

<b>Rosario v Ladetsky</b>
2019 NY Slip Op 31863(U)
June 26, 2019
Supreme Court, New York County
Docket Number: 805130/2015
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 6

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YAJAIRA MONTES ROSARIO, as Executrix  
of the Estate of MAYRA RANSOM,

Index No:  
805130/2015

Plaintiff,

**Decision and  
Order**

- against -

LYNN LADETSKY, M.D., COLUMBUS  
CIRCLE PARTIAL OPPOSITION IMAGING,  
COLUMBUS CIRCLE IMAGING a division  
of WEST SIDE RADIOLOGY ASSOCIATES,  
P.C., WEST SIDE RADIOLOGY ASSOCIATES,  
P.C., COLUMBUS CIRCLE IMAGING  
a division of WEST SIDE RADIOLOGY  
ASSOCIATES, P.C. affiliated with ST. LUKE'S  
ROOSEVELT HOSPITAL CENTER, ST.  
LUKE'S ROOSEVELT HOSPITAL CENTER  
a member of CONTINUUM HEALTH  
PARTNERS, INC., ST. LUKE'S ROOSEVELT  
HOSPITAL CENTER a member of MOUNT  
SINAI HEALTH SYSTEM, INC.,  
CONTINUUM HEALTH PARTNERS, INC.,  
MOUNT SINAI HEALTH SYSTEM, INC.,  
PAUL TARTTER, M.D.,

Mot. Seq.: 2

Defendants.

-----X  
HON. EILEEN A. RAKOWER, J.S.C.

This matter was recently transferred from Judge Madden to Judge Rakower.

Plaintiff Yajaira Montes Rosario, as Executrix of the Estate of Mayra Ransom ("Plaintiff" or "Plaintiff-Executrix"), moves for an Order pursuant to CPLR §3124, compelling defendants Columbus Circle Imaging, Columbus Circle Imaging, a division of West Side Radiology Associates, P.C., and West Side Radiology

Associates, P.C. (“the Columbus Defendants”), to proceed with discovery and depositions in this matter. In the alternative, Plaintiff seeks an Order pursuant to CPLR §603, severing this action as against the Columbus Defendants so as to permit discovery to proceed as against the remainder of the defendants.

### Background

This matter relates to allegations of medical malpractice against Defendant Lynn Ladetsky, M.D., (“Ladetsky”) for failure to diagnose a metastatic lesion to Mayra Ransom’s (“Ransom”) sternum following a review of an MRI on December 18, 2012. Ransom passed away on September 20, 2017. Prior to her death, Ransom was deposed on November 18, 2016, June 16, 2017, and July 6, 2017. Depositions of Plaintiff-Executrix and the defendants have not taken place.

On October 27, 2017, the Columbus Defendants informed the Court, through their counsel, that their insurance carrier, Fairway Physicians Insurance (“Fairway”), was in liquidation. Plaintiff states that “the Court has accepted the Defendants’ representations that Fairway is their insurance carrier, and their sole insurance carrier, and based thereon, has informally recognized the stay provided for in the DC Superior Court Order.”

Plaintiff argues that although the Columbus Defendants’ counsel has represented to the Court in their October 27, 2017 letter that Fairway provided medical malpractice insurance coverage to the Columbus Defendants, they have never provided any proof of their coverage. Plaintiff argues that should the Columbus Defendants continue to fail to submit proof of their coverage, this Court should not honor the stay provided for in the DC Superior Court Order and the Columbus Defendants should be compelled to proceed with discovery in this matter.

Plaintiff argues that should the Columbus Defendants submit proof of their insurance coverage with Fairway, this action should be severed as against them and discovery shall proceed as against the remainder of the defendants.

Defendants St. Luke’s Roosevelt Hospital Center; St. Luke’s Roosevelt Hospital Center, a member of Continuum Health Partners, Inc.; St. Luke’s Roosevelt Hospital Center, a member of Mount Sinai Health System, Inc.; Continuum Health Partners, Inc.; Mount Sinai Health System, Inc., and Paul Tartter, M.D., submit partial opposition to Plaintiff’s motion. They do not oppose Plaintiff’s motion to compel discovery or in the alternative, to sever the action. However, they assert that

they are entitled to their right to claim the protections, benefits and limitations set forth under Article 16 of the CPLR in the event that the action is severed. Ladetsky also submits partial opposition and requests that in the event that the Court severs the action as against the Columbus Defendants, her rights under Article 16 of the CPLR be reserved.

Defendants West Side Radiology Associates, P.C. d/b/a Columbus Circle Imaging “have no objection to plaintiff’s application to sever the action as against them due to the ongoing liquidation proceedings in which they are involved.” They do oppose the portion of the motion which seeks to resume discovery. In response to Plaintiff’s request that they provide proof of coverage, they provide a copy of their supplemental discovery response in which they disclose specific information of their malpractice insurance coverage. Defendants state that they “maintained a ‘claims made’ policy with Fairway Physicians Insurance Company, for the policy period covering October 1, 2015 through to October 1, 2016, under policy number FPC-2583-00 with insurance limits of \$2 million per claim, \$4 million in the aggregate.” Defendants further state, “As alleged in Endorsement #01, West Side Radiology Associates, P.C. is listed as an additional insured on this policy.” Defendants add, “Noting that the annexed ‘claims made’ policy period applies to this action based upon the date of service of the complaint on Defendants, which occurred in and around November 2015, the aforementioned disclosure evidences that Defendants maintained professional liability coverage with Fairway Physicians Insurance Company at the inception of this case.” Plaintiff does not submit a reply.

### Legal Standard

CPLR § 603 provides, “In furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a separate trial of any claim, or any separate issue.” CPLR § 603 has been applied in the context of stays for liquidations and bankruptcies applicable to some defendants but not all of them. *See e.g., Karmah v. Metropolitan Chiropractic Center*, 733 N.Y.S.2d 165, 166 (1st Dept 2001); *Moy v. St. Vincent’s Hosp. & Med. Ctr. of N.Y.*, 938 N.Y.S.2d 328, 329 (2d Dept. 2012). In *Moy*, 938 N.Y.S. at 329, the Court held, “Here, as the prejudice to the plaintiff in being required to await the conclusion of the bankruptcy proceeding before obtaining any remedy outweighs any potential inconvenience to the defendants, the Supreme Court improvidently exercised its discretion in denying the plaintiff’s motion pursuant to CPLR 603 to sever the causes of action asserted against Wayne from the causes of action asserted against the [bankrupt St. Vincent’s] hospital.” Where an action is severed against certain defendants, “equity

requires that the [other remaining] defendants have the benefit of their rights under CPLR article 16, such that if their culpability is 50% or less, their exposure for economic damages should be limited proportionately to their share of fault.” *Id.* See also *Karmah*, 733 N.Y.S.2d at 166.

Discussion

Here, the Columbus Defendants have provided proof that Fairway provided medical malpractice insurance coverage to them during the relevant time period. Therefore, the stay provided in the DC Superior Court Order will continue to be honored with respect to the Columbus Defendants. The action shall be severed as against the Columbus Defendants and shall proceed against the remainder of the defendants.

Wherefore it is hereby

ORDERED that this action is severed as against defendants COLUMBUS CIRCLE IMAGING, COLUMBUS CIRCLE IMAGING a division of WEST SIDE RADIOLOGY ASSOCIATES, P.C., and WEST SIDE RADIOLOGY ASSOCIATES, P.C.; and it is further

ORDERED that the action as against defendants LYNN LADETSKY, M.D., ST. LUKE’S ROOSEVELT HOSPITAL CENTER a member of CONTINUUM HEALTH PARTNERS, INC., ST. LUKE’S ROOSEVELT HOSPITAL CENTER a member of MOUNT SINAI HEALTH SYSTEM, INC, CONTINUUM HEALTH PARTNERS, INC., MOUNT SINAI HEALTH SYSTEM, INC., and PAUL TARTTER, M.D., shall proceed; it is further

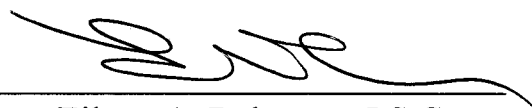
ORDERED that LYNN LADETSKY, M.D., ST. LUKE’S ROOSEVELT HOSPITAL CENTER a member of CONTINUUM HEALTH PARTNERS, INC., ST. LUKE’S ROOSEVELT HOSPITAL CENTER a member of MOUNT SINAI HEALTH SYSTEM, INC, CONTINUUM HEALTH PARTNERS, INC., MOUNT SINAI HEALTH SYSTEM, INC., and PAUL TARTTER, M.D., are entitled to their right to claim the protections, benefits and limitations set forth under Article 16 of the CPLR as against defendants COLUMBUS CIRCLE IMAGING, COLUMBUS CIRCLE IMAGING a division of WEST SIDE RADIOLOGY ASSOCIATES, P.C., and WEST SIDE RADIOLOGY ASSOCIATES, P.C.; and it is further

ORDERED that Plaintiff and the non-severed defendants shall appear for a compliance conference on Tuesday, July 30, 2019, at 9:30 am in Part 6, located at 71 Thomas Street, Room 205; and it is further

ORDERED that the severed defendants shall appear to report on the status of liquidation on December 17, 2019, at 9:30 AM in Part 6, located at 71 Thomas Street, Room 205.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: JUNE 26, 2019



Eileen A. Rakower, J.S.C.