

Vardouniotis v Pfizer, Inc.

2025 NY Slip Op 32361(U)

July 3, 2025

Supreme Court, New York County

Docket Number: Index No. 152029/2019

Judge: Nancy M. Bannon

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

PRESENT: HON. NANCY M. BANNON PART 61M

Justice

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VASILIKI VARDOUNIOTIS

Plaintiff,

- v -

PFIZER, INC.,

Defendant.

-----X

INDEX NO. 152029/2019

MOTION DATE 11/27/2024

MOTION SEQ. NO. 008

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 008) 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 221, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256

were read on this motion to/for RENEWAL.

In this products liability action in which the plaintiff seeks to recover for injuries allegedly resulting from her use of Chantix, a smoking cessation medication manufactured by the defendant, the court, by order dated July 8, 2024, denied the defendant’s motion for summary judgment (MOT SEQ 007). In denying that motion, the court held, among other things, that the defendant failed to establish its entitlement to summary judgment dismissing all of the plaintiff’s claims. Specifically, the defendant had provided two expert reports provided by Dr. Drew D. Kiraly and Dr. James F. Morley, but the reports were unsworn, and the defendant failed to submit an affidavit or affirmation from either expert. The defendant now moves pursuant to CPLR 2221(e) to renew MOT SEQ 007. The plaintiff opposes the motion, and cross-moves to exclude the defendant’s expert witnesses. The defendant opposes the cross-motion. The motion is granted and the cross-motion is denied.

To successfully move to renew, a party must present “new facts not offered on the prior motion that would change the prior determination” or demonstrate that “there has been a change in the law that would change the prior determination.” CPLR 2221(e)(2), (3). Courts may grant a motion to renew to allow movants to correct an inadvertent procedural oversight on the previous motion, and if there is no prejudice caused to the opposing party attributable to the delay. See Feuerman v Marriott Intl., Inc., 201 AD3d 566 (1st Dept. 2022), B.B.Y. Diamonds

Corp. v Five Star Designs, Inc., 6 AD3d 263 (1st Dept. 2004). Inadvertent procedural oversights include the failure to submit a proper expert affidavit or affirmation in the original motion. See id.

Here, the court denied MOT SEQ 007 partially because the defendant failed to provide proof in admissible form demonstrating the absence of triable issues of fact and *prima facie* entitlement to summary judgment. Specifically, the defendant submitted two expert reports from Dr. Kiraly and Dr. Morley but failed to provide affidavits or affirmations from these experts. The defendant now submits two sworn affidavits from Dr. Kiraly and Dr. Morley, in addition to their respective expert reports. In opposition, the plaintiff does not allege any prejudice caused by the defendant's delay. As such, the defendant's motion is granted. Upon renewal, the court finds that the defendant's current submissions entitle it to summary judgment dismissing the plaintiff's complaint.

On a motion for summary judgment, the moving party must make a *prima facie* showing of its entitlement to judgment as a matter of law by submitting evidentiary proof in admissible form sufficient to establish the absence of any material, triable issues of fact. See CPLR 3212(b); Jacobsen v New York City Health & Hosps. Corp., 22 NY3d 824 (2014); Alvarez v Prospect Hosp., 68 NY2d 320 (1986); Zuckerman v City of New York, 49 NY2d 557 (1980). In opposition, the nonmoving party must demonstrate by admissible evidence the existence of a triable issue of fact. See Alvarez v Prospect Hospital, supra; Zuckerman v City of New York, supra. Here, the defendant meets that burden by submitting two sworn affidavits from Dr. Morley and Dr. Kiraly and the expert reports of Dr. Morley and Dr. Kiraly. Dr. Kiraly is a practicing psychiatrist and physician-scientist, currently employed as an associate professor at Wake Forest University School of Medicine. Dr. Morley is an attending neurologist, employed as an associate professor at the University Of Pennsylvania School of Medicine and director at Crescenz VA Medical Center. Both experts specifically detail their analysis of the plaintiff's claims, having reviewed the plaintiff's complaint, the plaintiff's deposition testimony, the plaintiff's medical records, and reviewed publications from medical literature describing clinical trials reporting for varenicline, the drug sold by the defendant as Chantix. Dr. Morley states that in his opinion, after a review of the evidence, there is no causal link between the plaintiff's use of Chantix and her movement disorder. Specifically, Dr. Morley states that the plaintiff was exposed to Chantix for a very short period of time, inconsistent with a diagnosis for a movement disorder caused by chronic drug use. Additionally, Dr. Morley states that the plaintiff's diagnosis of tics are symptoms more consistent with a premonitory sensation or urge to make movements,

with the ability to suppress these movements. Dr. Morley opines that these symptoms are more of a functional movement disorder, with the plaintiff having some voluntary control of her movements, rather than a movement disorder caused by medication. Dr. Kiraly arrives at a similar conclusion, finding that the plaintiff's symptoms are more psychological rather than physical. Indeed, Dr. Kiraly notes that seven of the plaintiff's treating neurologists (save for Dr. Roger Kurlan, the plaintiff's expert whose testimony was excluded by court order dated July 8, 2024 [MOT SEQ 006]) reported that the plaintiff most likely had a functional, psychogenic, or psychosomatic condition, and not one caused by the use of Chantix.

The plaintiff fails to submit any evidence in opposition sufficient to raise a triable issue of fact. As an initial matter, the plaintiff fails to submit a memorandum of law, and instead improperly makes legal arguments in affirmations. Even considering its opposition papers, however, the plaintiff, in essence, attempts to reargue MOT SEQ 006, in which the defendant sought to preclude Dr. Kurlan's expert testimony. The plaintiff fails to demonstrate that the court overlooked or misapprehended any facts or relevant law that were presented to it in connection with the prior motion, beyond making conclusory allegations that the defendant "acted in bad faith" in moving to preclude Dr. Kurlan's testimony. See CPLR 2221(d)(2); William P. Pahl Equip. Corp. v Kassis, 182 AD2d 22 (1st Dept 1992). The purpose of a motion to reargue is not "to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided" (Pro Brokerage, Inc. v Home Ins. Co., 99 AD2d 971 [1st Dept. 1984] quoting Foley v Roche, 68 AD2d 558 [1st Dept. 1979]) "or to present arguments different from those originally asserted." William P. Pahl Equip. Corp. v Kassis, supra at 27. The plaintiff's cross-motion, seeking to preclude the testimony from the defendant's experts Dr. Kiraly, Dr. Morley, and Dr. Daniel Pak, is also denied for similar reasons, as the plaintiff makes conclusory claims, without support, that the defendant withheld information about Chantix from these experts.

Dr. Morley and Dr. Kiraly's expert reports establish that the plaintiff cannot demonstrate evidence of "general causation," i.e., that Chantix can cause the particular movement disorder and other medical conditions she alleges, and also "specific causation," i.e., that her ingestion of Chantix at the prescribed dosage for only eleven days created or aggravated her movement disorder and other alleged conditions. See Parker v Mobil Oil Corp., 7 NY3d 434, 448 (2006); Heckstall v Pincus, 19 AD3d 203, 204 (1st Dept. 2005). Thus, the plaintiff's first, fourth, and fifth causes of action for negligence, gross negligence, and willful, wanton and malicious conduct, which are limited to the issue of the defendant's failure to warn the plaintiff about the risks of

movement disorders associated with Chantix, are dismissed. The third and sixth causes of action, for breach of the implied warranty of good faith and fair dealing and unjust enrichment, respectively, are also dismissed.

The court has considered the plaintiff’s remaining arguments and finds them unavailing.

Accordingly, upon the foregoing documents, it is

ORDERED that defendant’s motion pursuant to CPLR 2221(e) (MOT SEQ 008) for leave to renew its prior motion for summary judgment (MOT SEQ 007) is granted, and upon renewal, the court vacates its prior order dated July 8, 2024, and grants the defendant’s motion for summary judgment dismissing the complaint, and it is further

ORDERED that the plaintiff’s cross-motion is denied.

This constitutes the Decision and Order of the court.

Nancy M. Bannon
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7/3/2025
DATE

NANCY M. BANNON, J.S.C.

CHECK ONE:

CASE DISPOSED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE