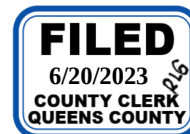


Harrison v Kraus
2023 NY Slip Op 35164(U)
June 13, 2023
Supreme Court, Queens County
Docket Number: Index No. 702402/2019
Judge: Peter J. O'Donoghue
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Multiple Motions-

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, PETER J. O'DONOGHUE IAS PART MD
Justice



KATHLEEN HARRISON and ARTHUR HIRSCHLER,

Plaintiff

Index No.: 702402/2019

Motion Date: 01/18/2023

-against-

Seq. Nos.: 6 and 7

DENNIS H. KRAUS, M.D., KEITH HALLER,
M.D., JONATHAN OREN, M.D., SAMI SABA,
M.D., ALLAN CONWAY, M.D., LINDSAY
MOSES, M.D., ALISA TIMASHPOLSKY, M.D.,
DEREK M. GONZALEZ, M.D., SASHA SORR,
P.A., LENOX HILL HOSPITAL,

Defendants.

Motions bearing sequence numbers 6 and 7 of 01/18 2023 are hereby consolidated for disposition. The following papers numbered as set forth below and read on these motions by **Defendants DENNIS H. KRAUS, M.D., JONATHAN OREN, M.D., SAMI SABA, M.D., ALLAN CONWAY, M.D., SASHA SORR, P.A. and LENOX HILL HOSPITAL (seq 6) and defendant LINDSAY MOSES, M.D. (Seq 7)** for an Order pursuant to CPLR §3212 granting summary judgment in favor of the herein moving defendants and permitting the moving Defendantst to enter judgment with the Clerk of the Court and against the Plaintiff with statutory costs and disbursements; and for such other and further relief as this Court deems just and proper.

PAPERS
NUMBERED

Seq. No. 6

N.M.-Affidavits-Exhibits.....	96-124
Opposition Papers-Affidavits-Exhibits.....	163-168
Reply Papers-Affidavits-Exhibits.....	176

Seq. No. 7

N.M.-Affidavits-Exhibits.....	147-162
Opposition Papers-Affidavits-Exhibits.....	169-173
Reply Papers-Affidavits-Exhibits.....	175

Upon the foregoing papers it is ordered that these motions by defendants **DENNIS H. KRAUS, M.D., JONATHAN OREN, M.D., SAMI SABA, M.D., ALLAN CONWAY, M.D., SASHA SORR, P.A. and LENOX HILL HOSPITAL (seq 6)** are decided as follows:

The motion by defendant **DENNIS H. KRAUS, M.D.** for an order pursuant to CPLR 3212 granting summary judgment is denied. Questions of fact exist, including but not limited to, whether **Dr. Kraus** departed from the accepted standard of care by (a) failing to order a vascular consultation post-operatively in light of plaintiff's history which included a heightened risk of arterial thrombosis following surgery, a history of deep vein thrombosis and an emergency surgery for a thrombus in her right femoral artery; and/or (b) failing to ensure that those treating plaintiff following the surgery monitored plaintiff's post-surgical recovery for symptoms and indications of thrombosis, and referred to Dr. Kraus's attention any such indications; and if so, whether such departure(s) was(were) a substantial factor(s) in causing plaintiff's injuries which may require resolution at trial.

Plaintiff does not oppose that branch of Dr. Kraus' motion as to liability for the pre-operative and intraoperative care and treatment on October 26, 2017 or the preoperative, intraoperative, or postoperative care and treatment for the October 27, 2017 hematoma evacuation. As such, the prima facie case established by Dr. Kraus is unrefuted as to plaintiffs' medical malpractice, negligence, negligent hiring/training claims and these claims are dismissed.

The motion by defendant **ALLAN CONWAY, M.D.** for an order pursuant to CPLR 3212 granting summary judgment is denied. Questions of fact exist, including but not limited to, whether **Dr. Conway** departed from the accepted standard of care by failing to expedite PA Sorr's urgent angiogram order to a STAT angiogram order; and if so, whether such departure was a substantial factor in causing plaintiff's injuries which may require resolution at trial.

The motion by defendant **SASHA SORR, P.A.** for an order pursuant to CPLR 3212 granting summary judgment is granted. The evidence establishes that **SASHA SORR, P.A.** was under the supervision of **Dr. Conway** and did not exercise independent judgement. (See Muniz v Katlowitz, 49 AD3d 511 [2d Dep't 2008]; Soto v Andaz, 8 AD3d 470 [2d Dep't 2004]; Tscocanos v Zaidman, 180 AD3d 841 [2d Dep't 2020].)

The motion by **defendant LENOX HILL HOSPITAL** for an order pursuant to CPLR 3212 granting summary judgment is denied base on potential vicarious liability for defendants **DENNIS H. KRAUS, M.D.** and/or **ALLAN CONWAY, M.D..**

The motion by defendant **LINDSAY MOSES, M.D. (Seq 7)** for an order pursuant to CPLR 3212 granting summary judgment is granted. The evidence establishes that **LINDSAY MOSES, M.D.** was under the supervision of **DENNIS H. KRAUS, M.D.** and did not exercise independent judgement; and the supervising physician's directions did not so greatly deviate from normal practice that the resident should be held liable for failing to intervene. (See Muniz v Katlowitz, 49 AD3d 511 [2d Dep't 2008]; Soto v Andaz, 8 AD3d 470 [2d Dep't 2004]; Tscocanos v Zaidman, 180 AD3d 841 [2d Dep't 2020].)

The Court notes that although plaintiff's expert affidavits were subscribed and sworn to out of state and were not accompanied by a certificate of conformity as required by CPLR 2309 (c), such a defect is not fatal and no substantial right was prejudiced by disregarding the defect. (See Seiden v Sonstein, 127 A.D.3d 1158, 1161-1162.)

The motion by defendants **JONATHAN OREN, M.D. and SAMI SABA, M.D.** is granted without opposition.

The Complaint as asserted against defendants **JONATHAN OREN, M.D., SAMI SABA, M.D., SASHA SORR, P.A. and LINDSAY MOSES, M.D.** is dismissed and the Clerk of the Court shall enter judgment accordingly.

The amended caption shall read as follows:

(S e e N e x t P a g e)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

KATHLEEN HARRISON and ARTHUR HIRSCHLER,

Index No.:

Plaintiffs,

702402/2019

-against-

DENNIS H. KRAUS, M.D., KEITH HALLER,
M.D., ALLAN CONWAY, M.D., ALISA TIMASHPOLSKY, M.D.,
DEREK M. GONZALEZ, M.D., LENOX HILL HOSPITAL,

Defendants.

Dated: June 13, 2023


.....
Peter J. O'Donoghue, J.S.C.

