

Williams v Senthilkumar
2023 NY Slip Op 34345(U)
December 4, 2023
Supreme Court, New York County
Docket Number: Index No. 805339/2021
Judge: Erika M. Edwards
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ERIKA M. EDWARDS

PART 10M

Justice

-----X

GEORGE WILLIAMS and LERAH WILLIAMS,

Plaintiffs,

- v -

LAKSHANA SENTHILKUMAR, M.D., JAMES
MARIADASON, M.D., NEW YORK CITY HEALTH AND
HOSPITALS CORPORATION,

Defendants.

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INDEX NO. 805339/2021MOTION DATE 07/10/2023MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73

were read on this motion to/for SECURITY FOR COSTS/PAYMENTS.

Upon the foregoing documents, the court denies Defendants Lakshana Senthilkumar, M.D.'s, James Mariadason, M.D.'s and New York City Health and Hospitals Corporation's (collectively "Defendants") motion for an order directing Plaintiffs George Williams and Lerah Williams (collectively "Plaintiffs") to post security for costs as of right in the amount of \$3,000.00 and for a stay in the proceedings until such security is given.

Plaintiffs brought this action against Defendants alleging claims of medical malpractice and negligence in their care and treatment of Plaintiff George Williams from August 17, 2021, through August 23, 2021, while he was a patient at Metropolitan Hospital.

Defendants now move, under motion sequence 002, for an order directing Plaintiffs to post security for costs as of right in the amount of \$3,000.00, pursuant to CPLR 8501(a) and 8503, and directing that until such payment or filing and notice of such payment, all other proceedings on the part of Plaintiffs, except to review or vacate this order, be stayed, pursuant to CPLR 8502.

Defendants argue in substance that they are entitled to security for costs and a stay until such security for costs is given because Plaintiffs' own testimony supports that they have been residents of Jamaica since 2018 and that they only visit their son in Brooklyn. Defendants further argue that such visits do not qualify as having a residence in New York.

Defendants further argue that Plaintiffs appeared virtually for their depositions from Jamaica on June 13, 2023 and June 15, 2023, respectively. Plaintiff George Williams testified in substance that he owned his residence in Jamaica for three years, that he resides in Jamaica for months at a time, and that the residence that he provided in Brooklyn is his son's address, but that he pays no rent. Defendants further argue in substance that Plaintiff Lerah Williams admitted that she does not live at her son's address, but merely visits, and that she has lived in Jamaica since 2018. Defendants also argue in substance that both Plaintiffs were born in Jamaica and retired from their work in the United States in 2018.

Plaintiffs oppose Defendants' motion and argue in substance that the court should deny that motion because Plaintiffs are United States citizens and Plaintiff George Williams has dual residency in Jamaica and New York.

Plaintiff George Williams submitted an affidavit stating in substance that he has resided at the Brooklyn address that he provided at his deposition for less than one year; that he previously resided at an address in Manhattan, which he provided at his 50-h hearing, for sixteen years; that he is registered to vote in New York at that address; and that he has a valid New York State drivers' license. Plaintiff George Williams further stated that he previously appeared in court in person on May 16, 2023, and that he is willing to appear in person again if necessary. He further states that he was never asked about his dual residency.

Pursuant to CPLR 8501(a), an order for security for costs is granted as of right, “[e]xcept where the plaintiff has been granted permission to proceed as a poor person or is the petitioner in a habeas corpus proceeding, upon motion by the defendant without notice, the court or a judge thereof shall order security for costs to be given by the plaintiffs where none of them is a domestic corporation, a foreign corporation licensed to do business in the state or a resident of the state where the motion is made” (CPLR 8501[a]).

Once said order is issued, until such security for costs is given, “all proceedings other than to review or vacate such order shall be stayed. If the plaintiff shall not have given security for costs at the expiration of thirty days from the date of the order, the court may dismiss the complaint upon motion by the defendant, and award costs in his favor” (CPLR 8502).

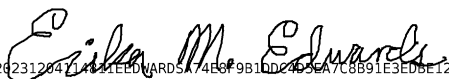
Here, the court denies Defendants’ motion and finds that Defendants failed to demonstrate that Plaintiff George Williams is a resident of Jamaica and that he does not have dual residency in the State of New York. Therefore, the court finds that Defendants failed to demonstrate their right to an order directing Plaintiffs to post security for costs in the amount of \$3,000.00.

The court has considered Defendants’ arguments to the contrary and finds them to be unpersuasive as to this issue.

As such, it is hereby

ORDERED that the court denies Defendants Lakshana Senthilkumar, M.D.’s, James Mariadason, M.D.’s and New York City Health and Hospitals Corporation’s motion, filed under motion sequence 002, for an order directing Plaintiffs George Williams and Lerah Williams to post security for costs as of right and for a stay in the proceedings until such security is given.

This constitutes the decision and order of the court.


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12/4/2023

DATE

CHECK ONE:

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CASE DISPOSED

☐

GRANTED

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DENIED

☐

SETTLE ORDER

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INCLUDES TRANSFER/REASSIGN

APPLICATION:

CHECK IF APPROPRIATE:

ERIKA M. EDWARDS, J.S.C.

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NON-FINAL DISPOSITION

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GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

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REFERENCE