

Barron v Lamont

2021 NY Slip Op 31522(U)

March 1, 2021

Supreme Court, New York County

Docket Number: 805028/2019

Judge: Eileen A. Rakower

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

PRESENT: Hon. EILEEN A. RAKOWER

PART 6

Justice

SUSAN BARRON,

Plaintiff(s)

-against -

INDEX NO. 805028/2019
MOTION DATE
MOTION SEQ. NO. 1, 2
MOTION CAL. NO.

JUSTIN G. LAMONT, MD, AMIT K.
BANSAL, DO, NEIL
MANDALAYAWALA, MD,
SHAWNA DORMAN, MD, KURT
SNAY, CRNA, and HOSPITAL FOR JOING
DISEASES-NYU LANGONE HOSPITAL,

Defendant(s).

The following papers, numbered 1 to _____ were read on this motion for/to

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

■

Answer — Affidavits — Exhibits _____

■

Replying Affidavits

■

Cross-Motion: Yes X No

This action was commenced by the filing of a Summons and Verified Complaint on or about January 25, 2019. Plaintiff Susan Baron (“Plaintiff”) alleges that Defendants failed to properly anti-coagulate Plaintiff after a total hip replacement surgery in August 2016 which caused her to sustain resulting injuries including a pulmonary embolism, episodes of loss of consciousness, inability to ambulate, and mental anguish.

There are two motions currently pending in this action.

Under Motion Sequence 1, Defendants move for an Order to dismiss the action because of Plaintiff’s failure to provide outstanding discovery or to compel its production. Defendants state that to date, Plaintiff has not served responses to their July 30, 2019 demand for Arons authorizations to permit Defendants to have discussions with Plaintiff’s treating cardiologist and pulmonologist. Defendants

state that Plaintiff was specifically ordered to respond to this demand within 30 days pursuant to the parties' September 19, 2019 Preliminary Compliance Conference. Defendants state that to date, Plaintiff has also failed to respond to Defendants' January 17, 2020 Notice to Produce Authorizations for her medical providers including Plaintiff's treating orthopedists, internists, pharmacies, mental health providers, and physical therapy/rehabilitation records. Defendants state that Plaintiff was specifically ordered to respond to this discovery pursuant to the parties' January 21, 2020 Compliance Conference Order. Lastly, Defendants contend that Plaintiff has also failed to provide responses to their April 22, 2020 additional demand for authorizations for records from several medical providers, including Plaintiff's "pulmonary wellness group", treating neurologist, and visiting nurses services. Plaintiff did not oppose Defendants' motion.

After Motion Sequence 1 was fully submitted, the law firm of Rheingold Giuffra Ruffo & Plotkin LLP ("Movant Law Firm") moved under Motion Sequence 2 for an Order pursuant to CPLR §321(b) to withdraw as attorneys of record for Plaintiff; stay all proceedings in this action for a period of sixty days to permit Plaintiff time to retain new counsel; and preserve a lien on a contingency fee basis for legal services rendered to date in connection with the prosecution of the within action. Sherri L. Plotkin, Esq., submits an affirmation in support of the application. Plaintiff does not oppose the request to be relieved as counsel. Defendants submit partial opposition.

Legal Standards

CPLR § 321 (2) provides, "An attorney of record may withdraw or be changed by order of the court in which the action is pending, upon motion on such notice to the client of the withdrawing attorney, to the attorneys of all other parties in the action or, if a party appears without an attorney, to the party, and to any other person, as the court may direct." The First Department has stated, "[A]n attorney may withdraw as counsel of record upon a showing of good and sufficient cause, and reasonable notice to the client." *Mason v. MTA New York City Transit*, 832 NYS2d 153, 154 (1st Dept 2017).

Judiciary Law § 475 provides in relevant part:

"From the commencement of an action, special or other proceeding in any court . . . or the initiation of any means of alternative dispute resolution including . . . mediation . . . the attorney who appears for a party has a lien upon his client's cause of action, claim or counterclaim, which

attaches to a verdict, report, determination, decision, judgment or final order in his client's favor, and the proceeds thereof in whatever hands they may come . . ."

"Under Judiciary Law § 475, a charging lien automatically comes into existence, without notice or filing, upon commencement of the action, and is measured by the reasonable value of the attorney's services in the action, unless fixed by agreement." *Resnick v. Resnick*, 24 AD3d 238, 239 [1st Dept 2005]. "A charging lien is a security interest in the favorable result of litigation, giving the attorney equitable ownership interest in the client's cause of action . . ." *Chadbourn & Parke, LLP v. AB Recur Finans*, 18 AD3d 222, 223 [1st Dept 2005].

"[A] charging lien is waived by an attorney who without just cause neglects or refuses to proceed with the prosecution of the case." *Klein v. Eubank*, 87 NY2d 459, 463 [1996]. "[W]here an attorney's representation terminates and there has been no misconduct, no discharge for just cause and no unjustified abandonment by the attorney, the attorney's right to enforce the statutory charging lien is preserved . . ." *Id.* at 1996. "Generally, however, if any attorney is discharged without cause he will be allowed a charging lien upon the proceeds of the lawsuit, the amount to be determined on a quantum meruit basis at the conclusion of the case . . . and his fees will be made a charge included within the fees to which the incoming attorney will be entitled." *People v. Keeffe*, 50 NY2d 149, 157 [1980]. Where the withdrawing counsel was retained on a contingent fee basis, the amount of the counsel's charging lien on the proceeds of the action are determined after a hearing at the conclusion of the case. *Cadichon v. Ryntz*, 2014 WL 5390560, [Sup Ct New York County 2014].

Discussion

Based on Ms. Plotkin's affirmation, the Court finds that good and sufficient cause exists in this case for Movant Law Firm to withdraw as counsel for Plaintiff.

Wherefore, it is hereby

ORDERED that Defendants' motion (Motion Sequence 1) is granted without opposition only to the extent that Plaintiff shall provide all outstanding discovery by May 21, 2021 (after the 60 day stay detailed below is lifted); and it is further

ORDERED that the motion of Rheingold Giuffra Ruffo & Plotkin LLP (Motion Sequence 2) to be relieved as the attorneys for Plaintiff Susan Barron is granted; and it is further

ORDERED that no further proceedings may be taken in this matter without leave of this court for a period of 60 days from the date of this order within which time Plaintiff Susan Barron must appoint a substitute attorney or shall be deemed to be proceeding pro se; and it is further

ORDERED that, WITHIN 3 DAYS OF THE DATE OF THIS DECISION, Rheingold Giuffra Ruffo & Plotkin LLP, shall serve a copy of this order with notice of entry upon Plaintiff Susan Barron and upon the attorneys for all other parties appearing herein by overnight mail; and it is further

ORDERED that, WITHIN 6 DAYS OF THE DATE OF THIS DECISION, Rheingold Giuffra Ruffo & Plotkin LLP, shall serve the client file upon Plaintiff Susan Barron; and it is further

ORDERED that any new attorney retained by Plaintiff Susan Barron shall file a notice of appearance with the Clerk of the Trial Support Office (Room 158) and the Clerk of the Part; and it is further

ORDERED that the law firm of Rheingold Giuffra Ruffo & Plotkin LLP preserves a lien to be determined at the conclusion of the case; and it is further

ORDERED that the parties shall appear for a compliance conference via Teams on May 25, 2021 at 9:30 AM.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: MARCH 1, 2021

ENTER:



J.S.C.

HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION