

Casola v Northern Westchester Hosp. Assn.
2018 NY Slip Op 34032(U)
January 22, 2018
Supreme Court, Westchester County
Docket Number: 65996/2016
Judge: Joan B. Lefkowitz
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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 WESTCHESTER-COMPLIANCE PART

-----X
JAMES CASOLA,

Plaintiff,

-against-

DECISION and ORDER

Index No. 65996/2016

Motion Date: Jan. 22, 2018

Seq. Nos. 1 and 2

NORTHERN WESTCHESTER HOSPITAL
ASSOCIATION, EVAN KARAS, M.D.,
MARK BRAUNING, M.D., MICHAEL ROSEN, M.D.,
DANIEL A. LEONARD, M.D., JEFFREY D. GROSS, M.D.,
DAVID CHEN, M.D., STEVEN KROOP, M.D., and
CHARLES ELKIN, M.D.,

Defendants.
-----X

LEFKOWITZ, J.

The following papers were read on motion sequence number one by defendants David Chen, M.D., Steven Kroop, M.D., and Charles Elkin, M.D. (hereinafter to be referred to as "Chen," "Kroop," and "Elkin", respectively), for an order: (1) pursuant to CPLR 3217, so-ordering plaintiff's stipulation of discontinuance with prejudice as to them; (2) discontinuing with prejudice plaintiff's claims asserted against them; and (3) amending the caption to delete their names.

Order to Show Case dated November 15, 2017; Affirmation in Support; Exhibits A-F

The following papers were read on motion sequence number two by defendant Jeffrey D. Gross, M.D. (hereinafter to be referred to as "Gross"), for an order: (1) pursuant to CPLR 3217, so-ordering plaintiff's stipulation of discontinuance with prejudice; (2) discontinuing with prejudice plaintiff's claims asserted against him; and (3) such other and further relief as this court deems just and proper.

Order to Show Cause dated November 15, 2017; Affirmation in support; Exhibits A-D

Upon the foregoing papers and proceedings held on January 22, 2018, these motions are determined as follows:

This is an action for medical malpractice commenced on or about October 21, 2016. Issue was joined by Chen by service of a verified answer on or about January 11, 2017; for Kroop by service of a verified answer on or about December 16, 2016, and for Elkin by service of a verified answer on or about November 22, 2016. An answer was served on behalf of defendant Northern Westchester Hospital Association on or about November 9, 2016, and the remaining defendants (including Gross) served their answer on or about November 21, 2016. There are no cross claims asserted in any of the answers.

On July 25, 2017, plaintiff executed three stipulations of discontinuance, with prejudice, as to Chen, Kroop and Elkin, respectively. Each of these stipulations was also executed by counsel, jointly representing each of these defendants, but not by the other defendants. In August, 2017 (no specific date set forth in the stipulation) plaintiff executed a stipulation of discontinuance, with prejudice, as to Gross. This stipulation was also executed by joint counsel for defendants Karas, Brauning, Rosen, Leonard and Gross, but not by the other defendants.

Presently Chen, Kroop and Elkin request this court to so-order plaintiff's stipulations. They note that there are no cross claims by any co-defendants against them and that the stipulations do not bar or prevent the co-defendants from asserting claims pursuant to CPLR Articles 14, 16 and the General Obligations Law. They note that although co-defendants have not executed the stipulations of discontinuance, they have not articulated any prejudice should the stipulations be enforced. By separate motion, Gross also requests this court to so-order plaintiff's stipulation of discontinuance as to him.

CPLR 3217(b) provides that the court may order the voluntary discontinuance of an action upon terms and conditions it deems proper. "In the absence of special circumstances, such as prejudice to a substantial right of the defendant, or other improper consequences, a motion for voluntary discontinuance should be granted" (*Emigrant Mort. Co., Inc., v Carrera*, 126 AD3d 853 [2d Dept 2015]). Authorization under CPLR 3217(b) for a party to discontinue an action rests within the sound discretion of the trial court (*Tucker v Tucker*, 55 NY2d 378 [1982]). In *Tucker*, the Court noted that "ordinarily a party cannot be compelled to litigate and, absent special circumstances, discontinuance should be granted" (*Id.*).

This court perceives no basis to deny discontinuance of the action against defendants Chen, Kroop, Elkin and Gross. No cross claims have been asserted by any defendant in this action against any co-defendant. Furthermore, it does not appear from the record that any party will be prejudiced by the discontinuances.

In view of the foregoing, it is

ORDERED that motion sequence number one by defendants David Chen, M.D., Steven Kroop, M.D., and Charles Elkin, M.D. is granted to the extent that, pursuant to CPLR 3217 (b), the action is discontinued with prejudice insofar as alleged against them; and it is further

ORDERED that motion sequence number two by defendant Jeffrey D. Gross, M.D., is granted to the extent that, pursuant to CPLR 3217 (b), the action is discontinued with prejudice

insofar as alleged against him; and it is further

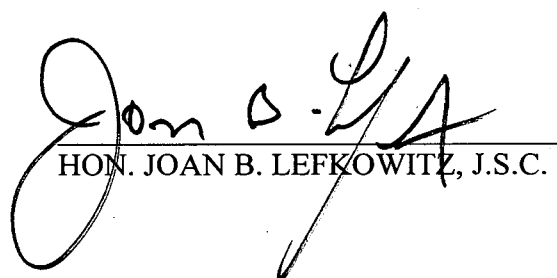
ORDERED that the caption is amended to omit the names of defendants David Chen, M.D., Steven Kroop, M.D., Charles Elkin, M.D., and Jeffrey D. Gross, M.D., therefrom; and it is further,

ORDERED that counsel for defendants David Chen, M.D., Steven Kroop, M.D., and Charles Elkin, M.D. is directed to serve a copy of this order with notice of entry upon all parties within seven days of entry and file proof of service on NYSCEF within five (5) days of service; and it is further

ORDERED that counsel for all parties are directed to appear for a conference in the Compliance Conference Part, Courtroom 800, on January 30, 2018, at 9:30 A.M. as previously directed.

The foregoing constitutes the decision and order of this court.

Dated: White Plains, New York
January 22, 2018


HON. JOAN B. LEFKOWITZ, J.S.C.

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cc: Compliance Part Clerk