

Gonzalez v Medtronic, PLC

2022 NY Slip Op 31468(U)

May 2, 2022

Supreme Court, New York County

Docket Number: Index No. 805271/2021

Judge: John J. Kelley

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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

-----X

RACHELLE GONZALEZ, as Administratrix of the Estate of
ABRAHAM GONZALEZ, and RACHELLE GONZALEZ
individually,

Plaintiff,

- v -

MEDTRONIC, PLC, ATHOS PATSALIDES, M.D., and NEW
YORK PRESBYTERIAN HOSPITAL,

Defendants.

-----X

INDEX NO. 805271/2021
MOTION DATE 02/22/2022
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20

were read on this motion to/for AMEND CAPTION/PLEADINGS.

In this action to recover damages for medical malpractice and wrongful death, and to recover in strict products liability, the plaintiff moves pursuant to CPLR 305(c) and 3025(b) for leave to file an amended summons and amended complaint so as to substitute Medtronic USA, Inc., for Medtronic, PLC, as a party defendant. No party opposes the motion. The motion is granted, the summons and complaint are amended accordingly, and the plaintiff is directed to serve a copy of the amended summons and the amended complaint upon Medtronic USA, Inc., on or before August 29, 2022. The amended summons and the amended complaint shall be deemed served upon the defendants Athos Patsalides, M.D., and New York Presbyterian Hospital as of the date that this order is entered.

Medtronic, PLC, is a corporation incorporated in Ireland that manufactures medical devices. It is affiliated with Medtronic USA, Inc., a corporation that is incorporated in the State of Minnesota, where both companies have their principal offices. Medtronic USA, Inc., is

registered with the New York State Secretary of State as a foreign corporation authorized to do business in the State of New York, with its principal offices within the State located in Erie County. In its filing with the Secretary of State, Medtronic USA, Inc., has designated Corporation Service Company, 80 State Street, Albany, New York, as its registered agent for service of process.

On March 8, 2021, the plaintiff commenced this action against Medtronic, PLC, among others, alleging that it developed, designed, manufactured, and sold a device known as Medtronic EV3 Hyperform Occlusion Balloon System, bearing Product Catalog Number 104-4370, Lot Number A794829, that malfunctioned due to improper manufacture and design, thus causing injury to the plaintiff's decedent. She caused a copy of the summons and complaint to be served upon Medtronic, PLC, by delivering it to Corporation Service Company in Albany. Medtronic, PLC, has yet to answer the complaint.

The plaintiff now seeks leave to amend the summons and the complaint to substitute Medtronic USA, Inc., as a party defendant in place and instead of Medtronic, PLC.

“CPLR 305 (c) authorizes the court, in its discretion, to ‘allow any summons or proof of service of a summons to be amended, if a substantial right of a party against whom the summons issued is not prejudiced.’ This provision, and its predecessors, has been consistently interpreted as allowing a misnomer in the description of a party defendant to be cured by amendment, even after the Statute of Limitations has run. Generally, such an amendment should be granted where (1) there is evidence that the correct defendant (misnamed in the original process) has in fact been properly served, and (2) the correct defendant would not be prejudiced by granting the amendment sought (*see, Stuyvesant v Weil*, 167 NY 421; *Simpson v Kenston Warehousing Corp.*, 154 AD2d 526; *Creative Cabinet Corp. v Future Visions Computer Store*, 140 AD2d 483; *Gajdos v Haughton Elevator*, 131 AD2d 428; *Yanni v Chopp*, 130 AD2d 489, 490-491; *Connor v Fish*, 91 AD2d 744; *Luce v Pierce Muffler Shops*, 51 Misc 2d 256, *affd* 28 AD2d 826; McLaughlin, 1988 Supp Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C305:4, 1990 Supp Pamph, at 193; Siegel, NY Practice § 65, at 66-67; 3 Carmody-Wait 2d, NY Prac §§ 19:11, 19:19)”

(*Ober v Rye Town Hilton*, 159 AD2d 16, 19-20 [2d 1990]; *see Jordan-Covert v Petroleum Kings, LLC*, 199 AD3d 666, 668 [2d Dept 2021]; *Martin v Witkowski*, 158 AD3d 131, 139 [4th Dept 2017]; *Houghtalen v Norstar Bank*, 191 AD2d 371, 371 [1st Dept 1993]).

The plaintiff has demonstrated that she already has properly served the correct defendant, that Medtronic USA, Inc., as the correct defendant, would not be prejudiced by granting the amendment sought, and that “the misnomer could not possibly have misled the defendant concerning who it was that the plaintiff was in fact seeking to sue” (*Jordan-Covert v Petroleum Kings, LLC*, 199 AD3d at 668, quoting *Creative Cabinet Corp. of Am. v Future Visions Computer Store*, 140 AD2d 483, 484-485 [2d Dept 1988]). Moreover, the amendment may be made nunc pro tunc (see *Jordan-Covert v Petroleum Kings, LLC*, 199 AD3d at 668; *Jaramillo v Asconcio*, 151 AD3d 947, 949-950 [2d Dept 2017]). Hence, the plaintiff is entitled to amend the summons, the caption, and the complaint to substitute Medtronic USA, Inc., as a party defendant in place and instead of Medtronic, PLC, and the summons, the caption, and complaint are deemed amended, nunc pro tunc, as of March 8, 2021.

In light of the foregoing, it is

ORDERED that the plaintiff’s motion is granted, without opposition; and it is further,

ORDERED that the summons, the caption of the action, and the complaint are deemed amended, nunc pro tunc as of March 8, 2021, so as to substitute Medtronic USA, Inc., as a party defendant in place and instead of Medtronic, PLC; and it is further,

ORDERED that the caption of this action is amended to read as follows:

-----X

RACHELLE GONZALEZ, as Administratrix of the Estate of ABRAHAM GONZALEZ, and RACHELLE GONZALEZ individually,

Plaintiff,

-v-

Index No. 805271/2021

MEDTRONIC USA, INC, ATHOS PATSALIDES, M.D., and NEW YORK PRESBYTERIAN HOSPITAL,

Defendants.

-----X

and it is further,

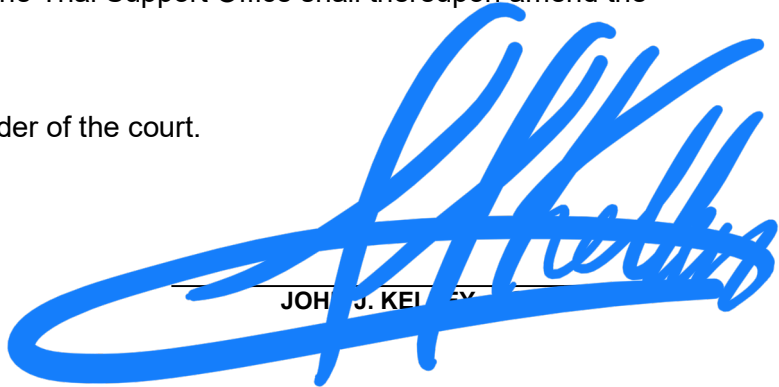
ORDERED that the amended complaint uploaded to the New York State Court Electronic Filing system under Docket Entry 19 is deemed served upon the defendants Athos Patsalides, M.D., and New York Presbyterian Hospital as of the date of entry of this order; and it is further,

ORDERED that, on or before August 29, 2022, the plaintiff shall, pursuant to CPLR 311(a)(1), serve upon Medtronic USA, Inc., a copy of a properly amended summons and the amended complaint in the form uploaded to the New York State Court Electronic Filing system under Docket Entry 19; and it is further,

ORDERED that, on the court's own motion, within 15 days of the entry of this order, the plaintiff shall serve a copy of this order upon the Trial Support Office (60 Centre Street, Room 148, New York, NY 10007), and shall separately file and upload the notice required by CPLR 8019(c) and a completed Form EF-22, and the Trial Support Office shall thereupon amend the court records accordingly.

This constitutes the Decision and Order of the court.

5/2/2022
DATE


JOHN J. KELLEY

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: