

Rohan v Lazarou
2018 NY Slip Op 33271(U)
December 10, 2018
Supreme Court, New York County
Docket Number: 805184/15
Judge: Martin Shulman
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NYSCEF DOC. NO. 135

RECEIVED NYSCEF: 12/12/2018

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

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LINDA ROHAN and BRIAN ROHAN,

Plaintiffs,

-against-

GEORGE LAZAROU, M.D., CARA GRIMES, M.D.,
WINTHROP-UNIVERSITY HOSPITAL, WOMEN'S
CONTEMPORARY CARE ASSOCIATES, P.C.,
NEW YORK PRESBYTERIAN HEALTH CARE
SYSTEM, INC. and COLUMBIA UNIVERSITY
HEALTH CARE, INC.,

Defendants.
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Index No. 805184/15

Decision & Order

Martin Shulman, J.:

In this action alleging medical malpractice and related claims, defendant Winthrop University Hospital (Winthrop) moves pursuant to CPLR 3212 for summary judgment dismissing this action (motion sequence 1). Defendants George Lazarou, M.D. (Dr. Lazarou) and Women's Contemporary Care Associates, P.C. (WCCA) move for the same relief (motion sequence 2). Finally, the remaining defendants, Cara Grimes, M.D., The New York and Presbyterian Hospital s/h/a New York Presbyterian Health Care System, Inc. and Columbia University Health Care, Inc. (collectively, the NYPH defendants), also move for summary judgment (motion sequence 3). Plaintiffs oppose all of the motions except that of Winthrop (seq. 1). Motion sequences 1, 2 and 3 are consolidated for disposition.

"To sustain a cause of action for medical malpractice, a plaintiff must prove two essential elements: (1) a deviation or departure from accepted

practice, and (2) evidence that such departure was a proximate cause of plaintiff's injury." *Frye v Montefiore Med. Ctr.*, 70 AD3d 15, 24 (1st Dept 2009) (citation omitted). A defendant physician seeking summary judgment must make a prima facie showing establishing the absence of a triable issue of fact as to the alleged departure from accepted standards of medical practice (*id.*).

In opposition, "a plaintiff must produce expert testimony regarding specific acts of malpractice, and not just testimony that alleges '[g]eneral allegations of medical malpractice, merely conclusory and unsupported by competent evidence tending to establish the essential elements of medical malpractice'." *Id.*, citing *Alvarez v Prospect Hosp.*, 68 NY2d at 325. "In most instances, the opinion of a qualified expert that the plaintiff's injuries resulted from a deviation from relevant industry or medical standards is sufficient to preclude a grant of summary judgment in a defendant's favor (citation omitted)." *Id.* However, where an expert's ultimate assertions are speculative or unsupported by any evidentiary foundation, the opinion should be given no probative force and is insufficient to withstand summary judgment. *Id.*, citing *Diaz v New York Downtown Hosp.*, 99 NY2d 542, 544 (2002).

It is unnecessary for this court to waste further judicial resources detailing this action's factual and procedural background, or summarizing the relevant arguments in support of and in opposition to each motion. This is because plaintiffs fail to submit any expert affidavit in opposition to motion sequences 2 and 3 and have failed to interpose any opposition to Winthrop's motion (sequence 1).

Each defendant has established prima facie entitlement to summary judgment dismissing this action. Plaintiffs do dispute that Dr. Lazarou, WCCA and the NYPH defendants have submitted detailed supporting affidavits from well qualified experts having extensive experience and knowledge in their respective specialties.¹ Their opinions are base upon their review of plaintiff Linda Rohan's medical records as well as the pleadings and deposition transcripts herein. Each expert addresses plaintiff's allegations in detail and establishes that none of the defendants deviated from good and accepted standards of medical care and none of their alleged acts or omissions proximately caused Ms. Rohan's claimed injuries. Accordingly, the burden shifted to plaintiffs to establish that issues of fact preclude summary judgment, which they failed to do.

For the reasons stated in the reply papers (motion sequences 2 and 3), there is no merit to plaintiffs' argument that an issue of fact exists because the NYPH defendants' expert's affidavit purportedly conflicts with that of Dr. Lazarou and WCCA. Nor does the record support the claim that the NYPH defendants failed to address plaintiffs' claims that they failed to: (1) "take heed of Plaintiff's signs, symptoms, and history"; and (2) "properly and sufficiently plan the [procedure]". These allegations are implicitly addressed in the NYPH defendants' expert's affidavit and there is no support for them in the record.

Finally, with respect to the argument that the institutional defendants failed to address the allegations that they failed to have pertinent written policies and

¹ Winthrop relies upon the expert affidavit of Dr. Lazarou, its employee.

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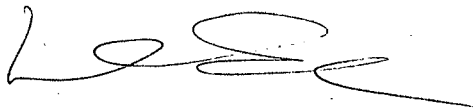
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procedures in effect or failed to follow any such policies and procedures, nothing in the record indicates that same existed and, if so, how they were allegedly violated. Indeed, plaintiffs never deposed representatives of the institutional defendants nor does it appear from the record that any discovery was ever conducted with regard to these allegations.

For all of the foregoing reasons, it is

ORDERED that summary judgment is granted in favor of all defendants, the complaint is dismissed with prejudice and the Clerk is directed to enter judgment dismissing this action with prejudice as to these defendants, together with costs and disbursements as taxed by the Clerk upon the submission of an appropriate bill of costs.

Dated: New York, New York
December 10, 2018



HON. MARTIN SHULMAN, J.S.C