Brown v White Plains Hosp. Med. Ctr.

2019 NY Slip Op 35163(U)

July 1, 2019

Supreme Court, New York County

Docket Number: Index No. 26483/2018E

Judge: George J. Silver

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Index №. 26483/2018E

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX PART 19A

----------X

CAROLEE BROWN, as Administratrix of the Estate of REYNOLD DOBSON, deceased,

Index №. 26483/2018E

Plaintiffs

-against-

WHITE PLAINS HOSPITAL MEDICAL CENTER, SAINT VINCENT'S HOSPITAL WESTCHESTER, and MONTEFIORE BEHAVIORAL HEALTH CENTER

Defendants

----------X

The following papers numbered 1 to 5 were read on this motion for (Seq. No. **001**) for **SUMMARY JUDGMENT** (*see* CPLR § 2219 [a]):

Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed	No(s). 1, 2
Answering Affidavit and Exhibits	No(s). 3, 4
Replying Affidavit and Exhibits	No(s). 5

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed decision and order of the court.

Dated: July 1, 2019

Hon. George J. Silver
GEORGE J. SILVER J.S.C.
GEORGE J. SILVER

1. CHECK ONE..... ☑ CASE DISPOSED IN ITS ENTIRETY ☐ CASE STILL ACTIVE
2. MOTION IS..... ☑ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER

- 1 -

Index №. 26483/2018E

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Plaintiffs

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WHITE PLAINS HOSPITAL MEDICAL CENTER, SAINT VINCENT'S HOSPITAL WESTCHESTER, and MONTEFIORE BEHAVIORAL HEALTH CENTER

Defendants

----------X

HON. GEORGE J. SILVER:

In this medical malpractice action, defendants WHITE PLAINS HOSPITAL CENTER ("White Plains"), MONTEFIORE BEHAVIORAL HEALTH CENTER ("Montefiore") and SAINT VINCENT'S HOSPITAL WESTCHESTER ("St. Vincent") move, pursuant to CPLR 3211, for dismissal of the complaint in the above-captioned action on account of its failure to state a cause of action and on related grounds. Plaintiff partially opposes the application. For the reasons stated herein, the respective requests for dismissal are granted.

BACKGROUND

This medical malpractice case arises from the assault and killing of Reynold Dobson ("decedent") at the hands of his grandson, Marcus Dobson ("Dobson"). After a suicide attempt Dobson was brought to the White Plains Hospital Center ("White Plains") emergency department on May 22, 2016. After a psychiatric evaluation, it was determined that Dobson needed inpatient psychiatric care that was not available at White Plains. That same day, White Plains transferred Dobson by ambulance directly to St. Vincent's for inpatient treatment. He was treated there for thirteen days until June 3,2016, when he was discharged home with plans for outpatient treatment at Montefiore. The deadly assault occurred on June 22, 2016.

ARGUMENTS

White Plains argues that once it discharged Dobson on May 22, 2016, and transferred him to St. Vincent, it lacked any authority or ability to exercise control over Dobson on the date of the assault one month later. White Plains argues it owed no legal duty to decedent to control Dobson's conduct or prevent the assault. White Plains further highlights that public policy leans strongly against imposing liability herein as it would lead to potentially limitless liability by extending a duty beyond the patient's discharge. Likewise, Montefiore argues that a duty of care cannot be imposed upon it for control that it never exercised over Dobson. Hence, both entities seek a determination dismissing this case for want of legal recognition that

they owed a duty to prevent the actions of a discharged, or merely contemplated, patient. St. Vincent joins in that application, and additionally seeks dismissal of plaintiff's complaint on procedural grounds, arguing that Carolee Brown has not produced appropriate Letters of Administration necessary to establish her for standing and capacity to sue. Notably, Carolee Brown concedes that she has not received Letters of Administration, and consequently did not have Letters of Administration at the time this action was commenced. Rather than persuasively opposing the merits of the respective dismissal applications, Carolee Brown argues that the tolling provisions of CPLR §205(a) apply, and that dismissal of this case should be without prejudice to Carolee Brown re-filing the summons and complaint within six months of dismissal to assert the causes of action for decedent's wrongful death and conscious pain and suffering.

DISCUSSION

Pursuant to CPLR §3211(a)(1), a party may move for judgment dismissing one or more causes of action asserted against him on the ground that "a defense is founded upon documentary evidence." A motion to dismiss on the basis of a defense founded upon documentary evidence may be granted "only where the documentary evidence utterly refutes [the complaint's] factual allegations, conclusively establishing a defense as a matter of law" (*Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]; *Mill Financial, LLC v. Gillett*, 122 AD3d 98 [1st Dept 2014]). "Dismissal pursuant to CPLR §3211(a)(1) is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law" (*Mill Financial, LLC v. Gillett, supra*, *citing Art and Fashion Group Corp. v. Cyclops Production, Inc.*, 120 AD3d 436 [1st Dept 2014]).

To be considered "documentary," evidence must be unambiguous and of undisputed authenticity (*Fontanetta v Doe*, 73 AD3d 78 [2d Dept 2010] *citing* Siegel, Practice Commentaries, McKinney's Cons. Laws of N.Y., Book 7B, CPLR C3211:10, at 21-22; *Raske v Next Management, LLC*, 40 Misc 3d 1240(A), Slip Copy, 2013 WL 5033149 (Table) [Supreme Court, New York 2013]; *Philips South Beach, LLC v ZC Specialty Iris. Co.*, 55 AD3d 493 [1st Dept 2008][documentary evidence "apparently aims at paper whose content is essentially undeniable and which assuming the verity of its contents and the validity of its execution will itself support the ground on which the motion is based"]). To constitute documentary evidence, the papers must be "essentially undeniable" and support the motion on its own (*Amsterdam Hospitality Group, LLC v. Marshall-Alan Associates, Inc.*, 120 AD3d 431 [1st Dept 2014] *citing* Siegel, Practice Commentaries, *supra*, at 2).

"A CPLR §3211(a)(7) motion may be used by a defendant to test the facial sufficiency of a pleading in two different ways. On the one hand, the motion may be used to dispose of an action in which the plaintiff has not stated a claim cognizable at law. On the other hand, the motion may be used to dispose of an action in which the plaintiff identified a cognizable cause of action but failed to assert a material allegation necessary to support the cause of action. As to the latter, the Court of Appeals has made clear that a defendant can submit evidence in support of the motion attacking a well-pleaded cognizable claim (*Basis Yield Alpha Fund (Master) v. Goldman Sachs Group, Inc.*, 115 AD3d 128 [1st Dept 2014]). When documentary evidence is submitted by a defendant "the standard morphs from whether the plaintiff has stated a cause of action to whether it has one" (*Basis Yield Alpha Fund (Master) v. Goldman Sachs Group, Inc.*, 115 AD3d 128, *supra*,

citing John R. Higgitt, CPLR §3211[A][7]: *Demurrer or Merits-Testing Device?,* 73 Albany Law Review 99, 110 [2009]).

In determining a motion to dismiss a complaint pursuant to CPLR §3211(a)(7), the Court's role is deciding "whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail" (*African Diaspora Maritime Corp. v Golden Gate Yacht Club*, 109 AD3d 204 [1st Dept 2013]; *Siegmund Strauss, Inc. v East 149th Realty Corp.*, 104 AD3d 401 [1st Dept 2013]). The standard on a motion to dismiss a pleading for failure to state a cause of action is not whether the party has artfully drafted the pleading, but whether deeming the pleading to allege whatever can be reasonably implied from its statements, a cause of action can be sustained (*see Stendig, Inc. v Thorn Rock Realty Co.*, 163 AD2d 46 [1st Dept 1990]; *Leviton Manufacturing Co., Inc. v Blumberg*, 242 AD2d 205 [1st Dept 1997] [on a motion for dismissal for failure to state a cause of action, the court must accept factual allegations as true]). When considering a motion to dismiss for failure to state a cause of action, the pleadings must be liberally construed (*see* CPLR §3026; *Siegmund Strauss, Inc. v East 149th Realty Corp.*, 104 AD3d 401, *supra*). On a motion to dismiss made pursuant to CPLR §3211, the court must "accept the facts as alleged in the complaint as true, accord plaintiffs "the benefit of every possible favorable inference," and "determine only whether the facts as alleged fit into any cognizable legal theory" (*Siegmund Strauss, Inc. v East 149th Realty Corp.*, 104 AD3d 401, *supra*; *Nonnon v City of New York*, 9 NY3d 825 [2007]; *Leon v Martinez,* 84 NY2d 83, 87-88 [1994]). However, "allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not" presumed to be true or accorded every favorable inference (*David v Hack*, 97 AD3d 437 [1st Dept 2012]; *Biondi v Beekman Hill House Apt. Corp.*, 257 AD2d 76, 81 [1st Dept 1999], *aff'd* 94 NY2d 659 [2000]; *Kliebert v McKoan*, 228 AD2d 232 [1st Dept], *lv denied* 89 NY2d 802 [1996], and the criterion becomes "whether the proponent of the pleading has a cause of action, not whether he has stated one" (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; *see also Leon v Martinez*, 84 NY2d 83, 88 [1994]; *Ark Bryant Park Corp. v Bryant Park Restoration Corp.*, 285 AD2d 143, 150 [1st Dept 2001]; *WFB Telecom., Inc. v NYNEX Corp.*, 188 AD2d 257, 259 [1st Dept], *lv denied* 81 NY2d 709, [1993] [CPLR §3211 motion granted where defendant submitted letter from plaintiff's counsel which flatly contradicted plaintiffs current allegations of prima facie tort]). "In deciding such a preanswer motion, the court is not authorized to assess the relative merits of the complaint's allegations against the defendant's contrary assertions or to determine whether or not plaintiff has produced evidence to support his claims" (*Salles v Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept 2002]). "On a motion to dismiss for failure to state claim on which relief could be granted, the court is not obligated to accept plaintiff's bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like" (*San Geronimo Caribe Project, Inc. v. Vila*, 663 F. Supp. 2d 54 (D.P.R. 2009).

On a motion to dismiss for failure to state a cause of action pursuant to CPLR §3211(a)(7) where the parties have submitted evidentiary material the pertinent issue is whether claimant has a cause of action, not whether one has been stated in the complaint (*see Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; Dollard v WB/Stellar IP Owner, LLC, 96 AD3d 533, 948 NYS2d 243 [1st Dept 2012] (the "court may freely consider affidavits submitted by the [non-moving party] to remedy any defects in the complaint and the

criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one") *citing Leon v Martinez*, 84 NY2d 83, 88[1994] [internal quotation marks and citations omitted]) R.*H. Sanbar Projects, Inc. v Gruzen Partnership*, 148 AD2d 316 [1st Dept 1989]). Affidavits submitted by a plaintiff may be considered for the limited purpose of remedying defects in the complaint (*Rovello v Orofino Realty Co.*, 40 NY2d 633, 635-36 [1976]; *Arrington v New York Times Co.*, 55 NY2d 433, 442 [1982]). While affidavits may be considered, if the motion is not converted to a 3212 motion for summary judgment, they are generally intended to remedy pleading defects and not to offer evidentiary support for properly pleaded claims" (*Nonnon v City of New York*, 9 NY3d 825 [2007]). As to affidavits submitted by the defendant/respondent, "[a]ffidavits submitted by a respondent will almost never warrant dismissal under CPLR §3211 unless they "establish conclusively that [petitioner] has no [claim or] cause of action" (*Lawrence v Miller*, 11 NY3d 588 [2008] *citing Rovello v Orofino Realty Co.*, 40 NY2d 633, 636 [1976]).

On a motion to dismiss directed at the sufficiency of the complaint, the plaintiff is afforded the benefit of a liberal construction of the pleadings: "The scope of a court's inquiry on a motion to dismiss under CPLR 3211 is narrowly circumscribed" (*1199 Housing Corp. v International Fidelity Ins. Co.*, NYLJ January 18, 2005, p. 26 col.4, *citing P.T. Bank Central Asia v Chinese Am. Bank*, 301 AD2d 373, 375 [2003]), the object being "to determine if, assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action" (*id.* at 376; *see Rovello v Orofino Realty Co.*, 40 NY2d 633, 634 [1976]).

It is the movant who has the burden to demonstrate that, based upon the four corners of the complaint liberally construed in favor of the plaintiff, the pleading states no legally cognizable cause of action (*see Leon v Martinez*, 84 NY2d at 87-88, *supra*; *Guggenheimer v Ginzburg*, 43 NY2d 268, 275, [1977]; *Salles v. Chase Manhattan Bank*, 300 AD2d 226, 228 [1st Dept 2002]).

The fact that a medical provider must render care that is within standards acceptable in the medical community in which he or she practices does not impose on him an obligation to be successful in each case, nor is that provider "liable for mere errors of professional judgment" (*Schrempf v. State of New York*, 66 NY2d 289, 295 [1985]; *Betty v. City of New York*, 65 AD3d 507, 509 [2d Dept. 2009]). The doctrine of professional medical judgment will insulate from liability a psychiatrist who chooses a treatment course that is within the range of medically accepted options, where that doctor has appropriately examined and evaluated the patient (*O'Sullivan*, 217 AD2d at 100, *supra*; *see also Durney v. Terk*, 42 AD3d 335, 336 [1st Dept 2007]; *Cohen v. State of New York*, 51 AD2d 494, 496 [3d Dept 1976], *aff'd* 41 NY2d 1086 [1977]). For a provider of psychiatric care to be liable for a decision relating to the treatment rendered or to the discharge of a patient from the hospital, it must be demonstrated that such decision constituted "something less than a professional medical determination" (*Ozugowski v. City of New York*, 90 AD3d 875, 876 [2d Dept 2011][internal quotation marks and citation omitted). A determination that lacks a proper medical foundation, i.e., that did not involve a careful examination, cannot be legally insulated as a professional medical judgment]; *Thomas v. Reddy*, 86 AD3d 602, 604 [2d Dept 2011]; *Fotinas v. Westchester County Med. Ctr.*, 300 AD2d 437, 439 [2d Dept 2002]; *see e.g. Winters v. New York City Health & Hosps. Corp.*, 223 AD2d 405 [1st Dept 1996]). The distinction between medical judgment and a departure from good and accepted medical practice is often hazy in psychiatric malpractice cases (*Schrempf*, 66 N.Y.2d at 295, *supra*; *Topel v. Long Is. Jewish Med. Ctr.*, 55 NY2d 682, 684 [1981]).

While in the past, the care of those with serious psychiatric conditions was often limited to confinement, the modern and more compassionate goal of the psychiatric profession is to render treatment to enable the patient to return to the community where "he does not pose an immediate risk of harm to himself or others" (*Schrempf*, 66 NY2d at 295, *supra*). This requires a thoughtful consideration and balancing of competing interests - the duty to care for each patient suffering from a psychiatric condition with the goal of returning that individual to the community in a more productive and capable state, against the concern that the patient, once released from confinement, will not harm himself or others and/or their property (*id.*; *see also Bell v. New York City Health & Hosps. Corp.*, 90 AD2d 270, 279 [2d Dept 1982]). Because psychiatry is not an exact science, this process involves a measure of risk and disagreement among experts as to the proper course of action (*Schrempf*, 66 NY2d at 295, *supra*; *Durney*, 42 AD3d at 337, *supra*; *Bell*, 90 AD2d at 280, *supra*).

If liability were imposed each time a prediction as to the course of a mental disease was incorrect, few patients would be released, thereby impeding any hope of rehabilitation and recovery (*id.; Seibert v. Fink*, 280 AD2d 661 [2d Dept 2001]; *Cameron v. State of New York*, 11 AD2d 46, 49 [4th Dept 1971], *aff'd* 30 NY2d 596 [1972]). Thus, provided that the decision to release the patient from the hospital constituted a professional medical judgment, and even if other psychiatrists might not make the same judgment, no liability will attach, despite the fact that the "honest professional judgment to release" the patient was wrong (*id.* at 49; *see also Park v. Kovachevich*, 116 AD3d 182, 190 [1st Dept 2014]; *Durney*, 42 AD3d at 336, *supra*; *see generally Pike v. Honsinger*, 155 NY 201, 210 [1898]). Despite the foregoing policy considerations, the psychiatrist has a duty to base his or her determinations on an appropriate examination and evaluation of the patient (*Park*, 116 AD3d at 191, *supra*; *see also Bell*, 90 AD2d at 280). When a claim exists of a psychiatric patient's wrongful release, the "courts have refused to impose liability unless there was something more than an error of judgment" (*id.* at 281 [internal citations and quotation marks omitted]; *see also See Oddo v. Queens Vill.* Comm. for Mental Health for Jamaica Cmty. Adolescent Program, Inc., 28 NY3d 731, 734 [2017][defendant mental health and substance abuse residential treatment facility owed no duty of care to the plaintiff, who was assaulted by one of the facility's discharged residents, because it lacked control over him at the time of the incident]; *Park*, 116 AD3d at 191, *supra*; *Vera v Beth Israel Med. Hosp.*, 214 AD2d 384, 385 [1st Dept 1995]).

Here, as an initial matter, the court recognizes that the there is a procedural defect in the posture of the instant matter insofar as Carolee Brown has yet to establish that she has standing in this lawsuit. As St. Vincent's observes, although the caption is styled in the format of a pleading alleging a cause of action for wrongful death, the complaint does not specifically allege that Letters of Administration were issued to Carolee Brown, on behalf of the estate of decedent, in either the Surrogate's Court for Bronx County or any other court with competent jurisdiction. Setting that deficiency aside for a moment, the more fundamental issue that is ripe for this court's consideration is the question of whether that deficiency, even if cured, would afford Carolee Brown the opportunity to commence a lawsuit that is cognizable under existing laws and precedent. The court finds that the law does not support the viability of this lawsuit.

If Carolee Brown were to survive the persuasive and binding opposition that has been put forward, the court would countenance the imposition of limitless liability to an indeterminate class of persons

conceivably injured by the temporally remote acts of others. The court would further be compelled to find a duty owed to decedent where controlling case law fails to recognize such a duty. Further, the court would have to find causation arising from actual control over a patient who was discharged from various facilities nearly three (3) weeks before he killed his grandfather and during a time period when he was receiving outpatient care at another facility. Finally, the court would have to find that Carolee Brown has standing and capacity to sue in spite of a deficiency in the pleadings in that regard.

The aforementioned obstacles cannot be overcome in this lawsuit, and the court refuses to endorse the viability of this lawsuit as set forth in the complaint. The complaint, as presently constituted, does not contain viable causes of action as a matter of law. Furthermore, this court refuses to recognize a duty, and potential liability therefrom, upon medical providers for the remote acts of patients who they, in their "honest professional judgment," agree to release from a facility. To be sure, "[a] defendant generally has no duty to control the conduct of third persons so as to prevent them from harming others even where as a practical matter defendant can exercise such control" (*D'Amico v Christie*, 71 NY2d 76, 88 [1987]). While there are exceptions to that general, those exceptions apply where the defendant has actual control over the third-person tortfeasor's conduct (*see, Hamilton v. Beretta U.S.A. Corp.*. 96 NY2d 222 [2001]) or when the relationship between defendant and plaintiff requires defendant to protect plaintiff from the conduct of others. An example of this is a landowner owing a duty to his tenants (*see Nallan v. Helmslev Soear Inc.*, 50 N Y.2d 507 [1980]). However, as evidenced by the case law cited by this court, this duty does not extend beyond that limited class of plaintiffs to the public at large. As such, the court agrees that White Plains, Montefiore, and St. Vincent had no actual control over Dobson after his discharge. Indeed, Dobson had been discharged from inpatient care for a month when the assault took place. Furthermore, the exception based on the relationship between decedent and the respective defendants does not apply here. Were this case, for instance, a matter in which Dobson took his own life following discharge, perhaps a more logical connection between defendants and a former patient previously in their custody could be established. But here, where defendants had no relationship at all with decedent, patient or otherwise, it is difficult for that argument to be advanced. No relationship existed between White Plains and decedent that required it to protect him from the criminal conduct of Dobson.

As such, the court finds that White Plains owed no duty to decedent to control Dobson or prevent the assault. Also, in these circumstances mental health care providers would be unreasonably subject to potentially limitless liability due to the countless number of potential plaintiffs if this claim were allowed. Furthermore, the court finds that the gap in time here between the alleged negligence and the assault renders the causal connection too speculative to support liability (*see Williams v State*, 18 NY3d 981, 984 [2012]). Any number of factors may have contributed to Dobson's mental condition, and his ultimate decision to assault decedent. As such, the necessarily must be dismissed for failure to state a cause of action pursuant to CPLR §3211(a)(7) and for lack of standing to sue pursuant to CPLR §3211(a)(3).

Likewise, with respect to St. Vincent, Dobson was admitted to Saint Vincent from May 22 2016 to June 2, 2016. His medical records indicate he was not a risk for violence or homicide. He was discharged when it was determined that he received maximum benefit from the inpatient program and required further outpatient care. He and his family elected for him to receive outpatient care from Montefiore and he was

receiving care at Montefiore at the time of the assault. Dobson killed his grandfather in his grandfather's home. The temporal gap between the patient's discharge and his grandfather's murder breaks any chain in causation entitling St. Vincent to dismissal of this claim. St. Vincent also argues that it had no duty to decedent to control Dobson's conduct and had no actual control over Dobson when he killed his grandfather. Those arguments are also true, and provide a sufficient basis for dismissal of the instant complaint as to St. Vincent.

Finally, no credible evidence has been advanced to impose a similar duty upon Montefiore, which only saw Dobson in an outpatient capacity. For the reasons discussed, *supra*, this motion is also granted as to the claims against St. Vincent and Montefiore.

Accordingly, it is hereby

ORDERED that that respective applications of White Plains, Montefiore, and St. Vincent are granted in their entirety; and it is further

ORDERED that the Clerk of the Court, Bronx County, is hereby directed to enter judgment dismissing the complaint as to White Plains, Montefiore, and St. Vincent's; and it is further

ORDERED that within fifteen (15) days of the issuance of this court's order, the moving defendants are directed to serve a copy of this decision, with notice of entry, upon CAROLEE BROWN, as Administratrix of the Estate of REYNOLD DOBSON, deceased.

This constitutes the decision and order of the court.

Dated: July 1, 2019

George J. Silver

HON. GEORGE J. SILVER