

Dixon v New York City Health & Hosps. Corp.

2022 NY Slip Op 33995(U)

November 22, 2022

Supreme Court, New York County

Docket Number: Index No. 805079/2021

Judge: Erika M. Edwards

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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. ERIKA M. EDWARDS

PART 10M

Justice

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CHARMAINE DIXON, AS ADMINISTRATRIX OF THE
ESTATE OF TAMEL DIXON, DECEASED, AND
CHARMAINE DIXON, INDIVIDUALLY,

Plaintiff,

- v -

NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION, HARLEM HOSPITAL CENTER, MICHAEL
ANTHONY DEVITA, M.D., CHIAGOZIE NWAKANMA, M.D.,
CHRISTIAN BENJAMIN-BOAMAH, JR., M.D., AND ADEL
HANANDEH, M.D.,

Defendants.

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INDEX NO. 805079/2021

MOTION DATE 07/06/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 65, 66, 67, 68

were read on this motion to/for DEFAULT JUDGMENT.

Upon the foregoing documents and oral argument held before this court on November 22, 2022, the court denies Plaintiff Charmaine Dixon, as Administratrix of the Estate of Tamel Dixon, Deceased, and Charmaine Dixon, Individually’s (“Plaintiff”) motion for a default judgment and for alternative relief filed under motion sequence 002.

This matter involves Plaintiff’s claims of wrongful death, medical malpractice, lack of informed consent and negligence for the Deceased Plaintiff’s care and treatment at Harlem Hospital Center from October 12, 2019 to October 31, 2019.

Plaintiff now moves under motion sequence 002 for an order granting a default judgment in favor of Plaintiff as against Defendant Adel Hanandeh, M.D. (“Dr. Hanandeh”) and scheduling an inquest to assess damages, or in the alternative, Plaintiff renews his previous motion for an order extending time to serve Dr. Hanandeh with the summons and complaint for

good cause shown, directing defense counsel to provide Plaintiff's counsel with Dr. Hanandeh's current residential, work and email addresses and granting Plaintiff leave to serve Dr. Hanandeh by alternate means via email.

In its previous decision and order, dated February 14, 2022 (NYSCEF Doc. No. 47), on motion sequence 001, the court granted in part Plaintiff's motion by extending time for thirty (30) days for Plaintiff to serve Dr. Hanandeh with the summons and complaint. The court denied the remainder of the motion, including the portion of the motion seeking an order deeming service on Dr. Hanandeh at his last known address in Ohio as timely *nunc pro tunc*.

Plaintiff argues in substance that he properly served Dr. Hanandeh at his last known address on West 140th Street, New York, New York because defense counsel provided Plaintiff with this address as Dr. Hanandeh's last known address, Plaintiff's process server made diligent efforts to serve Dr. Hanandeh within the additional thirty (30) day extension period by attempting to personally serve him at the address on March 2, 2022, March 3, 2022 and March 5, 2022, and then effecting service by "nail and mail" on March 8, 2022 and March 9, 2022, respectively.

Defendants oppose the motion and argue in substance that Dr. Hanandeh was not properly served because he did not reside at the address on West 140th Street at the time of the purported service. Therefore, "mail and nail" service was improper and Plaintiff failed to demonstrate that diligent efforts were made to properly serve him in Ohio. Defendants rely on an Affidavit from Dr. Hanandeh, which was executed in Montgomery County, Ohio. Dr. Hanandeh stated in substance that he formerly worked as a resident physician at Harlem Hospital from about July 1, 2018 to June 2020, that he was never served with the summons and complaint, that he did not live at the address on West 140th Street on the dates of the attempted service in March

2022, and that he had not lived at that address since June 2019. Defendants further argue that Plaintiff has not met his burden to demonstrate his entitlement to a default judgment against Dr. Hanandeh, to renew his previous motion, or for service by alternative means. Finally, Defendants argue that Plaintiff is not entitled to another extension of time to serve Dr. Hanandeh because the statute of limitations has expired and more than fifteen (15) days has elapsed.

Here, the court denies Plaintiff's motion in its entirety and finds that Plaintiff has failed to demonstrate his entitlement to the relief requested. The court finds that Plaintiff's purported service on Dr. Hanandeh at the address on West 140th Street was improper as Dr. Hanandeh demonstrated that he did not live at that address at the time of the purported service. Therefore, since Dr. Hanandeh was not properly served with the summons and complaint, the court will not enter a default judgment against him.

The court also finds that Plaintiff failed to show diligent efforts to locate and serve Dr. Hanandeh after the court granted an additional thirty (30) day extension. It appears that Plaintiff had information that Dr. Hanandeh was working as a licensed physician in Ohio, but Plaintiff failed to demonstrate that diligent efforts were made to locate him and serve him in Ohio at a residential or employment address other than the address used when Plaintiff first attempted to serve him in Ohio. Additionally, Plaintiff failed to demonstrate his entitlement to renew his prior motion, for additional time to serve Dr. Hanandeh, or for an order requiring defense counsel to provide him with Dr. Hanandeh's current contact information. As Defendants noted, the burden is on Plaintiff and Plaintiff failed to satisfy his burden


Therefore, the court denies Plaintiff's motion.

The court considered any additional arguments raised by the parties which were not specifically addressed herein and the court denies all additional requests for relief not expressly granted herein.

As such, it is hereby

ORDERED that the court denies Plaintiff Charmaine Dixon, as Administratrix of the Estate of Tamel Dixon, Deceased, and Charmaine Dixon, Individually’s motion filed under motion sequence 002.

This constitutes the decision and order of the court.


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<u>11/22/2022</u> DATE					<u>ERIKA M. EDWARDS, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE