

Loomis v Golden
2020 NY Slip Op 34818(U)
October 7, 2020
Supreme Court, Nassau County
Docket Number: Index No. 613383/2018
Judge: Antonio I. Brandveen
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SHORT FORM ORDER

SUPREME COURT — STATE OF NEW YORK

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

ROBERT LOOMIS,

Plaintiff,

— against —

TRIAL / IAS PART 22
NASSAU COUNTY

Index No. 613383/2018

Motion Sequences No. 2

JEFFREY L. GOLDEN, D.D.S. ,
VANITA MUDGIL, D.D.S. and
WILLIAMSBRIDGE DENTAL, LLC,

Defendants.

The following papers having been read on this motion:

Motion Sequence No. 2

Notice of Motion, Affidavits & Exhibits	1, 2
Answering Affidavits.....	3
Replying Affidavits.....	4
Briefs: Plaintiff / Petitioner.....	5
Defendant / Respondent.....	6

UPON DUE DELIBERATION AND CONSIDERATION BY THE COURT of the foregoing papers, including efiled documents/exhibits numbered 38 through and including 49, 52, 70 and 71, this motion is decided as follows:

This is an action for dental malpractice. The specific surgical treatment at issue for this

motion was done by Vanita Mudgil, D.D.S. on June 23, 2016. The treatment involved restoration of the plaintiff's upper right posterior region with dental implants. The plaintiff claims Dr. Mudgil failed to obtain a CBCT (cone beam computed tomography) prior to the treatment which would have disclosed the existing bone was insufficient in quality and density to support dental implants. The plaintiff alleges the treatment done by Dr. Mudgil was unsuccessful and caused damage to the bone. The plaintiff maintains extensive surgery is now needed to repair the bone so new dental implants may be placed.

The defendant Vanita Mudgil, D.D.S. moves for an order pursuant to CPLR 3212 granting the movant summary judgment dismissing the plaintiff's first cause of action in the complaint (malpractice) as against the movant. The defendant asserts there is no triable issue of fact the defendant departed from accepted standards of dental care and treatment. The defendant also moves for an order pursuant to CPLR 3212 granting the movant summary judgment dismissing the plaintiff's third cause of action in the complaint (lack of informed consent). The defendant maintains there is no triable issue of fact the defendant departed from accepted standards of dental care and treatment. The defendant further requests an order directing the Court Clerk enter judgment, sever the movant from this action and amend the caption. The plaintiff opposes and the movant replies to the opposition.

The plaintiff withdraws, in the opposition to this motion, the second cause of action alleging lack of informed consent. Accordingly, all issues raised in defendant's motion regarding lack of informed consent are no longer relevant to this case. Hence, the sole issue is whether there is a triable issue of fact regarding the plaintiff's claim of dental malpractice.

The requisite elements of proof in a dental malpractice action are a deviation or departure from accepted standards of dental practice, and that such departure was a proximate cause of the plaintiff's injuries. Consequently, on a motion for summary judgment, the defendant dentist has the initial burden of establishing either that he or she did not depart from good and accepted practice, or if there was such a departure, that it was not a proximate cause of the plaintiff's injuries. To sustain this burden, the defendant must address and rebut any specific allegations of malpractice set forth in the plaintiff's bill of particulars

Koi Hou Chan v Sammi Yeung, 66 AD3d 642, 642-43 [2d Dept 2009].

The Court determines Dr. Mudgil established a prima facie entitlement to summary judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). Here, the defendant provided evidence in admissible form. The plaintiff proffered the affirmed report dated March 13, 2020 of Robert L. Weber, D.D.S., a board-certified periodontist. Dr. Weber addressed and rebutted the specific allegations of malpractice set forth in the plaintiff's bill of particulars. Dr. Weber opined the care and treatment rendered by Dr. Mudgil was within the good and accepted standard of dental care and did not cause the alleged injuries. Dr. Weber opined Dr. Mudgil appropriately treated the patient for implant at site #4, despite the plaintiff's claims, the implant at #5 pre-existed the dates of treatment alleged in this action. Dr. Weber opined implant #5 was re-restored by Jeffrey L. Golden, D.D.S. after implant #4 was placed, but it has no relation to Dr. Mudgil's work on the #4 site. Dr. Weber opined Dr. Mudgil's implant was successfully placed in that it integrated, was restorable and was restored into function. Dr. Weber opined the plaintiff's claims of malpractice in the placement of the implant are unsupported. Dr. Weber opined, although the implant eventually failed over one year after placement, there is nothing that indicates it failed because of the departures alleged in this action. Dr. Weber noted Dr. Mudgil took a panoramic x-ray prior to surgery. Dr. Weber found, based on radiographs and clinical evaluation, Dr. Mudgil had sufficient information to determine the bone height and width at the #4 site and identified the fact that a localized sinus lift would be required. Dr. Weber opined here is nothing in the panoramic that contraindicates the placement of an implant at the #4 site. Dr. Weber remarked the imaging studies are complementary to intra-op findings and a panoramic or a third scan are acceptable means for pre-op planning. Dr. Weber opined Dr. Mudgil had sufficient diagnostic and planning information before the placement of implant #4, appropriately Dr. Weber opined Dr. Mudgil placed implant #4 with the simultaneous bone graft, placed the implant at a proper location, distance, angle and depth, the implant was successful in that it integrated and was successfully restored by Dr. Golden. Dr. Weber opined the failure of the #4 implant and crown was not caused by anything Dr. Mudgil did or did not do and especially not due to any of the claimed theories of malpractice.

In opposition, the plaintiff raised a triable issue of fact (*see Silveri v Glaser*, 166 AD3d 1044 [2d Dept 2018]). Here, the plaintiff provided evidence in admissible form. The plaintiff proffered the affirmed report dated May 26, 2020 of Dr. Lloyd Klausner, D.M.D., a board-

certified oral surgeon. Dr. Klausner opined Dr. Mudgil deviated from the standards of good and accepted practice of dentistry by failing to obtain a CBCT prior to the treatment on June 23, 2016. Dr. Klausner opined a CBCT scan should have been done to evaluate the bone structure prior to Dr. Mudgil's treatment on June 23, 2016. Dr. Klausner opined it was a deviation for Dr. Mudgil to attempt to place the #2 implant without first obtaining a CBCT scan. Dr. Klausner opined the treatment performed by Dr. Mudgil was not within the standard of care for proper reconstruction of the right upper jaw. Dr. Klausner opined the negligent treatment by Dr. Mudgil was a substantial factor in causing injury to the plaintiff, who now requires major bone grafting surgery including a sinus floor bone graft and placement of three implants to have implant supported restorations in the upper right quadrant.

ORDERED that the motion is DENIED in all respects.

This decision will constitute the order of the Court.

Dated: October 7, 2020

ENTERED



ANTONIO I. BRANDVEEN
J. S. C.

NOT FINAL DISPOSITION

ENTERED

Oct 13 2020

NASSAU COUNTY
COUNTY CLERK'S OFFICE