

Currie v Oneida Health Sys., Inc.
2022 NY Slip Op 35188(U)
May 20, 2022
Supreme Court, Madison County
Docket Number: Index No. EF2018-1820
Judge: Donald F. Cerio, Jr.
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STATE OF NEW YORK
SUPREME COURT : COUNTY OF MADISON
PRESENT: HON. DONALD F. CERIO, JR.
ACTING SUPREME COURT JUSTICE

FILED IN
MADISON COUNTY CLERK'S OFFICE
Tuesday, May 24, 2022 10:03 AM

RONALD GEORGE CURRIE as EXECUTOR of the
ESTATE OF BARBARA JANE CURRIE,

Plaintiff,

DECISION AND ORDER

Index No. EF2018-1820

v.

ONEIDA HEALTH SYSTEMS, INC., d/b/a
ONEIDA HEALTHCARE EXTENDED CARE
FACILITY and ONEIDA HEALTH CARE
CORPORATION d/b/a ONEIDA HEALTHCARE
EXTENDED CARE FACILITY,

Defendants.

This matter comes before the court upon the Defendants' January 13, 2022, Notice of Motion seeking to dismiss the Plaintiff's complaint in all respects. Accompanying the Notice of Motion was the January 13, 2022, Attorney Affirmation of Matthew B. Schutte, Esq.; the January 13, 2022, Expert Affidavit of Joseph A. Nicholas, M.D., M.P.H, and; the January 13, 2022, Statement of Material Facts. The Plaintiff thereafter submitted the April 21, 2022, Attorney's Affirmation in Opposition to Defendants' Motion for Summary Judgment, of Michael J. Welch, Esq.; the April 21, 2022, Expert Affidavit in Opposition to Defendants' Motion for Summary Judgment of Johanna Ojeda, R.N., BSN, and; the April 21, 2022, Statement of Material Facts. Subsequently, the Defendants submitted the April 28, 2022, Attorney Affidavit of Gabrielle L. Bull, Esq.

This particular action was commenced by the filing of plaintiff's Summons and Verified Complaint, dated September 7, 2018, on September 13, 2018. Issue was joined by the filing of the Defendant's Verified Answer, dated October 9, 2018, and filed on October 9, 2018.

Plaintiff's complaint asserts six causes of actions against the defendants.¹ The First and Fourth Causes of Action seek redress with respect to asserted violations of Public Health Law §§2801-D and 2803-C alleging the defendants had "willful[ly] and/or [with] reckless disregard," "fail[ed] to insure a dignified existence for the residents; fail[ed] to adequately staff the facility; fail[ed] to provide an adequate number of qualified personnel; fail[ed] to enhance and support an environment that promoted residents' dignity and quality care; engag[ed] in a pattern of failing to provide appropriate and adequate resources and equipment for the facility staff, facility maintenance, facility supplies and staff training; [and did] not properly monitor[]/supervis[e] the plaintiff's decedent and ignored the plaintiff's decedent's care plan." (¶¶ 39-40, 70-71). The Second and Fifth Causes of Action assert breach of contract claims, and the Third and Sixth Causes of Action assert as a basis for relief the defendants' negligence for having failed to provide the plaintiff's decedent with a safe environment. No causes of action as asserted specifically allege medical malpractice against any of the named defendants directly or vicariously.

The defendants' present motion submits that they are entitled to dismissal of the plaintiff's complaint upon the ground that the expert opinion of Dr. Nicholas does not find there to be, within a reasonable degree of medical certainty, any basis upon which to assert the presence of medical malpractice, and thus a deviation from the standard of care, with respect to the care and services provided to the decedent by the defendants. Dr. Nicholas further opined that the defendants had comported their procedures, conduct and care of the decedent in conformity with the mandates of the Public Health Law and their contractual obligations, and did not do so in a negligent fashion. Plaintiff, on the other hand, asserts that the present action is not one premised upon medical malpractice but, rather, statutory violations, breach of contract and common law negligence. As such, plaintiff asserts that the opinion of Dr. Nicholas does not entitle the defendants to relief.

As was held in *Wagner v. Zeh*, 45 Misc.2d 93, S.Ct. Albany Co., 1965, *aff'd* 26 ad2d 729, 3rd Dpt. 1966:

A remedy which precludes a litigant from presenting his evidence for consideration by a jury, or even a Judge, is necessarily one which should be used sparingly, for its mere existence tends to alter our jurisprudential concept of a "day in court". Understandably, courts speak of the summary judgment restrictively. Summary judgment is a harsh remedy and the requirement of the rule should be strictly complied with in order to entitle a party to that relief. (*Bakerian v. Horn*, 21 AD2d 714). To grant summary judgment, it must clearly appear that no material and triable issue of fact is presented. This drastic remedy should not be granted where there is any doubt as to the existence of such issues.

¹Significantly, the plaintiff had not commenced this action against any named physician, physician assistant, nurse practitioner, registered nurse or other medical professional, choosing, rather, to commence such against the named domestic corporations and residential health care facility at which the decedent had resided.

(*Di Menna & Sons v. City of New York*, 301 NY118; *Braun v. Carey*, 280 App. Div. 1019). On the other hand, the court should not hesitate to give this remedy the full purpose for which it is intended. Given the statutory sanction, it is the duty of the court, not to test the sufficiency of the pleadings, but rather to go behind them to the very substance of the action and distinguish matters of law from matters of fact, material issues of fact from immaterial ones. The task of the court now is to determine if a "material issue of fact" is presented. (*Di Menna & Sons v. City of New York*, *supra.*; *96 *Bakerian v. Horn*, *supra.*). As an adjective "material" means "substantial; of consequence; important; going to the essence or the merits; relating to matter of substance, rather than form." (Ballentine's Law Dictionary.)

Once the moving party establishes his entitlement to judgment as a matter of law, the burden then shifts to the opposing party to establish, by admissible proof, that some genuine issue of a material fact exists. (*Card v. Brown*, 43 AD3d 594 (3d Dept 2007); *Chunn v. Carman*, 8 AD3d 745 (3d Dept 2004). In the face of a motion for summary judgment, the party against whom it is sought is obligated to lay bare his proof, that is, to demonstrate by affidavit or otherwise that one or more triable issues of fact genuinely exist. If such proof is not forthcoming, summary judgment may well be the result. (*Zuckerman*, *supra.*; *RM & M Framemakers v. Baucom*, 198 AD2d 695 (3d Dept 1993). If a party seeks summary judgment dismissing a cause of action asserted against him, that party must proffer evidence showing that his adversary's pleadings contain no meritorious claim. (*Franceschi v. Consolidated Rail Corp.*, 142 AD2d 915 (3d Dept 1988).

The court reviews a summary judgment motion in the light most favorable to the party opposing it, giving that party the benefit of every inference that may be reasonably and fairly drawn. *Card v. Brown*, *supra.*; *Secore v. Allen*, 27 AD3d 825 (3d Dept 2006). Through that prism, the court determines whether any triable issue of a material fact exists. If it does, then resolution of the issue must await trial. If it does not, then the court may summarily grant judgment without the need for a trial. *Sillman v. Twentieth Century Fox Film Corp.*, 3 NY2d 395 (1957); *Gadani v. Dormitory Authority of the State of New York*, 43 AD3d 1218 (3d Dept 2007); *Raven Industries, Inc. v. Irvine*, 40 AD3d 1241 (3d Dept 2007).

Thus, the Court's function is to ascertain if there are any issues of fact rather than seeking to determine the issues on the submissions alone. (See *Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395). Upon a motion for summary judgment the Court is not to determine questions of credibility as such is a matter of sufficient materiality as to form the basis upon which denial of a summary judgment may lie. (*Glick and Dolleck v. Tri-Pac Export Corp.*, 22 NY2d 439, *and*; *Trionfero v. Vanderhorn*, 6 AD3d 903).

The question raised is whether the present action is essentially premised upon a claim of medical malpractice. If it is, the defendants are entitled to the relief requested. If it is not, the motion to dismiss must be denied as the defendants have not demonstrated their entitlement to the demanded relief or, in the alternative, if one were to find such entitlement to have been

demonstrated, the plaintiff has raised sufficient questions of material fact so as to preclude the grant of the relief sought.

The Appellate Division, Third Department, in *Martuscello v Jensen*, 134 AD3d 4 [2015], addressed the issue of whether an action is to be considered one sounding in medical malpractice or negligence. There, the decedent had sustained a fall within a medical office upon having appeared for a physical examination which was to have conducted by the named defendant physician, Jensen. Upon a review of the facts of that particular case the court concluded that the action was that of medical malpractice as “the conduct in question ‘[bore] a substantial relationship to the rendition of medical treatment.’” (*Id* at 12, *internal citations omitted*). The court held that:

“[T]he distinction between medical malpractice and negligence is a subtle one, for medical malpractice is but a species of negligence and ‘no rigid analytical line separates the two.’” “[T]he critical question in determining whether an action sounds in medical malpractice or simple negligence is the nature of the duty to the plaintiff which the defendant is alleged to have breached.” Conduct “that constitutes medical treatment or bears a substantial relationship to the rendition of medical treatment by a licensed physician” is malpractice. **Conduct is negligence rather than malpractice when “the gravamen of the complaint is not negligence in furnishing medical treatment to a patient, but [a medical facility’s] failure in fulfilling a different duty.”** The issue devolves to whether medical judgment is required or not; where the underlying claim arises from the failure to follow a medical order previously made or to apply standards of ordinary care, then it is negligence, without regard to whether expert testimony is deemed helpful to the resolution. However, where the conduct involves a standard established by means of the exercise of medical judgment, then it is malpractice. (*Id* at 11; *internal citations omitted*; *Emphasis added*).

With respect to the present matter the plaintiff has asserted causes of action which are not akin to medical malpractice. Here, the facility is alleged to have failed in its responsibilities to the decedent which were premised upon both statutory and common law. The allegations set forth in the First and Fourth Causes of Action serve to demonstrate a failure on the part of the defendant facility to have satisfactorily complied with the obligations imposed upon it statutorily due to the vulnerable nature of the population which it serves and, in particular, the decedent who suffered from a myriad of debilitating health conditions. This private right of action seeks redress for statutory liability which “contemplates injury to the 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.” (*Cornell v County of Monroe*, 158 AD3d 1151, 1152, 4th Dpt. 2018). So, too, nothing less may be said regarding plaintiff’s allegations contained in the Second and Fifth Causes of Action sounding in breach of contract and the Third and Sixth Causes of Action sounding in common law negligence with respect to the performance of the defendants within the confines of

their facility which, as alleged, caused the decedent injury. It is this court's finding that the matters as raised within the plaintiff's complaint do not "[bear] a substantial relationship to the rendition of medical treatment" and are thus not in the nature of medical malpractice. Rather, the various causes of action set forth by the plaintiff allege that the "[medical facility] fail[ed] to fullfil [it's duty to the plaintiff's decedent]." (*See Martuscello, supra*).

As such, given the foregoing, this court concludes that there exists material questions of fact which preclude the grant of the relief sought by the defendants.

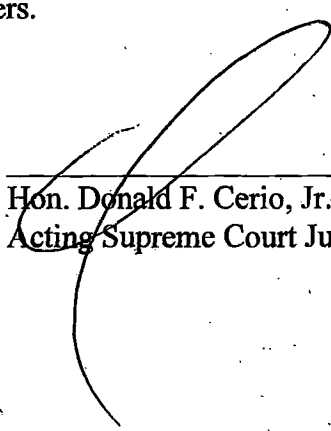
Therefore, it is

ORDERED, that the defendants' motion seeking dismissal of the plaintiff's complaint is denied in all respects, and it is

ORDERED, that a pretrial conference shall be conducted on June 1, 2022, at 9:00 AM, such to be conducted telephonically and initiated by chambers.

Enter.

DATED: May 20, 2022
Wampsville, New York



Hon. Donald F. Cerio, Jr.
Acting Supreme Court Justice

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