

Hooker v Bianchi
2024 NY Slip Op 35632(U)
April 9, 2024
Supreme Court, Nassau County
Docket Number: Index No. 614734/2020
Judge: Denise L. Sher
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

LISA HOOKER and GREGORY HOOKER,

Plaintiffs,

- against -

TRIAL/IAS PART 30
NASSAU COUNTY

Index No.: 614734/2020
Motion Seq. No.: 02
Motion Date: 01/22/2024

GIULIO BIANCHI, M.D., MARIA MCGRAIL, P.A.,
RALPH MILILLO, M.D., UNIVERSITY PHYSICIANS
GROUP, P.C., TRUE NORTH URGENT CARE, LLC,
NORTHWELL HEALTH, INC. d/b/a GOHEALTH
URGENT CARE, GOHEALTH URGENT CARE-
NEW-HYLAN PLAZA, CITYMED,
CITYMED CARES, INC., CITYMED CARES, INC.
d/b/a NEW DORP URGENT CARE, NORTHWELL
HEALTH PARTNERS, LLC d/b/a NORTHWELL
HEALTH PHYSICIANS PARTNERS UNIVERSITY
PHYSICIANS GROUP MEDICINE AND
PODIATRY AT ROSE AVENUE, NORTHWELL
HEALTH INC. and NORTHWELL HEALTH
PARTNERS, LLC.,

Defendants.

The following papers have been read on this motion:	
	Papers Numbered
Amended Notice of Motion, Affirmation and Exhibits	1
Affirmation in Partial Opposition	2

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Plaintiffs move, pursuant to CPLR § 3025(b), for an order granting leave to amend the Verified Complaint to assert a cause of action for wrongful death; and move, pursuant to CPLR §§ 1015(a) and 1021, for an order substituting Gregory Hooker,

as the Executor of the Estate of Lisa Hooker and amending the caption to reflect same; and move for an order validating the proceedings heretofore conducted herewith, including filing and service of the summons and complaint and all discovery proceedings previously had to date and that such proceedings need not be repeated as a result of the substitution of parties. Defendants GIULIO BIANCHI, M.D., MARIA McGRAIL, P.A., RALPH MILILLO, M.D., TRUE NORTH URGENT CARE, LLC., NORTHWELL HEALTH, INC. d/b/a GOHEALTH URGENT CARE, NORTHWELL HEALTH PARTNERS, LLC d/b/a NORTHWELL HEALTH PARTNERS, LLC, NORTHWELL HEALTH PARTNERS, LLC d/b/a NORTHWELL HEALTH PHYSICIAN PARTNERS UNIVERSITY PHYSICIANS GROUP MEDICINE AND PODIATRY AT ROSE AVENUE, NORTHWELL HEALTH, INC. submit partial opposition to the motion.

In support of the motion, counsel for plaintiffs asserts, in pertinent part, that, “[o]ur office was retained on June 7, 2020, by LISA HOOKER and GREGORY HOOKER to investigate and commence a lawsuit on their behalf in connection with a medical malpractice claim against the Defendants named in the caption of this matter. Suit was commenced by filing of the Summons and Complaint in Westchester Supreme Court on December 18, 2020.... An answer for Defendant, RALPH MILILLO, M.,D., was efiled on March 1, 2021.... An answer for Defendant, GOHEALTH URGENT CARE-NEW DORP HYLAN PLAZA, was efiled on March 1, 2021.... An answer for Defendant, NORTHWELL HALTH PARTNERS, LLC, was efiled on March 1, 2021.... A second amended answer for Defendant, TRUE NORTH URGENT CARE, LLC, was efiled on July 9, 2021.... Upon discussions between the Plaintiffs and Defendants, CITY MEDICAL OF UPPER EASTSIDE, PLLC s/h/a CITYMD and CITYMD CARES, INC. s/h/a as CITYMD CARES, INC. D/B/A NEW DORP URGENT CARE, a stipulation of discontinuance without prejudice was entered on December 2, 2021.... Plaintiff, LISA HOOKER, was pronounced dead on June 8, 2022.... Letters Testamentary were issued by the Surrogate of Monmouth County to GREGORY HOOKER on August 5, 2022.” *See* Plaintiffs’ Affirmation in Support Exhibits 1-8.

Counsel for plaintiffs further contends, in pertinent part, that, “[t]he standard for determining a party’s right to leave of Court to amend its pleadings is simply whether the amendment is palpably improper or patently insufficient as a matter of law.’

[citations omitted]. 'If it is neither, leave to amend should be granted unless an adverse party demonstrates that surprise or prejudice will directly result from the amendment.'

[citation omitted]. Here the cause of action for wrongful death is sufficient and meritorious.

The motion must be supported by competent medical proof of the causal connection between the alleged malpractice and the death of the Plaintiff. Plaintiff, LISA HOOKER's,

September 4, 2018 CT scan revealed the presence of dysplasia on cells which were not

properly investigated. Plaintiff was diagnosed with small cell lung cancer on January 24, 2019.

The Certificate of Death dated June 13, 2022, signed by Vincent T. Arrisi, states the cause of death was Malignant Neoplasm of UNSP Part of Right Lung.... When LISA HOOKER

was pronounced dead on June 8, 2022, Vincent T. Arrisi, listed her cause of death as

Malignant Neoplasm of UNSP Part of Right Lung. The Certificate of Death stating

Malignant Neoplasm of UNSP Part of Right Lung as the cause of death coupled with the facts alleged in the pleadings is sufficient causality to justify granting the instant motion."

See Plaintiffs' Affirmation in Support Exhibit 7.

In partial opposition to the motion, counsel for defendants GIULIO BIANCHI, M.D., MARIA McGRAIL, P.A., RALPH MILILLO, M.D., TRUE NORTH URGENT CARE, LLC., NORTHWELL HEALTH, INC. d/b/a GOHEALTH URGENT CARE, NORTHWELL HEALTH PARTNERS, LLC d/b/a NORTHWELL HEALTH PARTNERS, LLC, NORTHWELL HEALTH PARTNERS, LLC d/b/a NORTHWELL HEALTH PHYSICIAN PARTNERS UNIVERSITY PHYSICIANS GROUP MEDICINE AND PODIATRY AT ROSE AVENUE, NORTHWELL HEALTH, INC. asserts, in pertinent part, that, "[w]hile these defendants do not oppose the substitution of GREGORY HOOKER as the plaintiff in his role as the estate executor, it is noted he was granted Letters Testamentary for his late wife LISA HOOKER's estate, according to plaintiff's Exhibit 8 on August 5, 2022, well over a year ago. The instant motion is the first time the defense has been made aware of this appointment. These defendants do not oppose the portion of the instant motion seeking to amend the Complaint to add a cause of action for wrongful death. However, these defendants do oppose amending the caption in the manner requested in paragraph 13 of the instant motion. The caption proposed by plaintiff erroneously excludes the names of co-defendants CITY MEDICAL OF UPPER EASTSIDE, PLLC s/h/a CITYMD and CITY MD CARES, INC. s/h/a CITYMD CARES, INC. D/B/A NEW DORP URGENT CARE (hereinafter collectively

referred to as the 'CITY MD defendants'). While plaintiffs did sign a Stipulation of Discontinuance without prejudice as to these defendants in 2021, my office declined to sign that Stipulation on various grounds, including that it was very early on in the discovery process and we had not even received Bills of Particulars (which we still do not have). Given our refusal to sign, counsel for the CITYMD defendants requested that the Court so-order their Stipulation of Discontinuance without prejudice, which the Court did on November 24, 2021.... Nowhere does the Stipulation of Discontinuance provide that any of the CITYMD defendants' names are to be removed from the caption. Therefore, we now object to plaintiffs' attempt to do so. It is also noted that in the proposed Amended Summons and Complaint plaintiff attached to the instant motion as Exhibit '9' adding the wrongful death cause of action, plaintiff has incorrectly removed from the caption all the CITYMD defendants. The Proposed Amended Complaint ... is confusing in that plaintiff has not just simply amended the original Complaint to add the wrongful death cause of action but has in fact deleted some allegations that were in the original Complaint ... as to the CITYMD defendants, thus renumbering many of the paragraphs pertaining to allegations against our office's clients. Causing further confusion is that the proposed Amended Complaint plaintiff attaches as Exhibit '9' does not remove all the allegations as to the CITYMD defendants but only some of them. CPLR §3025(b) requires that a proposed amended pleading of any kind should clearly show the changes or additions being made. [citation omitted]. Plaintiff's proposed Amended Complaint as included as his Exhibit '9' has not done this. Therefore, if plaintiff's instant motion is granted to add a cause of action for wrongful death, plaintiff should be forced to file and serve a proper Amended Complaint with the correct caption including the CITYMD defendants and also clearly indicating the changes or additions to be made to the Complaint as required by CPLR § 3025(b).” See Plaintiffs’ Affirmation in Support Exhibits 6 and 9.

With respect to the branch of plaintiffs’ motion, pursuant to CPLR §§ 1015(a) and 1021, for an order substituting Gregory Hooker, as the Executor of the Estate of Lisa Hooker, counsel for defendants GIULIO BIANCHI, M.D., MARIA McGRIL, P.A., RALPH MILILLO, M.D., TRUE NORTH URGENT CARE, LLC., NORTHWELL HEALTH, INC. d/b/a GOHEALTH URGENT CARE, NORTHWELL HEALTH PARTNERS, LLC d/b/a NORTHWELL HEALTH

PARTNERS, LLC, NORTHWELL HEALTH PARTNERS, LLC d/b/a
NORTHWELL HEALTH PHYSICIAN PARTNERS UNIVERSITY PHYSICIANS GROUP
MEDICINE AND PODIATRY AT ROSE AVENUE, NORTHWELL HEALTH, INC.
did not oppose same.

Therefore, the branch of plaintiffs' motion, pursuant to CPLR §§ 1015(a) and 1021,
for an order substituting Gregory Hooker, as the Executor of the Estate of Lisa Hooker, is hereby
GRANTED. And it is further

ORDERED that the caption shall be amended to read as follows:

GREGORY HOOKER, as Executor of the Estate of
LISA HOOKER, deceased, and GREGORY HOOKER,
Individually,

Plaintiffs,

- against -

GIULIO BIANCHI, M.D., MARIA MCGRIL, P.A.,
RALPH MILILLO, M.D., UNIVERSITY PHYSICIANS
GROUP, P.C., TRUE NORTH URGENT CARE, LLC,
NORTHWELL HEALTH, INC. d/b/a GOHEALTH
URGENT CARE, GOHEALTH URGENT CARE-
NEW-HYLAN PLAZA, CITYMED,
CITYMED CARES, INC., CITYMED CARES, INC.
d/b/a NEW DORP URGENT CARE, NORTHWELL
HEALTH PARTNERS, LLC d/b/a NORTHWELL
HEALTH PHYSICIANS PARTNERS UNIVERSITY
PHYSICIANS GROUP MEDICINE AND
PODIATRY AT ROSE AVENUE, NORTHWELL
HEALTH INC. and NORTHWELL HEALTH
PARTNERS, LLC.,

Defendants.

With respect to the branch of plaintiffs' motion, pursuant to CPLR § 3025(b),
for an order granting leave to amend the Verified Complaint to assert a cause of action
for wrongful death, generally, leave to amend a pleading should be freely granted.
See CPLR § 3025(b). The party seeking such amendment must demonstrate a proper basis

for same. *See Wieder v. Scala*, 168 A.D.2d 355, 563 N.Y.S.2d 76 (1st Dept. 1990).

Such an application must be supported by an affidavit that the proposed amendment is meritorious. *See Zaid Theatre Corp. v. Suna Realty Co.*, 18 A.D.3d 352, 797 N.Y.S.2d 434 (1st Dept. 2005). A motion for leave to serve an amended pleading will only be denied where the amendment is wholly devoid of merit or is significantly prejudicial to the non-moving party. *See Norman v. Ferrara*, 107 A.D.2d 739, 484 N.Y.S.2d 600 (2d Dept. 1985). The merits of the proposed amended pleading will not be reviewed "... unless the insufficiency or lack of merit is clear and free from doubt." *Id.* at 740, 741. A party seeking to amend a complaint pursuant to CPLR § 3025 (b) in order to add a cause of action for wrongful death is not required to make an evidentiary showing by competent medical proof that a defendant's conduct caused the decedent's death. *See Lucido v Mancuso*, 49 A.D.3d 220, 851 N.Y.S.2d 238 (2d Dept. 2008).

The Court does not find that the amendment of the Verified Complaint in this matter is wholly devoid of merit or that said amendment is significantly prejudicial to defendants. However, the Court agrees with counsel for the opposing defendants that plaintiffs should file and serve a proper Amended Complaint with the correct caption including the CITYMD defendants and also clearly indicating the changes or additions to be made to the Complaint as required by CPLR § 3025(b).

Therefore, the branch of plaintiffs' motion, pursuant to CPLR § 3025(b), for an order granting leave to amend the Complaint to include wrongful death allegations, is hereby **GRANTED to the extent detailed above**. And it is further

ORDERED that plaintiff shall serve the Amended Verified Complaint upon defendants by **April 24, 2024**. A copy of this Decision and Order shall be served with those papers. And it is further

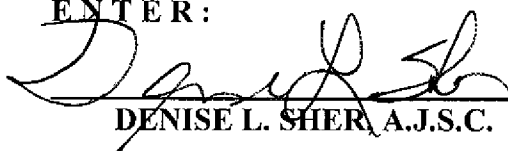
ORDERED that the **stay** in the matter is hereby **lifted**. And if its further

ORDERED that a Preliminary Conference is scheduled to be held on **June 10, 2024**, by the filing of a Proposed Preliminary Conference Order. The parties are hereby directed to the court website (<http://ww2.nycourts.gov/COURTS/10JD/nassau/cicgeneralforms.shtml>) where they will find a fillable PC form with instructions on how to fill it out and when and how to return it. There will be no adjournments, except by formal application pursuant to 22 NYCRR § 125.

The branch of plaintiffs' motion for an order validating the proceedings heretofore conducted herewith, including filing and service of the summons and complaint and all discovery proceedings previously had to date and that such proceedings need not be repeated as a result of the substitution of parties, is hereby **GRANTED to the extent that any discovery proceedings had to date are hereby validated and need not be repeated as a result of the substitution of parties, but not as to the addition of the new wrongful death cause of action.**

This constitutes the Decision and Order of this Court.

ENTER:



DENISE L. SHER, A.J.S.C.

Dated: Mineola, New York
April 9, 2024

ENTERED

Apr 10 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE