At an IAS Term, Part 63 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 5th day of August, 2025.

PRESENT:

HON. ELLEN M. SPODEK,
Justice.

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AMY LIEDMAN,

Plaintiff,

-against-

THE LONG ISLAND COLLEGE HOSPITAL, ANDREI E. RADIANU, PATRICK E. FARMER, DAVID SELIGSOHN, IRINA KAYLAKOVA, FULTON MEDICAL GROUP PC, PETER R. SMITH, MATTHEW B. HANSON, ANUKWARE K. KETOSUGBO, LAVEENA KONDAGARI, HAIDY MARZOUK, DEBORAH O'HARA, KAREN BURGESS, BERNADETTE MALIWAT-BANDIGAN, PROFESSIONAL GYNECOLOGICAL SERVICES PC, DMITRIY BRONFMAN, and BELLA NISIMOVA,

Defendants.

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DMITRIY BRONFMAN, M.D., PROFESSIONAL GYNECOLOGICAL SERVICES P.C., and BELLA NISIVOMA, P.A.,

Third-Party Plaintiffs,

-against-

IRINA CHEREPASHINKAYA VAIZMAN, M.D.,

Third-Party Defendant.

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DECISION AND ORDER

Index No. 2454/12

Mot. Seq. Nos. 13-16

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The following e-filed papers read herein: NYSCEF Doc. Nos.:

Notice of Motion, Affirmations, and Exhibits Annexed	26-34; 35-43; 44-47; 48-54
Affirmations in Opposition and Exhibits Annexed	55-58; 59-62; 63-66; 67-70; 75; 76; 77; 78
Reply Affirmations	79; 81-82; 83

Upon the foregoing papers in this action to recover damages for medical malpractice and lack of informed consent, defendant Andrei E. Radianu ("Dr. Radianu") moves and defendants/third-party plaintiffs Dmitriy Bronfman, M.D. (sued herein as Dmitriy

Bronfman), Professional Gynecological Services PC, and Bella Nisimova, P.A. (sued herein as Bella Nisimova) (collectively, the "principal Ob/Gyn defendants") cross-moved and third-party defendant Irina Cherepashinkaya Vaizman, M.D. ("Dr. Vaizman") cross-moved and co-defendant Matthew B. Hanson ("Dr. Hanson") cross-moved for an order, pursuant to CPLR 1601, confirming that codefendant Long Island College Hospital (sued herein as The Long Island College Hospital) ("LICH") will appear on the verdict sheet at the trial of this action.

Background

On January 18, 2011, plaintiff Amy Liedman ("plaintiff"), age 26, underwent an emergency dilation and curettage procedure at LICH, after undergoing a medical termination of pregnancy by one or more of the principal Ob/Gyn defendants and third-party defendant Dr. Vaizman. In the course of and following her recovery from the surgical procedure at LICH, plaintiff allegedly suffered anoxic brain damage. Plaintiff was discharged from LICH to a nonparty rehabilitation center on February 22, 2011.

In April 2011, approximately two months after plaintiff's discharge from LICH, a special proceeding was commenced by LICH in this court under index No. 9188/11 for approval of the sale of its assets to State University of New York ("SUNY") (the "asset-sale proceeding"). As part of the proposed asset sale, LICH sought separate approval of the establishment of a malpractice trust for the resolution and payment of medical malpractice claims against it and its covered medical staff (the "Malpractice Trust"). By order, dated May 13, 2011, Justice Carolyn E. Demarest then presiding over the asset-sale proceeding

approved the sale of LICH's assets to SUNY, with a proviso that SUNY was not assuming (among other things) any/all of LICH's medical malpractice liabilities because any such claims were to be resolved through the Malpractice Trust. On May 23, 2011, the Malpractice Trust was created. On May 29, 2011, the sale of LICH's assets to SUNY closed.

Approximately nine months later, on February 16, 2012, Justice Demarest, issued an order (the "Implementation Order") approving the proposed Plan for Valuing and Paying Claims from the Malpractice Trust and the proposed Proceedings for Valuing Claims (collectively, the "Claims-Resolution Proceedings"). In the Claims-Resolution Proceedings, LICH's medical malpractice claimants have been limited to resolving their claims (whether direct or indirect) against LICH and its covered medical staff by way of a pre-mediation settlement, mediation, or binding arbitration, and, upon resolution, receive their payments solely and exclusively from the Malpractice Trust.

Pursuant to the Implementation Order, the LICH medical malpractice claimants were each considered as having opted into the Claims-Resolution Proceedings unless such claimants expressly opted out by executing and returning an appropriate form, in which instance they would be limited to pursuing their claims against LICH or whatever remained of LICH after the asset-sale closing. Nothing in the record indicates that plaintiff (or her counsel) opted out of the Claims-Resolution Proceedings.

On February 1, 2012, plaintiff commenced this action against among others: (1) LICH; (2) a group of LICH physicians consisting of Patrick E. Farmer, Irina Kaylakova,

Peter R. Smith, Laveena Kondagari, Deborah O'Hara, Karen Burgess, and Bernadette Maliwat-Bandigan (collectively with LICH, the "LICH defendants"); (3) moving defendant Dr. Radianu; (4) cross-moving principal Ob/Gyn defendants; (4) cross-moving third-party defendant Dr. Vaizman; and (5) cross-moving defendant Dr. Hanson. On February 15, 2012, the LICH defendants jointly answered the complaint. The LICH defendants' answer did not assert an affirmative defense of lack of personal jurisdiction. On July 17, 2012, plaintiff filed a supplemental summons and amended complaint.[1] To date, the LICH defendants (by joint counsel) fully participated in this action. It does not appear from the record whether plaintiff (while prosecuting this action) and/or the non-LICH defendants (while defending this action) participated in the Claims-Resolution Proceedings.[2]

Discussion

CPLR 1601 (1) provides, in relevant part, that:

> "Notwithstanding any other provision of law, when a verdict or decision in an action or claim for personal injury is determined in favor of a claimant in an action involving two or more tortfeasors jointly liable or in a claim against the state and the liability of a defendant is found to be fifty percent or less of the total liability assigned to all persons liable, the liability of such defendant to the claimant for non-economic loss shall not exceed that defendant's

[1] The supplemental summons and amended complaint corrected the name of one defendant from "Mark F. Marzouk" to "Haidy Marzouk." *See* Supplemental Summons and Amended Verified Complaint, each dated July 17, 2012 (part of NYSCEF Doc No. 46). Although the LICH defendants apparently failed to interpose an answer to the amended verified complaint, their failure to do so elicited no concern from any of the other parties in this action.

[2] The terms of the Claims-Resolution Proceedings (in ¶ 3.4) invited the non-LICH codefendants "to participate in the [Claims-] [R]esolution [P]roceedings; however, the participation of non-LICH codefendants is not required for purposes of engaging in the [Claims-] [R]esolution [P]roceedings" (part of NYSCEF Doc No. 30).

> equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss; *provided, however that the culpable conduct of any person not a party to the action shall not be considered in determining any equitable share herein if the claimant proves that with due diligence he or she was unable to obtain* jurisdiction *over such person in said action* (or in a claim against the state, in a court of this state). . . ." (italics and underlining added).

The italicized statutory proviso – the inability "*to obtain jurisdiction over such person in said action*" and, in particular, the underlined term "jurisdiction" – has been broadly interpreted by the Court of Appeals to "encompass[ ] both *subject matter* and personal jurisdiction." *Artibee v Home Place Corp.*, 28 NY3d 739, 748 (2017) (internal quotation marks omitted; italics added).

Here, the Implementation Order, which was issued by Justice Demarest in the asset-sale proceeding and over which she and her successor retained (and still retain) subject-matter jurisdiction,[3] has deprived this Court of subject-matter jurisdiction in this action over plaintiff's direct claims and non-LICH co-defendants' contribution claims against the LICH defendants. For this reason, neither LICH nor the LICH defendants may appear on the verdict sheet in this action.

The moving defendants' attempt to distinguish *Artibee* by arguiing that "there is no statutory or constitutional provision that allows LICH . . . or Judge Demarest to divest the Supreme Court of its subject matter jurisdiction in this case," misses the point. It is immaterial that the subject-matter jurisdiction in *Artibee* was circumscribed by the New

[3] Order, dated February 16, 2012, Decretal ¶ 5 ("[T]his Court retains jurisdiction over implementation of, and disputes involving, the Plan [for Valuing and Paying Claims] and the [Claims-Resolution] Proceedings, including opt-outs.") (NYSCEF Doc No. 31).

York Constitution, whereas the subject-matter jurisdiction in this case is circumscribed by the doctrines of collateral estoppel and law of the case. The overarching principle remains the same. The Court in this action lacks the necessary predicate of subject-matter jurisdiction for addressing the merits (or the lack thereof) of plaintiff's direct claims (and of non-LICH defendants' contribution claims) against the LICH defendants, either on summary judgment or by submitting it for determination to a jury. Likewise, the Court in this action is without power to modify the Implementation Order which, as noted, was entered by Justice Demarest as a justice of the court of coordinate jurisdiction in the asset-sale proceeding. It goes without saying that nothing prevents the movants or any other non-LICH defendants from seeking in the asset-sale proceeding to modify the Implementation Order, the Malpractice Trust's Plan for Valuing and Paying Claims, and/or the protocols for the conduct of the Claims-Resolution Proceedings.

The moving defendants' citations to the pre- and post-*Artibee* decisions are not controlling either in light of the Court of Appeals' determination in *Artibee* or because such decisions are factually inapposite. Most importantly, not one of those decisions, cited by the movants, addressed a prior, separate court proceeding in which a court-approved claims trust was established for the mandatory evaluation and resolution of the medical malpractice claims against a self-insured, liquidated hospital and certain of its former healthcare providers.

The parties' remaining contentions have been considered and found unavailing.

Conclusion

Accordingly, it is

ORDERED that Dr. Radianu's motion in Seq. No. 13 and the respective cross-motions of the principal Ob/Gyn defendants, Dr. Vaizman, and Dr. Hanson in Seq. Nos. 14, 15, and 16 are all denied, therefore LICH will not appear on the verdict sheet; and it is further

ORDERED that plaintiff's counsel is directed to electronically serve a copy of this decision and order with notice of entry on the other parties' respective counsel and to electronically file an affidavit of service thereof with the Kings County Clerk.

This constitutes the decision and order of the Court.

ENTER,

J. S. C.

HON. ELLEN M. SPODEK

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