

**Taran v Haym Salomon Mgt. LLC**

2023 NY Slip Op 30543(U)

February 21, 2023

Supreme Court, Kings County

Docket Number: Index No. 501242/2019

Judge: Devin P. Cohen

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**Supreme Court of the State of New York  
County of Kings**

**Index Number** 501242/2019  
Seq. 002

Part 91

**DECISION/ORDER**

\_\_\_\_\_  
SARRA TARAN,

Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion

Plaintiff,

**Papers Numbered**

against

Notice of Motion and Affidavits Annexed . . . .	<u>1</u>
Order to Show Cause and Affidavits Annexed.	<u>    </u>
Answering Affidavits . . . . .	<u>2</u>
Replying Affidavits . . . . .	<u>3</u>
Exhibits . . . . .	<u>    </u>
Other . . . . .	<u>    </u>

HAYM SALOMON MANAGEMENT LLC D/B/A HAYM  
SALOMON HOME FOR NURSING & REHABILITATION,

Defendant.  
\_\_\_\_\_

Upon the foregoing papers, defendant Haym Salomon Management LLC d/b/a Haym Salomon Home for Nursing & Rehabilitation (“Haym Salomon”)’s motion for summary judgment (Seq. 002) is decided as follows:

**Introduction**

The plaintiff brought this action for negligence against the defendant, alleging that she was injured due to the nursing home’s negligence during her admission to the defendant facility from April 10, 2017, through April 24, 2017, following knee replacement surgery. Specifically, plaintiff claims the facility was negligent in allowing her to bear weight on her right leg, causing a fracture of her right knee.

**Factual Background**

It is undisputed that on April 5, 2017, prior to the admission at issue, plaintiff underwent a right total knee replacement at Mount Sinai Beth Israel. Ms. Taran had been diagnosed with osteoarthritis of the right knee and was admitted to Haym Salomon for rehabilitative care from

Mount Sinai Beth Israel via ambulance, on a stretcher, on April 10, 2017 after her right total knee replacement. Upon admission, the plaintiff was also assessed for and assigned to physical and occupational therapy.

It is further undisputed that the plaintiff suffered a nondisplaced supracondylar femur fracture. The plaintiff contends that this fracture was sustained during either her admission or a therapy session when she was forced to bear weight on the knee. The defendant contends that the fracture did not occur during the time Ms. Taran was under the care of Haym Salomon and must have occurred after she was discharged.

On April 11, 2017, the day after the plaintiff was admitted, the plaintiff was evaluated by Dr. Natalya Kozlov, an internist, and a plan of care was instituted (Progress Notes for Ms. Taran at 5–8). The plaintiff's care plan indicates that she was at risk for falls due to "confusion, gait/balance problems, psychoactive drug [sic], poor communication/comprehension, hypertension, Rt [sic] knee replacement" (Nursing Home Care Plan Activity Report at 1), and that subsequent safety measures were instituted to prevent a fall.

On April 12, 2017, Ms. Taran complained of pain in her right hip and was provided an increased prescription for Percocet and additional pain management; on the following day, there is no recorded complaint of pain (Progress Note for Ms. Taran at 10, 12–13). Plaintiff's physical therapist at the facility, Jonathan Laguio Lontok, recorded continuous improvements in the plaintiff's ambulation and leg strength between April 14 and April 19 (Therapy Records at 1–4).

Ms. Taran saw an orthopedist on April 24, 2017, the day that she was discharged (Taran EBT at 91). Dr. Silver, whose first name is not provided in the record, examined Mr. Taran and recommended that she follow up with an orthopedist outside of Haym Salomon. This recommendation is memorialized in the treatment notes taken by Dr. Natalya Kozlov, the

attending physician during Ms. Taran's convalescence at Haym Salomon (Progress Notes for Ms. Taran at 25).

There is no dispute that on April 28, 2017, four days after being discharged from Haym Salomon, the plaintiff went to see Dr. David Drucker, her orthopedic surgeon. At this time, Dr. Drucker took an MRI of the plaintiff's right knee and, on May 5, 2017, Dr. Drucker and another treating orthopedic surgeon diagnosed the nondisplaced fracture in Ms. Taran's right knee.

### Analysis

On a motion for summary judgment, the moving party bears the initial burden of making a prima facie showing that there are no triable issues of material fact (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003]). Once a prima facie showing has been established, the burden shifts to the non-moving party to rebut the movant's showing such that a trial of the action is required (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). "The distinction between ordinary negligence and malpractice turns on whether the acts or omissions complained of involve a matter of medical science or art requiring special skills not ordinarily possessed by lay persons or whether the conduct complained of can instead be assessed on the basis of the common everyday experience of the trier of the facts" (*Jeter v New York Presbyt. Hosp.*, 172 AD3d 1338, 1339 [2d Dept 2019]). "Generally, a cause of action will be deemed to sound in medical malpractice when the challenged conduct constitutes medical treatment or bears a substantial relationship to the rendition of medical treatment by a licensed physician" (*id.* at 1340 [internal citations omitted]). "To prevail on a motion for summary judgment dismissing a medical malpractice cause of action, a defendant must make a prima facie showing either that there was no departure from accepted community standards of medical practice, or that any departure \*678 was not a proximate cause of the plaintiff's injuries" (*Laughtman v Long Is. Jewish Val. Stream*, 192 AD3d

677, 677–78 [2d Dept 2021]).

Here, the crux of the parties’ dispute is whether the post-surgical care and physical rehabilitation that Ms. Taran received at Haym Salomon caused the fracture that she sustained to her right knee. The establishment and implementation of a treatment plan, especially when created by physicians, qualifies as an issue sounding in medical malpractice (*see e.g. Costello v Kirmani*, 54 AD3d 656 [2d Dept 2008])—accordingly, that is the standard the court will apply here.

The defendant argues that there is no evidence that the injury was sustained at the facility, and that there is no evidence that the staff departed from an appropriate standard of care. Jeffrey Richmond, M.D., defendant’s proffered orthopedic expert, opined that the fracture that the plaintiff suffered (a periprosthetic fracture) is a common complication associated with the implant inserted in the plaintiff’s right knee (Richmond Aff. at ¶ 20). Dr. Richmond contends that the plaintiff’s injury would most likely have been caused by a fall, and since there is no record of her falling at the facility, there is no way that she sustained the injury while in the care of Haym Salomon (*id.*). Additionally, Dr. Richmond states that, upon a review of the record, Haym Salomon provided Ms. Taran with a comprehensive care plan that adequately addressed her post-surgical needs (*id.* at ¶¶ 5, 7). Based on Dr. Richmond’s representations, the defendant has made out its prima facie case for summary judgment on the basis that Haym Salomon’s agents did not deviate from the medically acceptable standard of care.

In opposition, the plaintiff relies on the expert opinion of Dr. Vadim Abramov, an internal medicine doctor. Dr. Abramov opines that, after reviewing the documents submitted by the defendants, the deposition testimony of Dr. Kozlov, and after personally examining the plaintiff on May 27, 2022 in connection with these injuries that Haym Salomon did in fact depart

from the acceptable standard of medical care (Abramov Aff. at ¶ 5–7). Specifically, Dr. Abramov notes that Dr. Kozlov was not adequately trained to provide the care that Ms. Taran needed (*id.* at ¶ 30–31). Specifically, Dr. Abramov contends that the defendant did not provide adequate evidence that Ms. Taran received care from a specialist in “rehabilitation and physical therapy,” and that this deviated from the medically acceptable standard of care (*id.* at ¶ 33). Additionally, Dr. Abramov contends that there was not interdisciplinary coordination between the varying departments at Haym Salomon based on Dr. Kozlov’s testimony that she had not met with the orthopedic surgeon and was not involved in creating the physical and occupational treatment plan for Ms. Taran (*id.* at ¶ 36, 38–39). Dr. Kozlov’s testimony that she did not have access to therapy notes and did not review physical therapy notes lends credibility to Dr. Abramov’s assertion (Kozlov EBT at 111).

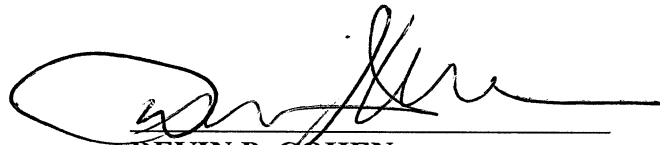
Finally, Dr. Abramov posits that Haym Salomon should have examined Ms. Taran in light of her complaints of pain and physical symptoms, included swelling, tenderness, “poor ambulation,” and other complaints during physical therapy instead of proceeding with increasingly strenuous treatment (Abramov Aff. at 43–47). Ms. Taran testified that she complained of pain while she was being taken to the fitness room for her physical therapy on multiple occasions and asked to see an orthopedist, and that she was told to perform the exercises despite her complaints (Taran EBT at 77).

In response, the defendant argues that the plaintiff’s production of an internal medicine specialist is inadequate to raise a question of fact in the instant action—instead, defendant contends, the plaintiff needed to produce an orthopedist to opine on Ms. Taran’s orthopedic condition. While the defendant correctly notes that “[w]here a physician opines outside his or her area of specialization, a foundation must be laid tending to support the reliability of the

opinion rendered,” (*Laughtman*, 192 AD3d at 678), there is a question here as to whether Dr. Abramov is testifying outside his area of expertise. Dr. Kozolov, who created the plaintiff’s care plan, testified that she was an internal medicine specialist, credentials shared by Dr. Abramov (Kozolov EBT at 14).<sup>1</sup> As the question at the heart of this action is the standard of care provided by the rehabilitation center, Dr. Abramov’s expertise is germane to the relevant issues in the case at bar. In light of Dr. Abramov’s testimony about the appropriate steps that should have been taken in responding to Ms. Taran’s complaints of pain, the issue of Haym Salomon’s departure from the medically acceptable standard of care is one of fact, and therefore must be decided by a jury.

This constitutes the decision of the court.

February 21, 2022  
2023  
**DATE**

  
**DEVIN P. COHEN**  
Justice of the Supreme Court

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<sup>1</sup> The defendant also argues that Dr. Kozolov was not the physician that approved Ms. Taran’s physical therapy care plan, but that this plan was approved by Dr. Helen Zaltsman. The credentials of Dr. Zaltsman are not provided in the record, and therefore a further question of fact remains about the appropriateness of Ms. Taran’s care plan.