

Panos v Medical Liab. Mut. Ins. Co.

2018 NY Slip Op 33859(U)

June 22, 2018

Supreme Court, Putnam County

Docket Number: 500103/2017

Judge: Paul I. Marx

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.

To commence the statutory time period for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM
HON. PAUL I. MARX, J.S.C.

-----X
SPYROS N. PANOS, M.D.
Plaintiff,

-against-

Index No.: 500103/2017
DECISION AND ORDER

MEDICAL LIABILITY MUTUAL INSURANCE
COMPANY and STEPHANIE E. SIEGRIST, M.D.

Defendants.
-----X

The following papers numbered 1 through 5 were considered in connection with plaintiff's motion seeking an Order: (1) "granting renewal of Plaintiff's opposition to Defendants [sic] Medical Liability Mutual Insurance Company (MLMIC) and Siegrist motion [sic] for summary judgment and modifying the Court's Order dated February 21, 2018 ... based upon newly identified evidence, so as to modify this court's February 21, 2018 'Decision and Order' and allow this case to proceed in the name of justice", and (2) granting reargument of the Plaintiff's motion to amend the original complaint in order to allow additional causes of action against both Defendants and to allow for a second declaratory judgment action as stipulated in plaintiff's original Motion to Amend."¹

Notice of Motion/Affirmation of Spyros N. Panos, M.D. dated March 22, 2018/	
Exhibit 8	1-3
Medical Liability Mutual Insurance Company's Memorandum of Law in Opposition to	
Motion for Renewal and Reargument	4
Affirmation of Nicholas J. Reeder, Esq. dated April 18, 2018/Memorandum of Law ...	5

¹ The Court notes that plaintiff's notice of motion states that he seeks only to renew that portion of the Decision and Order which granted the defendants' motions to dismiss his complaint because of alleged new evidence and to reargue that portion of the Decision and Order which denied his cross motion to serve an Amended Complaint. Nevertheless, plaintiff argues in the supporting affirmation that reargument of the motions to dismiss should be granted as well.

For the reasons set forth below, plaintiff's motion for renewal is denied in all respects. Plaintiff's motion seeking reargument is denied in all respects.

Procedural History

By Decision and Order dated February 21, 2018 ("the Decision and Order"), this Court granted the respective motions of defendants Medical Liability Mutual Insurance Company ("MLMIC") and Stephanie E. Siegrist, M.D., each of which sought dismissal of plaintiff's claims against them and denied plaintiff's motion to amend his complaint to add causes of action for declaratory relief.

Plaintiff now seeks to renew and reargue the Decision and Order. The predicate for plaintiff's motion to renew is that "new evidence has recently become available." He states that he has discovered that in February 2016, he sent a letter to Siegrist in which he "disputed the validity of Siegrist's role in being able to render a decision." Panos Affirmation ¶3. Exhibit 8.

The predicate for the motion to reargue is that plaintiff claims there are "inherent inconsistencies" in the Court's Decision and Order and that the "court overlooked key information which is of paramount importance... and should have led to a decision in favor of Plaintiff." *Id.* ¶4.

Discussion

Motion to Renew

Plaintiff's motion to renew seeks renewal of the Court's Decision and Order dated February 21, 2018 based upon what he claims is new evidence in the form of a letter sent by him to defendant Siegrist dated February 20, 2016, in which he sets forth his view of the issues to be decided by her and in which he challenges the process being employed.² He states that the letter was not available to him when the prior motion was submitted because it was "crafted by [him] while he was housed in a Federal Camp" and he was not allowed to retain a copy of the letter. He states that he sent the letter to his former (now disbarred) attorney and was only able to obtain it after the motions to dismiss were fully submitted. Panos Affirmation dated March 22, 2018 ¶10, 11. Essentially, the

² The Court notes that only the first page of the letter has been submitted. Plaintiff asserts that portions of the letter contain medical information which needs to be redacted and, therefore, have not been provided.

letter sets forth plaintiff's objection to the submission of the issues to arbitration before Siegrist. He asserts, therefore, that the Court erred in dismissing his complaint based, in part, on his participation in the arbitration process.

CPLR §2221(e) states as follows:

(e) A motion for leave to renew:

1. shall be identified specifically as such;
2. shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and
3. shall contain reasonable justification for the failure to present such facts on the prior motion.

A motion for leave to renew must be based upon additional material facts which existed at the time the prior motion was made, but "were not made known to the party seeking renewal, and consequently, [were] not made known to the court." *Elder v Elder*, 21 AD3d 1055, 1055 [2nd Dept 2005] (citing *Matter of Progressive Northeastern Ins. Co. v Frenkel*, 8 AD3d 390, 391 [2nd Dept 2004], quoting *Brooklyn Welding Corp. v Chin*, 236 AD2d 392 [2nd Dept 1997]). "Renewal should be denied where the party fails to offer a valid excuse for not submitting the additional facts upon the original application." *Mangine v Keller*, 182 AD2d 476, 477 [1st Dept. 1992] (citations omitted). "A motion for leave to renew 'is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation ...'." *Renna v Gullo*, 19 AD3d 472, 472 [2nd Dept 2005]; *O'Dell v Caswell*, 12 AD3d 492 [2nd Dept 2004].

The evidence Plaintiff now claims to be "new" was available and could have been discovered by him with due diligence. *Elder, supra* at 1055; *Yarde v New York City Transit Authority*, 4 AD3d 352, 353 [2nd Dept 2004]; *Cooke Center for Learning and Development*, 19 AD3d 834 [3rd Dept 2005]. Prior to the motions to dismiss being submitted for determination, plaintiff's then counsel was disbarred and plaintiff proceeded to represent himself. Since he was the author of the letter, plaintiff certainly knew of its existence before he submitted his opposition papers and could have, in the exercise of reasonable diligence, acquired it. Plaintiff does not state what efforts he made to acquire the letter from his prior counsel, or why those efforts proved unsuccessful. Plaintiff simply has not

provided a reasonable excuse for failing to present this evidence in opposition to the defendants' motions for dismissal at the time he filed his opposition to those motions.

Even if the Court were to consider the February 20, 2016 letter, such consideration would not change the outcome of the motion. Plaintiff's opposition papers made it abundantly clear that he opposed the arbitration process, contending that he was uncertain whether the insurance policies issued to him by MLMIC actually contained the provision that permitted arbitration. The Court has already determined that an arbitration provision exists and was complied with.

Accordingly, Plaintiff's motion to renew is denied.

The Motion to Reargue

In support of his motion to reargue, plaintiff contends that "inherent inconsistencies and misrepresentations are noted" in the Decision and Order. He states that the "Court should only be interested in the pursuit of justice and not getting over 200 pending malpractice actions off its docket at the biased expense of Plaintiff in this action."³ Panos Affirmation ¶ 21. Plaintiff proceeds to challenge a number of statements in the Decision and Order as incorrect.

CPLR §2221(d)(2) states in pertinent part as follows:

(d) A motion for leave to reargue:

2. shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion; ...

Plaintiff has not shown that the Court overlooked or misapplied the facts or the law in rendering its decision on the motion and cross-motion for summary judgment. "Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted." *Haque v Daddazio*, 84 AD3d 940, 942 [2nd Dept 2011] (quoting *Mazinov v Rella*, 79 AD3d 979, 980 [2nd Dept 2010], in turn quoting *McGill v Goldman*, 261 AD2d 593, 594 [1999]). Plaintiff's motion is a classic example of an unsuccessful party rehashing the same unsuccessful arguments that were previously made and

³ Plaintiff's suggestion that the Court was motivated by anything other than the interests of justice is incorrect and offensive.

fully considered by the Court in rendering its decision. The only difference is that plaintiff attempts to parse the language used by the Court in the Decision and Order.

Again, even if the Court were to grant reargument and evaluate the motions anew in light of plaintiff's assertions, the outcome would have been the same. While plaintiff asserts 17 separate "examples" of the Court having overlooked or misapprehended the facts or law, viewed independently or collectively, plaintiff's version of those statements would not lead to a different outcome.

Plaintiff's complaint that the Court erred in denying his request to serve an amended complaint to assert a cause of action seeking a declaration that insurance coverage was available to him under the insurance policies issued by MLMIC for administrative proceedings is simply incorrect, because the Court held that there was no justiciable controversy. Since plaintiff failed to allege that he was the subject of any administrative proceedings or that, if he was, he requested coverage under the policies or that MLMIC refused him coverage under the policies, no issue was presented to the Court which warranted a declaration of the parties' rights under the policies. His suggestion that his failure to make such an allegation is irrelevant is incorrect. Similarly, plaintiff's application to add causes of action against MLMIC and Siegrist was properly denied as the proposed causes of action lacked any merit.

Accordingly, Plaintiff's motion to reargue is denied in its entirety.

Dated: New City, New York
June 22, 2018

ENTER



HON. PAUL I. MARX, J.S.C.

To: Spyros N. Panos
120 Roundhill Road
Hopewell Jct, NY 12533

Rivkin Radler, LLP
Att: Frank Misiti, Esq.
926 RXR Plaza
Uniondale, NY 11556-0926

Hirsch & Tubiolo, PC
Att: Richard S. Tubiuolo, Esq.
1000 Reynolds Arcade Building
Rochester, NY 14614