

Dantzig v Mueller

2022 NY Slip Op 34875(U)

September 15, 2022

Supreme Court, New York County

Docket Number: Index No. 805253/2018

Judge: John J. Kelley

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

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

-----X

PAUL DANTZIG,

Plaintiff,

- v -

RICHARD L. MUELLER, M.D., and PRAMOD SANGHI,
M.D.,

Defendants.

-----X

INDEX NO. 805253/2018

MOTION DATE 07/08/2022

MOTION SEQ. NO. 020

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 020) 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 391, 392, 393, 397 were read on this motion to/for JUDGMENT - SUMMARY.

In this action to recover damages for medical malpractice based on alleged departures from good and accepted practice and lack of informed consent, the defendant cardiologist Richard L. Mueller, M.D., moves pursuant to CPLR 3212 for summary judgment dismissing the complaint insofar as asserted against him. The plaintiff opposes the motion. The motion is granted, and the complaint is dismissed insofar as asserted against Mueller.

The facts of this dispute are discussed at length in this court's September 14, 2022 order disposing of Motion Sequence 017. In that order, the court granted the motion of Mueller's codefendant, Pramod Sanghi, M.D., for summary judgment dismissing the complaint insofar as asserted against him. As explained in that order, the crux of the plaintiff's claims is that the defendants failed to diagnose mitral insufficiency, failed to perform a proper stress test, failed correctly to read a coronary computed tomography (CT) scan, placed a stent in his heart despite being contraindicated by virtue of his rheumatoid arthritis, and inappropriately installed an improperly sized stent in any event. The plaintiff further alleged that the defendants failed to obtain his informed consent for the procedure. In addition, he alleged that, as a consequence,

he sustained scapholunate advanced collapse (SLAC)-type osteoarthritis of his right wrist, necessitating two surgeries. In the September 14, 2022 order, the court concluded that Sanghi established his prima facie entitlement to judgment as a matter of law with, among other things, the expert affirmation of interventional cardiologist Jeffrey Moses, M.D. The court further concluded that the plaintiff failed to raise triable issues of fact in opposition to Sanghi's showing because he relied only upon his own unnotarized affirmation to contest Dr. Moses's opinion, and an unnotarized affirmation of a party is without probative value. In addition, the court concluded that, even had the plaintiff submitted his own notarized affidavit in admissible form, his allegations lacked an evidentiary foundation. The court explained that the plaintiff is a dermatologist who did not attest that he had training, knowledge, or experience in the fields of cardiology, interventional cardiology, cardiothoracic surgery, or cardiovascular medicine sufficient to permit him to render an opinion as to the standard of care applicable to cardiologists, or the qualitative sufficiency of the consent to the stenting procedure that the defendants obtained from him.

The allegations against Mueller that are set forth in the complaint are identical to those made against Sanghi. In his bills of particulars addressed to Mueller's demands, the plaintiff repeated, almost verbatim, the allegations of departures from good medical practice and failure to obtain informed consent that he made in his bills of particulars addressed to Sanghi.

In support of his motion, Mueller submitted the pleadings, the plaintiff's bills of particulars, transcripts of the parties' deposition testimony, and medical records from several physicians and hospitals. In addition, he submitted the expert affirmation of cardiologist and interventional cardiologist John Fox, M.D., who is currently both the Site-Chairman of Cardiovascular Services and Director of the Interventional Cardiac Catheterization Lab at Mount Sinai Beth Israel Hospital in New York.

Dr. Fox opined that, when Mueller first saw the plaintiff on February 26, 2018, he "properly informed plaintiff that cardiac catheterization and possible stenting of the left anterior

descending artery was an entirely indicated and appropriate option to his address his coronary artery disease,” and that when the plaintiff refused conservative management, Mueller properly referred the plaintiff to Sanghi, an interventional cardiologist, for further work-up and possible coronary intervention. Dr. Fox further concluded that

“any issues related to the consenting for and performance of cardiac catheterization are not relevant to Dr. Mueller, but rather are more appropriately directed at co-defendant Dr. Sanghi. As such, plaintiff’s claim that Dr. Mueller ignored his request not to perform stenting is entirely without merit since Dr. Mueller had no actual involvement with the informed consent discussion prior to the procedure, the decision to perform stenting or the performance of said stenting. . . . [T]o the extent Dr. Mueller was involved in Dr. Dantzig’s post-catheterization care, Dr. Mueller made appropriate recommendations and referrals to vascular surgeons to address plaintiff’s post-operative right wrist pain and swelling.”

Dr. Fox thus concluded that Mueller did not depart from good and accepted medical practice, he was not responsible for obtaining the plaintiff’s consent to the stenting procedure because he was a cardiologist who did not perform catheterizations and stenting, and that none of Mueller’s conduct caused or contributed to the plaintiff’s injuries.

With respect to the services that Mueller did render to the plaintiff, Dr. Fox asserted that

“Dr. Mueller constantly make himself available to Dr. Dantzig, out of a sense of professional courtesy, but Dr. Mueller also provided Dr. Dantzig with excellent recommendations for conservative management, articles related to plaintiff’s condition, statistics regarding different treatment options, and attempted to dissuade plaintiff from pursuing courses of treatment which were less accepted in the medical community. He at all times provided Dr. Dantzig with excellent advice. As a fellow physician, Dr. Dantzig often chose not to take the advice, and knew well he had the option of pursuing a second opinion for his condition.”

Dr. Fox’s affirmation essentially tracks Dr. Moses’s expert affirmation that had been submitted in connection with Sanghi’s summary judgment motion. In it, Dr. Fox concluded that Mueller conducted a proper work-up and made an appropriate referral to Sanghi, and that Mueller correctly and appropriately agreed with Sanghi’s diagnosis of the plaintiff’s condition and with the determination to proceed with stenting. He also asserted that Mueller, as a cardiologist, was entitled to rely on the pre-operative and operative procedures conducted by Sanghi, an interventional cardiologist. Dr. Fox also added that Mueller

“went above the standard of care by responding to plaintiff’s early morning emails and instructing him to wear a cardiac monitor for an additional 1 to 3 days to adequately evaluate the electrical activity of plaintiff’s heart. Moreover, Dr. Mueller’s recommendation for CT coronary angiogram was indicated for evaluating coronary artery disease. . . . Dr. Mueller’s continued recommendation of a beta blocker was proper and reasonable, while plaintiff’s refusal of conservative management of his condition was entirely unreasonable.”

He further added that Mueller went above the standard of care

“by not simply referring plaintiff for at CT coronary angiogram, but by also referring plaintiff for a fraction flow reserve CT coronary angiogram which confirmed obstructive disease. The fractional flow reserve CT scan was not required under the standard of care but demonstrates Dr. Mueller’s commitment to the patient to exhaust all conservative means of evaluating and treating plaintiff’s coronary artery disease. Given that plaintiff had greater than 70% obstructive stenosis of the proximal and mid segments of the left anterior descending artery on CT coronary angiogram which was confirmed on the fractional flow reserve CT, . . . he had a severe blockage of the artery. . . . [A] recommendation for cardiac catheterization would have been entirely indicated and appropriate following the CT scans which demonstrated a severe occlusion of the left anterior descending artery.”

As Dr. Fox explained it, on March 19, 2018, the plaintiff returned to Mueller complaining of recurrent chest pain, and Mueller documented that the plaintiff, acting as his own physician and without consulting an appropriate specialist, unilaterally discontinued the cholesterol-reducing drug Crestor and prescribed himself Repatha. Dr. Fox asserted that Mueller further documented that the plaintiff was clinically stable with a questionable cause of chest pain that Mueller, based on the available test results and his skill, knowledge, and experience as a board-certified cardiologist, concluded might be angina until proven otherwise, noting that the plaintiff was scheduled to see Sanghi for cardiac catheterization on March 23, 2018. Dr. Fox asserted that, despite the fact that Mueller, who is not an interventional cardiologist, had no duty to explain the catheterization and stenting procedure and its benefits, he nonetheless did so in response to the plaintiff’s questions about the relative merits of stenting, coronary artery bypass grafting, and balloon angioplasty. In any event, Mueller otherwise recommended that the plaintiff be administered antiplatelet therapy for 12 months and reduce his exercise level of activity in the immediate post-operative period. Dr. Fox opined that, on that date, Mueller

properly obtained the plaintiff's medical history, properly performed a physical examination, and appropriately assessed the plaintiff condition prior to Sanghi's proposed March 23, 2018 cardiac procedure, and properly recommended a 12-month regiment of Plavix. In light of the fact that Mueller is not an interventional cardiologist, Dr. Fox also concluded that Mueller properly deferred to Sanghi in connection with any full discussion of the specifics concerning the cardiac procedures to be performed, but nonetheless asserted that Mueller properly explained the general benefits of stenting in response to the plaintiff's questions.

Dr. Fox stated that, with respect to the post-operative management of plaintiff following Sanghi's stenting procedure, Mueller made appropriate recommendations to the plaintiff that he present to the emergency room at NYU Langone for a right radial artery pseudo-aneurysm, and ask to speak with vascular surgeons. Moreover, since Mueller does not maintain privileges at NYU Langone Hospital, where the stenting procedure was performed, Dr. Fox opined that there was no merit to the plaintiff's claim that Mueller failed properly to present the case to NYU Langone for post-operative management following the stenting procedure. In any event, Dr. Fox concluded that the plaintiff was treated by competent personnel at NYU Langone, noting that the plaintiff asserted no claims against nonparty NYU Langone for the allegedly improper post-operative treatment of his wrist.

Dr. Fox further added that, after the plaintiff presented himself to the NYU Langone emergency department on March 24, 2018, the attending emergency physician contacted Mueller, who recommended a vascular surgery consultation and analysis, and thereafter exchanged text messages with plaintiff while the plaintiff was at the hospital to recommend pain medication, a recommendation that the plaintiff refused to follow. By 11:00 p.m. on that date, the plaintiff was denying the presence of pain, and Mueller explained to him by text that the hospital's plan was to initiate compression therapy of the pseudo-aneurysm. Although the hospital's staff offered to let plaintiff remain overnight in the emergency department, he declined, left the hospital against medical advice, and, according to Dr. Fox, thus accepted the

risk of recurrent bleeding and possible distal extremity ischemia. In a series of text exchanges between Mueller and the plaintiff between March 25, 2018 and March 28, 2018, the plaintiff again complained of right wrist pain and discomfort, while Mueller made several recommendations and referrals for vascular wrist surgery, which the plaintiff ultimately underwent.

Dr. Fox opined that Mueller went above and beyond that which was required of him by the applicable standard of care in that he properly and timely recommended that the plaintiff return to the NYU Langone emergency department on March 24, 2018 to address increased wrist pain and swelling. As Dr. Fox characterized it, Mueller went a step further when he spoke with the hospital's attending emergency physician and made appropriate recommendations for vascular surgery consultation and analgesics. He opined that the plaintiff acted unreasonably by refusing pain medication and leaving the hospital against medical advice on March 24, 2018, and again on March 25, 2018. Dr. Fox further opined that Mueller made appropriate referrals for vascular surgery to Dr. Herrick Wun on March 26, 2018, and then to Dr. Alfio Carroccio and Dr. Peter Connolly on March 28, 2018. He also asserted that, when the plaintiff again presented to Mueller on March 27, 2018, Mueller properly obtained a medical history, performed a physical examination, and made appropriate recommendations, and exceeded the standard of care by recommending an electrocardiogram and echocardiogram to assess chest pain, a right arm arterial Doppler test to assess right radial artery occlusion, and reiterating his suggestion that the plaintiff consult with a vascular surgeon such as Dr. Wun, as well as with hand surgeon Dr. Michelle Gerwin-Carlson.

Dr. Fox opined that Mueller again went above the standard of care by contacting the plaintiff by telephone on April 16, 2018 when the plaintiff failed to present for a follow-up stress test, and that Mueller also properly documented that the plaintiff was non-complaint with follow-up care, including vascular ultrasound testing of his radial artery occlusion and a stress test. He further noted that the plaintiff testified at his deposition that none of the physicians with whom he

treated after the stent placement criticized the care rendered by Mueller.

In opposition to Mueller's motion, the plaintiff relied upon the same unnotarized affirmation that he submitted in opposition to Sanghi's motion, in which he asserted, without any support, that Mueller lacked basic medical knowledge, that Mueller incorrectly interpreted the results of various medical tests, that he suffered from conditions that Mueller claimed he did not have (e.g., rheumatoid arthritis and mitral insufficiency), that he did not suffer from conditions that Mueller claimed he did have (e.g., obstructive coronary artery disease and abnormal EKG and ECG results), that stenting was contraindicated because he suffered from rheumatoid arthritis, and that balloon angioplasty was the preferred mode of treatment.

Contrary to the plaintiff's contention, Mueller established his prima facie entitlement to judgment as a matter of law dismissing the complaint insofar as asserted against him with his submissions, including Dr. Fox's affirmation. The court rejects the plaintiff's ad hominem challenges to Dr. Fox's qualifications and opinions. For the same reasons that were articulated in this court's September 14, 2022 order disposing of Motion Sequence 017, the court concludes that the plaintiff failed to raise triable issues of fact in opposition to Mueller's showing. As explained in that order, the plaintiff's affirmation in opposition was not in evidentiary form, and he failed to establish an evidentiary foundation for his own personal opinions, as he adduced no evidence that he was qualified by training, knowledge, or experience to render opinions as to the standard of care applicable to a cardiologist or the qualitative sufficiency of any consent that he gave to Mueller in connection with the latter's treatment, recommendations, and referrals. As the court also explained in that order, the plaintiff's affirmation was insufficient to support any of his claims that either of the two defendants departed from good and accepted medical care in taking his medical history or in examining, diagnosing, making suggestions and recommendations, and treating him, or in obtaining his fully informed consent to the stenting procedure.

The plaintiff's remaining contentions are without merit.

Since the court has now awarded summary judgment dismissing the complaint to both of the two defendants, the action must be marked disposed.

Accordingly, it is

ORDERED that the motion of the defendant Richard L. Mueller, M.D., for summary judgment dismissing the complaint insofar as asserted against him is granted, and the complaint is dismissed insofar as asserted against the defendant Richard L. Mueller, M.D.; and it is further,

ORDERED that, inasmuch as the court, in its September 14, 2022 order, had severed the action against the defendant Pramod Sanghi, M.D., from the action against the defendant Richard L. Mueller, M.D., and they are the only two defendants named in this action, the Clerk of the court is directed to enter judgment dismissing the complaint insofar as asserted against the defendant Richard L. Mueller, M.D.

This constitutes the Decision and Order of the court.

9/15/2022
DATE



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