

McDonald v St. Luke's Cornwall Hosp.
2019 NY Slip Op 34293(U)
June 28, 2019
Supreme Court, Orange County
Docket Number: Index No. EF006576/2016
Judge: Maria S. Vazquez-Doles
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At a term of the IAS Part of the Supreme Court of the State of New York, held in and for the County of Orange, at 285 Main Street, Goshen, New York 10924 on the 28th day of June, 2019.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, on all parties.

MONIQUE MCDONALD AS ADMINISTRATOR OF THE ESTATE OF DEBORAH HOLLAND,

PLAINTIFF,

-AGAINST-

ST. LUKES' CORNWALL HOSPITAL and CAMPBELL HALL REHABILITATION CENTER, INC.,

DECISION & ORDER
INDEX #EF006576/2016
Motion date: 5/7/19
Motion Seq.# 1 & 2

DEFENDANTS.

VAZQUEZ-DOLES, J.S.C.

The following papers numbered 1 - 14 were read on the motion by Defendant, **St. Luke's Cornwall Hospital** (hereinafter the "Hospital") (Mot. Seq.#1) and Defendant, **Campbell Hall Rehabilitation Center, Inc.** (hereinafter "Campbell Hall") (Mot. Seq.#2) for partial summary judgment to dismiss the claim of punitive damages as to each of them. The motions are consolidated for purposes of this decision:

Notice of Motion, Affirmation (Doyle), Exhibits A - H	1-3
Affirmation in Opposition (Roman), Exhibits A - L	4-5
Reply Affirmation (Regenbaum), Exhibits I - K	6-7
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Reply Affirmation (O'Donnell), Exhibits A - B	13-14

This is an action for personal injuries and wrongful death allegedly caused or contributed by the negligence of the defendants. The action has a claim for punitive damages. Both

defendants seek to dismiss the gross negligence and punitive damages claims on the basis that plaintiff's pleadings are insufficient to support such a claim.

By way of background, this case involves a then 54-year-old woman with significant preexisting conditions including a stroke, diabetes, peripheral vascular disease, obesity and a history of bilateral leg wounds. The decedent was admitted to the Hospital on March 28, 2014. She never fully recovered and was in and out of the Hospital and Campbell Hall until January 2015 after which she remained in the Hospital until her death on July 12, 2015 of cardiopulmonary arrest. The decedent was essentially bedridden, required a PEG tube for nutrition and was only minimally responsive to staff. During the course of her first hospitalization (there were nine separate admissions over the course of 16 months), the patient developed sacral ulcers which, over time, deteriorated.

Plaintiff alleges that the Hospital regularly documented that they were turning and positioning the decedent every two hours throughout her hospital admissions when in fact they were not performing such care. Plaintiff testified at her deposition that she witnessed such conduct and in fact, provided time-stamped photographs which she took indicating that the decedent was not turned and positioned as the Hospital records state she was. The Hospital contends that even if such allegations are true, they do not evidence willful or wanton conduct.

In New York, a demand for punitive damages usually arises in the context of an action to recover damages for intentional torts, such as fraud, libel, or malicious prosecution, and "therefore the availability of punitive damages is often discussed in terms of conduct that is intentional, malicious, and done in bad faith" (*Randi A.J. v. Long Is. Surgi-Ctr.*, 46 A.D.3d 74, 80 [2d Dept 2007]). However, "[c]ourts in this state have long recognized that those who,

without specifically intending to cause harm, nevertheless engage in grossly negligent or reckless conduct showing an utter disregard for the safety or rights of others, may also be deserving of the imposition of punitive damages” (*id.* at 81). In a medical malpractice action, punitive damages may be recovered where the defendant’s conduct “evinces a high degree of moral culpability or willful or wanton negligence or recklessness” (*Dmytryszyn v. Herschman*, 78 A.D.3d 1108, 1109, [2d Dept 2010]; see *Pellegrini v. Richmond County Ambulance Serv., Inc.*, 48 A.D.3d 436, 437 [2d Dept 2008]; *Randi A.J. v. Long Is. Surgi-Center.*, 46 A.D.3d 74, 80 [2d Dept 2007]).

Here, plaintiff’s allegations, together with deposition testimony, creates issues of fact as to whether the Hospital’s conduct constituted gross negligence for which punitive damages are recoverable precluding summary judgment (*Sultan v Kings Highway Hosp. Center, Inc.* 167 AD2d 534 [2d Dept 1990]).

The Hospital also seeks leave to amend its Answer to assert an affirmative defense that plaintiff has failed to state of cause of action entitling her to punitive damages. Plaintiff submitted no opposition to this branch of the Hospital’s motion.

The decedent had several admissions to Campbell Hall during the period of May 30, 2014 through January 6, 2015. At the time of her initial admission on May 30, 2014, the decedent was suffering from significant medical problems as well as a stage IV decubitus ulcer to her sacrum. The complaint alleges negligence, wrongful death and a cause of action under PHL §2801-d(1). As predicate for her Public Health Law cause of action, plaintiff claims violations of 42 CFR 483.25(b) and 10 NYCRR 415.12 which requires that a resident having pressure sores shall receive necessary treatment and services to promote healing, prevent infection and prevent new sores from developing. (*see* §415.12[c])

As part of her claims pursuant to the Public Health Law, plaintiff seeks punitive damages against Campbell Hall. Public Health Law 2801-d (2) states, in relevant part, that “where the deprivation of any such right or benefit is found to have been willful or in reckless disregard of the lawful rights of the patient, punitive damages may be assessed.”

In particular, plaintiff alleges that Campbell Hall’s failure to develop a plan of care to treat the decedent’s pressure ulcers for nearly a week following her May 30, 2014 admission violated her rights and benefits under the Public Health Law.

In support of its motion to dismiss the punitive damages claim, Campbell Hall has submitted a portion of decedent’s medical records detailing the care that decedent received in her first few days at Campbell Hall which clearly demonstrate that a plan of care was in place for the decedent from her admission on May 30, 2014 in direct opposition to plaintiff’s allegations. (*see Exhibit A to Campbell Hall’s Reply*) Campbell Hall was aware that the decedent had a stage IV ulcer and provided an appropriate plan for care and treatment to prevent any worsening or additional injury. In opposition, Plaintiff has failed to raise any issue of fact sufficient to defeat the motion for summary judgment.

In light of the evidence as presented, this Court finds that a jury could not reasonably find that Campbell Hall created a substantial and unjustifiable risk of harm with a reckless indifference to that risk.

Accordingly, it is hereby

ORDERED that the partial summary judgment motion by defendant, St. Luke’s Cornwall Hospital is denied; and it is further

ORDERED that the branch of the motion by defendant, St. Luke’s Cornwall Hospital,

seeking to amend their answer is granted; and it is further

ORDERED that the partial summary judgment motion by defendant, Campbell Hall Rehabilitation Center, Inc. is granted; and it is further

ORDERED that defendant, St. Luke's Cornwall Hospital, shall serve its amended answer upon all parties within ten (10) days from the date of this Order; and it is further

ORDERED that the parties shall appear for a status conference on September 25, 2019 at 9:15am.

This decision constitutes the order of this court.

Dated: June 28, 2019
Goshen, New York

ENTER:



HON. MARIA S. VAZQUEZ-DOLES, J.S.C.

TO: Counsel of Record via NYSCEF