

Lettiere v New York City Health & Hosps. Corp.

2023 NY Slip Op 33557(U)

October 10, 2023

Supreme Court, New York County

Docket Number: Index No. 805380/2019

Judge: Erika M. Edwards

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

PRESENT: HON. ERIKA M. EDWARDS

PART 10M

Justice

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CYNTHIA LETTIERE, ADMINISTRATOR OF THE ESTATE
OF MICHAEL LETTIERE A/K/A MICHAEL LETTIERI,
Deceased and CYNTHIA LETTIERE, Individually,

Plaintiff,

- v -

NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION,

Defendant.

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INDEX NO. 805380/2019

MOTION DATE 12/08/2022

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65

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

Upon the foregoing documents, the court grants in part Defendant New York City Health and Hospitals Corporation’s (“Defendant”) motion for summary judgment dismissal of Plaintiff Cynthia Lettiere, Administrator of the Estate of Michael Lettiere a/k/a Michael Lettieri, Deceased (“Deceased”) and Cynthia Lettiere, Individually’s (“Plaintiff”) complaint, to the extent that the court grants the portion of the motion seeking dismissal of Plaintiff’s Second Cause of Action for negligent hiring and supervision and the court denies the remainder of the motion.

Plaintiff brought this action against Defendant alleging claims of medical malpractice, negligent hiring and supervision, and wrongful death regarding the care and treatment of the Deceased at Bellevue Medical Center (“Bellevue”) from November 30, 2018 to December 9, 2018. Plaintiff alleges in substance that Defendant departed from accepted standards of care in its care and treatment of the Deceased by misdiagnosing the Deceased with atypical pneumonia and failing to diagnose him with a life-threatening cardiac condition, which ultimately caused his

death. The Deceased was 42 years old at the time of his death. Plaintiff alleges in substance that he was treated in Bellevue's emergency room on November 30, 2018, with shortness of breath, cough and congestion. Plaintiff alleges that the Deceased was incorrectly treated for a pulmonary condition without having any cardiac work-up conducted. The Deceased was discharged with medication on December 1, 2018.

On December 8, 2018, at 8:25 p.m., the Deceased was brought back to the Emergency Department by Emergency Medical Services with complaints of sudden onset chest pain that had begun an hour earlier with full body weakness which caused him to collapse. Multiple diagnostic tests were conducted and the Deceased was admitted. At 11:50 p.m., the Deceased became agitated and tried to get out of bed. At 11:57 p.m., he got out of bed, despite the Bellevue staff pleading with him to remain in bed. By 11:59 p.m., he was unresponsive. On December 9, 2018, at 12:30 a.m., the Deceased was intubated. At 12:57 p.m. he was pronounced dead.

The preliminary cause of death was myocardial infarction due to sepsis, however, the autopsy revealed that he had bicuspid aortic valve, which is a congenital heart defect, with severe nodular calcification and stenosis and an enlarged heart, among other conditions. Thus, Plaintiff alleges in substance that the Deceased died from a severe and sudden cardiac event based on his cardiac condition, which included a heart murmur that should have been detected in the emergency room.

Defendant now moves under motion sequence 003 for summary judgment dismissal of Plaintiff's complaint. Defendants rely on the expert affidavits from Gregory Mazarin, M.D., a Board Certified emergency medicine physician, and Stanley Schneller, M.D., a Board Certified internal medicine physician and cardiologist. Defendants argue in substance that the treatment provided to Plaintiff by Defendant at Bellevue from November 30, 2018 to December 1, 2018,

and from December 8, 2018 and December 9, 2018, when he passed away, was appropriate and in accordance with accepted standards of practice. Defendant argues in substance that Defendant appropriately diagnosed and treated the Deceased at all relevant times from the initial Emergency Department visit, throughout his admission, until his discharge with appropriate medications.

Defendants further argue in substance that it was proper and appropriate for the providers to diagnose the Deceased with atypical pneumonia and that no cardiac workup was warranted based on the Deceased's presentation of having no signs or symptoms of a cardiac event, nor was there any indication that he had a congenital heart defect. Defendant further argues in substance that Defendant did not cause or contribute to the Deceased's injuries or death as the Deceased did not advise the staff that he had any history of cardiac problems. Also, Defendant argues in substance that by the time the Deceased returned to the Emergency Department, there was nothing Defendant could do to save him.

Plaintiff opposes Defendant's motion and relies on the expert affidavits of Plaintiff's Board-Certified expert emergency room physician and Board-Certified surgeon. Plaintiff argues in substance that Defendant's providers deviated from the accepted standard of care by failing to conduct a careful examination or careful work-up of the Deceased. Plaintiff argues that Defendant's resident examined the Deceased in the Emergency Department and he failed to detect a heart murmur when he listened to the Deceased's chest. Plaintiff further argues in substance that the heart murmur was present at the time and was impossible to miss if a careful and proper examination had been conducted. Plaintiff further argues in substance that if a proper examination had been conducted, then the heart murmur would have been revealed, which would have led to including a cardiac etiology in the differential diagnosis, which would have led to a

cardiac work-up, which would have revealed the bicuspid aortic valve and abnormal, dangerous condition, which would have ultimately saved the Deceased's life. It would have been clear that the Deceased's condition was beginning to put him into heart failure.

Plaintiff further argues that Defendant's providers inappropriately diagnosed the Deceased with a pulmonary condition and discharged him without conducting a cardiac work-up. Therefore, his cardiac condition remained undiagnosed and unaddressed until he returned to the Emergency Department within a week in heart failure. Unfortunately, it was too late to save him. Therefore, Plaintiff argues that Defendant's departures were the proximate cause of the Deceased's death.

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]).

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]).

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]).

In medical malpractice actions, 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.*).

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]).

As an initial matter, the court accepts the competency of Plaintiff's experts, so the court will consider the merits of their affidavits. Defendants arguments to the contrary go toward the weight of the experts' opinions and not their admissibility.

Here, the court finds that Defendant established its initial burden of demonstrating prima facie evidence of its entitlement to summary judgment in its favor as a matter of law, however,

Plaintiff's raised disputed material issues of fact sufficient to defeat the motion as to Plaintiff's medical malpractice and wrongful death claims. The court finds that such issues of fact include, but are not necessarily limited to, whether Defendant's providers departed from accepted standards of care and practice by failing to conduct a proper and careful examination when the Deceased was being treated in the emergency room; failing to detect a heart murmur; failing to conduct an appropriate cardiac work-up; and failing to properly diagnose and treat the Deceased's cardiac condition. The court also finds that a question of fact exists as to whether the Deceased had a heart murmur on November 30, 2018, which could have been detected with an proper examination. The court finds that there is a question of material fact as to whether any of the Defendant's alleged departures caused or contributed to the Deceased's injuries or death.

The court determines Defendant's arguments to the contrary to be unpersuasive.

Additionally, the court grants dismissal of Plaintiff's negligent hiring and supervision claim, as Plaintiff failed to raise any issues of fact requiring a trial on this claim.

Therefore, the court dismisses Plaintiff's Second Cause of Action and denies dismissal of the remainder of the motion.

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 not expressly granted herein.

As such, it is hereby

ORDERED that the court grants in part Defendant New York City Health and Hospitals Corporation's motion for summary judgment dismissal of Plaintiff Cynthia Lettiere, Administrator of the Estate of Michael Lettiere a/k/a Michael Lettieri, Deceased and Cynthia Lettiere, Individually's complaint, to the extent that the court grants the portion of the motion

seeking dismissal of Plaintiff's Second Cause of Action for negligent hiring and supervision and denies the remainder of the motion.

This constitutes the decision and order of the court.

Erika M. Edwards
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10/10/2023

DATE

ERIKA M. EDWARDS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE