

Santana v Hamilton Park Multicare, LLC

2023 NY Slip Op 34900(U)

September 14, 2023

Supreme Court, Kings County

Docket Number: Index No. 514900/2019

Judge: Genine D. Edwards

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At an I.A.S. Trial Term, MMESP 6 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Brooklyn, New York, on the 14th day of September 2023

P R E S E N T :

Hon. Genine D. Edwards, Justice

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MARISSA SANTANA as Administratrix of the Estate of VINCENT BRIGLIA, and MARISSA SANTANA, Individually,

Index No. 514900/2019

Plaintiffs,

-against-

HAMILTON PARK MULTICARE, LLC d/b/a HAMILTON PARK NURSING AND REHABILITATION CENTER, HAMILTON PARK NURSING AND REHABILITATION CENTER, and MAIMONIDES MEDICAL CENTER,

Defendants.

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The following e-filed papers read herein:	<u>NYSCEF Doc. No.</u>
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In this action, plaintiff seeks damages for medical malpractice, negligence, and wrongful death against defendant Maimonides Medical Center. After the note

of issue was filed, defendant moved to dismiss, pursuant to CPLR § 3211(a)(5) and CPLR § 3211(a)(7), all medical malpractice, negligence, and wrongful death claims relating to decedent Vincent Briglia's November 13, 2016 to December 1, 2016 admission at the hospital. Defendant also sought summary judgment, pursuant to CPLR § 3212, for all medical malpractice, negligence, and wrongful death claims pertaining to decedent's April 13, 2017 to April 21, 2017 and April 25, 2017 to May 26, 2017 hospital admissions. Plaintiffs opposed the motion.

Dismiss

“A defendant who seeks dismissal of a complaint on the ground that it is barred by the statute of limitations bears the initial burden of proving, prima facie, that the time in which to commence an action . . . expired.” *Hall v. Bolognese*, 210 A.D.3d 958, 178 N.Y.S.3d 564 (2d Dept. 2022). “The burden then shifts to . . . plaintiff to present evidence raising a question of fact as to whether the action falls within an exception to the statute of limitations or whether the continuous treatment doctrine applies to toll the statute of limitations.” *Id.* Under the continuous treatment doctrine, the limitations period is tolled until the end of the course of treatment if three conditions are met: (1) the patient continued to seek, and in fact obtained, an actual course of treatment from the defendant physician during the relevant period; (2) the course of treatment was for the same conditions or complaints underlying the plaintiff's medical malpractice claim; and (3) the

treatment is continuous.” *Proano v. Gutman*, 211 A.D.3d 978, 180 N.Y.S.3d 279 (2d Dept. 2022). Here, defendants established that the causes of action alleging medical malpractice was time-barred, insofar as it related to the care provided to decedent from November 13, 2016 to December 1, 2016. *See Weinstein v. Gewirtz*, 208 A.D.3d 717, 173 N.Y.S.3d 316 (2d Dept. 2022) (“A medical malpractice action must be commenced within two years and six months of the act, omission or failure complained of.”). In opposition, plaintiffs failed to demonstrate the applicability of the continuous treatment rule. *See Baltzer v. Westchester Medical Center*, 209 A.D.3d 815, 176 N.Y.S.3d 153 (2d Dept. 2022).

Summary Judgment

“A physician [who moves] for summary judgment dismissing a complaint alleging medical malpractice must establish, prima facie, either that there was no departure from accepted standards of medical care or that any departure was not a proximate cause of plaintiff’s injuries.” *Schwartzberg v. Huntington Hospital*, 163 A.D.3d 736, 81 N.Y.S.3d 118 (2d Dept. 2018) quoting *Mackauer v. Parikh*, 148 A.D.3d 873, 49 N.Y.S.3d 488 (2d Dept. 2017). To sustain the burden, the physician “must address and rebut any specific allegations of malpractice set forth in a plaintiff’s bill of particulars.” *Mackauer*, 148 A.D.3d 873.

“In opposition, the plaintiff must demonstrate the existence of a triable issue of fact as to the elements on which the defendant has met his or her initial burden.”

Barnaman v. Bishop Hucles Episcopal Nursing Home, 213 A.D.3d 896, 184 N.Y.S.3d 800 (2d Dept. 2023). Accordingly, a plaintiff must submit the affidavit of “a[n expert] physician attesting to a departure from good and accepted practice, and stating the physician’s opinion that the alleged departure was a competent producing cause of plaintiff’s injuries.” *Shectman v. Wilson*, 68 A.D.3d 848, 890 N.Y.S.2d 117 (2d Dept. 2009). See *Sunshine v. Berger*, 214 A.D.3d 1020, 186 N.Y.S.3d 326 (2d Dept. 2023).

Here, defendant established its prima facie entitlement to judgment as a matter of law by submitting, among other things, expert affirmations, and medical records to prove it did not deviate from accepted standards of medical care. The experts opined that decedent was admitted with multiple Stage III, Stage IV, and unstageable pressure ulcers, some with wet and dry gangrene and multi-drug resistant bacteria. Skin assessments and prevention measures were implemented, and consults such as infectious disease, wound care, and surgery were done, despite this care decedent continued to decline due to his clinical status and comorbidities. In opposition, plaintiffs’ expert failed to raise an issue of fact, including failing to refute specific assertions made by defendant’s experts.

Accordingly, the motion for summary judgment is granted, and the complaint against Maimonides Medical Center is dismissed. All parties shall appear for an Alternative Dispute Resolution conference on November 30, 2023, at 10:30AM.

For Clerks use only
MG ___
MD ___
Motion Seq.#: 2

~~ENTER~~
J.S.C.