

Dismiss Complaint
Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, PETER J. O'DONOGHUE IAS PART 13
Justice

ROSA FERRARO, Individually and as
Executrix of the Estate of EDWARD
FERRARO, Deceased,

Plaintiffs,

-against-

MING ZHU, M.D., MING ZHU, M.D., P.C.,
LAURENCE R. BUTT, M.D., CALVIN L. CHU,
M.D., MARC D. GOTTLIEB, M.D., MARC D.
GOTTLIEB, M.D., P.C., and QUEENS-LONG
ISLAND MEDICAL GROUP, P.C.,

Defendants.

Index No.: 22493/05

Motion Date: 1/16/08

Motion Cal. No.: 6 & 7

Motion Seq. No.: 002 & 003

The following papers numbered 1 to 13 read on these motions by
defendants Marc D. Gottlieb, M.D., Marc D. Gottlieb, M.D., P.C.
("Dr. Gottlieb"), Laurence R. Butt ("Dr. Butt"), and Calvin L.
Chu ("Dr. Chu") for Orders granting summary judgment and
dismissing plaintiff's complaint.

PAPERS
NUMBERED

Cal. No. 6

Notice of Motion-Affidavits-Exhibits 1-4
Answering Affidavits-Exhibits..... 5-7

Cal. No. 7

Notice of Motion-Affidavits-Exhibits 8-11
Answering Affidavits-Exhibits..... 5-7
Replying Affidavits-Exhibits..... 12-13

Upon the foregoing papers it is ordered that this motion by
defendant Dr. Gottlieb for an Order granting summary judgment in
its favor and dismissing the complaint is denied. Questions of

fact exist, including but not limited, whether Dr. Gottlieb was negligent in failing to consider a differential diagnosis of sino-nasal cancer and in failing to refer decedent Ferraro for an MRI and/or CAT scan to rule in or rule out sino-nasal cancer, which may require resolution at trial.

This motion by defendants Drs. Butt and Chu for an Order granting summary judgment in their favor and dismissing the complaint is denied. Questions of fact exist, including but not limited, whether Dr. Butt was negligent on October 24, 2002, in failing to refer decedent Ferraro for an ENT evaluation and whether Dr. Chu was negligent on March 18, 2003, in failing to entertain the appropriate differential diagnosis and in failing to refer the decedent Ferraro for and/or order a CAT scan and/or MRI, which may require resolution at trial.

Dated: March 4, 2008

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J.S.C.