

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

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CA 20-01448

PRESENT: WHALEN, P.J., SMITH, CENTRA, AND PERADOTTO, JJ.

ST. JOSEPH'S HOSPITAL HEALTH CENTER AND
ST. JOSEPH'S MEDICAL, P.C.,
PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

PATRICK ADCOCK, M.D., SCOTT ALLAN, M.D., MARK
BILLINSON, M.D., NINA DAVULURI, AS EXECUTOR
OF THE ESTATE OF CHAUDHURY DAVULURI, M.D.,
MARK J. EMERICK, M.D., AMY KASPEREK, P.A.,
JEFFREY LAPE, P.A., SARAH LEO, N.P., HANNAH
LOVALLO, SEAN LOVALLO, ATUL MAINI, M.D., MEHDI
MARVASTI, M.D., MARYANN E. MILLAR, M.D., BRYNNE
NOSKO, P.A., NAVPRIYA OBEROI, M.D., ANTHONY S.
OLIVIA, M.D., BALASUBRAMANIAM SIVAKUMAR, M.D.,
CAROL MELINDA STEVENS, D.O., ANTHONY STIRPE, P.A.,
DIANE TSCHUDI, P.A., ARTHUR VERCILLO, M.D.,
TRAVIS P. WEBB, M.D., KELLY ANN WOODS, N.P.,
VINCENT GEMELLI, P.A., LAURA MARTIN, DO,
DEFENDANTS-RESPONDENTS,
MEDICAL LIABILITY MUTUAL INSURANCE COMPANY,
ET AL., DEFENDANTS.

COSTELLO COONEY & FEARON, PLLC, SYRACUSE (JENNIFER L. WANG OF
COUNSEL), FOR PLAINTIFFS-APPELLANTS.

NOLAN HELLER KAUFFMAN LLP, ALBANY (BRIAN DEINHART OF COUNSEL), FOR
DEFENDANTS-RESPONDENTS PATRICK ADCOCK, M.D., JEFFREY LAPE, P.A., SARAH
LEO, N.P., HANNAH LOVALLO, SEAN LOVALLO, BRYNNE NOSKO, P.A., ANTHONY
STIRPE, P.A., AND KELLY ANN WOODS, N.P.

COHEN, COMPAGNI, BECKMAN, APPLER & KNOLL, PLLC, SYRACUSE (ANDREW M.
KNOLL OF COUNSEL), FOR DEFENDANTS-RESPONDENTS SCOTT ALLAN, M.D., MARK
BILLINSON, M.D., NINA DAVULURI, AS EXECUTOR OF THE ESTATE OF CHAUDHURY
DAVULURI, M.D., MARK J. EMERICK, M.D., AMY KASPEREK, P.A., ATUL MAINI,
M.D., MEHDI MARVASTI, M.D., MARYANN E. MILLAR, M.D., NAVPRIYA OBEROI,
M.D., ANTHONY S. OLIVIA, M.D., BALASUBRAMANIAM SIVAKUMAR, M.D., CAROL
MELINDA STEVENS, D.O., DIANE TSCHUDI, P.A., ARTHUR VERCILLO, M.D.,
TRAVIS P. WEBB, M.D., VINCENT GEMELLI, P.A., AND LAURA MARTIN, D.O.

Appeal from an amended order of the Supreme Court, Onondaga
County (Joseph E. Lamendola, J.), entered September 23, 2020. The
amended order, among other things, granted defendants-respondents'
motions for summary judgment and denied plaintiffs' cross motion for

summary judgment.

It is hereby ORDERED that the amended order so appealed from is unanimously modified on the law by granting judgment in favor of defendants-respondents as follows:

It is ADJUDGED and DECLARED that defendants-respondents are the sole and exclusive owners of the cash consideration paid to them as a result of the demutualization and conversion of defendant Medical Liability Mutual Insurance Company,

and as modified the amended order is affirmed without costs.

Memorandum: Plaintiffs commenced this action seeking, inter alia, a declaration of the rights and obligations of the parties with respect to demutualization proceeds issued by defendant Medical Liability Mutual Insurance Company to defendants-respondents when it converted from a mutual insurance company to a stock insurance company. We conclude that, for reasons stated in its amended decision, Supreme Court properly granted defendants-respondents' motions seeking, inter alia, summary judgment on their counterclaims and denied plaintiffs' cross motion for, among other things, summary judgment on the complaint. The court erred, however, in failing to declare the rights of the parties, and we therefore modify the amended order by making the requisite declaration (*see Maurizzio v Lumbermens Mut. Cas. Co.*, 73 NY2d 951, 954 [1989]).

Entered: March 18, 2022

Ann Dillon Flynn
Clerk of the Court