

DeLap v Serseloudi
2021 NY Slip Op 32066(U)
July 7, 2021
Supreme Court, Albany County
Docket Number: 900421-16
Judge: Denise A. Hartman
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

PAMELA DELAP,

Plaintiffs,

**DECISION AND
ORDER**

-against-

Index No. 900421-16

MICHAELA M. SERSELOUDI, D.D.S., ASPEN
DENTAL MANAGEMENT, INC. AND ASPEN
DENTAL ASSOCIATES OF HUDSON VALLEY,
PLLC,

Defendants.

HON. DENISE A. HARTMAN, AJSC

APPEARANCES

PAMELA DELAP
Plaintiff Pro Se
13 Sand Spurrey Road
Ballston Spa, New York 12020

SUGARMAN LAW FIRM, LLP
Zachary M. Mattison, Esq.
Attorneys for Aspen Defendants
211 West Jefferson Street
Syracuse, New York 13202

CABANISS CASEY LLP
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Attorneys for Non-Party Jordan R. Pine, Esq.
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Albany, New York 12203

Hartman, J.

After she purportedly sustained injuries as the result of shoddy dental work, plaintiff and, derivatively, her husband, Ronald DeLap, commenced this dental malpractice action in 2016 against defendants Michaela M. Serseloudi, DDS, Aspen Dental Management, Inc., and Aspen Dental Associates of Hudson Valley, PLLC (hereinafter the Aspen defendants). The parties negotiated a settlement in May 2018 providing for a total payment of \$150,000, from which the DeLaps were to receive \$85,000 as the result of a commitment by their attorney, Jordan R. Pine, to forgo a portion of his counsel fee. The DeLaps refused to execute the settlement documents, prompting Mr. Pine to move for, among other things, confirmation of the settlement and leave to withdraw as the DeLaps' counsel. The DeLaps, Mr. Pine, and counsel for the Aspen defendants participated in a conference on the motion return date in August 2018 that ended with the DeLaps agreeing to execute the May 2018 settlement documents, but with a commitment by Mr. Pine to forgo more of his counsel fee so that the DeLaps would receive \$90,000 of the settlement proceeds.

The DeLaps and counsel for the Aspen defendants executed the previously prepared settlement agreement, which was then "so ordered" by Supreme Court (Mackey, J.). And the DeLaps and Mr. Pine executed a new handwritten side agreement that addressed the counsel fee issue. As contemplated by the August 2018 settlement agreement, counsel for the

parties executed a stipulation of discontinuance that was filed with the Albany County Clerk on September 10, 2018 (*see* CPLR 3217 [a] [2]).

As specified in the stipulation and order, a settlement check for \$150,000 was made payable to both the DeLaps and Mr. Pine. Mr. Pine forwarded the settlement check to the DeLaps and requested that they indorse and return the check to him so that he could deposit it in his escrow account and cut them a check for \$90,000. After the DeLaps failed to do so, Mr. Pine moved for an order directing that the Aspen defendants' malpractice insurance carrier issue separate checks to the DeLaps and Mr. Pine for the amounts to which they were entitled under their side agreement. The DeLaps opposed that motion and moved for a variety of relief that included vacating the August 2018 settlement agreement and side agreement, permitting Ronald DeLap to withdraw as a party, and removing Mr. Pine as their attorney. Defendants opposed Mr. Pine's motion, stating that they had no wish to be pawns in the counsel fee dispute between the DeLaps and Mr. Pine, then submitted no opposition to the DeLaps' motion. Following oral argument, this Court granted the DeLaps' motion to the extent that it sought the relief requested above and denied Mr. Pine's motion as moot. Mr. Pine appealed.

On June 18, 2020, the Appellate Division, Third Department modified this Court's decision by reversing so much thereof that granted the DeLaps' motion. The Third Department noted that the parties' stipulation of

discontinuance was filed before “any of the motion practice at issue and, as a result, a plenary action was required ‘to enforce [or set aside] the settlement since the court does not retain the power to exercise supervisory control over previously terminated actions and proceedings” (*DeLap v Serseloudi*, 184 AD3d 992, 993 [3d Dept 2020], *lv dismissed* 36 NY3d 1080 [2021], quoting *Salvador v Town of Lake George Zoning Bd.*, 130 AD3d 1334, 1335 [3d Dept 2015]). And that “[i]ndeed, ‘[w]hen an action is discontinued, it is as if it had never been” (*DeLap v Serseloudi*, 184 AD3d at 993, quoting *Newman v Newman*, 245 AD2d 353, 354 [2d Dept 1997]). Thus, the Third Department held, this Court “lacked authority to grant any of the requested relief” and should have denied “both motions . . . in their entirety” (*DeLap v Serseloudi*, 184 AD3d at 993). On March 30, 2021, the Court of Appeals dismissed plaintiff’s leave to appeal (*see DeLap v Serseloudi*, 36 NY3d 1080 [2021]).

By notice of motion dated March 3, 2021, plaintiff Pamela DeLap moves to, among other things, vacate the August 2018 settlement agreement and “prosecute the listed [individuals] for the crimes committed in the Albany County Courthouse” that allegedly occurred between October 2014 and present. In so moving, Ms. DeLap ostensibly attempts to amend the caption of the underlying dental malpractice action and assert causes of action, both civil and criminal, against the following defendants: Hon. Gerald Connolly, Hon. Michael Mackey, Hon. Justin Corcoran, Sugarman Law Firm, Zachary

Mattison, Esq., Dr. Michaela Serseloudi DDS, Aspen Dental Management Inc., Aspen Dental of Lower Hudson Valley PLLC, Caitlin Insurance Company, and Jordan Pine, Esq. and Associates.

The Aspen defendants oppose Ms. DeLap's motion, and cross-move for an order prohibiting the DeLaps from filing any pleadings, letters, or other papers with this or any other Court without prior Court approval. Mr. Pine, appearing through counsel, also opposes Ms. DeLap's motion and supports the Aspen defendants' request for an order prohibiting the DeLaps from any further filings without prior Court approval.

Ms. DeLap's motion is denied. Th dental malpractice action has been discontinued. The Court cannot consider any further applications filed under Albany Index No. 900421-16. As the Appellate Division held, this Court "lack[s] authority" and any supervisory control over this matter (*see DeLap v Serseloudi*, 184 AD3d at 993). Plaintiff's motion is therefore denied.

The Aspen defendants' cross motion is also denied. Public policy mandates free access to the courts. And pro so litigants are generally afforded some latitude. To be sure, when a party is abusing the judicial process with repeated, frivolous litigation, equity may enjoin such vexatious conduct by requiring the litigant to seek Court approval before filing any further applications, actions or proceedings (*see He v Xiaokang Xu*, 183 AD3d 1145, 1145 [3d Dept 2020]; *Ritchie v Ritchie*, 184 AD3d 1113, 1117-1118 [4th Dept

2020]; *Strujan v Kaufman & Kahn, LLP*, 168 AD3d 1114, 1116 [2d Dept 2019]; *Curry v Common Ground Community, H.D.F.C.*, 146 AD3d 641, 641-642 [1st Dept 2017]). But the Court cannot conclude that the DeLaps' filings, thus far, have been motivated by ill will or spite. The broad injunctive relief that the Aspen defendants seek is therefore unwarranted at this juncture.

However, the Appellate Division and now this Court have made it abundantly clear that the Court is without authority to grant relief in this discontinued action. Thus, any future filings in this action (Albany Index No. 900421-16) will be considered frivolous and may serve as the basis for sanctions, including an order enjoining the DeLaps from filing papers without prior Court approval.

Accordingly, it is

ORDERED that plaintiff Pamela DeLap's motion is denied; and it is

ORDERED that the Aspen defendants' cross motion is denied.

This constitutes the decision and order of the Court. The original decision and order is being uploaded to NYSCEF for electronic entry by the Albany County Clerk. Upon such entry, counsel for the Aspen defendants shall promptly serve notice of entry on all other parties entitled to such notice. All other papers are being transmitted to the County Clerk for filing.

Dated: Albany, New York
July 7, 2021



Denise A. Hartman

HON. DENISE A. HARTMAN
Acting Justice of the Supreme Court

07/07/2021

Papers Considered

1. Notice of Motion, dated March 3, 2021;
2. Plaintiff's Affidavit, dated March 3, 2021, with Exhibits;
3. Plaintiff's letter, dated March 4, 2021;
4. Notice of Cross Motion, dated April 26, 2021;
5. Affirmation of Zachary M. Mattison, Esq., dated April 26, 2021;
6. Affidavit of Jordan R. Pine, dated April 28, 2021, with Exhibit;
7. Memorandum of Law in Opposition to Plaintiff's Motion, dated April 29, 2021;
8. Opposition to Cross Motion, dated May 12, 2021;
9. Plaintiff's Affidavit, dated May 12, 2021, with Exhibits;
10. Answer to Mr. Pine's Affidavit Of Opposition, dated May 17, 2021, with Exhibits;
11. Plaintiff's Memorandum of Law Opposition to Defendant's Jordan Pine's Response Presented by Counsel David B. Cabaniss, Esq. of Cabaniss Casey LLP, undated;
12. Letter from Zachary M. Mattison, Esq., dated May 17, 2021.
13. Plaintiff's letter, dated June 17, 2021, with attachments.