

Campo v Dialysis Clinic, Inc.
2019 NY Slip Op 34454(U)
November 1, 2019
Supreme Court, Rockland County
Docket Number: Index No. 034136/2016
Judge: Sherri L. Eisenpress
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
RAYMOND SAL CAMPO,

Plaintiff,

-against-

DIALYSIS CLINIC, INC. DR. MILITZA KIROYCHEVA,
STATEN ISLAND UNIVERSITY HOSPITAL and
"JOHN DOE, M.D." (names fictitious, identify
unknown, being sued herein as "JOHN DOE,
M.D."),

Defendants.

-----X
Sherri L. Eisenpress, A.J.S.C.

DECISION AND ORDER

Index No. 034136/2016

(Motions # 4,5, & 6)

The following papers, numbered 1 to 11, were considered in connection with the unopposed motions of (i) Defendant Dialysis Clinic Inc.'s motion for an Order, pursuant to Civil Practice Law and Rules § 3212, for summary judgment and dismissal of the action against it (Motion #4); (ii) Defendant Staten Island University Hospital's Notice of Motion for an Order, pursuant to Civil Practice Law and Rules § 3212, for summary judgment and dismissal of Plaintiff's action against it (Motion #5); and (iii) Defendant Militza Korycheva M.D.'s Notice of Motion, pursuant to Civil Practice Law and Rules § 3212, for summary judgment and dismissal of the action against her (Motion #6):

PAPERS

NUMBERED

Motion #4

NOTICE OF MOTION/AFFIRMATION IN SUPPORT/AFFIDAVIT OF ALLAN POLLOCK, M.D./AFFIDAVIT OF VAUGHN FOLKERT MD/AFFIDAVIT OF GEORGETTE CRAWFORD, R.M./EXHIBITS A-LL

1-5

Motion #5

NOTICE OF MOTION/AFFIRMATION IN SUPPORT/AFFIDAVIT OF DR. HEWLETT/EXHIBITS A-L

6-8

Motion #6NOTICE OF MOTION/AFFIRMATION IN SUPPORT/AFFIRMATION OF DR.
BRENSILVER/EXHIBITS A-CC

9-11

Upon a careful and detailed review of the foregoing papers, the Court now rules as follows:

Plaintiff commenced this medical malpractice action with the filing of a Summons and Verified Complaint on September 30, 2016. Issue was joined with the filing and service of Defendant Dialysis Clinic's Answer on November 28, 2016, Defendant Staten Island University Hospital's Answer on November 30, 2016, and Defendant Kiroycheva's Answer on February 27, 2017. Discovery proceeded and the instant summary judgment motions were timely filed after the filing of the Note of Issue. In sum and substance, Plaintiff alleges that a dialysis procedure he underwent caused a blood stream infection, which was neither noticed nor treated, necessitating neurospinal surgery in October 2016 to clear out the infection in the L2 vertebrae and related damages. Additionally, Plaintiff alleges that Defendant Staten Island University Hospital exposed him to hepatitis and negligent treatment following such exposure.

The proponent of a summary judgment motion must establish his or her claim or defense sufficient to warrant a court directing judgment in its favor as a matter of law, tendering sufficient evidence to demonstrate the lack of material issues of fact. Giuffrida v. Citibank Corp., et al., 100 N.Y.2d 72, 760 N.Y.S.2d 397 (2003), citing Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986). The failure to do so requires a denial of the motion without regard to the sufficiency of the opposing papers. Lacagnino v. Gonzalez, 306 A.D.2d 250, 760 N.Y.S.2d 533 (2d Dept. 2003). However, once such a showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form demonstrating material questions of fact requiring trial. Gonzalez v. 98 Mag Leasing Corp., 95 N.Y.2d 124, 711 N.Y.S.2d 131 (2000), citing Alvarez, supra, and Winegrad v. New York Univ. Med. Center, 64 N.Y.2d 851, 508 N.Y.S.2d 923 (1985). Mere conclusions or unsubstantiated allegations unsupported by competent evidence are insufficient to raise a triable issue. Gilbert Frank Corp. v. Federal Ins. Co., 70 N.Y.2d 966, 525 N.Y.S.2d 793 (1988);

Zuckerman v. City of New York, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980).

The requisite elements of proof in a medical malpractice action are: 1) a deviation or departure from accepted practice; and 2) evidence that such departure was a proximate cause of injury or damage. Wiands v. Albany Medical Center, 29 A.D.3d 982, 983, 816 N.Y.S.2d 162 (2d Dept. 2006). In a summary judgment motion on a medical malpractice action, a defendant doctor has the burden of establishing the absence of any departure from good and accepted medical practice, or that the plaintiff was not injured thereby. Belak-Redl v. Bollinger, 74 A.D.3d 1110, 1111, 903 N.Y.S.2d 508 (2d Dept. 2010). The defendant doctor must establish his or her entitlement to judgment as a matter of law by proffering competent evidence, such as affidavits of medical experts, hospital or medical records, examinations before trial, etc.. Georges v. Swift, 194 A.D.2d 517, 518, 598 N.Y.S.2d 545 (2d Dept. 1993).

In the instant matter, each of the moving Defendants has established their entitlement to summary judgment and dismissal of the action against them through the submission of expert affidavits, medical records, and testimony. Plaintiff, who has not opposed any of the summary judgment motions, has failed to raise a triable issue of fact sufficient to deny summary judgment. As such, the entire action is dismissed.

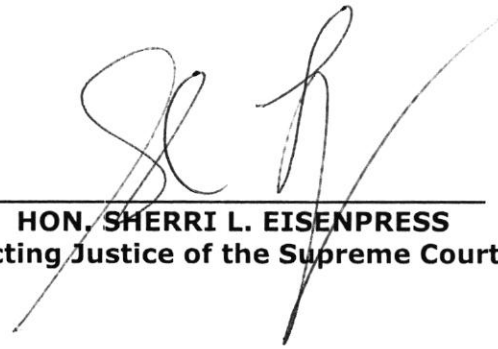
Accordingly, it is hereby

ORDERED that Defendants' motions for an Order granting summary judgment and dismissal of the Plaintiff's Complaint are GRANTED; and it is further

ORDERED that Judgments in Defendants' favor may be entered and the action is dismissed in its entirety.

The foregoing constitutes the Decision and Order of this Court on Motions #4, #5, and #6.

Dated: New City, New York
November 1, 2019



HON. SHERRI L. EISENPRESS
Acting Justice of the Supreme Court

TO:

(e-filed -)

All parties