

Chadwick v Charalel

2022 NY Slip Op 34965(U)

September 27, 2022

Supreme Court, Bronx County

Docket Number: Index No. 29486/2019E

Judge: Alicia Gerez

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NEW YORK SUPREME COURT – COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19A

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DOUGLAS K. CHADWICK,

Plaintiff,

- against -

Index No. 29486/2019E

Hon. ALICIA GEREZ,
Acting Justice of the Supreme Court

RESMI CHARALEL, M.D., SAMIR TREHAN, M.D.,
and NEW YORK PRESBYTERIAN HOSPITAL,

Defendants.

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The following papers numbered 64 to 83 were read on these motions (Seq. No. 002) for
SUMMARY JUDGMENT noticed on April 4, 2022 and duly submitted as Nos. on the
Motion Calendar of

Table with 2 columns: Sequence No., NYSCEF Doc. Nos.
Rows include: Notice of Motion – Exhibits and Affidavits Annexed (64-78), Cross Motion – Exhibits and Affidavits Annexed, Answering Affidavit and Exhibits, Memorandum of Law (79-82), Reply Affidavit (83)

The instant motion is decided in accordance with the annexed memorandum decision.

Dated: 9/27/22

Hon. Alicia Gerez
ALICIA GEREZ, A.J.S.C.

- 1. CHECK ONE..... [] CASE DISPOSED IN ITS ENTIRETY [X] CASE STILL ACTIVE
2. MOTION IS..... [X] GRANTED [] DENIED [] GRANTED IN PART [] OTHER
3. CHECK IF APPROPRIATE..... [] SETTLE ORDER [] SUBMIT ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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DOUGLAS K. CHADWICK,

Plaintiff,

DECISION and ORDER

- against -

Index No. 29486/2019E

RESMI CHARALEL, M.D., SAMIR TREHAN,
M.D., and NEW YORK PRESBYTERIAN
HOSPITAL,

Defendants.

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HON. ALICIA GEREZ

Defendant SEMIR TREHAN, M.D. moves for an Order pursuant to CPLR 3212 granting summary judgment and dismissing plaintiff’s complaint against him. Upon review of the papers, together with the opposition submitted thereto; review of the Court file; and upon due deliberation, the motion is decided as follows.

Factual Background

Plaintiff commenced this malpractice action alleging, generally, that defendant Semir Trehan, M.D., (hereinafter referred to as Dr. Trehan) deviated from good and accepted medical practice in his treatment of the plaintiff. More specifically, plaintiff asserts that as a result of defendant’s alleged malpractice, plaintiff suffered the loss of the distal third of his middle finger on his right hand.

In 2014, MRA imaging ordered by the Hospital for Special Surgery found a mass in plaintiff’s right hand. Despite a compression sleeve being prescribed, the mass continued to grow. On July 9, 2018, plaintiff consulted with Dr. Trehan for an evaluation of the mass in his hand. Dr. Trehan ordered an MRA which revealed a venous malformation. It is undisputed that Dr. Trehan informed plaintiff of the risks associated with an operation on the mass including risks of nerve injury. In August of 2018, Dr. Trehan referred plaintiff to interventional radiologist co-defendant Dr. Resmi Charalel (Dr. Charalel) for a consultation. Plaintiff met with Dr. Charalel on August 22, 2018, for a

consultation and on December 17, 2018, she performed an interventional radiology procedure intended to reduce the size of the mass.

It is alleged that during the procedure performed by Dr. Charalel some of the sclerosant foam extravasated from the blood vessel and seeped into the tissue of the middle finger on plaintiff's right hand ultimately causing the loss of the distal portion of plaintiff's middle finger.

It is undisputed that after plaintiff's injury, Dr. Charalel contacted Dr. Trehan as the referring physician.

Legal Standard

"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][citation omitted]). If a defendant in a medical malpractice action establishes prima facie entitlement to summary judgment, by a showing either that he or she did not depart from good and accepted medical practice or that any departure did not proximately cause the plaintiff's injuries, plaintiff is required to rebut defendant's prima facie showing "with medical evidence that defendant departed from accepted medical practice and that such departure was a proximate cause of the injuries alleged" (*Pullman v. Silverman*, 125 AD3d 562, 562 [1st Dept 2015], *aff'd* 28 NY3d 1060 [2016]; *see Scalisi v. Oberlander*, 96 AD3d 106, 120 [1st Dept 2012].)

Where defendant has made a prima facie showing of entitlement to judgment as a matter of law by submitting medical records and the affirmation of an expert demonstrating that the defendants did not depart from accepted medical practice (*See e.g. Kristal R. v. Nichter*, 115 AD3d 409, 411[1st Dept. 2014]), the burden thus shifts to the plaintiff to demonstrate otherwise. A plaintiff's expert's opinion "must demonstrate 'the requisite nexus between the malpractice allegedly committed' and the

harm suffered” (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 307 [1st Dept. 2007]). If “the expert’s ultimate assertions are speculative or unsupported by any evidentiary foundation . . . the opinion should be given no probative force and is insufficient to withstand summary judgment” (*Diaz v New York Downtown Hosp.*, 99 NY2d 542, 544 [2002]; *Giampa v Marvin L. Shelton, M.D., P.C.*, 67 AD3d 439 [1st Dept. 2009]).

As to timeliness, CPLR 3212(f) permits denial of a summary judgment motion should essential discovery remain outstanding. However, opposition to the motion must be supported by something other than mere hope or conjecture coupled with an attempt to discover facts at variance with the moving party’s proof (*Voluto Ventures, LLC v. Jenkins & Gilchrist Parker Chapin LLP*, 44 AD3d 557 [1st Dept 2007][internal citations omitted]).

Analysis

Plaintiff has abandoned his claims for lack of informed consent and negligent hiring, supervision, and credentialing for defendant Dr. Trehan. As plaintiff failed to oppose defendant’s arguments as to those claims, they are dismissed.

Plaintiff maintains that the instant motion is premature, insisting that they seek the deposition of Dr. Trehan. As a main contention, plaintiff seeks information regarding Dr. Trehan’s post-procedure consultation on December 17, 2018, as there is no notation regarding the consult in Dr. Trehan’s notes. Plaintiff argues this information is “crucial to the evaluation of the delay in treating the plaintiff’s condition.”

In moving for summary judgment, defendant attached to their papers an affirmation of Dr. Trehan. The affirmation details with specificity what information was conveyed to co-defendant Dr. Charalel in a phone call on December 17, 2018, after the plaintiff’s procedure. Also attached to the moving papers is the deposition of Dr. Charalel which confirms the conversation with Dr. Trehan and contains identical information regarding the call which transpired between the doctors after the

plaintiff's procedure. As Dr. Trehan never saw the plaintiff in person on December 17, 2018, we can only deduce the "consultation" plaintiff references is the call between the doctors regarding the incident which had just transpired.

Plaintiff has failed to provide any expert affirmation to refute the information provided by Dr. Trehan in his affirmation. Additionally, plaintiff fails to acknowledge Dr. Trehan's affirmation which contains the precise information they seek through additional discovery. Plaintiff has failed to submit via expert affirmation or otherwise that there was a departure in the care provided by Dr. Trehan and that the alleged departure caused plaintiff's injury. Plaintiff merely speculates, without more, that further discovery would lead to a question of fact regarding Dr. Trehan's alleged malpractice. The Court finds this, and the remaining arguments, to be without merit.

Accordingly, it is hereby

ORDERED that defendant SEMIR TREHAN, M.D.'s motion for summary judgment is granted to the extent that any and all claims in the complaint and bill of particulars relating to SEMIR TREHAN, M.D. are dismissed; and it is further

ORDERED that the Clerk of the Court, Bronx County, is directed to enter judgment in favor of SEMIR TREHAN, M.D.; and it is further

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ORDERED that the Clerk of the Court, Bronx County, is directed to amend the caption in this action to read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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DOUGLAS K. CHADWICK,
Plaintiff,

- against -

RESMI CHARALEL, M.D. and NEW YORK
PRESBYTERIAN HOSPITAL,

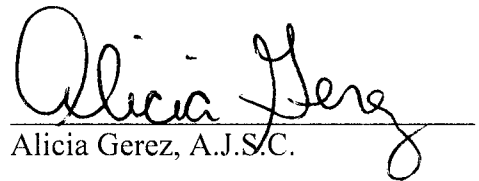
Defendants.

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This is the Decision and Order of the Court.

Dated: 9/27/22

ENTER


Alicia Gerez, A.J.S.C.