

Okocha v St. John's Episcopal Hosp.

2018 NY Slip Op 31538(U)

June 5, 2018

Supreme Court, Queens County

Docket Number: 700237/15

Judge: Peter J. O'Donoghue

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SFO Multiple motions

New YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, PETER J. O'DONOGHUE IAS PART MD

Justice

Osita Emmanuel Okocha as Temporary
Administrator of the Estate of Theresa
Onyeagom Okocha, a/k/a Theresa Onyeagom Ibuzo,
deceased, and Osita E. Okocha, Individually,

Index No.: 700237/15

Plaintiff,
-against-

Motion Date: 01/31/18

St. John's Episcopal Hospital, et. al.,

Motion Seq. No.: 5 & 6

Defendants.

Motions bearing sequence numbers 5 and 6 as set forth below are hereby consolidated for disposition. The following papers numbered as set forth below read on this motion by plaintiff for an Order pursuant to CPLR 306-b, extending the time within which to serve the Summons and Complaint, (ii) Extending the time for plaintiff to serve and/or reserve the remaining Defendants that have not answered; and motion by defendant Dr. Rothman for an order a) dismissing the action pursuant to CPLR 3211(a)(8) as the court does not have jurisdiction over defendant Dr. Rothman, based upon defective service of process pursuant CPLR 308 and CPLR 306-b or b) in the alternative, dismissing the action against defendant, Dr. Rothman, pursuant to CPLR 3215(c), as the plaintiff failed to move for entry of a default judgment within one year of default; and cross motion for an Order a) dismissing the action pursuant to CPLR 3211(a)(8) as the court does not have jurisdiction over defendants, Obiora Anyoku, M.D. s/h/a Obiora Anyaoku, M.D., Heino anto, M.D. s/h/a Dr. Anto, M.D. and Rajbir Chopra, M.D. s/h/a Dr. Chorpa, M.D. based upon defective service of process pursuant to CPLR 308 and CPLR 306-b or in the alternative dismissing the action against defendants Obiora Anyoku, M.D. s/h/a Obiora Anyaoku, M.D., Heino Anto , M.D. s/h/a Dr. Anto , M.D., and Rajbir Chopra, M.D. s/h/a Dr. Chopra, M.D., pursuant to CPLR 3215(c), as the plaintiff failed to move for entry or a default judgment within one year of the default and cross motion by defendants for an order awarding costs and issuing sanctions against plaintiff's counsel Mr. Osita Emmanuel Okocha, Esq for his frivolous attempts in identifying Dr. Bhartiben Patel who is not the intended named "Dr. Patel", pursuant to New York Lawyer's Code of Professional Responsibility DR 7-120(a)(5) and 22 NYCRR 130.1-1.4 and cross motion for an Order pursuant to CPLR 3126, to dismiss the compliant against Dr.

Voly Yankova, Dr. Crabtree, Dr. Krishnamani Chinasammy and Dr. Yohonner Melaku s/h/a Dr. Yohonner Mlole 2) or in the alternative to deem that the plaintiff has waived the right to depose Dr. Yankova Dr. Crabtree, Dr. Chinasammy and Dr. Melaku s/h/a for failure to comply with the orders and directives of this Court regarding depositions to be complete by December 5, 2017; 3) pursuant to CPLR 1024, for an Order to amend the caption and answer to reflect the correct spelling of named "Dr. Yohonner Mlole" to the proper spelling "Dr. Yohonner Melaku.

	<u>PAPERS</u> <u>NUMBERED</u>
<u>Seq. No. 5</u>	
N.M.-Affidavits-Exhibits.....	95-99
N.C.M.-Affidavits-Exhibits.....	101-112;113- 121;124-130
Reply Affirmation-Exhibits.....	131-134;141
 <u>Seq. No. 6</u>	
N.M.-Affidavits-Exhibits.....	142-146
Answering Papers-Affidavits-Exhibits.....	147-148
Reply Affirmation-Exhibits.....	149

Upon the foregoing papers and oral argument it is ordered that the within motion by plaintiff for an Order pursuant to CPLR 306-b, extending the time within which to serve the Summons and Complaint, (ii) Extending the time for plaintiff to serve and/or reserve the remaining Defendants that have not answered; and motion for an order is denied. Plaintiff failed to set forth facts a) establishing "good cause" or b) supporting the application of "the interest of justice" standard.

The branch of the cross motion pursuant to CPLR 3126, to dismiss the compliant against Dr. Voly Yankova, Dr. Crabtree, Dr. Krishnamani Chinasammy and Dr. Yohonner Melaku s/h/a Dr. Yohonner Mlole is granted.

The branch of the cross motion for an order to deem that the plaintiff has waived the right to depose Dr. Yankova Dr. Crabtree, Dr. Chinasammy and Dr. Melaku s/h/a for failure to comply with the orders and directives of this Court regarding depositions to be complete by December 5, 2017 is denied as moot.

The branch of the cross motion for an order pursuant to CPLR 1024, for an Order to amend the caption and answer to reflect the correct spelling of named "Dr. Yohonner Mlole" to the proper spelling "Dr. Yohonner Melaku is granted to correct spelling of defendant "Dr. Yohonner Mlole" to the proper spelling "Dr.

Yohonner Melaka and the complaint is dismissed against him as set forth above.

The branch of the cross motion for an order dismissing the action pursuant to CPLR 3211(a)(8) as the court does not have jurisdiction over defendants, Obiora Anyoku, M.D. s/h/a Obiora Anyaoku, M.D., Heino Anto, M.D. s/h/a Dr. Anto, M.D. and Rajbir Chopra, M.D. s/h/a Dr. Chopra, M.D. based upon defective service of process pursuant to CPLR 308 and CPLR 306-b is granted.

The branch of the cross motion for an order dismissing the action pursuant to CPLR 3215(c) with respect to defendants, Obiora Anyoku, M.D. s/h/a Obiora Anyaoku, M.D., Heino Anto, M.D. s/h/a Dr. Anto, M.D. and Rajbir Chopra, M.D. s/h/a Dr. Chopra, M.D. is denied as moot.

The cross motion for an Order awarding costs and issuing sanctions against plaintiff's counsel Mr. Osita Emmanuel Okocha, Esq for his frivolous attempts in identifying Dr. Bhartiben Patel who is not the intended named "Dr. Patel", pursuant to New York Lawyer's Code of Professional Responsibility DR 7-120(a)(5) and 22 NYCRR 130.1-1.4 is denied.

The branch of the motion by defendant Dr. Rothman (seq. No. 6) for an order dismissing the action pursuant to CPLR 3211(a)(8) based upon defective service of process pursuant to CPLR 308 and 306-b is granted and the branch of the motion to dismiss the action against Dr. Rothman pursuant to CPLR 3215(c) is denied as moot.

The amended caption shall read as follows:

(S E E N E X T P A G E)

Supreme Court of the State of New York
County of Queens

Osita Emmanuel Okocha as Temporary
Administrator of the Estate of Theresa
Onyeagom Okocha, a/k/a Theresa Onyeagom Ibuzo,
deceased, and Osita E. Okocha, Individually,

Index No.:700237/15

Plaintiffs,
-against-

St. John's Episcopal Hospital, a/k/a St.
John's Episcopal Hospital, Tatek Teshome,
M.D., David Loewinger, DPM, and Dr. Challa,
M.D.,

Defendants.

Dated: June 5, 2018

.....
Hon. Peter J. O'Donoghue, J.S.C.

FILED
JUN 7 2018
COUNTY CLERK
QUEENS COUNTY