

McMoon v Chuang

2021 NY Slip Op 34165(U)

January 21, 2021

Supreme Court, Queens County

Docket Number: Index No. 716691/2017

Judge: Peter J. O'Donoghue

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This opinion is uncorrected and not selected for official publication.

FILED

NEW YORK SUPREME COURT - QUEENS COUNTY

1/21/2021

11:39 AM

Present: Honorable, PETER J. O'DONOGHUE IAS PART MD
Justice

**COUNTY CLERK
QUEENS COUNTY**

James McMoon,

Index No.: 716691/2017

Plaintiff

-against-

Motion Date: 01/13/2021

Motion Seq. No.: 5

MICHAEL S. CHUANG, M.D. and
NEW YORK-PRESBYTERIAN/QUEENS,

Defendants.

The following papers numbered as set forth below and read on this O.S.C. by the plaintiff for an order (a) Vacating and setting aside two (2) orders on default dated August 26, 2020 (hereinafter, the "Orders"), which erroneously granted the Defendants' motions for summary judgment without opposition despite the fact that extensive opposition papers including, an expert affirmation in opposition, were filed by Plaintiff prior to the motion return date; and directing that Plaintiff's opposition papers which were filed before the return date be marked as submitted; and (b) Staying any request for or entry of judgment until this motion is decided.

PAPERS
NUMBERED

O.S.C.-Affidavits-Exhibits..... 120-128; 133

Upon the foregoing papers it is ordered that the within motion for an order (a) Vacating and setting aside two (2) orders on default dated August 26, 2020 (hereinafter, the "Orders"), which erroneously granted the Defendants' motions for summary judgment without opposition despite the fact that extensive opposition papers including, an expert affirmation in opposition, were filed by Plaintiff prior to the motion return date; and directing that Plaintiff's opposition papers which were filed before the return date be marked as submitted; and (b) Staying

any request for or entry of judgment until this motion is decided is granted.

In light if the vacateur of these two orders the Court will now review the motion papers, opposition papers and reply papers submitted with respect to seq. 3 and 4 and render decisions on these motions herein.

The within motion bearing seq 3 by defendant MICHAEL S. CHUANG, M.D. for an order for an Order:

a) Pursuant to CPLR §3212, dismissing the Plaintiff's complaint with prejudice and granting summary judgment in favor of Defendant, MICHAEL S. CHUANG, M.D., based upon the grounds that:

- i. There are no triable issues of material and/or relevant fact whatsoever as to Defendant, MICHAEL S. CHUANG, M.D.; and
- ii. The evidence in the record unequivocally demonstrates that the care and treatment rendered by Defendant, MICHAEL S. CHUANG, M.D. to the Plaintiff was at all times, appropriate and did not deviate and/or depart from good and accented standards of medical care and practice; and
- iii. The evidence in the record unequivocally demonstrates that there is no causal relationship between the care and treatment rendered by Dcfcñdant, MICHAEL S. CHUANG, M.D. and the Plaintiff's alleged in juries and damages. which were not nroximately caused by any acts and/or omissions of the Defendant. MICHAEL S. CHUANG, M.D.; and
- iv. This moving Defendant, MICHAEL S. CHUANG, M.D., and Co-defendant, NEW YORK-PRESBYTERIAN/QUEENS, could not have detained the Plaintiff at NEW YORK-PRESBYTERIAN/OUEENS against his will as a matter of law; (b) Amending the caption of this action to delete the Defendant, MICHAEL S. CHUANG, M.D. from the case caption; and c) Directing the Clerk of the Court to enter judgment in favor of Defendant, MICHAEL S. CHUANG, M.D. and against the Plaintiff accordingly, together with statutory fees and costs is decided as follows:

The branch of the motion by MICHAEL S. CHUANG M.D. for an order pursuant to CPLR 3212 granting summary judgment with respect to the medical malpractice cause of action is denied. Questions of fact exist, including but not limited to, whether defendant MICHAEL S. CHUANG, M.D. departed from the accepted standard of care by(a) failing to perform a complete evaluation by failing to perform a fall risk assessment and order a blood alcohol level following triage and prior to the initial discharge; (b) discharging plaintiff without performing a fall risk assessment and ordering a blood alcohol level prior to discharge ; and if so, whether such departure(s) was(were) a substantial factor(s) in causing plaintiff's injuries which may require resolution at trial. Contrary to defendant's argument, these theories of liability are not raised for the first time in

the plaintiff's expert's affirmation. The Bill of Particulars contains language in paragraph 3 sufficient to place defendant on notice of these theories of liability: "in failing to appreciate the significance of plaintiff's need for assistance in order to walk without risking injury to his life and limbs"; "in failing to perform any labs upon plaintiff"; "in failing to properly observe the patient despite his having recently been admitted to the defendant hospital presenting in an intoxicated condition".

The within motion bearing seq 4 by defendant NYPH for an Order of this Court: a) Pursuant to CPLR §3212, dismissing plaintiff's Complaint with prejudice and directing summary judgment be entered in favor of defendant NEW YORK PRESBYTERIAN QUEENS upon the grounds that:

- i. There is no triable issue of fact as to the defendant NEW YORK PRESBYTERIAN QUEENS;
- ii. The moving defendant could not have detained the plaintiff at NEW YORK PRESBYTERIAN QUEENS against his will as a matter of law;
- iii. There are no viable claims of any direct liability as to the defendant NEW YORK-PRESBYTERIAN QUEENS and that to the extent that summary judgment is denied any claimed liability attributable to NEW YORK-PRESBYTERIAN QUEENS is purely vicarious;

b) Permitting the defendant NEW YORK-PRESBYTERIAN QUEENS to enter judgment and directing the Clerk of the Court to enter judgment accordingly with statutory fees and costs is decided as follows:

The branch of the motion by defendant NYPH for an order pursuant to CPLR 3212 granting summary judgment with respect to the medical malpractice cause of action premised upon vicarious liability is denied. Questions of fact exist, including but not limited to, whether defendant NYPH through defendant MICHAEL S. CHUANG, M.D. departed from the accepted standard of care by

- (a) failing to perform a complete evaluation by failing to perform a fall risk assessment and order a blood alcohol level following triage and prior to the initial discharge;
- (b) discharging plaintiff without performing a fall risk assessment and ordering a blood alcohol level prior to discharge;

and if so, whether such departure(s) was(were) a substantial factor(s) in causing plaintiff's injuries which may require resolution at trial.

Contrary to defendants' arguments, Mental Hygiene Law 22.09 does not operate to relieve defendants of the responsibility to render medical care and treatment in a non-negligent manner.

The branch of the motion by defendant NYPH for an Order pursuant to CPLR 3212 granting partial summary judgment with respect to the medical malpractice claim premised upon direct liability is granted.

The branches of the motions by defendants Michael Chuang, MD and NYPH for an order granting summary judgment with respect to the claims of lack of informed consent are granted.

Dated: January 21, 2021

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Peter J. O'Donoghue, J.S.C.

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**COUNTY CLERK
QUEENS COUNTY**