

**Dalton v Frempong-Boady**

2021 NY Slip Op 32170(U)

November 3, 2021

Supreme Court, New York County

Docket Number: Index No. 805047/2018

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. JOHN J. KELLEY PART 56M**

*Justice*

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EDNA DA SILVA DALTON, as the Proposed  
Administratrix of the Estate of DENNIS JOHN DALTON,  
deceased, and EDNA DA SILVA, individually

Plaintiff,

- v -

ANTHONY K. FREMPONG-BOADY, M.D., NYU  
LANGONE HOSPITALS, doing business as NYU LANGONE  
MEDICAL CENTER, "JOHN DOE," "JANE DOE," and  
"CORPORATION XYZ" (JOHN DOE, JANE DOE, and  
CORPORATION XYZ BEING FICTITIOUS, AS THE  
TRUE NAMES ARE PRESENTLY UNKNOWN),

Defendants.

-----X

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 37, 38, 39, 40

were read on this motion to/for WITHDRAW AS ATTORNEY.

In this action to recover damages for medical malpractice and wrongful death, the law firm of Munawar & Hashmat, LLP, formerly known as Munawar & Andrews-Santillo, LLP (M&H), moves pursuant to CPLR 321(b)(2) for leave to withdraw as attorney for the plaintiff, Edna da Silva Dalton, in her capacity as the proposed administratrix of the estate of Dennis John Dalton, deceased, and in her individual capacity. The motion is granted, without opposition.

On July 19, 2019, M&H moved for leave to withdraw as the attorneys for the plaintiff (SEQ 001). While that motion was pending, the court (Madden, J.), by order dated January 6, 2020, directed M&H to provide the plaintiff with the medical records of Dr. Han Jo Kim in its possession that related to the treatment of the plaintiff's decedent. By order dated January 16, 2020, the same court, after learning that M&H did not have those records in its possession, directed M&H to subpoena Dr. Kim's records, and issued a so-ordered judicial subpoena for that purpose on January 22, 2020. On January 27, 2020, M&H caused the judicial subpoena to be

served upon Dr. Kim, but he did not immediately comply with the subpoena. By order dated October 22, 2020, the court (Madden, J.) directed M&H to move by order to show cause to hold Dr. Kim in civil contempt on or before November 13, 2020, and instructed that M&H's failure to do so would result in the denial of its motion for leave to withdraw as counsel. When M&H did not initiate a contempt motion, the same court, by order dated December 10, 2020 and entered December 15, 2020, denied M&H's motion for leave to withdraw as the plaintiff's counsel, albeit without prejudice to renewal after it had initiated a motion to hold Dr. Kim in contempt.

Justice Madden retired from the bench as of December 31, 2020, and this action was reassigned to this court. By order to show cause entered September 24, 2021, M&H moved to hold Dr. Kim in civil contempt of court for failing to comply with the so-ordered subpoena served upon him in January 2020 (SEQ 003). In response to that motion, Dr. Kim provided M&H with the relevant medical records, thus purging his contempt. On October 11, 2021, M&H and Dr. Kim executed a stipulation, pursuant to which M&H agreed to withdraw the contempt motion; on October 27, 2021, M&H submitted an affirmation that Dr. Kim had complied with the subpoena, and had produced all relevant office records. At the oral argument of the motion on November 3, 2021, Dr. Kim appeared remotely by counsel, who, during the course of the appearance, emailed a copy of Dr. Kim's office records directly to the plaintiff, who also appeared remotely.

During oral argument, the plaintiff informed the court that she had yet to obtain the full office records of the defendant Anthony K. Frempong-Boady, M.D. M&H informed the court that it had some, but not likely all, of Frempong-Boady's office records in its possession. Counsel for Frempong-Boady informed the court that she was not certain whether her firm had all of his office records in its possession, but would obtain them.

In light of the foregoing, it is

ORDERED that, on or before November 15, 2021, Munawar & Hashmat, LLP, shall deliver to the plaintiff, both by email at her email address ([ednadalton2012@aol.com](mailto:ednadalton2012@aol.com)) and by regular mail at her home address in Middletown, New York, the entire file referable to this

action, including the entirety of the relevant office records of Dr. Han Jo Kim and Dr. Anthony K. Frempong-Boady currently in its possession; and it is further,

ORDERED that, on or before November 15, 2021, the defendant Anthony K. Frempong-Boady, M.D., shall, by counsel, deliver to the plaintiff, both by email at her email address ([ednadalton2012@aol.com](mailto:ednadalton2012@aol.com)) and by regular mail at her home address in Middletown, New York, the entirety of his office records referable to examination and treatment of Dennis John Dalton; and it is further,

ORDERED that the motion of Munawar & Hashmat, LLP, formerly known as Munawar & Andrews-Santillo, LLP, to be relieved as the attorney for the plaintiff, Edna da Silva Dalton, as the proposed administratrix of the estate of Dennis John Dalton, deceased, and individually, is granted, without opposition, and Munawar & Hashmat, LLP, formerly known as Munawar & Andrews-Santillo, LLP, is permitted to withdraw as counsel upon the filing of proof by said law firm that it has complied with the conditions set forth above, as well as the following conditions, and all proceedings in this action are stayed to the extent set forth herein; and it is further,

ORDERED that, on or before November 10, 2021, Munawar & Hashmat, LLP, formerly known as Munawar & Andrews-Santillo, LLP, shall serve a copy of this order with notice of entry upon the former client at the client's last known address both by email and overnight delivery service, and upon the attorneys for any other parties appearing herein by uploading a copy of this order with notice of entry to the New York State Court Electronic Filing (NYSCEF) system; and it is further,

ORDERED that, together with the copy of this order with notice of entry, moving counsel shall forward a notice to the former client directing her to appoint a substitute attorney on or before January 25, 2022; and it is further,

ORDERED that any new attorney retained by the plaintiff, Edna da Silva Dalton, as the proposed administratrix of the estate of Dennis John Dalton, deceased, and individually, shall file a notice of appearance with the Trial Support Office (60 Centre Street, Room 148, New

York, NY 10007), the Clerk of Part 56, and the NYSCEF system on or before January 25, 2022; and it is further,

ORDERED that all proceedings in this matter are stayed, and no further proceedings may be taken by or against the former client without leave of this court until January 25, 2022, except to the extent necessary for the court to dispose of the plaintiff's motion to hold Dr. Han Jo Kim in contempt, currently pending under MOT SEQ 003; and it is further,

ORDERED that, upon receipt of a copy of this order with notice of entry, the plaintiff shall contact the Part Clerk of Part 56 at RSPEAKS@nycourts.gov and provide the Part Clerk with the plaintiff's contact information, including residence address, mailing address, e-mail address and telephone number; and it is further,

ORDERED that the parties shall appear for a conference on January 25, 2022, at 11:30 a.m., which shall be held remotely via the Microsoft Teams computer application, and the court shall forward a link to the parties so that the parties may participate in the conference; and it is further,

ORDERED that the plaintiff shall appear at that preliminary conference either with or without an attorney; and it is further,

ORDERED that any party's or attorney's failure to comply with the directives set forth herein may result in the imposition of sanctions.

This constitutes the Decision and Order of the court.

11/3/2021  
DATE

  
JOHN J. KELLEY, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE