

Ochoa v Montefiore New Rochelle Hosp.
2024 NY Slip Op 35486(U)
April 3, 2024
Supreme Court, Bronx County
Docket Number: Index No. 810285/2022E
Judge: Michael A. Frishman
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NEW YORK SUPREME COURT – COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 34

-----X
YANETH OCHOA

Index No. 810285/2022E

Plaintiff(s),
- against -

Hon. Michael A. Frishman
Justice of the Supreme Court

MONTEFIORE NEW ROCHELLE HOSPITAL,
MONTEFIORE MEDICAL CENTER, MONTEFIORE
HEALTH SYSTEMS, VICTORIA CESPEDES, M.D.,
and MAX SCHWARTZMAN, P.A.,

Defendant(s).

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 34

-----X
YANETH OCHOA

Index No. 802935/2023E

Plaintiff(s),
- against -

MONTEFIORE NEW ROCHELLE HOSPITAL,
MONTEFIORE MEDICAL CENTER, MONTEFIORE
HEALTH SYSTEMS, ENVISION HEALTHCARE
CORP. a/k/a ENVISION PHYSICIAN SERVICES,
EMERGENCY MEDICAL ASSOCIATES, LLP,
VICTORIA CESPEDES, M.D., CESPEDES, M.D., and
MAX SCHWARTZMAN, P.A., EMERGENCY
MEDICAL ASSOCIATION/SOUTHSHORE, PLLC

Defendant(s).

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The following papers numbered 45 – 63, 74 – 77, 79 – 95 were read on this motion (**Seq. No. 1**) for
DISMISSAL

Sequence No. 1	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	45 – 63, 74 – 77
Cross Motion – Exhibits and Affidavits Annexed ¹	79 – 90
Answering Affidavit and Exhibits, Memorandum of Law	91 – 95

¹ Per plaintiff's counsel's letter, the cross-motion is withdrawn (NY St Cts Elec Filing [NYSCEF] Doc No. 97), therefore the Court will only consider the motion filed by defendants.

The following papers numbered 55 – 57 were read on this motion (**Seq. No. 1**) to SEVER

Sequence No. 1	NYSCEF Doc. Nos.
Notice of Motion – Exhibits and Affidavits Annexed	55 – 57
Cross Motion – Exhibits and Affidavits Annexed ²	
Answering Affidavit and Exhibits, Memorandum of Law	
Reply Affidavit	

Upon deliberation of the application duly made by defendants, MONTEFIORE MEDICAL CENTER and MONTEFIORE HEALTH SYSTEM, by **NOTICE OF MOTION**, and all the papers in connection therewith, for an Order: (1) pursuant to CPLR §3211(a)(1) and CPLR §3211(a)(7) dismissing the Complaint against MONTEFIORE MEDICAL CENTER and MONTEFIORE HEALTH SYSTEM and (2) upon dismissal of MONTEFIORE MEDICAL CENTER from the action, transferring the case against any remaining defendant to Westchester County, is heretofore granted.

Upon deliberation of the application duly made by plaintiff, YANETH OCHOA, by **NOTICE OF MOTION**, and all the papers in connection therewith, for an Order: (1) pursuant to CPLR §602 and CPLR §603 severing defendants EMERGENCY MEDICAL ASSOCIATES LLP and EMERGENCY MEDICAL ASSOCIATION, LLP from the 2023 action and consolidating with the 2022 action, is heretofore granted as unopposed.

These motions will be discussed together as they stem from the same surrounding circumstances and involve similar issues of law and fact.

In these actions alleging medical malpractice, it is undisputed that all treatment occurred in Westchester County and all parties reside in Westchester County, with the exception of defendant corporation Montefiore Medical Center (“MMC”) with their primary place of business in Bronx County, and upon which plaintiff has based venue. Montefiore Medical Center and Montefiore Health System now move to dismiss the Complaint based upon documentary evidence and failure to state a cause of action.

In furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a separate trial of any claim, or of any separate issue (*see* CPLR §603). “The automatic stay provisions of the Federal bankruptcy laws apply only to the parties in the adversary proceeding in Bankruptcy Court and do not extend to nonbankrupt codefendants” (*Maynard v George A Fuller Co.*, 236 AD 2d 300 [1st Dept 1997]). “Therefore, in such circumstances, it is within the discretion of the trial court to direct a severance of the action as against the bankrupt defendant” (*Rosenbaum v Dane & Murphy, Inc.*, 189 AD 2d 760, 761 [2d Dept 1993]). CPLR 602(a) gives the trial court discretion to consolidate actions involving common questions of law or fact (*see Progressive Ins. Co. v Vasquez*, 10 A.D. 3d 518, 519 [1st Dept 2004]). “Although great deference is to be accorded to the motion court’s discretion, it is well settled that there is a preference for consolidation in the interest of judicial economy where there are common questions of law and fact, unless the party opposing the motion demonstrates that consolidation will prejudice a substantial right” (*Geneva Temps, Inc. v New World Communities, Inc.*, 24 AD 3d 332, 334 [1st Dept 2005]). “Consolidation is mandated by

² Per plaintiff’s counsel’s letter, the cross-motion is withdrawn (NY St Cts Elec Filing [NYSCEF] Doc No. 97), therefore the Court will only consider the motion filed by defendants.

judicial economy where two lawsuits are intertwined with common questions of law and fact” (*Teitelbaum v PTR Co.*, 6 AD 3d 254, 255 [1st Dept 2004]).

Here, ENVISION HEALTHCARE CORP. a/k/a ENVISION PHYSICIAN SERVICES filed for Chapter 11 Bankruptcy on May 15, 2023. “The prejudice to the plaintiff in being required to await the conclusion of the bankruptcy proceeding before obtaining any remedy outweighs any potential inconvenience to the defendants” (*Moy v St. Vincent’s Hosp. and Medical Center of New York*, 92 AD 3d 651, 652 [2d Dept 2012]). Since the Court finds both actions arise out of the alleged treatment of plaintiff while she was under the care of defendants, EMERGENCY MEDICAL ASSOCIATES LLP and EMERGENCY MEDICAL ASSOCIATION, LLP will be severed from the 2023 action and consolidated with the 2022 action.

In support of their motion to dismiss, defendants argue plaintiff has failed to show a cause of action against either MMC or MHS. Defendants contend plaintiff is not entitled to discovery on defendants’ corporate relationship. They further argue dismissal of MHS and MMC severs any connection to Bronx County and venue should be transferred to Westchester County where the facts giving rise to this case occurred.

In opposition to the motion to dismiss, plaintiff argues dismissal against MMC and MHS is unwarranted and premature.

Dismissal under CPLR § 3211(a)(1) is warranted where the documentary evidence submitted “resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff’s claims” (*Fortis Financial Services, LLC v Fimat Futures USA*, 290 AD2d 383 [1st Dept 2002]; *see Amsterdam Hospitality Group, LLC v Marshall-Alan Assoc., Inc.*, 120 AD3d 431 [1st Dept 2014]). While on a motion to dismiss, the facts pleaded are presumed to be true and given every favorable inference, bare legal conclusions and factual claims that are inherently incredible or flatly contradicted by documentary evidence are not entitled to such consideration (*Beattie v Brown & Wood*, 243 AD 2d 395 [1st Dept 1997]).

The Court’s role in determining a motion to dismiss a complaint pursuant to CPLR § 3211(a)(7), is to decide “whether the pleading states a cause of action, and if from the four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail” (*African Diaspora Maritime Corp. v Golden Gate Yacht Club*, 109 AD 3d 204, 211 [1st Dept 2013]; *Siegmund Strauss, Inc. v East 149 Realty Corp.*, 104 AD 3d 401, 403 [1st Dept 2013]). In interpreting a cause of action, the Court must evaluate the pleading to allege whatever can be reasonably implied from its statements (*see Stendig, Inc. v Thorn Rock Realty Co.*, 163 AD 2d 46, 48 [1st Dept 1990]; *Leviton Manufacturing Co., Inc. v Blumberg*, 242 AD 2d 205, 660 NYS2d 726 [1st Dept 1997]).

When evaluating a motion to dismiss pursuant to CPLR § 3211(a)(7), the pleadings must be liberally construed (*see CPLR §3026; Siegmund Strauss, Inc.*, 104 AD 3d 401, *supra*). In deciding such a motion, the Court must “accept the facts as alleged in the complaint as true, accord plaintiff ‘the benefit of every possible favorable inference,’” and “determine only whether the facts as alleged fit into any cognizable legal theory” (*Siegmund Strauss, Inc.*, 104 AD 3d 401, *supra*; *Nonnon v City of New York*, 9 NY 3d 825, 827 [2007]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). “Allegations consisting of bare legal conclusions as well as factual claims flatly contradicted by documentary evidence are not” presumed to be true or accorded every favorable inference (*David v Hack*, 97 AD

3d 437, 438 [1st Dept 2012]), and the criterion becomes “whether the proponent of the pleading has a cause of action, not whether he has stated one” (*Guggenheimer v Ginzburg*, 43 NY 3d 268, 275 [1977]).

Where a motion to dismiss is directed at the sufficiency of the complaint, plaintiff is afforded the benefit of a liberal construction of the pleadings: “The scope of a court’s inquiry on a motion to dismiss under CPLR 3211 is narrowly circumscribed” (*P.T. Bank Central Asia v Chinese Am. Bank*, 301 AD 2d 373, 375 [1st Dept 2003]), the object being “to determine if, assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action” (*id.* at 376).

Movant bears the burden to demonstrate that, based upon the four corners of the complaint liberally construed in favor of the plaintiff, the pleading states no legally cognizable cause of action (*see Leon*, 84 NY 2d at 87-88, *supra*).

Here, the moving defendants provide certified copies of the Restated Certificates of Incorporation³ for MMC, MHS, and Montefiore New Rochelle Hospital showing different principal places of business and outlining their corporate histories showing that MMC and Montefiore New Rochelle Hospital are separate subsidiaries of Montefiore Health System. Montefiore Health System is shown as the sole member of each subsidiary. Plaintiff argues that moving defendants’ reliance on *Yovich v Montefiore Nyack Hospital* (212 AD 3d 425 [1st Dept 2023]) is misplaced as she has “cited a confluence of ‘overlapping ownership, office and directors, common office space and address’” (affirmation of counsel for plaintiff in opp to mot ¶ 32). However, “a plaintiff seeking to pierce the corporate veil must show that (1) the owners exercised complete dominion of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff’s injury” (*Cortlandt Street Recovery Corp. v Bonderman*, 31 NY3d 30, 47 [2018]). At the pleading stage, “a plaintiff must do more than merely allege that [defendant] engaged in improper acts or acted in ‘bad faith’ while representing the corporation” (*East Hampton Union Free Sch. Dist. V Sandpebble Builders, Inc.*, 16 NY3d 775, 776 [2011]). The plaintiff must adequately allege the existence of a corporate obligation and that defendant “exercised complete dominion and control over the corporation and ‘abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice’” (*id.*). The Complaint does not contain allegations sufficient to support holding MMC [and MHS] liable on a theory of piercing the corporate veil, since it does not allege facts supporting a finding that MMC [and MHS] completely dominated and controlled Montefiore New Rochelle Hospital or abused the privilege of doing business in the corporate form (*see Yovich* at 426). Plaintiff is relying on discovery to uncover the alleged interconnectedness of MHS and its subsidiaries, however, the lack of discovery does not excuse plaintiff’s failure to plead any facts that would support piercing the corporate veil (*see Art Capital Bermuda Ltd. v Bank of N.T. Butterfield & Son Ltd.*, 169 AD3d 426, 427 [1st Dept 2019]), and the hope that something will turn up in discovery is an insufficient basis to deny the motion to dismiss (*East Hampton Union Free School Dist. v Sandpebble Bldrs., Inc.*, 66 AD 3d 122, 128-129 [2d Dept 2009]).

Furthermore, plaintiff alleges in her Complaint she was transported by ambulance to Montefiore New Rochelle on or about December 25, 2022⁴. It is undisputed that plaintiff never

³ These certified Restated Certificates of Incorporation for Montefiore New Rochelle Hospital, Montefiore Medical Center, and Montefiore Health System were obtained from the State of New York Department of State.

⁴ Plaintiff corrects the date of the alleged incident to December 25, 2021 in her Bill of Particulars.

received treatment at MMC⁵. “Generally, a doctor only owes a duty of care to his or her patient” (*McNulty v City of New York*, 100 NY 2d 227, 232 [2003]). MMC and MHS did not provide care to plaintiff, therefore they are not proper parties to the action. The claims against MMC and MHS are dismissed, severing the ties to Bronx County; the case will be transferred to Westchester County, the location of Montefiore New Rochelle Hospital’s principal place of business and where all the alleged malpractice occurred (*see* CPLR § 503[a]).

Accordingly, it is hereby

ORDERED that the motion by defendants, MONTEFIORE MEDICAL CENTER and MONTEFIORE HEALTH SYSTEM, to dismiss the Complaint pursuant to CPLR §3211(a)(1) and CPLR §3211(a)(7) is heretofore granted; and it is further

ORDERED that the motion by plaintiff, YANETH OCHOA, to sever defendants EMERGENCY MEDICAL ASSOCIATES LLP and EMERGENCY MEDICAL ASSOCIATION, LLP, from the 2023 action and consolidate with the 2022 action pursuant to CPLR §602 and CPLR §603, is heretofore granted; and it is further

ORDERED that the caption of these matters shall now read:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
YANETH OCHOA

Index No. 810285/2022E

Plaintiff(s),

- against -

MONTEFIORE NEW ROCHELLE HOSPITAL,
VICTORIA CESPEDES, M.D., and MAX
SCHWARTZMAN, P.A., EMERGENCY MEDICAL
ASSOCIATION OF NEW YORK, P.C. and
EMERGENCY MEDICAL ASSOCIATION-SOUND
SHORE PLLC,

Defendant(s).

-----X

⁵ The medical records attached to the motion shows plaintiff’s treatment at Montefiore New Rochelle Hospital prior to being transferred to Westchester Medical Center.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX-----X
YANETH OCHOA

Index No. 802935/2023E

Plaintiff(s),

- against -

ENVISION HEALTHCARE CORP. a/k/a ENVISION
PHYSICIAN SERVICES,Defendant(s).
-----X

ORDERED that the Clerk of the Court is to mark the file accordingly; and it is further

ORDERED that the Clerk of the Supreme Court, Bronx County, deliver to the Clerk of the
Supreme Court, Westchester County, all papers filed in the 2022 action and certified copies of all
minutes; and it is furtherORDERED that counsel for defendants, MONTEFIORE MEDICAL CENTER and
MONTEFIORE HEALTH SYSTEM, shall serve a copy of this Decision with Notice of Entry by first
class mail within twenty (20) days of its entry.

This constitutes the Decision and Order of the Court.

Dated: 4/3/24Hon. MICHAEL A. FRISHMAN, J.S.C.

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|------------------------------|--|---|
| 1. CHECK ONE..... | ☐ CASE DISPOSED IN ITS ENTIRETY | ☒ CASE STILL ACTIVE |
| 2. MOTION IS..... | ☒ GRANTED | ☐ DENIED ☐ GRANTED IN PART ☐ OTHER |
| 3. CHECK IF APPROPRIATE..... | ☐ SETTLE ORDER | ☐ SUBMIT ORDER |