

**Genet v New York & Presbyt. Hosp.**

2022 NY Slip Op 30607(U)

February 23, 2022

Supreme Court, New York County

Docket Number: Index No. 805024/2021

Judge: Judith N. McMahon

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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. JUDITH MCMAHON PART 30M

Justice

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GERALD GENET, RANDY GENET,

Plaintiff,

- v -

THE NEW YORK AND PRESBYTERIAN HOSPITAL, NEW YORK PRESBYTERIAN HOSPITAL - NEW YORK WEILL CORNELL CENTER, GEOFFREY BERGMAN, MING ZHONG, PRIMO REVELDEZ, CAITLYN DOUGLAS, GILLIAN RICHARDS, NATALIA GARCIA

Defendant.

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INDEX NO. 805024/2021

MOTION DATE 04/29/2021, 05/03/2021

MOTION SEQ. NO. 001 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 37, 38, 39, 40, 41, 42, 43, 44, 45, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 75, 76, 77, 78, 79, 80

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 46, 47, 48, 49, 50, 51, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74

were read on this motion to/for STRIKE PLEADINGS

Upon the foregoing documents, it is ordered that the motion of defendants the New York and Presbyterian Hospital s/h/a The New York and Presbyterian Hospital, New York Presbyterian Hospital-New York Weill Cornell Center, Geoffrey Bergman, M.D., Ming Zhong, M.D., Primo Reveldez, RCIS, Caitlyn Douglas, RN, and Gillian Richards, RN (hereinafter, collectively, "NYP") (Mot. Seq. No. 001) to vacate the April 1, 2021 preliminary conference order is denied as academic, consistent with the parties' June 24, 2021 stipulation withdrawing the motion, and the October 20, 2021 so-ordered stipulation of Deborah A. Kaplan, J.S.C. regarding discovery (see NYSCEF Doc. No. 88). Plaintiffs' motion (Mot. Seq. No. 002)<sup>1</sup> to

<sup>1</sup> Defendants' "Notice of Opposition and Cross-Motion" (NYSCEF Doc. No. 64) which purports to seek an order (1) denying plaintiffs' motion, (2) deeming defendants' response to plaintiffs' Notice to Admit as "proper" and

strike defendants' answer and to deem as admitted parts of the hospital record annexed to plaintiff's March 30, 2021 Notice to Admit is denied.

This matter arises out of alleged medical malpractice occurring on August 1, 2018, following a cardiac catheterization to the 88-year-old plaintiff, Gerald H. Genet.

Plaintiffs' March 30, 2021 Notice to Admit (*see* NYSCEF Doc. No. 28) seeks admissions of six items: (1) plaintiff was given the wrong dose of the medication, Angiomax; (2) accurate copies of the NYP medical records for plaintiff are attached to the notice; (3) six named individuals were present during plaintiff's procedure; (4) the history contained on page 269 of the (attached) medical record is "a true and accurate history of what occurred on August 1, 2018 in the cath [sic] lab"; (5) the history contained on page 565 of the (attached) "miscellaneous nursing note" of nurse Gillian Richards "is a true and accurate history of what occurred on August 1, 2018 in the cath [sic] lab" and (6) the history contained in the "medication event" on page 566 of the (attached) medical record "is a true and accurate history of what occurred on August 1, 2018 in the cath [sic] lab."

In their April 7, 2021 "Response to Plaintiffs' Notice to Admit" (*see* NYSCEF Doc. No. 70), defendants provide explanations for their objections to items 1, 3, 4, 5 and 6. As for item 2, defendants admit that the first five pages of the attachment are "accurate copies of the Cardiac Catheterization Report."

Plaintiffs move to strike defendants' answer on the grounds, *inter alia*, that defendants' responses to the Notice to Admit were willfully non-compliant and sanctionable. Defendants oppose the motion.

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(3) compelling costs and sanctions from plaintiffs' counsel has not been designated as a formal cross motion and is treated herein as defendants' opposition to Mot. Seq. No. 002.

“A notice to admit pursuant to CPLR §3213 (a) is to be used only for disposing of uncontroverted questions of fact or those that are easily provable, not for the purpose of compelling admission of fundamental and material issues or ultimate facts that can only be resolved after a full trial” (*Meadowbrook-Richman Inc. v. Cicchiello*, 273 AD2d 6 [1<sup>st</sup> Dept. 2000]; [internal citations omitted]). The First Department has “consistently held that the purpose of a notice to admit is ‘to eliminate from the litigation factual matters which will not be in dispute at trial, not to obtain information in lieu of other disclosure devices’” such as depositions (*Taylor v. Blair*, 116 AD2d 204, 205-206 [1<sup>st</sup> Dept. 1986] citing *Berg v. Flower Fifth Ave. Hosp.*, 102 AD2d 760 [1<sup>st</sup> Dept. 1984]).

The items objected to by defendants were improper demands in the first place, inasmuch as plaintiffs seek admissions on ultimate matters that are in dispute. The demands for the “accuracy of the history of what occurred on August 1, 2018” go beyond seeking admission of Nurse Richards’ authorship of the medical notes. Rather, plaintiffs appear to be seeking an admission as to the truth of the contents contained in the chart. That information must be explored through other disclosure devices, such as a deposition.

The penalties embodied in CPLR 3126 do not apply in this case (*see Glasser v. City of New York*, 265 AD2d 526 [2d Dept. 1999]) and accordingly, plaintiffs’ motion to strike defendants’ answer and for an order deeming parts of the hospital record as admitted must be denied in its entirety.

Accordingly, it is

ORDERED, that the defendants’ motion to vacate the April 1, 2021 preliminary conference order (Motion Seq. No. 001) is denied as moot; and it is further

ORDERED, that plaintiffs' motion to strike defendants' answer and to deem parts of the hospital record as admitted (Motion Seq. No. 002) is denied and the subject Notice to Admit is hereby stricken.

This is the Order of the Court.

2/23/2022  
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

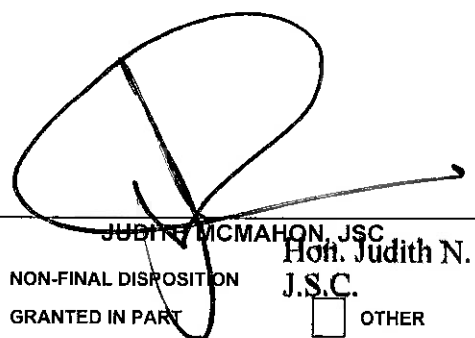
GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT \*

OTHER

REFERENCE

  
JUDITH MCMAHON, J.S.C.  
Hon. Judith N. McMahon  
J.S.C.