

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D19646
Y/kmg

_____AD3d_____

Argued - May 19, 2008

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2007-03525

DECISION & ORDER

Taylor Perre, etc., respondent, v Vassar
Brothers Hospital, a/k/a Vassar Brothers Medical
Center, appellant, et al., defendants.

(Index No. 2617/04)

Phelan, Phelan & Danek, LLP, Albany, N.Y. (Timothy S. Brennan of counsel), for
appellant.

Kelner and Kelner, New York, N.Y. (Gerard K. Ryan, Jr., of counsel), for respondent.

In an action to recover damages for medical malpractice, the defendant Vassar
Brothers Hospital, a/k/a Vassar Brothers Medical Center appeals from an order of the Supreme
Court, Dutchess County (Brands, J.), dated March 1, 2007, which denied its motion for summary
judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

“[T]he proponent of a summary judgment motion must make a prima facie showing
of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the
absence of any material issues of fact” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). “Failure to
make such showing requires denial of the motion, regardless of the sufficiency of the opposing
papers” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853).

The expert affidavit submitted in support of the defendant hospital’s motion for

June 17, 2008

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VASSAR BROTHERS MEDICAL CENTER

summary judgment was wholly conclusory and did not attempt to refute by specific factual reference the allegations of negligence on the part of hospital employees, such as, for example, the failure to prevent infection or prescribe proper antibiotics. Accordingly, the motion was properly denied (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851; *Savage v Franco*, 35 AD3d 581; *Grandell Rehabilitation & Nursing Ctr., Inc. v Serby*, 21 AD3d 346; *Guerin v North Shore Univ. Hosp.*, 13 AD3d 481; *Kenny v Parkway Hosp.*, 281 AD2d 596; *Brosnan v Shafron*, 278 AD2d 442).

MASTRO, J.P., SKELOS, BALKIN and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court