

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

ARLENE KUSHNER and	:	
MARK KUSHNER, w/h	:	
Plaintiffs	:	
vs.	:	October Term, 2013
	:	
MARC A. NEFF, M.D.,	:	No. 2505
ALIA ABDULLA, D.O.,	:	
ASSOCIATES IN GENERAL SURGERY;	:	
DIVISION OF SURGICAL SPECIALISTS OF	:	
NEW JERSEY, LLC,	:	
SURGICAL SPECIALISTS OF NEW	:	
JERSEY, LLC,	:	
KENNEDY UNIVERSITY	:	
HOSPITAL-STRATFORD, and	:	
KENNEDY HEALTH SYSTEMS, INC.	:	
Defendants	:	

ORDER

And Now, this 11th day of April, 2014, after considering the Preliminary Objections filed by Kennedy University Hospital, Inc. and the Responses thereto, and the Supplemental Memoranda filed by the parties, and, for the reasons set forth in Court Exhibit "A" attached hereto, it is hereby **ORDERED** that the Preliminary Objections are **OVERRULED** and Defendants Kennedy University Hospital-Stratford and Kennedy Health Systems, Inc. shall file an Answer to Plaintiff-Kushners' Amended Complaint within twenty (20) days from the date this Order is docketed.

BY THE COURT:



 FREDERICA A. MASSIAH-JACKSON, J.

Kushner Etal Vs Neff Et-ORDER



Court Exhibit "A"

I. INTRODUCTION

Arlene Kushner, a New Jersey resident, age 57, underwent a laparoscopic weight loss procedure in December, 2011. Surgery was performed at Kennedy University Hospital in Camden County, New Jersey by Marc A. Neff, M.D. and Alia Abdulla, D.O.

As a result of serious and permanent injuries sustained, Mrs. Kushner and her husband, Mark Kushner, initiated this medical malpractice litigation in the Philadelphia Court of Common Pleas. Kennedy University Hospital, Inc. filed Preliminary Objections challenging jurisdiction and venue.

The parties were permitted to engage in limited discovery. Supplemental Memoranda were filed on March 4, 2014. After careful consideration of the circumstances present herein, this Court concludes that the Defendants' Preliminary Objections (Control No. 13121516) are **OVERRULED** and Defendants Kennedy University Hospital-Stratford and Kennedy Health Systems, Inc. shall file an Answer to Plaintiff-Kushners' Amended Complaint within twenty (20) days from the date this Order is docketed.

II. LEGAL DISCUSSION

When Preliminary Objections, if sustained, will result in the dismissal of an action, this Court is permitted to sustain only in the clearest of cases. Haas v. Four Seasons Campground, Inc., 952 A.2d 668 (Pa. Superior Ct. 2008); GMAC v. Keller, 737 A.2d 279 (Pa. Superior Ct. 1999).

Once a proper jurisdictional objection is raised, the Plaintiffs must establish that the exercise of jurisdiction is permissible. Temtex Products, Inc. v. Kramer, 479 A.2d 500 (Pa. Superior Ct. 1984).

A. Kennedy University Hospital, Inc. - Jurisdiction

42 Pa. C.S.A. §5301(a)(2) provides the factors which constitute sufficient basis for jurisdiction for a corporation such as Kennedy University Hospital, Inc.:

- a. Incorporation under laws of Pennsylvania.
- b. Consent to jurisdiction.
- c. Continuous and systematic business in Pennsylvania.

This Court is unable to conclude that the record is so clear that the Amended Complaint should be dismissed. These Plaintiffs have established that the exercise of jurisdiction is permissible.

In Mendel v. Williams, M.D., 53 A.3d 810 (Pa. Superior Ct. 2012), the Appellate Court commented that general jurisdiction for a corporation includes consideration of the course of conduct and circumstances from which it is proper to infer an intention to benefit from the forum state [Pennsylvania]. Plaintiffs' Supplemental Memorandum, pages 11-12, provides a detailed overview of the record here:

“Kennedy actively sought out and cemented an integrative relationship with Philadelphia-based Penn Cancer Network, traveling to Philadelphia to do so (Koss Depo. at 39, 40, Exhibit “A”);

By written agreement, the Abramson Cancer Center in Philadelphia is ‘an extension of’ Kennedy in the delivery of cancer care (Cancer Network Agreement Sec. 5.4, p. 2, Exhibit “D”);

The Clinical Practices of the University of Pennsylvania is the exclusive provider of physician services at Kennedy's Cancer Center (Radiation Oncology Services Agreement at p. 1, Exhibit "E");

Through its membership in the Jefferson Neuroscience Network, neurologists and neurosurgeons at Jefferson in Philadelphia have a virtual presence Kennedy hospitals that enables them to evaluate and consult with Kennedy patients remotely (Jefferson Neuroscience Network Agreement, Exhibit "F"; Koss Depo. at 45-46);"

Kennedy's agreement with Jefferson University physicians enables Kennedy to provide comprehensive stroke care to its patients (Coverage Services Agreement, Exhibit "G");

Jefferson Hospital in Philadelphia and JEFFSTAT in Philadelphia both coordinate and fulfill Kennedy's emergency patient transport needs (Transfer Center and Medical Transport Services Agreement, Exhibit "H");

Jefferson Hospital in Philadelphia fulfills Kennedy's emergency department's needs for oral surgeons (Service Agreement, Exhibit "I");

Orthopedic surgeons from the Rothman Institute in Philadelphia perform surgery on Kennedy patients at Kennedy Washington Township Hospital (Koss Depo. at 48);

By virtue of its annual Galas, Kennedy comes to Philadelphia to raise substantial amounts of money that allow it to fulfill its central missions of providing patient care and treatment (Koss Depo. at 52-54; Gala Announcements, Exhibit "J" and "K");

Kennedy has an extremely high visibility billboard in Philadelphia that captures Pennsylvania and Philadelphia residents' awareness and encourages them to seek services at Kennedy (Photo of billboard, Exhibit "L", Koss Depo. at 27);

Kennedy's advertising agency is in Philadelphia (Koss Depo. at 20-21);

Kennedy uses a Pennsylvania financial planning firm to manage its employee retirement plan (Koss Depo. at 55-56);

Kennedy Health care facilities provide medical treatment to Pennsylvania residents;

Kennedy corresponds with its Pennsylvania resident patients in Pennsylvania;

Kennedy has a contract with Independence Blue Cross in Philadelphia determining the rates for various types of care (Koss Depo. at 17).”

It is true that any one of these contacts alone would not be sufficient to meet the burden to establish jurisdiction. In this case, the breadth and depth of ongoing financial, contractual, fundraising and professional services which form the basis for Kennedy to expand its care and mission is continuous and systematic in Pennsylvania. Kennedy’s business and contracts in this forum are not random, fortuitous nor attenuated. Rather, this Hospital purposefully directed its activities to this forum and purposefully avails itself to Philadelphia’s stellar medical and university privileges and benefits. Thus, this Defendant should also be subject to this forum state’s laws and regulations. e.g. Sulkava v. Glaston Finland Oy, 54 A.3d 884, 890 (Pa. Superior Ct. 2012).

B. Kennedy University Hospital, Inc. - Venue

Rule 1006(c)(1) states in pertinent part:

“(c)(1) Except as otherwise provided by paragraph (2), an action to enforce a joint or joint and several liability against two or more defendants, except actions in which the Commonwealth is a party defendant, may be brought against all defendants in any county in which the venue may be laid against any one of the defendants under the general rule of subdivision (a) or (b).”

It is undisputed that venue is permissible for co-defendant Alia Abdulla, D.O. in Philadelphia, Pennsylvania. Dr. Abdulla's related Motion to Dismiss Pursuant to 42 Pa. C.S. §5522(e) acknowledges that jurisdiction and venue exist in Pennsylvania (Control No. 14011022). Accordingly, the Kennedy challenge to venue is without merit.

III. CONCLUSION

For the reasons set forth above, the Preliminary Objections filed by Kennedy University Hospital, Inc. are **OVERRULED**. Defendants Kennedy University Hospital-Stratford and Kennedy Health Systems, Inc. shall file an Answer to Plaintiff-Kushners' Amended Complaint within twenty (20) days from the date this Order is docketed.

BY THE COURT:


FREDERICA A. MASSIAH-JACKSON, J.