

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

D23547
C/hu

_____AD3d_____

Argued - May 8, 2009

STEVEN W. FISHER, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
L. PRISCILLA HALL, JJ.

2008-01700

DECISION & ORDER

Miles Adjetey, etc., respondent, v New York City
Health and Hospitals Corporation, et al., appellants.

(Index No. 20811/05)

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Pamela Seider Dolgow
and Elizabeth S. Natrella of counsel), for appellants.

Kramer & Pollack, Mineola, N.Y. (Larry J. Kramer of counsel), for respondent.

In an action, inter alia, to recover damages for medical malpractice, the defendants
appeal from an order of the Supreme Court, Kings County (Levine, J.), dated January 25, 2008,
which denied their motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The defendants established their prima facie entitlement to judgment as a matter of law
by submitting expert affidavits which demonstrated that they did not depart from good and accepted
medical practice in their treatment of the plaintiff, and that, in any event, their treatment was not a
proximate cause of the plaintiff's injuries (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). In
opposition, however, the plaintiff submitted affirmations of two experts which were sufficient to raise
triable issues of fact as to whether the defendants departed from good and accepted medical practice
and whether such departures were a proximate cause of the plaintiff's injuries (*see Boutin v Bay
Shore Family Health Ctr.*, 59 AD3d 368; *Roca v Perel*, 51 AD3d 757, 759). Summary judgment
may not be awarded in a medical malpractice action where the parties adduce conflicting opinions of
medical experts (*see Shields v Baktidy*, 11 AD3d 671, 672; *Barbuto v Winthrop Univ. Hosp.*, 305

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AD2d 623, 624). Accordingly, the defendants' motion for summary judgment dismissing the complaint was properly denied.

FISHER, J.P., DICKERSON, ENG and HALL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court