

Lani v Manaro
2012 NY Slip Op 32336(U)
September 6, 2012
Supreme Court, Richmond County
Docket Number: 11960/03
Judge: Joseph J. Maltese
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND DCM PART 3**

**Index No.:11960/03
Motion No.:003**

**JOSEPH LANI and
CAROLE LANI,**

Plaintiffs

DECISION & ORDER

HON. JOSEPH J. MALTESE

against

**ROBERT A. MANARO, M.D.,
AYMAN E. FARID, M.D.,
ST. VINCENT'S CATHOLIC MEDICAL CENTER, and
ST. VINCENT'S CAMPUS,**

Defendants

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

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

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

The defendants move for summary judgment dismissing the plaintiffs' complaint. The motion is denied.

Facts

This is an action for alleged medical malpractice. The plaintiff, Joseph Lani, went to the defendant, Robert A. Manaro, M.D. ("Dr. Manaro"), an internist, complaining of flu like symptoms and muscle soreness. Lani informed Dr. Manaro that his wife and daughter had the flu like symptoms and that he had bench pressed approximately 400 lbs prior to the soreness developing. According to Lani, Dr. Manaro conducted several electrocardiograms within his office and directed him to go see Aymen E. Farid, M.D. ("Dr. Farid"), a cardiologist. Lani

described Dr. Manaro's demeanor as one not expressing urgency at his condition. Dr. Manaro sets forth a differing rendition of the facts, wherein he claims that he advised Lani to go to the hospital immediately. It is conceded that Dr. Manaro did not administer aspirin to Lani while he was at his office.

Lani states that he proceeded to Dr. Farid's approximately 3 hours after seeing Dr. Manaro. Upon leaving Dr. Manaro's, Lani checked in on his daughter and wife and filled a prescription at the pharmacy. At Dr. Farid's office, Lani was administered an aspirin and referred to the hospital by ambulance after Dr. Farid reviewed the electrocardiogram. Dr. Farid believed that Lani suffered a myocardial infarction approximately 12-24 hours prior to his presenting to his office based on the Q waves.

Lani was taken by ambulance to the defendant St. Vincent's Medical Center ("SVMC") where Dr. Almeida reviewed the electrocardiogram and decided not to administer thrombolytic agents. Dr. Almeida's decision was based on the belief that the thrombolytic agents would not have a beneficial effect because the 4-6 hour window after the myocardial infarction had passed.

The day after Lani's admission to SVMC a transesophageal echocardiogram was performed and an aortic dissection was ruled out. The test did reveal a severe apical, septal and anterior hypo/akinesis. Dr. Farid performed a cardiac catheterization that revealed a 100% occlusion of the left anterior descending coronary artery (LAD) at the ostium with retrograde filling from the right coronary artery and severe left ventricle systolic dysfunction.

After Lani received a nuclear viability study that showed a fixed defect at the anterior wall which was supplied by the LAD that was consistent with a scar and no living tissue, Dr. Farid did not open the occlusion. Dr. Farid determined because the occlusion in the LAD was few days old and the anterior wall was severely hypokinetic there would not be any benefit to performing the procedure.

In support of their motion for summary judgment the defendants submit the expert opinion of Edward Katz, M.D. who is board certified in internal medicine, cardiovascular disease as well as echocardiography. Dr. Katz is the Cardiology Chief of Service at New York University School of Medicine. Dr. Katz's affirmation states that the defendants did not deviate from the standard of care in treating Lani. His review of Lani's medical records leads him to conclude that the myocardial infarction was not ongoing and in fact had caused the damage to the Lani's heart prior to his initial presentation to Dr. Manaro. Dr. Katz maintains that, ". . . Mr. Lani's presentation to Dr. Manaro of February 25, 2002 at 2:00 p.m. was well beyond the time in which therapy in the form of thrombolytics or cardiac catheterization to open the occlusion would be of any clinical benefit." And that the ". . . damage [to Mr. Lani] had occurred and was irreversible prior to Mr. Lani's presentation to Dr. Manaro around 2:00 p.m. on February 25, 2002."

Discussion

A motion for summary judgment must be denied if there are "facts sufficient to require a trial of any issue of fact (CPLR §3212[b]). 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".¹ 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.² As is relevant, summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist and the movant is entitled to judgment as a matter of law.³ On a motion for summary

¹ *Marine Midland Bank, N.A., v. Dino*, et al., 168 AD2d 610 [2d Dept 1990].

² *American Home Assurance Co., v. Amerford International Corp.*, 200 AD2d 472 [1st Dept 1994].

³ *Rotuba Extruders v. Ceppos*, 46 NY2d 223 [1978]; *Herrin v. Airborne Freight Corp.*, 301 AD2d 500 [2d Dept 2003].

judgment, the function of the court is issue finding, and not issue determination.⁴ In making such an inquiry, the proof must be scrutinized carefully in the light most favorable to the party opposing the motion.⁵

“On a motion for summary judgment, a defendant doctor has the burden of establishing the absence of any departure from good and accepted medical practice or that the plaintiff was not injured thereby. . . In opposition, the plaintiff must submit a physician’s affidavit attesting to the defendant’s departure from accepted practice, which departure was a competent producing cause of the injury . . . General allegations that are conclusory and unsupported by competent evidence tending to establish the essential elements of medical malpractice are insufficient to defeat summary judgment . . .”⁶

First, the plaintiffs seek for this court to disregard the unsigned deposition transcript of the moving defendants. The Appellate Division, Second Department in *Zalot v. Zieba* held that:

. . . although the deposition transcript of the third party defendant . . . was not signed, it was certified by the reporter, and was properly considered in support of the defendants’ motion since the excerpts thereof included in the record are not challenged as inaccurate.⁷

Here, there is no challenge to the accuracy of the transcripts. Consequently, they are properly before this court.

The moving defendants met their burden on summary judgment by establishing that the

⁴ *Weiner v. Ga-Ro Die Cutting*, 104 AD2d 331 [2d Dept 1984]. *Aff’d* 65 NY2d 732 [1985].

⁵ *Glennon v. Mayo*, 148 AD2d 580 [2d Dept 1989].

⁶ *Rebozo v. Wilen*, 41 AD3d 457, [2d Dept 2007].

⁷ 81 AD3d 935, 936 [2d Dep’t 2011].

defendants had not departed from good and acceptable standards of medical practice in their treatment of Lani. The defendants' expert, Dr. Katz, maintained that the damage to Lani's heart from the myocardial infarction had already been sustained by the time he presented to Dr. Manaro, and that the therapies of administering thrombolytic agents and performing a cardiac catheterization would not have had any clinical benefit.

In opposition, the plaintiffs set forth an alternate statement of facts, which maintain that Dr. Manaro did not express the urgency of Lani's condition to him. Moreover, Lani maintains that Dr. Manaro: 1) never directed him to proceed directly to the hospital for treatment; 2) never contacted an ambulance; and 3) never offered him an aspirin. In addition, the plaintiffs submit the expert affirmation of Michael R. Golding, M.D. a board certified surgeon in surgery and thoracic surgery and is currently on the staff at Lutheran Medical Center in Brooklyn, New York. Dr. Golding posits that Lani's ". . . heart attack was evolving and all of the damage later found, had not yet been done, but was easily reversible by appropriate management, including aspirin, thrombotics and cardiac catheterization." Dr. Golding maintains that Dr. Manaro departed from good and acceptable medical standards when he: 1) failed to offer the plaintiff any treatment in his office; 2) to call an ambulance to his office; 3) to give the plaintiff aspirin; 4) to send the plaintiff to the other side of Staten Island in a car to see Dr. Farid; and 4) to repeat the EKGs after the first one was clear.

Dr. Golding further maintains that because the heart attack was ongoing, Dr. Farid departed from good and accepted medical standards by failing to perform a cardiac catheterization and subsequently to remove the occlusion from Lani's LAD. Similarly, it is Dr. Golding's contention that thrombolytics should have been administered when Lani presented to SVMC, because his heart attack was ongoing and not completed.

Consequently, given the divergence of both medical opinions, an issue of fact exists and summary judgment dismissing the plaintiffs' complaint must be denied.

Accordingly, it is hereby:

ORDERED, that the defendants' motion for summary judgment is denied; and it is further

ORDERED, that the parties shall return to DCM Part 3, 130 Stuyvesant Place, 3rd Floor, on **Monday, October 1, 2012 at 9:30 a.m.** for a Pre-Trial Conference.

ENTER,

DATED: September 6, 2012

Joseph J. Maltese
Justice of the Supreme Court