IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *John Doe v. Edgewood Holdings (2013) Ltd.,* 2025 BCSC 972

Date: 20250528
Docket: S219922
Registry: Vancouver

Between:

John Doe

Plaintiff

And

Edgewood Holdings (2013) Ltd., Dr. Gary Richardson, Dr. Mel Vincent, and Estate of J.B.

Defendants

Before: Associate Judge Bilawich

Reasons for Judgment

Counsel for the Plaintiff:	S.L. Kovacs
Counsel for the Defendants Dr. Gary Richardson and Dr. Mel Vincent:	D. Pilley
No other appearances.	
Place and Date of Hearing:	Vancouver, B.C. April 11, 2025
Place and Date of Judgment:	Vancouver, B.C. May 28, 2025

Introduction

[1] The plaintiff applies for leave to file a third amended notice of civil claim, in the form attached to his application filed February 13, 2025, as well as leave to file a “clean” version of the newly amended pleading (i.e. without changes tracked).

[2] The defendants Dr. Richardson and Dr. Vincent (collectively, the "Physician Defendants") oppose the amendments which raise a new allegation that they failed to obtain the plaintiff's informed consent for admission to the defendant Edgewood's rehabilitation facility. They take no position regarding the balance of the amendments.

Background

[3] The plaintiff, who has been anonymized as "John Doe", is a US resident who was admitted to the defendant Edgewood's private addiction rehabilitation facility in Nanaimo, BC from October 11 to December 7, 2016, after an intervention organized by his then-spouse. His stay at the facility lasted 58 days and cost US$28,000, paid by his parents.

[4] His existing claim is framed as being for negligent admission, breach of fiduciary duty and false imprisonment. He pleads that the defendants were fiduciaries *vis à vis* him. He says Edgewood accepted him for admission to its inpatient program without any independent diagnosis of substance use disorder by a qualified medical doctor and/or without any adequate assessment of his medical conditions by its medical director and on-site physician, Dr. Richardson, or its director of psychiatry, Dr. Vincent. Alternatively, when Dr. Richardson and/or Dr. Vincent assessed him after his arrival, they were in a conflict of interest, in breach of the requisite standard of care and in breach of their fiduciary duties by misdiagnosing him and/or recommending him for inpatient treatment. He says his admission was not voluntary, in that it was procured through misdiagnoses, psychological pressure and coercion, including but not limited to "false" statements to the effect that he suffered from alcohol use disorder and a process (gaming) addiction, both of which were misdiagnoses and comments that he was "the worst of the worst", that he was delusional because he denied suffering from alcohol use disorder and that if he left the facility, he had nowhere to go because his wife had already consulted a divorce attorney. He says his cash, passport and telephone were seized when he arrived. He characterizes his admission to Edgewood's facility as unlawful confinement.

[5] Further, the plaintiff says that during his stay, his assigned roommate / fellow patient, J.B., committed multiple acts of sexual assault and battery upon him. He claims that Edgewood and the Physician Defendants are jointly and

severally liable for the harms caused by the assaults and batteries, by reason of their own direct negligence. He also pleads that the running of the applicable limitation periods related to his claims were postponed due to the psychological sequelae arising from the sexual assaults and batteries.

[6] The defendants deny all of the plaintiff's claims.

Controversial Proposed Amendments

[7] The controversial proposed "informed consent" amendments are set out in bold text below, in Part 1 [Statement of Facts]:

> 15. Particulars of the Defendant Physicians' breach of the standard of care causing the Negligent Admission, presently known, include:
>
> (a) Failing to exercise the level of care and skill to be expected of a reasonably skilled physician of similar training and background in the provision of all relevant medical care and treatment to the plaintiff if the circumstances;
>
> (b) Failing to consider or adequately consider all available information, including the plaintiff's medical history, self-report, psychological testing, and/or his absence of withdrawal symptoms, in assessing whether the plaintiff suffered from a *bona fide* alcohol use and/or gaming disorder;
>
> (c) Failing to consider or adequately consider all available information, including the plaintiff's medical history, self-report, psychological testing, and/or his absence of withdrawal symptoms, in assessing the severity of any assessed ~~disease~~ alcohol use disorder, before recommending inpatient residential treatment to the plaintiff;
>
> (d) Erroneously diagnosing alcohol use disorder or, alternatively, failing to diagnose the severity of the plaintiff's alcohol use disorder;
>
> **(e) Failing to determine the appropriate level of care for the plaintiff, considering his needs, obstacles, and liabilities, as well as his strengths, assets, resources, and support structure, before recommending inpatient residential care;**
>
> **(f) Failing to recommend outpatient care, which was available and more appropriate for the plaintiff's alcohol use concerns;**
>
> **(g) Failing to inform the plaintiff of the risks, benefits, and/or alternatives to inpatient residential rehabilitation care;**
>
> **(h) Failing to give the plaintiff any or any adequate information about the severity of his diagnosis, and the alternative level of care options available, depriving him of the ability to make an informed choice;**
>
> (i) Failing to assess the plaintiff adequately or at all during the course of his inpatient Admission to Edgewood, in order to verify

diagnoses and the necessity of inpatient residential treatment for 58 days;

(j) Failing to diagnose a depressive disorder;

(k) Erroneously diagnosing a “gaming addiction”; and

(l) Such further and other particulars as may become known.

[8] And at para. 20 of Part 1:

20. The doctor-patient relationship is one of trust and confidence. The Defendant Physicians had discretionary power over the medical interests of the plaintiff, they had the ability to unilaterally exercise that power and discretion so as to affect the plaintiff’s interests, and the plaintiff was particularly vulnerable to, or at the mercy of, the Defendant Physicians exercise of the power and discretion. As such, the Defendant Physicians each had a duty to act with the utmost loyalty and good faith. The Defendant Physicians breached their fiduciary duty owed to the plaintiff, the particulars of which, presently known, include:

(a) ~~15. In the further alternative, when Dr. Gary Richardson and/or Dr. Mel Vincent assessed the plaintiff following his arrival at Edgewood, they were~~ Acting in a conflict of interest~~, in breach of the requisite standard of care, and in breach of their fiduciary duties in~~ and misdiagnosing the plaintiff and/or recommending him for inpatient treatment at Edgewood, when they stood to indirectly or directly gain financially from his Admission.

(b) ~~31(h)~~ Submitting to express or implied direction from or coercion by Edgewood to recommend admission of fully-funded patients to Edgewood’s for-profit inpatient treatment facility and its aftercare program, no matter the specific diagnosis or severity of disorder, prioritizing the financial interests of Edgewood – their contracting client – over the best interest of the vulnerable plaintiff; and

(c) **Failing to give the plaintiff any or any adequate information about the severity of his diagnosis, and the alternative level of care options available to him, depriving him of his dignity as a competent patient to make an informed choice, for the benefit of Edgewood, who would fill an empty bed and receive a per diem payment from the plaintiff’s guarantor, his father;** and

(d) ~~30(j~~ Such further and other particulars as may become known.

History of Proceedings

[9] On December 21, 2020, the plaintiff filed his notice of civil claim. This was more than four years after his stay at Edgewood’s facility came to an end.

[10] On January 27, 2021, the defendants initially filed a joint response to civil claim denying the claims. They did not have legal counsel of record acting for them.

[11] On March 25, 2021, by consent, the Physician Defendants filed a “new” response to civil claim. One of the positions taken (without limitation) was that the plaintiff’s claims were barred by virtue of the *Limitation Act*, S.B.C. 2012, c. 13.

[12] On April 20, 2021, the plaintiff filed a reply, asserting an exemption and/or a postponement of the running of the time under ss. 3(j) and 8 of the *Limitation Act*.

[13] On May 31, 2021, Edgewood filed an amended response to civil claim. Amongst other things, it also added a limitation defence.

[14] On October 21, 2021, the plaintiff filed an “amended notice of civil claim”. On December 7, 2021, he filed a “further amended notice of civil claim”.

[15] On September 28, 2022, Dr. Vincent was examined for discovery. Plaintiff’s counsel questioned him about the American Society of Addiction Medicine’s (“ASAM”) admission criteria, which address level of care options based on the severity of substance use disorders, availability of outpatient treatment for the plaintiff and voluntariness of his admission to Edgewood, all without objection.

[16] On October 26, 2022, Dr. Richardson was examined for discovery. He too was questioned regarding ASAM criteria, without objection.

[17] The plaintiff was examined for discovery on three dates: October 27, 2022, March 22, 2023 and December 21, 2023.

[18] On November 27, 2023, plaintiff’s counsel obtained an expert report from Dr. Shaohua Lu, an Addiction and Forensic Psychologist. In his report, he refers to the ASAM treatment continuum and highlights the importance of matching the level of care to the patient’s overall treatment requirements. He opines that the plaintiff did not require more than an outpatient level of care and was critical of how the Physician Defendants assessed him and their failure to diagnose that he was suffering from depression.

[19] On February 15, 2024, the plaintiff filed an application for leave to amend his “further amended notice of civil claim”. On March 1, 2024, he filed a new version of the application. On December 16, 2024, the application was heard by Associate Judge Harper. On February 5, 2025, she issued reasons, indexed as *John Doe v. Edgewood Holdings (2013) Ltd.*, 2025 BCSC 185. She concluded that

the proposed amendment did not set out material facts necessary to support a claim based on lack of informed consent as against any of the defendants. She was not able to analyze the proposed amendments and could not determine whether the relevant limitation period had expired without a proper pleading. She granted plaintiff counsel's request that they be permitted to re-draft the proposed amendments to address the shortcomings.

[20] On February 13, 2025, the plaintiff filed the present application. The trial is scheduled for July 6, 2026 for 15 days.

Applicable Law

[21] Rule 6-1(1)(b) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, ("*SCCR*") provides that after a notice of trial has been filed, a party may only amend a pleading with leave of the court or with written consent of the parties.

[22] Evidence is not required on an application to amend a pleading. The facts alleged in the pleading are assumed to be true. The court can consider evidence which bears on an allegation that the amendment will give rise to prejudice or constitute an abuse of process, but not to address the substance of the claims: See *W.O.M. Mastercraft Construction Ltd. v. TFN Meadows Development Limited Partnership*, 2020 BCSC 1345 at para. 10.

[23] In *Thomas v. Rio Tinto Alcan Inc.*, 2019 BCSC 107 at para. 18, the court summarized the principles applicable to applications to amend pleadings:

> THE TEST FOR AMENDING PLEADINGS
>
> 18 Some of the basic principles governing applications for leave to amend pleadings have been summarized in *Continental Steel Ltd. v. CTL Steel Ltd.*, 2014 BCSC 104 at para. 26 and in *British Columbia (Director of Civil Forfeiture) v. Violette*, 2015 BCSC 1372 at para. 41 [citations deleted]:
>
> > 1. The court has a wide discretion to permit amendments so as to enable the real issues between the parties to be determined;
> >
> > 2. The discretion to permit amendments is unfettered, subject only to the general rule that it be exercised judicially;
> >
> > 3. The overriding consideration is the interests of justice generally and to direct what is just and convenient between the parties;
> >
> > 4. While useless amendments that do not advance a reasonable cause of action or defence are to be avoided, justice is generally best served by permitting amendments that will allow the real controversy between the parties to be decided on the merits;

> 5. Amendments may not be allowed if they will cause actual and meaningful prejudice to the opposing party -- mere potential prejudice is insufficient. Rather the party resisting an amendment must prove actual and significant prejudice;
>
> 6. Additional considerations include any delays in applying for the amendment, the reasons for such delay and whether deliberate or voluntarily dilatory conduct is involved, particularly when a new cause of action is proposed to be added that would otherwise preclude the operations of a limitation defence;
>
> 7. Costs are the general means of protecting against prejudice unless it would be a wholly inadequate remedy; and
>
> 8. Courts should only disallow an amendment as a last resort.

[24] When considering whether to allow an amendment in circumstances where there is or may be a limitation issue, the relevant factors are summarized in *Eastern Platinum Limited v. Cameron*, 2020 BCSC 1353 at paras. 37-38:

> [37] With respect to the issue of a potentially expiring limitation period on an application to amend pleadings, the first question to be addressed is whether the proposed amendments raise a new cause of action: *Swiss* at para. 21, and *Taylor v. Blenz The Canadian Coffee Company Ltd.*, 2019 BCSC 906 at para. 35. If the amendments do not raise a new cause of action, there will be no issue as to the potential expiry of a limitation period. If they do raise a new cause of action, and it is possible that the limitation period applicable to the new cause of action has expired, the court should determine whether it is just and convenient to allow the amendments assuming that the limitation period has expired: *KPMG Inc. v. IMO Industries (Canada) Inc.*, 2008 BCCA 317 at paras. 47–49; *Blenz* at para. 37.
>
> [38] Where there is a dispute whether a limitation period has expired or where it is inappropriate to decide that issue summarily, an amendment may be allowed without prejudice to the defendant raising the limitation defence at trial: *The Owners, Strata Plan No. VIS3578 v. John A. Neilson Architects Inc.*, 2010 BCCA 329 at paras. 46–48; *KPMG* at paras. 47–49.

[25] The factors were also summarized in *Teal Cedar Products (1977) Ltd. v. Dale Intermediaries Ltd.*, [1996] B.C.J. No. 234, 19 B.C.L.R. (3d) 282, 1996 CanLII 3033 (C.A.) [*Teal*] at para. 67:

> 67 In the exercise of a judge's discretion, the length of delay, the reasons for delay and the expiry of the limitation period are all factors to be considered, but none of those factors should be considered in isolation. Regard must also be had for the presence or absence of prejudice, and the extent of the connection, if any, between the existing claims and the proposed new cause of action. Nor do I think that a plaintiff's explanation for delay must necessarily exculpate him from all "fault" or "culpability" before the court may exercise its discretion in his favour. This case is a good example. The plaintiff sought legal advice and accepted a lawyer's opinion to the effect that it did not have a claim against insurers under the

> policy. The lawyer was subsequently persuaded that his initial opinion was unduly pessimistic and that there was at least some prospect of success in advancing such a claim. Unfortunately, the limitation period had passed.

Analysis

[26] The plaintiff argues that lack of informed consent is not really a new cause of action, rather, he simply seeks to clarify existing claims. His current pleading includes allegations that the Physician Defendants were negligent in terms of their diagnosis of alcohol use disorder and their recommendation that residential treatment at Edgewood's facility was appropriate for the plaintiff. The Physician Defendants disagree and say the new informed consent allegations are materially different than and inconsistent with the existing allegations.

[27] I agree that the new informed consent allegations do represent a materially different focus for the plaintiff's allegations of negligence against the Physician Defendants. Lack of informed consent is a form of negligence claim which is based on a physician's duty to advise a patient by providing them information about risks, benefits and alternatives to a course of treatment. For the plaintiff to succeed in a claim that there was no informed consent, they must establish three elements [paraphrasing *Liu v. Cho*, 2019 BCSC 109 at para. 81]:

a) The plaintiff was not fully informed of the nature of any material risk of the treatment and any special or unusual risks attendant on it;

b) A reasonable person in the plaintiff's position, properly informed, would not have proceeded with the treatment; and

c) An undisclosed material or special or unusual risk actually materialized and caused the plaintiff damage.

[28] There do appear to be some general similarities to the current negligence allegations, such as the Physician Defendants allegedly advising the plaintiff that he had an alcohol use disorder and recommending him for residential treatment. There are already allegations regarding various false statements were made to him. The new allegations appear to have at least a basic level of connection to the current allegations, in that they also focus on inaccurate information and advice being provided to the plaintiff.

[29] The defendants have already raised a limitation defence to the claim generally, saying the applicable limitation period for all of the claims had expired

before he started the action. The plaintiff pleads an exemption and/or postponement of the relevant limitation periods. In the proposed "second further amended notice of civil claim", he expands on the existing plea, at Part 3, para. 48 (amendment is underlined):

> 48. With regard to his claims for false imprisonment, breach of fiduciary duty, and negligence, the plaintiff pleads a postponement of the running of the applicable limitation period arising due to the psychological sequelae of having suffered the Sexual Assaults and Batteries.

[30] The plaintiff has also filed a reply to the Physician Defendants' second response to civil claim, expressly asserting entitlement to an exemption and/or a postponement of the running of time of the applicable limitation period, referring to s. 3(1)(i), (j) and (k), 8, 11 and 19 of the *Limitation Act*. The exemption is based on the claims relating to the alleged sexual assault and batteries. The postponement is based on alleged discoverability issues and/or the plaintiff being a person under disability, due to the psychological sequelae caused by the alleged sexual assaults and batteries, and/or the injuries he suffered from that being "indivisible" from the injuries he suffered as a result of the alleged negligence, breach of fiduciary duty and false imprisonment-based claims.

[31] Section 3 of the *Limitation Act* addresses exempted claims:

> **Exempted claims**
>
> 3 (1) This Act does not apply to the following:
>
> …
>
> (i) a claim relating to misconduct of a sexual nature, including, without limitation, sexual assault,
>
> (i)if the misconduct occurred while the claimant was a minor, and
>
> (ii)whether or not the claimant's right to bring the court proceeding was at any time governed by a limitation period;
>
> (j) a claim relating to sexual assault, whether or not the claimant's right to bring the court proceeding was at any time governed by a limitation period;
>
> (k) a claim relating to assault or battery, whether or not the claimant's right to bring the court proceeding was at any time governed by a limitation period, if the assault or battery occurred while the claimant
>
> (i) was a minor, or
>
> (ii) was living in an intimate and personal relationship with, or was in a relationship of financial, emotional, physical or other dependency with, a person who performed,

> contributed to, consented to or acquiesced in the assault or battery;

[32] The Physician Defendants argue that any alleged lack of informed consent is not captured by this exemption. The plaintiff alleges he was assaulted by another patient in the weeks after the Physician Defendants assessed him. They say lack of informed consent cannot be considered as "relating to conduct of a sexual nature" or "a claim relating to a sexual assault". Counsel relied on *Khan v. School District No. 39*, 2021 BCSC 49 at paras. 14-15, in which the court drew distinctions between conduct which could and could not be considered as being related to assault or battery under s. 3(k) of the *Limitation Act*. I agree that it is not at all clear how the proposed informed consent allegations relate to the sexual assault and battery allegations.

[33] Section 8 addresses general discovery rules:

> **General discovery rules**
>
> 8 Except for those special situations referred to in sections 9 to 11, a claim is discovered by a person on the first day on which the person knew or reasonably ought to have known all of the following:
>
> (a) that injury, loss or damage had occurred;
>
> (b) that the injury, loss or damage was caused by or contributed to by an act or omission;
>
> (c) that the act or omission was that of the person against whom the claim is or may be made;
>
> (d) that, having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage.

[34] Sections 11 and 19 address special situations for persons under disability:

> **Special situations for persons under disability**
>
> 11 For a claim of a person under a disability, the discovery rules set out in section 19 apply.
>
> …
>
> **Discovery rule for persons under disability**
>
> 19 A claim of a person under a disability is discovered,
>
> (a) unless a notice to proceed is delivered under paragraph (b) before the person ceases to be a person under a disability, on the later of the following:
>
> (i) the day on which the person ceases to be a person under a disability;

> (ii) the day on which the claim is discovered under section 8, 12, 13, 14, 15, 16 or 17, as the case may be, or
>
> (b) on the day on which a notice to proceed that complies with the requirements of section 20 (2) and any requirements prescribed under section 20 (5) is delivered in accordance with section 20 (1) and with any requirements prescribed under section 20 (5).

[35] The plaintiff argues that he is a person under disability. Dr. Lu has provided a report in which he diagnoses the plaintiff as suffering from Post Traumatic Stress Disorder ("PTSD") related to the sexual assaults and batteries, and that he suffers from major depression. Dr. Lu opines that PTSD, avoidance behaviours and the implication of guilt and shame played mutually aggravating roles in affecting the plaintiff's efforts to seek a remedy. Many PTSD patients do not seek treatment until years or even decades after the critical trauma, especially sexual assault patients. Counsel says there can be no presumed prejudice where a limitation period has been postponed, relying on *J.P. v. Sinclair*, [1997] B.C.J. No. 1327, 1997 CanLII 12500 (C.A.) at para. 7.

[36] I was not directed to any authorities in which the court had accepted that a person suffering these or similar conditions was found to be a "person under disability" for purposes of sections 11 and 19 of *Limitation Act*. At this stage, this is simply an arguable point. On the material before me, I am not able to make a definitive determination regarding whether the limitation period relating to the plaintiff's new "informed consent" claims has expired, or whether it may have been postponed due to the plaintiff being a person under disability due to PTSD and depression. Those issues will have to be determined at trial.

[37] Even if the plaintiff is found to be a person under disability, PTSD only explains delay up to December 21, 2020, the date on which this action was started. It does not explain the plaintiff's failure to include the informed consent allegations initially, or the subsequent delay in making amendments to add them.

[38] Plaintiff's counsel "falls on her sword" on this issue, saying it was only after the last examination discovery of the plaintiff was completed on December 21, 2023 that she reviewed the status of the pleadings and she first appreciated the need to clarify the informed consent issues. On that same day, she circulated proposed amendments and asked the defendants to consent to them being filed. That eventually led to the initial application before Harper A.J., later followed by

the present one. Counsel argues that the post-December 21, 2020 delay can be characterized as honest but mistaken judgment on the part of counsel, for which the plaintiff should not be punished. She refers to *Teal* at paras. 62-63:

> 62 In any event, in my view, the plaintiff in this case did provide a satisfactory explanation for the delay in seeking to amend. Its solicitor's affidavit sets out how he came to give the advice not to sue on the contract and how he subsequently came to alter his views in that regard. I am unable to understand why a plaintiff who considered advancing a cause of action but decided upon legal advice against doing so should be in a worse position than a plaintiff who never (or whose solicitor never) turned his mind to the question. A decision not to sue or to claim may be "deliberate" in the sense of being intentional. But not all such decisions are the result of fault or culpability. Some are the result of honest but mistaken judgment. In deciding whether it is in the interests of justice to allow an amendment under s. 4(4) after the limitation period has gone by, I do not think a party should be punished for having obtained advice that may have been mistaken. To say that s. 4 of the Limitation Act does not "authorize the luxury of a change of mind", as Locke J.A. did in *Bank of Montreal v. Ricketts* (at 110), is to suggest that first decisions must always be correct and that thoughtful reconsideration is never necessary or permitted. With respect, I do not agree.
>
> 63 It is also, in my view, potentially misleading to characterize a deliberate decision not to make a certain allegation (or to name a certain defendant) as "voluntary dilatory behaviour". One of the meanings of "dilatory" is "made for the purpose of gaining time". An honest but mistaken decision not sue, or to allege a certain cause of action within a limitation period, is unlikely to be made for the purposes of gaining time. If dilatory is taken to mean only "characterized by delay; slow, or tardy", then it would in my view be preferable to express that meaning without ambiguity.

[39] I agree that there has been significant post-December 21, 2020 delay in bringing the informed consent amendments forward. Much of that appears to be attributable to counsel. Some of the delay after December 21, 2023 is attributable to the need to arrange a mutually convenient long chambers date for the first application, at which the draft pleadings were found to be inadequate. The current application with new draft amendments was filed shortly after Harper A.J. released her reasons.

[40] The Physician Defendants say they will suffer actual prejudice if the amendments are allowed because they have prepared their case on the basis that the plaintiff’s claim rests on misdiagnosis and breach of fiduciary duty. They also say prejudice is presumed when the limitation period has expired. I accept that if the informed consent amendments are allowed, this will require the Physician

Defendants to further develop their case. I am not persuaded that this would be unduly prejudicial, considering that trial is just over a year away.

[41] Considering all of the foregoing, I have decided to exercise my discretion to grant the plaintiff leave to make the new “informed consent” amendments. This is without prejudice to the Physician Defendants and Edgewood’s ability to also raise a limitation defence to the informed consent claims at trial.

[42] As noted, the current pleadings already raise numerous limitation issues, including exemption, postponement and expiry. All of these are going to be addressed at trial in any event. The informed consent amendments are likely to involve essentially the same limitation issues. It is in the interests of justice that all of the limitation-related issues be decided together at trial. The trial judge will have the benefit of a more fulsome evidentiary record, including cross-examination of witnesses.

[43] Neither party addressed the plaintiff’s request to file a clean copy of the “third amended notice of civil claim” in any detail. I do not consider the extent of the amendments to be such that this step is necessary. Having multiple versions of third amended notice of civil claim could lead to confusion. I dismiss this item.

Orders Made

[44] The plaintiff is granted leave to file the “third amended notice of civil claim” in the form appended to the application filed February 13, 2025. This is without prejudice to the defendants’ ability to raise a limitation defence to the informed consent claims at trial. The balance of the relief sought is dismissed.

[45] The plaintiff is entitled to costs of this application from the Physician Defendants in the cause.

“Associate Judge Bilawich”