

**Torres v Cerngul**

2015 NY Slip Op 32769(U)

April 10, 2015

Supreme Court, Bronx County

Docket Number: 24566/06

Judge: Douglas E. McKeon

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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX - PART IA-19A

-----X  
JESSICA TORRES.

Plaintiff(s)

- against -

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IRENE G. CERGNUL, M.D., DEBORAH BORNE,  
M.D., BRONXCARE MBD FAMILY PRACTICE  
CLINIC, BRONX-LEBANON HOSPITAL CENTER  
LINCOLN MEDICAL AND MENTAL HEALTH  
CENTER, and NEW YORK CITY HEALTH AND  
HOSPITALS CORPORATION,

DECISION/ORDER

Defendant(s)

-----X

**HON. DOUGLAS E. MCKEON**

Motion for summary judgment by defendant New York City Health and Hospitals Corporation is granted as plaintiff has advised the Court that she does not oppose that motion. Plaintiff does oppose the summary judgment motion brought by defendants Dr. Cergnul and Bronx Lebanon Hospital Center and plaintiff cross-moves to amend the Verified Bill of Particulars dated February 28, 2008 as to defendant Bronx Lebanon Hospital Center to correct a typographical error.

The Court grants plaintiff's cross-motion and permits plaintiff to amend her Verified Bill of Particulars to correct a typographical error in paragraph three. It read that "defendant Bronx Lebanon Hospital Center was careless and negligent from

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June 2, 2006 through June 21, 2006.” The new pleading will correct the alleged dates of negligence so that June 21, 2006 is changed to June 23, 2006. Paragraph three now reads that “defendant Bronx Lebanon Hospital Center was careless and negligent from June 2, 2006 through June 23, 2006.” The Court finds that there is no surprise or prejudice to defendants by permitting this amendment in that the facts and circumstances of June 22<sup>nd</sup> and June 23<sup>rd</sup> were discussed in detail at plaintiff’s deposition and also addressed by defendant’s expert, Dr. Corbett. Furthermore, a review of the allegations of negligence contained in the original Bill of Particulars as to Bronx Lebanon Hospital reveals that plaintiff alleged negligence in tests that occurred on June 22<sup>nd</sup> and June 23<sup>rd</sup>.

In support of the motion by Bronx Lebanon Hospital Center and Dr. Cerngul, movants have provided the Court with the expert affirmation of Dr. Corbett. Dr. Corbett opines, within a reasonable degree of medical certainty, that the medical staff of Bronx Lebanon Hospital Center obtained a proper history, performed sufficient and timely tests, appropriately monitored plaintiff and worked up her signs, symptoms and complaints, appropriately examined plaintiff and appropriately and timely diagnosed and treated an ectopic pregnancy. Dr. Corbett further opines that the movants appropriately made all attempts to preserve plaintiff’s fallopian tube.

Plaintiff’s expert fails to address any of those allegations which were rebutted by Dr. Corbett’s affirmation. Instead, plaintiff’s expert offers new theories of liability as to Bronx Lebanon Hospital Center now claiming that the staff failed to provide the

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option of immediate surgery on June 22<sup>nd</sup>, failed to offer a less invasive procedure, failed to maintain sufficient staff or operating rooms and failed to refer the plaintiff to another facility where an immediate laparoscopy could have been performed. Movants argue that plaintiff cannot introduce new allegations or theories of liability not initially pled in the Bill of Particulars or pleadings for the first time in opposition to summary judgment citing Abalola v. Flower Hosp. 44 A.D.3d 522 (1<sup>st</sup> Dept. 2007) and other cases.

Dr. Corbett opines, within a reasonable degree of medical certainty, that plaintiff was in stable condition at all times on June 22, 2006 and discusses her blood pressure, temperature, and heart rate. He opines that there were no signs or symptoms of a ruptured fallopian tube throughout June 22<sup>nd</sup>. Plaintiff's expert has failed to provide a reason for the new claim that emergent surgery should have been offered on June 22, 2006 as the expert has failed to refute Dr. Corbett's opinion that the patient was stable and did not exhibit any signs or symptoms of a ruptured fallopian tube requiring immediate surgery. Furthermore, plaintiff's expert fails to address that plaintiff signed a consent form authorizing Dr. Afflack, an OB/GYN who evaluated plaintiff on June 22<sup>nd</sup> at Bronx Lebanon Hospital Center, to perform a laparoscopy, possible laparotomy, possible oophorectomy and a possible salpingectomy. As such, there is no evidence to support plaintiff's theory that a less invasive procedure was not offered her when there is a signed consent form for these other procedures one of which is a diagnostic laparoscopy which is the least

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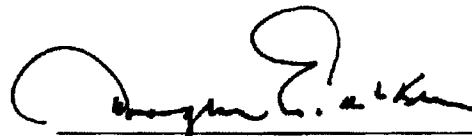
invasive procedure.

The Court finds that Dr. Cergnul is also entitled to summary judgment. Plaintiff has not alleged any departures as to the care and treatment rendered on June 15<sup>th</sup> or June 19, 2006 so the focus of the expert opinion surrounds the June 6<sup>th</sup> visit. Again, Dr. Corbett opines within a reasonable degree of medical certainty that Dr. Cergnul obtained a proper history, performed sufficient tests, appropriately monitored plaintiff and appropriately and timely diagnosed and treated an ectopic pregnancy. The Court notes that Dr. Cergnul has demonstrated that she explicitly instructed plaintiff to return to the clinic on June 8<sup>th</sup> which plaintiff failed to do. Furthermore, plaintiff's expert failed to dispute Dr. Corbett's opinion that on examination on June 6<sup>th</sup> by Dr. Cergnul plaintiff was stable so there was no need to refer plaintiff to an emergency department or any specialist.

Defendants' motion for summary judgment is granted as plaintiff has failed to establish that the injuries (a ruptured fallopian tube) were proximately related to any acts or omissions by defendant. Plaintiff's expert has failed to refute Dr. Corbett's opinion that plaintiff's fallopian tube ruptured intra operatively which is a well known risk of a salpingostomy and not the result of any negligence by defendant.

So ordered.

Dated: *April 10, 2015*



Douglas E. McKeon, J.S.C.