

Majid v Manna

2023 NY Slip Op 35062(U)

December 21, 2023

Supreme Court, Queens County

Docket Number: Index No. 701671/2021

Judge: Tracy Catapano-Fox

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
COUNTY OF QUEENS

-----X

FASEHA MAJID,

Index No. 701671/2021

Plaintiff,

Part MDP

Motion Date: December 13, 2023

-against-

Calendar No. 17

Sequence No. 3

GENO MANNA, M.D., MARIA CULOTTA, M.D.,
FACOG, GARDEN OB/GYN, KATZ WOMEN’S
HOSPITAL, KATZ WOMEN’S HOSPITAL, an entity
of NORTHWELL HEALTH, INC., LONG ISLAND
JEWISH MEDICAL CENTER, LONG ISLAND
JEWISH MEDICAL CENTER, an entity of
NORTHWELL HEALTH, INC., and NORTHWELL
HEALTH, INC.,



Defendants.

-----X

The following papers numbered EF-61 to EF-72 read on this motion by defendants LONG ISLAND JEWISH MEDICAL CENTER s/h/a KATZ WOMEN’S HOSPITAL, LONG ISLAND JEWISH MEDICAL CENTER s/h/a KATZ WOMEN’S HOSPITAL, an entity of NORTHWELL HEALTH, INC., LONG ISLAND JEWISH MEDICAL CENTER, LONG ISLAND JEWISH MEDICAL CENTER s/h/a LONG ISLAND JEWISH MEDICAL CENTER, an entity of NORTHWELL HEALTH, INC. and NORTHWELL HEALTH, INC. for summary judgment and dismissal of plaintiff’s Complaint pursuant to CPLR §3212.

Papers
Numbered

Notice of Motion, Affirmation, Exhibits.....EF61-EF72

Upon the foregoing papers, it is ordered that this motion is determined as follows:

Defendants Long Island Jewish Medical Center s/h/a Katz Women’s Hospital, Long Island Jewish Medical Center s/h/a Katz Women’s Hospital, an entity of Northwell Health, Inc., Long Island Jewish Medical Center, Long Island Jewish Medical Center s/h/a Long Island Jewish Medical Center, an entity of Northwell Health, Inc. and Northwell Health, Inc.’s (hereinafter

referred to collectively as the “Northwell defendants”) motion for summary judgment and dismissal of plaintiff’s Complaint pursuant to CPLR §3212 is granted without opposition.

Plaintiff commenced this medical malpractice action arising out of injuries sustained during plaintiff’s labor and delivery at Long Island Jewish Medical Center (hereinafter referred to as “LIJ”) between April 16, 2018 and April 18, 2018. Plaintiff filed the Summons and Complaint on January 22, 2021 and issue was joined on February 24, 2021.

Northwell defendants argue that they are entitled to summary judgment and dismissal of plaintiff’s Complaint, as they adhered to the accepted standard of medical care and did not proximately cause or contribute to plaintiff’s injuries. Defendants present the pleadings, deposition testimony, expert affirmation of Jonathan Lanzkowsky, M.D., and affirmation of Avraham Z. Schwartz in support of their motion. Defendants argue that based upon the documentary evidence presented, they eliminated all triable issues of fact with respect to whether they departed from accepted standards of medical care. Defendants further argue that during plaintiff’s labor and delivery, the doctors that treated her at LIJ were not Northwell employees, but rather treated plaintiff in their capacity as private attending physicians. Defendants argue that the mere affiliation with LIJ as an attending physician is insufficient to establish negligence on behalf of defendants. Defendants further argue that defendants Northwell Health, Inc. and Katz Women’s Hospital are not proper parties, as Northwell Health, Inc. did not provide medical care and treatment and therefore does not owe plaintiff a duty, and Katz Women’s Hospital is not a separate legal entity from LIJ, but rather is the name of a unit of the hospital.

Northwell defendants present the affirmation of Dr. Lanzkowsky, a physician who is board certified in Obstetrics and Gynecology, in support of their motion. Dr. Lanzkowsky affirmed that he reviewed the pleadings, plaintiff’s Bills of Particulars, the deposition testimony, and plaintiff’s medical records in rendering his opinions. Dr. Lanzkowsky noted plaintiff was admitted to LIJ on April 16, 2018 as a private patient of co-defendant Dr. Culotta, who was employed by co-defendant Garden OB/GYN. Dr. Lanzkowsky opined within a reasonable degree of medical certainty that Northwell defendants were not responsible for plaintiff’s labor and delivery, as she was a private patient of co-defendant Garden OB/GYN and its physicians. Dr. Lanzkowsky further opined that the Northwell defendants’ staff took direction from co-defendants, and co-defendants’ care was not so egregious that the Northwell defendants were required to intervene to safeguard plaintiff’s health and safety. Dr. Lanzkowsky further opined that the decision to administer Pitocin to plaintiff and the obligation to obtain informed consent from plaintiff was up to co-defendant Dr. Manna. Dr. Lanzkowsky further opined that Northwell defendants’ staff properly administered Pitocin to plaintiff as ordered by co-defendant Dr. Manna. Finally, Dr. Lanzkowsky opined that as a private patient of Garden OB/GYN, it was Garden OB/GYN staff’s responsibility to clear plaintiff for discharge, which was ultimately done by co-defendant Dr. Manna.

Northwell defendants also present the affirmation of Avraham Schwartz, Vice President of the Medical Malpractice Program, Corporate Risk Management at Northwell Health, Inc., in support of their motion. Mr. Schwartz affirmed that Northwell Health, Inc. is a not-for-profit Domestic Corporation and corporate parent of Long Island Jewish Medical Center, which maintains professional liability insurance through Northwell Health, Inc. Mr. Schwartz further affirmed that Northwell Health, Inc. does not render medical care and does not maintain insurance coverage for medical malpractice claims. Mr. Schwartz affirmed that Katz Women's Hospital is not a separate legal entity from Long Island Jewish Medical Center, but rather is a hospital unit at LIJ that does not maintain professional liability insurance separate from the insurance afforded to LIJ through Northwell. Based upon the foregoing, Northwell defendants argue that they are entitled to summary judgment and dismissal of plaintiff's Complaint pursuant to CPLR §3212.

Pursuant to CPLR §3212, “[a] motion [for summary judgment] shall be granted if . . . the cause of action . . . [is] established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.” (CPLR 3212 [b]; *Rodriguez v. City of New York*, 31 N.Y.3d 312 [2018].) The motion for summary judgment must also “show that there is no defense to the cause of action.” (*Id.*). The party moving for summary judgment must make a prima facie showing that it is entitled to summary judgment by offering admissible evidence demonstrating the absence of any material issues of fact and it can be decided as a matter of law. (CPLR § 3212 [b]; *see Jacobsen v New York City Health and Hosps. Corp.*, 22 N.Y.3d 824 [2014]; *Brill v City of New York*, 2 N.Y.3d 648 [2004].) In deciding a summary judgment motion, the court does not make credibility determinations or findings of fact. Its function is to identify issues of fact, not to decide them. (*Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 505 [2012].) Once a prima facie showing has been made, however, the burden shifts to the non-moving party to prove that material issues of fact exist that must be resolved at trial. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980].)

In moving for summary judgment in a medical malpractice action, the defendant must establish a prima facie case that there was no departure from good and accepted medical practice or that the plaintiff was not injured thereby, and the plaintiff in opposition must submit evidentiary facts or materials to demonstrate the existence of a triable issue of fact. (*Stukas v. Streiter*, 83 A.D.3d 18, 24 [2d Dept. 2011].) In presenting opposition to raise a triable issue of fact, the plaintiff is required to provide an affidavit of merit by a medical expert, and the failure to submit an affidavit by a medical expert competent to attest to the meritorious nature of the plaintiff's claims requires dismissal of the Complaint. (*Id.* at 28.) Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions. (*Buch v. Tenner*, 204 A.D.3d 635, 638 [2d Dept. 2022].) In general, a hospital may be vicariously liable for the negligence or malpractice of its employees acting with the scope of employment under the doctrine of *respondeat superior*. (*Valerio v. Liberty Behavioral Mgt. Corp.*, 188 A.D.3d 948 [2d Dept. 2020].)

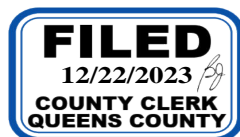
Northwell defendants established a prima facie entitlement to summary judgment. Defendants demonstrated through the pleadings, deposition testimony, medical records and affirmations of Dr. Lanzkowsky and Avraham Schwartz that they did not depart from the accepted standards of medical care and did not proximately cause plaintiff's alleged injuries. Their evidence demonstrated that plaintiff was admitted to LIJ under the private care of co-defendant Garden OB/GYN and its co-defendant physicians, which is insufficient to render Northwell defendants liable for their care. (*See Hill v. St. Clare's Hospital*, 67 N.Y.2d 72, 79 [1986] [holding that affiliation of a doctor with a hospital or other medical facility, not amounting to employment, is not sufficient to impute the doctor's negligent conduct to the hospital or facility].) Defendants further demonstrated that Northwell Health, Inc. did not render care to plaintiff and therefore owes her no duty and bears no liability for her alleged injuries. Finally, defendants demonstrated that Katz Women's Hospital is a unit within LIJ and not a separate legal entity for which liability could be imposed. Based upon the above, Northwell defendants established a prima facie entitlement to summary judgment, and as co-defendants and plaintiff failed to oppose the motion, they failed to raise triable issues of fact in dispute.

Accordingly, defendants' Long Island Jewish Medical Center s/h/a Katz Women's Hospital, Long Island Jewish Medical Center s/h/a Katz Women's Hospital, an entity of Northwell Health, Inc., Long Island Jewish Medical Center, Long Island Jewish Medical Center s/h/a Long Island Jewish Medical Center, an entity of Northwell Health, Inc. and Northwell Health, Inc.'s motion for summary judgment and dismissal of plaintiff's Complaint is granted without opposition, and it is hereby

ORDERED that plaintiff's Complaint is dismissed as to defendants Long Island Jewish Medical Center s/h/a Katz Women's Hospital, Long Island Jewish Medical Center s/h/a Katz Women's Hospital, an entity of Northwell Health, Inc., Long Island Jewish Medical Center, Long Island Jewish Medical Center s/h/a Long Island Jewish Medical Center, an entity of Northwell Health, Inc. and Northwell Health, Inc.

This constitutes the decision and Order of the Court.

Dated: December 21, 2023





Hon. Tracy Catapano-Fox, J.S.C.