

Baksh v Allure Group Inc.

2019 NY Slip Op 30821(U)

February 7, 2019

Supreme Court, Kings County

Docket Number: 507864/2016

Judge: Ellen M. Spodek

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At an IAS Term, Part 63 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 7th day of February 2019,

PRESENT:

HON. ELLEN M. SPODEK

Justice,

=====X

**MIRIAM BAKSH, As Administrator of the Estate of
CARMEN RODRIGUEZ, Deceased, and MIRIAM
BAKSH, Individually,**

INDEX No.: 507864/2016

Plaintiffs,

~~-against-~~

ORDER

**THE ALLURE GROUP INC., GREATER HARLEM
NURSING HOME AND REHABILITATION CENTER,
RAJI MOHAMMED AYINLA, M.D., MAIMONIDES
MEDICAL CENTER, RICK WALQUIST, D.O., and
LAWRENCE WOLF, M.D.,**

Defendants.

=====X

The following papers numbered 1 to 8 read herein:

Papers Numbered

Notice of Motion and Affirmations Annexed

1-4

Opposing Affirmation

5-6

Reply Affirmation

7

Amended Reply Affirmation

8

Defendants MAIMONIDES MEDICAL CENTER and LAWRENCE WOLF, M.D. moved this Court for an Order: (a) pursuant to CPLR §3212, granting summary judgment in their favor and dismissing the case against them in its' entirety on the grounds that: (a) there are no material or triable issues of fact for a jury to determine, and these defendants are entitled to judgment against the plaintiff as a matter of law,

and (b) directing that the name of defendants MAIMONIDES MEDICAL CENTER and LAWRENCE WOLF, M.D. be removed from the caption, and (c) for such other and further relief as this Court may deem just and proper.

Background

Carmen Rodriguez was sent to the Maimonides Medical Center Emergency Department from the Brooklyn Health Center New York Hotel Trades on September 21, 2015 for further care of a deep laceration to her foot and pain of five days duration. She did not provide the name of a private attending physician who would be responsible for her care if she was admitted. Maimonides Medical Center has teams of physicians who rotate and take call and are assigned to care for patients who are admitted without private attendings. Dr. Lawrence Wolf was the attending physician on the Orange Team on call for the Emergency Department during the day on September 21, 2015. His name, therefore, was entered in the electronic medical record as the patient's attending physician. However, it was learned that Ms. Rodriguez was a patient of the Brooklyn Health Center, and all patients of the Center are the private patients of Dr. Rick Walquist, the Medical Director of the Brooklyn Health Center. The corrected information was entered into the computer, and Dr. Walquist was entered as the attending physician, and Dr. Wolf was changed to the admitting physician or the referring physician. The patient was initially cared for by the Emergency Department physicians on September 21, and Dr. Wolf was not contacted regarding her care. Ms. Rodriguez was admitted to the hospital, and Dr.

Walquist was responsible for and oversaw her care until her discharge on September 25, 2015.

The Instant Medical Malpractice Action

Plaintiff Baksh, as Administrator of the estate of her mother, Carmen Rodriguez, and Baksh individually, commenced this action on or about May 11, 2016 against The Allure Group, Inc, Greater Harlem Nursing Home and Rehabilitation Center, Raji Mohammed Ayinla, M.D., Maimonides Medical Center, Rick Walquist, D.O. and Lawrence Wolf, M.D. by filing a summons and verified complaint. Plaintiff asserted eight causes of action, five of which pertain to Lawrence Wolf, M.D. and Maimonides Medical Center and one which pertains solely to Maimonides Medical Center. As to Lawrence Wolf, M.D. and Maimonides Medical Center, plaintiff asserted: (1) medical malpractice; (2) lack of informed consent; (3) a derivative claim for loss of services, and (4) wrongful death. As to Maimonides Medical Center, plaintiff asserted negligence in hiring and maintaining staff.

Baksh filed Bills of Particulars, Supplemental Bills of Particulars and Amended Bills of Particulars asserting that defendants negligently discontinued medications, failed to order medications, and failed to reconcile medications, and that as a result Ms. Rodriguez suffered fluid overload, pulmonary embolism, deep vein thrombosis and death.

Baksh did not request nor conduct the deposition of Dr. Lawrence Wolf nor seek the deposition of any witness from Maimonides Medical Center.

Summary Judgment Motion

Maimonides Medical Center and Lawrence Wolf, M.D. moved for summary judgment dismissing the complaint on the grounds that there are no material or triable issues of fact for a jury to determine. In support of the motion, defendants submitted an affirmation from Amit Uppal, M.D. who opined that treatment rendered by Maimonides Medical Center and Lawrence Wolf, M.D., if any, was at all times in accordance with good and accepted standards of medical practice.

In additional support of the motion, Lawrence Wolf, M.D. submitted his affirmation stating that on September 21, 2015 he was a daytime attending physician on the Orange Team at Maimonides covering admissions to the Team through the Emergency Department. He explained that when a patient comes into the Emergency Department to be seen and does not have a private physician there is a default program for the electronic medical record computer system that assigns the name of the attending physician on duty for the Team. That Team physician's name then appears in the medical record as the admitting physician. He further stated that Carmen Rodriguez was sent to the Maimonides Emergency Department from the Brooklyn Health Center New York Hotel Trades, that Dr. Rick Walquist is the Medical Director for the Brooklyn Health Center New York Hotel Trades, and as such, Ms. Rodriguez was his private patient. When the Team was informed that Dr. Walquist was the Attending of Record for this patient, the correction was made in the

computer system, and Dr. Walquist was then documented in the record as Ms. Rodriguez's attending physician. Dr. Walquist signed the admission note on September 22, 2015, indicating that he had assumed care of the patient. Dr. Wolf affirmed that although his name had been automatically entered by the default computer program as the admitting physician responsible for the care and treatment of Ms. Rodriguez, he was not contacted by anyone in the Emergency Department regarding the patient, that he did not see the patient at any time that she was in Maimonides, and he did not provide nor authorize any of her care and treatment.

Dr. Rick Walquist testified that he is the Medical Director of the Brooklyn Health Center New York Hotel Trades, that he is a voluntary physician at Maimonides Medical Center, and there is never a time that he is required to be at Maimonides Medical Center. He sees patients of the Brooklyn Health Center who are admitted to Maimonides seven days a week. He further testified that he teaches the residents at Maimonides as he does his rounds with them, they discuss patients that are admitted under his service, that he would tell them things that needed to be done for his patient's care, and he would expect them to be done in accord with his orders.

The patient was transferred to Greater Harlem Nursing Home and Rehabilitation Center on September 25, 2015. Codefendant Dr. Raji Mohammed Ayinla was the physician caring for the patient at that facility in Manhattan.

Baksh Opposition

Baksh, in opposition to the summary judgment motion, states that this is a medical malpractice action based on defendants' failure to properly administer, monitor and reconcile medications, and that the main premise in defendants' motion is the claim that Dr. Wolf was not involved in the care at issue in this case. Baksh counters this premise with the statement that Dr. Wolf's codefendant, Dr. Raji Ayinla, explicitly testified that Dr. Wolf was one of the treating doctors.¹

Baksh further states that Dr. Walquist was a part of defendant Dr. Wolf's "Orange Team".²

Reply

In reply, defendants Maimonides Medical Center and Dr. Lawrence Wolf, state that in opposition to the motion Baksh omitted reference to Dr. Wolf's affirmation in which he stated that he never saw the patient nor authorized any of her care or treatment and that a false affirmation is deemed perjury.³

The moving defendants also state that Dr. Ayinla was given a document to read and was asked if he knew from the Discharge Summary note who the treating doctors were at Maimonides Medical Center, and he read, "Over here it says, Caregivers: Walquist, Rick, Wolf, Lawrence". These moving defendants state that reading from a document does not indicate explicit knowledge.⁴

The moving defendants state that Dr. Walquist testified that he is an attending physician at Maimonides Medical Center and that when he makes rounds on his

¹ See ¶ 3 Opposition

² See ¶ 16 Opposition

³ See ¶ 6 Reply

⁴ See ¶ 8 Reply

private patients with the residents he discusses the patients, clinically teaches them, and gives specific instructions or orders regarding their care.⁵

Dr. Walquist also testified that he only would see a patient assigned to a hospital team when the patient was erroneously admitted to the hospital service, and the assignment correction is then made from a service patient to his private patient.⁶

Discussion

In Andrei v. Pomeroy, 35 N.Y.2d 361, 364, 362 N.Y.S.2d 131, 133 (1974), the Court of Appeals stated that, “Summary judgment is designed to expedite all civil cases by eliminating from the Trial Calendar claims which can properly be resolved as a matter of law...But when there is no genuine issue to be resolved at trial, the case should be summarily decided.”

In determining a motion for summary judgment, the court’s function is not to “weigh the evidence, but rather, ‘in taking the cases from the jury, to determine that by no rational process could the trier of facts base a finding in favor of the plaintiff upon the evidence.’” Smith v. Vosburgh, 176 A.D.2d 259, 274 N.Y.S.2d 73 (2 Dep’t 1991)

The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment, as a matter of law, tendering sufficient evidentiary proof to demonstrate the absence of any material issues of fact. Alvarez v. Prospect Hospital, 68 N.Y.2d 320, 324, 508 N.Y.S.2d 923 (1986); Zuckerman v. City of New York, 49 N.Y.2d 557, at 562, 508 N.Y.S.2d 923 (1986).

⁵ See ¶ 9 Reply

⁶ ¶ 10 Reply

Once that showing has been made, 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 that require a trial of the action. Mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient. Zuckerman, supra.; *see also*, Fileccia v. Massapequa General Hospital, 63 N.Y.2d 639, 640, 479 N.Y.S.2d 520 (1984).

Here, plaintiff attempted to support her claim as to Dr. Wolf by ignoring his affirmation indicating that he was not involved in the patient's care, by citing the testimony of codefendant Dr. Ayinla to suggest that he had actual knowledge that Dr. Wolf provided care to the patient when he was merely reading an entry in the chart, and by stating, in contradiction to Dr. Walquist's testimony, that he was part of Maimonides Medical Center Teams that provide treatment to service patients in order to suggest that he was an employee of Maimonides Medical Center, in an unethical attempt to defeat the summary judgment motion,

NOW, upon the reading, filing and submission of the Notice of Motion of defendants MAIMONIDES MEDICAL CENTER and LAWRENCE WOLF, M.D. dated October 30, 2018, the Affirmation of JEFFREY GORENSTEIN, ESQ. dated November 1, 2018 and the exhibits annexed thereto submitted in support of said motion; the Affirmation in Opposition of JORDAN K. MERSON, ESQ. dated December 5, 2018 together with the exhibits annexed thereto; the Reply Affirmation of M. MAUREEN KLETTE, ESQ. dated December 10, 2018, and the Amended Reply Affirmation of M. MAUREEN KLETTE, ESQ. dated January 29, 2019,

And attorneys for all parties having appeared before this Court for oral argument on February 7, 2019, and upon due deliberation and consideration thereon having been had, the Court finds that plaintiff's opposition has failed to raise a triable issue of fact as to Maimonides Medical Center or as to Dr. Lawrence Wolf, and the motion of MAIMONIDES MEDICAL CENTER and LAWRENCE WOLF, M.D. for summary judgment is granted, the case is dismissed in its entirety as to these defendants, the names of these defendants are to be redacted from the caption, and judgment is to be entered by the Clerk of the Court together with costs and disbursements of this action, and it is hereby further directed that MAIMONIDES MEDICAL CENTER and LAWRENCE WOLF, M.D. settle an Order.

ORDERED, that the Clerk of the Court is directed to enter this Order.

ENTER,

J.S.C.