

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

D33791
N/nl

_____AD3d_____

Argued - January 10, 2012

RUTH C. BALKIN, J.P.
JOHN M. LEVENTHAL
ARIEL E. BELEN
SHERI S. ROMAN, JJ.

2011-02996

DECISION & ORDER

Lawrence Calli, etc., respondent-appellant, v Forest View Center for Rehabilitation and Nursing, Inc., respondent, et al., defendants, Precision Health, Inc., doing business as Medfax Portable Diagnostics, appellant-respondent.

(Index No. 1998/08)

Miranda Sambursky Slone Sklarin Verveniotis, LLP, Mineola, N.Y. (Steven Verveniotis and Todd M. Hellman of counsel), for appellant-respondent.

Lawrence Levine, New York, N.Y., for respondent-appellant.

Catalano Gallardo & Petropoulos, LLP, Jericho, N.Y. (Karen Corbett of counsel), for respondent.

In a consolidated action, inter alia, to recover damages for medical malpractice and wrongful death, the defendant Precision Health, Inc., doing business as Medfax Portable Diagnostics, appeals, as limited by its brief, from so much of an order of the Supreme Court, Queens County (James J. Golia, J.), dated February 4, 2011, as denied that branch of its cross motion which was for summary judgment dismissing the complaint insofar as asserted against it, and the plaintiff cross-appeals from so much of the same order as granted that branch of the motion of the defendant Forest View Center for Rehabilitation and Nursing, Inc., which was for summary judgment dismissing the complaint insofar as asserted against that defendant.

ORDERED that the order is reversed insofar as appealed from, on the law, and that

January 31, 2012

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branch of the motion of the defendant Precision Health, Inc., doing business as Medfax Portable Diagnostics, which was for summary judgment dismissing the complaint insofar as asserted against it is granted; and it is further,

ORDERED that the order is affirmed insofar as cross-appealed from; and it is further,

ORDERED that one bill of costs is awarded to the defendants Forest View Center for Rehabilitation and Nursing, Inc., and Precision Health, Inc., doing business as Medfax Portable Diagnostics, payable by the plaintiff.

The defendants Forest View Center for Rehabilitation and Nursing, Inc. (hereinafter Forest View), and Precision Health, Inc., doing business as Medfax Portable Diagnostics (hereinafter Precision Health), each demonstrated their prima facie entitlement to judgment as a matter of law dismissing the complaint insofar as asserted against each of them (*see McLoughlin v Suffolk Obstetrics & Gynecology, LLP*, 85 AD3d 984, 985; *Stukas v Streiter*, 83 AD3d 18; *Breland v Jamaica Hosp. Med. Ctr.*, 49 AD3d 789, 790). In opposition, the plaintiff's submissions, including the conclusory affirmation of his expert, were insufficient to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 325; *Ahmed v New York City Health & Hosps. Corp.*, 84 AD3d 709, 710). Accordingly, the Supreme Court properly granted that branch of Forest View's motion which was for summary judgment dismissing the complaint insofar as asserted against it, and should have granted that branch of Precision Health's cross motion which was for summary judgment dismissing the complaint insofar as asserted against it.

BALKIN, J.P., LEVENTHAL, BELEN and ROMAN, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court