

Nasir v New York Univ. Hosps. Ctr.

2018 NY Slip Op 30363(U)

February 27, 2018

Supreme Court, New York County

Docket Number: 155606/17

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, IAS Part 11

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SYED NASIR and KEIKO NASIR,

Index No.: 155606/17

Plaintiffs,

-against-

Sequence # 001

NEW YORK UNIVERSITY HOSPITALS CENTER,

Defendant.

-----X
JOAN MADDEN, J.:

In this personal injury action, defendant New York University Hospitals Center (“NYU”) moves pursuant to CPLR 3211 (a)(4) to dismiss this action on the grounds of another action pending. Plaintiffs oppose the motion and cross move to consolidate the two actions and for sanctions for frivolous motion practice.

This action seeks to recover damages for personal injuries allegedly sustained by plaintiff Syed Nasir (“Nasir”) on March 13, 2016, when Nasir, who came to the NYU’s emergency room with complaints of abdominal pain, fell on the bathroom floor during his emergency room work. Plaintiff Kieko Nasir, who is Nasir’s wife, seeks to recovery for loss of consortium. Before commencing this action, plaintiffs commenced an action asserting claims for medical malpractice and lack of informed consent, against NYU and an emergency room physician and two emergency room nurses under Index No. 805406/16 (“the prior action”). The prior action is also pending before this court, and discovery is in its early stages.

NYU argues that the existence of the prior action warrants the dismissal of the instant action. Plaintiffs oppose the motion and asserts that the proper remedy under the circumstances here is consolidation since the two actions arise out of common facts, and that the motion to

dismiss is frivolous since the claims asserted in the two actions are distinct.

For the reasons below, the motion is denied, and the cross motion is granted to the extent of consolidating the two actions.

Pursuant to CPLR 3211(a)(4), a court has broad discretion as to the disposition of an action when another action is pending.” Montalvo v. Air Dock Systems, 37 AD3d 567, 567 (2d Dept 2007). To warrant and dismissal under this provision, “the two actions must be sufficiently similar and the relief sought must be the same or substantially the same.” Id. (internal quotations and citations omitted). There must also be at least a “substantial identity of parties ‘which generally is present when at least one plaintiff and one defendant is common in each action.’” Proietto v. Donohue, 189 AD2d 807 (2d Dept 1993), citing Morgulus v. J. Yudell Realty, Inc., 161 AD2d 211, 213 (1st Dept 1990). Furthermore, the court need not dismiss the action but may make such order as justice requires, including consolidating the action with the earlier commenced action when the actions “involve common questions of law and fact.” See Gutman v. Klein, 26 AD3d 464, 465 (2d Dept 2006); Wiltshire, 2A Carmody-Wait 2d, Another Action Pending § 12:2 (December 2016).

When, as here, two actions assert different causes of action but involve common issues of law and fact, the appropriate remedy is not dismissal but consolidation. See Fay Estates v. Toys “R” Us, Inc., 22 AD3d 712, 714 (2d Dept 2005)(court properly declined to dismiss the action on the ground of another action pending; “[h]owever, since the two actions involve common questions of law or fact the actions should have been consolidated”); see also, Amcan Holdings, Inc. v. Torys LLP, 32 AD3d 337 (1st Dept 2006) (reversing the trial court's denial of motion to consolidate two actions against a law firm brought by two plaintiff companies controlled by a

single corporate entity where the parties to each action possessed knowledge and information relevant to claims in the other, and there were questions of law and fact common to both).

The cross motion for sanctions, however, must be denied since it cannot be said that NYU's motion seeking dismissal on the grounds of another action pending is frivolous.

Accordingly, it is

ORDERED that the motion to dismiss on the grounds of another action pending is denied; and it is further

ORDERED that the cross motion to consolidated is granted, and the consolidated action shall bear the following caption:

SYED NASIR and KEIKO NASIR,

Plaintiffs

Index No. 805402/16

- v -

NEW YORK UNIVERSITY HOSPITALS CENTER,
ANAND KUMAR SWAMINATHAN, M.D., ANNETTE
PEPE, R.N., JOSEPH AGUILAR, R.N. and "JOHN DOE",
intended to be that individual who assisted plaintiff out of
bed in the emergency department on March 13, 2016,

Defendants

and it is further


ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that the movant is directed to serve a copy of this order with notice of entry on the County Clerk (room 141B) who shall consolidate the papers in the actions hereby consolidated and shall mark the Court's records to reflect the consolidation; and it is further

ORDERED that the movant is directed to serve a copy of this order with notice of entry shall also be served upon the Clerk of the Trial Support Office (Room 158), who is hereby directed to mark the court's records to reflect the consolidation; and it is further

ORDERED that the cross motion for sanctions is denied; and it is further

ORDERED that the parties in the consolidated action shall appear on ^{March 22, 2018} ~~February 15, 2018~~ at 9:30 am for a preliminary conference in Part 11, room 351, 60 Centre Street, New York, NY.

DATED: ~~January~~ ^{February 27, 2018} 



J.S.C.
HON. JOAN A. MADDEN
J.S.C.

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION; and