

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

D36831  
T/kmb

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

Argued - October 16, 2012

REINALDO E. RIVERA, J.P.  
CHERYL E. CHAMBERS  
L. PRISCILLA HALL  
PLUMMER E. LOTT, JJ.

2012-01107

DECISION & ORDER

Charles Corletta IV, etc., respondent,  
v Eva Fischer, et al., appellants, et al.,  
defendants.

(Index No. 1906/11)

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Pilkington & Leggett, P.C., White Plains, N.Y. (Michael N. Romano of counsel), for appellants Eva Fischer, Anupama Pani, and Steven A. Klein, M.D., P.C., doing business as Healthmed Plus.

Feldman, Kleidman & Coffey, LLP, Fishkill, N.Y. (Craig A. Burgess of counsel), for appellants Jayesh R. Mehta, Brijender Batra, and Pulmonary Consultants, P.C., doing business as Pulmonary Consultants.

O'Connor, McGuinness, Conte, Doyle, Oleson, Watson & Loftus, LLP, White Plains, N.Y. (Montgomery Effinger of counsel), for appellant Good Samaritan Hospital of Suffern, N.Y., Inc.

Meagher & Meagher, P.C., White Plains, N.Y. (Bruce W. Slane and Christopher Meagher of counsel), for respondent.

In an action to recover damages for medical malpractice and wrongful death, the defendants Jayesh R. Mehta, Brijender Batra, and Pulmonary Consultants, P.C., doing business as Pulmonary Consultants, appeal, as limited by their brief, from so much of an order of the Supreme Court, Rockland County (Walsh II, J.), dated December 21, 2011, as denied their motion for summary judgment dismissing the complaint insofar as asserted against them, the defendant Good Samaritan Hospital of Suffern, N.Y., Inc., separately appeals, as limited by its brief, from so much

December 19, 2012

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of the same order as denied its motion for summary judgment dismissing the complaint insofar as asserted against it, and the defendants Eva Fischer, Anupama Pani, and Steven A. Klein, M.D., P.C., doing business as Healthmed Plus, separately appeal, as limited by their brief, from so much of the same order as denied their motion for summary judgment dismissing the complaint insofar as asserted against them.

ORDERED that the order is modified, on the law, (1) by deleting the provision thereof denying the motion of the defendant Good Samaritan Hospital of Suffern, N.Y., Inc., for summary judgment dismissing the complaint insofar as asserted against it, and substituting therefor a provision granting the motion, and (2) by deleting the provision thereof denying that branch of the motion of the defendants Eva Fischer, Anupama Pani, and Steven A. Klein, M.D., P.C., doing business as Healthmed Plus which was for summary judgment dismissing the complaint insofar as asserted against the defendant Eva Fischer, and substituting therefor a provision granting that branch of the motion; as so modified, the order is affirmed insofar as appealed from, without costs or disbursements.

The Supreme Court properly denied the motion of the defendants Jayesh R. Mehta, Brijender Batra, and Pulmonary Consultants, P.C., doing business as Pulmonary Consultants, for summary judgment dismissing the complaint insofar as asserted against them. In opposition to those defendants' prima facie showing of their entitlement to judgment as a matter of law, the plaintiff raised a triable issue of fact (*see Howard v Kennedy*, 60 AD3d 905, 906).

However, the Supreme Court erred in denying the motion of the defendant Good Samaritan Hospital of Suffern, N.Y., Inc. (hereinafter the Hospital), for summary judgment dismissing the complaint insofar as asserted against it. "In general, a hospital cannot be held vicariously liable for the negligence of a private attending physician" (*Martinez v La Porta*, 50 AD3d 976, 977; *see Hill v St. Clare's Hosp.*, 67 NY2d 72, 79). Further, a hospital "cannot be held concurrently liable with such a physician unless its employees commit independent acts of negligence or the attending physician's orders are contraindicated by normal practice" (*Cerny v Williams*, 32 AD3d 881, 883; *see Sela v Katz*, 78 AD3d 681, 683; *Martinez v La Porta*, 50 AD3d at 977).

The Hospital established its prima facie entitlement to judgment as a matter of law by demonstrating that the plaintiff's decedent was referred to the Hospital by her private physician, and that the treatment of the plaintiff's decedent was performed at the Hospital by private attending physicians (*see Gardner v Brookdale Hosp. Med. Ctr.*, 73 AD3d 1124, 1124-1125). Furthermore, the Hospital demonstrated, prima facie, that the Hospital staff did not commit any independent acts of negligence, and that no orders given by any of the private attending physicians were contraindicated by normal practice. In opposition, the plaintiff failed to raise a triable issue of fact (*see Schultz v Shreedhar*, 66 AD3d 666, 666-667).

The Supreme Court also erred in denying that branch of the motion of the defendants Steven A. Klein, M.D., P.C., doing business as Healthmed Plus (hereinafter Healthmed Plus), Eva Fischer, and Anupama Pani (hereinafter collectively the Healthmed defendants), which was for summary judgment dismissing the complaint insofar as asserted against Fischer. In opposition to

the Healthmed defendants' prima facie showing, the plaintiff failed to raise a triable issue of fact as to the liability of Fischer (*see Ballek v Aldana-Bernier*, \_\_\_\_\_ AD3d \_\_\_\_\_, 2012 NY Slip Op 07946 [2d Dept 2012]; *Bellafiore v Ricotta*, 83 AD3d 632, 633; *Soto v Andaz*, 8 AD3d 470, 471). However, the plaintiff raised triable issues of fact as to the liability of Pani and Healthmed Plus (*see Zuckerman v City of New York*, 49 NY2d 557). Therefore, the Supreme Court properly denied that branch of the Healthmed defendants' motion which was for summary judgment dismissing the complaint insofar as asserted against Pani and Healthmed Plus.

The parties' remaining contentions either need not be addressed in light of our determination or are without merit.

RIVERA, J.P., CHAMBERS, HALL and LOTT, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court