

Evans v Memorial Hosp. for Cancer & Allied Diseases
2025 NY Slip Op 33398(U)
September 9, 2025
Supreme Court, New York County
Docket Number: Index No. 805217/2018
Judge: Kathy J. King
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHY J. KING PART 06

Justice

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JEFFREY EVANS AS ADMINISTRATOR OF THE ESTATE OF MAGNOLIA EVANS, DECEASED and JEFFREY EVANS, INDIVIDUALLY,

Plaintiffs,

- v -

MEMORIAL HOSPITAL FOR CANCER AND ALLIED DISEASES, MEMORIAL HOSPITAL FOR CANCER AND ALLIED DISEASES D/B/A MEMORIAL SLOAN KETTERING CANCER CENTER, MEMORIAL SLOAN KETTERING CANCER CENTER, ARNAB GHOSH, TIFFANY TROSO-SANDOVAL, NORTH SHORE UNIVERSITY HOSPITAL D/B/A SYOSSET HOSPITAL, SYOSSET HOSPITAL, NORTHWELL HEALTH, INC., NORTHWELL HEALTHCARE, INC., JOHN/JANE DOE A-Z, and THE NAMES JOHN/JANE DOE BEING FICTITIOUS AND INTENDED TO REPRESENT THOSE WHO RENDERED CARE AND/OR TREATMENT TO DECEDENT MAGNOLIA EVANS WHOSE NAMES ARE CURRENTLY UNKNOWN.

Defendants.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51

were read on this motion to/for EXTEND - TIME.

Upon the foregoing documents, and after oral arguments having been heard, the Plaintiffs move for an Order:

- 1) vacating or vitiating the 90-day notice dated and filed on December 31, 2024, by Defendants, NORTH SHORE UNIVERSITY HOSPITAL d/b/a SYOSSET HOSPITAL, SYOSSET HOSPITAL, NORTHWELL HEALTH, INC. & NORTHWELL HEALTHCARE, INC. (“Northwell Defendants”)
- 2) extending Plaintiff’s time to complete discovery.
- 3) extending the deadline for filing of a Note of Issue so as to enable the completion of discovery; and

4) compelling Defendants, NORTH SHORE UNIVERSITY HOSPITAL d/b/a SYOSSET HOSPITAL, SYOSSET HOSPITAL, NORTHWELL HEALTH, INC. & NORTHWELL HEALTHCARE, INC. to comply with outstanding discovery & produce witnesses for deposition by a date certain.

Defendants oppose the motion.

BACKGROUND

This is an action sounding in medical malpractice concerning a 77-year-old female with uterine cancer who was undergoing chemotherapy treatment at Memorial Sloan Kettering Medical Center. Plaintiff has claims against Memorial Sloan Kettering Cancer Center, which are not at issue in this instant motion. As to the Northwell Defendants, this patient presented to Syosset Hospital on January 9, 2016, following a syncopal episode. The allegations against Syosset Hospital concern an alleged failure to notify her treating oncologist that she had a syncopal episode and/or a failure to administer proper prophylactic treatment. The Plaintiff's decedent was evaluated in the emergency department, where labs were drawn, and an EKG was done. The patient was monitored, vital signs repeated and discharged by emergency medical physician, Dr. Joseph Perrotta. in stable condition with instructions to return if symptoms returned. On November 30, 2016, Plaintiff's decedent died at Winthrop University now known as NYU Langone. The final diagnosis was recurrence of uterine cancer and respiratory failure and renal failure.

Plaintiff commenced this action by a filing of a Summons & Verified Complaint on July 3, 2018. The Northwell Defendants filed their Answers on October 10, 2018.

DISCUSSION

Plaintiff contends that discovery has stalled, and that Defendants have failed to cooperate in good faith to complete discovery. Plaintiff also specifies that while the pandemic initially slowed progress, discovery has not returned to its proper pace. The Plaintiff was deposed on February 3,

2022, and Defendants Dr. Ghosh and Dr. Troso-Sandoval were deposed shortly thereafter. However, and according to the Plaintiff, since then, Defendants have failed to produce any of their witnesses for deposition. Additionally, certain paper discovery is still needed. Pursuant to the Preliminary Conference Order filed on October 20, 2021, the defendants were to provide the hospital rules and regulations (specified in the addendum) and insurance information within 30 days, which Plaintiff contends have not been provided by the Defendants. Prior to bringing this motion, and on July 2, 2022, Plaintiff wrote to Defense Counsel to follow up on the outstanding insurance disclosures and the deposition of Decedent's treating physician at Syosset Hospital. Subsequently, on May 17, 2023, Plaintiff followed up to designate a witness for deposition and follow-up on the outstanding discovery.

Defendants assert they have fully cooperated with Plaintiff's discovery requests. In July 2022, after Plaintiff requested hospital records and the deposition of Dr. Joseph Perrotta, Defendants responded promptly via email. They informed the Plaintiff that Dr. Perrotta was no longer employed by the hospital but that his last known address would be provided. On July 8, 2022, Defendants emailed the Syosset Hospital records, and on July 20, 2022, they sent a letter confirming that Dr. Perrotta had not been employed since 2017 and providing his last known address.

The Court finds that Plaintiff has provided a reasonable excuse for delaying the prosecution of this matter. The Court also finds that upon reviewing the moving papers, the Plaintiff is now ready, willing, and able to proceed with discovery. Given the facts in this case, neither the Defendants' nor the Plaintiff's conduct is not willful, deliberate or contumacious and the extreme sanction of preclusion or dismissal is not warranted (*see generally Rubin v Pan Am. World*

Airways, Inc., 128 AD2d 765 [2d Dept 1987], citing *Bassett v Bando Sangsa Co.*, 103 AD2d 728 [1st Dept 1984]); *Dauria v New York*, 127 AD2d 459 [1st Dept 1987]).

Thus, it is hereby

ORDERED, that the Plaintiff's motion is granted to the extent of granting a brief extension of time to complete discovery; and it is further

ORDERED that in all other respects the Plaintiff's motion is denied; and it is further

ORDERED that the Plaintiff is directed to subpoena non-party witnesses within 90 days of the date of this Order; and it is further

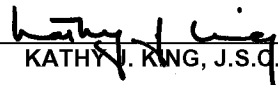
ORDERED that the Note of Issue is extended to February 6, 2026, and no further extensions will be granted; and it is further

ORDERED that the Defendants provide courtesy copies of the requested hospital records and the last known address of Dr. Perrotta via certified mail to the Plaintiff's counsel's last known address and email within ten (10) days of the date of this Order; and it is further

ORDERED that that Plaintiff serve a copy of this Order upon the Defendants within five (5) days of the date of this Order; and it is further

ORDERED that all parties are directed to appear for an in-person status conference on November 6, 2025, at 10am in Courtroom 351, 60 Centre Street, New York, NY 10007.

This constitutes the decision and Order of the Court.

<p>9/9/2025 DATE</p>	 KATHY J. KING, J.S.C.	
<p>CHECK ONE:</p>	<p><input type="checkbox"/> CASE DISPOSED</p> <p><input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED</p> <p>APPLICATION: <input type="checkbox"/> SETTLE ORDER</p> <p>CHECK IF APPROPRIATE: <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN</p>	<p><input checked="" type="checkbox"/> NON-FINAL DISPOSITION</p> <p><input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER</p> <p><input type="checkbox"/> SUBMIT ORDER</p> <p><input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE</p>