

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

D31255
O/kmb

_____AD3d_____

Submitted - April 25, 2011

MARK C. DILLON, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
L. PRISCILLA HALL, JJ.

2010-05083

DECISION & ORDER

Emily Pulliam, etc., plaintiff-respondent, v Spiro
Demetis, etc., et al., defendants-respondents,
Paul F. Riska, etc., appellant.

(Index No. 16732/04)

Phillips Lytle, LLP, New York, N.Y. (Eric M. Kraus and Craig R. Bucki of counsel),
for appellant.

Salenger, Sack, Schwartz & Kimmel, LLP (Pollack, Pollack, Isaac & DeCicco, New
York, N.Y. [Brian J. Isaac and Michael H. Zhu], of counsel), for plaintiff-respondent.

In an action to recover damages for medical malpractice and lack of informed consent,
the defendant Paul F. Riska appeals from an order of the Supreme Court, Kings County (Schmidt,
J.), dated April 14, 2010, which denied his motion for summary judgment dismissing the complaint
and all cross claims insofar as asserted against him.

ORDERED that the order is affirmed, with costs.

The appellant doctor moved for summary judgment dismissing the complaint and all
cross claims insofar as asserted against him. The complaint alleged medical malpractice and lack of
informed consent. The appellant established, prima facie, his entitlement to judgment as a matter of
law. However, in opposition, the affidavit of the plaintiff's expert raised triable issues of fact as to
both the medical malpractice and lack of informed consent causes of action (*see Thurston v Interfaith
Med. Ctr.*, 66 AD3d 999, 1001; Public Health Law § 2805-d; *see also Stukas v Streiter*, 83 AD3d
18).

May 17, 2011

Page 1.

PULLIAM v DEMETIS

Accordingly, the Supreme Court properly denied the appellant's motion for summary judgment dismissing the complaint and all cross claims insofar as asserted against him.

DILLON, J.P., BALKIN, LEVENTHAL and HALL, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court