

Lutz v St. Francis Hosp.
2020 NY Slip Op 34703(U)
November 23, 2020
Supreme Court, Nassau County
Docket Number: Index No. 602019/2017
Judge: Antonio I. Brandveen
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SHORT FORM ORDER

SUPREME COURT — STATE OF NEW YORK

Present: **ANTONIO I. BRANDVEEN**
J. S. C.

JUDITH LUTZ, Individually, and as
Administrator of the Estate of JAMES
LUTZ, Deceased,

Plaintiffs,

— against —

**TRIAL / IAS PART 22
NASSAU COUNTY**

Index No. 602019/2017

Motion Sequence No. 4, 5, 6

ST. FRANCIS HOSPITAL, SO YOUNG
KIM, N.P., RICHARD MATANO, M.D.,
RICHARD A. MATANO, PHYSICIAN, P.C.,
ANKUR ANAND, M.D., JAMES WIDYN, M.D.,
NEW YORK CARDIOVASCULAR
ANESTHESIOLOGISTS, P.C. and KENNETH
CRYSTAL, M.D.,

Defendants.

The following papers having been read on these three motions:

Motion Sequence No. 4

Notice of Motion, Affidavits & Exhibits	_____ 1, 2 _____
Answering Affidavits.....	_____ 3, 4 _____
Replying Affidavits.....	_____ 5 _____
Briefs: Plaintiff / Petitioner.....	_____
Defendant / Respondent.....	_____

Motion Sequence No. 5

Notice of Motion, Affidavits & Exhibits 1, 2
 Answering Affidavits..... 3, 4
 Replying Affidavits..... 5
 Briefs: Plaintiff / Petitioner.....
 Defendant / Respondent.....

Motion Sequence No. 6

Notice of Motion, Affidavits & Exhibits 1, 2
 Answering Affidavits..... 3
 Replying Affidavits..... 4
 Briefs: Plaintiff / Petitioner.....
 Defendant / Respondent.....

UPON DUE DELIBERATION AND CONSIDERATION BY THE COURT of the foregoing papers, including efiled documents/exhibits numbered 117 through and including 185, 189 through and including 196, 198 through and including 200 and 202 through and including 205, these three motions are decided as follows:

The plaintiffs Judith Lutz, individually, and as administrator of the estate of James Lutz, deceased commenced this medical malpractice action seeking to recover monetary damages for the alleged failure to timely diagnose lung cancer in the decedent. The plaintiffs allege the defendants departed from the standard of care regarding the decedent, and the defendants' negligence was a substantial contributing factor to the decedent's injury.

The defendant Kenneth Crystal, M.D. moves (**Sequence No. 4**) for an order pursuant to CPLR 3212 granting summary judgment and dismissing all claims with prejudice as to Kenneth Crystal, M.D. Kenneth Crystal, M.D. asserts there are no triable issues of fact as to this defendant. Kenneth Crystal, M.D. also moves for an order directing the Clerk of the Court to enter judgment. Kenneth Crystal, M.D. further moves for an order amending the caption of the action by deleting Kenneth Crystal, M.D.'s name.

The defendants Richard Matano, M.D. and Richard A. Matano Physician, P.C. move (**Sequence No. 5**) for an order granting summary judgment to them.

The defendants Ankur Anand, M.D., James Widyn, M.D., and New York Cardiovascular Anesthesiologists, P.C. move (**Sequence No. 6**) for an order pursuant to CPLR § 3212, dismissing the plaintiff's complaint and any and all crossclaims with prejudice and directing that summary judgment be entered in their favor. Ankur Anand, M.D., James

Widyn, M.D., and New York Cardiovascular Anesthesiologists, P.C. also move for an order severing their names from the caption.

“ ‘The essential elements of medical malpractice are (1) a deviation or departure from accepted medical practice, and (2) evidence that such departure was a proximate cause of injury.’ ” A defendant seeking summary judgment in a medical malpractice action must make a prima facie showing either that he or she did not depart from the accepted standard of care or that any departure was not a proximate cause of the plaintiff’s injuries. “Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions” [citation omitted] *Yanchynska v Wertkin*, 178 AD3d 1122, 1123 [2d Dept 2019].

Dr. Crystal, Dr. Matano, Richard A. Matano Physician, P.C., Dr. Anand, Dr. Widyn and New York Cardiovascular Anesthesiologists, P.C. established prima facie entitlements to judgment as a matter of law. Here, the defendants provided evidence in admissible form showing Dr. Crystal, Dr. Matano, Richard A. Matano Physician, P.C., Dr. Anand, Dr. Widyn and New York Cardiovascular Anesthesiologists, P.C. followed the accepted standard of care regarding the decedent’s condition.

In opposition to both defense motions, Judith Lutz, individually, and as administrator of the estate of James Lutz, deceased raised triable issues of fact (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). The plaintiffs provided evidence in admissible form showing Dr. Crystal, Dr. Matano, Richard A. Matano Physician, P.C., Dr. Anand, Dr. Widyn and New York Cardiovascular Anesthesiologists, P.C. breached the accepted standard of care regarding the decedent’s condition. Hence, due to the conflicting medical expert opinions, summary judgment is inappropriate.

ORDERED that the branch of the motion by Kenneth Crystal, M.D. (Sequence No. 4) is DENIED for granting summary judgment and dismissing all claims as to Kenneth Crystal, M.D. with prejudice, and it is also,

ORDERED that the branch of the motion by Kenneth Crystal, M.D. (Sequence No. 4) is DENIED for directing the Clerk of the Court to enter judgment, and it is also,

ORDERED that the branch of the motion by Kenneth Crystal, M.D. (Sequence No. 4) is DENIED for an order amending the caption of the action by deleting Kenneth Crystal, M.D.’s name, and it is also,

ORDERED that the motion by Richard Matano, M.D. and Richard A. Matano Physician, P.C. (Sequence No. 5) is DENIED for awarding summary judgment to Richard Matano, M.D. and Richard A. Matano Physician, P.C., and it is also,

ORDERED that the branch of the motion by Ankur Anand, M.D., James Widyn, M.D., and New York Cardiovascular Anesthesiologists, P.C. (Sequence No. 6) is DENIED

to dismiss the plaintiff's complaint and any and all crossclaims with prejudice and directing that summary judgment be entered in their favor, and it is further,

ORDERED that the branch of the motion by Ankur Anand, M.D., James Widyn, M.D., and New York Cardiovascular Anesthesiologists, P.C. (Sequence No. 6) is DENIED severing their names from the caption.

This decision will constitute the order of the Court.

Dated: November 23, 2020

ENTERED



ANTONIO I. BRANDVEEN
J. S. C.

NOT FINAL DISPOSITION

ENTERED

Nov 24 2020

NASSAU COUNTY
COUNTY CLERK'S OFFICE