

Dykstra v New York City Health & Hosp. Corp.
2007 NY Slip Op 30738(U)
April 12, 2007
Supreme Court, New York County
Docket Number: 0111212/2002
Judge: Carol E. Huff
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **CAROL E. HUFF**

PART 32

Justice

Index Number : 111212/2002
DYKSTRA, HEATH
vs
AVALON RESTAURANT
Sequence Number : 006
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No


Upon the foregoing papers, It is ordered that this motion

FILED
APR 16 2007
COUNTY CLERK'S OFFICE
NEW YORK

motion is decided in accordance

with accompanying memorandum decision

Dated: APR 12 2007


CAROL E. HUFF

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32

-----X

HEATH DYKSTRA,	:	Index No. 111212/02
	:	
Plaintiff,	:	
	:	
- against -	:	
	:	
NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,	:	
	:	
Defendant.	:	

-----X

CAROL E. HUFF, J.:

Following trial and a jury verdict in favor of plaintiff Heath Dykstra, defendant New York City Health and Hospitals Corporation (HHC) moves for an order granting judgment in favor of HHC notwithstanding the verdict, or, alternatively, setting aside the verdict and ordering a new trial, or, alternatively, striking or reducing the award for damages.

At the time of the events that gave rise to this action, plaintiff was a thirty-two-year-old man who went to Bellevue Hospital for outpatient shoulder surgery. The surgery lasted five hours, during which time plaintiff was under general anesthesia and was seated in a "beach chair" position with his legs lower than his heart. Plaintiff alleges that as a result of Bellevue's failure to apply sequential compression devices or TED stockings, he developed a blood clot in his legs that entered his brain, causing a permanent "hole in his vision on the left side of the center of the vision in both eyes." (testimony of Dr. Boniuk, defendant's Ex. E, p. 11.) The jury found HHC negligent and awarded plaintiff \$75,000.00 for past pain and suffering, \$300,000.00 for future pain and suffering, \$75,000.00 for past lost wages and \$1,000,000.00 for future lost

wages.

“[I]n the absence of indications that substantial justice has not been done, a successful litigant is entitled to the benefits of a favorable jury verdict’ (see Nicastro v Park, 113 AD2d 129, 133 [2d Dept 1985]). Thus, ‘the overturning of the jury’s resolution of a sharply disputed factual issue may be an abuse of discretion if there is any way to conclude that the verdict is a fair reflection of the evidence’ (*id.* at 135).” Torricelli v Pisacano, 9 AD3d 291, 293 (1st Dept 2004).

With respect to its claim that the evidence was insufficient to support the verdict, HHC’s primary contention is that plaintiff’s expert witness was not a specialist in shoulder surgery. The witness, Dr. James Sarnelle, is a general surgeon with a subspecialty in vascular surgery. A testifying physician, however, “need not be a specialist in a particular field if he nevertheless possesses the requisite knowledge necessary to make a determination on the issues presented.” Joswick by Joswick v Lenox Hill Hosp., 161 AD2d 352, 356 (1st Dept 1990). The issues in this case did not concern the shoulder surgery itself, but the general surgical conditions under which it was carried out (length of anesthesia, position of legs, available procedures to prevent blood clotting). Sarnelle was sufficiently qualified with respect to those factors, and he testified sufficiently as to the relevant standard of care. The jury had ample grounds to reach its verdict.

HHC also contends that the jury’s awards for pain and suffering and lost wages were unsupported or excessive. As for pain and suffering, HHC argues that plaintiff exaggerated his injuries and manipulated the tests he underwent. Because defendant raised these issues fully at trial, however, this was a matter appropriately decided by the jury.

As for lost wages, HHC contends that the amounts are excessive. As a result of his

injury, plaintiff, who held a master's degree in international studies, could only pursue careers not involving reading, computer work, driving a car, or anything else that required visual acuity.

Since his surgery, he had been employed as a handyman. Plaintiff presented evidence of the average earnings of a male with a master's degree, compared with his earnings as a handyman. The jury awarded an amount less than that sought by plaintiff, and the amount is supported by evidence and not speculative.

Accordingly, it is

ORDERED that defendant's motion is denied in all respects.

Dated: APR 12 2007,

FILED
APR 16 2007
CLERK'S OFFICE
NEW YORK
[Signature]
CAROL E. HUFF
J.S.C.