

Pietroforte v Belle Harbor Home of the Sages, Inc.
2018 NY Slip Op 31494(U)
July 3, 2018
Supreme Court, New York County
Docket Number: 805149/2014
Judge: George J. Silver
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**SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: GEORGE J. SILVER PART 10**

Justice

**HELEN PIETROFORTE, by her legal guardian,
JANET BREW**

Plaintiffs

MOTION INDEX NO. 805149/2014

MOTION DATE _____

- v -

MOTION SEQ. NO. 002,003

**BELLE HARBOR HOME OF THE SAGES, INC.,
BELLE HARBOR MANOR, MARIE A. LIPPMAN, M.D.,
INSTITUTE FOR COMMUNITY LIVING, INC.,
MILESTONE RESIDENCE, NEW YORK CITY HEALTH
AND HOSPITALS CORPORATION, WOODHULL
MEDICAL AND MENTAL HEALTH CENTER,
GRAMERCY PARK MEDICINE, P.C., NORTH SHORE-
LONG ISLAND JEWISH HEALTH SYSTEM, INC.,
THE ZUCKER HILLSIDE HOSPITAL, NAE EDISON, LLC
d/b/a EDISON HOME HEALTH CARE, HEALTHCARE
CHOICES, INC., DR. NAIRA AMBARIAN, D.O. and
CENTERLIGHT HEALTHCARE, INC.,**

Defendants.

Cross-Motion: Yes No

In this medical malpractice action, plaintiff Helen Pietroforte (“plaintiff”) alleges that defendants were collectively negligent and deliberately indifferent to her medical needs, and failed to provide proper medical treatment and supervision, resulting in her fall out of a fourth floor window of Belle Harbor Manor, located at 209 Beach 125th Street, Belle Harbor, New York on February 18, 2013. Plaintiff had been displaced from her adult home following Hurricane Sandy on October 29, 2012. Plaintiff was subsequently transferred to the Park Slope Armory from Belle Harbor and shortly thereafter taken to the Kings Hotel. She was then admitted to Woodhull Hospital. Upon her discharge she was transferred to Milestone Residence. She was briefly admitted to Zucker Hillside Hospital and then returned to Milestone Residence. On or about February 14, 2013, she returned to Belle Harbor Manor. Plaintiff claims that defendants collectively failed to give her prescribed medication

**MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):**

to treat her history of schizophrenic episodes, resulting in her fall.

Motion Sequence 002 concerns plaintiff's request to add Center for Nursing and Rehabilitation, Inc. ("CNR"), as a party defendant. Since the commencement of the above-entitled action and after service of the complaint, plaintiff avers that it was discovered that CNR should have been named as a party defendant. CNR is a member of Centerlight Health System as is defendant Centerlight Healthcare, Inc. ("Centerlight Healthcare, Inc."). Following Hurricane Sandy CNR, at the request of the New York State Department of Health, was issued an emergency temporary license to operate an adult home at 2416 Atlantic Avenue in Brooklyn for residents of Belle Harbor Manor.

Plaintiff asserts that CNR was not named as a party defendant at the time of the commencement of the action because CNR held itself out as "Centerlight," a name incidentally shared by Centerlight Healthcare, Inc. Michael Friedman, on behalf of defendants Belle Harbor Home of the Sages, Inc. and Belle Harbor Manor has testified that "Centerlight," not CNR, was responsible for plaintiff's care, including the distribution of her medications, while at Kings Hotel. At the time of his deposition, Michael Friedman also specifically testified that CNR and Centerlight Healthcare, Inc. were the same company. Plaintiff states that plaintiff only learned of CNR's potential involvement in plaintiff's care when an agreement between Belle Harbor Home of the Sages, Inc. and CNR was exchanged during discovery.

Having discovered this information, plaintiff argues that it is necessary for CNR to be joined as a party defendant in this case so that all parties who are or may be liable to plaintiff for damages may be joined in one cause of action and her claims against them be determined in that one action. Plaintiff further contends that the joinder of CNR in the above-entitled action as a party defendant will not operate to prejudice either CNR or the currently named defendants, and will not inconvenience any of the parties herein nor cause undue delay of the trial of the above-entitled

action. Indeed, plaintiff submits that the proposed amendment prejudices neither the existing parties, nor the party to be added as a defendant because the new party is aligned with existing parties and the additions to the complaint do not change the nature of any person's defense or impose additional discovery obligations. To the contrary, joinder obviates the need to resolve some of plaintiff's claims in a separate action.

In opposition, Centerlight Healthcare, Inc. contends that the granting of plaintiff's instant application would highly prejudice defendants since significant discovery has been completed and this case has been pending for over three years. Centerlight Healthcare, Inc. further contends that plaintiff's allegations that it is the "same company" as CNR are unfounded, as each company is a separate and distinct legal entity. Additionally, Centerlight Healthcare, Inc. contends that the statute of limitations against CNR has expired. Indeed, Centerlight Healthcare, Inc. avers that the longest relevant statute of limitations for plaintiff's claims of violations of the public health law, medical malpractice and negligence, is three years pursuant to CPLR §214. As such, Centerlight Healthcare, Inc. submits that the time for the plaintiff to file a claim against CNR expired on February 16, 2016.

Separately, CNR moves (Motion Sequence 003), pursuant to CPLR 3211(a)(5), for an order dismissing plaintiff's complaint as to CNR based on the argument espoused by Centerlight Healthcare, Inc. in opposition to plaintiff's motion to amend – namely, that plaintiff's causes of action against CNR are time-barred. It is undisputed that when plaintiff initiated this action on May 6, 2014, CNR was not named as a defendant. Over one year later, plaintiff filed an amended summons and complaint, and still did not include CNR as a defendant. On November 16, 2017, defendant Institute for Community Living, Inc. commenced a third-party action against CNR. Subsequently, on February 12, 2018, plaintiff amended her complaint for the second time to include CNR as a direct defendant, alleging causes of action for violations of Public Health Law Sections §§ 2801-D and 2803-C, medical

malpractice, and negligence arising from plaintiff's care and treatment between November 18, 2012 and December 6, 2012. CNR was served with this amended pleading on February 22, 2018, a date that it contends is well past the longest applicable statute of limitations pursuant to CPLR §214.

In opposition, plaintiff does not dispute the pertinent time line of events. Rather, plaintiff highlights that it did not learn that CNR operated the Kings Hotel until well after discovery had commenced. Following defendant Institute for Community Living, Inc.'s impleader of CNR, plaintiff avers that she timely moved to amend her complaint to add CNR as a direct defendant. Plaintiff further argues that the relation back doctrine allows a claim asserted against a defendant in an amended filing to relate back to claims previously asserted against a co-defendant for statute of limitations purposes where the two defendants are "united in interest" (*Ramos v. Cilluffo*, 276 AD2d 475, 475 [2d Dept. 2000]). Here, plaintiff contends that although the statute of limitations on plaintiff's direct claim against CNR has elapsed, CNR and Centerlight Healthcare, Inc. are "united in interest" and their claims are transnationally related. As such, plaintiff avers that CNR's motion to dismiss must be denied, as she is not time-barred from filing her amended complaint.

Motion Sequence 002 and 003 are decided in accordance with the discussion below.

DISCUSSION

New York courts generally maintain that "[l]eave to amend pleadings 'shall be freely given' absent prejudice or surprise resulting directly from the delay" (see *McCaskey, Davies and Associates, Inc. v New York City Health & Hospitals Corp.*, 59 NY2d 755, 757 [1983], quoting CPLR § 3025 [b]; see also *Spiegel v Gingrich*, 74 AD3d 425 [1st Dept. 2010]). Indeed, leave to amend should only be denied where the proposed amendment is palpably insufficient or patently devoid of merit (see *Rodgers v. New York City Tr. Auth.*, 109 AD3d 535, 537 [2d Dept. 2013]; *Schwartz v. Sayah*, 83 AD3d 926 [2d Dept. 2011]). As such, in the absence of prejudice or surprise to the opposing party, leave to amend

pleadings is freely granted. Prejudice can be shown where, for instance, the application for leave to amend is made long after the action has been certified for trial since a party's ability to properly respond to an amendment may be frustrated under such a circumstance (see, e.g., *Civil Serv. Empls. Assn. v. County of Nassau*, 144 AD3d 1077, 1078 [2d Dept. 2016]).

Here, plaintiff submits upon information and belief that CNR and Centerlight Healthcare, Inc. are both members of Centerlight Health System. Moreover, as previously indicated, Michael Friedman of defendant Belle Harbor testified that CNR and Centerlight Healthcare, Inc. are the same company. Additionally, an agreement exchanged during the course of discovery reveals that CNR, acting under the title "Centerlight," decided to care for Belle Harbor residents following Hurricane Sandy. As such, plaintiff has a basis to add CNR as a defendant in spite of a potential time-bar based upon the relation back doctrine. As articulated in plaintiff's motion to amend (Sequence 002) and opposition to CNR's motion to dismiss (Sequence 003), pursuant to that doctrine, the claims asserted against a newly added defendant in an amended pleading may relate back to claims previously asserted against another defendant for statute of limitations purposes where those defendants are united in interest (*Buran v. Coupal*, 87 NY2d 173, 177–178 [1995]). In order for the relation back doctrine to apply, a plaintiff must establish that "(1) both claims arose out of [the] same conduct, transaction or occurrence, (2) the new party is united in interest with the original defendant, and by reason of that relationship can be charged with such notice of the institution of the action that he [or she] will not be prejudiced in maintaining his [or her] defense on the merits and (3) the new party knew or should have known that, but for an excusable mistake by plaintiff as to the identity of the proper parties, the action would have been brought against him [or her] as well" (*id.* at 178; see *Brock v. Bua*, 83 AD2d 61, 69 [2d Dept. 1981]).

Here, it is essentially conceded that plaintiff has satisfied the first prong of the relation back test, as there is no assertion that plaintiff's claims against CNR and Centerlight Healthcare, Inc. did not arise out of the same conduct, transaction or

occurrence. The court rejects Centerlight Healthcare, Inc. and CNR's contention that plaintiff failed to satisfy the second prong of the relation back test, i.e., that CNR is united in interest with it. Centerlight Healthcare, Inc. and CNR's self-serving assertions that they are not united in interest with one another are contradicted by the record evidence cited above by plaintiff. Additionally, at oral argument before the court on February 20, 2018, counsel for Centerlight Healthcare, Inc., Kaufman Borgeest & Ryan, LLP, asserted that the law firm represents both CNR and Centerlight Healthcare, Inc. Such representation would be improper if there are divergent interests between CNR and Centerlight Healthcare, Inc. such that it would be impossible for counsel to effectively represent both clients (*see People v. Cardoza*, 22 AD3d 428 [1st Dept. 2005]). Consequently, the very fact that Kaufman Borgeest & Ryan, LLP affirms that the law firm is able to represent both clients enures in favor of plaintiff's contention that CNR and Centerlight Healthcare, Inc. are united in interest.

Finally, because the claims asserted in this action as to CNR and Centerlight Healthcare, Inc. arose out of the same conduct, and because the interests of both parties appear to be aligned, it is axiomatic that CNR knew or should have known that this action would be brought against it. Thus, plaintiff's amended complaint against CNR relates back to the original, timely complaint filed against Centerlight Healthcare, Inc., for statute of limitations purposes. Moreover, plaintiff has established that the failure to include CNR in the original complaint was a mistake and not the result of a strategy to obtain a tactical advantage, and that plaintiff did not have sufficient knowledge of CNR's role when the action was commenced.

As plaintiff has satisfied the elements of the relation back doctrine, and CNR and Centerlight Healthcare, Inc. have failed to convincingly assert that they would suffer prejudice, especially where some discovery relevant to CNR has already been exchanged, thus diminishing the likelihood of undue delay if this court were to permit the addition of CNR to this action, it is hereby

ORDERED that plaintiff's application motion for leave to amend its pleading to add Center for Nursing and Rehabilitation, Inc., is granted; and it is further **ORDERED** that plaintiff shall be serve an amended complaint within 30 days of service of a copy of this order with notice of entry thereof; and it is further **ORDERED** that the caption is amended to read as follows:

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

Index No. 805149/2014

**HELEN PIETROFORTE, by her legal guardian,
JANET BREW ,
Plaintiffs,**

-against-

**BELLE HARBOR HOME OF THE SAGES, INC.,
BELLE HARBOR MANOR, MARIE A. LIPPMAN, M.D.,
INSTITUTE FOR COMMUNITY LIVING, INC.,
MILESTONE RESIDENCE, NEW YORK CITY HEALTH
AND HOSPITALS CORPORATION, WOODHULL
MEDICAL AND MENTAL HEALTH CENTER,
GRAMERCY PARK MEDICINE, P.C., NORTH SHORE-
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THE ZUCKER HILLSIDE HOSPITAL, NAE EDISON, LLC
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CHOICES, INC., DR. NAIRA AMBARIAN, D.O. and
CENTERLIGHT HEALTHCARE, INC., CENTER FOR
NURSING AND REHABILITATION, INC.,**

Defendants.

; and it is further

ORDERED that Center for Nursing and Rehabilitation, Inc.'s motion to dismiss is denied for the reasons stated herein; and it is further

ORDERED that Kaufman Borgeest & Ryan, LLP is directed to conduct a conflicts check with respect to its continued representation of Centerlight Healthcare, Inc. and Center for Nursing and Rehabilitation, Inc. within the same

proceeding; and it is further

ORDERED that the parties are directed to appear for a compliance conference
on *August 14* at 111 Centre Street, Room 1227 at 9:30 AM.

This constitutes the decision and order of the court.

Dated: *July 3*, 2018

George J. Silver
HON. GEORGE J. SILVER

Check one: Case Disposed Non-Final Disposition