

**Barros v St. Vincent's Hosp.**

2007 NY Slip Op 33521(U)

October 26, 2007

Supreme Court, New York County

Docket Number: 0107922/2007

Judge: Eileen Bransten

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

BRANSTEN

PART 06

Index Number : 107922/2004

BARROS, RUFINA

vs

ST. VINCENT'S HOSPITAL

Sequence Number : 003

SUMMARY JUDGMENT

INDEX NO. 107922-07

MOTION DATE 9-11-07

MOTION SEQ. NO. 003

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

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

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

IS DECIDED IN ACCORDANCE WITH  
THE ACCOMPANYING MEMORANDUM

THE ACCOMPANYING MEMORANDUM

FILED

OCT 30 2007

NEW YORK  
COUNTY CLERK'S OFFICE

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

Dated: 10/26/07

*Eileen Bransten*

HON. EILEEN BRANSTEN

J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

REFERENCE

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

-----X

RUFINA BARROS, as Administratrix of  
the Estate of DIMAT CANER, deceased

*Plaintiff*

- against -

Index No.: 107922/04  
Motion Date: 9/11/07  
Motion Sequence No.: 003

ST. VINCENT'S HOSPITAL, EDUARDO  
GONZALEZ, M.D., and MING LIN, M.D.

*Defendants*

**FILED**  
OCT 30 2007  
NEW YORK  
COUNTY CLERKS OFFICE

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PRESENT EILEEN BRANSTEN, J:

Plaintiff Rufina Barros (“Ms. Barros”), as Administratrix of the Estate of Dimat Caner, deceased (“Ms. Caner”), brings the instant action for medical malpractice and wrongful death against Defendants St. Vincent’s Hospital (“St. Vincent’s”), Edward Gonzalez, M.D (“Dr. Gonzalez”), and Ming Lin, M.D. (“Dr. Lin”) (collectively, “Defendants”). In the instant motion, the Defendants move for summary judgment pursuant to CPLR 3212.

**BACKGROUND**

Ms. Caner sustained head, neck, and facial injuries when she fell in the vicinity of 19<sup>th</sup> Street and Eighth Avenue in Manhattan on January 5, 2003. An ambulance took her to Saint Vincent’s at 2:35pm. Upon arrival, the attending staff found her to be alert, oriented, and ambulatory. *See*, O’Connell Aff, at 5, ¶ 8; Shapiro Aff at 2, ¶ 5. Her blood pressure was

recorded at 174/97, her heart rate was 88, and her respirations were 18. *See*, O'Connell Aff at 6, ¶ 9. Her past surgical history indicated that she had undergone a bypass and mitral valve replacement and her current medications were anticoagulant, Coumadin, and Tylenol. *Id.*

Dr. Lin, the Emergency-Department attending physician, examined Ms. Caner at 2:55pm. *See, Id.*, Ex F. She complained of mild pain in her right cheek. Dr. Lin noted that she was alert and had mild swelling on her right cheek. At 5:05pm, hospital staff conducted a CT scan. An unnamed radiologist noted the presence of a small subdural hematoma, and conveyed said CT test results to Dr. Lin telephonically at 5:45pm. *Id.*

Dr. Lin ordered laboratory work, and requested that the Neurosurgery Service consult on Ms. Caner's condition. Non-parties Allan Hirschfeld, M.D. ("Dr. Hirschfeld") and Dr. Hussein were the neurosurgery attending physician and the neurosurgery house officer, respectively.<sup>1</sup> Hospital staff drew blood samples. The blood work indicated an elevated INR of 5.90 and an elevated Prothrombin Time of 48.9. Both results indicated that it took longer than normal for the blood to clot, or respond to the injury. *Id.*

At 5:48pm, Non-party James R. McGinnis, R.N. ("Nurse McGinnis") examined Ms. Caner, noted that her cheek had become more swollen, and applied an ice pack. *See*, O'Connell Aff at 6, ¶ 11. At 6:00pm, Ms. Caner became slightly disorientated, complained

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<sup>1</sup> Neither party provided Dr. Hussein's full name.

of a headache, and vomited. Dr. Lin gave her a STAT dose of morphine 2 mg. IV for the pain in her right cheek, and ordered a repeat CT scan.

At or about 6:40pm, Ms. Caner began to clinically decompose as her blood pressure elevated. *Id.* at page 7, ¶ 13-14. Labetolol and Vitamin K were administered between 7:57pm and 8:15pm. *Id.*, ¶ 14. She also received 4 units of fresh frozen plasma in an attempt to bring down her INR. *See, Id.*, Ex F.

The repeat CT scan, taken at 8:00pm, showed “marked interval increase in the right subdural hematoma with marked mass effect, midline shift and signs of uncal herniation. The basal cisterns are obliterated.” *See, Id.* St. Vincent’s admitted Ms. Caner to the Intensive Care Unit. Brain death occurred on January 7, 2003, and she was pronounced dead on January 9, 2003.

Ms. Barros, as Ms. Caner’s estate’s Administratrix, commenced this action on May 17, 2004. In the first cause of action, Ms. Barros alleges that Drs. Gonzalez and Lin departed from the ordinary care-standard in rendering medical treatment to Ms. Caner, and were negligent in doing so. Furthermore, she alleges that St. Vincent’s was negligent, carelcss, and reckless in supervising them. In the second cause of action, Ms. Barros alleges that the Defendants’ negligence wrongfully caused Ms. Caner’s death.

In the instant motion, the Defendants argue that Ms. Cancr's death was an unavoidable result of her fall and did not result from her treatment. Accordingly, they move for summary judgment disposition pursuant to CPLR 3212.<sup>2</sup>

### ANALYSIS

Summary judgment is a drastic remedy that should not be granted if there is any doubt as to the existence of a triable issue of fact. *See, Rotuba Extruders, Inc. v. Ceppos*, 46 N.Y.2d 223, 231 (1978); *see also, Greenidge v. HRH Constr. Corp.*, 279 A.D.2d 400, 403 (1st Dept. 2001); *DuLuc v. Resnick*, 224 A.D.2d 210, 211 (1st Dept. 1996). Indeed, because summary disposition serves to deprive a party of her/his day in court, relief should not be granted where an issue of fact is even arguable. *See, Henderson v. City of New York*, 178 A.D.2d 129, 130 (1st Dept. 1991). Further, "on a defendant's motion for summary judgment, opposed by plaintiff, [the court is] required to accept the plaintiff's pleadings, as true, and [its] decision must be made on the version of the facts most favorable to [plaintiff]." *Byrnes v. Scott*, 175 A.D.2d 786, 786 (1st Dept. 1991).

The proponent of a summary judgment motion has the burden of making a *prima facie* showing of entitlement to judgment as a matter of law. *See, Alvarez v. Prospect Hospital*,

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<sup>2</sup> Dr. Gonzalez moves for summary judgment, arguing that he never treated Ms. Cancr. Ms. Barros does not oppose Dr. Gonzalez's motion because "he apparently never rendered treatment to decedent." Shapiro Aff at 5. Thus, Dr. Gonzalez's motion is granted.

68 N.Y.2d 320, 324 (1986). Once the movant has made this showing, the burden then shifts to the opponent to establish, through competent evidence, that there is a material issue of fact that warrants a trial. *Id.*

General allegations of medical malpractice that are unsupported by competent medical evidence are insufficient to defeat a motion for summary judgment. *See, Neuman v. Greenstein*, 99 A.D.2d 1018 (1st Dept. 1984). Thus, on a motion for summary judgment where a medical malpractice defendant demonstrates that treatment was provided in accordance with accepted standards of medical practice, the plaintiff must respond with medical evidence establishing a departure from accepted medical procedure. *See, Alvarez v. Prospect Hosp.*, 68 N.Y.2d, at 327.

The Defendants argue that their treatment of Ms. Caner was comported with acceptable medical standards. In support of their contention, they offer the 1.5 page affidavit of New York-licensed physician Dr. Hirschfeld, whom St. Vincent's employs as a neurosurgery attending physician. *See, Hirschfeld Aff'd.* Dr. Hirschfeld attests that

“[Ms. Caner] was on the anticoagulant Coumadin due to her prior cardiac procedures\* \* \* Due to [this], [shc] was more inclined to sustain a brain bleed after head trauma \* \* \* [The initial CT scan-review] showed a small acute subdural hematoma with a mild mass effect \* \* \* [T]here was no clinical significance to [this effect] since the patient was \* \* \* uncomplaining of headache or other neurological symptoms \*

\* \* [After Ms. Caner became disoriented], [a] repeat CT showed rapid extension of the small hematoma \* \* \* It is my opinion, to a reasonable degree of medical certainty, that obtaining the laboratory work any earlier would not have changed the unfortunate outcome \* \* \* It is further my opinion that the administration of fresh frozen plasma any earlier would not have affected [her] condition. The use of the anti-hypertensive Labetolol any earlier \* \* \* also would have had no effect on the outcome. I reiterate my opinion \* \* \* that the death of Ms. Caner was due to the fall she sustained \* \* \*

*Id.*

Based on their submission, the movant-Defendants, have established a *prime facie* showing of entitlement to judgment as a matter of law. The burden now shifts to Ms. Barros, the opponent, to raise triable factual issues warranting the motion's denial. In opposition, Ms. Barros offers a five-page expert affidavit from a board-certified, New York-licensed emergency-room physician. The expert attests that

“[T]his case revolves around the timeliness of certain therapies \* \* \* It is my opinion to a reasonable degree of medical certainty that there are several key departures in the care of this patient. These include 1) delay in sending initial laboratory results; 2) delay in treating with [fresh frozen plasma] and 3) delay in treatment of elevated blood pressure, and all alone or together were the proximate causes of the plaintiff's death.

\* \* \*

“[The physician] did not \* \* \* access if the patient's INR was too high [until] over three hours [after she arrived in the emergency room]. [Any earlier test] may have prompted the physician to give fresh frozen plasma earlier \* \* \* Checking \* \* \* any patient on Coumadin is standard procedure, especially after minor trauma with signs of injury.

\* \* \*

“Lack of earlier treatment with fresh frozen plasma is indefensible in this case. This is a patient who’s CT showed a subdural hematoma with mild shift. The patient also had progressively worsening symptoms during her course.

\* \* \*

“Clearly, however, the fresh frozen plasma should have been ordered \* \* \* after the CT was read as subdural and the INR noted as too high.

\* \* \*

“Treatment with antihypertensives was also lacking \* \* \* She [was] not treated however until 30 minutes prior to herniation. It is considered standard however, and should have been given.”

Shapiro Aff, Expert Aff’d at 2, ¶ 5; at 3, ¶ 12-17.

Here, Ms. Barros’ opposition papers contain a sufficient expert affidavit that contradicts the Defendants’ expert opinion. Since this Court is presented with conflicting affidavits from equally competent authorities, the motion for summary judgment must be denied. *See, Prigorac v. Park*, 20 A.D.3d 363 (1st Dept. 2005); *See also, Frobose v. Weiner*, 19 A.D.3d 258 (1st Dept. 2005); *Santiago v. Brandeis*, 309 A.D.2d 621, 622 (1st Dept. 2003).

Accordingly, it is

ORDERED that the Defendants' motion for a summary judgment is DENIED.

This constitutes the Decision and Order of the Court.

Dated: New York, New York  
October 26, 2007

ENTER



Hon. Eileen Bransten

**HON. EILEEN BRANSTEN**

**FILED**  
OCT 30 2007  
NEW YORK  
COUNTY CLERK'S OFFICE