Vanrenterghem v Sukumaran
2023 NY Slip Op 30245(U)
January 24, 2023
Supreme Court, New York County
Docket Number: Index No. 805069/2020
Judge: Judith N. McMahon
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDITH MCMAHON, *Justice* — PART 30M

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ANNIE VANRENTERGHEM, JEFFREY RAVEN,

Plaintiff,

- v -

MUTHIAH SUKUMARAN, DAVID KAMELHAR, DAVID KAMELHAR, M.D., PLLC,MAJ WICKSTROM, JOHN DELLOSSO, WESTSIDE MEDICAL GROUP, P.C.,NYU LANGONE HOSPITALS

Defendant.

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INDEX NO. 805069/2020

MOTION DATE 1/18/2023

MOTION SEQ. NO. 001 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 104, 107, 110, 113, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 208, 209

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 105, 108, 111, 114, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 206

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 106, 109, 112, 115, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 207

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER.

Upon the foregoing documents, it is ordered that the motions for summary judgment of the defendants Muthiah Sukumaran, M.D. (Motion Seq. No. 001), David Kamelhar, M.D., and David Kamelhar, M.D., PLLC (Motion Seq. No. 002) are granted and plaintiffs' complaint is severed and dismissed as against these defendants. The motions for summary judgment of the defendants Maj L. Wickstrom, M.D., NYU Langone Hospitals ("NYU") (Motion Seq. No. 001), John Dellosso M.D. and West Side Medical Group, P.C. (Motion Seq. No. 003) are denied. The

only physicians remaining in this case are the radiologist, Dr. Wickstrom, and plaintiff's internist, Dr. Dellosso.

The motion for summary judgment of NYU is denied, as a triable issue of fact has been raised by the conflicting sworn testimony of Dr. Wickstrom, who initially testified at her September 28, 2021 EBT that she was employed by "NYU Langone Medical Center" (*see* NYSCEF Doc. No. 48, p. 10), but subsequently stated, in her August 4, 2022 affidavit, that she was employed by NYU School of Medicine (*see* NYSCEF Doc. No. 59). Likewise denied is that the motion for summary judgment by Westside Medical Group, P.C., which employed Dr. Dellosso.

In this medical malpractice matter the plaintiff, Annie Vanrenterghem, alleges that defendants were negligent in failing to timely diagnose cholangiocarcinoma, a rare cancer of the liver.

FACTUAL BACKGROUND

In late 2016 Mrs. Vanrenterghem began having a persistent cough. At the suggestion of her primary care physician, Dr. Dellosso, she started treating with pulmonologist, Dr. Sukumaran, who diagnosed her with asthma and prescribed several medications and inhalers which she took with varying success. Plaintiff regularly saw Dr. Sukumaran between March 2, 2017 and April 6, 2018 (*see* NYSCEF Doc. No. 193). He administered a chest x-ray which was unremarkable. After almost a year of asthma treatments and still experiencing significant coughing episodes, plaintiff sought a second opinion from pulmonologist, Dr. Kamelhar, who she saw on December 21, 2017, and February 20, 2018 (*see* NYSCEF Doc. No. 194). Dr. Kamelhar ordered a low dose chest CT scan which was performed at NYU on December 22, 2017. Radiologist, Maj Wickstrom, M.D., read the CT scan and interpreted "mild diffuse

bronchial wall thickening without bronchiectasis"[1]. *No other abnormalities were noted.* Plaintiff continued to see Dr. Dellosso between her visits to the two pulmonologists (*see* NYSCEF Doc. No. 195).

On April 4, 2018, four months after undergoing her chest CT scan, Mrs. Vanrenterghem presented to the emergency room of Lenox Hill Hospital (Greenwich Village) with significant abdominal pain and vomiting. An abdominal/pelvic CT scan with oral and IV contrast revealed a 10.8 x 7.1 x 7.2 cm heterogeneous mass in the left lobe of the liver which was suspicious for malignancy (*see* NYSCEF Doc. No. 180). Three days later, on April 7, 2018, an abdominal MRI confirmed the presence of a left liver mass (*see* NYSCEF Doc. No. 181), and on April 13, 2018, a PET CT scan revealed evidence of a centrally necrotic mass in the left liver lobe with two small adjacent malignant looking foci (*see* NYSCEF Doc. No. 182). On April 16, 2018, a biopsy of the mass revealed moderately differentiated adenocarcinoma, and cholangiocarcinoma was suspected clinically (*see* NYSCEF Doc. No. 183).

After consulting with multiple surgeons and oncologists, plaintiff elected to reduce the size of the tumor by first using neoadjuvant chemotherapy before undergoing surgical resection. Following her first round of chemotherapy and the associated shrinkage of the tumor, plaintiff testified that her coughing stopped and has never returned.

On September 19, 2018, Dr. William Jarnagin, Chief of the Hepatopancreatobiliary service at Memorial Sloan Kettering Cancer Center, resected the left and caudate lobes of the liver along with portal lymph nodes. At present, four years after diagnosis and treatment and according to ongoing surveillance monitoring, plaintiff's cancer has not recurred.

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[1] Bronchiectasis is a condition where the airways of the lungs become widened, leading to a build-up of excess mucus that can make the lungs more vulnerable to infection.

MOTIONS FOR SUMMARY JUDGMENT AND EXPERT OPINIONS

Dr. Sukumaran, the pulmonologist to whom plaintiff was first referred by Dr. Dellosso, moves for summary judgment relying in part upon the expert affirmation of pulmonologist Edward Eden, M.D. (*see* NYSCEF Doc. No. 38). Dr. Eden emphasizes that plaintiff did not present with classic symptoms that would raise suspicion for liver cancer (*i.e.*, jaundice, severe gastrointestinal symptoms, or pain in the upper right quadrant) and is emphatic that Dr. Sukumaran (1) met the standard of care in treating plaintiff for a *recurring cough* between March 2, 2017 and January 19, 2018; (2) was not required to perform full "head to toe evaluations" as those exams were left to plaintiff's internist (*id.*, para 24); and (3) acted within the standard of care by performing focused physical examinations of plaintiff's upper body and lungs. According to Dr. Eden, plaintiff's suggestion that Dr. Sukumaran would have palpated the enlarged liver had he properly performed an abdominal exam is speculative, since none of the other physicians who examined plaintiff during this time (*i.e.*, Dr. Dellosso, Dr. Kamelhar or non-party gastroenterologist Dr. Khan) diagnosed an enlarged liver. He further opines that the standard of care did not require Dr. Sukumaran to order a chest CT scan before December 22, 2017, because plaintiff's cough was responsive to the asthma treatment he was prescribing. To the extent relevant, Dr. Eden disagrees with plaintiff's oncologist who, according to plaintiff, hypothesized that her cough was caused by the tumor pushing up and against the diaphragm.

Dr. Wickstrom, the radiologist who plaintiff claims missed a finding on the upper lobe of the liver when reading the December 22, 2017 low dose chest CT scan, moves for summary judgment relying, in part, upon the expert affirmation of thoracic radiologist Anna Shlionsky Bader, M.D. (*see* NYSCEF Doc. No 39). Dr. Wickstrom's report includes, in relevant part: "mild diffuse bronchial wall thickening without bronchiectasis and an *unremarkable upper abdomen.*"

Dr. Bader attests that she herself did not observe the mass in the liver when she reviewed the chest CT scan. According to Dr. Bader, the subject CT scan uses a low dose of radiation which is adequate to visualize lung structures but is not designed for abdominal imaging or intended as a diagnostic study of the liver. The expert concludes that plaintiff's enlarged liver was only visible in hindsight, and that "[i]t would have been highly irregular practice for Dr. Wickstrom or any thoracic radiologist to manipulate the windows and views on the non-contrast study to search for and detect low attenuation within the left lobe of the liver, particularly given that there was no clinical information to support searching plaintiff's liver for abnormalities" (*id.,* para 16).

Motion Seq. No. 002 is for summary judgment in favor of pulmonologist **David Kamelhar, M.D**. and his practice, David Kamelhar, M.D., PLLC. It is undisputed that plaintiff presented to Dr. Kamelhar on December 21, 2017 for a second opinion on her recurrent cough, at which time he ordered the December 22, 2017 low dose chest CT scan, a swallow evaluation, a video fluoroscopic swallowing evaluation, and a referral to an ENT to evaluate voice quality and cough. At her second office visit on February 20, 2018, Dr. Kamelhar diagnosed the source of plaintiff's cough as upper airway irritation and agreed that there could also be underlying asthma. He referred plaintiff to non-party gastroenterologist, Dr. Abraham Khan, for evaluation of esophageal dysfunction, and to non-party Dr. Paul Kwak, an otolaryngologist, for evaluation of dysphagia. It is noted that Dr. Khan did not find an enlarged liver during his examination.

In support of his motion, Dr. Kamelhar relies upon the expert affirmation of internist and pulmonologist Edwin Neil Schachter, M.D. (*see* NYSCEF Doc. No. 67), who finds within a reasonable degree of medical certainty that Dr. Kamelhar (1) acted within the standard of care in treating plaintiff on both of her visits; (2) performed thorough and correct physical examinations including an examination of plaintiff's abdomen; (3) performed correct pulmonary function tests;

(4) properly referred plaintiff to a gastroenterologist and otolaryngologist, and (5) properly ordered a chest CT scan and swallow study to rule out esophageal dysfunction/reflux. Based upon his findings and those of the consulting physicians who found no abnormalities of the liver, Dr. Kamelhar did not depart from the standard of care in suggesting that plaintiff's cough may have had respiratory causes in addition to asthma. According to the expert, Dr. Kamelhar acted within the standard of care in not working up plaintiff for cholangiocarcinoma.

Motion Seq. No. 003 is for summary judgment in favor of plaintiff's primary care physician, **John Dellosso, M.D.,** and his practice, **West Side Medical Group, P.C.** These defendants likewise rely upon the expert affidavit of Edwin Neil Schachter, M.D. (*see* NYSCEF Doc. No. 87) who finds that "there were no acts of negligence on the part of Dr. Dellosso, his employees, servants or agents, and that none of Dr. Dellosso's alleged deviations proximately caused the injuries claimed" (*id.*, para 3). Specifically, Dr. Schachter finds that Dr. Dellosso correctly examined plaintiff's abdomen and adhered to the standard of care despite failing to diagnose plaintiff with cholangiocarcinoma, as none of his physical examinations (particularly those performed on March 23, 2018 and April 5, 2018) revealed a palpable mass. According to Dr. Schachter, Dr. Dellosso (1) acted within the standard of care during plaintiff's October 6, 2017 examination, given that plaintiff informed him that her cough was improving after her treatments with Dr. Sukumaran; (2) appropriately examined plaintiff's abdomen on November 30, 2017, and ordered a stress test to further evaluate plaintiff's complaints of shortness of breath and dyspnea on exertion; (3) correctly relied upon Dr. Sukumaran's diagnosis of asthma, and (4) did not fail to recognize plaintiff's claimed unintentional weight loss, since a five-pound loss within a six-month period is considered moderate and does not warrant further action. The expert concludes that Dr. Dellosso's treatment was not a proximate cause of plaintiff's injuries and did

not cause a delay in the diagnosis of cholangiocarcinoma, and that Dr. Dellosso "took all reasonable steps to ascertain the cause of plaintiff's cough and to treat same" (*id.*, para 48).

In opposition to the motions, plaintiffs maintain that the cancer should have been diagnosed in December of 2017 instead of mid-April 2018, that it had been allowed to grow uninterruptedly for four months, and that had it been diagnosed earlier plaintiff's prognosis and life expectancy would be significantly improved. Specifically, plaintiffs argue that (1) **Dr. Sukumaran** failed to perform an abdominal examination at any time prior to April 6, 2018 and had he done so, he would have recognized an enlarged liver and referred plaintiff for further abdominal imaging that would have allowed earlier diagnosis and treatment; (2) **Dr. Kamelhar** failed to perform an abdominal exam on her first office visit, and had he done a proper and thorough physical examination, he would have palpated an enlarged liver and ordered abdominal imaging which would have led to an earlier diagnosis and treatment; (3) **Dr. Dellosso** failed to properly examine plaintiff's abdomen on multiple occasions and had he done so, plaintiff would have been referred for imaging studies which would have revealed an enlarged liver requiring biopsy, and (4) **Dr. Wickstrom** failed to properly read and interpret plaintiff's chest CT scan of December 22, 2017, should have seen and documented the incidental finding of an enlarged left lobe of the liver, and should have recommended follow-up imaging which would have yielded an earlier diagnosis and treatment.

Plaintiffs rely upon "significant and material factual issues" to defeat summary judgment, including but not limited to (1) the March 26, 2019 independent radiological review of the December 22, 2017 CT scan, in which a radiologist from Mt. Sinai West found: "UPPER ABDOMEN: 8.8 x 5.8 cm hypodense mass occupying the left hepatic lobe;" (2) whether and when plaintiff's enlarged liver was palpable, and (3) whether proper abdominal exams by Drs.

Sukumaran, Kamelhar and Dellosso would have uncovered an enlarged liver requiring follow up evaluations.

In opposition to the motions, plaintiffs submit the redacted expert affirmation of a radiologist (*see* NYSCEF Doc. No. 117) who is unequivocal that the enlarged mass in the left lobe of the liver was visible to Dr. Wickstrom using standard viewing techniques, that she incorrectly noted "upper abdomen unremarkable," and that the abnormal incidental finding of an enlarged liver should have been seen by Dr. Wickstrom but was not recognized.

Plaintiff also attaches the expert affirmation of an oncology/hematology expert (*see* NYSCEF Doc. No. 118) who states unequivocally that the standard of care at an initial consultation requires a thorough physical examination including palpation of the patient's abdomen (*id., para* 21), because it establishes a baseline for evaluating any abdominal pathology.

Plaintiff's oncology expert opines that (1) Dr. Sukumaran's failure to perform abdominal examinations were departures from the standard of care because of plaintiff's ongoing complaints that her cough was associated with eating; (2) Dr. Kamelhar incorrectly reported a negative abdominal exam on December 21, 2017; (3) Dr. Dellosso's physical examinations of plaintiff's abdomen on October 6, 2017, November 30, 2017, March 23, 2018 and April 5, 2018 were all lacking in that he failed to properly perform those exams and notably, on April 5, 2018, even after plaintiff's imaging study at Lenox Hill revealed a 10.8 cm liver mass, Dr. Dellosso failed to recognize, appreciate and palpate her enlarged liver. Plaintiff's oncologist concludes that "had [plaintiff's] cholangiocarcinoma been diagnosed in December 2017 or January 2018, she would have, more likely than not, been Stage 1B and not needed neoadjuvant chemotherapy, she would not have suffered toxic effects of chemotherapy" (*id.*, para 30) …[and] "while cough

is not a symptom of cholangiocarcinoma, any large mass in the liver that pushes against the diaphragm will cause coughing."

The Court notes at this juncture that while plaintiff has not submitted the expert affirmation of a pulmonologist specifically setting forth that the accepted standard of pulmonological care required an abdominal examination for a patient undergoing treatment for a cough. Neither of plaintiff's experts mentioned whether they had any specific training or expertise in pulmonology or any particularized knowledge with regard to diagnosis and treatment for a recurrent cough. "While it is true that a medical expert need not be a specialist in a particular field in order to testify regarding accepted practices in that field…the witness nonetheless should be possessed of the requisite skill, training, education, knowledge, or experience from which it can be assumed that the opinion is reliable" (*Behar v. Coren*, 21 AD3d 1045, [2d Dept. 2005], *quoting Postlethwaite v. United Health Servs. Hosps.*, 5 AD3d 892 [3d Dept. 2004]). Accordingly, judgment as a matter of law must be awarded to the defendant pulmonologists, Dr. Sukumaran and Dr. Kamelhar.

APPLICABLE LAW AND ANALYSIS

It has long been acknowledged that summary judgment deprives the litigant of his day in court and is considered a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues (*Andre v. Pomeroy,* 35 NY2d 361, 364 [1974]). To obtain summary judgment, a movant must establish its position "sufficiently to warrant the court as a matter of law in directing judgment" in its favor (*Friends of Animals, Inc., v. Associated Fur Mfrs.,* 46 NY2d 1065, 1067 [1979], *quoting* CPLR 3212[b]). The proponent of a summary judgment motion must initially make a *prima facie* showing of entitlement to judgment as a matter of law, by tendering sufficient evidence to eliminate any genuine material issues of fact from the case (*see*

Alvarez v. Prospect Hosp., 68 NY2d 320, 324 [1986]). The failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If a *prima facie* showing is made, the burden shifts to the party opposing the motion for summary judgment to come forward with evidentiary proof in admissible form to establish the existence of material issues of fact which require a trial (*see Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]).

A defendant physician moving for summary judgment in a medical malpractice action must make a *prima facie* showing of entitlement to judgment as a matter of law by showing that "in treating the plaintiff, there was no departure from good and accepted medical practice or that any departure was not the proximate cause of the injuries alleged" (*Roques v. Nobel,* 73 AD3d 204, 206 [1st Dept. 2010]; *Stukas v. Streiter*, 83 AD3d 18, 24 [2d Dept. 2011]. To satisfy the burden, defendant must present expert opinion testimony that is supported by the facts in the record, addresses the essential allegations in the complaint or the bill of particulars, and is detailed, specific and factual in nature (*id.; see also Joyner-Pack v. Sykes,* 54 AD3d 727, 729 [2d Dept. 2008]). "Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Perre v. Vassar Bros. Hosp.*, 52 AD3d 670, 670 [2d Dept. 2008], *quoting Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

In reviewing a defendant's motion for summary judgment, the Court must accept plaintiff's facts as true, and draw all reasonable inferences in the light most favorable to the plaintiff (*see Asabor v. Archdiocese of New York*, 102 AD3d 524 [1st Dept. 2013]; [*internal citations omitted*]). The standard for determining the motion is whether there are any genuine and material disputed issues of fact. Summary judgment should not be granted where there is any doubt as to the existence of a factual issue or where the existence of a factual issue is even arguable (*see Glick &*

Dolleck v. Tri-Pac Expert Corp., 22 NY2d 441 [1968]). Critically, "it is not the court's function on a motion for summary judgment to assess credibility" (*Ferrante v. American Lung Assn.*, 90 NY2d 93 [1997]; [*emphasis supplied*]). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he [or she] is ruling on a motion for summary judgment or for a directed verdict" (*Anderson v. Liberty Lobby, Inc.*, 477 US 242, 255 [1986]).

Once a defendant has met his or her burden on the motion, the plaintiff must "submit evidentiary facts or materials to rebut the *prima facie* showing by the defendant-physician that he was not negligent in treating plaintiff, so as to demonstrate the existence of a triable issue of fact...general allegations of medical malpractice, merely conclusory and unsupported by competent evidence tending to establish the essential elements of medical malpractice, are insufficient to defeat [the physician's] summary judgment motion" (*Alvarez v. Prospect Hospital,* 68 NY 320, 324-325 1986). Thus, in opposing the motion, plaintiff's expert "must demonstrate 'the requisite nexus between the malpractice allegedly committed' and the harm suffered" (*Dallas-Stephenson v. Waisman,* 39 AD23d 303 [1st Dept. 2007], *quoting Ferrara v. South Shore Orthopedic Associates, P.C.*, 178 AD2d 364, 366 [1st Dept. 1991]). Moreover, plaintiff's expert must address and refute the specific assertions of defendants' experts with respect to negligence and causation (*see Janelle M. v. New York City Health & Hospitals Corp.*, 148 AD3d 519 [1st Dept. 2017]).

In most instances, the opinion of a qualified expert that the plaintiff's injuries resulted from a deviation from relevant industry or medical standards is sufficient to defeat summary judgment. Where the parties' conflicting expert opinions are adequately supported by the record, summary judgment must be denied (*Frye v. Montefiore Med. Ctr.*, 70 AD3d 15, [1st Dept. 2009]).

Here, defendant-pulmonologists Dr. Sukumaran and Dr. Kamelhar have made a *prima facie* showing of entitlement to summary judgment dismissing the complaint through the affirmations of Dr. Eden and Dr. Schachter, who attest that these defendants' management of plaintiff's cough was within the standard of care for a pulmonologist. Noted here pursuant to the medical records is plaintiff's positive response to every treatment rendered by the pulmonologists, and the fact that her moderate weight loss was reasonably attributed to a change in her ability to taste. Notable here also is the fact that Dr. Kamelhar's referral of plaintiff to non-party gastroenterologist Dr. Khan (who examined plaintiff and performed an upper endoscopy and colonoscopy) uncovered no evidence of an enlarged liver. Plaintiff's expert affirmations in opposition to these motions were, as previously stated, insufficient as a matter of law to raise a triable issue of fact.

While defendant Dr. Wickstrom has made a *prima facie* showing of entitlement to judgement as a matter of law, plaintiffs have successfully raised triable issues of fact sufficient to defeat summary judgment through the submission of an affirmation of a board-certified radiologist who sets forth detailed opinions supported by factual references to the record, explaining why Dr. Wickstrom departed from the standards of good radiological care and why those departures were a substantial contributing factor to plaintiffs' injuries. Relevant here are the findings made by plaintiff's radiology expert and the findings of Dr. Barak Friedman after his independent radiological review of the December 22, 2017 CT scan. Reconciliation of these expert witnesses' diametrically opposed opinions is a task for the jury.

While Dr. Dellosso established a *prima facie* showing of entitlement to judgment as a matter of law, plaintiffs have successfully raised triable issues of fact sufficient to defeat summary judgment through the submission of an affirmation of a hematologist/oncologist, who sets forth

that Dr. Dellosso performed incorrect abdominal examinations evidenced, in part, by his failure to palpate the enlarged liver during the April 5, 2018 office visit, one day after the 10.8 cm mass had been visualized by Lenox Hill Hospital.

As previously discussed, the issue of whether NYU employed Dr. Wickstrom during the relevant time is a question for the jury (*see Bykowsky v. Eskenazi*, 72 AD3d 590 [1st Dept. 2010], *lv denied* 16 NY3d 701 [2011]). West Side Medical Group, P.C.'s motion must be denied to the extent that it bears vicarious responsibility for the conduct of Dr. Dellosso.

Accordingly, it is

ORDERED that that branch of Motion. Seq. No. 001 for summary judgment by defendant Muthiah Sukumaran, M.D., is granted in its entirety; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Dr. Sukumaran dismissing the complaint; and it is further

ORDERED that the balance of Motion Seq. No. 001 as to Dr. Wickstrom and NYU, vicariously only, is denied; and it is further

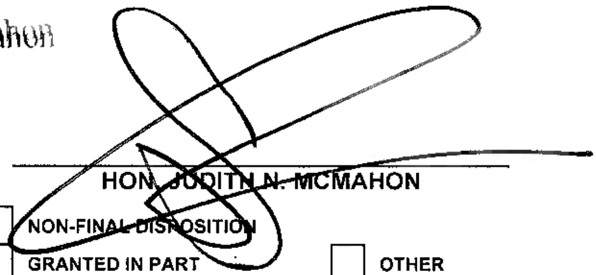
ORDERED that Motion Seq. No. 002 by defendants David Kamelhar, M.D., and David Kamelhar, PLLC is granted in its entirety; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Dr. Kamelhar and David Kamelhar, M.D. PLLC dismissing the complaint; and it is further

ORDERED that Motion Seq. No. 003 by defendant John Dellosso, M.D. and West Side Medical Group, P.C., vicariously only, is denied in its entirety; and it is further

ORDERED that the parties return for a pre-trial conference via Microsoft Teams on **March 21, 2023 at 11:00 a.m.**

Hon. Judith N. McMahon
J.S.C.



1/24/2023
DATE

HON. JUDITH N. MCMAHON

CHECK ONE:	☐	CASE DISPOSED		x	NON-FINAL DISPOSITION	
	☐	GRANTED	☐ DENIED	x	GRANTED IN PART	☐ OTHER
APPLICATION:	☐	SETTLE ORDER		☐	SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN		☐	FIDUCIARY APPOINTMENT	☐ REFERENCE