

Dantzig v Mueller

2020 NY Slip Op 33919(U)

November 25, 2020

Supreme Court, New York County

Docket Number: 805253/18

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JOAN A. MADDEN

PART 11

Justice

ORDER

PAUL DANTZIG,

Index No.: 805253/18

MOTION SEQ. NO. 011

Plaintiff,

-against -

**RICHARD MUELLER, M.D., PRAMOD SANGHI, M.D.,
and NYU LANGONE HEALTH SYSTEM,**

Defendants.

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Defendant NYU Langone Health System moves for an order dismissing the complaint against it.¹ Plaintiff, appearing *pro se*, opposes the motion.

This action arises out of a procedure performed on March 23, 2018, when plaintiff alleges defendant Pramod Sanghi, M.D. placed the wrong heart stent in his left anterior descending artery. The Bill of Particulars alleges, *inter alia*, that the alleged malpractice occurred at “NYU Hospital... [and that] NYU Langone Health System, was negligent and careless in, *inter alia*, failing to diagnose and treat the cause of plaintiff’s coronary artery disease, failing to diagnose mitral insufficiency; failing to offer and explain treatment alternative and to offer medical treatment; failing to offer a stress test.” In his supplemental bill of particulars, plaintiff also

¹ NYU Langone Health System also moved for reargument of the court’s decision and order dated June 18, 2020 (“the original decision”) which granted plaintiff’s motion to compel NYU Langone Health System to produce materials within its possession and control regarding any application for the subject grant payment for in camera inspection. By interim order dated October 7, 2020, the court denied reargument, and directed NYU Langone Health System to produce the materials sought and held the motion to dismiss in abeyance pending compliance with the order. NYU Langone Health System has timely complied with the interim order.

alleges that NYU Langone Health System was negligent in obtaining an improper and fraudulent permission for the catheterization.

NYU Langone moves to dismiss, arguing that it does not have a physician-patient relationship with plaintiff as neither NYU Langone Health System nor its employees or agents rendered medical care to plaintiff. In support of its motion NYU Langone Health System submits the affidavit of its Director of Insurance, Michael Browdy, who states that he is “fully familiar with the services rendered by NYU Langone[Health System] entities, including those entities which provide medical and/or hospital care and those entities which exist for non-medical and non-hospital care purposes.” According to Mr. Browdy, “NYU Langone Health System is an administrative entity that does not render patient care [and that] NYU Langone Health System did not employ any of the clinicians or caregivers at NYU Langone Hospitals.”

Plaintiff opposes the motion, arguing that “NYU [Langone Health System] owns the cardiac catheterization lab, the recovery room and the emergency room and NYU [Langone Health System] is responsible to see that they operate in a medical and morally responsible manner...[and] plaintiff was treated by employees of the NYU Langone Health System [and]...was responsible for hiring Dr. Slater and appointing him to head of the cardiac catheterization unit and was responsible for his actions.”

In reply, NYU Langone Health System argues that plaintiff’s statements regarding it are false and unsupported by evidence.

Here, based on the affidavit of Mr. Browdy that NYU Langone Health System does not provide medical or patient care but is an administrative entity, the motion to dismiss is granted. In this connection, plaintiff has not shown the existence of a hospital/physician-patient relationship. McKinney v. Bellevue Hospital, 183 AD2d 563, 564 (1st Dept 1992)(internal citations omitted)(noting that “a cause of action sounding in medical malpractice must be predicated upon the existence of an express or implied physician-patient relationship”); Hylton v. Flushing Hosp & Medical Center, 218 AD2d 604 (1st Dept 1995), lv denied, 87 NY2d 807

(1996)(landlord cannot be held liable for alleged malpractice of defendant physician who leased the practice as a medical clinic).²

In view of the above, it is

ORDERED that NYU Langone Health System’s motion to dismiss is granted; and it is further

ORDERED that the caption is amended so as to delete NYU Langone Health System from the caption and the amended caption which shall read as follows:

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PAUL DANTZIG,

INDEX NO. 805194/14

Plaintiff,

- v -

RICHARD L. MUELLER, M.D., and
NYU LANGONE HEALTH SYSTEM,

Defendants

-----X
and it is further

ORDERED, that NYU Langone Health System shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (Room 119) and the County Clerk (room 141B), who are directed to mark the court records to reflect the removal of NYU Langone Health System from the caption; and it is further

ORDERED that such service upon the General Clerk’s Office and the County Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County

² Moreover, as plaintiff has not argued that he sued the wrong entity, there is no basis for permitting him to amend the complaint to correct any error. Compare Petruzzi v. Purow, 180 AD3d 1083 (2d Dept 2020).

Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page and on the court’s website at the address (www.nycourts.gov/supctmanh)); and it is further.

DATED: November 25 2020



J.S.C.
HON. JOAN A. MADDEN
J.S.C.

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION