

Powell v Northwell Health Alliance, Inc.

2024 NY Slip Op 33835(U)

October 11, 2024

Supreme Court, New York County

Docket Number: Index No. 805284/2023

Judge: John J. Kelley

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

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THOMAS POWELL and CHARLOTTE POWELL,

Plaintiffs,

- v -

NORTHWELL HEALTH ALLIANCE, INC., NORTHWELL HEALTH AT WORK, INC., NORTHWELL HEALTH COLLABORATIVE, LLC, NORTHWELL HEALTH DEVELOPMENT COMPANY, LLC, NORTHWELL HEALTHCARE, INC., NORTHWELL HEALTH, INC., NORTHWELL HEALTH REGIONAL ALLIANCE, INC., NORTHWELL HEALTH PHYSICIAN PARTNERS, INC., NORTHWELL HEALTH PARTNERS, LLC, NORTHWELL HEALTH INNOVATIONS COMPANY, LLC, NORTHWELL HEALTH FOUNDATION, LENOX HILL HOSPITAL, LENOX HILL HOSPITAL MEDICAL, P.C., LENOX HILL PHYSICIAN HOSPITAL ORGANIZATION INC., LENOX HILL MEDICAL ANESTHESIOLOGY, PLLC, CHAD KLIGER, MD, CRAIG BASMAN, M.D., ANDREA MIGNATTI, M.D., LUIGI PIRELLI, M.D., DEREK RALPH BRINSTER, M.D., CHRISTOPHER LEGGAT, M.D., JUI-CHUAN TSENG, PA, "JOHN DOE," and "JANE DOE," fictitious names being unknown at this time,

Defendants.

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INDEX NO. 805284/2023
MOTION DATE 02/08/2024
05/14/2024
MOTION SEQ. NO. 001, 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11 were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 14, 15, 16, 17, 18 were read on this motion to/for DISMISS.

In this action to recover damages for medical malpractice, the defendant Lenox Hill Hospital (LHH) moves pursuant to CPLR 3012(b) to dismiss this action as against it on the ground that the plaintiffs failed to serve a complaint within 20 days after it served them with a demand therefor (MOT SEQ 001). The defendants Northwell Health Alliance, Inc., Northwell Health At Work, Inc., Northwell Health Collaborative, LLC, Northwell Health Development Company, LLC, Northwell Healthcare, Inc., Northwell Health, Inc., Northwell Health Regional

Alliance, Inc., Northwell Health Physician Partners, Inc., Northwell Health Partners, Inc., Northwell Innovations Company, LLC, Northwell Health Foundation, Lenox Hill Hospital Medical, P.C., Lenox Hill Physician Hospital Organization, Inc., Chad Kliger, M.D., Craig Basman, M.D., Derek Ralph Brinster, M.D., and Christopher Leggat, M.D. (collectively the Northwell defendants) move for the same relief as to them (MOT SEQ 002). The plaintiffs do not oppose the motions. The motions are granted, and the action is dismissed as against the movants.

On June 8, 2023, the plaintiffs commenced this action by filing a summons with notice (see CPLR 304[a]). Shortly thereafter, the plaintiff served the moving defendants with a copy of the summons with notice. On November 7, 2023, LHH served the plaintiffs' attorneys by electronic filing and regular mail with a demand, pursuant to CPLR 3012(b), that the plaintiffs serve a complaint upon it within 20 days. LHH's attorney asserts that the plaintiffs did not serve a complaint upon LHH within that period of time, and, in fact, have not served a complaint at any time. On April 8, 2024, the Northwell defendants served an identical demand upon the plaintiffs' attorney by electronic filing. The Northwell defendants' attorney similarly asserts that the plaintiffs did not serve a complaint upon the Northwell defendants at any time.

CPLR 3012(b) requires that where, as here, a plaintiff commences an action by filing a summons with notice, he or she must serve the complaint within 20 days after the defendant serves a demand for service of a complaint. That subsection also provides that "[t]he court upon motion may dismiss the action if service of the complaint is not made as provided in this subdivision." Here, the plaintiffs were required to serve a complaint upon LHH within 20 days of November 7, 2023, or by November 27, 2023, and to serve a complaint upon the Northwell defendants no later than the first business day after the lapse of 20 days after April 8, 2024, or by April 29, 2024 (see General Construction Law §§ 20, 25-a). Since the plaintiffs did not serve a complaint upon those defendants in response to their demands by these respective deadlines, LHH's motion and the Northwell defendants separate motion to dismiss the action as against

each of them must be granted (*see Fawn Second Ave., LLC v First Am. Tit. Ins. Co.*, 192 AD3d 478, 478 [1st Dept 2021]; *Patel v Port Auth. of N.Y. & N.J.*, 184 AD2d 235, 236 [1st Dept 1992]).

Accordingly, it is,

ORDERED that the motion of the defendant Lenox Hill Hospital to dismiss the action as against it is granted, without opposition, and the action is dismissed against the defendant Lenox Hill Hospital (SEQ 001); and it is further,

ORDERED that, on the court's own motion, the action is severed against the defendant Lenox Hill Hospital; and it is further,

ORDERED that the Clerk of the court shall enter judgment dismissing the action against the defendant Lenox Hill Hospital; and it is further,

ORDERED that the motion of the defendants Northwell Health Alliance, Inc., Northwell Health At Work, Inc., Northwell Health Collaborative, LLC, Northwell Health Development Company, LLC, Northwell Healthcare, Inc., Northwell Health, Inc., Northwell Health Regional Alliance, Inc., Northwell Health Physician Partners, Inc., Northwell Health Partners, Inc., Northwell Innovations Company, LLC, Northwell Health Foundation, Lenox Hill Hospital Medical, P.C., Lenox Hill Physician Hospital Organization, Inc., Chad Kliger, M.D., Craig Basman, M.D., Derek Ralph Brinster, M.D., and Christopher Leggat, M.D., to dismiss the action as against them is granted, without opposition, and the action is dismissed against the defendants Northwell Health Alliance, Inc., Northwell Health At Work, Inc., Northwell Health Collaborative, LLC, Northwell Health Development Company, LLC, Northwell Healthcare, Inc., Northwell Health, Inc., Northwell Health Regional Alliance, Inc., Northwell Health Physician Partners, Inc., Northwell Health Partners, Inc., Northwell Innovations Company, LLC, Northwell Health Foundation, Lenox Hill Hospital Medical, P.C., Lenox Hill Physician Hospital Organization, Inc., Chad Kliger, M.D., Craig Basman, M.D., Derek Ralph Brinster, M.D., and Christopher Leggat, M.D. (SEQ 002); and it is further,

ORDERED that, on the court's own motion, the action against the defendants Northwell Health Alliance, Inc., Northwell Health At Work, Inc., Northwell Health Collaborative, LLC, Northwell Health Development Company, LLC, Northwell Healthcare, Inc., Northwell Health, Inc., Northwell Health Regional Alliance, Inc., Northwell Health Physician Partners, Inc., Northwell Health Partners, Inc., Northwell Innovations Company, LLC, Northwell Health Foundation, Lenox Hill Hospital Medical, P.C., Lenox Hill Physician Hospital Organization, Inc., Chad Kliger, M.D., Craig Basman, M.D., Derek Ralph Brinster, M.D., and Christopher Leggat, M.D., is severed; and it is further,

ORDERED that the Clerk of the court shall enter judgment dismissing the action against the defendants Northwell Health Alliance, Inc., Northwell Health At Work, Inc., Northwell Health Collaborative, LLC, Northwell Health Development Company, LLC, Northwell Healthcare, Inc., Northwell Health, Inc., Northwell Health Regional Alliance, Inc., Northwell Health Physician Partners, Inc., Northwell Health Partners, Inc., Northwell Innovations Company, LLC, Northwell Health Foundation, Lenox Hill Hospital Medical, P.C., Lenox Hill Physician Hospital Organization, Inc., Chad Kliger, M.D., Craig Basman, M.D., Derek Ralph Brinster, M.D., and Christopher Leggat, M.D.

This constitutes the Decision and Order of the court.

JOHN J. KELLEY, J.S.C.

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| <u>10/11/2024</u> | | | | | |
| DATE | | | | | |
| MOTION 001: | <input type="checkbox"/> | CASE DISPOSED | <input type="checkbox"/> | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION |
| | <input checked="" type="checkbox"/> | GRANTED | <input type="checkbox"/> | <input type="checkbox"/> | GRANTED IN PART |
| | | | DENIED | <input type="checkbox"/> | OTHER |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | | <input type="checkbox"/> | SUBMIT ORDER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | | <input type="checkbox"/> | FIDUCIARY APPOINTMENT |
| | | | | <input type="checkbox"/> | REFERENCE |
| MOTION 002: | <input type="checkbox"/> | CASE DISPOSED | <input type="checkbox"/> | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION |
| | <input checked="" type="checkbox"/> | GRANTED | <input type="checkbox"/> | <input type="checkbox"/> | GRANTED IN PART |
| | | | DENIED | <input type="checkbox"/> | OTHER |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | | <input type="checkbox"/> | SUBMIT ORDER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | | <input type="checkbox"/> | FIDUCIARY APPOINTMENT |
| | | | | <input type="checkbox"/> | REFERENCE |