

Coyle v Sacknoff

2022 NY Slip Op 30629(U)

February 28, 2022

Supreme Court, New York County

Docket Number: Index No. 805036/2017

Judge: Erika Edwards

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ERIKA EDWARDS PART 10M

Justice

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INDEX NO. 805036/2017

DANIELLE COYLE, KIMBERLY BAKER AND CORINNE CROCE, AS ADMINISTRATRICES OF THE ESTATE OF DANIEL CROCE, DECEASED AND DANIELLE COYLE, KIMBERLY BAKER AND CORINNE CROCE, AS EXECUTRICES OF THE ESTATE OF MADELINE CROCE, DECEASED, AND DANIELLE COYLE, KIMBERLY BAKER AND CORINNE CROCE, INDIVIDUALLY,

MOTION DATE 06/29/2021, 07/26/2021, 09/21/2021

MOTION SEQ. NO. 002 003 004

Plaintiffs,

- v -

DAVID SACKNOFF, M.D., HUNTINGTON HOSPITAL, ROBERT MCALLION, R.N., ANP, BERNADINI, VOMERO, ANSELMI & ANWAR, M.D., P.C., APRIL SILVA, M.D., SUSAN ESPOSITO, M.D., FLOYD FORBES, M.D. AND VERA FREEMAN, M.D.,

AMENDED DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 119, 120, 121, 122, 123, 126, 181, 184, 187, 188, 191, 192

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 003) 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 124, 125, 182, 185, 189, 190, 193

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 004) 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 183, 186

were read on this motion to/for SUMMARY JUDGMENT

Upon the foregoing documents and the oral argument held on February 28, 2022, the court grants Defendant Floyd Forbes, M.D.'s ("Forbes") summary judgment motion filed under motion sequence 002; grants Defendant David Sacknoff, M.D.'s ("Sacknoff") summary judgment motion filed under motion sequence 003; and grants in part Defendants Huntington

Hospital's ("Hospital"), Bernadini, Vomero, Anselmi & Anwar, M.D., P.C.'s ("Bernadini Vomero"), April Silva, M.D.'s ("Silva"), Susan Esposito, M.D.'s ("Esposito") and Vera Freeman, M.D.'s ("Freeman") summary judgment motion filed under motion sequence 004 to the extent that the court grants dismissal of Plaintiffs' Danielle Coyle, Kimberly Baker, and Corinne Croce as Administratrices of the Estate of Daniel Croce, Deceased's, and Danielle Coyle, Kimberly Baker, and Corinne Croce as Executrices of the Estate of Madeline Croce, Deceased's, and Danielle Coyle's, Kimberly Baker's, and Corinne Croce's, Individually (collectively "Plaintiffs") claims regarding Deceased Plaintiff Daniel Croce's care, treatment and admission to Defendant Hospital from October 10-25, 2015 as against Defendant Hospital, only, grants dismissal of Plaintiffs' Fourth Cause of Action regarding Defendant Hospital's alleged negligent hiring, but denies dismissal of Plaintiffs' remaining claims against Defendant Hospital which are outside of October 10-25, 2015. The court denies dismissal of Plaintiffs' claims against Defendants Silva, Esposito and Freeman. The court grants dismissal of Plaintiffs' Fifth Cause of Action regarding Defendant Bernadini Vomero's negligent hiring, but denies dismissal of Plaintiffs' remaining claims against Bernadini Vomero.

Plaintiffs brought this medical malpractice and wrongful death action against Defendants alleging in substance that Defendants departed from good and accepted medical practice in their care and treatment of Deceased Plaintiff Daniel Croce during his hospital admission from October 10-25, 2015, his treatment by McCallion on November 4, 2015 and his emergency room treatment at Defendant Hospital on November 5, 2015, which resulted in his death. Plaintiffs allege in substance that Defendants failed to properly treat Deceased Plaintiff Daniel Croce's signs and symptoms of acute congestive heart failure, including pulmonary edema, and failed to properly intubate him which caused him to suffer cardiopulmonary arrest, respiratory distress,

brain damage and his death. Deceased Plaintiff Daniel Croce was admitted to Defendant Hospital from October 10, 2015 to October 25, 2015. Defendant Sacknoff is an internist who treated Deceased Plaintiff Daniel Croce during this hospital admission. Defendant McCallion, who was employed by Bernadini Vomero, treated Deceased Plaintiff Daniel Croce on November 4, 2015. Finally, Deceased Plaintiff Daniel Croce was treated by Defendants Forbes (anesthesiologist), Silva (physician), Esposito (physician) and Freeman (surgical intensivist) in the emergency room at Defendant Hospital on November 5, 2015, where he died.

Defendant Forbes now moves for summary judgment dismissal of Plaintiffs' complaint against him under motion sequence 002. Defendant Sacknoff now moves for summary judgment dismissal of Plaintiffs' complaint against him under motion sequence 003. Defendants Hospital, Bernadini Vomero, Silva, Esposito and Freeman now move for summary judgment dismissal of Plaintiffs' complaint against them, but they limited their arguments to Defendant Hospital's treatment of Deceased Plaintiff Daniel Croce during his hospital admission from October 10-25, 2015, under motion sequence 004. These defendants did not move for summary judgment regarding Plaintiffs' claims for Deceased Plaintiff Daniel Croce's treatment on November 4, 2015 or November 5, 2015. Furthermore, Defendant Robert McCallion, R.N., ANP did not move for summary judgment.

Plaintiffs did not oppose the merits of Defendants Forbes' and Sacknoff's motions, but Plaintiffs requested the court to dismiss all Article 16 claims in Forbes' and Sacknoff's answers and the Third Affirmative Defense in Forbes' answer and Second Affirmative Defense in Sacknoff's answer. Plaintiffs do not oppose the merits of Defendants Hospital's, Bernadini Vomero's, Silva's, Esposito's and Freeman's summary judgment motion as it pertains to Plaintiffs' claims against Defendant Hospital during Deceased Plaintiff Daniel Croce's hospital

admission from October 10-25, 2015. Additionally, Plaintiffs consent to dismissal of their Fourth and Fifth Causes of Action regarding Defendants Hospital's and Bernadini Vomero's negligent hiring, respectively.

In a medical or dental malpractice action, a defendant doctor or provider moving for summary judgment must establish that in treating the plaintiff there was no departure from good and accepted medical or dental practice or that any departure was not the proximate cause of the injuries alleged (*Roques v. Noble*, 73 AD3d 204, 206 [1st Dept 2010]; *Scalisi v Oberlander*, 96 AD3d 106, 120 [1st Dept 2012]; *Thurston v Interfaith Med. Ctr.*, 66 AD3d 999, 1001 [2d Dept 2009]; *Rebozo v Wilen*, 41 AD3d 457, 458 [2d Dept 2007]).

If the moving party fails to make such prima facie showing, then the court is required to deny the motion, regardless of the sufficiency of the non-movant's papers (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985]). However, if the moving party meets its burden, then the burden shifts to the party opposing the motion to establish by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his or her failure to do so (*Zuckerman*, 49 NY2d at 560; *Jacobsen*, 22 NY3d at 833; *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]).

The court finds that Defendants Forbes and Sacknoff demonstrated their entitlement to dismissal of Plaintiffs' claims against them and Plaintiffs failed to rebut such claims. The court also finds that Defendant Hospital demonstrated its entitlement to dismissal of Plaintiffs' claims against it regarding Deceased Plaintiff Daniel Croce's hospital admission from October 10-25, 2015. Plaintiffs failed to rebut and conceded dismissal of their claims against the Hospital within this period, as well as their Fourth and Fifth Causes of Action.

Therefore, the court grants dismissal of Plaintiffs' complaint against Defendants Forbes and Sacknoff; grants dismissal of Plaintiffs' claims against Defendant Hospital as to Deceased Plaintiff Daniel Croce's hospital admission from October 10-25, 2015, only; grants dismissal of Plaintiffs' Fourth and Fifth Causes of Action regarding negligent hiring as to Defendants Hospital and Bernadini Vomero, respectively; denies dismissal of Plaintiffs' remaining claims against Defendants Hospital, Bernadini Vomero, Silva, Esposito and Freeman; the court severs and continues these remaining claims and the court directs the caption to be amended accordingly.

The court has considered all additional arguments raised by the parties but not discussed herein and the court denies additional requests for relief which are not expressly granted.

As such, it is hereby

ORDERED that the court grants Defendant Floyd Forbes, M.D.'s motion for summary judgment filed under motion sequence 002, the court dismisses Plaintiffs' complaint as against Defendant Floyd Forbes, M.D. and the Third Affirmative Defense in his answer, and the court directs the Clerk of the Court to enter judgment in favor of Defendant Floyd Forbes, M.D. as against all Plaintiffs without costs to any party; and it is further

ORDERED that the court grants Defendant David Sacknoff, M.D.'s motion for summary judgment filed under motion sequence 003, the court dismisses Plaintiffs' complaint as against David Sacknoff, M.D. and the Second Affirmative Defense in his answer, and the court directs the Clerk of the Court to enter judgment in favor of Defendant David Sacknoff, M.D. as against all Plaintiffs without costs to any party; and it is further

ORDERED that the court grants in part Defendants Huntington Hospital's, Bernadini, Vomero, Anselmi & Anwar, M.D., P.C.'s, April Silva, M.D.'s, Susan Esposito, M.D.'s and Vera Freeman, M.D.'s summary judgment motion filed under motion sequence 004 to the extent that:

- (a) the court grants dismissal of Plaintiffs' claims regarding Deceased Plaintiff Daniel Croce's hospital admission from October 10-25, 2015 against Defendant Huntington Hospital;
- (b) the court dismisses Plaintiffs' Fourth Cause of Action regarding Defendant Huntington Hospital's alleged negligent hiring;
- (c) the court dismisses Plaintiffs' Fifth Cause of Action regarding Defendant Bernadini, Vomero, Anselmi & Anwar, M.D., P.C.'s alleged negligent hiring; and
- (d) the court denies the portion of the motion seeking dismissal of Plaintiffs' remaining claims against the moving defendants; and it is further

ORDERED that Plaintiffs' claims against Defendant Robert McCallion, R.N., ANP and the remaining claims against Defendants Huntington Hospital, Bernadini, Vomero, Anselmi & Anwar, M.D., P.C., April Silva, M.D., Susan Esposito, M.D. and Vera Freeman, M.D. are severed and continued in this action; and it is further

ORDERED that the Clerk of the Court is directed to remove Defendants Floyd Forbes, M.D. and David Sacknoff, M.D. from the caption and the caption is amended as follows:

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 DANIELLE COYLE, KIMBERLY BAKER AND CORINNE CROCE, AS ADMINISTRATRICES OF THE ESTATE OF DANIEL CROCE, DECEASED AND DANIELLE COYLE, KIMBERLY BAKER AND CORINNE CROCE, AS EXECUTRICES OF THE ESTATE OF MADELINE CROCE, DECEASED, AND DANIELLE COYLE, KIMBERLY BAKER AND CORINNE CROCE, INDIVIDUALLY,

Plaintiffs,

-V-

HUNTINGTON HOSPITAL, ROBERT MCALLION, R.N., ANP, BERNADINI, VOMERO, ANSELM I & ANWAR, M.D., P.C., APRIL SILVA, M.D., SUSAN ESPOSITO, M.D. AND VERA FREEMAN, M.D.,

Defendants.

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This constitutes the decision and order of the court.

2/28/2022
 DATE


 ERIKA EDWARDS, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE	