

McCann v Rajpal
2023 NY Slip Op 35118(U)
December 7, 2023
Supreme Court, Queens County
Docket Number: Index No. 712004/2022
Judge: Tracy Catapano-Fox
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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DEBRA MCCANN,

Index No. 712004/2022

Plaintiff,

Part MDP

Motion Date: November 29, 2023

-against-

Calendar No. 24

Sequence No. 2

KARTAVYA RAJPAL as Administrator of the Estate
of SANJEEV RAJPAL, M.D., s/h/a DR. SANJEEV
RAJPAL,

Defendant.



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The following papers numbered EF-14 to EF-42 read on this motion by defendant KARTAVYA RAJPAL as Administrator of the Estate of SANJEEV RAJPAL, M.D., s/h/a DR. SANJEEV RAJPAL for summary judgment and dismissal of plaintiff's Complaint pursuant to CPLR §3212.

Papers

Numbered

Notice of Motion, Affirmation, Exhibits.....EF14-EF34

Affidavit in Opposition, Exhibits.....EF35

Reply Affirmation, Exhibits.....EF37-EF42

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

Defendant Kartavya Rajpal as Administrator of the Estate of Sanjeev Rajpal, M.D., s/h/a Dr. Sanjeev Rajpal's (hereinafter referred to as "Dr. Rajpal") motion for summary judgment and dismissal of plaintiff's Complaint pursuant to CPLR §3212 is granted, as defendant eliminated all triable issues of fact with respect to whether he departed from good and accepted standards of medical care. (*See Gargiulo v. Geiss*, 40 A.D.3d 811 [2d Dept. 2007].)

Plaintiff commenced this medical malpractice action arising out of Dr. Rajpal's alleged failure to properly and timely evaluate, diagnose, and treat plaintiff before, during, and after her hernia surgery. Plaintiff filed the Summons and Complaint on July 27, 2018 and issue was joined via service of defendant's Answer on October 2, 2018.

Defendant Dr. Rajpal argues that he is entitled to summary judgment and dismissal of plaintiff's Complaint because he adhered to accepted standards of medical care and did not proximately cause or contribute to plaintiff's alleged injuries. Defendant presents the pleadings, plaintiff's medical records, deposition testimony, and the expert affirmation of Sanford R. Goldberg, M.D. in support of the motion.

Dr. Sanford R. Goldberg affirmed he is a licensed physician in New York who is board certified in internal medicine and gastroenterology. Dr. Goldberg affirmed that he reviewed plaintiff's medical records, Bills of Particulars, and deposition testimony in rendering his opinions. Dr. Goldberg opined within a reasonable degree of medical certainty that Dr. Rajpal did not depart from good and accepted standards of medicine in the care and treatment of plaintiff and did not proximately cause or contribute to plaintiff's injuries. Dr. Goldberg summarized plaintiff's medical history as it related to the treatment rendered by Dr. Rajpal. Dr. Goldberg noted plaintiff had an extensive medical history of lower abdominal, pelvic, and hip pain, and initially presented to Dr. Rajpal for a hernia evaluation on March 8, 2016. Dr. Rajpal performed plaintiff's right-sided hernia repair surgery on March 25, 2016, and plaintiff presented to Dr. Rajpal for several post-operative appointments, during some of which she reported abdominal pain and issues. The medical records showed that Dr. Rajpal recommended she see her primary care physician and a gastroenterologist for the abdominal pain, and plaintiff ultimately underwent another hernia repair surgery on December 4, 2020 for a left-sided hernia.

Dr. Goldberg stated that based upon his review of the materials and his education, training, and experience, he opined within a reasonable degree of medical certainty that Dr. Rajpal properly cared for and treated plaintiff in accordance with good and accepted medical practice from March 8, 2016 through April 8, 2017 and did not proximately cause or contribute to plaintiff's injuries. Dr. Goldberg further opined that Dr. Rajpal properly evaluated plaintiff's medical condition prior to the surgery, properly performed the surgery, and properly provided post-operative treatment care. Dr. Goldberg further opined that Dr. Rajpal did not unnecessarily perform the surgery, as plaintiff had extensive complaints of abdominal pain and elected to do the surgery. Therefore, Dr. Goldberg opined that the surgery was necessary and warranted. Dr. Goldberg also opined that plaintiff's contentions are without merit and unsupported, as Dr. Rajpal relied on plaintiff's radiological studies and complaints of abdominal pain in assessing the need for surgery, extensively discussed the surgery with plaintiff, and properly provided post-operative care. Based upon the foregoing, Dr. Goldberg opined within a reasonable degree of medical certainty that Dr. Rajpal adhered to the accepted standard of medical care and did not proximately cause or contribute to plaintiff's injuries.

Plaintiff opposes defendant's motion and argues that Dr. Rajpal's motion should be denied because defendant failed to establish a prima facie entitlement to summary judgment. Plaintiff

argues that Dr. Goldberg's affidavit is insufficient to warrant summary judgment because defendant failed to include plaintiff's complete medical records in support of the motion. Plaintiff further argues that Dr. Goldberg's affidavit is conclusory and lacks evidentiary support. It is noted that plaintiff presented medical records in opposition to defendant's motion but did not support an affirmation or affidavit by a medical doctor. Based upon the foregoing, plaintiff argues that defendant failed to establish a prima facie case and the motion must be denied.

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].)

Defendant established a prima facie entitlement to summary judgment and dismissal of plaintiff's Complaint pursuant to CPLR §3212, as defendant demonstrated through the medical records, deposition testimony and Dr. Goldberg's affirmation that Dr. Rajpal adhered to the accepted standards of medical care and did not proximately cause or contribute to plaintiff's injuries. Defendant further demonstrated that he did not depart from the accepted standard of care, as Dr. Goldberg attested and opined that Dr. Rajpal properly evaluated and diagnosed plaintiff, properly recommended and performed the surgery, and properly provided post-operative care. Based upon the foregoing, defendant established a prima facie entitlement to summary judgment.

Plaintiff failed to raise a triable issue of fact in dispute, as plaintiff failed to present competent, admissible evidence sufficient to rebut defendant's prima facie case. (*DiLorenzo v. Zaso*, 148 A.D.3d 1111, 1112 [2d Dept. 2017])[holding that general and conclusory allegations of medical malpractice that are unsupported by competent evidence tending to establish the essential elements of medical malpractice are insufficient to defeat a defendant physician's summary judgment motion].) Plaintiff's argument that Dr. Goldberg's affidavit is insufficient to warrant summary judgment because defendant did not include plaintiff's complete medical records is without merit, as Dr. Goldberg attested that he reviewed the pleadings, deposition testimony, and plaintiff's pertinent medical records in rendering his opinions. Therefore, the evidence presented by defendant was sufficient to establish a prima facie case, and in contrast, plaintiff's submission of uncertified medical records and failure to present an expert affirmation was insufficient to rebut defendant's prima facie case and raise a triable issue of fact in dispute. (*See Stukas, supra* at 27.)

Accordingly, defendant Kartavya Rajpal as Administrator of the Estate of Sanjeev Rajpal, M.D., s/h/a Dr. Sanjeev Rajpal's motion for summary judgment and dismissal of plaintiff's Complaint pursuant to CPLR §3212 is granted. Plaintiff's Complaint is hereby dismissed.

This constitutes the decision and Order of the Court.

Dated: December 7, 2023



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

