

Grandison v Gabbur
2022 NY Slip Op 31998(U)
June 24, 2022
Supreme Court, Kings County
Docket Number: Index No. 10138/2011
Judge: Genine D. Edwards
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At an I.A.S. Trial Term, Part 80 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 24th day of June, 2022

P R E S E N T :

Hon. Genine D. Edwards, Justice

NYASIA GRANDISON,

Index No. 10138/2011

Plaintiff,

- against -

DECISION

NAGARAJ GABBUR, M.D., MARY TOUSSAINT-MILORD, M.D., KIRANMAYI MECHINENI, M.D., a/k/a DR. MUDDADA,

Defendants.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Affirmation in Support.....	1
Affirmations in Opposition.....	2-4
Affirmation in Reply.....	5

In this medical malpractice action, plaintiff Nyasia Grandison moved, in motion sequence #24 for: 1) an order striking the bill of particulars as to affirmative defenses for defendant Nagaraj Gabbur, M.D., electronically served on June 17, 2021 for lack of verification pursuant to CPLR §3044; 2) an order striking the verified bill of particulars as to affirmative defenses for defendant Nagaraj Gabbur, M.D., electronically served on

June 22, 2021 for untimeliness; 3) an order striking both the original affirmative defenses in the verified answer of defendant Nagaraj Gabbur, M.D., dated July 19, 2011 and the electronically served response for vagueness and other deficiencies; 4) an order striking defendant's supplemental verified bill of particulars as to affirmative defenses electronically served on June 21, 2021 by Mary Toussaint-Milord, M.D., for untimeliness; 5) an order striking both the original affirmative defenses in the verified answer of defendant Mary Toussaint-Milord, M.D., dated July 11, 2011 and the electronically served response for vagueness and other deficiencies; 6) an order striking the response to plaintiff's demand for further particularized bill of particulars as to affirmative defenses of defendant Kiranmayi Mechineni, M.D., dated June 18, 2021 for lack of verification and/or electronic service or, in the alternative, for the failure to comply with the predicate decision and order; 7) an order striking the original affirmative defenses in the verified answer of defendant Kiranmayi Mechineni, M.D., dated July 19, 2011 for vagueness and other deficiencies; 8) an order striking defendants' responses for scandalous or inflammatory claims pursuant to CPLR §3024(b); 9) an order precluding defendants from offering evidence at trial in support of their affirmative defenses pursuant to CPLR §3042(c); 10) an order dismissing defendants' answers for failure to serve well-crafted responses to plaintiff's demand for further particularizations of their bills of particulars; 11) an order striking defendants' answers for lack of merit pursuant to CPLR §3211(b); or in the alternative, 12) an order granting judgement in favor of plaintiff and against defendants on the lack of informed consent cause of action as a matter of law together with; 13) an order setting this matter down for an inquest to assess damages, including interests, in a sum certain or for a sum which can, by computation, be

made certain; 14) an order awarding plaintiff attorney fees, costs and disbursements due to the frivolous conducts of defendants and attorneys; and 15) an order granting the instant motion in its entirety or denying any portion not so granted without prejudice together with leave to renew post note of issue. All defendants oppose.

After oral argument, and due deliberation and consideration, this Court finds as follows:

The branches of plaintiff's motion to strike defendants' answers and counterclaims and to strike part of defendants' bills of particulars, are insufficient as a matter of law. Specifically, the affirmation of good faith submitted in support does not satisfy 22 NYCRR 202.7, as it does not evince a diligent effort by plaintiff to resolve the present discovery dispute.

The branches of plaintiff's motion seeking to strike defendants' responses for scandalous or inflammatory claims, pursuant to CPLR §3024(b), are deficient. While CPLR §3024(b) permits a party to make a motion to strike a scandalous or prejudicial matter unnecessarily inserted in a pleading, CPLR §3024(c) limits the time to file such motion to within twenty days after service of the challenged pleading. Plaintiff's challenge is untimely. Moreover, "matter that is scandalous or prejudicial will not be stricken if it is relevant to a cause of action in a complaint or petition or its material elements" *Pisula v Roman Catholic Archdiocese of New York*, 201 A.D.3d 88, 97, 159 N.Y.S.3d 458 (2d Dept. 2021); *See New York City Health & Hospitals Corp. v St. Barnabas Community Health Plan*, 22 A.D.3d 391, 802 N.Y.S.2d 263 (1st Dept. 2005).

Here, the alleged “unfair, scandalous, inflammatory, prejudicial [claims] intended to ridicule her” are related to defendants’ comparative negligence affirmative defenses.

That branch of plaintiff’s motion seeking summary judgment as to the lack of informed consent claim misses the mark. Plaintiff failed to shoulder his burden of establishing prima facie entitlement to judgment as a matter of law. *See Kleinman v North Shore University Hosp.*, 148 A.D.3d 693, 48 N.Y.S.3d 455 (2d Dept. 2017); *Walker v Saint Vincent Catholic Medical Centers*, 114 A.D.3d 669, 979 N.Y.S.2d 697 (2d Dept. 2014).

That branch of plaintiff’s motion requesting an inquest on damages is similarly lacking. As mentioned above, plaintiff’s motion is unsupported by an affirmation of a good faith effort to resolve the purported discovery dispute as required by 22 NYCRR 202.7(a)(2). *See Walter B. Melvin, Architects, LLC v 24 Aqueduct Lane Condominium*, 51 A.D.3d 784, 857 N.Y.S.2d 697 (2d Dept. 2008).

That branch of plaintiff’s motion seeking attorney’s fees is unpersuasive. “Resolution of discovery disputes and the nature and degree of the penalty to be imposed pursuant to CPLR 3126 are matters within the sound discretion of the motion court” *Eyeing, LLC v Singer*, 174 A.D.3d 506, 101 N.Y.S.3d 858 (2d Dept. 2019) quoting *Morales v. Zherka*, 140 A.D.3d 836, 837, 35 N.Y.S.3d 121 (2d Dept. 2016). “[T]he imposition of a monetary sanction under CPLR 3126 may be appropriate to compensate counsel or a party for the time expended and costs incurred in connection with an offending party’s failure to fully and timely comply with court-ordered disclosure.” *Lucas v Lawrence Stam, Susan Gordon, Martin Clearwater & Bell, LLP*, 147 A.D.3d

921, 926, 48 N.Y.S.3d 150 (2d Dept. 2017). Plaintiff failed to establish that any alleged failure by the defendants to comply with its discovery demands was the result of willful or contumacious conduct. *See Quiroz v Beitia*, 68 A.D.3d 957, 893 N.Y.S.2d 70 (2d Dept. 2009). Furthermore, plaintiff failed to provide an affirmation of a good-faith effort to resolve any discovery disputes as required by 22 NYCRR 202.7. *Id.*

Accordingly, plaintiff's motion is denied in its entirety. Any issue raised and not specifically addressed by this decision is denied.

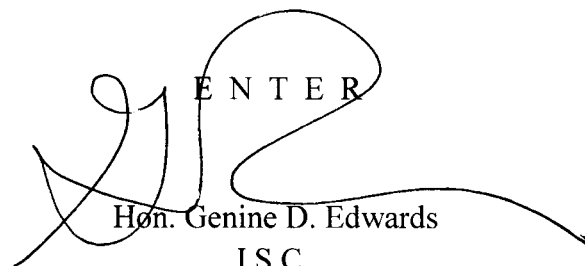
This constitutes the Decision of this Court.

For Clerks use only

MG ___

MD ___

Motion Seq.#: 24


ENTER
Hon. Genine D. Edwards
J.S.C.