

Heasley v New York-Presbyt./Lower Manhattan Hosp.

2024 NY Slip Op 32725(U)

July 8, 2024

Supreme Court, New York County

Docket Number: Index No. 805337/2014

Judge: David B. Cohen

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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. DAVID B. COHEN

PART 58

Justice

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INDEX NO. 805337/2014

ADAM HEASLEY,

MOTION SEQ. NO. 006

Plaintiff,

- v -

NEW YORK-PRESBYTERIAN/LOWER MANHATTAN
HOSPITAL, NEW YORK-PRESBYTERIAN/WEILL
CORNELL MEDICAL CENTER, JIMMY SUNG, and
UNKNOWN PHYSICIANS,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 151, 152, 153, 154, 155, 156

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

In this medical malpractice action, plaintiff moves, pursuant to CPLR 5015 and 5019, to “vacate or alter” defendant Dr. Jimmy Sung’s proposed judgment in this matter.

I. Factual and Procedural Background

Plaintiff commenced this action against defendants in 2014 after Dr. Sung allegedly improperly manipulated one of plaintiff’s recently-injured fingers, which plaintiff claimed resulted in plaintiff requiring additional surgeries (NYSCEF Doc No. 2). After discovery was completed, defendants New York-Presbyterian/Lower Manhattan Hospital (NYP-LM) and New York-Presbyterian/Weill Cornell Medical Center (NYP-WC) moved (Seq. 005) for summary judgment dismissing the complaint as against them (Doc. No. 107). By decision and order dated June 4, 2020 (Shulman, J.), the motion was granted and the action as against NY-PLM and NYP-WC was dismissed (Doc No. 137), leaving Dr. Sung as the only remaining defendant.

This Court presided over a jury trial in September and October 2023. The jury, in their verdict, found that Dr. Sung departed from good and accepted medical practice when he manipulated plaintiff's finger, but that departure was not a substantial factor in causing plaintiff's injury (Doc. No. 156). Shortly thereafter, Dr. Sung served a proposed judgment upon the Clerk of the Court, which was returned for correction (Doc No. 148), and plaintiff failed to serve a proposed counterjudgment.

Plaintiff now moves to vacate or alter Dr. Sung's proposed judgment and adopt plaintiff's proposed counterjudgment (Doc. No. 151), which defendant opposes (Doc. No. 154).

II. Legal Analysis and Conclusions

A. Plaintiff's Motion to Vacate Pursuant to CPLR 5015

Plaintiff contends that the proposed judgment should be vacated because it fails to accurately state the jury's findings. According to plaintiff, the judgment should include language stating that Dr. Sung "committed medical malpractice" because the jury concluded that he departed from the relevant standard of care. Dr. Sung maintains in opposition that plaintiff's motion is procedurally defective, because he must wait for the submitted judgment to be signed and entered before he can move to vacate it.

CPLR 5015 grants a trial court the discretion to relieve a party from a judgment or order upon such terms as may be just (*see* CPLR 5015 [a]). However, it is axiomatic that in order to vacate a judgment, a judgment must have actually been entered. Here, there is no such judgment; Dr. Sung's proposed judgment was neither signed nor entered by the Clerk of the Court, it was returned for correction. Thus, a judgment has not been entered and plaintiff cannot move to vacate it.

B. Plaintiff's Motion to Vacate Pursuant to CPLR 5019

Similar to his contentions regarding CPLR 5015, plaintiff contends that Dr. Sung's proposed judgment should be altered to include language that Dr. Sung committed medical malpractice. Dr. Sung maintains in opposition that the language requested by plaintiff is improper, because it does not align with the jury's findings regarding causation of plaintiff's injuries.

CPLR 5019(a) provides trial courts with the discretion to correct, "any mistake, defect or irregularity in the papers or procedures in the action not affecting a substantial right of a party" (see *Kiker v Nassau County*, 85 NY2d 879, 881 [1995]; see *Betts v Tsitiridis*, 171 AD3d 573, 573 [1st Dept 2019]). However, "[w]hen a case has been tried by a jury, the trial court must be especially careful in exercising its powers under CPLR 5019(a) so as not to encroach upon the province of the jury by nullifying or revising its findings in the course of correcting the judgment" (10 Weinstein, Korn, & Miller, *New York Civil Practice: CPLR* ¶ 5019.04); see *Sabbagh v Copti*, 251 AD2d 149, 150 [1st Dept 1998] [explaining that court should not "unnecessarily interfere with the fact-finding function of the jury to a degree that amounts to an usurpation of the jury's duty" (internal quotation marks and citations omitted)]).

Plaintiff's CPLR 5019 contentions are unavailing for the same reasons as his CPLR 5015 contentions. Because no judgment has been entered yet by the Clerk of the Court, there is no judgment for this Court to change pursuant to the statute. Even assuming Dr. Sung's proposed judgment was entered and eligible for change, plaintiff fails to identify an error contained within it that needs correction.

In a medical malpractice action, "a plaintiff must prove two essential elements: (1) a deviation or departure from accepted practice, and (2) evidence that such departure was a proximate cause of plaintiff's injury" (*Frye v Montefiore Med. Ctr.*, 70 AD3d 15, 24 [1st Dept

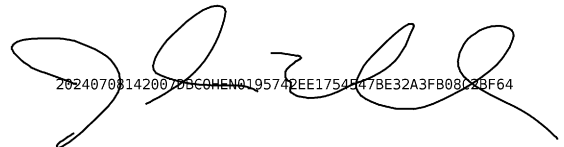
2009]; see *Wild v Catholic Health Sys.*, 21 NY3d 951, 954-955 [2013] [“It is well settled that a plaintiff must generally show that the defendant’s negligence was a substantial factor in producing the injury . . . in a medical malpractice action” (internal quotation marks and citations omitted)].

Here, the jury unanimously determined that Dr. Sung’s departure from good and accepted medical practices was not a substantial factor in causing plaintiff’s injury. Therefore, the jury did not find that Dr. Sung committed medical malpractice. For that reason, plaintiff’s request to include language in the judgment stating that Dr. Sung committed medical malpractice is more than a “ministerial correction,” it is an improper request to change the disposition of the action (*Indeck Energy Servs., Inc. v Merced Capital, L.P.*, 200 AD3d 455, 457 [1st Dept 2021] [affirming denial of postjudgment CPLR 5019(a) motion because defendants sought to change trial court’s damages assessment as trier of fact]).

The parties remaining contentions are either without merit or need not be addressed given the findings above.

Accordingly, it is hereby:

ORDERED that plaintiff’s motion is denied.


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7/8/2024
DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: