

**Mitchell v Grace Plaza of Great Neck, Inc.**

2012 NY Slip Op 31517(U)

May 24, 2012

Sup Ct, Nassau County

Docket Number: 08-16938

Judge: John M. Galasso

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - COUNTY OF NASSAU  
PRESENT: HONORABLE JOHN M. GALASSO, J.S.C.

BOBBY MITCHELL, as Administrator of the Estate of  
CLARA MITCHELL, Deceased,

Plaintiff,

- against -

Index No. 08-16938  
Sequence #s 010, 011  
Part 35

GRACE PLAZA OF GREAT NECK, INC. and NORTH  
SHORE LONG ISLAND JEWISH HEALTH SYSTEM,  
INC.,

05/03/12

Defendants,

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Upon the foregoing papers, defendants' motion and cross-motion to dismiss the complaint on summary judgment pursuant to CPLR 3212 and, in the case of Jewish Health Systems, Inc. (North-Shore) also pursuant to CPLR 3211 (a) (7) for failure to state a cause of action, are determined as follows:

This action for medical malpractice and wrongful death was allegedly precipitated by a fall of the 78-year-old decedent Clara Mitchell on April 29, 2006 while a resident at defendant Grace Plaza of Great Neck, Inc. (Grace), a nursing home. Evidently Mrs. Mitchell, who had a longstanding history of hemorrhagic strokes, seizures and serious heart (atrial fibrillation) and other medical conditions along with multiple hospital admissions was placed in Grace subsequent to an episode at home where she was found passed out on the floor. After transport to North Shore where it was found she had suffered another stroke, she was stabilized then transferred to Grace for rehabilitation on April 24, 2006.

On April 29<sup>th</sup> while at Grace, the wheelchair bound patient attempted to stand up and lost her balance.\*\* She hit her head on a staffmember's leg before she touched the floor. Nevertheless, as a precaution, the patient was taken to the hospital for an evaluation.

\* Decedent's North Shore discharge summary prior to the transfer to Grace noted no prior history of recurring falls. She had been non-compliant with her medical regimen in the past and was returned to chronic coumadin therapy and restarted on beta-blockers at the hospital.

\*\* On the date of the accident the incident report notes there was no order for restraints. On transfer Mrs. Mitchell was unable to answer questions appropriately, although earlier she had been wheeling herself independently. However, a wheelchair alarm was in place which activated when Mrs. Mitchell stood up.

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According to uncontradicted evidence, on transfer to North Shore Mrs. Mitchell appeared agitated and disoriented in the emergency room but otherwise evinced no trauma from the fall. She became “aggressive” while being moved from a stretcher to a CT scan table. The stretcher rail was in the down position at the time to facilitate her move to the scan table. The patient rolled off and onto Dr. Wong, who was at her bedside; she fell to the floor, hitting her forehead. In response Mrs. Mitchell was placed on a backboard with a cervical collar and subsequently scanned. A hematoma to the forehead was noted in the chart plus a small laceration inside her lip.

A CT scan of her spine showed no evidence of fracture or subluxation. A brain scan demonstrated no change from one taken almost two weeks ago before her nursing home transfer to Grace\* except for a slightly increased size of soft tissue swelling in the left front of the skull cap, *i.e.*, a bump on the forehead.

A repeat CT scan taken the next day on April 30, 2006 showed a left occipital hemorrhagic transformation of a “new”\*\* stroke along with evidence of several old ischemic strokes in the right territory. Mrs. Mitchell was transferred to the SICU with a diagnosis of stroke with hemorrhagic conversion. Her condition continued to deteriorate and included periodic seizures with atrial fibrillation and aspiration pneumonia. After several transfers she passed away at South Nassau Community Hospital on August 5, 2006.

According to Grace’s expert physician and certified nursing home medical director Dr. Elaine Healy, the care Mrs. Mitchell received was appropriate and within the standard of care applicable to nursing homes.

Specifically, at the time of the incident she was appropriately monitored and supervised. The staff was present and the use of restraints under her circumstances was not warranted.

At the time of her admission defendant Grace was made aware of Mrs. Mitchell’s prior medical history. She was evaluated at a high risk for fall and accordingly provided a wheelchair, with attention paid to safety methods for transfers/ambulations and resident fatigue plus wheelchair instructions along with physical therapy. As of April 28<sup>th</sup>, the care plan was updated to include bed and chair alarms in addition to one on one assistance for transfers. Mrs. Mitchell was encouraged to call for assistance, if needed.

The accident happened when she was at or near the nurse’s station. Subsequently, the first CT scan performed at North Shore, which was after she fell off the stretcher, revealed only a forehead hematoma.

Dr. Healy explains that pursuant to Public Health Law 2803-c (b), a nursing home resident “shall be free from... physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time”...or in an emergency under qualifying circumstances. In practice, whether a restraint is necessary and to what extent requires long-term monitoring and re-evaluation.

\* The prior scan depicted a “new” non-acute stroke, *i.e.*, subsequent to a 2004 stroke.

\*\* This “new” is in the sense of even more recent than the April 2006 pre-Grace CT scan referred to above which showed right infarcts.

In the case at bar Dr. Healy maintains, just because Ms. Mitchell was at risk for falls did not render her situation an emergency or make her an “imminent danger” to herself. Although she had decreased strength and balance, she was alert, oriented, cooperative and able to follow directions. She was ambulatory with assistance and provided an alarmed wheelchair.

Dr. Healy opined that Mrs. Mitchell’s fall was clinically unavoidable.

Defendant Grace also submits the affirmation of Dr. Alan Segal, who also opines that the fall at Grace nursing home was not a proximate cause or contributing factor to Mrs. Mitchell’s alleged injuries, which according to plaintiff includes seizures, pneumonia, urinary tract and respiratory failure, strokes, loss of speech, limited swallowing, altered mental state, failure to ambulate, hypertension, loss of eyesight and death.

Significantly, Dr. Segal states trauma, such as the fall at Grace, does not cause ischemic strokes with hemorrhagic conversion. The injuries plaintiff claims are the common sequelae of a stroke.

In this case it is likely that a pre-existing stroke eventually lead to subsequent bleeding (hemorrhagic conversion). There were no physical injuries observed on Mrs. Mitchell’s head in the emergency room prior to her fall in the CT scan room. Moreover, if her fall at Grace was a contributing factor, the April 30<sup>th</sup> CT scan would have depicted trauma associated with intracranial hemorrhage, such as a subdural hematoma or hemorrhagic contusion. It did not.

According to defendant North Shore’s expert Dr. Joseph Jeret, he agrees that falls do not cause a stroke; however a stroke may cause a person to fall. Furthermore, acute strokes may not show up on a CT scan done soon after the onset of the stroke. It becomes more obvious in a scan after 24 hours.

On April 30<sup>th</sup>, the next day, the repeat CT scan of the head showed a new left occipital CVA of a kind not related to trauma. Dr. Jeret opines that this stroke, caused by atrial fibrillation, was not a new event that happened in the hospital.

Subsequently, the patient’s deteriorating condition caused her to be transferred to the stroke unit.

Dr. Jeret concludes that the fall in the CT scan room did not cause or effect Mrs. Mitchell’s ultimate outcome, exacerbate her pre-existing seizure condition or contribute to the hemorrhagic transformation of the stroke suffered prior to her admission and caused by her atrial fibrillation pre-existing condition.

Initially, the Court concludes that both defendants have sufficiently demonstrated their entitlement to judgment as a matter of law (*Zuckerman v. City of New York*, 49 NY2d 557). However, the Court also determines that in opposition, plaintiff has failed to raise a question of fact that would require a jury trial.

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In the case of the Grace nursing home, plaintiff's expert Dr. Randal Wojciehoski who is licensed to practice in Wisconsin fails to address the expert opinion of Dr. Elaine Healy that under the specific circumstances of this action and according to the New York State Public Health Law, a Velcro Rap and/or harness device was too restrictive at this juncture with no prior history of her falling from a wheelchair.\* By basing his opinion solely on Mrs. Mitchell's past medical history and not upon Mrs. Mitchell's the present assessment of her condition in the nursing, Dr. Wojciehoski's statements are merely conclusory and without probative value.

In addition, her action in rising from the chair was uncontrovertably spontaneous and unpredictable. Dr. Wojciehoski does not assert that Mrs. Mitchell was otherwise insufficiently supervised.

Furthermore, plaintiff's expert does not set out the causal connection between plaintiff's fall from the wheelchair and her subsequent injuries other than through conclusory statements. He does not take into account that there were no indications of trauma in the emergency room noted, nor intercranial evidence of trauma in the first brain CT scan at the hospital.

In considering the Grace nursing home evidence separately and assuming *arguendo* that North Shore was negligent as alleged, the evidence demonstrates as a matter of law that what occurred at the hospital was an independent or at worse, an intervening cause of the decedent's injuries and ultimate death as a matter of law (compare PJI 2:72 and 2:71 commentary). The fall was merely the event that caused defendant Grace's prudent decision to have its resident thoroughly evaluated at North Shore, without any evidence whatsoever that the fall accelerated or aggravated Mrs. Mitchell's pre-existing condition.

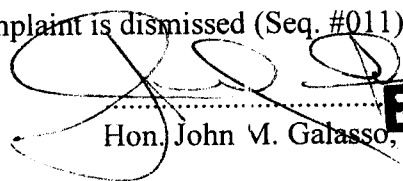
Accordingly, defendant Grace Plaza's motion is granted (Seq. #010) and the complaint and any cross-claims against this defendant are dismissed (see *Pesantes v. Komatsu Forklift USA, Inc.*, 58 AD3d 823; *Orange County-Poughkeepsie Ltd. Partnership v. Bonte*, 37 AD3d 684).

Turning to North Shore's cross-motion, Dr. Wojciehoski opinion states that North Shore was negligent in failing to have Mrs. Mitchell "secured in a Velcro Rap properly monitored with harness devices to secure her from falling off the CT scan table by having her head locked into a second secured stabilized position." However, this evaluation is without any probative value whatsoever since the admissible evidence indicates that the patient fell off the E.R. transport stretcher when she was brought to the CT scan room and the side rail was put down in preparation of moving Mrs. Mitchell to the CT scan table (see *Canton v. Doug Urban Construction Co.*, 65 NY2d 909). Consequently, plaintiff's expert fails to raise a question of fact.

Defendant's cross-motion is granted and the complaint is dismissed (Seq. #011).

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Hon. John M. Galasso, J.S.C.  
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\* Dr. Wojciehoski states there should have been a "warning" device. Again, the incontroverted evidence demonstrates that the chair alarm provided was actually set off when Mrs. Mitchell arose from the chair and then fell.