

Mastronicola v City MD Walk-in Urgent Care
2020 NY Slip Op 33306(U)
October 5, 2020
Supreme Court, Kings County
Docket Number: 506153/2017
Judge: Genine D. Edwards
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At Part 80 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Brooklyn, New York, on the 5th day of October 2020

PRESENT:

HON. GENINE D. EDWARDS,
Justice.

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JACKIE MASTRONICOLA,
Plaintiff,

Index No. 506153/2017

Motion Sequence: 4

-against-

CITY MD WALK-IN URGENT CARE, CITY MEDICAL OF UPPER EAST SIDE PLLC, CITY PRACTICE GROUP OF NEW YORK, LLC, CITY PRACTICE GROUP USA, LLC, CITY PRACTICE GROUP HOLDINGS, LLC, RICHARD PARK, MD, PIRET PAASHOLLAND, MD and LAUREL D. EDMUNDSON, MD,

DECISION/ORDER

Defendants.

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<u>PAPERS</u>	<u>NUMBERED</u>
Notice of Motion and Affirmation.....	1
Affirmation in Opposition.....	2
Reply Affirmation.....	3

In this action to recover damages for medical malpractice, defendants City Medical of Upper East Side, PLLC d/b/a CityMD and d/b/a CityMD Urgent Care s/h/a City MD Walk-in Urgent Care, City Practice Group of New York, LLC, City Practice Group USA, City Practice Group Holdings, LLC, Richard Park, M.D., Piret Paasholland, M.D. s/h/a Piret Paasholland, M.D., and Laurel D. Edmundson, M.D. move,

pursuant to CPLR 3212, for summary judgment dismissing the complaint with prejudice.¹ Plaintiff opposes the motion.

BACKGROUND

Plaintiff was employed as a housekeeper at Eataty. On August 1, 2016, the chemical contents of "Super Trump"² spilled into plaintiff's eyes and onto the right side of his body, soaking the plaintiff's shirt to his skin. Plaintiff washed his eyes and asked his supervisors whether he could remove his shirt, but the request was denied because he was working near food and it would be unsanitary.

An hour and a half later, plaintiff took a train to the CityMD located at 87 Chambers Street. It took another 25 minutes to arrive at the CityMD. Plaintiff presented to CityMD with complaints of a burning sensation over his eyelids, face, anterior neck, right armpit, right chest wall area, and right nipple area. He was examined by Dr. Piret Paas-Holland, who noted small areas of hyperemia over plaintiff's bilateral upper and lower eyelids, a skin burn at the anterior and lateral aspect of the right upper torso, including the areola and nipple, the right axillary area, medial aspect of the right upper arm, anterior neck, bilateral cheeks, upper and lower eyelids, and nasal bridge, and a second degree burn on the torso and right upper extremity was noted on less than 5% of his total body surface area. The area had a moist, beefy, red wound base with

¹ On or about June 29, 2018, the parties executed a Stipulation and Order wherein plaintiff agreed to discontinue the instant action against defendants City Practice Group of New York, LLC, City Practice Group USA, LLC, City Practice Group Holdings, LLC and Richard Park, M.D. The Stipulation and Order was never filed with the Court.

² Super Trump is an industrial machine warewashing detergent.

scattered coagulum over the wound but no blistering. Hyperemic patches with no blistering were noted on plaintiff's anterior neck and face as well as first degree burns.

Dr. Paas-Holland called Poison Control and was advised to implement regular burn wound care. She diagnosed plaintiff with a chemical burn, and instructed him about burn wound care, pain control as well as the warning signs and symptoms of a wound infection. She prescribed Silvadene cream 1%, to be applied twice daily for fourteen days; Hibiclens liquid 4%, to be applied twice daily for fourteen days; ophthalmic Bacitracin ointment 500 unit/gm, to be applied to the eyelids twice daily for 14 days; and Acetaminophen-Codeine 300-30 mg, one tablet as needed every six hours for pain. Additionally, Dr. Paas-Holland advised plaintiff to return to the office in two days for a wound recheck or sooner should his symptoms persist and/or worsen.

Plaintiff purchased the medication from a pharmacy, went home and took an ice-cold shower with Hibiclens soap. Afterwards, he applied Silvadene cream to the wound. The next day, the wound looked the same. However, on August 3, 2016, plaintiff observed pus and darker skin. He was driven to CityMD Park Slope. Dr. Laurel Edmundson examined plaintiff. She noted a burn to the right upper torso, axilla, areola and nipple, medial aspect of the right upper arm, and anterior neck and described a continued tender, moist, beefy red wound base that was covered by yellowish coagulum. There was no blistering or purulence. Plaintiff's right nipple and the periphery of his areola was black, thickened, and dried. She advised him to follow-up at a burn center that day.

Plaintiff went to Weill Cornell-New York Presbyterian Hospital. He was admitted

to the burn unit and treated with repeated washing and debridement of his burns. On August 9, 2016, he underwent surgery, consisting of excision and split thickness skin grafting. Thereafter, plaintiff participated in occupational therapy. Upon his discharge from the hospital, on August 14, 2016, plaintiff wore a compression shirt for one year to aid with his healing.

LAW

It is well settled that “the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact.” *Ayotte v. Gervasio*, 81 N.Y.2d 1062, 601 N.Y.S.2d 463 (1993), citing *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986); *Zapata v. Buitriago*, 107 A.D.3d 977, 969 N.Y.S.2d 79 (2013). Failure to make such a showing requires the denial of the motion, regardless of the sufficiency of the papers in opposition. See *Alvarez*, 68 N.Y.2d at 324; *Smalls v. AJI Industries, Inc.*, 10 N.Y.3d 733, 853 N.Y.S.2d 526 (2008). Once a prima facie demonstration has been made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact that require a trial of the action. See *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980).

In the context of a medical malpractice action, “a physician [who moves] for summary judgment dismissing a complaint alleging medical malpractice must establish, prima facie, either that there was no departure from accepted standards of medical care or that any departure was not a proximate cause of the plaintiff’s injuries.” *Schwartzberg v. Huntington Hospital*, 163 A.D.3d 736, 81 N.Y.S.3d 118 (2d Dept. 2018) quoting *Mackauer v. Parikh*, 148

A.D.3d 873, 49 N.Y.S.3d 488 (2d Dept. 2017). See *McAlwee v. Westchester Health Associates, PLLC*, 163 A.D.3d 549, 80 N.Y.S.3d 401 (2d Dept. 2018). To sustain the burden, the physician “must address and rebut any specific allegations of malpractice set forth in the plaintiff’s bill of particulars.” *Mackauer*, 148 A.D.3d 873. “In opposition, a plaintiff must submit the affidavit of a[n expert] physician attesting to a departure from good and accepted practice, and stating the physician’s opinion that the alleged departure was a competent producing cause of the plaintiff’s injuries.” *Shectman v. Wilson*, 68 A.D.3d 848, 890 N.Y.S.2d 117 (2d Dept. 2009). See *Burns v. Goyal*, 145 A.D.3d 952, 44 N.Y.S.3d 180 (2d Dept. 2016) (“Expert testimony is necessary to prove a deviation from accepted standards of medical care and to establish proximate cause.”). Once the expert establishes “his or her knowledge of the relevant standards of care, he or she need not be a specialist in the particular area at issue to offer an opinion.” *Leavy v. Merriam*, 133 A.D.3d 636, 20 N.Y.S.3d 117 (2d Dept. 2015). “Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions.” *Simpson v. Edghill*, 169 A.D.3d 737, 93 N.Y.S.3d 399 (2d 2019).

ANALYSIS

Initially, plaintiff failed to oppose the motion as to defendants City Practice Group of New York, LLC, City Practice Group USA, LLC, City Practice Group Holdings, LLC, Richard Park, M.D. and Laurel D. Edmundson, M.D.

Turning to the remaining defendants, City Medical of Upper East Side, PLLC d/b/a CityMD and d/b/a CityMD Urgent Care s/h/a City MD Walk-in Urgent Care and Piret Paas-Holland, M.D. s/h/a Piret Paasholland, M.D., their expert Gregory I. Mazarin, M.D., who is board certified in Emergency Medicine, opined, *inter alia*, that

Dr. Paas-Holland appropriately treated plaintiff's burns on August 1, 2016. Specifically, he stated:

First of all, Dr. PAAS-HOLLAND properly cleaned the affected burn area. Contrary to plaintiff's claims, Mr. MASTRONICOLA's burns were washed before Silvadene cream was applied. After cleaning the burn areas, Dr. PAAS-HOLLAND appropriately applied Silvadene cream to a non-adherent dressing and secured the dressing. Cleaning the affected area and applying an antimicrobial like Silvadene is the treatment of choice for superficial partial- thickness second-degree chemical burns.

However, defendants' evidence contradicted Dr. Mazarin's opinion. Specifically, the medical records, which did not indicate that Dr. Paas-Holland cleaned plaintiff's burns before applying Silvadene cream as well as Dr. Paas-Holland's deposition testimony, wherein she admitted that she did not wash plaintiff's burns under running water before applying Silvadene cream. In addition, plaintiff's deposition testimony indicated same.

Dr. Paas-Holland's deposition testimony:

Q. Okay. At the specific CityMD, where you treated Mr. Mastrinicola, how would you affect the ten or fifteen minute washing of wounds -- of burns such as the type that he had, would you have him put his effected body under a faucet of a sink, was there a shower there, something else? In general, how would that be accomplished?

A. In Urgent Care center, he's instructed to proceed home, and do it right away, when he gets home, in a shower.

Q. So you would not have done it, he would have been instructed to do it, when he got home?

A. Yes.

Q. Okay. And that would be after you had applied the ointment, that you had testified to earlier, as having on hand, as part of your usual custom and practice?

A. Yes. See pgs. 95-96.

Plaintiff's deposition testimony:

Q. So, was the soap put on at the clinic as well?

A. No soap. She just put cream on me.

Q. She gave you the soap to put on when you got home?

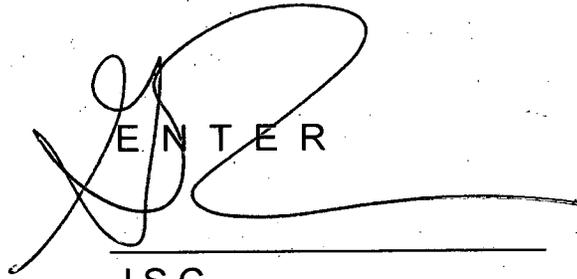
A. No, she gave me the prescription to go to the Rite Aid. When I went to the Rite Aid, I got the soap, the cream and the eyedrops. Whatever she prescribed me on that sheet is what I got. See pg. 46.

Considering that defendants' expert's opinion was not based upon facts in the record, defendants failed to establish their prima facie entitlement to judgment as a matter of law.

Accordingly, the motion for summary judgment dismissing the complaint is granted to defendants City Practice Group of New York, LLC, City Practice Group USA, LLC, City Practice Group Holdings, LLC, Richard Park, M.D. and Laurel D. Edmundson, M.D. The complaint is dismissed against these defendants. The motion is denied against City Medical of Upper East Side, PLLC d/b/a CityMD and d/b/a CityMD Urgent Care s/h/a City MD Walk-in Urgent Care and Piret Paas-Holland, M.D. s/h/a Piret Paasholland, M.D.

This constitutes the Decision and Order of the Court.

For Clerks use only
MG____
MD____
Motion Seq.#



J.S.C.
HON. GENINE D. EDWARDS