

Siegel v Snyder

2019 NY Slip Op 34279(U)

January 17, 2019

Supreme Court, Nassau County

Docket Number: Index No. 6612/16

Judge: Denise L. Sher

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

LINDA SIEGEL, AS THE TESTATRIX OF THE ESTATE
OF MICHAEL SIEGEL, DECEASED,

Plaintiff,

- against -

BRIAN SNYDER, M.D., NICHOLAS STRIPOLI, PA,
FARINA SIAL, P.A., NEUROLOGICAL SURGERY P.C.,
KENNETH BECKER, M.D., KENNETH B. BECKER,
M.D., P.C., MATTHEW LURIN, M.D., MARK
WASHBURN, M.D., ISLAND MEDICAL EMERGENCY
SERVICES, P.C., JEREMY BOSWORTH, M.D., STACEY
FUNT, M.D., RADIOLOGICAL ASSOCIATES OF LONG
ISLAND, P.C., SOUTH NASSAU COMMUNITIES
HOSPITAL and AUDREY RILEY,

Defendants.

TRIAL/IAS PART 32
NASSAU COUNTY

Index No.: 6612/16
Motion Seq. No.: 03
Motion Date: 10/23/18

The following papers have been read on this motion:

	Papers Numbered
Notice of Motion, Affirmations and Exhibits	1
Affirmation in Support	2
Affirmation in Opposition	3
Reply Affirmation	4

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Defendants Radiological Associates of Long Island, P.C. ("RALI") and South Nassau
Communities Hospital ("SNCH") move, pursuant to CPLR § 2221(e), for an order to renew their
arguments in support of the branches of their prior motion (Seq. No. 02), pursuant to CPLR

§§ 3101 and 3101(b), based upon the privilege set forth in Education Law § 6527(3) and Public Health Law § 2805-m, for an order limiting plaintiff's combined demands dated November 23, 2016, protecting defendant SNCH's peer review committee meeting minutes from disclosure and limiting or conditioning plaintiff's notice for discovery inspection to include only the portions of the peer review committee meeting minutes that constitute statements made in attendance at such a meeting by any natural person who is an individually named defendant concerning the care and treatment of plaintiff's decedent, the subject matter of which was reviewed at such meeting, and for an order finding, after *in camera* inspection of the un-redacted peer review committee meeting minutes, that the proposed redaction which had been submitted under seal as an exhibit to the motion constitutes the party-statement exception to the quality assurance privilege previously described, upon which this Court rendered its Decision and Order on July 16, 2018, and, upon renewal, for the Court to grant said branches of defendants RALI and SNCH's prior motion; and move, pursuant to CPLR § 2221(d), for leave to re-argue the aforementioned branches of their prior motion (Seq. No. 2), upon which the Court rendered its Decision and Order on July 16, 2018, and, upon re-argument, for the Court to grant said branches of defendants RALI and SNCH's prior motion; and move for an order permitting certain exhibits set forth in the instant motion papers to be submitted under seal; and, in alternative, move for an order granting a stay of enforcement of the disputed discovery demands pending an appeal from the court's prior order of July 16, 2018, and/or any subsequent order issued on this motion for renewal and re-argument. Defendants Kenneth Becker, M.D. and Kenneth B. Becker, M.D., P.C. submit an affirmation in support of the motion. Plaintiff opposes the motion.

The Court will first address the branch of defendants RALI and SNCH's motion for re-argument.

It is settled that “[m]otions for re-argument are addressed to the sound discretion of the court which decided the prior motion and may be granted upon showing that the court overlooked or misapprehended the facts or law for some [other] reason mistakenly arrived at earlier.” See *Carrillo v. PM Realty Group*, 16 A.D.3d 611, 793 N.Y.S.2d 69 (2d Dept. 2005). See also CPLR § 2221(d)(2); *Barnett v. Smith*, 64 A.D.3d 669, 883 N.Y.S.2d 573 (2d Dept. 2009); *Frisenda v. X Large Enterprises Inc.*, 280 A.D.2d 514, 720 N.Y.S.2d 187 (2d Dept. 2001); *William P. Pahl Equipment Corp. v. Kassis*, 182 A.D.2d 22, 588 N.Y.S.2d 8 (1st Dept. 1992); *Foley v. Roche*, 68 A.D.2d 558, 418 N.Y.S.2d 588 (1st Dept. 1979), *appeal after remand*, 86 A.D.2d 887, *app den.* 56 N.Y.2d 507.

Notably, the remedy “is not designed to provide an unsuccessful party with successive opportunities” to make repetitious applications, “rehash questions already decided” or “present arguments different from those originally presented.” See *McGill v. Goldman*, 261 A.D.2d 593, 691 N.Y.S.2d 75 (2d Dept. 1999); *William P. Pahl Equipment Corp. v. Kassis*, *supra*. See also *Gellert & Rodner v. Gem Community Management Inc.*, 20 A.D.3d 388, 797 N.Y.S.2d 316 (2d Dept. 2005); *Pryor v. Commonwealth Land Title Ins. Co.*, 17 A.D.3d 434, 793 N.Y.S.2d 452 (2d Dept. 2005); *Amato v. Lord & Taylor, Inc.*, 10 A.D.3d 374, 781 N.Y.S.2d 125 (2d Dept. 2004).

Defendants RALI and SNCH have not demonstrated that the Court overlooked or misapprehended the facts (and viable issues thereto) or law relative to its analysis and subsequent denial of the aforementioned branches of defendant RALI and SNCH's prior motion (Seq. No. 02).

Having reviewed its prior determination and the papers submitted herein, this Court concludes that it has not overlooked or misapplied any controlling principles of law. *See William P. Pahl Equipment Corp. v. Kassis, supra; Foley v. Roche, supra.* Nor can the Court glean from the record herein where it had, for some other reason, mistakenly arrived at its earlier decision. *See Long v. Long, 251 A.D.2d 631, 675 N.Y.S.2d 557 (2d Dept. 1998).*

Re-argument is therefore **DENIED** as defendants RALI and SNCH have failed to demonstrate that the Court misapprehended the facts or misapplied the law. *See CPLR § 2221(d)(2).*

The Court will now address the branch of defendants RALI and SNCH's motion to renew. In its July 18, 2018 Decision and Order, the Court held, in pertinent part, that,

Pursuant to New York State Public Health Law § 2805-m(2), "... The Prohibition relating to discovery of testimony shall not apply to the statements made by any person in attendance at such a meeting who is a party to an action or proceeding the subject matter of which was reviewed at such meeting."... Based upon the *in camera* review of said un-redacted hospital peer review committee meeting minutes, the Court is left with several questions. None of the information listed in the "Hospital Course" and "Peer Review Committee Discussion" sections of the minutes are attributed to any particular individual, leaving the submission by defendants RALI and SNCH quite vague. The Court cannot determine who provided specific statements and/or information when all of the statements and/or information contained in the minutes are attributed to the "committee." How is the Court to determine if certain statements are privileged when there is no indication as to who specifically made said statements? The Court is not satisfied with the representation that the statements in the peer review committee discussion were made by "committee." It is evident that someone who was present at the meeting, who may or may not be a party defendant, made a conclusion upon which the committee agreed. The Court needs to know the specific identity of the individuals who reached the conclusions that were then agreed to by the committee. It has been represented that minutes were taken at said meeting and, typically when minutes are taken the individuals who were speaking/made

specific remarks are noted. Said information is necessary for the Court to make a ruling with respect to the privilege of the statements made at the meeting. Basically, the Court needs to know specifically who said what at the hospital peer review committee meeting before it can rule on the admissibility of the information in the minutes.

Therefore, the branches of defendants RALI and SNCH's motion, pursuant to CPLR §§ 3101 and 3101(b), based upon the privilege set forth in Education Law § 6527(3) and Public Health Law § 2805-m, for an order limiting plaintiff's combined demands dated November 23, 2016, protecting defendant SNCH's peer review committee meeting minutes from disclosure and limiting or conditioning plaintiff's notice for discovery inspection to include only the portions of the peer review committee meeting minutes that constitute statements made in attendance at such a meeting by any natural person who is an individually named defendant concerning the care and treatment of plaintiff's decedent, the subject matter of which was reviewed at such meeting, and for an order finding, after *in camera* inspection of the un-redacted peer review committee meeting minutes, that the proposed redaction which has been submitted under seal as an exhibit to this motion constitutes the party-statement exception to the quality assurance privilege previously described, are hereby **DENIED with leave to renew** upon the submission of the above described information of which the Court is in need to conduct a further *in camera* review. *See* Defendants RALI and SNCH's Affirmation in Support Exhibit A.

In support of the branch of the instant motion to renew, counsel for defendants RALI and SNCH submits, in pertinent part, that "[i]n the prior order, the Court operated on a mistaken assumption as to what would be in a hospital's peer review committee meeting minutes.

Accepting the representation that minutes were taken at the meeting (which was more than a representation since the actual minutes were produced to demonstrate that very fact), the Court qualified it's (*sic*) discussion with the comment that, '[T]ypically when minutes are taken the individuals who were speaking/made specific remarks are noted.'... There is no support in the record for this expectation, nor is there any legal requirement for what would amount to a verbatim (*sic*) transcript of the proceedings. The Court is asked to consider the affidavit of

Maureen McGovern attesting to the fact that, as is plain from the minutes that were produced in this case, the Hospital does not routinely quote or identify specific speakers, and has no obligation to do so. Further, it is respectfully submitted that the Hospital simply cannot provide the information that the Court wishes now to investigate.” *See* Defendants RALI and SNCH’s Affirmation in Support Exhibit B.

Maureen McGovern, Director of Risk Management/Patient Safety Officer at defendant SNCH, submits, in pertinent part, that, “South Nassau Communities Hospital is a Level 2 designated trauma center, which is required to conduct review by a Trauma Peer Review Committee of all trauma-related mortalities. The Trauma Peer Review Committee held a meeting as previously detailed for the Court in the affidavit of Christine Parks dated March 29, 2018, for the reason that Michael Siegel died after receiving treatment by the Trauma Team for injuries he sustained in a pedestrian accident. There is no documented procedure or protocol on what information is to be contained in peer review committee meeting minutes. Contrary to the expectation denoted in the Court’s order dated July 16, 2018 (from which the following passages in quotation marks are taken) the minutes are not intended to and do not record ‘the specific identity of the individuals who reached the conclusion that were then agreed to by the committee.’ When peer review committee meeting minutes are written they do not and are not intended to note or identify ‘the individuals who were speaking/made specific remarks.’ The Hospital does not require any recording or transcription or record of specifically ‘who said what’ in attendance at a peer committee meeting. The Hospital is therefore unable to provide such information.” *See id.*

CPLR § 2221(e) states, “[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 is not a second chance freely given to parties who have not exercised due diligence in making their first factual presentation.” *See Rowe v. NYCPD*, 85 A.D.3d 1001, 926 N.Y.S.2d 121 (2d Dept. 2011) quoting *Elder v. Elder*, 21 A.D.3d 1055, 802 N.Y.S.2d 457 (2d. Dept 2005).

Based upon the representations made in the Affidavit of Maureen McGovern, the Court, obviously, still cannot determine who provided specific statements and/or information since all of the statements and/or information contained in the subject minutes are attributed to the “committee.” As the Court held in its July 18, 2018 Decision and Order, it cannot rule on the admissibility of the information in the hospital peer review committee meeting minutes without knowing if the “discussions” referenced in said minutes involve “statements made by any person in attendance at such a meeting who is a party to an action or proceeding the subject matter of which was reviewed at such meeting.” *See Defendants RALI and SNCH’s Affirmation in Support Exhibit B.*

The Court, therefore, adheres to its original determination, and the branches of defendants RALI and SNCH’s prior motion (Seq. No. 02), pursuant to CPLR §§ 3101 and 3101(b), based upon the privilege set forth in Education Law § 6527(3) and Public Health Law § 2805-m, for an order limiting plaintiff’s combined demands dated November 23, 2016, protecting defendant SNCH’s peer review committee meeting minutes from disclosure and limiting or conditioning plaintiff’s notice for discovery inspection to include only the portions of the peer review committee meeting minutes that constitute statements made in attendance at such a meeting by any natural person who is an individually named defendant concerning the care and treatment of

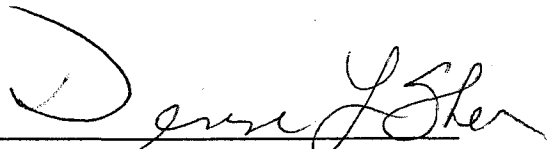
plaintiff's decedent, the subject matter of which was reviewed at such meeting, and for an order finding, after *in camera* inspection of the un-redacted peer review committee meeting minutes, that the proposed redaction which had been submitted under seal as an exhibit to the motion constitutes the party-statement exception to the quality assurance privilege previously described, are hereby **DENIED**.

The branch of defendants RALI and SNCH's instant motion for an order granting a stay of enforcement of the disputed discovery demands pending an appeal from the court's prior order of July 16, 2018 and/or any subsequent order issued on this motion for renewal and re-argument, is hereby **DENIED**.

All parties shall appear for a Certification Conference in IAS Part 32, Nassau County Supreme Court, 100 Supreme Court Drive, Mineola, New York, on January 22, 2019, at 9:30 a.m.

This constitutes the Decision and Order of this Court.

ENTER:


DENISE L. SHER, A.J.S.C.

Dated: Mineola, New York
January 17, 2019

ENTERED
JAN 18 2019
NASSAU COUNTY
COUNTY CLERK'S OFFICE