

Geffner v Mercy Med. Ctr.
2023 NY Slip Op 35266(U)
October 4, 2023
Supreme Court, Queens County
Docket Number: Index No. 707387/19
Judge: Allan B. Weiss
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE ALLAN B. WEISS Part 2
Justice

REBECCA GEFFNER, Individually, and as
Executrix of the Estate of ALFRED GEFFNER,
dec'd,

Plaintiff,

-against-

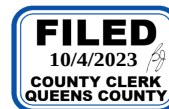
MERCY MEDICAL CENTER, et al.,

Defendants.

Index Number 707387/19

Motion Dates 5/18/22
9/14/22

Motion Seq. Nos. 16, 17



The following electronically filed ("EF") documents read on the motions by plaintiff for: (seq. no. 16) (1) protective orders and orders of preclusion; (2) an order striking defendant Mercy Medical Center's answer and for an adverse inference charge at the time of trial; (3) an order vacating the trial court's bench directive preventing plaintiff from presenting certain evidence as to defendant Harte Placements, Inc.'s assigned aides; (4) an order vacating the trial court's bench decision granting defendant Harte Placements, Inc.'s motion to quash a subpoena; (5) an order compelling defendant Seniorbridge to provide insurance coverage information; (6) an order directing defendants' counsel to provide insurance coverage information with respect to their clients; (7) a JHO/referee to oversee jury selection; (8) sanctions against Edward Dondes, Esq., attorney for defendant Harte Placements, Inc.; (9) sanctions against Robert Ryan, Esq., attorney for defendant Mercy Medical Center and an order cautioning Louis Valvo, Esq., attorney for defendants Thierry Duchatellier, M.D. and Cardiology Consultants of Long Island and Associated Cardiology Consultants, P.C. against engaging in prejudicial trial prosecution practices; (seq. no. 17) an order striking the cross motion by defendants Mercy Medical Center, sued herein as a.d.b.a Mercy Hospital Association, Eric A. Shoenfeld, M.D. and Roy A. Rubinstein, M.D.; and separate cross motions by defendant Harte Placements, Inc., d.b.a Nassau-Johrens Registry Agency, Seniorbridge Family Companies (NY), Inc. and defendants Mercy Medical Center, sued herein as a.d.b.a Mercy Hospital Association, Eric A. Shoenfeld, M.D. and Roy A. Rubinstein, M.D. for an order: (1) limiting plaintiff's proof at trial to comport the law of the case as established by the orders of Justice Peter O'Donoghue dated January 30, 2013 and November 30, 2020; (2) precluding plaintiff from offering any evidence or otherwise advancing a claim that plaintiff's decedent sustained physical injuries that were the result of abuse by defendants; and (3) precluding plaintiff from offering any evidence or otherwise advancing a claim that defendants violated federal & state law including but not limited to violations of the patients' bill of rights.

Papers
Numbered

Seq. No. 16

Notice of Motion – Affidavits – Exhibits EF 419 – 434
 Notice of Cross Motion – Affidavits – Exhibits EF 447 – 454
 Notice of Cross Motion – Affidavits – Exhibits EF 468 – 470
 Answering Affidavits – Exhibits EF 442 – 446, 455 – 467, 481 – 489
 Reply Affirmations – Exhibit EF 474 – 480, 490 – 499, 514 – 515

Seq. No. 17

Notice of Motion – Affidavits – Exhibits EF 504 – 513
 Answering Affidavits – Exhibits EF 518 – 520
 Reply Affidavits EF 528 – 532

Upon the foregoing papers, it is ordered that the motions and cross motions are consolidated for disposition and decided as follows:

With respect to plaintiff's motion in limine for protective orders and orders of preclusion, plaintiff's attempt to establish the permissible parameters of defendants' anticipated trial presentation is premature at this point. The alleged behavior plaintiff is seeking to prohibit is not ripe for adjudication. Timely objections during the trial are plaintiff's remedy if defendants misbehave in any way. To the extent that plaintiff seeks to preclude possible trial evidence, it is premature and is hereby denied as such. This branch of plaintiff's motion is denied.

With respect to the branch of plaintiff's motion seeking an adverse inference charge against defendant Mercy Medical Center and to strike defendant Mercy Medical Center's answer, plaintiff failed to establish her entitlement to this requested relief. "Under the common-law doctrine of spoliation, a party may be sanctioned where it negligently loses or intentionally destroys key evidence." (*Gaoming You v Rahmouni*, 147 AD3d 729, 730 [2d Dept 2017]; *Peters v Hernandez*, 142 AD3d 980, 980-981 [2d Dept 2016] quoting *Morales v City of New York*, 130 AD3d 792 [2d Dept 2015].) "A party that seeks sanctions for spoliation of evidence must show that the party having control over the evidence possessed an obligation to preserve it at the time of its destruction, that the evidence was destroyed with a culpable state of mind, and that the destroyed evidence was relevant to the party's claim or defense such that the trier of fact could find that the evidence would support that claim or defense." (*S.W. v Catskill Regional Med. Ctr.*, 211 AD3d 890, 891-92 [2d Dept 2022], quoting *Pegasus Aviation I, Inc. v Varig Logistica S.A.*, 26 NY3d 543, 547 [2015].) "[S]triking a pleading is a drastic sanction to impose in the absence of willful or contumacious conduct, and, thus, courts must consider the prejudice that resulted from the spoliation to determine whether such drastic relief is necessary as a matter of fundamental fairness." (*Amos v Southampton Hosp.*, 198 AD3d 947, 948 [2d Dept 2021],

quoting *Utica Mut. Ins. Co. v Berkoski Oil Co.*, 58 AD3d 717, 718 [2d Dept 2009].) Here, it is undisputed that defendant Mercy Medical Center did not destroy the medical records in question. Therefore, plaintiff's request for an adverse inference charge and to strike defendant Mercy Medical Center's answer is denied.

The next branch of plaintiff's motion seeks to vacate this court's bench directive preventing plaintiff from presenting certain evidence as to defendant Harte Placements, Inc.'s aides as well as this court's bench decision granting Harte Placements' motion to quash a subpoena. None of the appellate authority cited by plaintiff supports her contention. Therefore, this branch of plaintiff's motion is denied.

The branch of plaintiff's motion to compel defendant Seniorbridge Family Companies (NY), Inc. ("Seniorbridge") to provide insurance coverage information is granted, without opposition. (CPLR 3101 [f].) Counsel for Seniorbridge shall provide the requested insurance information within ten days upon receipt of a copy of this order with notice of entry. The branch of plaintiff's motion seeking insurance coverage information from the remaining defendants is denied. Defendants Thierry Duchatellier, M.D. and Cardiology Consultants of Long Island and Associated Cardiology Consultants, P.C. ("Cardiology defendants") and defendants Mercy Medical Center, sued herein as a.d.b.a Mercy Hospital Association, Eric A. Shoenfeld, M.D. and Roy A. Rubinstein, M.D. ("Mercy Medical defendants") assert that they have previously provided the requested insurance information to plaintiff, and plaintiff does not object in her reply papers.

With respect to plaintiff's request for a JHO/referee to oversee jury selection, plaintiff's argument is not persuasive and she has not cited any authority which supports her request. Therefore, this branch of plaintiff's motion is denied.

The court will now turn to the last branch of plaintiff's motion for sanctions against Edward Dondes, Esq., attorney for defendants Harte Placements, Inc., d.b.a Nassau-Johrens Registry Agency and Seniorbridge ("Harte defendants"), and Robert Ryan, Esq., attorney for Mercy Medical defendants, and an order cautioning Louis Valvo, Esq., attorney for the Cardiology defendants, against engaging in prejudicial trial prosecution practices.

22 NYCRR 130-1.1 permits the court to impose sanctions against any party or attorney for frivolous conduct. The decision whether to impose costs or sanctions for frivolous conduct is generally entrusted to the court's sound discretion." (*Perez v Tedesco*, 214 AD3d 1010, 1012 [2d Dept 2023] [citation omitted].) Here, plaintiff failed to prove that Edward Dondes, Esq. and Robert Ryan, Esq. engaged in frivolous conduct that warrant sanctions. (See 22 NYCRR 130-1.1).

The court will now consider the cross motions by the Harte defendants and the Mercy Medical Center defendants. Both cross motions seek the same reliefs. The first branch seeks to limit plaintiff's proof at trial to comport the law of the case as established by the orders of the Hon. Peter O'Donoghue, J.S.C. dated January 30, 2013 and November 30, 2020. This branch is granted to the extent that the orders dated January 30, 2013 and November 30, 2020 by the Hon. Peter O'Donoghue, J.S.C., among other orders in this action, constitute the law of the case.

With respect to the second branch of the cross motions, the Harte defendants and Mercy Medical defendants seek to preclude plaintiff from offering evidence and advancing the claims that plaintiff's decedent sustained physical injuries that were the result of abuse by defendants. The Hon. Peter O'Donoghue, J.S.C.'s order dated November 30, 2020 clearly stated that any language in the various pleadings and disclosures which sounds in intentional tort or suggests intent is stricken. The cross movants' application, with respect to allegations of abuse by defendants is granted.

The final branch of the cross motion seeks to preclude plaintiff from offering evidence or advancing the claims that defendants violated federal & state law including but not limited to violations of the patients' bill of rights, The Hon. Peter O'Donoghue, J.S.C.'s January 30, 2013 order clearly stated that the causes of action based on federal and state laws and regulations are dismissed as to the Mercy Medical defendants.

Finally, plaintiff's motion to strike the Mercy Medical defendants' cross motion is denied.

The court has considered the parties' remaining arguments and finds them unavailing.

The branch of plaintiff's motion seeking insurance information from defendant Seniorbridge is granted and counsel for Seniorbridge shall provide the requested insurance information within ten days upon receipt of a copy of this order with notice of entry. The remaining branches of plaintiff's motion are denied.

The first and third branches of the separate cross motions by the Harte defendants and the Mercy Medical defendants are granted. The second branch of the cross motions seeking to preclude plaintiff from offering evidence and advancing the claims that defendant's decedent sustained physical injuries that were the result of abuse by the defendants is also granted. Plaintiff's motion to strike the Mercy Medical defendants' cross motion is denied.

The Harte defendants' cross motion is granted without opposition. Mercy Medical defendants' cross motion is granted to the extent that the Hon. Peter O'Donoghue, J.S.C.'s orders dated January 30, 2013 and November 30, 2020, among other orders in this action, constitute the law of the case, and plaintiff is precluded from offering any evidence or advancing any claim that the defendants violated federal and state law including but not limited to violations of the patients' bill of rights. As noted above, the branch of the cross motions seeking to preclude plaintiff from offering evidence and advancing the claims that plaintiff's decedent sustained physical injuries that were the result of abuse by defendants is granted.

Dated:

10/4/23

J.S.C.

