

Takeuchi v Ukawa

2014 NY Slip Op 30113(U)

January 13, 2014

Sup Ct, New York County

Docket Number: 800262/11

Judge: Alice Schlesinger

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: ALICE SCHLESINGER
Justice

PART IA PART 16

Index Number : 800262/2011
TAKEUCHI, REIKO
vs.
UKAWA, AKEMI
SEQUENCE NUMBER : 001
SUMMARY JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is granted and the action is dismissed in accordance with the accompanying memorandum decision.

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

FILED
JAN 15 2014
NEW YORK
COUNTY CLERK'S OFFICE

Dated: JAN 13 2014


_____, J.S.C.
ALICE SCHLESINGER

- 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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 16

-----X
REIKO TAKEUCHI and YOZO TAKEUCHI,

Plaintiffs,

-against -

Index No. 800262/11
Mot. Seq. Nos. 001 & 002

AKEMI UKAWA, HSUEH-CHIH CHIN, ANSHIN
MEDICAL HEALTHCARE PLLC, and DR. JOHN DOE
1 through DR. JOHN DOE # 10, the preceding ten
names being fictitious, the persons or parties intended
being doctors on the staff of Anshin Medical Health Care,
PLLC, and who had a duty to supervise Akemi Ukawa
or a duty of care to the plaintiffs,

Defendants.

FILED

JAN 15 2014

NEW YORK
COUNTY CLERK'S OFFICE

-----X
SCHLESINGER, J:

All the defendants have moved in this medical malpractice action for summary judgment dismissing the claims against them. As confirmed by counsel's January 10, 2014 letter, plaintiff offers no opposition to either motion, although counsel was given ample opportunity to do so. The relevant facts are as follows.

Plaintiff Reiko Takeuchi claims here that negligent care provided by the defendants led to her development of preeclampsia during her pregnancy and the subsequent premature delivery of her son, plaintiff Yozo Takeuchi¹. Preeclampsia is a medical condition characterized by high blood pressure and significant amounts of protein in the urine of a pregnant woman which, if left untreated, can cause significant complications.

In or about August 2010, Ms. Takeuchi moved to New York from Japan while pregnant. According to the records of her New York obstetrician Dr. Teresa Cheon, Ms.

¹ Defense counsel correctly asserts that Yozo Takeuchi lacks legal capacity to sue, as he is only three years old. However, that defect can be remedied by the amendment of the pleadings so would not, standing alone, result in the dismissal of the claims here.

Takeuchi had a history of hypertension, and Dr. Cheon noted elevated readings in her chart as late as September 7, 2010.

Shortly thereafter, on September 14 and 18, 2010, plaintiff obtained acupuncture services from defendant Akemi Ukawa, a New York State licensed acupuncturist. After the second visit, plaintiff experienced shortness of breath and went to New York University Medical Center on September 20, 2010 where she was diagnosed with a pneumothorax, which is an abnormal collection of air or gas in the pleural space that separates the lung from the chest wall. Plaintiff was also diagnosed at that time with preeclampsia. As a result, her doctor induced labor and delivered the infant on September 23, 2010.

Defendant Dr. Hsueh-Chih Chin and his professional corporation, defendant Anshin Medical Healthcare PLLC, have moved to dismiss on the ground that Dr. Chin had no physician-patient relationship with the plaintiff. As documented by the License Agreement between Anshin Medical and defendant Ukawa, Ukawa merely rented space from Anshin; Ukawa and Dr. Chin had no relationship in terms of any treatment provided to the patients. (A copy of the License Agreement is attached to the motion as Exh B; see also Dr. Chin's deposition testimony at Exh C). What is more, plaintiff testified at her own deposition that she never spoke to Dr. Chin on the telephone or in the office and was never even introduced to him. (Exh E).

Dr. Chin and his corporation have thus established a prima facie case for dismissal of the action against them. They had no duty of care to the plaintiff, nor any duty to supervise Ukawa. Plaintiff had a direct relationship with Ukawa only, and there can be no claim of vicarious liability based on the terms of the License Agreement and

the facts as a whole. As plaintiff has not opposed the motion in any way, the motion is granted.

The motion by defendant Ukawa is more complex, but it is equally meritorious and is also unopposed. According to the Bill of Particulars, plaintiff claims that Ukawa's negligent performance of acupuncture caused a pneumothorax, which then led to preeclampsia and the premature birth of her son. (See Motion, Exh D). Defendant asserts in her motion that no medical correlation exists between plaintiff's pneumothorax and her development of preeclampsia and the premature delivery of her son.

In support of her motion, defendant presents an Affidavit from Steven H. Eisinger, M.D., F.A.C.O.G., a physician licensed in the State of New York who has been Board Certified in Obstetrics & Gynecology since 1977. According to his curriculum vitae (Exh A to his Affidavit), Dr. Eisinger has substantial training and experience in the field. He indicates (at ¶ 2) that his opinions are stated with a "reasonable degree of medical certainty" based on his "decades of experience in treating women with preeclampsia." He adds that he has reviewed the pleadings, plaintiff's medical records, and the deposition testimony. He has attached to his affidavit the medical records from plaintiff's obstetrician Dr. Teresa Cheon.

Dr. Eisinger notes that the records indicate that plaintiff had chronic hypertension and that Dr. Cheon recorded a particularly high reading on September 7, 2010, when plaintiff was 30 weeks pregnant. He asserts (at ¶ 5) that: "The plaintiff's allegation that the pneumothorax that she attributes to the acupuncture services caused her to develop preeclampsia is nothing more than speculation that is not supported by medical

science.” He reiterates (at ¶ 8) that: “No causal relationship exists between the acupuncture services that the plaintiff received from Ms. Ukawa and the plaintiff’s development and treatment of preeclampsia and premature childbirth of the plaintiff’s son.”

Dr. Eisinger explains the basis for his opinion in some detail. He indicates that plaintiff’s history of hypertension and her “advanced maternal age (over 35)” were “two of the top risk factors” for preeclampsia (¶¶9-10). In contrast, trauma to the mother typically does not cause preeclampsia. He emphasizes that, while the pneumothorax and preeclampsia happened around the same time, they are “not related causally or as a consequence of the other.” (¶13). As evidence of this fact, he notes that neither plaintiff’s preeclampsia, nor her hypertension, resolved after the pneumothorax had been clinically resolved; in fact, plaintiff’s hypertension worsened after the birth of her son to the point where she began taking blood pressure medication (¶¶15-16). He adds (at ¶18) that the infant’s hernia “cannot be linked to the plaintiff’s pneumothorax or to his premature delivery for that matter.”

Defendant Ukawa has thus established a prima facie case for dismissal of the claims against her. Although Dr. Eisinger does not address the claim in the Bill of Particulars that Ukawa’s negligent acupuncture caused a pneumothorax, which may well constitute an injury in itself, albeit short-lived, plaintiff has made no effort in response to the motion or otherwise to pursue that claim. Therefore, Ukawa’s motion should be granted.

Accordingly, it is hereby

ORDERED that the defendants' motions for summary judgment are granted and the complaint is dismissed in its entirety with prejudice; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: January 13, 2014

JAN 13 2014



J.S.C.
ALICE SCHLESINGER

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