Alli v Rentrop
2025 NY Slip Op 32501(U)
July 10, 2025
Supreme Court, Kings County
Docket Number: Index No. 506829/2024
Judge: Anne J. Swern

At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 10th day of July 2025.

PRESENT: HON. ANNE J. SWERN, J.S.C.

DOMANIC ALLI, as Administrator of the Estate of KENDACIE ALLI, Deceased, and DOMANIC ALLI, Individually,

Plaintiff(s),

-against-

PETER RENTROP, M.D.,

Defendant(s).

DECISION & ORDER
Index No.: 506829/2024

Calendar No.: 3

Motion Seq.: 001

Recitation of the following papers as required by CPLR 2219(a):

	Papers Numbered
Notice of Motion, Affirmation, Affidavits and Exhibits (NYSCEF 6-19)	1, 2
Affirmation and Exhibits in Opposition (NYSCEF 21-31)	3
Reply Affirmation (NYSCEF 34)	4

Upon the foregoing papers and after oral argument, the decision and order of the Court is as follows:

Plaintiff commenced this action asserting a single common law cause of action for fraud. The complaint alleges that during defendant's deposition in an underlying medical malpractice action entitled *Alli v. Uduevebo, et al.*, Index #507754/2019, he gave perjurious, deceptive, and fraudulent testimony with the intent to induce plaintiff to discontinue that action. Plaintiff, relying on this testimony, discontinued the action against Rentrop only. The medical malpractice action is still pending.

Defendant has moved to dismiss this action (1) based on the complaints in each action and the stipulation of discontinuance in the underlying action (CPLR § 3211 [a] [1]) and (2) plaintiff has failed to state a cognizable and independent common law cause of action for fraud (CPLR § 3211 [a] [7]). In opposition, plaintiff argues that he has sufficiently pleaded an independent cause of action for fraud that is part of a larger "fraudulent" and "illegal kickback" scheme based on the rental agreement for office space between Dr. Uduevbo and Dr. Rentrop. Therefore, a piercing of the corporate veil to obtain punitive damages is appropriate.

Underlying Medical Malpractice Action

Plaintiff alleged that Doctors Uduevbo, Mittal, and Rentrop caused the death of Kendacie Alli ("decedent") by failing to diagnose a pulmonary embolus in December 2017.

On 12/4/2017, the decedent presented to Dr. Uduevbo with complaints of postpartum shortness of breath. It was the doctor's opinion that these results were indicative of a pulmonary embolism, myocardial infarction, or postpartum cardiomyopathy. All three were emergency-type conditions and potentially life-threatening. The doctor conducted an EKG, which revealed an abnormal result that narrowed down the possibilities to a pulmonary embolism and myocardial infarction. Dr. Uduevbo informed the decedent that she could die a sudden death and offered to call 911 to take her immediately to the emergency room because the test to rule out a pulmonary embolus is conducted in an emergency setting. The decedent refused because of family and work commitments. Instead, the decedent preferred to see a cardiologist.

Therefore, Dr. Uduevbo referred the decedent to a cardiologist at Gramercy Cardiac Diagnostic Services, P.C. ("Gramercy"), an entity solely owned by Dr. Rentrop who rented office space from Dr. Uduevbo. However, the decedent did not go to the emergency room or Gramercy on 12/4/2017. On 12/6/2017, the decedent presented to Gramercy and was treated by Dr. Mittal.

Dr. Mittal did not repeat the EKG as he had access to Dr. Uduevbo's test results. Based on the EKG, Dr. Mittal also recommended that the decedent be taken to the emergency room; however, she refused. Therefore, Dr. Mittal ordered a chest x-ray at a private facility of her choosing. She passed away two days later.

It is undisputed that Dr. Rentrop never treated the decedent, was not present during the decedent's presentation to Dr. Mittal, and did not supervise Dr. Mittal on 12/6/2017. Following the deposition, plaintiff executed a stipulation of discontinuance in favor of Dr. Rentrop. Dr. Rentrop's attorneys then served a motion for the Court to so-order the stipulation, which was granted.

Subsequently, plaintiff's counsel learned that Dr. Rentrop had settled an action commenced against him by the United States District Attorney for the Southern District of New York alleging large scheme fraud under, *inter alia,* the New York False Claims Act (State Finance Law, Art. 13, §§187-194).[1] As part of the settlement, Dr. Rentrop admitted to some general allegations unrelated to the decedent's medical treatment by Dr. Mittal or Dr. Uduvebo.

It is alleged in the action before this Court that Gramercy paid above-market rent to Dr. Uduvebo to allegedly incentivize him to refer patients to Gramercy Cardiac rather than providing treatment and care per accepted standards of care. This agreement violated, *inter alia,* the federal Anti-Kickback Statute. Further, Dr. Mittal received a flat fee for each diagnostic test or procedure performed at Gramercy to generate income.

[1] To state a claim under the Federal False Claims Act (31 U.S.C. § 3729 [a] [1] [A]) and New York False Claims Acts, the relator in a *qui tam* action must allege facts showing that defendants knowingly made or caused to be made to the state or local government, a false record or statement material to an obligation to pay or transmit money or property (*State of New York ex rel. Edelweiss Fund, LLC v JP Morgan Chase & Co.*, 189 AD3d 723 [1st Dept 2020]). The federal "Anti-Kickback" Statute prohibits health care professionals from knowingly offering or paying any remuneration to induce referrals for any service for which payment would be sought from Medicare and Medicaid (42 U.S.C § 1320a-7b [b] [2]). It was alleged in the federal court action that Rentrop conspired in violation of the statutes to submit fraudulent Medicare and Medicaid claims.

Law & Analysis

a) CPLR § 3211 [a] [1]

"A motion pursuant to CPLR § 3211 [a] [1] to dismiss the complaint on the ground that the action is barred by documentary evidence may be [appropriately] granted only where the documentary evidence utterly refutes the plaintiff's factual allegations, thereby conclusively establishing a defense, as a matter of law" (*Karpovich v City of New York*, 162 AD3d 996, 997 [2d Dept 2018] *citing Mawere v Landau*, 130 AD3d 986, 987 [2d Dept 2015]; *see also Beal Sav. Bank v Sommer*, 8 NY3d 318, 324 [2007] and *Goshen v Mutual Life Insurance Co. of N.Y.*, 98 NY2d 314, 326 [2002]). "To constitute 'documentary' evidence, the evidence must be unambiguous, authentic, and undeniable, such as judicial records and documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and other papers, the contents of which are essentially undeniable" (*Karpovich v City of New York*, 162 AD3d at 997-998; *see Prott v Lewin & Baglio*, 150 AD3d 908, 909 [2d Dept 2017]). Affidavits submitted in support of such motion do not qualify as documentary evidence because their "contents can be controverted by other evidence, such as another affidavit" (*Phillips v Taco Bell Corp.*, 152 AD3d 806, 807 [2d Dept 2017]; *Prott v Lewin & Baglio*, 150 AD3d 909).

b) CPLR § 3211 [a] [7]

Plaintiffs may submit affidavits in opposition to a motion to dismiss pursuant to CPLR § 3211 [a] [7], but it does not obligate them to do so to avoid a dismissal (*See Rovello v Orofino Realty Co.*, 40 NY2d 633, 635 [1976]). Therefore, plaintiff may stand on the pleadings alone, "confident that its allegations are sufficient to state all of the necessary elements of a cognizable cause of action" to survive a motion to dismiss under CPLR § 3211 [a] [7] (*id.*). When determining a motion to dismiss pursuant to CPLR § 3211 [a] [7], the Court must accept the

factual allegations in the complaint as true and "accord plaintiffs the benefit of every possible favorable inference and determine only whether the facts as alleged fit into any cognizable legal theory" (*Leon v Martinez,* 84 NY2d 83, 88 [1994]).

However, if the Court considers evidentiary material outside the pleadings and the motion is not converted to one for summary judgment, "the question becomes whether the pleader has a cause of action, not whether the pleader has stated one and, unless it has been shown that a material fact as claimed by the pleader is not a fact at all, and unless it can be said that no significant dispute exists regarding it, [a] dismissal should not [be granted]" (*Board of Mgrs. of 100 Congress Condominium v SDS Congress, LLC,* 152 AD3d 478, 480 [2d Dept. 2017]).

c) Medical Malpractice, Fraud and Piercing the Corporate Veil

A plaintiff cannot maintain a separate cause of action for fraud arising out of medical malpractice because the injuries and damages are identical to those arising from an alleged deviation from a standard practice of care (*Harja v Milhorat,* 95 AD3d 829 [2d Dept 2012] and *DeGroof v Milhorat,* 95 AD3d 818 [2d Dept 2012]). Therefore, where a fraud claim gives rise to damages which are not separate and distinct from those flowing from an alleged medical malpractice and "the alleged fraud is part and parcel of the alleged malpractice, the cause of action must be dismissed" (*Luciano v Levine,* 232 AD2d 378, 379 [2d Dept 1996]).

A party must establish all the elements of New York common law fraud cause of action by detailing the misconduct that constitutes the wrong (CPLR § 3016; *Scifo v Taibi,* 126 AD3d 777, 778 [2d Dept 2015]). The elements of fraud are 1) a representation of material fact, 2) the falsity of that representation, 3) knowledge by the party who made the representation that it was false when made, 4) justifiable reliance by the claimant, and 5) a resulting injury (*id.*). However, allegations of "a mere conspiracy to commit a tort is never of itself a cause of action" (*Alexander*

& Alexander, Inc. v Fritzen, 68 NY2d 968, 969 [1986]). Allegations of a fraudulent conspiracy merely provide the predicate basis for an otherwise actionable tort or contract claim but do not constitute a "freestanding claim for conspiracy" under New York common law (*Carlson v American International Group, Inc.,* 30 NY3d 288, 310 [2017]).

"A decision whether to pierce the corporate veil in a given instance will necessarily depend on the attendant facts and equities." However, piercing the corporate veil requires a showing of two factors: "(1) the owners exercised complete domination 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…While complete domination of the corporation is the key to piercing the corporate veil, especially when the owners use the corporation as a mere device to further their personal rather than the corporate business, such domination, standing alone, is not enough; some showing of a wrongful or unjust act toward plaintiff is required." To prevail, it must be established that through such domination, the owners "abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against them such that the court in equity will intervene." (*Morris v State Dep't of Taxation & Finance,* 82 NY2d 135, 141-142 [1993]).

d) Stipulations

A stipulation signed by counsel for each party constitutes a binding contract (*Oh v Jeannot,* 160 AD3d 701, 702 [2d Dept 2018]; *Okumus v Living Room Steak House, Inc.,* 112 AD3d 799 [2d Dept 2013]). Therefore, the party seeking to vacate a so-ordered stipulation must demonstrate sufficient cause to avoid the consequences of the stipulation, i.e., fraud, collusion, mistake, or accident (*Okumus v Living Room Steak House, Inc.,* 112 AD3d 799) or that its terms were unconscionable (*Oh v Jeannot,* 160 AD3d 703).

e) **Analysis**

In support of the motion to dismiss per CPLR § 3211 [a] [1] and [7], defendant has submitted the underlying medical malpractice complaint and stipulation of discontinuance and the complaint in this action. A comparison of the complaints establishes that each action seeks identical relief against Dr. Rentrop (*Harja v Milhorat*, 95 AD3d 829, and *DeGroof v Milhorat*, 95 AD3d 818). Further, under the facts of this case, the alleged fraudulent testimony may serve as a basis to vacate the stipulation of discontinuance in the medical malpractice action (*Okumus v Living Room Steak House, Inc.*, 112 AD3d 799), but not an independent common law cause of action because allegations of a fraudulent conspiracy merely provide the predicate basis for an otherwise actionable tort [such as medical malpractice], but do not constitute a "freestanding claim for conspiracy" under New York common law (*Carlson v American International Group, Inc.*, 30 NY3d 310). The complaints and the stipulation of discontinuance undeniably establish a defense per CPLR § 3211 [a] [1] (*Karpovich v City of New York*, 162 AD3d 997-998; *Prott v Lewin & Baglio*, 150 AD3d 909).

The so-ordered stipulation was entered upon a notice of motion.[2] Therefore, per CPLR § 2221 or CPLR § 5015, plaintiff's appropriate remedy is to move in the underlying action to vacate the so-ordered stipulation of discontinuance. Defendant has established his defense based on the complaints and stipulation of discontinuance as a matter of law, and this action must be dismissed (*Luciano v Levine*, 232 AD2d 379; CPLR § 3211 [a] [1]).

In opposition to the motion, plaintiff argues that an independent cause of action for fraud has been sufficiently established to pierce the corporate veil based on a larger fraudulent scheme in the federal court settlement. However, the federal court complaints alleging a fraudulent

[2] See Motion Sequence #4 in Index #507754/2019 (NYSCEF 114 – 127).

scheme or conspiracy assert narrowly defined statutory causes of action in derogation of the common law which are inapplicable to the facts of this case.

The allegations in both actions stem from alleged acts of malpractice and deviation from the standard of care. However, Dr. Rentrop did not treat plaintiff, and the fraud allegations in the federal court complaints do not establish a fraudulent wrongful act towards the decedent (*Morris v State Dep't of Taxation & Finance*, 82 NY2d 141-142) that was a deviation from any standard of care and treatment rendered by Dr. Rentrop for purpose of defrauding Medicaid or Medicare. It is noted that (1) Dr. Mittal did not perform testing or receive compensation therefor, as he had referred the decedent to another facility and (2) plaintiff has not alleged that the decedent was a recipient of Medicaid that would bring her care and treatment within the ambit of the federal and state False Claims Acts or the federal Anti-Kickback Act. In the absence of treatment, diagnosis, or a referral by Dr. Rentrop in violation of the foregoing, plaintiff has not established "a wrongful or unjust act toward plaintiff" (*Morris v State Dep't of Taxation & Finance*, 82 NY2d 141-142). Plaintiff has also not alleged that this is a *qui tam* action commenced under the applicable statutes. Therefore, affording plaintiff every favorable inference, he has failed to state a cognizable claim for common law fraud. (*Leon v Martinez*, 84 NY2d 88; *Carlson v American International Group, Inc.*, 30 NY3d 310; CPLR § 3211 [a] [7]).

The Court has considered the parties' remaining arguments and finds them to be either academic or without merit. Accordingly, it is hereby

ORDERED that defendant's motion to dismiss this action pursuant to CPLR § 3211 [a] [1] and [7] is granted and this action is dismissed in its entirety.

This constitutes the decision and order of the Court.

ENTER:

Hon. Anne J. Swern, J.S.C.
Dated: 7/10/2025

For Clerks use only:

MG _____

MD _____

Motion seq. # _____