

**Sancimio v Richmond Ctr. for Rehabilitation & Specialty Healthcare**

2019 NY Slip Op 34902(U)

August 21, 2019

Supreme Court, Richmond County

Docket Number: Index No. 150341/2016

Judge: Judith N. McMahon

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND**

**IAS PART 6**

CHRISTINA SANCIMIO and TERESA GALLETTA  
MABREY as Guardians of the Person and Property of  
MARY FRANCIS GALLETTA,

ORDER

Plaintiffs,

Index Number: 150341/2016

- against -

RICHMOND CENTER FOR REHABILITATION AND  
SPECIALTY HEALTHCARE, SV OPERATING THREE,  
LLC, SV OPERATING THREE LLC d/b/a RICHMOND  
CENTER FOR REHABILITATION AND SPECIALTY  
HEALTHCARE, CENTERS FOR SPECIALTY CARE  
GROUP LLC and CENTERS FOR SPECIALTY CARE  
GROUP LLC d/b/a RICHMOND CENTER FOR  
REHABILITATION

Hon. Justice  
Judith N. McMahon

Defendants.

x

Defendants', SV Operating Three, LLC d/b/a Richmond Center for Rehabilitation and Specialty Care Healthcare ("RICHMOND CENTER") and Centers for Specialty Care Group LLC ("SPECIALTY CARE"), motion for Summary Judgment seeking to dismiss the case is denied as detailed herein.

Plaintiffs allege, among others, that Defendants departed from accepted standards of medical care to Plaintiff by a failure to provide proper tracheostomy care to Plaintiff while she was a short-term rehabilitation resident at RICHMOND CENTER.

In or around January 2015, Plaintiff Mary Francis Galletta was admitted to Staten Island University Hospital ("SIUH") with acute respiratory failure. Records indicate a tracheostomy was performed on January 12, 2015.

Plaintiff was discharged from SIUH to RICHMOND CENTER on or about January 21, 2015, for short-term rehabilitation. Plaintiff was oxygen dependent with a tracheostomy tube in place.

RICHMOND CENTER's admission notes reflect that Plaintiff suffered from a number of maladies, including acute respiratory failure and COPD exacerbation. RICHMOND CENTER designated Plaintiff as a problem smoker due to her prolonged smoking habit.

Plaintiff's admission included an order for tracheostomy care three times per day, 30% oxygen via tracheostomy, and suctioning every two hours and as needed.

A nurse employed by RICHMOND CENTER testified that she attended to Plaintiff's tracheostomy at approximately 5:30 or 6:00 p.m. on February 1, 2015.

At approximately 7:20 p.m., Plaintiff was found unresponsive in her bed. Plaintiff was transported to Richmond University Medical Center ("RUMC").

RUMC triage noted Plaintiff was post cardiac arrest when she arrived. Plaintiff had altered mental status and a new onset of seizures.

Plaintiff was discharged approximately one month later into a nursing home, where she remains today.

Plaintiff commenced this suit against Defendants on March 21, 2016, alleging medical malpractice. Plaintiff alleges departures from the standard of care, among others, in that Defendants failed to suction Plaintiff every two hours as ordered and failed to perform proper tracheostomy care.

Defendants RICHMOND CENTER and SPECIALTY CARE now move for Summary Judgment to dismiss Plaintiffs' claims.

SPECIALTY CARE asserts that it cannot be held liable in this case because it did not exist at the time of the alleged malpractice and did not render any care to Plaintiff.

RICHMOND CENTER asserts that it provided appropriate care to Plaintiff.

In order to prevail on a motion for Summary Judgment, the proponent must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence demonstrating the absence of any material issue of fact. *See Klein v. City of New York*, 89 N.Y.2d 833, 652 N.Y.S.2d 723 (1996); *Ayotte v. Gervasio*, 81 N.Y.2d 1062, 601 N.Y.S.2d 463 (1993); *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986).

“The requisite elements of proof in a medical malpractice action are a deviation or departure from accepted community standards of practice, and evidence that such deviation or departure was a proximate cause of injury or damage.” *Castro v. New York City Health & Hosps. Corp.*, 74 A.D.3d 1005, 903 N.Y.S.2d 152 (N.Y.A.D. 2<sup>nd</sup> Dept. 2010). “To prevail on a motion for summary judgment in a medical malpractice action, the defendant must make a prima facie showing either that there was no departure from good and accepted medical practice, or that any departure was not a proximate cause of the patient’s injuries.” *Kelly v. Rosca*, 164 A.D.3d 888, 83 N.Y.S.3d 317 (N.Y.A.D. 2<sup>nd</sup> Dept. 2018).

Defendant RICHMOND CENTER submits an Affirmation from Dr. David Nierman, a pulmonary and critical care specialist, who opines that there is nothing in the medical record to suggest that there was a clog which caused Plaintiff’s respiratory distress, as alleged by Plaintiffs. Dr. Nierman argues that the admission order to suction every two hours was too much, and that, in any event, Plaintiff’s tracheostomy tube was suctioned within two hours before Plaintiff’s respiratory distress. Dr. Nierman also argues that Plaintiff kept smoking, despite her medical condition, so an event similar to what Plaintiff experienced was inevitable.

Defendant SPECIALTY CARE submits an Affidavit from Yisroel Wolff, an officer of SPECIALTY CARE. Mr. Wolff states that SPECIALTY CARE was an entity created for marketing and has not operated since 2013. Mr. Wolff went on to state that SPECIALTY CARE never owned, operated, controlled or managed RICHMOND CENTER.

The Affidavits submitted by Defendants demonstrated their prima facie entitlement to judgment as a matter of law. *See Lefkowitz v. Kelly*, 170 A.D.3d 1148, 96 N.Y.S.3d 642 (N.Y.A.D. 2<sup>nd</sup> Dept. 2019).

“Once this showing has been made, a plaintiff, in opposition, need only demonstrate the existence of a triable issue of fact as to those elements on which the defendant met the prima facie burden.” *Reid v. Souls*, 138 A.D.3d 1087, 31 N.Y.S.3d 527 (N.Y.A.D. 2<sup>nd</sup> Dept. 2016); *See also Zuckerman v. City of New York*, 49 N.Y.2d 557, 404 N.E.2d 718 (1980).

"In opposition, the Plaintiff raised a triable issue of fact by submitting an expert affirmation from a physician, who opined with a reasonable degree of medical certainty that the Defendants departed from the accepted standard of care." *Cummings v. Brooklyn Hosp. Ctr.*, 147 A.D.3d 902, 48 N.Y.S.3d 420 (N.Y.A.D. 2<sup>nd</sup> Dept. 2017).

Plaintiffs' Expert, Dr. Luigi Capobianco, opines as to multiple departures on the part of Defendants, including Defendants ignoring their own admission order for suctioning every two hours. Dr. Capobianco also opines as to multiple departures regarding the manner of care Defendants provided Plaintiff and specific techniques and actions performed by Defendants in the care of Plaintiff's tracheostomy tube.

In response to the arguments of SPECIALTY CARE, Plaintiffs argue that the Affidavit of Mr. Wolff is inadmissible hearsay because it is not a sworn affidavit. Plaintiffs also argue that SPECIALTY CARE did not submit any documentary evidence to support Mr. Wolff's claims. In opposition to SPECIALTY CARE's motion, Plaintiffs submitted certified records from the New York State Department of State showing that SPECIALTY CARE was still an active business entity on the date of the alleged malpractice.

As such, Defendants' Motion for Summary Judgment must be denied as there are questions of fact regarding Defendants' alleged departures from the standard of care and the status/involvement of SPECIALTY CARE.

Accordingly, it is

ORDERED that Defendants' Motion for Summary Judgment seeking dismissal is denied, and it is further

ORDERED that any and all additional requests for relief are hereby denied, and it is further,

ORDERED that all parties shall appear for a Settlement Conference on September 9, 2019, at 9:30 a.m.

NYSCEF DOC. NO. 97

RECEIVED NYSCEF: 08/21/2019

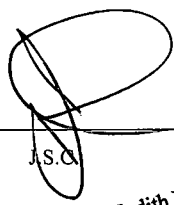
ORDERED that the Clerk enter the Judgment accordingly.

THIS IS THE DECISION AND ORDER OF THE COURT.

Dated: 8/21/19

So Ordered.

ENTER: \_\_\_\_\_



J.S.C.

Hon. Judith N. McMahon  
J.S.C.