

Camara v BronxCare Health Sys.
2022 NY Slip Op 35055(U)
December 21, 2022
Supreme Court, Bronx County
Docket Number: Index No. 25143/19
Judge: Joseph E. Capella
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**NEW YORK SUPREME COURT - COUNTY OF BRONX
PART 23**

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BOUGADARY CAMARA,

Index #: **25143/19**
DECISION/ORDER

Plaintiff,

- against -

Present:
Hon. Joseph E. Capella
J.S.C.

**BRONXCARE HEALTH SYSTEM f/k/a BRONX-
LEBANON HOSPITAL CENTER, and HANASOGE
THIMMEGOWDA GIRISHKUMAR, M.D.,**

Defendants.

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The following papers numbered 1 to 3 read on this motion dated March 29, 2022.

<u>PAPERS</u>	<u>NUMBERED</u>
NOTICE OF MOTION & AFFIRMATION	1
ANSWERING AFFIDAVIT	2
REPLY AFFIDAVIT	3

UPON THE FOREGOING CITED PAPERS, THE DECISION/ORDER IN THIS MOTION IS AS FOLLOWS:

Motion by defendants, Bronxcare Health System f/k/a Bronx-Lebanon Hospital Center (BLHC) and Hansoge Thimmegowda Girishkumar, M.D., for summary judgment (CPLR 3212) and dismissal of plaintiff’s complaint, which alleges medical malpractice, lack of informed consent and negligent hiring, is granted in part and denied in part. On January 14, 2018, plaintiff presented to the BLHC Emergency Room (ER) with complaints of bilateral foot pain, burning sensation, and tingling from the ankles down. He was treated and referred to the BLHC Clinic for outpatient evaluation, and on January 22, he presented to the ER again for continued complaints of left foot pain, where he was evaluated by Dr. Girishkumar, who eventually performed a thrombectomy on the left and right legs. The initial burden is on defendants to make a *prima facie* showing of an

entitlement to summary judgment as a matter of law by tendering sufficient evidence to eliminate any material issues of fact. (*Alvarez v Prospect*, 68 NY2d 320 [1986].) If they do, then the burden shifts to plaintiff to produce evidentiary proof in admissible form sufficient to create issues of fact to warrant a trial (*Alvarez*, 68 NY2d 320), and denial of summary judgment.

In support of the motion, defendants include an expert affirmation from Dr. Todd Berland, who is board certified in general and vascular surgery. Dr. Berland provides a thorough and detailed explanation as to why he believes the care provided by defendants was appropriate, timely and did not deviate from the standards of accepted medical practice. In general, he opines that defendants appropriately evaluated plaintiff, and timely identified that plaintiff had severe, life-threatening vascular disease in his bilateral legs. He goes on to state that Dr. Girishkumar properly treated the left leg first (i.e., January 23, 2018) with thrombectomy and a bypass. Dr. Berland goes on to opine that progressive worsening of the arterial disease in the right leg from January 22, coupled with numbness, provided adequate justification for proceeding with a right angiography/embolectomy on January 26, 2018. He opines that plaintiff's failure to comply with the need for anticoagulation and his continued smoking inevitably led to the need for right foot amputation. He further opines that Dr. Girishkumar obtained complete and fully informed consent for both procedures. Lastly, defendants argue that where, as here, an employee acts within the scope of his employment, the employer is liable for the

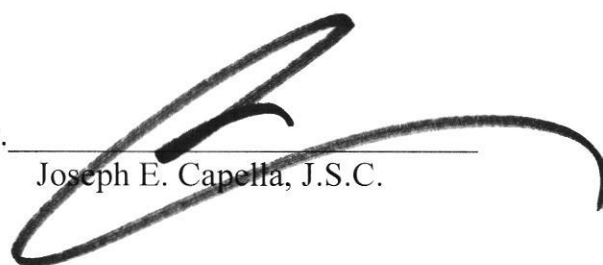
employee's negligence under a theory of respondent superior and no claim may proceed against the employer for negligent hiring, retention, supervision or training. (*Talavera v Arbit*, 18 AD3d 738 [2nd Dept 2005].) Given the aforementioned, the Court is satisfied that defendants have met their burden for summary judgment, (*Zuckerman v City of NY*, 49 NY2d 557 [1980]; *Kaffka v NY Hospital*, 228 AD2d 332 [1st Dept 1996]), which now shifts to plaintiff to demonstrate that issues of fact exist to warrant a trial.

Plaintiff's opposition papers do not address negligent hiring, and therefore, that portion of defendants' motion seeking dismissal of same is granted. The opposition papers do include an expert affirmation by Dr. Richard Green, a board certified vascular surgeon, who provides a detailed opinion as to how defendants acted contrary to the standard of care. According to Dr. Green, attempting endovascular surgical revascularization on the right leg on January 26, 2018, was unnecessary and contraindicated, putting plaintiff in a foreseeable and substantial risk of harm that he did not have to face. He states that there was a lack of documented abnormalities to the right leg, and the vascular disease in this leg was asymptomatic, which should have been managed conservatively with medical therapy instead of surgically. Dr. Green states that plaintiff's limb loss was a result of the high-risk endovascular procedure undertaken on January 26, 2018, which foreseeably dispersed embolic atherosclerotic trash that occluded the outflow distal vessels to the right foot. And contrary to the opinion of defendants' expert, plaintiff's purported noncompliance with anticoagulation therapy after surgery did not

contribute to the limb loss because by then, the damage was already done. Anti-coagulation in this setting would serve to prevent further embolization, but would not reverse the damage that was already done by the surgery on January 26. Dr. Green also opines that given the lack of symptoms indicative of acute critical ischemic, the informed consent discussion in this circumstance would not have been complete without a detailed discussion with plaintiff regarding nonsurgical treatment.

Viewing the evidence in a light most favorable to plaintiff, (*O'Sullivan v Presbyterian*, 217 AD2d 98 [1st Dept 1995]), the Court is satisfied that he has met his burden of producing evidentiary proof in admissible form sufficient to create issues of fact regarding the January 26 surgery, and the corresponding informed consent. (*Alvarez*, 68 NY2d 320.) Therefore, that portion of defendants' motion seeking dismissal of these two claims is denied, and the balance of their motion is granted to the extent of dismissing all other claims raised by plaintiff. Defendants are directed to serve a copy of this decision with notice of entry by first class mail upon all sides within 30 days of receipt of copy of same. This constitutes the decision and order of this court.

12/21/22
Dated

Hon. 
Joseph E. Capella, J.S.C.