

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

D20571
X/kmg

_____AD3d_____

Submitted - September 16, 2008

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
HOWARD MILLER
JOHN M. LEVENTHAL, JJ.

2007-03967
2007-11563

DECISION & ORDER

Catherine Larsen, et al., respondents, v Kitti
Loychusuk, etc., et al., appellants, et al.,
defendants.

(Index No. 05846/04)

Geisler & Gabriele, LLP, Garden City, N.Y. (Lori A. Marano and David B. De Siver
of counsel), for appellants.

Katz & Kreinces, Mineola, N.Y. (Matthew R. Kreinces of counsel), for respondents.

In an action, inter alia, to recover damages for medical malpractice, etc., the
defendants Kitti Loychusuk, Ravindra Kumar Kota, and Caremax Surgical, P.C., appeal (1) from an
order of the Supreme Court, Suffolk County (Pines, J.), dated March 12, 2007, which denied their
motion for summary judgment dismissing the complaint insofar as asserted against them, and (2), as
limited by their brief, from stated portions of an order of the same court dated June 20, 2007, which,
inter alia, upon reargument, adhered to the original determination.

ORDERED that the appeal from the order dated March 12, 2007, is dismissed, as that
order was superseded by the order dated June 20, 2007, made upon reargument; and it is further,

ORDERED that the order dated June 20, 2007, is affirmed insofar as appealed from;
and it is further,

ORDERED that one bill of costs is awarded to the plaintiffs.

October 7, 2008

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LARSEN v LOYCHUSUK

On a motion for summary judgment in a medical malpractice action, a defendant doctor has the initial burden of establishing either the absence of any departure from good and accepted medical practice or that the plaintiff was not injured thereby (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853; *Sandmann v Shapiro*, 53 AD3d 537). In this case, the appellants did not make such a showing, and thus failed to demonstrate, prima facie, their entitlement to judgment as a matter of law. Among other things, the expert affirmation the defendants submitted in support of their summary judgment motion failed to address many of the plaintiffs' allegations of malpractice set forth in their bills of particulars (*see Kuri v Bhattacharya*, 44 AD3d 718). Accordingly, the appellants' motion was properly denied regardless of the sufficiency of the plaintiffs' opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853; *Kuri v Bhattacharya*, 44 AD3d 718), and, upon reargument, the Supreme Court properly adhered to its original determination denying the motion for summary judgment.

The appellants' remaining contentions are without merit.

SPOLZINO, J.P., FLORIO, MILLER and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court