Lancia v Good Samaritan Hosp.
2019 NY Slip Op 34555(U)
September 23, 2019
Supreme Court, Rockland County
Docket Number: Index No. 035690/2016
Judge: Thomas P. Zugibe
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This opinion is uncorrected and not selected for official publication.

To commence the statutory period for appeals as of right under CPLR § 5513(a), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
ROCKLAND COUNTY

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ROBERT LANCIA AND LISA LANCIA, Index No. 035690/2016

Plaintiff,

-against- DECISION AND ORDER

GOOD SAMARITAN HOSPITAL, BON SECOURS HEALTH SYSTEMS, INC., JEFFREY OPPENHEIM, M.D., VALLEY BRAIN AND SPINE SURGERY, P.C., PATRICIA KNIGHT, R.N., MERCEDES NUNEZ, R.N. AND ARUP KUMAR BHADRA, M.D.,

Defendants.

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Zugibe, J.

In Motion Sequence #9 (NYSCEF Docs #157-176, 312), Defendant Bon Secours Health System has moved for Summary Judgment under CPLR 3212. Defendant Bon Secours has submitted deposition testimony regarding its relationship with Good Samaritan. According to Matthew Toddy, Executive Vice President and General Counsel of Bon Secours Health System, "Good Samaritan Hospital is not a division or department of Bon Secours Health System, Inc. Furthermore, Bon Secours Health System, Inc. does not own, operate or oversee the operation of Good Samaritan Hospital." The affidavit further describes the employment of information system technicians at Good Samaritan. In opposition, Plaintiff provides deposition testimony of Dr. Oppenheim, RN Knight, and Nurse Nunez regarding the relationship between Bon Secours and Good Samaritan. RN Nunez testified that Bon Secours used to be on her ID card, and Dr. Oppenheim testified that he believed Bon Secours had a relationship with Good Samaritan either

current or past. RN Knight testified that she thought they were the same entity. However, none of these Defendants testified they were employees of Bon Secours or held personal knowledge of the relationship between the entities. Therefore, Plaintiff failed to raise a question of fact regarding the relationship between Bon Secours Health System, Inc. and Good Samaritan Hospital, and summary judgment is granted for Bon Secours Health System, Inc.

In Motion Sequence #10 (NYSCEF Docs #130-156, 312), Defendant ARUP KUMAR BHADRA seeks Summary Judgment pursuant to CPLR 3212. In support of the motion, Defendant submits an Expert Medical Affirmation by Ronald Mann, M.D. which concludes Dr. Bhadra's actions fell within the standard of care. In opposition, Plaintiff does not produce an expert affidavit. Deviations from the accepted standards of medical care must be proven through expert testimony. *Prete v. Rafla-Demetrious*, 224 A.D.2d 674-75 (2d Dep't 1996). Therefore, Summary Judgment is granted for Defendant Dr. Arup Kumar Bhadra.

In motion sequence #14 (NYSCEF Docs #202-221, 312, and 343), Defendant Stanley Kang seeks Summary Judgment pursuant to CPLR 3212. In support of the motion, Defendant submits an Expert Medical Affirmation by Joseph Greco, M.D. which concludes Dr. Bhadra's actions fell within the standard of care. The Fourth Department decided a similar case involving the standard of care for anesthesiologist during patient transfer:

> Bancroft had no responsibility to secure plaintiff to the operating table and did not in fact participate in placing any such restraints on her; and that the responsibility for properly positioning and securing the patient belonged solely to the surgeon and nurses. Bancroft thus established as a matter of law that he breached no duty of care.

Schallert v. Mercy Hosp. Of Buffalo, 281 A.D.2d 983 (4th Dep't 2001). The evidence before the Court establishes Dr. Kang supported the patient's head and neck to maintain his airway. This motion is unopposed by Plaintiff. Therefore, Summary Judgment is granted for Sequence #14.

Motion sequences #13 (NYSCEF Docs #223-249, 312-342), #15 (NYSCEF Docs #250-264, 288-311, 338-39), and #16, (NYSCEF Docs #266-287, 332-226) involve cross motions for summary judgment. Motions #13, #15, and #16 are denied. Plaintiff brings this action under the theory of res ipsa loquitur. The standard for res ipsa is as follows: (1) the event is of a kind that ordinarily does not occur in the absence of someone's negligence; (2) the event is caused by an agent or instrumentality within the exclusive control of the defendant; and (3) the event was not caused by any voluntary action or contribution. McCarthy v. N. Westchester Hosp., 139 A.D.3d 825, 827 (2 Dep't 2016).

On September 23, 2016, Plaintiff was admitted to Good Samaritan Hospital for a spinal fusion surgery. In the pre-operative report, the Plaintiff had normal range of motion and no pain in his left knee. The operative report does not denote any incident reports regarding a fall and post-operative notes indicate "5/5 strength on all limbs". Plaintiff has produced deposition testimony he first complained of knee pain in the recovery room on the date of surgery. Plaintiff's expert affirmed Mr. Lancia did not have a torn quadricep preoperatively and the type of injury alleged would occur "in the event of a sudden trauma", suggesting a fall took place during the surgery. At the 9/25 evaluation, Dr. Kang noted a weak motor response and "tremendous pain on left leg/knee".

In opposition, Defendant asserts the first documentation of knee pain was at 7:30PM on the following day 9/24. On 9/24, notes from RN Noreen Pfaffenberger indicate the Plaintiff was able to walk in the hallway at 5:42 PM. Defendant Good Samaritan Hospital's expert affirms the patient's tendon would not have an acute tear given the nature of the alleged injury. The swelling of the knee was mild with no bruising and there was no blood in the area of the tear and minimal effusion.

In 2018, the Second Department cited Court of Appeals case law in a res ipsa loquitur matter. "To rely on res ipsa loquitur a plaintiff need not conclusively eliminate the possibility of all other causes of the injury. It is enough that the evidence supporting the three conditions afford a rational basis for concluding that it is more likely than not that the injury was caused by [the] defendant's negligence." Kambat v. St. Francis Hosp., 89 N.Y.2d 489, 494(1997). Therefore, the question is whether a rational basis exists to determine that the injury was more likely than not caused by the surgery. Although the Defendants have produced significant opposition to the theory of res ipsa, there is a rational basis for concluding it was more likely than not the injury was caused by Defendant's negligence. Therefore, summary judgment is not proper where there are factual questions as to causation.

ORDERED that the parties shall appear for a settlement conference on October 25, 2019

The foregoing constitutes the Decision and Order of the Court.

Dated: September 23, 2019
New City, New York

ENTER

THOMAS P. ZUGIBE
J.S.C.