

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

D29370
O/kmb

_____AD3d_____

Argued - November 12, 2010

WILLIAM F. MASTRO, J.P.
MARK C. DILLON
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2009-07516

DECISION & ORDER

Yuriy Novikov, etc., appellant, v Yury Zamdborg,
etc., et al., respondents, et al., defendants.

(Index No. 15953/03)

Mark M. Basichas & Associates, P.C., New York, N.Y. (Aleksey Feygin of counsel),
appellant.

Patrick S. Adams, PLLC, for respondent Yury Zamdborg; Gordon & Silber, P.C., for
respondent Isaia Avraham; McAloon & Friedman, P.C., for respondent John Costa
(Mauro Goldberg & Lilling LLP, Great Neck, N.Y. [Caryn L. Lilling and Jennifer B.
Ettinger], of counsel for all respondents) (one brief filed).

In an action to recover damages for medical malpractice, the plaintiff appeals from a
judgment of the Supreme Court, Kings County (Steinhardt, J.), entered July 1, 2009, which, upon
a jury verdict, is in favor of the defendants Yury Zamdborg, John Costa, and Isaia Avraham and
against him, dismissing the complaint insofar as asserted against those defendants.

ORDERED that the judgment is affirmed, with costs.

Contrary to the plaintiff's contention, comments made during defense openings and
summation were not improper, as they were based on evidence presented at trial, and the questions
posed to witnesses by defense counsel, and testimony of defense experts were proper (*see Cassano
v Hagstrom*, 5 NY2d 643, 646; *Plainview Water Dist. v Exxon Mobil Corp.*, 66 AD3d 754, 755;
Friedman v Marcus, 32 AD3d 820).

The plaintiff waived any claim that the decedent's medical records from Lenox Hill

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Hospital, with the exception of her autopsy report, should have been redacted, as the plaintiff submitted those records into evidence at the beginning of the trial and did not request that they be redacted until after the jury began deliberations (*see Plantation House & Garden Prods. v R-Three Invs.*, 285 AD2d 539, 540; *see also People v Soberanis*, 289 AD2d 343, 344). In any event, the medical records were properly admitted, as they were germane to the diagnosis and treatment of the decedent (*see Bruce-Bishop v Jafar*, 302 AD2d 345; *Moran v Demarinis*, 152 AD2d 546, 547).

The plaintiff's contention that the jury verdict was inconsistent is without merit (*see Lovett v Interfaith Med. Ctr.*, 52 AD3d 578, 580; *Sukhoo v City of New York*, 1 AD3d 349).

The plaintiff's remaining contentions are without merit.

MASTRO, J.P., DILLON, ENG and CHAMBERS, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court