

Areizaga v St. Vincent's Med. Ctr. of Richmond
2008 NY Slip Op 31004(U)
April 1, 2008
Supreme Court, Richmond County
Docket Number: 0012317/2004
Judge: Joseph J. Maltese
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND PART DCM 3**

**Index No.: 12317/04
Motion No.: 2**

**EDWIN AREIZAGA, as Administrator of the Estate of
MARTHA AREIZAGA, deceased, and EDWIN AREIZAGA,
individually**

Plaintiffs

against

DECISION & ORDER

HON. JOSEPH J. MALTESE

**ST. VINCENT'S MEDICAL CENTER OF RICHMOND,
SUSAN GROSSMAN, M.D., PEGGY ANN GARJIAN, M.D.,
and HOMER MARTINEZ, M.D.,**

Defendants.

The following items were considered in the review of this motion for summary judgment:

<u>Papers</u>	<u>Numbered</u>
Notice of Petition and Affidavits Annexed	1
Answering Affidavits	2
Replying Papers	3
Exhibits	Attached to Papers

Upon the foregoing cited papers, the Decision and Order on this Motion is as follows:

Defendant, Peggy Ann Garjian, M.D. ("Dr. Garjian") seeks an Order, pursuant to CPLR §3212, granting summary judgment dismissing all claims against her.

In this medical malpractice action, plaintiffs allege that the defendants failed to diagnose the decedent with miliary tuberculosis resulting in the decedent Martha Areizaga's death. On May 15, 2003, Martha Areizaga, a 53 year old female, presented to St. Vincent's Medical Center's Emergency Department ("St. Vincent's") with complaints of left-sided headache and nausea for six days with a fever. She was admitted under the care of co-defendant, Dr. Susan Grossman, to rule out meningitis, cervical injury and giant cell arthritis.

The decedent was first seen by Dr. Garjian, a rheumatologist, on May 21, 2003 for a

rheumatology consultation at the request of her attending physician to rule out giant cell arteritis (or temporal arteritis), which is a rheumatologic disease. Dr. Garjian recommended a temporal artery biopsy to rule out temporal arteritis. On May 22, 2003, Dr. Garjian saw the decedent for a follow-up consultation for suspected left temporal arteritis. Dr. Garjian saw the decedent again on May 23, 2003, and was not aware of the positive findings of a nodular density which appeared to be a calcified granuloma from a chest x-ray ordered by Dr. Crawford the day before. Dr. Garjian discussed the importance of an immediate biopsy in order to confirm the suspected diagnosis of temporal arteritis, but the decedent allegedly refused the procedure. Unbeknownst to Dr. Garjian, the plaintiff was discharged the same day by her attending physician, Dr. Grossman, on steroids with a decreased fever and headache.

Four days later, on May 27, 2003, the decedent returned to St. Vincent's with continued headaches, increased lumbar pain, decreased appetite and a fever. On May 29, 2003, Dr. Garjian saw the decedent for another rheumatology consultation to confirm the suspected diagnosis of temporal arteritis. Dr. Garjian ordered that the steroids be restarted at a lower dose. On May 30, 2003, Dr. Garjian met with the decedent again and the decedent informed her that she had discontinued taking her steroids after leaving the hospital one week earlier. Dr. Garjian again ordered that a temporal artery biopsy be done and contacted the surgery department to schedule the procedure.

On May 31, 2003, Dr. Garjian noted the decedent continued to improve on steroids and no longer had a headache. A chest CT scan was also performed the same day revealing several, small, ill-defined areas of nodularity in the lungs. On June 1, 2003, Dr. Garjian's last meeting with the decedent, she reviewed the chest CT scan results and felt the decedent may have metastatic carcinoma and ordered the decedent be switched to Prednisone (an oral steroid) for twenty-four hours. Thereafter, Dr. Garjian signed off the decedent's case.

On June 2, 2003, after the abnormal CT scan was reviewed, the decedent was tested for tuberculosis for the first time. On June 3, 2003, the decedent was seen for an infectious disease consultation to rule out the possibility of miliary tuberculosis and was worked-up accordingly. The

decedent began suffering acute respiratory problems which necessitated her to be intubated.

On June 4, 2003, the decedent died and subsequent autopsy results revealed that the cause of death was cardiorespiratory arrest and miliary tuberculosis.

Defendant, Dr. Garjian, argues that plaintiff cannot demonstrate that any action or inaction on the part of Dr. Garjian was the proximate cause of decedent's death. In support of his motion, Dr. Garjian presents the various deposition testimonies taken as well as the opinions of Dr. Jason Faller, which allegedly shows that Dr. Garjian had no active role in managing the decedent and only had very limited contact, for a rheumatology consultation only. Furthermore, Dr. Garjian argues that the decedent was being seen by other physicians, including infectious disease consultants and thus, she was not responsible for the diagnosis of an infectious disease such as miliary tuberculosis. Dr. Garjian claims that the rheumatology consultation was limited to ruling out a diagnosis of temporal arteritis and that no action or inaction on his part lead to decedent's arrest and eventual death from miliary tuberculosis.

Plaintiffs claim, through their expert, that Dr. Garjian departed from good and accepted medical practice in her care and treatment of the decedent, which were substantial factors in causing decedent's death. More specifically, plaintiff's expert states that Dr. Garjian failed to review the results of the May 22, 2003 chest x-ray when she saw the decedent on May 23, 2003. Plaintiff's expert claims that the sooner tuberculosis is diagnosed and treated, the better the patient's care for survival and cure are. Therefore, Dr. Garjian's failure to detect the abnormal results of the May 22, 2003 chest x-ray was a deviation from the standard of care. Finally, plaintiff's expert opines that Dr. Garjian departed from good and accepted medical practice in failing to heed the question of a possible diffuse infectious etiology that was reported by the radiologist who interpreted the May 31, 2003 chest CT scan. Had Dr. Garjian considered the possibility of a diffuse infectious process, plaintiffs' argue the decedent's diagnosis would have occurred at a time when the decedent had a better chance to survive the disease.

Discussion

A motion for summary judgment must be denied if there are "facts sufficient to require a trial of

any issue of fact.”¹ Granting summary judgment is only appropriate where a thorough examination of the merits clearly demonstrates the absence of any triable issues of fact. “Moreover, the parties competing contentions must be viewed in a light most favorable to the party opposing the motion.”² Summary judgment should not be granted where there is any doubt as to the existence of a triable issue or where the existence of an issue is arguable.³ A moving party on a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law by tendering sufficient evidence to eliminate any material issues of fact from the case.⁴

Defendant, Dr. Garjian’s motion for summary judgment is denied. Plaintiffs have presented, through their expert, medical records and testimony triable issues of fact regarding Dr. Garjian’s care of the decedent. Whether or not the diagnosis of tuberculosis should have been considered and ruled out earlier based on decedent’s test results are issues of fact not left to the discretion of this court.

Accordingly, it is hereby:

ORDERED, that Defendant, Peggy Ann Garjian, M.D.’s motion, pursuant to CPLR §3212, for summary judgment dismissing all claims against her, is denied; and it is further

ORDERED, that all parties appear at DCM 3 on **Wednesday, May 28, 2008** at 9:30AM for a conference.

ENTER,

DATED: April 1, 2008

Joseph J. Maltese

¹CPLR §3212[b].

²*Marine Midland Bank, N.A., v. Dino, et al.*, 168 AD2d 610 [App Div 2nd Dept 1990].

³*American Home Assur. Co., v. Amerford Intl. Corp.*, 200 AD2d 472 [App Div 1st Dept 1994].

⁴*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985].

Justice of the Supreme Court