

Martinez v New York City Health & Hosps. Corp.

2023 NY Slip Op 31104(U)

April 10, 2023

Supreme Court, New York County

Docket Number: Index No. 450082/2016

Judge: Erika M. Edwards

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ERIKA M. EDWARDS PART 10M

Justice

-----X

JOANN MARTINEZ, as admin. of estate of VALERIE
GUZMAN, deceased,

Plaintiff,

INDEX NO. 450082/2016

MOTION DATE 06/10/2022

MOTION SEQ. NO. 004

- v -

NEW YORK CITY HEALTH & HOSPITALS
CORPORATION, COLER-GOLDWATER MEMORIAL
HOSPITAL AND COLER REHABILITATION AND NURSING
CARE CENTER,

Defendants.

**DECISION AND ORDER
ON MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 004) 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99

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

Upon the foregoing documents, the court grants Defendants New York City Health & Hospitals Corporation’s (“NYCHHC”), Coler-Goldwater Memorial Hospital’s (“Coler Hospital”) and Coler Rehabilitation and Nursing Care Center’s (“Coler Rehab.”) (collectively, “Defendants”) motion for summary judgment dismissal of Plaintiff Joanne Martinez, as admin. of estate of Valarie Guzman, deceased’s (“Plaintiff”) complaint.

Plaintiff brings this action sounding in negligence and medical malpractice against Defendants and alleges in substance that Defendants departed from good and acceptable standards of medical, surgical care, emergency care and/or nursing care rendered to Plaintiff from July 11, 2014 to August 3, 2014. Plaintiff further alleges in substance that on July 23, 2014, while the deceased Plaintiff was a patient at Defendants’ facility, Defendants negligently allowed her to fall out of her bed when she stretched to reach her wheelchair, which was out of her reach. As a result, the deceased Plaintiff suffered injuries which included a fractured right lesser

trochanter and additional surgery and treatment. Plaintiff further alleges in substance that Defendants failed to appreciate her non-mobility, failed to assess her as a fall risk, allowed the call bell to remain out of her reach, failed to promptly respond to her calls, failed to timely assist her, failed to provide constant supervision, and failed to appreciate the significance of her episodes of confusion and agitation.

Defendants now move under motion sequence 004 for summary judgment in their favor and dismissal of Plaintiff's complaint. Defendants rely on the expert affirmation of Steven J. Arsht, M.D. and argue in substance that at all times Defendants' staff acted appropriately and in accordance with accepted standards of medical and nursing practice. Dr. Arsht opined that Defendants properly assessed, planned and treated the deceased Plaintiff prior to her fall and that her fall was not caused by any negligence or malpractice committed by Defendants. Additionally, he states in substance that any failure to diagnose a fracture did not alter the course of treatment, including revision surgery, and was not a proximate cause of the deceased Plaintiff's alleged injuries.

Defendants further argue in substance that they properly assessed the deceased Plaintiff's fall status and properly implemented appropriate fall prevention protocols. Defendants argue that at the time of her fall, the deceased Plaintiff was scheduled to be discharged in two days, she performed her daily living activities independently and she was able to walk and transfer on her own. Therefore, Defendants claim that there was no need for her to have any supervision, let alone constant supervision, and she did not need any assistive devices to get out of her bed. Additionally, prior to the alleged fall the deceased Plaintiff was advised to ring the call bell for supervision in ambulating, toileting and to avoid over-reaching, but she failed to follow these instructions. Therefore, Defendants argue that they are not negligent for her alleged injuries.

Plaintiff opposes the motion and relies on the expert affirmation of Terrance Baker, M.D. Plaintiff argues that Defendants departed from good and accepted medical standard of care and that such departures were the proximate cause of the deceased Plaintiff's injuries. Plaintiff alleges in substance that Defendants failed to develop, implement and update an adequate care plan, failed to provide the deceased Plaintiff with a bed alarm, failed to place her under 24-hour supervision, failed to keep the bed near their staff, failed to put up bed rails, and failed to keep her in a well-lit room. Plaintiff further argues that such negligence caused the deceased Plaintiff to fall.

To prevail on a motion for summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact (*see* CPLR 3212[b]; *Zuckerman v New York*, 49 NY2d 557, 562 [1980]; *Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The movant's initial burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party (*Jacobsen*, 22 NY3d at 833; *William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013]).

If the moving party fails to make such prima facie showing, then the court is required to deny the motion, regardless of the sufficiency of the non-movant's papers (*Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985]). However, if the moving party meets its burden, then the burden shifts to the party opposing the motion to establish by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his or her failure to do so (*Zuckerman*, 49 NY2d at 560; *Jacobsen*, 22 NY3d at 833; *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]).

Summary judgment is “often termed a drastic remedy and will not be granted if there is any doubt as to the existence of a triable issue” (Siegel, NY Prac § 278 at 476 [5th ed 2011], citing *Moskowitz v Garlock*, 23 AD2d 943, 944 [3d Dept 1965]). Summary judgment should be awarded when a party cannot raise a factual issue for trial (*Sun Yan Ko v Lincoln Sav. Bank*, 99 AD2d 943, 943 [1st Dept 1984]; CPLR 3212[b]).

In a medical malpractice action, a defendant doctor or provider moving for summary judgment must establish 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. Noble*, 73 AD3d 204, 206 [1st Dept 2010]; *Scalisi v Oberlander*, 96 AD3d 106, 120 [1st Dept 2012]; *Thurston v Interfaith Med. Ctr.*, 66 AD3d 999, 1001 [2d Dept 2009]; *Rebozo v Wilen*, 41 AD3d 457, 458 [2d Dept 2007]). It is well settled that expert opinion must be detailed, specific, based on facts in the record or personally known to the witness, and that an expert cannot reach a conclusion by assuming material facts not supported by the record (*see Roques*, 73 AD3d at 207; *Cassano v Hagstrom*, 5 NY2d 643, 646 [1959]; *Gomez v New York City Hous. Auth.*, 217 AD2d 110, 117 [1st Dept 1995]; *Aetna Casualty & Surety Co. v Barile*, 86 AD2d 362, 364-365 [1st Dept 1982]; *Joyner-Pack v Sykes*, 54 AD3d 727, 729 [2d Dept 2008]). If a defendant’s expert affidavit contains “[b]are conclusory denials of negligence without any factual relationship to the alleged injuries” and “fails to address the essential factual allegations set forth in the complaint” or bill of particulars, then it is insufficient to establish defendant’s entitlement to summary judgment as a matter of law (*Wasserman v Carella*, 307 AD2d 225, 226 [1st Dept 2003] [internal quotations omitted]; *see Cregan v Sachs*, 65 AD3d 101, 108 [1st Dept 2009]).

To defeat the motion, a plaintiff must rebut the defendant's prima facie showing by submitting an affidavit from a physician attesting that the defendant departed from accepted medical practice and that the departure was the proximate cause of the injuries alleged (*Roques*, 73 AD3d at 207). An expert affidavit which sets forth general allegations of malpractice or conclusions, misstatements of evidence or assertions unsupported by competent evidence is insufficient to demonstrate that defendants failed to comport with accepted medical practice or that any such failure was the proximate cause of a plaintiff's injuries (*Coronel v. New York City Health & Hosps. Corp.*, 47 AD3d 456, 457 [1st Dept 2008]; *Alvarez*, 68 NY2d at 325).

Competing expert affidavits alone are insufficient to avert summary judgment since experts almost always disagree, but the question is whether plaintiff's expert's opinion is based upon facts sufficiently supported in the record to raise an issue for the trier of fact (*De Jesus v Mishra*, 93 AD3d 135, 138 [1st Dept 2012]). "Ordinarily, the opinion of a qualified expert that a plaintiff's injuries were caused by a deviation from relevant industry standards would preclude a grant of summary judgment in favor of the defendants" (*Diaz v New York Downtown Hospital*, 99 NY2d 542, 544 [2002] [internal quotations omitted]). However, "[w]here the expert's ultimate assertions are speculative or unsupported by any evidentiary foundation . . . the opinion should be given no probative force and is insufficient to withstand summary judgment" (*id.*).

Here, the court finds that Defendants demonstrated their prima facie entitlement to summary judgment in their favor as a matter of law and Plaintiff failed to raise material issues of fact based on admissible evidence sufficient to defeat this motion. As an initial matter, the court accepts Dr. Baker's expert affirmation. Although he is a physician licensed in Maryland, he stated that he was familiar with the standard of care in New York in the fields of geriatric medicine and family medicine. However, he failed to provide any basis for such knowledge.

Dr. Baker's expert opinions regarding Defendants' alleged departures from good and accepted medical and nursing practice and proximate causation fail to raise material questions of fact because such opinions are conclusory, speculative and unsupported by the record. Dr. Baker's opinion that 24-hour supervision was required and that Defendants failed to provide an updated, appropriate and safer plan are simply unsupported by the record, speculative and conclusory. Additionally, Dr. Baker failed to provide details regarding the required relevant industry standard regarding the level of observation, supervision and care which would have prevented the deceased Plaintiff's fall under the circumstances of her fall. Plaintiff failed to set forth what constant supervision meant under these circumstances and why a higher level of supervision or constant supervision was the appropriate standard of care for Plaintiff at the time of her fall. Furthermore, as noted by Defendants, Dr. Baker failed to address or refute Defendants' expert's opinions. Therefore, Plaintiff failed to demonstrate a material issue of fact to support her claims for liability or causation.

Dr. Baker's opinions that the deceased Plaintiff's fall was caused by Defendants' failure to provide her with a bed alarm, failure to keep the bed near staff, failure to put up bed rails and failure to keep the deceased Plaintiff in a well-lit room were not included in Plaintiff's Notice of Claim or Bill of Particulars. Therefore, the court rejects them and finds that they are unacceptable new claims raised for the first time in Plaintiff's opposition papers. Even if the court did consider such claims, then the court finds that they do not serve to raise a material issue of fact.

Additionally, the record supports Defendants' arguments that Plaintiff's fall was sudden, unforeseeable and not proximately caused by any action or inaction on Defendants' part. Based on the deceased Plaintiff's progress and mobility at the time of her fall, she was able to ambulate

and get out of bed without supervision and she was preparing to be discharged in two days. Even though Defendants directed Plaintiff to call them for assistance when needed and Plaintiff alleges that she could not reach the call bell, it is speculative as to whether Plaintiff would have used the call bell and waited a reasonable amount of time for assistance. Therefore, since the records indicate that the deceased Plaintiff was capable of getting out of bed and ambulating without assistance, the court agrees with Defendants' arguments that Plaintiff's remaining negligence claims are irrelevant, unsupported by the record and without merit.

Furthermore, the court finds that Plaintiff failed to raise a material factual issue regarding Defendants' alleged failure to timely diagnose her fracture.

The court has considered any additional arguments raised by the parties which were not specifically discussed herein and the court denies any additional requests for relief which were not expressly granted herein.

As such, it is hereby

ORDERED that the court grants Defendants New York City Health & Hospitals Corporation's, Coler-Goldwater Memorial Hospital's and Coler Rehabilitation and Nursing Care Center's motion for summary judgment in their favor; and it is further

ORDERED that the court dismisses Plaintiff Joanne Martinez, as admin. of estate of Valarie Guzman, deceased's complaint against all defendants with prejudice and directs the Clerk of the Court to enter judgment in favor of all defendants as against Plaintiff without costs to any party.

This constitutes the decision and order of the court.


24236470702451EEDWARDSA32A3A7FDE17421466D86C36BB9C58F0

4/10/2023
DATE

ERIKA M. EDWARDS, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE