Eng v NYU Hosps. Ctr.
2018 NY Slip Op 30742(U)
April 26, 2018
Supreme Court, New York County
Docket Number: 156810/2014
Judge: Manuel J. Mendez

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ PART 13
Justice

DOROTHY ENG, as the Executor of the ESTATE OF HING MAY ENG,

Plaintiff,

-against-

NYU HOSPITALS CENTER,

Defendant.

INDEX NO.	156810/2014
MOTION DATE	04/18/2018
MOTION SEQ. NO.	004
MOTION CAL. NO.	

The following papers, numbered 1 to 7 were read on this motion for summary judgment.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1 - 3
Answering Affidavits — Exhibits	4 - 6
Replying Affidavits	7

Cross-Motion: ☐ Yes X No

Upon a reading of the foregoing cited papers, it is Ordered that Defendant's motion for summary judgment to dismiss Plaintiff's Second Amended Complaint pursuant to CPLR §3212, is denied.

Plaintiff, the daughter and executor of the Estate of Hing May Eng (the "decedent"), alleges that from August 9, 2013 to August 26, 2013, the decedent was treated as an inpatient, for injuries sustained following a fall, at the Defendant's facilities located at 550 First Avenue, New York, New York ("Hospital"). Plaintiff alleges that on August 20, 2013 Martina Eng, a non-party daughter of the decedent and employed by the Defendant as a nurse, allegedly accessed decedent's medical records from the Defendant's record system without a written health Insurance Portability and Accountability Act of 1996 [HIPAA] authorization. Plaintiff alleges that Martina Eng used these medical records to assist her in a separate action she commenced to obtain guardianship over the decedent.

While the decedent was still in the Hospital Martina Eng allegedly informed some of the Defendant's staff, without any factual support, that the decedent suffered from mental illness and should not be released. This allegedly led to decedent being falsely imprisoned in the Hospital from August 26, 2013 to September 20, 2013 despite repeated demands to be discharged. Plaintiff commenced this action on July 11, 2014 asserting causes of action for negligence and wrongful imprisonment. Plaintiff's Second Amended Complaint added a cause of action for negligent hiring, retention, or supervision.

Defendant now moves for summary judgment pursuant to CPLR §3212 to dismiss Plaintiff's Second Amended Complaint. Plaintiff opposes the motion.

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

To prevail on a motion for summary judgment, the proponent must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence, eliminating all material issues of fact (Klein v City of New York, 81 NY2d 833, 652 NYS2d 723 [1996]). Once the moving party has satisfied these standards, the burden shifts to the opponent to rebut that prima facie showing, by producing contrary evidence, in admissible form, sufficient to require a trial of material factual issues (Amatulli v Delhi Constr. Corp., 77 NY2d 525, 569 NYS2d 337 [1999]). In determining the motion, the court must construe the evidence in the light most favorable to the non-moving party (SSBS Realty Corp. v Public Service Mut. Ins. Co., 253 AD2d 583, 677 NYS2d 136 [1st Dept. 1998]).

A Plaintiff cannot maintain a private cause of action to require physicians (and medical corporations) to protect the confidentiality of patient information obtained during the course of treatment by statutes or regulations (Doe v Cmty. Health Plan - Kaiser Corp., 268 AD2d 183, 709 NYS2d 215 [3rd Dept. 2000]). However, "the duty not to disclose confidential personal information springs from the implied covenant of trust and confidence that is inherent in the physician patient relationship, the breach of which is actionable as a tort" (*Id*). "A physician's disclosure of secrets acquired when treating a patient naturally shocks our sense of decency and propriety, which is one reason it is forbidden" (Chanko v Am. Broad. Cos. Inc., 27 NY3d 46, 29 NYS3d 879, 49 NE3d 1171 [2016]). "The legislature has declared that it is the public policy of this State to protect the "privacy and confidentiality of sensitive medical information" (*Id*).

To establish a cause of action for breach of physician-patient confidentiality, the Plaintiff must show: "(1) the existence of a physician-patient relationship; (2) the physician's acquisition of information relating to the patient's treatment or diagnosis; (3) the disclosure of such confidential information to a person not connected with the patient's medical treatment, in a manner that allows the patient to be identified; (4) lack of consent for that disclosure; and (5) damages" (*Id*). "Under the doctrine of respondeat superior, an employer may be vicariously liable for the tortious acts of its employees only if those acts were committed in furtherance of the employer's business and within the scope of employment" (N. X. v Cabrini Med. Ctr., 97 NY2d 247, 739 NYS2d 348, 765 NE2d 844 [2002]). "A medical corporation's duty of safekeeping a patient's confidential medical information is limited to risks that are reasonably foreseeable and to actions within the scope of employment" pursuant to the theory of *respondeat superior* (Doe v Guthrie Clinic, Ltd., 22 NY3d 480, 982 NYS2d 431, 5 NE3d 578 [2014]).

Material issues of fact remain as to whether it was reasonably foreseeable for the Defendant to be aware that Martina Eng would obtain the decedent's medical record without a proper authorization and disclose it to a third-party, and whether this act was within the scope of her employment. The record establishes that the decedent was a patient at the Defendant's Hospital and as a result, doctors and staff acquired medical information about her (Moving Papers Ex. AA). Martina Eng, a nurse at the Hospital, testified that she accessed decedent's medical records and gave them to her lawyer in the unrelated guardianship action (*Id* at Ex. S). The decedent never gave Martina Eng permission to release her medical records to the third-party. The determination of whether particular acts are within

the scope of the servant's employment is heavily dependent on factual consideration and normally left for juries (Riviello v Waldron, 47 NY2d 297, 418 NYS2d 300, 391 NE2d 1278 [1979]). Summary judgment on Plaintiff's First Cause of Action is denied.

For a plaintiff to establish a cause of action for false imprisonment, the plaintiff must show that: "(1) the defendant intended to confine him; (2) the plaintiff was conscious of the confinement; (3) the plaintiff did not consent to the confinement; and (4) the confinement was not otherwise privileged" (Broughton v State, 37 NY2d 451, 373 NYS2d 87, 335 NE2d 310 [1975]). A patient's "[c]ommitment pursuant to Mental Hygiene Law article 9 is privileged in the absence of medical malpractice. "[T]he burden of proving privilege is upon the person or entity charged with the commission of the tort" (Gonzalez v State of New York, 110 A.D.2d 810, 812, 488 N.Y.S.2d 231 [2nd Dept. 1985]; *see also* Hollender v Trump Vill. Coop., Inc., 58 NY2d 420, 461 NYS2d 765, 448 NE2d 432 [1983]). With patients involving psychiatric admission, "considerations of due process require that [the institution] comport its conduct with the procedures outlined in the Mental Hygiene Law, and take steps to apply the criteria articulated therein" (Ferris v Millman, 17 Misc.3d 898, 847 NYS2d 373 (NY Sup. Ct. 2007) *citing* Morgan v City of N.Y., 32 AD3d 912, 822 NYS2d 567 [2nd Dept. 2006]; *see also* Ruhlmann v Smith, 323 F. Supp.2d 356 (NDNY 2004) ["Whether the confinement here was privileged depended upon whether the mandates of Mental Hygiene Law 9.39 has been fulfilled"]).

Defendant fails to meet its prima facie burden that the decedent's confinement was privileged pursuant to Mental Hygiene Law Article 9. The decedent was held in the Hospital for seventeen (17) days despite informing multiple employees of her desire to be discharged. The Defendant failed to offer evidence that it acted in compliance with Mental Hygiene Law Article 9, including by failing to: (i) notice the decedent of her rights and availability to counsel (MHL §9.07); (ii) have an application certified by two doctors ten (10) days prior to an involuntary admission, which was immediately reviewed by a psychiatrist (MHL §9.27); (iii) notice the decedent of her right to a hearing to contest imprisonment (MHL §9.30); and (iv) after decedent's refusal to treatment, the Defendant did not submit evidence that it made an emergency application to the supreme court for permission to retain her (MHL §9.35).

Defendant failed to demonstrate it acted in accordance with the Article 9 guidelines. The Defendant fails to make its prima facie showing that it should be entitled to Article 9 privilege and shift the burden to the Plaintiff. Summary judgment on Plaintiff's Second Cause of Action is denied.

To establish a cause of action for negligent hiring, supervision, or retention, the Plaintiff must establish the standard elements of negligence in addition to establishing a showing: "(1) that the tort-feasor and the defendant were in an employee-employer relationship; (2) that the employer knew or should have known of the employee's propensity for the conduct which caused the injury prior to the injury's occurrence; and, (3) that the tort was committed on the employer's premises or with the employer's chattels." (Ehrens v Lutheran Church, 385 F.3d

232 (2d Cir. 2004) *citing* Kenneth R. v Roman Catholic Diocese, 229 AD2d 159, 654 NYS2d 791[2nd Dept. 1997]). "A claim for negligent supervision or retention arises when an employer places an employee in a position to cause foreseeable harm, which the injured party most probably would have been spared had the employer taken reasonable care in supervising or retaining the employee." (Sheila C. v Povich, 11 AD3d 120, 781 NYS2d 342 [1st Dept. 2004]).

Material issues of fact remain as to whether the Defendant knew or should have known that Martina Eng would access and take the decedent's medical record without the proper authorization and use it for the unrelated guardianship action. Martina Eng had repeatedly told other employees that she commenced an action to obtain guardianship over the decedent (Opposition Papers Ex. A). During Martina Eng's deposition, she testified that she also informed Dr. Geoffrey Taylor that she "need[ed] some type of documentation to support [her] claim that [her] mother [was] not competent" to be successful in her guardianship proceeding (Moving Papers Ex. S). Summary judgment on Plaintiff's Third Cause of Action is denied.

Accordingly, it is ORDERED, that Defendant's motion for summary judgment to dismiss Plaintiff's Second Amended Complaint pursuant to CPLR §3212, is denied.

ENTER:

MANUEL J. MENDEZ
J.S.C.

Dated: April 26, 2018

MANUEL J. MENDEZ
J.S.C.

Check one: ☐ FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE