

Padilla v Bodey

2019 NY Slip Op 30791(U)

March 25, 2019

Supreme Court, New York County

Docket Number: 161554/2015

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

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Rose Padilla,
Plaintiff,

Index No.
161554/2015

**DECISION and
ORDER**

- against -

Mot. Seq. #001

Janet C. Bodey, D.D.S.,
Defendant.

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HON. EILEEN A. RAKOWER, J.S.C.

Plaintiff Rose Padilla (“Padilla”) commenced this dental malpractice action by summons and complaint on November 10, 2015 against defendant Janet C. Bodey, D.D.S. (“Bodey”). Bodey filed an answer on December 7, 2015. Padilla served a Verified Bill of Particulars on December 15, 2015, and an Amended Bill of Particulars on April 19, 2016.

Pending Motion

Presently before the Court is Bodey’s motion seeking an Order granting her summary judgment pursuant to CPLR 3212 and dismissing all claims against her. Bodey submits an affidavit; pleadings, Bills of Particulars; Amended Bill of Particulars; records of Manhattan Oral Facial Surgery LLC; excerpts from Bodey’s deposition; transcript of Bodey’s deposition; Notice to Admit; Certificate of Filing for Manhattan Oral Facial Surgery LLC; and Calendar Print Out.

Padilla does not oppose.

Padilla’s Claims

In the Bill of Particulars and Amended Bill of Particulars, Padilla claims that she was treated by Bodey from August 2013 through December 2014 at offices located at 3915 Broadway, New York, New York. Padilla claims that she came to

Bodey complaining of pain at the lower right side of her mouth and that Bodey failed to make a proper diagnosis and render care in conformity with accepted dental standards. Padilla claims that Bodey “caused additional injury by being aggressive with repairing the injured area after the extraction” and “unnecessary (sic) removed teeth no. 7 and 8 causing plaintiff to need substantial dental treatment in the future.” Padilla further claims that she was not advised of any risks or alternatives” and should have been given “more information prior to extracting” the teeth and “informed [of] what procedures could have been done in order to preserve the teeth.” Padilla further asserts that “[t]here are no claims of vicarious responsibility.”

At her deposition, Padilla testified that she did not remember the dentist who extracted the teeth and that the extractions occurred in 2013. (Dep. Transcript, pages 8-11).

Bodey’s Testimony and Affidavit

Bodey testified at her deposition that she is a licensed Dentist in the State of New York. Bodey further testified that she did not provide care or treatment to Padilla in 2013 or 2014, was not present for any treatment provided to Padilla during those years and did not supervise any care provided to Padilla during those years. (Transcript, 35-36).

The medical records of Manhattan Oral Facial Surgery, LLC, identify non-party Jonathan Pong, DMD, as having performed extractions on Padilla’s teeth on August 8, 2013.

Notice to Admit

On April 11, 2017, Padilla was served with a Notice to Admit that: (a) Bodey did not provide dental care and treatment to Padilla during the period of August 2013 through December 2014; (b) Bodey did not perform dental surgery on Padilla in 2013; and (c) Bodey did not provide the dental care and treatment referred to in Padilla’s pleadings.

Bodey’s Supporting Affidavit

In her affidavit, Bodey states that she is the shareholder of the Limited Liability Company Manhattan Oral Facial Surgery, LLC, which was formed as of March 21, 2009. Bodey states that she has reviewed her deposition transcript and the records of Manhattan Oral Facial Surgery, LLC, and opines “to a reasonable

degree of dental certainty, [her] care and treatment of plaintiff, was at all times within the bounds of good and accepted dental care and nothing that was done by me, or omitted by me, was a proximate cause of any injury to plaintiff.” Bodey further opines that “the care, treatment and actions of the staff at Manhattan Oral Facial Surgery, LLC, with respect to the care and treatment of plaintiff were at all times appropriate and in accord with good and accepted dental care.”

Bodey avers, “[m]ore particularly, I was not negligent in failing to treat plaintiff in accord with good and accepted dental care, rather I did not treat plaintiff at all during the times alleged in plaintiff’s pleadings. Rather the care that I rendered was in June and July, 2010, a period of time which is not included in plaintiff’s claims.” Bodey further avers, “[m]oreover, I was not present for, did not provide nor supervise any of the care and treatment included in plaintiff’s claims herein.” Bodey further avers, “Manhattan Oral Facial Surgery, L.L.C. employs fully licensed Oral Surgeons who are well qualified by virtue of their knowledge, education, training, and experience” and “there is no need for [her] to supervise the oral surgical care that they provide.”

Relevant Legal Standard

CPLR § 3212 provides in relevant part, that a motion for summary judgment,

“shall show that there is no defense to the cause of action or that the cause of action or defense has no merit. The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party... [t]he motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact.”

A defendant moving for summary judgment in a medical malpractice case has the burden of making a *prima facie* showing of entitlement to judgment as a matter of law by showing that “there was no departure from good and accepted medical practice or that any departure was not the proximate cause of the injuries alleged” by introducing expert testimony that is supported by the facts in the record. *Rogues v. Nobel*, 73 A.D.3d 204, 206 [1st Dept. 2010]. Once the defendant has made this showing, the burden shifts to the party opposing the motion “to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Alvarez v. Prospect Hospital*, 68 N.Y.2d

320, 324 [1986]. Specifically, a plaintiff “must submit an affidavit from a physician attesting that the defendant departed from accepted medical practice and that the departure was the proximate cause of the injuries alleged.” *Rogues*, 73 A.D.3d at 207.

A defendant moving for summary judgment on a lack of informed consent claim must show that there is no factual dispute as to whether the plaintiff was informed “of any foreseeable risks, benefits or alternatives” of the treatment rendered. *Balzola v. Giese*, 107 A.D.3d 587, 588 [1st Dept. 2013].

Where the movant has made a prima facie showing of entitlement to summary judgment, the motion, unopposed on the merits, shall be granted. (*See generally Access Capital v. DeCicco*, 302 A.D. 2d 48, 53-54 [1st Dept. 2002]).

Discussion

Bodey demonstrates that she did not treat from August 2013 through December 2014, the time period when the alleged malpractice occurred. The records of Manhattan Oral Facial Surgery, LLC, show that non-party Dr. Pong rendered the dental care to Padilla and performed the negligent extractions of her teeth that form the basis of Padilla’s malpractice claim. Padilla does not oppose Bodey’s motion for summary judgment, and therefore fails to raise a factual dispute that Bodey was involved in the alleged negligent dental care or of apprising Padilla of the risks of any procedure. Accordingly, Bodey is entitled to summary judgment and Padilla’s claims are dismissed.

Wherefore, it is hereby

ORDERED that Defendant Janet C. Bodey, D.D.S.’s motion for summary judgment is granted without opposition, and the Complaint is dismissed and the Clerk is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: MARCH 25, 2019

SO ORDERED


EILEEN A. RAKOWER
J.S.C.