

Ramos v Checho

2020 NY Slip Op 35123(U)

February 25, 2020

Supreme Court, Nassau County

Docket Number: Index No. 601984/2019

Judge: Sharon M.J. Gianelli

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU - IAS/TRIAL PART 17
Present: Hon. Sharon M.J. Gianelli, J.S.C.

ADAN RAMOS,

X

Plaintiff,

Index No. 601984/2019

-against-

Mot Seq. Nos. 001, 002,
003 and 004

FERNANDO CHECHO, M.D., SACHIN SHAH, M.D.,
THE CENTRAL ORTHOPEDIC GROUP, LLP,
JONATHON LENTZ, D.O., GEORGE XIPOLEAS, M.D.,
NORTHWELL HEALTH PLAINVIEW HOSPITAL,

XXX

Defendants.

X

Papers submitted on this motion:

Mot. Seq. 001

Defendant Fernando Checho, M.D. and The Central Orthopedic Group, LLP's
Motion and Affirmation in support to Dismiss Plaintiff's Summons _____X

Mot. Seq. 002

Defendant George Xipoleas, M.D.'s
Motion and Affirmation in support to Dismiss Plaintiff's Summons _____X

Mot. Seq. 003

Defendant Jonathon Lentz, D.O. and Northwell Health Plainview Hospital's (Plainview
Hospital s/h/a Northwell Health Plainview Hospital)
Motion and Affirmation in support to Dismiss Plaintiff's Summons _____X

Mot. Seq. 004

Defendant Sachin Shah, M.D.'s
Motion and Affirmation in support to Dismiss Plaintiff's Summons _____X

Defendants individually move for an Order dismissing Plaintiff's Summons with Notice
due to Plaintiff's failure to serve a Complaint within the applicable time period provided
for such a pleading.

Underlying Facts

This is an action brought by Plaintiff, via the filing of a Summons with Notice on February 9, 2019 for negligence and/or medical malpractice.

Mot. Seq. 001

Defendants Fernando Checho, M.D. and The Central Orthopedic Group, LLP allege that on May 30, 2019, Plaintiff served a Summons with Notice on Defendants, service having been completed on May 31, 2019.

Defendant Fernando Checho, M.D. and The Central Orthopedic Group, LLP allege that on June 10, 2019, a Demand for a Complaint pursuant to CPLR §3012(b) was served via NYSCEF with the Nassau County Clerk.

Pursuant to CPLR §3012(b) plaintiff was to have served the Complaint no later than July 1, 2019. To date Defendants have not received the Complaint.

Mot. Seq. 002

Defendant George Xipoleas, M.D. alleges that on February 9, 2019, Plaintiff purchased an index number and filed a Summons with Notice with the Nassau County Clerk via e-filing. On May 28, 2019, Plaintiff served a Summons with Notice on Defendant, George Xipoleas, M.D.

On June 4, 2019, Defendant George Xipoleas, M.D. served a Demand for a Complaint pursuant to CPLR §3012(b) along with a Statement of Authorization for Electronic Filing, with the Nassau County Clerk.

Pursuant to CPLR §3012(b) Plaintiff was to have served the Complaint no later than June 24, 2019. To date Defendant George Xipoleas, M.D. has not received the Complaint.

Mot. Seq. 003

Defendant Jonathon Lentz, D.O. and Northwell Health Plainview Hospital (Plainview Hospital s/h/a Northwell Health Plainview Hospital) alleges this action was commenced by Plaintiff's counsel with the electronic filing of a Summons with Notice with the Nassau County Clerk's Office on February 9, 2019.

In response to the Summons with Notice, a Notice of Appearance and Demand for a Complaint was served on behalf of Defendant, Northwell Health Plainview Hospital's (Plainview Hospital s/h/a Northwell Health Plainview Hospital), on June 20, 2019.

Based on the date the Notice of Appearance and Demand for a Complaint was served, Plaintiff had until July 10, 2019 to timely serve a Complaint as to Defendant Northwell Health Plainview Hospital (Plainview Hospital s/h/a Northwell Health Plainview Hospital). Said Defendant alleges that Plaintiff failed to do so.

Mot. Seq. 004

Defendant Sachin Shah, M.D. alleges that on February 9, 2019, Plaintiff purchased an Index number and e-filed a Summons with Notice. Thereafter, on May 29, 2019, Plaintiff served the Summons with Notice on said Defendant.

On July 8, 2019, Defendant, Sachin Shah, M.D.'s office served a Demand for Complaint and e-filed same with the Court. Said Defendant, alleges that to date, Plaintiff has failed to serve a Complaint within the time period prescribed by CPLR 3012(b).

Analysis

CPLR §3012(b) states in pertinent part "...Service of the complaint shall be made within twenty days after service of the demand... The Court upon motion may dismiss the action if service of the complaint is not made as provided in this subdivision."

It is clear that Plaintiff has failed to comply with the mandates of CPRL §3012(b) which would have required the service of a Complaint in excess of six (6) months ago, despite ample opportunity to do so. Plaintiff has not filed an Affirmation in Opposition to any of the motions filed individually by the named Defendants in this action.

Accordingly,

it is

ORDERED, that Defendants Fernando Checho, M.D. and The Central Orthopedic Group, LLP's Motion for an Order dismissing Plaintiff's Summons with Notice is Granted; and

it is

ORDERED, that Defendant George Xipoleas, M.D.'s Motion for an Order dismissing Plaintiff's Summons with Notice is Granted; and

it is

ORDERED, that Defendant Jonathon Lentz, D.O. and Northwell Health Plainview Hospital's (Plainview Hospital s/h/a Northwell Health Plainview Hospital) Motion for an Order dismissing Plaintiff's action due to Plaintiff's failure to serve a complaint upon the moving Defendants within the applicable time period provided for such a pleading is Granted; and

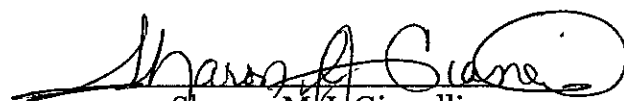
it is

ORDERED, that Defendant Sachin Shah, M.D.'s Motion for an Order dismissing the Plaintiff's action due to Plaintiff's failure to serve a Complaint upon the moving Defendant within the applicable time period provided for such a pleading is Granted;

All applications not specifically addressed herein are denied.

The forgoing constitutes the decision and order of the Court.

DATED: Mineola, New York
February 25, 2020


Sharon M.J. Gianelli
Justice of the Supreme Court

ENTERED

FEB 27 2020

NASSAU COUNTY
COUNTY CLERK'S OFFICE