

Ruocco v Rawinis
2025 NY Slip Op 35410(U)
March 4, 2025
Supreme Court, Suffolk County
Docket Number: Index No. 204145/2022
Judge: Deanna D. Panico
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SHORT FORM ORDER

INDEX No: 204145/2022

Supreme Court of the State of New York
IAS Part 23 - County of Suffolk

PRESENT: Hon. Deanna D. Panico

CAROL RUOCCO and ANTHONY RUOCCO,

Plaintiffs,

- against-

IWONA RAWINIS, M.D., CARUSO, GORDON,
RABINOWITZ & RAWINIS, M.D., P.C., NYU
LANGONE AMBULATORY CARE BETHPAGE,
NYU LANGONE HEALTH SYSTEM, RONALD
WACHSBERG, M.D., SYED AKBAR, M.D.,
LISA KALIMI, M.D., and ZWANGER & PESIRI
RADIOLOGY GROUP, LLP

Defendants.

ORIG. RETURN DATE: 6/13/24

ADJOURNED DATE: 1/02/25

MOTION SEQ. NO.: 002- MG

Plaintiff's Attorneys:

Danzi Law Partners LLP

500 N. Broadway Suite 124

Jericho, New York 11753

Defendant's Attorneys:

Kerley Walsh Matera & Cinquemani, P.C.

Attys for Defendants - Iwona Rawins

MD, NYU Langone Ambulatory Care

Bethpage, NYU Langone Health System

2174 Jackson Ave

Seaford, New York 11783

Martyn Clearwater & Bell LLP

Attys for Defendants - Ronald Wachsberg

MD, Syed Akbar MD, Lisa Kalimi MD,

Zwanger & Persiri Radiology Group LLP

90 Merrick Avenue, Suite 401

East Meadow, New York 11554

Upon efiled documents numbered 35-49; it is

ORDERED that Plaintiffs' motion to amend the caption of the within action to substitute the decedent's estate Administrator in place of decedent Carol Ruocco and to amend their complaint to add a cause of action for wrongful death, is granted; and it is further

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ORDERED that the caption of the within action shall be amended as follows:

ANTHONY RUOCCO, as Administrator of the Estate
of CAROL RUOCCO, Deceased, and ANTHONY
RUOCCO, Individually,

Plaintiffs

-against-

IWONA RAWINIS, M.D., RONALD WACHSBERG, M.D.,
SYED AKBAR, M.D., LISA KALIMI, M.D., and
ZWANGER & PESIRI RADIOLOGY GROUP, LLP,

Defendants.

and it is further

ORDERED that movant shall serve a copy of the within order with CPLR§8019 (c) notice upon the Suffolk County Clerk within twenty (20) days of entry of this order; and it is further

ORDERED that upon receipt of a copy of this order with notice, that the Suffolk County Clerk shall amend the caption of this action as set forth above; and it is further

ORDERED that contemporaneously with service of such notice upon the Suffolk County Clerk or within ten (10) days thereafter, movants shall revise a copy of the pleading filed at NYSCEF #47, so that the document title reads "Amended Complaint," and shall file the amended complaint in NYSCEF; and it is further

ORDERED that upon such filing of the amended complaint, it shall be deemed served upon all parties presently participating in NYSCEF in this matter; and it is further

ORDERED that the parties are directed to appear for a compliance conference in this matter, in person, on **April 24, 2025 at 9:30 a.m.**, at 1 Court Street, Riverhead New York 11901, Room 148-A.

The within action seeks damages for injuries resulting from alleged medical malpractice in failing to diagnose and treat lung cancer, and related claims. Plaintiff Anthony Ruocco asserts derivative claims. Stipulations of discontinuance have been executed with respect to Defendants Caruso, Gordon, Rabinowitz & Rawinis M.D., P.C., NYU Langone Ambulatory Care Bethpage, and NYU Langone Health System. Issue has been joined as to the remaining Defendants. As a result of the death of Plaintiff Carol Ruocco on August 12, 2023, the within matter was stayed. Plaintiff Anthony Ruocco now seeks an order substituting himself in his capacity as Administrator of the

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Estate of Carol Ruocco, in place of Carol Ruocco, as plaintiff herein, amending the caption of the within action, and permitting amendment of the complaint to add a claim for wrongful death.

Limited Letters of Administration were issued to Plaintiff Anthony Ruocco by the Suffolk County Surrogate's Court on December 5, 2023. Such Letters confer upon Anthony Ruocco, the authority to prosecute and settle Carol Ruocco's wrongful death claim. Anthony Ruocco submits an affirmation in support of the within application. Movant has submitted a proposed amended complaint with his motion.

Counsel for Iwona Rawinis, M.D. has interposed partial opposition to the within motion. Such objection is based upon the characterization of certain facts, and is also based upon the inclusion of claims in the proposed amended complaint that are asserted against the three parties who were removed from this case by stipulations of discontinuance. In reply, movant submitted a "Proposed Second Amended Verified Complaint," which removes the parties for whom the claims were previously discontinued. Counsel for Defendants Ronald Wachsberg, M.D., Syed Akbar, M.D., Lisa Kalimi, M.D. and Zwanger & Pesiri Radiology Group, LLP also interposed opposition to Plaintiff's characterization of facts, but does not oppose amendment of the complaint.

CPLR §1021 provides, in part, "[a] motion for substitution may be made by the successors or representatives of a party or by any party. If a person who should be substituted does not appear voluntarily he may be made a party defendant." CPLR §1015(a) provides: "If a party dies and the claim for or against him is not thereby extinguished the court shall order substitution of the proper parties." It appearing that movant has properly obtained Letters of Administration, and there being no substantive objection to movant's request, the portion of movant's motion seeking substitution of the Administrator in place of the decedent in this action is granted. Movant also seeks to amend the complaint to add a cause of action for wrongful death.

Leave to amend pleadings should be freely granted absent surprise or prejudice (CPLR §3025[b]; *McCasky, Davies and Associates, Inc. v New York City Health & Hospitals Corp.*, 59 NY2d 755, 463 NYS2d 434 [1983]; *Rosicki, Rosicki & Assocs., P.C. v. Cochems*, 59 AD3d 512, 514, 873 NYS2d 184 [2d Dept. 2009]). In determining a motion seeking leave to amend a pleading, the court need not consider the merits or legal sufficiency of the proposed amendment unless it is palpably insufficient or patently devoid of merit on its face (*Rosicki, supra*; *Bank of Smithtown v. 219 Sagg Main, LLC*, 107 AD3d 654, 655, 968 NYS2d 95, 97 [2d Dept. 2013]; *Lucido v. Mancuso*, 49 AD3d 220, 227, 851 NYS2d 238 [2d Dept. 2008]; *Siddiqui v. Smith*, 207 AD3d 681, 682, 173 NYS3d 23, 24 [2d Dept. 2022]). "No evidentiary showing of merit is required under CPLR 3025(b)" (*Lucido v. Mancuso, supra*; *Siddiqui v. Smith, supra*), but a motion to amend should be denied when the lack of merit of the proposed amendment is clear and free from doubt (*Lucido v. Mancuso*, 49 AD3d 220, 851 NYS2d 238 [2d Dept. 2008]).

Here, there is no indication that the amendment of the complaint to remove the parties who have been discontinued against, or to add the wrongful death claim, would render the pleading palpably insufficient or patently devoid of merit. The portion of Plaintiff's motion seeking to amend the complaint is therefore, granted.

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The pleading that the court considers in making its determination is that which is filed at NYSCEF #47 and calls itself "Proposed Second Amended Verified Complaint." As no amended complaint has been previously interposed in this matter, except that which appears as an exhibit to the initial moving papers, Plaintiffs are directed to file their amended pleading with a change to the title of the document, as set forth above.

Dated: March 4, 2025
Riverhead, New York


DEANNA D. PANICO, J.S.C.

CHECK ONE: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION