

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1006

CA 11-00388

PRESENT: SCUDDER, P.J., SMITH, LINDLEY, SCONIERS, AND GORSKI, JJ.

JOHN TENCZA, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

ST. ELIZABETH MEDICAL CENTER,
DEFENDANT-APPELLANT.

GALE & DANCKS, LLC, SYRACUSE (CATHERINE A. GALE OF COUNSEL), FOR
DEFENDANT-APPELLANT.

BRINDISI, MURAD, BRINDISI, PEARLMAN, JULIAN & PERTZ, LLP, UTICA
(STEPHANIE A. PALMER OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Oneida County
(Bernadette T. Clark, J.), entered July 6, 2010 in a medical
malpractice action. The order, inter alia, directed defendant to pay
plaintiff costs, disbursements and interest on a judgment.

It is hereby ORDERED that the order so appealed from is
unanimously affirmed without costs.

Memorandum: Defendant appeals from an order in this medical
malpractice action that, inter alia, denied its motion seeking to
vacate a judgment entered in plaintiff's favor pursuant to CPLR 5003-a
and ordered defendant to pay costs, disbursements and interest on that
judgment. We affirm. Contrary to defendant's contention, plaintiff
satisfied his obligation pursuant to CPLR 5003-a by tendering a
general release and stipulation of discontinuance to defendant's
attorney. The general release acknowledged the existence of a
Medicare lien and provided "that a portion of the settlement will be
paid to Medicare for [the] purpose[] of satisfying that lien." The
parties thereafter agreed that defendant was permitted to withhold
only \$50,000 of the settlement to satisfy the Medicare lien. "Neither
CPLR 5003-a, nor the parties' stipulation of settlement, imposed any
additional requirement on the plaintiff or his attorney" (*Klee v
Americas Best Bottling Co., Inc.*, 76 AD3d 544, 546).

Entered: September 30, 2011

Patricia L. Morgan
Clerk of the Court