

Nenni v Vassar Bros. Med. Ctr.
2020 NY Slip Op 34570(U)
November 13, 2020
Supreme Court, Dutchess County
Docket Number: 2017-52477
Judge: Christi J. Acker
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To commence the 30-day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS**

JESSICA NENNI, A Person Under a Disability, by Her
Court Appointed Guardian, HOLLY NENNI And Co-
Guardian MATTHEW NENNI,

Plaintiffs,

-against-

VASSAR BROTHERS MEDICAL CENTER,
THOMAS S. ROBINSON, M.D.,
FRANK C. PEDEVILLANO, D.O., STUART A.
FEINSTEIN, M.D., ELIE ELLIOTT DANCOUR, M.D.,
HEALTH QUEST MEDICAL PRACTICE, P.C.,
STEVEN ROBLES, D.O., EMERGENCY
PHYSICIAN SERVICES OF NEW YORK, P.C.,
BENJAMIN D. SECKLER, M.D., HUDSON VALLEY
RADIOLOGISTS, P.C., and DRA IMAGING, P.C.
a/k/a HVR IMAGING, P.C.,

Defendant(s).

DECISION AND ORDER
INDEX NO. 2017-52477
SEQ. NOS. 6, 7 and 8

VASSAR BROTHERS MEDICAL CENTER,

Third-Party Plaintiff,

-against-

GARY LEWIS NEIFELD, M.D., STEVEN ROBLES, D.O.,
and EMERGENCY PHYSICIAN SERVICES OF NEW YORK,
P.C.,

Third-Party Defendants.

VASSAR BROTHERS MEDICAL CENTER,

Third-Party Plaintiff,

-against-

KATRINA KNOWLES, M.D., and EMERGENCY
PHYSICIANS SERVICES OF NEW YORK, P.C.,

Third-Party Defendants.

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ACKER, J.

Third-Party Plaintiff, VASSAR BROTHERS MEDICAL CENTER (“VBMC”) makes application (seq.#6) to amend its Third-Party Bill of Particulars. Defendant/Third-Party Defendant, EMERGENCY PHYSICIAN SERVICES OF NEW YORK, P.C., (“EPS”) moves for an order (seq.7), pursuant to CPLR Section 1010, seeking dismissal of the Second Third-Party summons and complaint, or, in the alternative, severance pursuant to CPLR Section 603. Second Third-Party Defendant, KATRINA KNOWLES, M.D. (“Dr. Knowles”), moves for an order (seq#8) seeking to sever and strike, or, in the alternative, dismissal of the summons and complaint against her.

The following papers were considered:

NYSCEF docs 236-241, 248-250, 254-256 (Sequence 6)

NYSCEF docs 264-281 (Sequence 7)

NYSCEF docs 279-280, 301-303, 317 (Sequence 8)

“Generally, in the absence of prejudice or surprise to the opposing party, leave to amend a bill of particulars should be freely granted ‘unless the proposed amendment is palpably insufficient or patently devoid of merit’ [citations omitted].” *Rodgers v. New York City Transit Auth.*, 109 AD3d 535, 536 [2d Dept 2013]. “A determination whether to grant such leave is within the Supreme Court’s broad discretion, and the exercise of that discretion will not be lightly disturbed.” *Gitlin v. Chirinkin*, 60 AD3d 901, 902 [2d Dept 2009].

Here, VBMC seeks to amend its Bill of Particulars to allege claims of negligence for care and treatment rendered to plaintiff by Dr. Katrina Knowles, an employee of EPS. As set forth in its motion papers, VBMC first became aware of possible claims of negligence regarding Dr. Knowles' treatment of the plaintiff when EPS submitted its motion for summary judgment. VBMC asserts that EPS cannot claim surprise or prejudice as it is their expert who "implicated" Dr. Knowles. VBMC maintains that amendment is "necessary to prevent potential exposure" to VBMC for the care rendered to plaintiff by emergency department physicians employed or contracted by EPS.

The motion and the opposition of EPS to the motion of VBMC to amend the Bill of Particulars and the motion of Dr. Knowles all address the prejudice to them should trial proceed in this matter in October 2020, as originally scheduled. EPS and Dr. Knowles both stress that this matter is several months post note of issue. Indeed, at the time the motions *sub judice* were filed, summary judgment motions of other defendants were pending decision.

The Court conferenced this case with all parties on November 10, 2020. At that time, the Court indicated that given the COVID-19 health pandemic, it is not likely that this case will be scheduled for trial for at least another seven or eight months.¹

The Court is cognitive of the right of Dr. Knowles and EPS to discovery as to these new claims.² After consideration of the relevant factors, including the potential prejudice to all of the parties in this action, the Court will grant the application of VBMC to amend its Bill of Particulars regarding the actions of Dr. Knowles. As trial in this matter will not proceed at any time in the near future, the Court set a discovery schedule by separate order in an effort to preserve the rights of all parties to a fair trial.

Now, it is hereby

ORDERED that the motion of VBMC is granted as set forth herein; and it is further

ORDERED that the motions of Dr. Knowles and EPS are denied.

¹ As there are multiple parties, there are no courtrooms which can safely accommodate all the attorneys, parties and jurors.

² VBMC waives discovery relative to the Second Third-Party action.

This shall constitute the Decision and Order of this Court.

Dated: Poughkeepsie, New York
November 13, 2020



CHRISTI J. ACKER, J.S.C.

To: All Counsel Via ECF