

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

D34785  
W/ct

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - March 5, 2012

PETER B. SKELOS, J.P.  
THOMAS A. DICKERSON  
JOHN M. LEVENTHAL  
JEFFREY A. COHEN, JJ.

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2011-04071

DECISION & ORDER

Solmaria Andrade, et al., appellants, v Thomas H.  
Milhorat, etc., et al., respondents.

(Index No. 606/10)

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Locks Law Firm PLLC, New York, N.Y. (Andrew P. Bell, Gene Locks, Steven P. Knowlton, and Janet C. Walsh of counsel), and Goldsmith, Ctorides & Rodriguez, LLP, New York, N.Y. (Lee S. Goldsmith and Christina Ctorides of counsel), for appellants (one brief filed).

Martin Clearwater & Bell LLP, New York, N.Y. (Barbara Goldberg, Anthony M. Sola, Rosaleen T. McCrory, and Nancy J. Block of counsel), for respondents Thomas H. Milhorat, Paolo A. Bolognese, L. Thierry Remy, Salvatore A. Insinga, Misao Nishikawa, Sol Mora, Amit Shelat, North Shore-Long Island Jewish Health System, Inc., Chiari Institute, and Harvey Cushing Institutes of Neuroscience.

Heidell, Pittoni, Murphy & Bach, LLP, White Plains, N.Y. (Daniel S. Ratner and Daryl Paxson of counsel), for respondent Chanland Roonrapunt.

In an action, inter alia, to recover damages for fraud and medical malpractice, etc., the plaintiffs appeal from an order of the Supreme Court, Kings County (Jackson, J.), dated November 17, 2010, which granted the respective motions of the defendants Thomas H. Milhorat, Paolo A. Bolognese, L. Thierry Remy, Salvatore Insinga, Misao Nishikawa, Sol Mora, Amit Shelat, North Shore-Long Island Jewish Health System, Inc., Chiari Institute, and Harvey Cushing Institutes of Neuroscience, and the defendant Chanland Roonrapunt pursuant to CPLR 3211(a)(7) to dismiss the third cause of action, which alleged fraud, insofar as asserted against each of them.

May 1, 2012

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ORDERED that the order is affirmed, with one bill of costs to the respondents appearing separately and filing separate briefs.

The Supreme Court properly granted the respective motions of the defendants Thomas H. Milhorat, Paolo A. Bolognese, L. Thierry Remy, Salvatore Insinga, Misao Nishikawa, Sol Mora, Amit Shelat, North Shore-Long Island Jewish Health System, Inc., Chiari Institute, and Harvey Cushing Institutes of Neuroscience, and the defendant Chanland Roonprapunt to dismiss the fraud cause of action insofar as asserted against each of them since the injuries arising from the alleged fraud are no different from those resulting from the alleged lack of informed consent and malpractice (*see Simcusi v Saeli*, 44 NY2d 442; *McNamara v Droesch*, 49 AD3d 511; *Karlin v IVF Am.*, 239 AD2d 560, *mod on other grounds* 93 NY2d 282; *Luciano v Levine*, 232 AD2d 378; *Spinosa v Weinstein*, 168 AD2d 32).

The plaintiffs' contention that the Supreme Court erred in dismissing their demand for punitive damages, insofar as it relates to the third cause of action, which alleged fraud, has been rendered academic in light of our determination.

SKELOS, J.P., DICKERSON, LEVENTHAL and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court