

Pedranghelu v Oruci
2017 NY Slip Op 33497(U)
March 31, 2017
Supreme Court, Nassau County
Docket Number: Index No. 603820/2015
Judge: Antonio I. Brandveen
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ORIGINAL

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

JOHN P. PEDRANGHELU, JR., as
ADMINISTRATOR of the Estate of JOHN P.
PEDRANGHELU,

TRIAL / IAS PART 31
NASSAU COUNTY

Index No. 603820/2015

Plaintiff,

Motion Sequence No. 002, 003, 004

- against -

EDWARD H. ORUCI, INTERVENTIONAL
CARDIOVASCULAR ASSOCIATES, PLLC,
PAUL KEANE, NORTH SHORE
UNIVERSITY HOSPITAL AMBULANCE
SERVICE, LORNE NELSON SHERMAN,
WILLIAM GOLDWASSER, NORTH SHORE -
LIJ SYOSSET HOSPITAL, SYOSSET
HOSPITAL AND NORTH SHORE - LONG
ISLAND JEWISH HEALTH SYSTEM,

Defendants.

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits	<u>1, 2, 3</u>
Answering Affidavits	<u>4</u>
Replying Affidavits	<u>5, 6, 7</u>
Briefs: Plaintiff's / Petitioner's	_____
Defendant's / Respondent's	_____

The defendants Edward H. Oruci and Interventional Cardiovascular Associates,
PLLC(Sequence 002), William Goldwasser (Sequence 003) and North Shore University
Hospital Ambulance Service, Lorne Nelson Sherman, North Shore - LIJ Syosset Hospital,

Syosset Hospital and North Shore - Long Island Jewish Health System (Sequence 004) move this Court for orders dismissing the verified complaint in this medical malpractice action on the ground the plaintiff John P. Pedranghelu, Jr., as Administrator of the Estate of John P. Pedranghelu failed to appear for multiple court conferences, or in the alternative dismissing the verified complaint pursuant to CPLR 3126 because the plaintiff unreasonably neglected to prosecute this action.

The plaintiff opposes these motions, with a new attorney, on the grounds that John P. Pedranghelu, Jr., Esq. acted *pro se* since approximately September 2016, after the former plaintiff's attorneys were relieved, but had complied with the defendants' demands for authorizations. This Court signed an order dated August 4, 2016, which was entered on August 12, 2016, in the Nassau County Clerk's office relieving the law firm of Sanders, Sanders, Block, Woycik, Viener & Grossman, P.C. as the plaintiff's attorney. The plaintiff and the plaintiff's new attorney executed a consent to change the attorney on January 25, 2017. The plaintiff's new counsel asserts, in an affirmation, some 66 HIPAA authorizations were recently mailed to all of the attorneys for the defendants. The plaintiff avers there has been no willful and contumacious conduct by the plaintiff rather various mixups, and points to the plaintiff's affidavit dated January 26, 2017, regarding the plaintiff's obligation to appear as directed by the Court. The plaintiff states he never received notice of the October 6, 2016 court appearance nor the court order dated August 4, 2016 with notice of entry dated September 12, 2016 from any source. The plaintiff points out the plaintiff's home listed was incorrect as 2 Spruce Court, Bayville, New York

rather than 2 Spruce Street, Bayville, New York. The plaintiff contends, in view of the short period of time that the plaintiff acted *pro se* and the lack of willful and contumacious conduct by the plaintiff, the motions should be denied since there is no prejudice to any defendant.

In reply, Edward H. Oruci, M.D. and Interventional Cardiovascular Associates, PLLC assert the plaintiff fails to meet the 22 N.Y.C. R.R. § 202.27(b) burden by providing both a reasonable excuse for the plaintiff's default and the existence of a potentially meritorious cause of action. Dr. Oruci and Interventional Cardiovascular Associates, PLLC point out the plaintiff did not address the second prong of the burden by providing an affirmation from a medical expert demonstrating a potentially meritorious cause of action against the defendants. Dr. Oruci and Interventional Cardiovascular Associates, PLLC contend the plaintiff's recent disclosure of HIPAA authorizations almost six months after the plaintiff's former attorney was relieved does not excuse the plaintiff's failure to appear in court and respond properly to the instant motion. Dr. Oruci and Interventional Cardiovascular Associates, PLLC maintain the plaintiff, who is an attorney, acknowledged he did not appear at court conferences and cannot be held to the same standard as a *pro se* litigant who may lack knowledge of the legal system.

In reply, William Goldwasser, M.D. points out the then *pro se* attorney signed for a letter dated October 11, 2016, sent by registered mail, return receipt requested article

number 7012 3050 0000 4694 8878 to 2 Spruce Street, Bayville, New York 11709 advising the plaintiff of the October 27, 2016-court conference. The United States Postal Service stamped that return receipt, signed by the plaintiff as delivered to the plaintiff on October 22, 2016, at the Bayville, New York at the Bayville, New York facility of United States Postal Service. The attorney for Dr. Goldwasser states, in an affirmation dated January 30, 2016, that no letters were ever returned to that law office as undeliverable to the plaintiff. The attorney for Dr. Goldwasser states the plaintiff failed to retain a new attorney within the 60 days provided in the court order dated August 4, 2016, request additional time to retain a new attorney. The attorney for Dr. Goldwasser adds the plaintiff was duly advised of multiple conferences and failed to appear.

In reply, North Shore University Hospital Ambulance Service, Lorne Nelson Sherman, M.D., North Shore - LIJ Syosset Hospital, Syosset Hospital and North Shore - Long Island Jewish Health System assert the plaintiff fails to meet the 22 N.Y.C. R.R. § 202.27(b) burden by providing both a reasonable excuse for the plaintiff's default and the existence of a potentially meritorious cause of action. North Shore University Hospital Ambulance Service, Lorne Nelson Sherman, M.D., North Shore - LIJ Syosset Hospital, Syosset Hospital and North Shore - Long Island Jewish Health System contend the plaintiff asserts a standard of "willful and contumacious" regarding the plaintiff's conduct which is inapplicable for the purposes of a dismissal pursuant to 22 N.Y.C. R.R. § 202.27(b). North Shore University Hospital Ambulance Service, Lorne Nelson Sherman, M.D., North Shore - LIJ Syosset Hospital, Syosset Hospital and North Shore - Long

Island Jewish Health System aver, even were the Court to accept the plaintiff's excuses for three defaults, the plaintiff fails to provide a potentially meritorious cause of action by not submitting an affidavit of merit from a licensed medical professional nor make any effort to claim this action has merit. North Shore University Hospital Ambulance Service, Lorne Nelson Sherman, M.D., North Shore - LIJ Syosset Hospital, Syosset Hospital and North Shore - Long Island Jewish Health System notes the plaintiff's claim of compliance with numerous discovery responses is unavailing because the plaintiff sent 66 HIPAA authorizations to their attorney yet to be received nearly six months after the plaintiff's former attorney withdrew despite multiple requests to the plaintiff. North Shore University Hospital Ambulance Service, Lorne Nelson Sherman, M.D., North Shore - LIJ Syosset Hospital, Syosset Hospital and North Shore - Long Island Jewish Health System point out the plaintiff could have checked court appearances on this action filed by electronic means with the Nassau County Clerk.

The Court determines all of the defendants satisfactorily show the plaintiff defaulted on discovery obligations, appearances at court conferences and unreasonably neglecting to prosecute this action (*see* 22 N.Y.C.R.R. 202.27 [b]; *see Hagen-Meurer v Balakhane*, 127 AD3d 1020 [2d.Dept. 2015]). In opposition, the plaintiff fails to satisfy the burden of showing both a reasonable excuse for the default and the existence of a potentially meritorious cause of action. It appears the plaintiff received notices of the court appearances, duly served discovery demands and court orders, and failed to comply with those items. The affirmation of the plaintiff attorney is insufficient to demonstrate a

potentially meritorious cause of action against the defendants. There is no sworn statement by a medical professional to specify the acceptable standard of medical care or detail the procedures that should have been followed by the defendants (*Nowell v NYU Med. Ctr.*, 55 AD3d 573 [2d Dept. 2008]).

ORDERED that the motions (Sequence 002), William Goldwasser (Sequence 003) and North Shore University Hospital Ambulance Service, Lorne Nelson Sherman, North Shore - LIJ Syosset Hospital, Syosset Hospital and North Shore - Long Island Jewish Health System (Sequence 004) are GRANTED dismissing the verified complaint in this medical malpractice.

This decision will constitute the order and judgment of the Court.

So ordered.

Dated: March 31, 2017

ENTER:



J. S. C.

ENTERED

APR 10 2017

NASSAU COUNTY
COUNTY CLERK'S OFFICE

NON-FINAL DISPOSITION