

FILED

OCT 19 2020

RACHELLE L. HARZ
J.B.C.

Prepared by the Court

KRISTIN DEBENEDICTIS : SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: BERGEN COUNTY
: DOCKET NO. BER-L-28-19

-vs-

Civil Action

HEALTHPLUS SURGERY CENTER, :
LLC; JOHN DOES I-X :
(fictitious persons whose : **ORDER GRANTING LEAVE TO FILE**
true identities are : **AMENDED COMPLAINTS**
presently unknown); JANE :
DOES I-X (fictitious persons :
whose true identities are :
presently unknown); and XYZ :
Companies (fictitious :
entities whose true :
identities are presently :
unknown)

Defendants.

THIS MATTER, having been opened to the Court by Bendit Weinstock, P.A., counsel for Plaintiffs, upon Notice of Motion to Amend Complaints in the HealthPlus Multicounty Litigation, and the Court having reviewed the matter, and for good cause having been shown,

IT IS, on this 19th day of October, 2020,

ORDERED, that Plaintiffs' motion is GRANTED in accordance with the Decision attached hereto; and it is further

ORDERED, that the Master Long Form Complaint shall be filed within 30 days of the date of this Order; and it is further

ORDERED, that a copy of this Order shall be served upon all counsel of record via eCourts.



HONORABLE Rachelle L. Harz, J.S.C.

Opposed

Unopposed

KRISTIN DEBENEDICTIS

Plaintiff,

-vs-

HEALTHPLUS SURGERY CENTER,
LLC; JOHN DOES I-X (fictitious persons
whose true identities are presently
unknown); JANE DOES I-X (fictitious
persons whose true identities are presently
unknown); and XYZ Companies (fictitious
entities whose true identities are presently
unknown)

Defendants.

In re HealthPlus Surgery Center, LLC

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L-28-19

Civil Action

MASTER DOCKET NUMBER: BER-L-

DECISION

Before this court is plaintiff Kristin DeBenedictus' motion to amend her complaint. Opposition papers submitted on behalf of Defendant HealthPlus Surgery Center, LLC (hereinafter "HealthPlus") do not object to the proposed Amended Complaint insofar as it seeks to name additional defendants other than Yan Moshe, the owner of HealthPlus. The focus of the proposed amended pleading is to assert direct claims against Mr. Moshe under a corporate veil piercing theory, or alternatively, under a participation theory of liability.¹ HealthPlus argues that since the proposed Amended Complaint includes futile claims against Mr. Moshe, plaintiff's motion to amend the complaint should be denied.

¹ This court need not address the opposition submitted on behalf of Regina Lora, as Plaintiffs' counsel has agreed to delete her from the proposed Amended Complaint to be filed as the Master Complaint.

Plaintiff's counsel has filed this motion in the case of the DeBenedictis v. HealthPlus Surgery Center, LLC, Docket number BER- L-28- 19.

This case is one of multiple matters consolidated into a Multicounty Litigation ("MCL"), which contains persons allegedly exposed to certain bloodborne pathogens as a result of supposedly intentional, reckless, and/or negligent conduct of Defendants that caused lapses in infection control in sterilization and cleaning of instruments at the HealthPlus ambulatory surgery center between January 1, 2018 and September 7, 2018. There is also a related consolidated putative class action pending in the Federal Court for the District New Jersey under Civil Action Number 2:19-cv-00964 (WJM).

Before this Court is Plaintiff's Motion to Amend the Complaint. The Amended Complaint is to serve as a Master Long Form Complaint for all cases involved in this MCL, in re HealthPlus Surgery Center, LLC. This court considered all the submissions. For the reasons set forth below, the motion is **GRANTED**.

The proposed Amended Complaint that plaintiff seeks to file is almost identical to a similar proposed Amended Complaint submitted by plaintiffs' counsel for the putative class action in the Federal matter. On October 15, 2020 the Hon. Mark Falk, Chief U.S.M.J., entered an order granting plaintiffs' motion to amend its complaint.

This court's decision pertaining to this motion shall apply to the Master Complaint required to be filed in this MCL litigation.

I. The Motion to Amend

The Amended Complaint seeks to add eleven defendants, both individuals and corporate entities, as well as adding additional claims. Plaintiffs allege that these new defendants sought to be added were, *inter alia*, involved in an improper referral pattern, in which Yan Moshe and his sister, Defendant Regina Moshe, M.D. would refer patients from New York to the New Jersey based HealthPlus facility for wrongful, personal financial gain.

The Amended Complaint seeks to add additional counts to the complaint, for a total of eight counts:

1. Patient's claim for negligence against HealthPlus, the Medical Director, and Nursing Director Defendants;
2. Patient's claim for negligence against Yan Moshe as owner of HealthPlus;
3. Patient's claim for negligence against Citimedical NY, Citimedical NJ, Premier, Metro Pain, and Hudson Regional Hospital as related entities;
4. Patient's claim for direct negligence against Yan Moshe;
5. Patient's claim for negligence against MRK Defendants;
6. Patient's claim for negligent referral against Regina Moshe, M.D. and Citimedical NY;
7. Patient's claim for negligence against the Anesthesiologist Defendants; and
8. Per Quod claim on behalf of the plaintiff's spouse.

II. Legal Standard

Amendments to pleadings are governed by R 4:9-1, which provides: “[a] party may amend a pleading only by written consent of the adverse party or by leave of court which shall be freely given in the interest of justice. A motion for leave to amend shall be have annexed thereto a copy of the proposed amended pleading.” Such amendments shall be liberally granted without consideration of the ultimate merits of the amendment. Notte v. Merchants Mutual Insurance Co., 185 N.J. 490, 500-501 (2006). However, “the discretion to deny a motion is not mistakenly exercised when it is clear that the amendment is so meritless that a motion to dismiss under Rule 4:6-2 would have to be granted, the so-called futility prong of the analysis.” See Pressler & Veniero, Current N.J. Court Rules, cmt. 2.2.1 to R. 4:9-1 (GANN 2020) (citing Notte, 185 N.J. at 501).

When considering whether a motion to dismiss under Rule 4:6-2(e) should be granted, courts, treating all allegations as true, must determine whether there is no basis upon which relief may be granted. See, e.g., Geyer v. Fajella, 279 N.J. Super. 386, 392-93 (1995).

III. Analysis

The Proposed Amended Complaint contains a detailed and comprehensive set of factual allegations that could impose liability against Yan Moshe, individually. Viewing all the factual allegations as true, the Amended Complaint states that Mr. Moshe controlled and dominated the operations of HealthPlus. Such allegations could support the theory of piercing the corporate veil, which is a fact question. Verni ex rel. Burnstein v. Harry M. Stevens, Inc., 387 N.J. Super. 160, 199 (App. Div. 2006). These allegations could also potentially support Plaintiffs’ alleged participation theory for imposing liability against Mr. Moshe, individually. By piercing the corporate veil, or finding a participation theory, Plaintiffs can seek recovery against Mr. Moshe in his individual capacity.

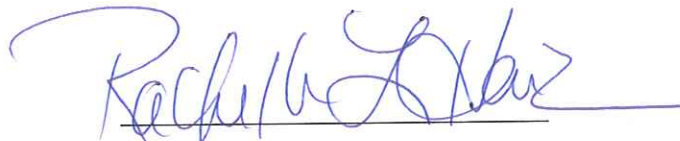
At this stage of the litigation, it is not within this court’s purview to assess the validity of the factual allegations. The parties to this matter must conduct discovery before any factual findings can be made. Defendant Moshe’s opposition to this motion focuses almost exclusively on attempting to disprove the factual allegations in the Proposed Amended Complaint. Absent discovery and an opportunity for Plaintiffs to develop support for the factual allegations, this court cannot rely on the assertions of Defendant Moshe that the Amended Complaint’s factual allegations are false.

IV. Conclusion

Based on the foregoing Plaintiffs’ Motion to Amend the Complaint is GRANTED. The Master Complaint shall be filed on eCourts as a new initiating document to be assigned a Master Docket Number.

V. Miscellaneous

As discussed during the October 14th, 2020 Case Management Conference, the next Case Management Conference in this matter will be conducted via Zoom, which will be coordinated by this Court, on December 12th, 2020 at 10:00 a.m.



Hon. Rachelle L. Harz, J.S.C.

10/19/2020