

Cimillo v West Side Dental Assoc., P.C.

2023 NY Slip Op 34341(U)

November 30, 2023

Supreme Court, New York County

Docket Number: Index No. 805151/2021

Judge: John J. Kelley

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

PRESENT: HON. JOHN J. KELLEY **PART** **56M**

Justice

-----X

LYDIA CIMILLO,

Plaintiff,

- v -

WEST SIDE DENTAL ASSOCIATES, P.C., LEV
TROSTYANETSKY, ALEXANDER AYZENBERG, and
ADAM BRISMAN,

Defendants.

-----X

INDEX NO. 805151/2021

MOTION DATE 08/08/2023

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 95, 98, 101, 102, 103, 104

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

In this action to recover damages for dental malpractice based on alleged departures from good and accepted dental practice in the course of tooth extractions and the placement of dentures and implants, as well as lack of informed consent, the defendants West Side Dental Associates, P.C. (West Side), and dentist Lev Trostyanetsky (together the West Side defendants) move pursuant to CPLR 3212 for summary judgment dismissing the amended complaint insofar as asserted against them. The plaintiff opposes the motion. The motion is granted only to the extent that the West Side defendants are awarded summary judgment (a) dismissing the lack of informed consent cause of action insofar as asserted against them, (b) dismissing so much of the dental malpractice cause of action against them as was premised upon the alleged malpractice of the defendant Adam Brisman, and (c) dismissing so much of the dental malpractice cause of action against them as was premised upon those malpractice claims asserted against the defendant Alexander Ayzenberg that this court had summarily dismissed in its November 27, 2023 order deciding Motion Sequence 001, other than the alleged failure to reline the temporary denture that Ayzenberg had placed on November 19,

2019. The motion is otherwise denied, as there are triable issues of fact as to (a) whether Trostyanetsky deviated from the applicable standard of care by failing to examine the plaintiff at her first post-operative visit, in not relining the temporary denture at that time or thereafter, in failing to advise the plaintiff to return to West Side every four to six weeks to have the denture relined, and in failing to manage the denture, (b) whether West Side dentist Amit Dhar, D.D.S., departed from good and accepted practice in failing to “relieve” the denture when he installed healing abutments on March 4, 2020, and in failing to place a bone graft on July 8, 2020, or ordering the placement of a bone graft, over the sockets of the failed implants that he had removed on that date, (c) whether those departures caused or contributed either to the failure of the dental implants in the first instance or the continuing loss of bone in the maxilla, and (d) whether West Side may be held vicariously liable for those departures.

The facts of this dispute are set forth in detail in this court’s November 27, 2023 order resolving Motion Sequence 001. Briefly, the plaintiff alleged in her amended complaint that Trostyanetsky departed from good and accepted practice in the course of monitoring and following up on the extraction of 12 teeth from her mouth and the installation of 6 implants by the defendant oral surgeon Adam Brisman, and in monitoring and following up on Ayzenberg’s placement of a temporary denture over those extracted tooth positions where no implants had been installed. She had further alleged that the destabilization and continuous movement of the temporary denture in the months following the extractions, implants, and denture-placement procedure interfered with and inhibited bone regeneration and healing at the implant sites, causing the implants to fail, and necessitating further oral surgery to remove several of the implants. The plaintiff additionally alleged that the failure of the implants, and the loss of bone at the implant sites, relegated her to the placement of a full removable denture for her upper gum and jaw. She alleged that West Side was vicariously liable for the negligence of Brisman, Ayzenberg, and Trostyanetsky. Further, the plaintiff alleged in her amended complaint that West Side and Trostyanetsky failed to obtain her fully informed consent to the procedures.

In her bills of particulars and amended bills of particulars as to the West Side defendants, the plaintiff essentially reiterated the allegations set forth in her bills of particulars as to Ayzenberg, which are described in detail in the November 27, 2023 order determining Motion Sequence 001. She also asserted that the then-unidentified West Side dentist who performed the “Stage 2” post-operative implant and abutment-installation procedures on March 4, 2020, and thereafter removed the five implants that were remaining on June 29, 2020, who turned out to be nonparty Dhar, departed from good practice in failing properly to manage the denture on the earlier date, and in failing properly to complete the removal of the five remaining failed implants on the later date.

In its November 27, 2023 order, this court awarded summary judgment to Ayzenberg dismissing the amended complaint insofar as asserted against him, except as to the claim that he departed from good and accepted practice in failing to provide the plaintiff with adequate post-denture placement instructions and information. In an order dated November 28, 2023 (MOT SEQ 002), this court granted Brisman’s motion for summary judgment dismissing the amended complaint insofar as asserted against him.

In support of their motion, the West Side defendants submitted the pleadings, the plaintiff’s bills of particulars, transcripts of the parties’ depositions, relevant dental records, a statement of undisputed material facts, an attorney’s affirmation, a memorandum of law, and the expert affirmation of Kenneth Allen, D.D.S.

In his affirmation, Dr. Allen provided numerous opinions as to whether any of West Side’s professional dental staff, including Ayzenberg, Brisman, Trostyanetsky, and nonparty Dhar, departed from good and accepted dental practice. Inasmuch as the plaintiff conceded in her response to Brisman’s motion that Brisman did not depart from good practice, and the court thereupon summarily dismissed the amended complaint insofar as asserted against him, Dr. Allen’s opinions as to the treatment rendered by Brisman no longer is relevant as to the issue of whether West Side may be held vicariously liable for Brisman’s conduct.

As to Trostyanetsky, Dr. Allen asserted that he performed a proper and complete consultation with the plaintiff on her first visit to West Side on September 24, 2019 by obtaining a thorough and complete medical history, performing extra-oral and intra-oral examinations, taking a cone beam computed tomography (CBCT) scan, and having a discussion with her about possible treatment options. Dr. Allen further concluded that Trostyanetsky did not need to obtain any additional information, perform additional radiographic testing, or conduct a further examination of the plaintiff so as to develop and discuss a treatment plan addressing her dentition, with particular focus on her maxillary teeth. He stated that, at that first visit, Trostyanetsky correctly characterized the 12 maxillary teeth then remaining in the plaintiff's mouth as broken, non-restorable, and unsalvageable, thus requiring a treatment plan that involved the extraction of all of those teeth, and that there were available treatment options that could avoid those extractions. Hence, Dr. Allen concluded that the standard of care required Trostyanetsky to recommend the removal of those teeth, with placement of a "total upper restoration" as the treatment plan.

According to Dr. Allen, Trostyanetsky properly provided the plaintiff with three options for restoring the maxillary arch after the upper teeth were removed, which Dr. Allen described as the only possible options. The first option involved the installation of four or six implants, with the concomitant placement of crowns and abutments, and the placement of a non-removable, permanent denture over the tooth positions where implants were not installed. The second involved the installation of four or six implants, with the concomitant placement of crowns and abutments, and the placement of a removable, non-permanent denture over the tooth positions where implants were not installed. The third option dispensed altogether with the installation of any implants, consisting solely of the placement of a removable denture. Dr. Allen asserted that the plaintiff, after discussing the relevant treatment options and receiving the appropriate information from Trostyanetsky as to pricing, elected the first option, which Dr. Allen concluded was appropriate and would likely have worked well in a patient with sufficient bone density.

Dr. Allen opined that Trostyanetsky properly obtained a three-dimensional CBCT scan, as that was the correct type of radiograph for assessing the sufficiency and density of bone for the placement of implants. Nonetheless, he also opined that Trostyanetsky, as a general dentist, would not be expected to make the assessment of bone quality, as this was outside of his area of professional expertise; rather, he asserted that the CBCT scan would be obtained in conjunction with a referral to an oral surgeon, who would, in turn, employ the radiograph to assess the quality of bone before placing the implants. Dr. Allen thus concluded that the plaintiff's case properly was referred to Brisman, an oral surgeon, for assessment of the quality and sufficient of the plaintiff's maxilla bone, extraction of the maxillary teeth, and placement of the implants. Similarly, he asserted that it was outside of Trostyanetsky's purview as to whether the bone in the maxillary arch was properly assessed, whether the proper types of implants were installed, whether the method chosen to install the implants was appropriate, whether the plaintiff was a good candidate for implants, and whether the plaintiff properly was evaluated to determine how the implants should have been installed; rather, he opined that Brisman was responsible for those assessments and determinations.

Dr. Allen further averred that West Side did not depart from the standard of care in creating an impression of the plaintiff's teeth and generating a bite registration for the purpose of immediately fabricating a denture that was to be temporary and removable, as that would permit the plaintiff to have an interim restoration in her mouth following the extraction that allowed her to eat. He added that the impression and bite registration were performed at the proper time prior to the extractions, so that the denture would properly fit in the plaintiff's mouth in place of the teeth that were removed and for which no implant was installed. Dr. Allen also stated that there was "no evidence that the temporary prosthesis was improperly created or fabricated, based on the impression taken on November 1, 2019."

In addition, Dr. Allen reiterated the opinions set forth in the expert affirmation of Mordechai Hoschander, D.M.D., that Brisman had submitted in support of his own summary

judgment, to the effect that Brisman committed no malpractice and obtained the plaintiff's fully informed consent to the procedures and that, consequently, West Side could not be held vicariously liable for any of Brisman's conduct. Although Dr. Allen did not submit an affirmation in connection with Ayzenberg's motion for summary judgment, he nonetheless reiterated the opinions set forth in the expert affirmation of John E. Lagner, D.M.D., that Ayzenberg had submitted in support of his own summary judgment motion, and asserted that West Side could not be held vicariously liable for any of Ayzenberg's conduct.

In connection with the issue of whether the temporary denture became ill-fitting over a period of several months subsequent to its placement, and thus moved around in the plaintiff's mouth, Dr. Allen opined that "a denture cannot cause implants to become loose when cover screws are on the implants and neither the implants nor the cover screws are exposed," but that "a denture can cause implants to loosen if the cover screw of [the] implant is exposed or when healing abutments are placed on the implants in Stage 2 of implant procedures," since, under those circumstances, a denture "can come in contact with either the cover screws or the healing abutments, causing them to loosen." He conceded that a treating dentist "has to examine, and if necessary, adjust and/or reline the denture if the cover screw(s) of the implant(s) is exposed after the implant is placed on or once the healing abutment is placed." Dr. Allen nonetheless continued that,

"if the oral surgeon wishes to refer the patient to the general dentist or prosthodontist because it has become necessary to adjust and/or reline the denture, then it is appropriate for the oral surgeon to do so, but this is not required, and the oral surgeon can perform their own adjustments and/or relining of the denture, if necessary, should they wish to take responsibility for that aspect of care."

In this regard, he asserted that there was no evidence that the cover screws were exposed at the plaintiff's December 3, 2019 post-operative visit, or that the denture needed adjustment or relining at that juncture, "so the denture again would not have resulted in any loosening of the implants because the cover screws of the implants were not exposed on that date." Dr. Allen

further stated that Brisman and, hence, West Side, properly directed the plaintiff to return 10 to 12 weeks thereafter for Stage 2 of the implant procedures, “and that no further visits were required between the follow-up visit and that future visit, which actually occurred on March 4, 2020, to address the denture *unless Plaintiff had complaints with the implants or the denture before the Stage 2 presentation*” (emphasis added).

Dr. Allen asserted that Dhar and hence, West Side, did not depart from the standard of care in the examination of the plaintiff when she returned on March 4, 2020 for Stage 2 of the implant procedures, which entailed uncovering the implants and placing healing abutments, “in that he examined Plaintiff, took eight periapical films, [and] noted that she made no complaints.” He stated that the more than 13-week interval between her first post-operative and post-placement visit and her “Stage 2” visit was an appropriate period of time, inasmuch as she had expressed no concerns and made no complaints about how the denture was fitting. Dr. Allen also concluded that Dhar properly conducted his examination by observing that the implant at the space of tooth 7 was missing and was not found clinically or radiographically, and in examining the remaining implants to determine whether they were stable, to observe whether healing abutments were needed, and to investigate whether the screws for the implants needed to be tightened, which Dhar reported were not necessary at the time. He stated that there “was no evidence that the denture had caused the implants to become loose between the visits of December 3, 2019 and March 4, 2020,” and that the “mere fact that the implant at the space of tooth #7 was missing, likely due to falling out of Plaintiff’s mouth some time prior to March 4, 2020, did not mean that the other implants would fail.”

In connection with Dhar’s post-examination treatment, Dr. Allen asserted that Dhar properly performed Stage 2 of the implant procedures by exposing the implants at tooth positions 4 and 5, placing healing abutments, suturing the area over the implants, and that Dhar properly determined that the cover screws of the implants at tooth positions 10, 11, and 13 already were exposed and, as such, did not require the placement of healing abutments. He

further opined that there was no clinical significance to the fact that the implants at those tooth positions were exposed as of March 4, 2020, inasmuch as they were covered during the initial procedure on November 19, 2019. Dr. Allen asserted that those cover screws were exposed because the gum shrank or because Brisman intentionally placed them in a position closer to the mouth so that they would, in fact, become exposed.

Dr. Allen approved of Dhar's deposition testimony to the effect that Dhar "would have checked the temporary upper denture to see if it was properly and comfortably fitting after placing the healing abutments," and asserted that Dhar properly concluded, upon clinical examination, that the denture did not need to be relined at the March 4, 2020 visit. He further alleged that there is no requirement that a denture be relined at a follow-up visit, but that relining was "an individual decision to be made under the circumstances by the treating dentist, in this case Dr. Dhar, based upon the dentist's own clinical examination of the patient."

Additionally, Dr. Allen opined that, at the March 4, 2020 appointment, Dhar properly and appropriately took an open tray impression for the fabrication of the final prosthesis, and that it was proper to instruct the plaintiff to return to West Side to see Trostyanetsky a few weeks after that appointment to take a final impression for the final prosthesis, inasmuch as Trostyanetsky assumed the role as the plaintiff's restorative dentist once all the implants were integrated. Dr. Allen asserted that, although he did not know for sure as to why the plaintiff did not actually return to West Side until June 29, 2020, he noted that the West Side office was closed for several months due to the COVID-19 pandemic beginning in or about the middle of March 2020, except for emergency treatment, which he concluded was not necessary in the plaintiff's situation, since there was no evidence that she contacted West Side with any complaints that would suggest the presence of an emergency. He asserted that it nevertheless was "perfectly appropriate to let the implants in Plaintiff's mouth have three to four months to integrate after State 2 surgery before placing further restorations, especially given the lack of documentable symptoms."

In connection with the plaintiff's June 29, 2020 follow-up visit, Dr. Allen asserted that Trostyanetsky did not depart from the standard of care in examining the plaintiff, as Trostyanetsky correctly noted her current complaints of bleeding in the upper left quadrant, and appropriately took a panoramic X-ray, 3D CBCT scan, and three periapical films, which Dr. Allen concluded were sufficient, in and of themselves, to allow a proper diagnosis and plan of care. He averred that Trostyanetsky made the proper and appropriate determination, after his clinical and radiographic review of the area, that all three implants in the upper left quadrant, specifically at tooth positions 10, 11, and 13, were mobile, which meant that those implants had failed, and thereafter appropriately scheduled the plaintiff to meet with practice's oral surgeon at a future visit to remove those three failed implants and to be evaluated for further treatment. In this regard, Dr. Allen also asserted that West Side's dental and oral surgical staff properly performed the removals on July 8, 2020 by administering a local anesthetic, removing the implants, curetting and debriding residual material from the sockets of tooth positions 10, 11 and 13, irrigating the area with a saline solution, prescribed 875 mg of Augmentin to prevent any dental infections, and planned for the installation of replacement implants a visit scheduled for July 15, 2020.

Inasmuch as the plaintiff elected to undergo any further treatment at a different dental practice, Dr. Allen concluded that her failure to re-schedule further visits at West Side, despite its requests that she return on July 15, 2020, August 4, 2020, November 30, 2020, and December 9, 2020, constituted a voluntary severance of the dentist-patient relationship with West Side and its professional staff, and defeated any claim that West Side or its staff abandoned her.

Dr. Allen ultimately concluded that the plaintiff's loss of the six implants at tooth positions 4, 5, 7, 10, 11, and 13, her bone loss at those tooth positions, and any need for a sinus or nasal lift to accommodate revision bone grafting for the installation of new implants, among other injuries, were not due to the alleged malpractice of West Side, Trostyanetsky, or any other

dental providers West Side. Rather, he opined that they simply were caused by an unfortunate failure of the implants, which was a known and accepted risk of the implant procedures.

In opposition to the West Side defendants' motion, the plaintiff relied on the same documentation that the West Side defendants had submitted, as well as the same expert affirmation of Charles Kaner, D.D.S., that she had submitted in opposition to Ayzenberg's motion under motion sequence 001. She also submitted an attorney's affirmation.

With respect to the West Side defendants, Dr. Kaner asserted that, when the plaintiff returned to West Side on December 3, 2019 for her first post-operative visit several weeks after the extractions, installation of the implants, and placement of the temporary denture, she was only examined by Brisman, the oral surgeon, whose role did not include relining the denture. Dr. Kaner opined that, "since the swelling had gone down by this time, it was mandatory that the denture be relined," and that, "[w]ithout the swollen tissue, the denture was, more likely than not, not fitting properly." Since Trostyanetsky was the owner of West Side and the practice's restorative dentist, Dr. Kaner asserted that he deviated from the applicable standard of care by failing to examine the plaintiff at her first post-operative visit, in not relining the denture at that time, in failing to advise the plaintiff to return to West Side every four to six weeks to have the denture relined, and in failing to perform periodic relinings at subsequent visits. He thus opined that the West Side defendants should have instructed the plaintiff to return not only on December 3, 2019, but also in January and February 2020, regardless of whether the plaintiff had complaints, but especially because she did experience movement of the denture, gum abrasions, and bleeding during that period of time. As Dr. Kaner previously had concluded in connection with Ayzenberg's motion, subsequent to the abatement of the post-operative swelling in the plaintiff's gums, the implants had moved, become ill-fitting, traumatized the gum tissue covering the implants, interfered with bone regeneration, and caused the implants to fail.

As to Dhar's involvement in the plaintiff's care, Dr. Kaner concluded that, when Dhar examined the plaintiff on March 4, 2020, he installed healing abutments on two of the six

implants, which, according to Dr. Kaner, could be as much as four millimeters above the gum line, a measurement that Dr. Kaner asserted was confirmed as to at least one of the implants by the June 29, 2020 radiographs. As Dr. Kaner explained it, “[w]hen healing abutments are placed on implants it is necessary that the denture be ‘relieved,’ a term which means that the denture needs to have those areas carved out so that the abutments do not prevent good occlusion between the denture and the ridge of bone.” According to Dr. Kaner, the failure to relieve the denture resulted in a malocclusion of the denture and bone, as well as “movement and trauma to the tissue and implants.” He continued that,

“[a]t this point one side has exposed implants and the other side has two abutment[s] which most likely were above the gum line. The testimony and the records show that Dr. Dhar did not make any adjustment, relieving or relining of the denture. That is what is required under the standard of care for implants. It was not done and therefore it was a deviation from the standard of care. It is my opinion that these failures contributed not only to the failure of the implants but to the continuing bone loss.”

Dr. Kaner expressly agreed with Dr. Allen’s opinion that a denture can cause implants to loosen if the cover screw of the implant is exposed or when healing abutments are placed on the implants during Stage 2 of implant procedures, since, under those circumstances, a denture can come in contact either with the cover screws or the healing abutments, causing them to loosen. He diverged from Dr. Allen, however, by concluding that the plaintiff’s implants were being traumatized prior to the plaintiff’s March 4, 2020 visit with Dhar, inasmuch as, by that time, three implants already had been exposed, and there already was evidence of implant failure by virtue of the absence of the implant that had been installed at tooth position 7. He also stated that, “[o]n March 4, 2020, two implants had healing abutments placed on them yet the denture was not relieved or relined. This failure to relieve and reline was an additional contributing factor to the implants’ failure.”

Dr. Kaner further faulted Dhar, who was not an oral surgeon, as to the manner in which he removed the implants on July 8, 2020. In this respect, Dr. Kaner asserted that, when three of the loose, failed implants were removed, they left empty sockets, and that the standard of

care required that bone grafts be placed so as to minimize the amount of bone loss, since, without a graft, the maxilla, which he believed had been traumatized for months by the ill-fitting denture, would continue to lose bone through resorption. He opined that Dhar's and West Side's failure to place a bone graft at the plaintiff's July 8, 2020 visit "contributed to the amount of bone loss ultimate[ly] found" by Vincent Novelli, D.D.S., on March 25, 2021, which Dr. Kaner characterized as a "loss so great" that Dr. Novelli deemed the plaintiff no longer to be a candidate for dental implants. Dr. Kaner also noted that the plaintiff did not return for a scheduled July 15, 2020 appointment because she was ill at the time, but that, in any event, West Side inappropriately scheduled that appointment not to place a bone graft but to again install dental implants. He also opined that, inasmuch as four of the six implants already had failed by June 29, 2020, the plaintiff's decision not to follow up with the West Side defendants, and her determination to delay in seeking further dental treatment for approximately eight months thereafter, "did not alter the fact that the implants had already failed due to a poorly fitting denture which was never relieved, adjusted or relined since it was delivered on November 19, 2019." Dr. Kaner concluded that nothing that had occurred in connection with the plaintiff subsequent to June 29, 2020 altered his opinion that Trostyanetsky's and Dhar's departures from the standard of care contributed to the failure of the implants and the plaintiff's bone loss.

In reply, the West Side defendants submitted an attorney's affirmation, in which their attorney argued that the plaintiff's affidavit contradicted her deposition testimony and, thus, constituted an attempt to raise a feigned issue of fact. Counsel further argued that Dr. Kaner's opinions had no support in the dental records and that these opinions were speculative and conclusory. In addition, counsel argued that the lack of informed consent cause of action should be dismissed because Dr. Kaner failed to rebut the West Side defendants' prima facie showing as to that cause of action.

The legal standards applicable to summary judgment motions in dental malpractice actions are set forth in detail in this court's November 27, 2023 order resolving Motion Sequence 001.

The West Side defendants established their prima facie entitlement to judgment as a matter of law through their submissions, including Dr. Allen's expert affirmation.

The plaintiff and her expert did not address the West Side defendants' prima facie showing with respect to her lack of informed consent cause of action and, hence, failed to raise a triable issue of fact in opposition thereto. Hence, the West Side defendants must be awarded summary judgment dismissing the lack of informed consent cause of action insofar as asserted against them.

The plaintiff, however, raised a triable issue of fact as to whether Trostyanetsky, as the plaintiff's restorative dentist, departed from good and accepted dental practice in failing to examine the patient at her first post-operative visit, in failing to reline the temporary denture at that time or at any time thereafter, in failing to advise the plaintiff to return to West Side every four to six weeks to have the denture relined, and in relining the denture at those visits, and whether those departures caused or contributed to the failure of the implants and the plaintiff's bone loss. She also raised a triable issue of fact to whether Dhar departed from good and accepted dental practice in failing to relieve the temporary denture and have it relined on March 4, 2020, and whether that departure caused or contributed to the failure of her implants and bone loss, and in failing to place, or having Trostyanetsky or another West Side dentist place, a bone graft in connection with the sockets remaining after the July 8, 2020 removal of several of the failed implants, and whether that departure caused or contributed to her additional bone loss. Where a physician working for a professional corporation renders medical care to a patient "within the scope of his or her employment" for that corporation, the corporation may be held vicariously liable for the negligence of the physician (*Petruzzi v Purow*, 180 AD3d 1083, 1084-1085 [2d Dept 2020]). Hence, to the extent that this court has concluded that there are

triable issues of fact as to whether Trostyanetsky or Dhar committed dental malpractice, West Side may be held vicariously liable to the extent of their malpractice. The court rejects the West Side defendants' contention that the plaintiff's affidavit presented feigned issues of fact; rather, the statements in her affidavit do not alter her prior testimony, but supplement and clarify it. Hence, that branch of the West Side defendants' motion seeking summary judgment dismissing the dental malpractice cause of action is granted only to the extent that they are awarded summary judgment dismissing the complaint insofar as it was premised upon Brisman's alleged malpractice, and was premised upon those malpractice claims against Ayzenberg that this court had summarily dismissed in the November 27, 2023 order deciding Motion Sequence 001, other than the claim for failure timely to reline the denture. That branch of their motion is otherwise denied.

In light of the foregoing, it is

ORDERED that the motion is granted only to the extent that the defendants West Side Dental Associates, P.C., and Lev Trostyanetsky are awarded summary judgment dismissing the lack of informed consent cause of action insofar as asserted against them, and dismissing the dental malpractice cause of action against them insofar as it was premised upon (a) the alleged malpractice of the defendant Adam Brisman, or any of the duties and responsibilities that the defendant Adam Brisman had in reviewing radiographic images prior to the procedure, assessing the quality of the plaintiff's maxilla bone, performing the extractions, installing the implants, and examining the quality of the implants and the plaintiff's maxilla bone at her first post-operative visit, and (b) those dental malpractice claims asserted against the defendant Alexander Ayzenberg that this court had summarily dismissed in its November 27, 2023 order deciding Motion Sequence 001, other than the claim for negligent failure to reline the temporary denture, which shall continue against the defendants West Side Dental Associates, P.C., and Lev Trostyanetsky, and the motion is otherwise denied; and it is further,

ORDERED that the remaining parties shall appear for an initial pretrial settlement conference before the court, in Room 304 of 71 Thomas Street, New York, New York 10013, on February 7, 2024, at 10:00 a.m., at which time they shall be prepared to discuss resolution of the action and the scheduling of a firm date for the commencement of jury selection.

This constitutes the Decision and Order of the court.

11/30/2023
DATE


JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: