

Tzfanya v New York & Presbyt. Hosp.

2023 NY Slip Op 30655(U)

March 6, 2023

Supreme Court, Kings County

Docket Number: Index No. 515967/2020

Judge: Genine D. Edwards

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 80 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 6th day of March 2023.

P R E S E N T:

HON. GENINE D. EDWARDS,
Justice.

-----X
ZOE R. TZFANYA, Administrator of the Estate of
YACOV TZFANYA, a/k/a JACOB SOHNE TZFANYA, Deceased,
and ZOE R. TZFANYA, Individually,

Plaintiff,

-against-

THE NEW YORK AND PRESBYTERIAN HOSPITAL
and MARK A. SUGUITAN, M.D.,

Defendants.
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DECISION AND ORDER

Index No. 515967/20

Mot. Seq. No. 1

The following e-filed papers read herein:

NYSCEF Doc. Nos.:

Notice of Motion, Affirmations, and Exhibits Annexed.....	16-32, 34
Affirmations (Affidavits) in Opposition, Memorandum of Law, and Exhibits Annexed.....	35-43
Reply Affirmation.....	47

In this action to recover damages for medical malpractice, wrongful death, and loss of services, defendants The New York and Presbyterian Hospital (“NYPH”) and Mark A. Suguitan, M.D. (“Dr. Suguitan” and collectively with NYPH, “defendants”), jointly move for summary judgment dismissing all claims as against them. Plaintiff Zoe R. Tzfanya (“plaintiff”), individually and as the administrator of the Estate of her late husband, Yacov Tzfanya, also known as Jacob Sohne Tzfanya (the “patient”), opposes.

The patient died at 06:38 hours on Wednesday, August 28, 2019,¹ approximately seven hours after his walk-in presentation – with the chief complaints of chest tightness and shortness of breath – to NYPH’s emergency department (“ED”) at 23:49 hours the night prior (the “ED stay”).² For the entirety of his ED stay, the patient remained under the care and supervision of Dr. Suguitan and other medical staff provided to him by NYPH.

At the time of the patient’s triage, his oxygen saturation was 93% on room air, as was measured at 23:59 hours on August 27.³ At the time of his death approximately seven hours later, his heart was in asystole with no detectable electrical or mechanical activity, despite the immediately preceding resuscitation attempts that lasted for approximately one hour. In the course of his ED stay, the patient was diagnosed by Dr. Suguitan with pulmonary embolism, and, at the latter’s orders, was empirically treated with aspirin, an IV anticoagulant and an IV thrombolytic agent. Dr. Suguitan’s diagnosis, however, proved wrong when the IV contrast-enhanced CT scan, completed at 05:41 hours and reported at 06:22 hours on August 28, found no pulmonary embolism.⁴ Neither Dr. Suguitan (either in his chart notes nor during his deposition), nor his resident, nonparty Sara Murphy, M.D. (in her “Death Note”),⁵ could point to an alternative (such as a respiratory and/or cardiac) cause of the patient’s deterioration and ensuing death. The next day’s autopsy revealed that the patient died from an “acute

¹ All references are to year 2019, unless otherwise indicated. All references to NYPH’s chart for the patient are to the certified and date-stamped version e-filed under NYSCEF Doc. No. 22. For consistency with the time entries in NYPH’s chart, all time references herein are to the military time.

² NYPH’s chart at 094 (pronouncement of death); 022 (clinical summary); 023 (chief complaints at presentation).

³ NYPH’s chart at 048 (vital signs).

⁴ NYPH’s chart at 119-120 (CT Chest PE Without Lower Extremity with IV Contrast).

⁵ NYPH’s chart at 021 (Dr. Murphy’s “Death Note”).

exacerbation of bronchial asthma” (a form of pulmonary disease) with the “contributory [or compounding] condition” of his “atherosclerotic cardiovascular disease,” rather than from the non-pulmonary, non-cardiac thromboembolic disease, such as pulmonary embolism that Dr. Suguitan suspected (the “autopsy report”).⁶

Plaintiff commenced this action premised on Dr. Suguitan’s (and vicariously NYPH’s) alleged failure to diagnose the patient’s bronchial asthma attack, which she further alleged, relying on the autopsy report, caused or contributed to his death. After discovery was completed and a note of issue/certificate of readiness was filed on July 5, 2022, defendants timely served the instant motion. The motion was fully submitted on December 2, 2022, with the Court reserving decision.

The parties’ conflicting expert opinions were sufficient to create issues of fact as to whether (among other things) defendants departed from the applicable standard of care by: (1) failing to place a bronchial asthma attack on top of the differential diagnosis list and assign to it a high clinical index of suspicion; (2) failing to perform spirometry or other pulmonary function testing to rule it out; and (3) failing to treat the patient empirically for bronchial asthma by way of IV corticosteroids and/or albuterol nebulizers. In addition, the parties’ expert affirmations raised triable issues of fact regarding proximate cause. *See Petrik v. Pilat*, 119 A.D.3d 760, 989 N.Y.S.2d 348 (2d Dept., 2014); *see also Clarke v. New York City Health & Hosps.*, 210 A.D.3d 631, 177 N.Y.S.3d 681 (2d Dept., 2022); *Shirley v.*

⁶ Certified Autopsy Report as e-filed under NYSCEF Doc. No. 28, at 001.

Falkovsky, 207 A.D.3d 679, 170 N.Y.S.3d 496 (2d Dept., 2022); *Ivey v. Mbaidjol*, 202 A.D.3d 1070, 163 N.Y.S.3d 589 (2d Dept., 2022).

The mirror-image opinions of defendants' emergency medicine expert Andrew Wollowitz, M.D. (in ¶ 62 of the expert affirmation at NYSCEF Doc. No. 19) and their pulmonary medicine expert Amit Uppal, M.D. (in ¶ 56 of the expert affirmation at NYSCEF Doc. No. 20), that "the cause of death in the autopsy report is inaccurate" was adequately rebutted by the detailed, non-conclusory opinion of plaintiff's expert pathologist Zhongxue Hua, M.D. (in ¶ 14 of the expert affirmation at NYSCEF Doc. No. 38).

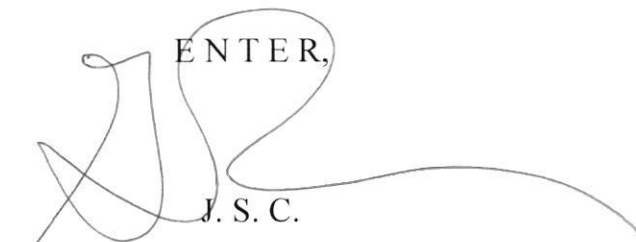
Accordingly, it is

ORDERED that defendants' motion is *denied in its entirety*; and it is further

ORDERED that plaintiff's counsel is directed to electronically serve a copy of this decision/order with notice of entry on defendants' counsel and to electronically file an affidavit of service thereof with the Kings County Clerk; and it is further

ORDERED that the parties are reminded of their next appearance for an Alternate Dispute Resolution conference on March 7, 2023, at 12 noon.

This constitutes the decision/order of this Court.

ENTER,

J. S. C.
HON. GENINE D. EDWARDS