

Samuda v New York City Health & Hosps. Corp.

2009 NY Slip Op 32951(U)

December 16, 2009

Supreme Court, New York County

Docket Number: 118682/06

Judge: Douglas E. McKeon

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

PRESENT: Douglas E. McKeon, J.S.C.
Justice

PART 38

Samuda

INDEX NO. 11868 2/06

- v -

MOTION DATE _____

NMCHHC

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 per annexed Memorandum Decision.

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

~~Letain in Order~~

FILED

DEC 18 2009

NEW YORK COUNTY CLERK'S OFFICE

Dated: 12/16/09

Douglas E. McKeon
Douglas E. McKeon, J.S.C. 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

-----X
AMELIA SAMUDA, by her attorney-in-fact BELINDA
SAMUDA,

Plaintiff,

-against-

NEW YORK CITY HEALTH & HOSPITALS CORP.
(HARLEM HOSPITAL CENTER and COLER
GOLDWATER HOSPITAL AND NURSING FACILITY),

Defendants.

MEMORANDUM DECISION

Index No.: 118682/06

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HON. DOUGLAS E. MCKEON:

Motion by defendant New York City Health and Hospitals Corporation

("NYCHHC") for an order granting summary judgment is denied.

This medical malpractice action relates to plaintiff's treatment at Harlem Hospital and Coler-Goldwater Specialty Hospital and Nursing Facility between October 8, 2005 and January 15, 2006. Plaintiff, then a 76 year old woman, alleges that her medical condition was allowed to deteriorate in the post-operative period after undergoing surgery at Harlem Hospital for a bowel obstruction in October 2005 and that the defendant failed to properly treat her peripheral vascular disease ("PVD"). Plaintiff claims that she was caused to suffer complications from the surgery as well as sepsis and gangrene of her left lower extremity, resulting in an above the knee amputation. Plaintiff has a long standing history of PVD.

Defendants' experts opine to a reasonable degree of medical certainty that the plaintiff's injuries were not a result of any acts or omissions of NYCHHC. John W.

O'Grady, M.D., an attending in Medicine and the Director of Medical School Education in the Department of Medicine at Lenox Hill Hospital, who is Board Certified in Internal Medicine opines, upon his review of the relevant medical records and the Bills of Particulars, and based on his clinical and academic experience, that the plaintiff did not suffer any permanent damages relating to the treatment for the life-threatening bowel obstruction: "Given plaintiff's advanced age, multiple and severe co-morbidities prior to her admission to Harlem Hospital, including heart disease, hypertension, advanced PVD and the extremely critical condition in which she was admitted, plaintiff's prolonged hospital stay and complicated recovery were typical and reasonable."

Steven G. Friedman, M.D., Chairman of the Department of Surgery at New York Downtown Hospital and a Professor of Clinical surgery at Weill-Cornell Medical College, who is Board Certified in Vascular Surgery, reviewed the relevant medical records pertaining to the plaintiff, Bills of Particulars and certain deposition transcripts. He opines that the cause of plaintiff's gangrene and amputation was an onset of acute irreversible ischemia and the end-stage of plaintiff's underlying PVD. By the time plaintiff was admitted to Harlem in October 2005, her diseased limb was no longer viable. Dr. Friedman states that "[a]t no time during plaintiff's admissions at either Harlem Hospital or Coler-Goldwater was she healthy enough to undergo further revascularization." He adds that "[t]he proximate cause of plaintiff's eventual development of gangrene in her left leg and foot and the subsequent amputation of her left leg was her unremitting PVD."

In opposition, plaintiff argues there were departures by both Harlem Hospital and Coler-Goldwater, including the following: defendants failed to treat plaintiff with an adequate amount of intravenous fluids in the first two days of her initial admission to Harlem Hospital; defendants failed to adequately investigate the existence of an ulcer on her left foot during her admissions to Coler and to Harlem; and defendants failed to procure a consultation with a vascular specialist to examine the extent of plaintiff's PVD and possibly treat her condition. The failures led to a delay in a diagnosis of leg ischemia that deprived the plaintiff of an opportunity for therapeutic intervention, such as surgery, depending on what a thorough investigation, which was not done, would have revealed.

More specifically, plaintiff's expert, a cardiothoracic and vascular surgeon at several metropolitan New York area hospitals, Board Certified in General and Thoracic surgery, opines that the failure to provide adequate intravenous dehydration in October 2005 was a departure from the standard of care and that this departure was a direct proximate cause of the plaintiff's above the knee amputation "because the low flow state led to inadequate perfusion of the leg." Upon admission, the plaintiff was recognized as suffering from PVD, for which a vascular consultation was originally planned, but there is no evidence that a vascular surgeon saw the patient and evaluated the viability of her extremities following the preoperative period or subsequently. Plaintiff's expert posits that the "egregious failure to involve a vascular surgeon in the pre-operative hydration of this patient...contributed to the ischemia to the lower extremities and the eventual loss of her leg."


Plaintiff's expert summarized that the departure from the standard of care in failing to adequately rehydrate the plaintiff for almost two days was a sufficient delay to be responsible for the progressive gangrene that followed over the ensuing months. In addition, the subsequent failure to arrange for continued follow-up with a vascular surgeon, after her transfer to Coler-Goldwater, was a departure from the standard of care. These failures directly led to a delay in the diagnosis of leg ischemia that deprived the patient of the opportunity for therapeutic intervention. The failure to investigate the worsening clinical condition of the leg was therefore a departure that negatively impacted directly on the probability that the leg could be saved. Plaintiff's expert concludes by stating that had the alleged malpractice not occurred, Ms. Samuda would not have lost her leg and would not have had the loss of mobility and other sequella of an above the knee amputation.

Clearly, the defendants met their initial burden of entitlement to summary judgment, and while the issue is a close one on causation, plaintiff's expert's specified departures preclude summary disposition. In short, it is for a trier of fact to determine whether inadequate hydration and a failure to obtain a vascular consult deprived plaintiff of a reasonable chance to avoid amputation of her leg. *See Alicea v. Ligouri*, 54 Ad3d 784 (2d Dep't 2008).

So ordered.

DATED: New York, New York
December 16, 2009

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Douglas E. McKeon, J.S.C.