

Ransom v Ladetsky

2018 NY Slip Op 32196(U)

September 6, 2018

Supreme Court, New York County

Docket Number: 805130/15

Judge: Joan A. Madden

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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MAYRA RANSOM, INDEX NO. 805130/15

Plaintiff,
-against-

LYNN LADETSKY, M.D., COLUMBUS CIRCLE IMAGING,
COLUMBUS CIRCLE IMAGING a division of WEST SIDE
RADIOLOGY ASSOCIATES, P.C., WEST SIDE RADIOLOGY
ASSOCIATES, P.C., COLUMBUS CIRCLE IMAGING a
division of WEST SIDE RADIOLOGY ASSOCIATES, P.C.
affiliated with ST. LUKE’S ROOSEVELT HOSPITAL CENTER,
ST. LUKE’S ROOSEVELT HOSPITAL CENTER, ST. LUKE’S
ROOSEVELT HOSPITAL CENTER a member of CONTINUUM
HEALTH PARTNERS, INC., ST. LUKE’S ROOSEVELT
HOSPITAL CENTER a member of MOUNT SINAI
HEALTH SYSTEM, INC., CONTINUUM HEALTH
PARTNERS, INC., MOUNT SINAI HEALTH
SYSTEM, INC., PAUL TARTTER, M.D.,

Defendants.

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JOAN A. MADDEN, J.:

In this action for medical malpractice, plaintiff alleges defendants failed to timely
diagnose and treat breast cancer, specifically a cancerous sternal lesion, during the period from
December 8, 2012 to October 31, 2014, thereby causing the cancer to metastasize, spread and
upstage, and ultimately resulting in her death on September 9, 2017.

Plaintiff moves for an order pursuant to CPLR 1015(a), amending the caption to
substitute the executrix of plaintiff’s estate; an order lifting the automatic stay due to plaintiff’s
death; an order pursuant to CPLR 3025(b) granting leave to amend the complaint to add a cause
of action for wrongful death; and an order extending the time to file note of issue. In support of

the proposed new claim for wrongful death, plaintiff submits the expert affirmation of Dr. Anupama Pani, M.D. who is Board Certified in Family Practice.

Defendant Dr. Ladetsky, and defendants St. Luke's Roosevelt Hospital Center, St. Luke's Roosevelt Hospital Center a member of Continuum Health Partners, Inc., St. Luke's Roosevelt Hospital Center, a member of Mount Sinai Health System, Inc., Continuum Health Partners, Inc., Mount Sinai Health System, Inc. and Paul Tarter, M.D. (collectively "St. Luke's Roosevelt Hospital") oppose only that portion of the motion seeking to amend the complaint to add a wrongful death cause of action.¹ Citing Imperati v. Lee, 132 AD3d 591 (1st Dept 2015), defendants assert that plaintiff's expert affirmation fails to establish the causal connection between the alleged malpractice and Mr. Ransom's death. Defendants object that Dr. Pani's opinion as to causation is conclusory; she fails to identify and differentiate any specific acts committed by any specifically named defendants; she is Board Certified in Family Practice, so the diagnosis and treatment of cancer is beyond her medical expertise; she is not a radiologist, so her opinion that the December 18, 2012 MRI shows a "sternal lesion" is beyond her expertise; she never treated Ms. Ransom; and she fails to address the significance of Ms. Ransom's subsequent treatment for four years following the alleged malpractice.

Defendants' objections to Dr. Pani's expert affirmation are without merit. In addition to Imperati v. Lee, id., defendants cite McGuire v. Small, 129 AD2d 429 (1st Dept 1987). The

¹The St. Luke's Roosevelt Hospital defendants "oppose plaintiff's request to lift the stay," asserting that plaintiff "concedes . . . the pendency of the Fairway Liquidation." Plaintiff, however, is merely moving to lift the stay resulting from Ms. Ransom's death, and is not seeking any relief with respect to any stay resulting from the liquidation proceeding involving Fairway Physicians Insurance Co, the entity that provided malpractice coverage to defendants West Side Radiology and Columbus Circle Imaging. The Court, at this time, makes no determination as to the effect of the liquidation proceeding on the instant action.

plaintiffs in both those cases failed to submit an expert affidavit or affirmation from a physician, and relied solely on an attorney's affirmation. In contrast, in the case at bar, plaintiff submits the expert affirmation of Dr. Pani who identifies the medical records she reviewed and relied on in rendering her opinion, as including the records from defendants St. Luke's Roosevelt Hospital and Columbus Circle Imaging, and non-parties University Radiology at Robert Wood Johnson, Rutgers Cancer Institute of New Jersey, Cancer Treatment Centers of America, Morristown Medical Center and Caring Hospice Services. See Griffin v. New York City Transit Authority, 1 AD3d 141 (1st Dept 2003). Those records cover not only the period of defendants' treatment and the alleged malpractice, but also the subsequent treatment provided by non-parties through the time of Ms. Ransom's death.

Moreover, for the purposes of this CPLR 3025(b) motion for leave to amend the complaint, the affirmation of plaintiff's expert is sufficient to establish a causal connection between Ms. Ransom's death and the originally alleged malpractice. See Frangiadakis v. 51 West 81st Street Corp, 161 AD3d 478, 479 (1st Dept 2018); Gambles v. Davis, 32 AD3d 224, 226 (1st Dept 2006). Based on a detailed recitation of Ms. Ransom's medical history, Dr. Pani opines that the same departure supporting decedent's claims for malpractice, i.e. the failure to timely diagnose Ms. Ransom's cancerous sternal lesion, caused her death.

Specifically, Dr. Pani explains that from November 2012 to September 2013, Ms. Ransom was treated for cancer of her left breast, including surgery, chemotherapy and radiation therapy; in June 2014, she discovered a new mass in her left breast; and on October 31, 2014, a PET-CT scan was performed. Dr. Pani opines that the October 2014 PET-CT scan "identified

the mass in the left breast as well as a sclerotic lesion in the mid sternum” and “[i]t was noted that the sternal lesion was apparent on the breast MRI previously done on December 18, 2012, and my own review of the radiological imaging confirms this.” Dr. Pani opines that “[f]ollowing the belated diagnosis of the sternal lesion, Ms. Ransom commenced an “intensive course of treatment” for the cancer and the sternal lesion in particular,” but despite “aggressive treatment, the malignancy in Ms. Ransom’s sternal lesion continued to persist and recur.”

Dr. Pani opines that after a partial sternectomy was performed “in an attempt to excise the lesion . . . the malignancy that had been contained in the sternal lesion metastasized to other parts of Ms. Ransom’s body, including her liver, abdomen, kidneys and lungs,” and her “cancer, and her cancerous sternal lesion in particular, clearly was the cause of her death.” Dr. Pani further opines that “almost certainly,” the nearly two-year delay in diagnosing the sternal lesion had a “very substantial impact” on Ms Ransom’s outcome, as had the sternal lesion been timely diagnosed in December 2012 when it was “clearly” shown on the MRI, it would have been “far more treatable and far more responsive to treatment,” and “most likely” either the sternectomy would not have been necessary or the cancer would not have metastasized to other parts of Ms. Ransom’s body, which “ultimately led to her death.”

To the extent defendants object that Dr. Pani’s opinion is conclusory, and fails to identify and differentiate any specific acts committed by any specifically named defendants, “[t]o require a more detailed showing regarding [defendants’] negligence would impose upon the plaintiffs a burden of proof associated with summary judgment without affording the plaintiffs full discovery on the issue.” Gambles v. Davis, *supra* at 226 (1st Dept 2006) (quoting Zuck v. Sierp, 169 AD2d 717 [2nd Dept 1991]). While defendants object to Dr. Pani’s qualifications, they cite no legal

authority holding that an expert must be certified in the particular medical speciality on which she is rendering an expert opinion.

Thus, based on Dr. Pani's expert affirmation, plaintiff has satisfied the requirement for "competent medical proof of the causal connection between the alleged malpractice and the death of the original plaintiff." Imperati v. Lee, supra (quoting McGuire v. Small, supra); accord Frangiadakis v. 51 West 81st Street Corp, supra at 479; Gambles v. Davis, supra at 225.

Plaintiff, therefore, has made a sufficient showing to amend the complaint to add a wrongful death cause of action. See Frangiadakis v. 51 West 81st Street Corp, supra; Gambles v. Davis, supra; Zuck v. Sierp, supra; Spina-Sterling v. Birnbaum, 2016 WL 3647256 (Sup Ct, NY Co 2016).

The balance of plaintiff's motion is granted in the absence of opposition.

Accordingly, it is

ORDERED that plaintiff's motion is granted in its entirety; and it is further

ORDERED that plaintiff's motion for leave to amend the complaint to add a cause of action for wrongful death is granted and the proposed Amended Summons and Verified Amended Complaint annexed to the motion papers as Exhibit G and electronically filed as Document No. 39, shall be deemed served upon service of a copy of this decision and order with notice of entry; and it is further

ORDERED that defendants shall have 20 days from said service to serve and file answers to the Verified Amended Complaint; and it is further

ORDERED that the stay resulting from plaintiff's death is lifted forthwith; and it is further

ORDERED that the caption is amended to substitute Yajaira Montes Rosario, as Executrix of the Estate of Mayra Ransom, as plaintiff, and the amended caption shall read as follows:

YAJAIRA MONTES ROSARIO, as EXECUTRIX OF THE ESTATE OF MAYRA RANSOM,

Plaintiff,

-against-

LYNN LADETSKY, M.D., COLUMBUS CIRCLE IMAGING, COLUMBUS CIRCLE IMAGING a division of WEST SIDE RADIOLOGY ASSOCIATES, P.C., WEST SIDE RADIOLOGY ASSOCIATES, P.C., COLUMBUS CIRCLE IMAGING a division of WEST SIDE RADIOLOGY ASSOCIATES, P.C. affiliated with ST. LUKE'S ROOSEVELT HOSPITAL CENTER, ST. LUKE'S ROOSEVELT HOSPITAL CENTER, ST. LUKE'S ROOSEVELT HOSPITAL CENTER a member of CONTINUUM HEALTH PARTNERS, INC., ST. LUKE'S ROOSEVELT HOSPITAL CENTER a member of MOUNT SINAI HEALTH SYSTEM, INC., CONTINUUM HEALTH PARTNERS, INC., MOUNT SINAI HEALTH SYSTEM, INC., PAUL TARTTER, M.D.,

Defendants.

and it is further


ORDERED that plaintiff shall serve a copy of this decision and order with notice of entry on the Clerk of the Trial Support Office (Room 158), and on the County Clerk, so that the Court's records may be altered to reflect the change in the caption substituting Yajaira Montes Rosario, as Executrix of the Estate of Mayra Ransom, as plaintiff; and it is further

ORDERED that a new date for filing note of issue shall be set at the next status conference; and it is further

ORDERED that the parties shall appear for a status conference on October 11, 2018, at 9:30 a.m., in Part 11, Room 351, 60 Centre Street, New York, New York.

DATED: September 6, 2018

ENTER:



J.S.C.
HON. JOAN A. MADDEN
J.S.C.