

Giurici v Rajmane

2020 NY Slip Op 32189(U)

June 16, 2020

Supreme Court, New York County

Docket Number: 162349/2015

Judge: George J. Silver

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - PART 10**

-----X
DENNIS GIURICI, as Executor of the Estate of
ROSEANNE GIURICI, Deceased and DENNIS
GIURICI, Individually,

Plaintiff,

- against -

INDEX NO: 162349/2015

RAVINDRA C. RAJMANE, M.D., RAVINDRA
C. RAJMANE, M.D., PLLC., DAVID WEINER,
M.D., NY CARDIOVASCULAR ASSOCIATES,
PLLC., BETH ISRAEL MEDICAL CENTER, and
BETH ISRAEL MEDICAL CENTER C/O
MOUNT SINAI HOSPITALS GROUP,

Defendants.

-----X
HON. GEORGE J. SILVER:

This is an action for medical malpractice. Presently before the court is defendants BETH ISRAEL MEDICAL CENTER (“Beth Israel”) and BETH ISRAEL MEDICAL CENTER C/O MOUNT SINAI HOSPITALS GROUP’s (Beth Israel C/O Mount Sinai) motion for an order pursuant to CPLR § 3217(b) “so-ordering” a stipulation of discontinuance as to Beth Israel and Beth Israel C/O Mount Sinai, and dismissing the complaint against Beth Israel and Beth Israel C/O Mount Sinai with prejudice. Beth Israel and Beth Israel C/O Mount Sinai also request that the caption of this action be amended to remove Beth Israel and Beth Israel C/O Mount Sinai. Although plaintiff DENNIS GIURICI, as executor of the estate of ROSEANNE GIURICI, deceased and DENNIS GIURICI, individually (“plaintiff”), Beth Israel, and Beth Israel C/O Mount Sinai signed the subject stipulation of discontinuance, defendants RAVINDRA C. RAJMANE, M.D. (“Dr. Rajmane”),

RAVINDRA C. RAJMANE, M.D., PLLC, DAVID WEINER, M.D. ("Dr. Weiner"), and NY CARDIOVASCULAR ASSOCIATES, PLLC ("NY Cardiovascular") have not signed the stipulation. The non-signing defendants have submitted no opposition to the motion, and are not asserting any cross-claims against Beth Israel or Beth Israel C/O Mount Sinai.

In support of Beth Israel and Beth Israel C/O Mount Sinai's motion, plaintiff asserts that based on the completion of discovery, and after discussions with the Beth Israel and Beth Israel C/O Mount Sinai's counsel, it appears that Beth Israel and Beth Israel C/O Mount Sinai did not depart from the standard of care. Accordingly, plaintiff avers that he has no opposition to Beth Israel and Beth Israel C/O Mount Sinai's motion.

CPLR § 3217(a)(2) provides that a party may discontinue its claim against another party by filing a stipulation of discontinuance "in writing signed by the attorneys of records for all parties." Where a party is unwilling to sign the stipulation, the court may nevertheless order discontinuance under CPLR § 3217(b). CPLR § 3217(b) provides that "an action shall not be discontinued by a party asserting a claim except upon order of the court and upon terms and conditions, as the court deems proper."

The subject stipulation of discontinuance, signed by the attorneys for plaintiff, Beth Israel, and Beth Israel C/O Mount Sinai, but not by the attorneys for Dr. Rajmane, Ravindra C. Rajmane, M.D., PLLC, Dr. Weiner, and NY Cardiovascular, constituted a release of Beth Israel and Beth Israel C/O Mount Sinai from the action within the meaning of General Obligations Law § 15--108 (*see*, General Obligations Law § 15--303; *Tereshchenko v. Lynn*, 36 A.D.3d 684, 685 [2d Dept. 2007]; *Hanna v Ford Motor Co.*, 252 A.D.2d 478, 479 [2d Dept. 1998]; *Killeen v. Reinhardt*, 71 A.D.2d 851, 853 [2d Dept. 1979]). Said stipulation served to relieve Beth Israel and Beth Israel C/O Mount

Sinai “from liability to any other person for contribution as provided in article fourteen of the civil practice law and rules” (General Obligations Law § 15--108 [b]; *see, Rosado v. Proctor & Schwartz*, 66 NY2d 21, 24 [1985]; *Tereshchenko*, 36 A.D.3d at 686, *supra*). However, any verdict in favor of plaintiff and against the remaining defendants will be reduced in the amount of Beth Israel and Beth Israel C/O Mount Sinai’s equitable share of the damages, if any (*see, General Obligations Law § 15--108 [a]; Tereshchenko*, 36 A.D.3d at 686, *supra; Killeen*, 71 A.D.2d at 853, *supra*).

This court, in its sound discretion, has the authority to grant or deny an application to discontinue an action made pursuant to CPLR § 3217(b) (*Tucker v. Tucker*, 55 NY2d 378 [1982]). In the absence of special circumstances, such as prejudice to the substantial rights of other parties to the action, a motion for a voluntary discontinuance should be granted (*see, Burnham Serv. Corp. v. National Council on Compensation Ins.*, 288 A.D.2d 31, 32 [1st Dept. 2001]; *Citibank v. Nagrotsky*, 239 A.D.2d 456, 457 [2d Dept. 1997]; *County of Westchester v. Welton Becket Assocs.*, 102 A.D.2d 34 [1984], *aff’d* 66 NY2d 642 [1985]). Although CPLR § 3217(b) authorizes a voluntary discontinuance by court order on motion of “a party asserting a claim,” this provision may not be the basis for a dismissal motion by a party defending a claim unless the party asserting the claim consents or joins in the motion (*Shamley v. ITT Corp.*, 67 NY2d 910 [1986]).

Here, since the subject stipulation has not been signed by counsel for defendants Dr. Rajmane, Ravindra C. Rajmane, M.D., PLLC, Dr. Weiner, and NY Cardiovascular, CPLR § 3217(a) is inapplicable. However, CPLR § 3217(b) is applicable, and no co-defendant has submitted opposition specifically attacking the discontinuance of Beth Israel and Beth Israel C/O Mount Sinai from this matter. Therefore, the request to discontinue the action as against Beth Israel and Beth Israel C/O Mount Sinai with prejudice is granted, and the complaint is dismissed as against Beth Israel and Beth

Israel C/O Mount Sinai. In addition, Beth Israel and Beth Israel C/O Mount Sinai are to be deleted from the caption of this action.

Furthermore, although Beth Israel and Beth Israel C/O Mount Sinai will not be liable for contribution under CPLR article 14, any verdict in plaintiff's favor and against the remaining defendants will be reduced in the amount of Beth Israel and Beth Israel C/O Mount Sinai's equitable share of damages, if any (*see, Tereshchenko*, 36 A.D.3d at 686, *supra*; *Killeen*, 71 A.D.2d at 853, *supra*). In addition, inasmuch as the instant motion was one for discontinuance pursuant to CPLR § 3217, which is not the functional equivalent of a trial on the merits, the remaining defendants may seek to include any liability attributable to Beth Israel and Beth Israel C/O Mount Sinai as part of the total liability assigned to "all persons liable" for purposes of CPLR article 16 (*see, Hendrickson v. Philbor Motors, Inc.*, 102 A.D.3d 251, 955 NYS2d 384 [2d Dept. 2012]; *Anderson v. House of Good Samaritan Hosp.*, 44 A.D.3d 135, 840 NYS2d 508 [4th Dept. 2007]).

Accordingly, it is hereby

ORDERED that BETH ISRAEL MEDICAL CENTER and BETH ISRAEL MEDICAL CENTER C/O MOUNT SINAI HOSPITALS GROUP's motion pursuant to CPLR § 3217(b) for a court-ordered discontinuance is GRANTED; and it is further

ORDERED that BETH ISRAEL MEDICAL CENTER and BETH ISRAEL MEDICAL CENTER C/O MOUNT SINAI HOSPITALS GROUP's counsel is directed to serve a copy of this order, with notice of entry, on all remaining parties within 20 days of its entry; and it is further

ORDERED that the instant action shall continue as against the remaining defendants; and it is further

ORDERED that the caption of this action is amended to read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - PART 10

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DENNIS GIURICI, as Executor of the Estate of
ROSEANNE GIURICI, Deceased and DENNIS
GIURICI, Individually,

Index No.162349/2015

-against-

RAVINDRA C. RAJMANE, M.D., RAVINDRA
C. RAJMANE, M.D., PLLC., DAVID WEINER,
M.D., NY CARDIOVASCULAR ASSOCIATES,
PLLC.

-----X
; and it is further

ORDERED that co-defendants RAVINDRA C. RAJMANE, M.D., RAVINDRA C. RAJMANE, M.D.,
PLLC, DAVID WEINER, M.D., and NY CARDIOVASCULAR ASSOCIATES, PLLC are assessed a
collective fine of \$525, split equally (\$131.25 each) to be disseminated to the law firms of DOPF, P.C., counsel
for RAVINDRA C. RAJMANE, M.D. and RAVINDRA C. RAJMANE, M.D., PLLC, and GORDON &
SILBER, P.C., counsel for DAVID WEINER, M.D. and NY CARDIOVASCULAR ASSOCIATES, PLLC
as costs associated with the making of the instant application; and it is further

ORDERED that the remaining defendants may seek to include any liability attributable to defendant
BETH ISRAEL MEDICAL CENTER and BETH ISRAEL MEDICAL CENTER C/O MOUNT SINAI
HOSPITALS GROUP as part of the total liability assigned to "all persons liable" for purposes of CPLR article
16; and it is further

ORDERED that the remaining parties are directed to appear for a pre-trial conference before the court,
Part 10 Room 1227, on *on July 15, 2020*, in Part 10, Room 1227 at 2:15 p.m.
time to be determined.

Dated: *June 16, 2020*

virtual
George J. Silver

HON. GEORGE J. SILVER, J.S.C.
GEORGE J. SILVER