

Gourzis v Stolzenberg
2012 NY Slip Op 31265(U)
May 11, 2012
Sup Ct, New York County
Docket Number: 112854/09
Judge: Joan B. Lobis
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: JOAN B. LOBIS
Justice

PART 6

Gourzis, Miriam

- v -

Stolzenberg, Sol, S., AM.D.

INDEX NO. 112854/09

MOTION DATE 3/6/12

MOTION SEQ. NO. 001

The following papers, numbered 1 to 37, were read on this motion to summary judgment.

Notice of Motion / Order to Show Cause - Affidavits - Exhibits _____

Answering Affidavits - Exhibits _____

Replying Affidavits _____

No(s). 1-13; 14-25
No(s). 26-28; 29-32; 33-36
No(s). 37; 38

Upon the foregoing papers, it is ordered that this motion is

THIS MOTION IS DECIDED IN ACCORDANCE
WITH THE ACCOMPANYING MEMORANDUM DECISION & ORDER

FILED

MAY 14 2012

NEW YORK
COUNTY CLERK'S OFFICE

[Signature]

JOAN B. LOBIS, J.S.C.

Dated: 5/11/12

1. CHECK ONE: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

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

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

-----X
MIRIAM H. GOURZIS,

Plaintiff,

Index No. 112854/09

-against-

Decision and Order

SOL S. STOLZENBERG, D.M.D., P.C. d/b/a
TOOTHSАVERS DENTAL CENTER,

Defendant.

-----X
SOL S. STOLZENBERG, D.M.D., P.C. d/b/a
TOOTHSАVERS s/h/a "SOL S. STOLZENBERG,
D.M.D., P.C. d/b/a TOOTHSАVERS DENTAL
CENTER,

Third -Party Plaintiff,

-against-

DR. AHMAD CHAUDHURY,

Third-Party Defendant.

-----X
JOAN B. LOBIS, J.S.C.:

Third-party defendant Dr. Ahmad Chaudhry s/h/a Dr. Ahmad Chaudhury moves, by order to show cause, under C.P.L.R. Rule 3212, for an order granting him summary judgment and dismissing the causes of action brought against him by third-party plaintiff Sol S. Stolzenberg, D.M.D., P.C. d/b/a Tothsavers s/h/a Sol S. Stolzenberg, D.M.D., P.C. d/b/a Tothsavers Dental Center ("Tothsavers"). Defendant/third-party plaintiff Tothsavers cross-moves for an order granting it partial summary judgment and dismissing all claims of vicarious liability for Dr. Chaudhry's acts, omissions, care, and treatment.

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MAY 14 2012

NEW YORK
COUNTY CLERK'S OFFICE
Third Party
Index No. 590819/10

Plaintiff Miriam H. Gourzis commenced a dental malpractice action against Tothsavers for treatment rendered by various dentists between June 2005 and December 2008. Dr. Chaudhry, an oral and maxillofacial surgeon, rendered certain treatment to plaintiff. Tothsavers commenced a third-party action against Dr. Chaudhry, alleging, inter alia, that Dr. Chaudhry negligently performed bilateral sinus lifts; negligently performed dental procedures; failed to timely and accurately diagnose complications; and failed to obtain plaintiff's informed consent. Tothsavers also alleges that Dr. Chaudhry had an oral agreement with Tothsavers by which he agreed to indemnify and hold harmless Tothsavers.

Dr. Chaudhry's work on Ms. Gourzis' teeth consisted of placing a final abutment of a pre-existing implant at tooth number 12; placing an implant at tooth number 11; and performing sinus lifts on the upper left and upper right sides in January 2007. When Ms. Gourzis returned to Dr. Chaudhry on August 6, 2007, he anticipated that he could place implants in the upper left portion of plaintiff's mouth; however, when he reopened that area, he realized that the upper left sinus lift had failed and that most of the added bone had been absorbed by the body. After realizing that the sinus lift had failed, Dr. Chaudhry proceeded no further, informed plaintiff that the sinus lift had failed, and advised plaintiff that she would need a further procedure should she wish to proceed with implants. Dr. Chaudhry performed no work on plaintiff after August 6, 2007.

Dr. Chaudhry maintains that his work on plaintiff did not depart from good and accepted dental practice. He submits a detailed affirmation from David A. Behrman, D.M.D., who sets forth that he is a dentist duly licensed to practice in New York. Based on his review of

plaintiff's dental records, the pleadings in the case, and the parties' deposition transcripts, Dr. Behrman opines that Dr. Chaudhry did not depart from good and accepted standards of practice, nor did he fail to obtain plaintiff's informed consent.

Dr. Chaudhry's motion is sufficient to make out a prima facie case of entitlement to summary judgment on the claims asserted by Toothsavers against him sounding in dental malpractice and lack of informed consent. See, e.g., Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324 (1986); Roques v. Noble, 73 A.D.3d 204, 206 (1st Dep't 2010). Neither Toothsavers nor Ms. Gourzis substantively oppose Dr. Chaudhry's motion for summary judgment. Accordingly, Dr. Chaudhry is entitled to summary judgment dismissal of Toothsavers' causes of action against him sounding in dental malpractice and lack of informed consent. Additionally, as Dr. Chaudhry has demonstrated that his care was not negligent, to the extent that Toothsavers has claimed that Dr. Chaudhry is required to indemnify Toothsavers or contribute to a verdict or judgment against Toothsavers based on his care, these claims fall away. Given the above, Toothsavers' cross motion for an order granting it partial summary judgment on any claims that it is vicariously liable for the dental work performed by Dr. Chaudhry is rendered academic. Accordingly, it is hereby

ORDERED that the motion of third-party defendant Dr. Ahmad Chaudhry s/h/a Dr. Ahmad Chaudhury, seeking summary judgment and dismissal of the third-party complaint against him, is granted, the third-party complaint is dismissed in its entirety, and the clerk is directed to enter judgment accordingly; and it is further

ORDERED that the cross motion of third-party plaintiff Sol S. Stolzenberg, D.M.D., P.C. d/b/a Toothsavers s/h/a Sol S. Stolzenberg, D.M.D., P.C. d/b/a Toothsavers Dental Center is denied as academic; and it is further

ORDERED that the parties shall appear for a pre-trial conference on May 29, 2012, at 9:30 a.m.

Dated: May // , 2012

ENTER:



JOAN B. LOBIS, J.S.C.

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