

**Zanni v Gomori**

2021 NY Slip Op 30922(U)

March 9, 2021

Supreme County, New York County

Docket Number: 805479/2016

Judge: Judith Reeves McMahon

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

**PRESENT: HON. JUDITH REEVES MCMAHON PART IAS MOTION 30**

*Justice*

-----X

EVE ZANNI,

Plaintiff,

- v -

ELISABETH GOMORI, ELISABETH GOMORI, M.D., P.C.

Defendant.

-----X

INDEX NO.	805479/2016
MOTION DATE	02/24/2021
MOTION SEQ. NO.	001
<b>DECISION + ORDER ON MOTION</b>	

The following e-filed documents, listed by NYSCEF document number (Motion 001) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER).

Defendants Elisabeth Gomori, M.D. (“Dr. Gomori”) and Elisabeth Gomori, M.D., P.C. (collectively “Defendants”) move this Court for an Order pursuant to CPLR §3212 (a) granting them summary judgment dismissal of the Complaint and/or alternatively (b) granting them partial summary judgment in their favor pursuant to CPLR §214-a and CPLR §3212. The Court hereby grants Defendant’s Motion for summary judgment dismissal of the Complaint pursuant to CPLR §3212(a).

FACTS

Plaintiff Eve Zanni (“Plaintiff”) brought this Action for medical malpractice against the Defendants and alleges that Dr. Gomori negligently ignored her symptoms associated with coronary artery disease and failed to refer her for appropriate cardiac testing. Plaintiff came under the care of Dr. Gomori on February 11, 2009 when she was 58 years old and reported a past medical history of hypothyroidism and hepatitis C. Plaintiff previously went for a left knee surgery and a myomectomy for uterine fibroids, in addition to receiving a patch for menopausal

symptoms. Dr. Gomori performed a physical examination of Plaintiff, whose blood pressure was 130/80, and recorded that she was 5'4, and weighed 170 pounds. Dr. Gomori reviewed the results of Plaintiff's Echocardiogram taken on July 15, 2008 at New York Cardiovascular Associates, which did not reveal any abnormalities. Dr. Gomori ordered blood tests and advised Plaintiff to see a hepatologist. When Plaintiff returned on March 17, 2009, Dr. Gomori informed Plaintiff that her blood test results were abnormal for elevated LFTs. Dr. Gomori noted that Plaintiff's liver function tests were abnormal and discussed Plaintiff's plan to see Dr. Cain, a hepatologist.

On April 2, 2009, Plaintiff's gynecologist sent her to Dr. Gomori's office due to her blood pressure reading of 150/100. Plaintiff's EKG showed nonspecific ST-T changes, also known as "nonspecific repolarization abnormalities." Dr. Gomori added Altace 25 mg and recommended Plaintiff start ASA 81 mg (Aspirin) and return for a follow-up visit in three weeks. Dr. Cain sent Dr. Gomori a report dated May 16, 2009 regarding Plaintiff's treatment options for her hepatitis. On June 29, 2009, Dr. Gomori physically examined Plaintiff and gave her medical clearance for a hysteroscopy following a physical examination and noted that her blood pressure was 130/80. Dr. Cain sent information about Plaintiff's liver biopsy to Dr. Gomori on July 29, 2009 and Plaintiff cancelled an appointment with Dr. Gomori on July 28, 2009. Dr. Gomori left messages with Plaintiff to re-schedule on September 15, 2009, November 3, 2009 and January 12, 2010.

Plaintiff returned to Dr. Gomori on April 20, 2010 for a routine check-up and requested blood work and a blood pressure check, which read 126/89. Plaintiff complained of left hip pain and Dr. Gomori indicated she would see Plaintiff for an evaluation after the blood test results came in. On May 12, 2010, Plaintiff returned with complaints of discomfort when walking up

the stairs and her blood pressure reading was 130/90. Plaintiff informed Dr. Gomori that she had a history of snoring and a family history significant for heart disease. Dr. Gomori noted that Plaintiff was not compliant with her medication and that she stopped taking Altace and Aspirin. The record shows that Dr. Gomori attributed Plaintiff's complaints to atypical chest discomfort and referred her for a nuclear stress test based on her risk factors.

Plaintiff underwent a nuclear stress test, performed by Dr. Rentrop at Gramercy Cardiac Services ("Gramercy"), on May 21, 2010 ("2010 Nuclear Stress Test"). Plaintiff represents that Dr. Rentrop noted that she was referred for a nuclear stress test based on her "precordial discomfort and exertional dyspnea." Dr. Rentrop reported that "there is evidence of endothelial dysfunction, which is seen with dyslipidemia. Aggressive risk factor modification (LDL less than 70, normal HDL) is warranted." On May 21, 2010, Dr. Gomori wrote a note acknowledging the results of the 2010 Nuclear Stress Test and the need to discuss the issue with Plaintiff's hepatologist since statin drugs could be harmful to Plaintiff due to her liver disease. On May 25, 2010, Dr. Gomori spoke with Dr. Cain and noted that it was not recommended that Plaintiff start on medication to lower her cholesterol due to her liver condition.

Defendants represents that Plaintiff did not have contact with Dr. Gomori for nearly one year until she went for an office visit on May 17, 2011. During this visit, Plaintiff made complaints of feeling weak and tired with low energy. While her blood pressure was recorded as 150/90 and 160/100, Plaintiff states that it is unclear if she reported these ranges or if Dr. Gomori checked her blood pressure in the office. Dr. Gomori performed an EKG, which showed non-specific ST-T changes. Plaintiff requested Ambien for sleep and Dr. Gomori documented the need for blood pressure medication. Dr. Gomori prescribed Robitussin for Plaintiff on May 31, 2011 and saw her again on June 7, 2011 when she presented with phlegm and a cough. Dr.

Gomori noted that Plaintiff's blood pressure improved to 130/80 and diagnosed her with an upper respiratory infection. During the visit, Dr. Gomori prescribed Zithromax, an antibiotic, and Synthroid. After Plaintiff's cough continued, Dr. Gomori prescribed Azithromycin for possible pertussis.

On July 23, 2011, Plaintiff informed Dr. Gomori that her psychiatrist started her on Lexapro and Adderall. Dr. Gomori told Plaintiff that Adderall has negative side effects on cardiovascular control and blood pressure and advised her to follow up in two weeks. Plaintiff asked that a review of all her medications and prescriptions be sent to the pharmacy on July 28, 2011. Plaintiff did not return to Dr. Gomori until November 1, 2011, when she presented with complaints of weakness, hypertension and dizziness. After Plaintiff stated that she stopped taking all her medication, Dr. Gomori discussed with her the harmful effects of hypertension and stopping medication. Dr. Gomori performed an examination and an EKG, which showed nonspecific ST-T changes. Dr. Gomori recommended that Plaintiff come back in six weeks and prescribed Ziac. When Plaintiff returned on December 29, 2011, Dr. Gomori prescribed her medication for a respiratory infection and recommended she continue taking Ziac and Aspirin for her blood pressure.

Plaintiff presented to Dr. Gomori on March 15, 2012 with complaints of feeling weak and dizzy and numbness and tingling, which worsened after stress or exercise. Dr. Gomori's impression was fatigue and shortness of breath. Plaintiff's EKG was stable compared to her previous EKGs and Dr. Gomori recommended she continue taking Ziac for hypertension and undergo a chest x-ray. On April 17, 2012, Plaintiff went to Dr. Gomori and stated that she felt much better and she was told to follow up in two months. An office visit scheduled for May 2, 2012 was cancelled. Plaintiff next went to Dr. Gomori on September 11, 2012 and underwent an

EKG, which showed nonspecific ST-T changes. Plaintiff's blood pressure was 120/80 and she was advised to follow up in three months. Dr. Gomori left a message with Plaintiff to see a liver specialist on October 10, 2012. An appointment for October 29, 2012 was canceled and Plaintiff did not keep an appointment scheduled for December 10, 2012.

During an office visit on December 17, 2012, Dr. Gomori went over Plaintiff's recent blood work that showed continued chronic liver disease due to hepatitis C and abnormal liver function tests. Dr. Gomori advised Plaintiff to avoid greasy food, alcohol, Tylenol and statins. Aspirin and Ziac were continued and Dr. Gomori wrote a prescription for Synthroid on December 19, 2012. Plaintiff saw a nutritionist on December 26, 2012 and was told to add fiber to her diet and keep a food journal. On January 22, 2013, Plaintiff returned to the nutritionist and reported an increase in mood and energy after losing 8 pounds. Plaintiff saw Dr. Gomori on January 23, 2013 and reported that she lost 8 pounds but felt dizzy. Dr. Gomori attributed this dizziness to Plaintiff's thyroid medication and performed an EKG on Plaintiff, which was in normal limits despite showing bradycardia. Due to her complaints of shortness of breath, Plaintiff also underwent a chest-ray that did not reveal any interval change or pulmonary disease. Plaintiff saw urologist Dr. Suzanne Frye on January 31, 2013 and was told that she had stress urinary incontinence.

On February 11, 2013, Plaintiff saw Dr. Gomori for a pulmonary function test, which was normal. Plaintiff next went to Dr. Gomori on February 27, 2013 for a follow up on her blood work and Dr. Gomori noted that she would discuss treatment with the Plaintiff after the results were available. Plaintiff underwent a chest x-ray on March 20, 2012, which showed no active pulmonary disease. On April 16, 2013, Plaintiff returned to her nutritionist, who recommended she increase her activity levels due to fluctuating weight. Plaintiff returned to Dr. Gomori on

April 18, 2013 and denied complaints of chest pain or shortness of breath. Plaintiff reported feeling better with respect to the dizziness she experienced in January and her EKG showed nonspecific ST-T changes and bradycardia. At the time, Plaintiff was on Metformin, Levoxyl, ASA and Bisoprolol. Dr. Gomori renewed Plaintiff's prescriptions for Ziac and Synthroid on April 26, 2013.

Plaintiff informed Dr. Gomori in June 2013 that her psychiatrist prescribed Adderall for her again. On June 25, 2013, Dr. Gomori told Plaintiff that she should discontinue Adderall due to its effects on blood pressure. During Plaintiff's next visit on October 11, 2013, Plaintiff told Dr. Gomori that she ran out of her medicines and stopped taking them. Dr. Gomori informed Plaintiff that she needed to continue taking her blood pressure medication and performed an EKG, which showed bradycardia. A trans-cranial doppler study that was taken that day was normal and Plaintiff's thyroid ultrasound showed mild bulky right and left lobes, but no cysts or nodules.

During Plaintiff's next visit on February 24, 2014, Dr. Gomori noted that Plaintiff presented with a history of hypertension, prediabetes, Hepatitis C, hypothyroidism and anxiety. Plaintiff underwent another EKG, which showed nonspecific ST-T segment changes. Plaintiff presented to Dr. Gomori on May 13, 2014 with no specific complaints and underwent an EKG, which showed sinus bradycardia and nonspecific ST-T changes. Dr. Gomori told Plaintiff to return in three months. On September 17, 2014, Plaintiff went to Dr. Gomori and informed her that she lost her job and broke up with her boyfriend. Plaintiff's EKG showed nonspecific ST-T changes and Dr. Gomori recommended Plaintiff continue all medications.

When Plaintiff returned on December 15, 2014, Plaintiff told Dr. Gomori that she was under stress due to changes in her work and complained of shortness of breath. Dr. Gomori

noted that her impression included anxiety, shortness of breath and hypertension. Plaintiff's EKG showed slight nonspecific ST-T changes and Dr. Gomori told Plaintiff to schedule a nuclear stress test. On December 19, 2014, Plaintiff returned with continuing symptoms of dizziness and weakness. Plaintiff's EKG showed nonspecific ST-T changes and Dr. Gomori wrote in her notes that "EST [exercise stress test] exercise stress test to be scheduled." On December 22, 2014, Plaintiff returned to Dr. Gomori with complaints of shortness of breath. Plaintiff told Dr. Gomori that she had not been taken her blood pressure medication as directed. Dr. Gomori told Plaintiff to "have EST ASAP" and explained to her the dangers of untreated hypertension.

On January 7, 2015, Plaintiff returned to Dr. Gomori's office with complaints of chest pain. Plaintiff informed Dr. Gomori that she did not schedule the exercise stress test and that she starting taking her medication again two days prior to the visit. Plaintiff's EKG showed normal sinus rhythm with nonspecific ST-T changes and her echocardiogram showed an ejection fraction of 60%. Dr. Gomori noted Plaintiff "to schedule nuclear EST Gramercy Cardiac-particularly soon." Plaintiff failed to schedule the recommended stress test and returned to Dr. Gomori's office on March 20, 2015 with complaints of shortness of breath on exertion and dizziness. Plaintiff's nuclear stress test was scheduled for March 25, 2015 at Gramercy Diagnostic Services, P.C. ("Gramercy"). Dr. Rentrop, who interpreted the stress test at Gramercy, found that the stress test portion was submaximal. The perfusion study showed inferior-apical ischemia.

Based on Plaintiff's risk factors, including hypertension, diabetes mellitus type II and family history of coronary vascular disease, a cardiac catheterization was scheduled and performed on April 8, 2015. Dr. Fox, who performed Plaintiff's catheterization, called Dr. Gomori to tell her

that he found three vessel disease and recommended coronary artery bypass graft surgery. After Plaintiff was admitted to the Mt. Sinai Beth Israel, Dr. John Puska performed a clampless off-pump coronary artery bypass. The surgery was successful and Plaintiff remained at the hospital until April 12, 2015. Plaintiff testified that she retired from a teaching position at the New York City Board of Education in January 2015 after the music program she was assigned to was terminated in July 2014. Plaintiff currently works part time on an occasional basis giving private lessons and musical performances.

#### Defendant's Motion for Summary Judgment

In support of their motion for summary judgment, Defendants provide the affidavit of Robert A. Perlmutter, M.D. ("Dr. Perlmutter"), who opines that Dr. Gomori adhered to accepted practice while treating the Plaintiff. Dr. Perlmutter states that

"despite clear documentation of Ms. Zanni's repetitive noncompliance with her medication regimen and scheduling of recommended tests, Dr. Gomori persevered and, to her credit, ultimately prevailed in convincing Ms. Zanni to obtain the tests which led to her surgery."

Dr. Perlmutter maintains that Dr. Gomori did not, and could not, have caused Plaintiff's coronary artery disease. Furthermore, any contention that an earlier intervention would have negated Plaintiff's need to undergo a triple bypass "cannot be based on science and would be nothing but rank speculation." According to Dr. Perlmutter, Dr. Gomori achieved the "ultimate success" based on the fact that Plaintiff's avoided the serious and potentially fatal consequences of having a heart attack.

Regarding Plaintiff's assertion that Dr. Gomori failed to obtain the necessary consultation and recommend physical and nuclear stress tests, Dr. Perlmutter states that Dr. Gomori properly obtained a nuclear stress test from a cardiologist in 2010 and consulted with a hepatologist and urologist. Dr. Perlmutter notes that while Dr. Gomori "properly" advised

Plaintiff to get a nuclear stress test in December 2014, Plaintiff failed to schedule it until March 2015. Dr. Perlmutter states that Dr. Gomori “promptly” referred Plaintiff for a cardiac catheterization based upon the results of the 2015 Stress Test. Dr. Perlmutter states that Dr. Gomori properly monitored Plaintiff’s blood pressure and prescribed maximal medications to treat it. With respect to Plaintiff’s allegations about Dr. Gomori’s alleged failure to properly medicate her, Dr. Perlmutter explains that Dr. Gomori properly consulted with a hepatologist who advised against giving Plaintiff “potential liver-toxic medicines” to lower her cholesterol due to her hepatitis.

Dr. Perlmutter details how he reviewed each of Plaintiff’s EKG Strips and found that Dr. Gomori’s interpretation of each test was appropriate. Dr. Perlmutter notes that Plaintiff’s 2010 Nuclear Stress Test showed a low likelihood of coronary arterter disease despite the 2009 EKG results that showed nonspecific ST-T changes. Dr. Perlmutter states

Many physicians would reasonably read the EKG of May 17, 2011 (Gomori Record, p. 135) as normal, although Dr. Gomori noted nonspecific ST-T changes in her record (Gomori Record p. 210). The EKG on November 1, 2011 (Gomori Record p. 133) was unchanged. The EKG of March 15, 2012 was likewise stable (Gomori Record p. 110) and Dr. Gomori’s office note indicated no new changes (Gomori Record p. 205). The EKG of September 11, 2012 (Gomori Record p. 85) remained stable and Dr. Gomori noted nonspecific ST-T changes in her office note (Gomori Record p. 203). EKG dated January 22, 2013 (Gomori Record, p. 109), which was actually performed on January 23, 2013 (Gomori Record p. 202) showed mild sinus bradycardia, which may be protective in a patient with coronary risk factors. EKG dated June 27, 2013 (Gomori Record p. 104) showed bradycardia and was otherwise normal. EKGs dated, as was an EKG dated June 27, 2013 (Gomori Record p. 104). EKGs dated July 23, 2013 (Gomori Record p. 92), October 11, 2013 (Gomori Record p. 90), February 26, 2014 (Gomori Record p. 87) and September 17, 2014 (Gomori p. 86) were all stable.

Dr. Perlmutter also states that any ST-T changes that Dr. Gomori noted “were consistent, not ominous, and did not indicate need for a further workup.” Dr. Perlmutter opines that Dr. Gomori properly advised Plaintiff undergo a nuclear stress test when she complained of

shortness of breath in 2014 and states that there is no science to support a contention that an earlier test would have avoided the need for surgery.

Plaintiff's Opposition to Defendants' Motion

In opposition to Defendants' Motion, Plaintiff submits a redacted expert affirmation by a board certified physician with a Sub-Certification in Cardiovascular Disease ("Plaintiff's Expert"). Plaintiff's Expert opines that Dr. Gomori negligently disregarded signs and symptoms of coronary artery disease in the Plaintiff. While Plaintiff's Expert states that Dr. Gomori acted within the standard of care by ordering Plaintiff go for the 2010 Stress Test, she failed to properly address Plaintiff's complaints of dizziness and weakness on November 1, 2011. Such failure "constituted the first of many departures from accepted standard of care", since Dr. Gomori was obligated to refer Plaintiff to go for a stress test despite her normal EKG.

According to Plaintiff's Expert, Dr. Gomori departed from the standard of care when she failed to send Plaintiff to a stress tests when she presented with symptoms of fatigue and shortness of breath on March 15, 2012. "Instead of referring Ms. Zanni for a stress test, which in my opinion to a reasonable degree of medical certainty and probability, would have diagnosed heart ischemia, Dr. Gomori ignored Ms. Zanni's symptoms and simply advised her to continue taking hypertensive medicant." According to Plaintiff's Expert, Dr. Gomori again departed from the standard of care by failing to order a stress test in January and February 2013.

Plaintiff's Expert concludes that in light of the 2010 Stress Test, Plaintiff did not have coronary ischemia in May 2010 but developed clinical signs and symptoms of such that were ignored by Dr. Gomori in 2011, 2012 and 2013. Plaintiff's Expert opines that had Plaintiff been referred for a stress test in 2012, she would have been diagnosed with ischemia to a lesser degree and would have been amenable to angioplasty treatment and thereby avoiding open heart

surgery. Plaintiff's Expert refutes Dr. Perlman's point that Plaintiff failed to schedule a stress test for three months in December 2014 and states that Plaintiff would have still needed the same surgical intervention had she undergone a stress test in December 2014.

## DISCUSSION

### Summary Judgment Standard

Pursuant to CPLR §3212(b), a motion for summary judgment "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the Court as a matter of law in directing Judgment in favor of any party." CPLR §3212(b). A party seeking summary judgment must show that there are not material issues of fact that are in dispute and that it is entitled to judgment as a matter of law. *See Dallas-Stephenson v. Waisman*, 39 AD3d 303, 306 [1st Dept., 2007]. Once a movant makes such a showing, "the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue of fact that precludes summary judgment and requires a trial. *Id.*

"A defendant in a medical malpractice action establishes prima facie entitlement to summary judgment by showing that in treating the plaintiff, he or she did not depart from good and accepted medical practice, or that any such departure was not a proximate cause of the plaintiff's alleged injuries." *Anyie B. v. Bronx Lebanon Hosp.*, 128 AD3d 1, 3 [1st Dept 2015]. (*See Costa v. Columbia Presbyt. Med. Ctr.*, 105 AD3d 525, 525 [1st Dept 2013]). "Once a defendant has established prima facie entitlement to summary judgment, the burden shifts to plaintiff to 'rebut the prima facie showing via medical evidence attesting that the defendant departed from accepted medical practice and that such departure was a proximate cause of the injuries alleged.'" *Ducasse v. New York City Health and Hosps. Corp.*, 148 AD3d 434, 435 [1st

Dept 2017] (internal citations omitted). “The opinion of a qualified expert that a plaintiff’s injuries were caused by a deviation from relevant industry standards would preclude a grant of summary judgment in favor of the defendants.” *Diaz v. New York Downtown Hosp.*, 99 N.Y.2d 542, 544 [2002].

“To defeat summary judgment, the expert’s opinion ‘must demonstrate ‘the requisite nexus between the malpractice allegedly committed’ and the harm suffered.’” *Anyie B. v. Bronx Lebanon Hosp.*, 128 AD3d 1, 3 [1st Dept 2015] (internal citations omitted). “General allegations of medical malpractice, merely conclusory and unsupported by competent evidence tending to establish the essential elements of medical malpractice, are insufficient to defeat defendant physician’s summary judgment motion.” *Alvarez v. Prospect Hosp.*, 68 NY2d 320, 325 [1986]. (See *Otero v. Faierman*, 128 AD3d 499, 500 [1st Dept 2015]. See generally *Cruz v. New York City Health and Hosps. Corp.*, 188 AD3d 592, 593 [1st Dept 2020]; *Henry v. Duncan*, 169 AD3d 421 [1st Dept 2019]). “In order not to be considered speculative or conclusory, expert opinions in opposition should address specific assertions made by the movant’s experts, setting forth an explanation of the reasoning and relying on ‘specifically cited evidence in the record.’” *Lowe v. Japal*, 170 AD3d 701, 703 [2d Dept 2019]. See *Frye v. Montefiore Med. Ctr.*, 70 AD3d 15, 24 [1st Dept 2009].

Here, the Court finds that Defendants have met their prima facie burden by submitting the expert affidavit of Dr. Perlmutter, who provides a detailed opinion as to how Dr. Gomori acted within the standard of care while treating the Plaintiff. Dr. Perlmutter addresses the numerous allegations of departure found in Plaintiff’s Bill of Particulars and explains why each individual allegation is unmeritorious. Dr. Perlmutter details how Dr. Gomori correctly interpreted each EKG reading and properly recommended Plaintiff undergo a stress test when

she complained of shortness of breath in 2014. In his affidavit, Dr. Perlmutter notes that Dr. Gomori was able to successfully treat Plaintiff, who was noncompliant with her medications and recommendations for procedures, and prevent Plaintiff from suffering a heart attack by ultimately convincing her to undergo the stress test and catherization. Based upon Dr. Perlmutter's affidavit and the corresponding medical records, the Court finds that Defendants have made a prima facie showing that Dr. Gomori did not depart from the standard of care and that any alleged departure was not the proximate cause of Plaintiff's alleged injuries.

The burden now shifts to Plaintiff to rebut Defendants' showing via medical evidence showing that Dr. Gomori departed from the standard of care and that such departure was a proximate cause of her injuries. The Court finds that Plaintiff has failed to meet such burden, as the opinion of Plaintiff's Expert is conclusory and speculative. *See Lyakhovich v. Vernov*, 185 AD3d 566, 569 [2d Dept., 2020]; *Rivera v. New York Pain Care Ctr., P.C.*, 154 AD3d 421, 422 [1st Dept 2017]; *Kaplan v. Karpfen*, 57 AD3d 409 [1st Dept, 2008]. Plaintiff's Expert fails to cite any medical evidence, studies or reports to support his position that Dr. Gomori's alleged delay in diagnosing Plaintiff's coronary artery disease led to her need for surgery or that Plaintiff would have avoided surgery if Dr. Gomori sent her for a stress test in 2012 or 2013. *See generally G.L. v. Harawitz*, 146 AD3d 476, 476 [1st Dept 2017]; *Gaudio v. Gonzalez*, 117 AD3d 490, 490-91 [1st Dept 2014]; *Callistro ex rel. Rivera v. Bebbington*, 94 AD3d 408, 411 [1st Dept 2012], *affd sub nom. Callistro v. Bebbington*, 20 NY3d 945 [2012]; *Bullard v. St. Barnabas Hosp.*, 27 AD3d 206 [1st Dept, 2006].

Furthermore, Plaintiff's Expert fails to sufficiently respond to the relevant issues raised by Dr. Perlmutter, including his analysis of Dr. Gomori's interpretation of Plaintiff's EKG results. *See generally Ruiz v. Reiss*, 180 AD3d 623, 623 [1st Dept 2020]; *Choida v. Schirripa*,

188 AD3d 978, 980 [2d Dept 2020]; *Ahmed v. Pannone*, 116 AD3d 802, 806 [1st Dept, 2014].

Plaintiff's Expert does not dispute Dr. Perlmutter's opinion that Dr. Gomori correctly interpreted Plaintiff's EKG results. Without citing any medical studies or materials, Plaintiff's Expert simply states that Dr. Gomori should have recommended Plaintiff undergo a stress test in 2011 and 2012 despite her normal EKG results due to her complaints of shortness of breath.

The Court finds that based upon her reliance on the affidavit of Plaintiff's Expert, Plaintiff has failed to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue of fact that precludes summary judgment and requires a trial. *See Perez v. Riverdale Family Med. Practice, P.C.*, 117 AD3d 554, 555 [1st Dept 2019]; *Ahmed v. Pannone*, 116 AD3d 802, 806 [2d Dept., 2014]. *See also Lowe v Japal*, 170 AD3d 701, 703 [2d Dept 2019]; *Kaplan v. Karpfen*, 57 AD3d 409, 409 [1st Dept 2008]. Therefore, Defendants' Motion to dismiss is hereby granted.

Accordingly, it is hereby

ORDERED that Defendants' Motion to dismiss Plaintiff's Complaint pursuant to

CPLR §3212 is hereby granted in its entirety; and it is further

ORDERED that Plaintiff's Complaint is hereby dismissed.

3/9/2021  
DATE

  
JUDITH REEVES MCMAHON, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	
<input type="checkbox"/>	SETTLE ORDER		
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<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: