

**Rojas v New York-Presbyterian Hosp./Brooklyn
Methodist**

2022 NY Slip Op 33926(U)

November 8, 2022

Supreme Court, Kings County

Docket Number: Index No. 508735/2017

Judge: Genine D. Edwards

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This opinion is uncorrected and not selected for official publication.

At Part 80 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Brooklyn, New York, on the 8th day of November 2022.

PRESENT:

Hon. Genine D. Edwards
Justice, Supreme Court

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Rafael Rojas, as Administrator of the Estate of
Micenis Fernandez, Deceased,
Plaintiff,

Index. No. 508735/2017

-against-

DECISION and ORDER

New York-Presbyterian Hospital/Brooklyn Methodist
f/k/a The New York Methodist Hospital, New York-
Presbyterian Healthcare System, Inc., Regal Heights
Rehabilitation and Health Care Center, Jackson Heights
Care Center, LLC, Jackson Heights Care Center
Intermediate Parent, LLC, Jackson Heights Care Center
Ultimate Parent LLC, Regal Heights Management, LLC
and Regal, Heights Operating LLC,

Defendants.
-----X

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

<u>Papers</u>	<u>NYSCEF Doc. No.</u>
Notices of Motion and Affirmation in Support.....	201-226, 251, 227-250, 252-253
Affirmation in Opposition.....	258-292, 293-327
Affirmations in Reply.....	334-342, 333

In this action for medical malpractice, inter alia, Jackson Heights Care Center d/b/a Regal Heights Rehabilitation and Health Care Center (“Regal Heights”) moves, in motion sequence #8, and New York-Presbyterian Hospital Brooklyn Methodist Hospital d/b/a New York Methodist Hospital s/h/a New York-Presbyterian Hospital/Brooklyn Methodist f/k/a The New York Methodist Hospital (“Methodist”) moves, in motion sequence #9, for an order granting summary judgment to their benefit, pursuant to CPLR §3212. Plaintiff opposes the motions.

On a motion for summary judgment, the requisite elements of proof in a medical malpractice action are a deviation or departure from accepted standards of medical practice and such departure was a proximate cause of the plaintiff's injuries. *See Templeton v. Papathomas*, 208 A.D.3d 1268, __ N.Y.S.3d __ (2d Dept. 2022). Once the defendant establishes a prima facie case, the plaintiff has the burden to raise a triable issue of fact regarding the issues defendant demonstrated. Conclusory and speculative assertions will not defeat defendant's motion. *Id.*

Regal Heights' Motion

Regal Heights established its prima facie entitlement to judgment as a matter of law on the causes of action for negligence and medical malpractice by submitting evidence that it did not depart from accepted standards of care or that any departure was not a proximate cause of decedent's injuries. *See Schwartzberg v. Huntington Hospital*, 163 A.D.3d 736, 81 N.Y.S.3d 118 (2d Dept. 2018); *McAlwee v. Westchester Health Associates, PLLC*, 163 A.D.3d 549, 80 N.Y.S.3d 401 (2d Dept. 2018). However, in opposition, plaintiff's expert, Dr. Starer, proffered triable issues of fact regarding those causes of action.

Liability under the Public Health Law contemplates injury to a patient caused by the deprivation of a right conferred by contract, statute, regulation, code, or rule, subject to the defense that the facility exercised all care reasonably necessary to prevent and limit the deprivation and injury to the patient. *See Schwartz v. Partridge*, 179 AD3d 963, 117 N.Y.S.3d 300 (2d Dept. 2020); *Zeides v. Hebrew Home for Aged at Riverdale*, 300 A.D.2d 178, 753 N.Y.S.2d 450 (2d Dept. 2002). Punitive damages may be assessed where a deprivation of a patient's rights is found to be willful or in reckless disregard to the patient's rights. *Valensi v. Park Ave. Operating Co., LLC*, 169 AD3d 960, 94 N.Y.S.3d 311 (2d Dept 2019); *Pellot v. Lutheran Med. Ctr.*, 2019 N.Y. Slip Op. 30292[U] (N.Y. Sup Ct, Kings County 2019). Regal

Heights demonstrated its prima facie entitlement to judgment as a matter of law dismissing the cause of action alleging deprivation of rights pursuant to the Public Health Law by submitting evidence that decedent's alleged injuries did not result from any acts or omissions of its staff. Again, Dr. Starer's opinions raised issues of fact that preclude judgment as a matter of law.

Methodist's Motion

Methodist established its prima facie entitlement to judgment as a matter of law, dismissing the complaint insofar as asserted against it. Among other things, Methodist's experts' affirmations bolstered by Methodist's records clearly prove that the treatment rendered to decedent was within the appropriate standard of care and that any alleged departure did not proximately cause decedent's injuries and death. In opposition, plaintiff failed to raise a question of fact as to Methodist's liability.

Accordingly, it is hereby

ORDERED that Regal Height's motion is denied in its entirety, and it is further

ORDERED that Methodist's motion is granted in its entirety, and it is further

ORDERED that the caption is amended as follows:

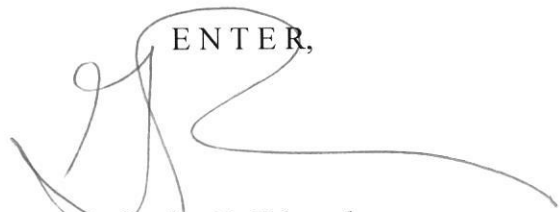
-----X
Rafael Rojas, as Administrator of the Estate of
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Plaintiff,

-against-

New York-Presbyterian Healthcare System, Inc., Regal
Heights Rehabilitation and Health Care Center,
Jackson Heights Care Center, LLC, Jackson Heights
Care Center Intermediate Parent, LLC, Jackson Heights
Care Center Ultimate Parent LLC, Regal Heights
Management, LLC and Regal, Heights Operating LLC,
Defendants.

-----X

This constitutes the Decision and Order of this Court.

ENTER,

Genine D. Edwards
J.S.C.