SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

780
CA 20-01631
PRESENT: PERADOTTO, J.P., CARNI, LINDLEY, WINSLOW, AND BANNISTER, JJ.

ENGLISH ROAD PEDIATRICS & ADOLESCENT MEDICINE, LLC,
PLAINTIFF-APPELLANT,

V   MEMORANDUM AND ORDER

CAREN ELIZABETH GELLIN, M.D., DEFENDANT-RESPONDENT.

HODGSON RUSS LLP, BUFFALO (RYAN K. CUMMINGS OF COUNSEL), FOR
PLAINTIFF-APPELLANT.

HURWITZ & FINE, P.C., BUFFALO (AMBER E. STORR OF COUNSEL), FOR
DEFENDANT-RESPONDENT.

Appeal from an order and judgment (one paper) of the Supreme
Court, Monroe County (J. Scott Odorisi, J.), entered June 16, 2020.
The order and judgment, among other things, granted that part of
defendant's cross motion seeking summary judgment on her counterclaim
for declaratory judgment.

It is hereby ORDERED that the order and judgment so appealed from
is unanimously modified on the law by granting judgment in favor of
defendant as follows:

> It is ADJUDGED and DECLARED that defendant is the sole
> and exclusive owner of the cash consideration paid to her as
> a result of the demutualization and conversion of Medical
> Liability Mutual Insurance Company,

and as modified the order and judgment is affirmed without costs.

Memorandum: Plaintiff commenced this action seeking, inter alia,
a declaration of the rights and obligations of the parties with
respect to demutualization proceeds issued by Medical Liability Mutual
Insurance Company to defendant when it converted from a mutual
insurance company to a stock insurance company. We conclude that, for
reasons stated in its decision, Supreme Court properly denied
plaintiff's motion for summary judgment on the complaint and granted
that part of defendant's cross motion seeking summary judgment on her
counterclaim. The court erred, however, in failing to declare the
rights of the parties, and we therefore modify the order and judgment
by making the requisite declaration (*see Maurizzio v Lumbermens Mut.*

Cas. Co., 73 NY2d 951, 954 [1989]).

Entered: October 1, 2021   Ann Dillon Flynn
                                                   Clerk of the Court