

Santoro v Personal Touch Home Aides of N.Y., Inc.

2024 NY Slip Op 31827(U)

May 24, 2024

Supreme Court, Kings County

Docket Number: Index No. 510058/18

Judge: Genine D. Edwards

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 80 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 24th day of May 2024.

P R E S E N T:

HON. GENINE D. EDWARDS,
Justice.

-----X
NOREEN SANTORO, as the Executor of the
Estate of KATHLEEN ROHAN,

Plaintiff,

-against-

PERSONAL TOUCH HOME AIDES OF NEW YORK, INC.,
HOME HEALTH CARE SERVICES OF NEW YORK, INC.,
INTEGRA MLTC, INC., and
DAVID SCHIFTER, M.D.,

Defendants.

DECISION AND ORDER

Index No. 510058/18

Mot. Seq. Nos. 5-6

-----X
The following e-filed papers read herein:

NYSCEF Doc Nos.:

Notice of Motion, Affirmations, and Exhibits.....	95-116; 117-150
Affirmations in Opposition, and Exhibits.....	152-158; 159-160; 161-173; 174
Reply Affirmations.....	175; 176

In this action to recover damages for (among other things) negligence and medical malpractice, David R. Schifter, M.D., sued herein as David Schifter, M.D. (“Dr. Schifter”) moved for summary judgment dismissing the complaint of Noreen Santoro, as the executor of the Estate of her late mother, Kathleen Rohan (“plaintiff”). Concurrently, Integra MLTC, Inc. (“Integra”) moved for summary judgment dismissing the plaintiff’s complaint and, separately, for common-law and/or contractual indemnification on its cross-claim against Home Health Care Services of New York, Inc. (“Home Health”).¹

¹ The remaining defendant, Personal Touch Home Aides of New York, Inc., was dismissed from this action by stipulation of discontinuance.

Background²

On December 2, 2014 and again on June 5, 2015, plaintiff's decedent, Kathleen Rohan (the "patient"), an octogenarian with a history of an ischemic stroke,³ fell at her home⁴ sustaining a right-hip fracture and a pelvic fracture, respectively (the "December 2014 fall" and the "June 2015 fall," respectively).⁵ During the relevant time period (including on the dates of her falls), the patient was an enrolled member of the Medicaid-

² As recited in the background section, the facts were viewed in a light most favorable to plaintiff as the party opposing the instant motions and giving her the benefit of every reasonable inference. *See Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 942 N.Y.S.2d 13 (2012). Further, it is "not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact. . . ." *Vega*, 18 N.Y.3d 499; *Goldin Real Estate, LLC. v. Shukla*, ___ A.D.3d ___, 2024 WL 1895845 (2d Dept. 2024).

³ The patient suffered a left posterior cerebral artery ischemic stroke on January 30, 2014, which left her with incontinence, speech impairment, decreased balance, and an inability to maintain mobility independently. *See* Renee Rappo's deposition tr at page 27, lines 2-4 ("[A] person had to be with [the patient]. She was never able to manipulate a cane or a walker."); page 27, lines 5-9 (testifying that "a person had to be physically holding [the patient] while she was standing."); page 31, lines 13-14 ("[The patient] couldn't ask for her needs to be met."); page 32, lines 815 ("[The patient] couldn't take direction. . . . If I said, mom, here hold this for me, I am going to be right back, she couldn't understand that direction."); page 114, lines 4-5 ("[The patient] wore diapers since the time of her stroke."); page 121, lines 18-20 (testifying that the patient always required a person to help her. "She was able to ambulate and move as long as someone was next to her."). *See also* Dr. Schifter's Progress Note, Medicine Attending, dated July 14, 2014 and timed at 11:15 a.m., page 1 of 9 (part of Dr. Schifter's records summarizing the patient's medical history).

⁴ The patient's home was a one-bedroom apartment located on the ground floor of her daughter Renee Rappo's two-family home in Staten Island, New York. *See* Renee Rappo's deposition tr at page 35, line 3 to page 36, line 24. The bedroom, living room, and kitchen were equipped with home-security cameras. *See* Renee Rappo's deposition tr at page 92, lines 5-23; page 95, lines 6-22. Both of the patient's falls were captured on the home-security cameras, and the videos of those falls (though not part of the record before the Court) were exchanged during discovery.

⁵ The December 2014 fall happened when the aide employed by Home Health (nonparty Janie Lewis) left the patient sitting in the living room unattended, while she went to and stayed in, for a period of five to seven minutes, the nearby kitchen (without, at any time during that period, turning her back to check on the patient). *See* Plaintiff's deposition tr at page 71, line 21 to page 74, line 23; page 120, line 18 to page 121, line 25; Renee Rappo's deposition tr at page 100, line 14 to page 101, line 3; page 102, lines 7-18.

The June 2015 fall happened when the patient was left in her bedroom unattended, while a different aide also employed by Home Health (nonparty Rose Addo) "was sleeping on the living room couch," even though she was supposed to have been sleeping on a cot next to the patient's bed in the patient's bedroom. *See* Plaintiff's deposition tr at page 198, line 2 to page 202, line 4.

approved long-term managed care plan operated by Integra. As the plan manager, Integra determined the number of hours of personal care assistance (“PCA”) services the patient initially required upon enrollment and every six months thereafter (subject to earlier assessments following interim changes in the patient’s medical condition). Integra’s determination of the number of PCA hours to which the patient was entitled per day (both at the time of enrollment and at every subsequent assessment) depended on (among other things) its receipt of a written approval (or prescription) from the patient’s primary-care physician, defendant Dr. Schifter.⁶ In that regard, Integra prepared and faxed to Dr. Schifter, for his signature, the prefilled scripts for the patient’s PCA services. Dr. Schifter signed, dated, and faxed back to Integra his signed scripts for the patient’s PCA services.⁷ Integra, in turn, retained (with plaintiff’s approval) defendant Home Health (an approved Integra provider) to render the actual PCA services to the patient.

During the relevant time period (including on the dates of her falls), the patient received – in accordance with Integra’s repeated determinations which were repeatedly

⁶ See Plaintiff’s deposition tr at page 175, lines 24-25 (“Doctor Schifter was [the patient’s] only doctor.”); page 167, lines 5-10 (“[Dr. Schifter] was her primary doctor[,] and he was in charge of everything for my mother. . . . [S]he no longer went to the asthma doctor. [Dr. Schifter] was the one writing out scripts for her.”); page 173, lines 7-14 (“Doctor Schifter was my mother’s primary doctor. He was responsible for making sure that she had what she needed and that would have meant making the documentation that warranted that, to ensure that is what she received. Doctor Schifter was my mother’s primary care doctor.”); page 176, lines 19-23 (“Doctor Schifter became [the patient’s] primary care doctor for everything. He started writing the scripts for the [patient’s] asthma medication as well. He was her primary doctor.”); page 95, lines 3-7 (testifying that Dr. Schifter remained the patient’s treating physician over the periods of her falls).

⁷ See Plaintiff’s deposition tr at page 173, line 25 to page 174, line 3 (“Doctor Schifter was [the patient’s] primary doctor and he discussed that she would have [PCA] services around the clock.”); page 174, lines 8-10 (“[Dr. Schifter] was her primary care doctor[,] and our conversations were that she needed around the clock [PCA] care.”); page 175, lines 15-19 (“[Dr. Schifter] was [the patient’s] primary care doctor and our conversations were that she needed around the clock [PCA] care.”).

endorsed by Dr. Schifter as the patient's primary-care physician – the live-in PCA services (the “24-hour shift”). In the patient's case, the 24-hour shift meant that her aide – while staying in her home for a total of 24 hours per day from 8 a.m. of the immediately preceding day to 8 a.m. of the immediately following day – actually performed only 13 hours of the PCA services for the patient during the entirety of her 24-hour shift and, accordingly, was paid for only 13 hours of such work.⁸ Although the aide could not leave the patient's home for any time during the remaining 11 hours of her 24-hour shift, she was not required to (nor did she) perform any PCA services for the patient for the remainder of her shift. Further, the 24-hour shift schedule came with a proviso that the aide was assured of receiving five hours of uninterrupted sleep (in a separate, client-provided bed) during her 24-hour shift.⁹

The patient, however, was fragile and disoriented in the period following her ischemic stroke in January 2014 and before her fall in December 2014. According to plaintiff, “[the patient] couldn't be left unattended, because prior to the [December 2014] fall, if she wanted to get up out of the chair or something, she would have been in danger

⁸ See Rose Addo's deposition tr at page 23, lines 14-16 (“We start at 8:00 a.m. [At] 8:00 p.m.[.] I am finished. I am still there in the patient's house, but I am not working.”); page 24, lines 16-18 (“[When it is] 8:00 [o']clock [in the evening], . . . I take care of myself because I am tired. My time is off. It is 12 hours. They don't pay me [for] 24 hours.”); page 26, lines 14-18 (“We are there 24 hours, but we don't take care of the patient [for] 24 hours. We don't do that. [The] [a]gency does not pay us [for] 24 hours. That is why I tell you before [it's] 8:00 [a.m.] to 8:00 [p.m.]”). It was not relevant to the Court, at this stage of the litigation, whether Aide Rose Addo's deposition testimony that she was paid for only 12 hours (rather than for 13 hours) in the 24-hour shift, was accurate.

⁹ Two aides, working for three or four consecutive days, provided the patient with the PCA services throughout each week. See Plaintiff's deposition tr at page 114, lines 20-23 (“We didn't have just one person that lived there continuously. That person would need . . . a break. [I]t was . . . two people, two aides.”).

[of falling].”¹⁰ Plaintiff was dissatisfied with her mother’s 24-hour shift arrangement and, prior to her mother’s December 2014 fall, repeatedly complained to Integra that her mother needed additional hours in the form of a “split-shift” (the “split shift”).¹¹ Under the split-shift coverage, one aide worked for a patient from 8 a.m. to 8 p.m., while the other aide worked for the same patient from 8 p.m. to 8 a.m. of the following day, with each aide working (and getting paid for) 12 hours. Integra, however, repeatedly denied plaintiff’s verbal requests to convert her mother’s 24-hour shift schedule to split-shift coverage.

Following the patient’s June 2015 fall, plaintiff (through Integra) switched the PCA services from Home Health to nonparty Advantage Home Care.¹² The patient, however, continued to receive the 24-hour coverage after her June 2015 fall and until her death on January 22, 2017, at the age of 83.¹³ Integra never provided the patient with split-shift coverage.

On May 15, 2018, plaintiff, as the executor of the patient’s Estate, commenced this action against (among others) Dr. Schifter and Integra for medical malpractice and negligence, respectively. Dr. Schifter and Integra separately joined issue. After discovery

¹⁰ See Plaintiff’s deposition tr at page 169, line 22 to page 170, line 6; page 172, line 3.

¹¹ See Plaintiff’s deposition tr at page 149, line 19 to page 150, line 21 (testifying, among other things, that “[w]e [*i.e.*, plaintiff and her sister Renee Rappo] kept requesting split [or 12/12-hour] shifts. We wanted to have split shifts, for my mother’s safety. My mother was disoriented. [I]t would be for her own safety, to have a split shift, where you would have two staff members being alert for that second 12[-]hour shift.”). See also Renee Rappo’s deposition tr at page 40, lines 10-14 (“Because of my mother needing full support and care and for her safety, we [*i.e.*, Renee Rappo and plaintiff] wanted two twelve-hour shifts so the [aide] could be alert to care for [the patient] when she needed to be cared for.”); page 43, lines 2-3 (“I know [plaintiff] just kept asking for [the 12/12-hour shift] over and over and over again.”).

¹² See Plaintiff’s deposition tr at page 126, line 25 to page 127, line 24.

¹³ See Renee Rappo’s deposition tr at page 107, line 12 to page 108, line 14.

was completed and a note of issue was filed, the instant motions were timely served.

Plaintiff opposed both motions. Home Health opposed the branch of Integra's motion that sought summary judgment on its cross-claim for common-law/contractual indemnification as against it. Both motions were fully submitted on February 9, 2024, and the Court reserved decision.

Discussion

Dr. Schifter

“The requisite elements of proof in a medical malpractice action are a deviation or departure from accepted practice and evidence that such departure was a proximate cause of injury or damage.” *Hamilton v. Good Samaritan Hosp. of Suffern, N.Y.*, 73 A.D.3d 697, 900 N.Y.S.2d 368 (2d Dept., 2010). On a motion for summary judgment dismissing the complaint in a medical malpractice action, the defendant [physician] has the initial burden of establishing the absence of any departure from good and accepted medical practice or that the deviation was not a proximate cause of injury to the plaintiff. *Attia v. Klebanov*, 192 A.D.3d 650, 143 N.Y.S.3d 408 (2d Dept. 2021). Plaintiff in opposition to a defendant physician's motion for summary judgment must submit evidentiary facts or materials to rebut the defendant's prima facie showing.” *Piazza v. NYU Hosps. Ctr.*, 208 A.D.3d 515, 173 N.Y.S.3d 293 (2d Dept. 2022).

Here, contrary to Dr. Schifter's contention, his duty of care extended to the departures alleged by plaintiff. *See Lindenbaum v. Federbush*, 144 A.D.3d 869, 41 N.Y.S.3d 260 (2d Dept. 2016); *Feinstein v. Norwegian Christian Home & Health Ctr., Inc.*, 135 A.D.3d 699, 24 N.Y.S.3d 660 (2d Dept. 2016); *Trauring v. Gendal*, 121 A.D.3d

1097, 995 N.Y.S.2d 182 (2d Dept. 2014); *cf. Aaron v. Raber*, 188 A.D.3d 967, 136 N.Y.S.3d 114 (2d Dept. 2020). As the patient's primary-care physician during the period in question, Dr. Schifter involved himself with the home-health aspects of her care when he repeatedly and passively approved Integra's at-home assessments of the patient. *See Olgun v. Cipolla*, 82 A.D.3d 1186, 920 N.Y.S.2d 175 (2d Dept. 2011).

Further, "where a physician opines outside his or her area of specialization, a foundation must be laid tending to support the reliability of the opinion rendered." *Shectman v. Wilson*, 68 A.D.3d 848, 890 N.Y.S.2d 117 (2d Dept. 2009). Unless "such foundation is laid, the expert's opinion is of no probative value, and is therefore insufficient to meet a party's burden on a summary judgment motion." *Laughtman v. Long Is. Jewish Val. Stream*, 192 A.D.3d 677, 143 N.Y.S.3d 97 (2d Dept. 2021).

In the instant matter, the affirmation of Dr. Schifter's expert, Lance D. Rubel, M.D. ("Dr. Rubel"), a board-certified internal medicine physician with a sub-specialty in nephrology, lacked probative value because Dr. Rubel failed to aver that he had any specific training or expertise in geriatric medicine, or how he was (or became) familiar with the applicable standards of care in the specialized area of geriatric medicine.¹⁴ *See Corujo v. Caputo*, 224 A.D.3d 729, 205 N.Y.S.3d 174 (2d Dept. 2024); *Laughtman*, 192

¹⁴ *See* Dr. Rubel's Expert Affirmation, dated September 19, 2023, ¶ 1. The entirety of Dr. Rubel's expert qualifications was set forth in the introductory paragraph of his affirmation which read in full as follows: "I am a physician duly licensed to practice medicine in the State of New York. I received my medical degree from SUNY Downstate College of Medicine, Brooklyn, NY. I completed an Internal Medicine residency at Beth Israel Medical Center, New York, NY and a Nephrology fellowship at Stony Brook University Hospital, Stony Brook, NY. I am board-certified in Nephrology. *I am familiar with the standards of good and accepted medical care applicable to this case.*" (emphasis added). Dr. Schifter's counsel's assertion (in ¶ 16 of her Reply Affirmation) that Dr. Rubel was qualified to render an opinion in this case because he so affirmed in his affirmation, was nothing more than circular reasoning that was conclusory and unpersuasive.

A.D.3d 677; *Samer v. Desai*, 179 A.D.3d 860, 116 N.Y.S.3d 377 (2d Dept. 2020); *Boltyansky v. New York Community Hosp.*, 175 A.D.3d 1478, 108 N.Y.S.3d 188 (2d Dept. 2019); *Daniele v. Pain Mgt. Ct. of Long Is.*, 168 A.D.3d 672, 91 N.Y.S.3d 496 (2d Dept. 2019).¹⁵

Dr. Schifter's failure to proffer a prima facie showing required the denial of his motion for summary judgment, regardless of the sufficiency of plaintiff's opposition papers. *See Neumann v. Silverstein*, ___ A.D.3d ___, ___ N.Y.S.3d ___, 2024 N.Y. Slip Op 02712 (2d Dept. 2024).¹⁶

Integra

The determination of whether the patient qualified (or not) for split-shift coverage under New York law at the time of each of the patient's falls at issue was the type of decision that required specialized knowledge; namely, whether Integra's underlying assessments of the patient's PCA needs were (or were not) correct. Thus, expert evidence was required to determine whether Integra exercised due care in assessing the patient's PCA needs and whether Integra, on the basis of those assessments, exercised due care in

¹⁵ It would be for the jury to determine whether (as his counsel contended): (1) Dr. Schifter reasonably believed that the 24-hour schedule was the highest level of PCA coverage available, and (2) whether his PCA orders addressed to Integra affected the latter's PCA coverage for the patient.

¹⁶ Assuming the truth of Dr. Schifter's contention that Integra ultimately would have denied his recommendation for a higher level of the PSA coverage, such denial, in and of itself, would not have relieved him of his legal responsibility as her primary-care physician of recommending a higher level of PSA coverage in the first place. *See Feinstein*, 135 A.D.3d 699 ("The [defendant primary care physician] contend[ed] that she could not have departed from good and accepted medical practice by failing to recommend that fall precaution measures be implemented for the decedent's safety[,] since the evidence presented at trial established that the decedent resided in an assisted living facility which prohibited the use of such fall precaution measures. However, [plaintiff's expert] testified that the [defendant] was required to assess the decedent's needs based upon her medical and mental status and to make proper recommendations therefor, and *the fact that the decedent resided in an assisted living facility did not relieve the [defendant] of that responsibility.*") (emphasis added).

denying split-shift coverage to the patient before her December 2014 fall and in the ensuing six months preceding her June 2015 fall. *See generally De Long v. Erie County*, 60 N.Y.2d 296, 469 N.Y.S.2d 611 (1983) (“The guiding principle is that expert opinion is proper when it would help to clarify an issue calling for professional or technical knowledge, possessed by the expert and beyond the ken of the typical juror.”).¹⁷

The affidavit of Integra’s former Vice President and General Counsel, Ronald Spielberg, Esq. (“Attorney Spielberg”), was insufficient to meet its prima facie burden on the initial branch of its motion.¹⁸ Attorney Spielberg, not being a physician or other healthcare professional, failed to establish, prima facie, the truth of the fundamental proposition that he took for granted in reaching his opinion; namely, that Integra’s underlying nursing assessments of the patient’s PCA needs were correct. Contrary to Attorney Spielberg’s position, a jury – crediting the patient’s medical records – could find that Integra’s underlying nursing assessments of the patient’s PCA needs were understated or driven by the economics of spending less for her care. Without a reliable foundation that was supported by an independent medical expert opinion as to the correctness of Integra’s underlying nursing assessments of the patient’s PCA needs, Attorney Spielberg’s conclusion (in ¶ 12 of his affidavit) that “[Integra’s] decision to deny [the] 12-hour split shift care [to the patient] correctly applied the governing rules, regulations, and policies in effect during the period at issue,” was factually

¹⁷ *Accord Michael v. He Gin Lee Architect Planner, PLLC*, 153 A.D.3d 704, 61 N.Y.S.3d 236 (2d Dept. 2017), *lv. denied* 31 N.Y.3d 908, 79 N.Y.S.3d 97 (2018); *Herman v. Franke, Gottsegen, Cox Architects*, 155 A.D.3d 841, 63 N.Y.S.3d 701 (2d Dept. 2017).

¹⁸ *See* Attorney Spielberg’s Affidavit, dated October 16, 2023, ¶ 1.

unsupported.¹⁹ Accordingly, denial of the initial branch of Integra's motion for summary judgment was warranted for failure to establish its prima facie entitlement to judgment as a matter of law. *See Walker v. Jamaica Hosp. Med. Ctr.*, 208 A.D.3d 714, 173 N.Y.S.3d 630 (2d Dept. 2022).²⁰

The remaining branch of Integra's motion, which was for summary judgment on its cross-claim against Home Health for common-law/contractual indemnification, was equally devoid of merit. As to its request for common-law indemnification, Integra failed to eliminate all triable issues of fact as to whether the patient's falls (and her resulting injuries) were not due to its own negligence in failing to provide her with split-shift coverage. *See Randazzo v. Consolidated Edison Co. of New York, Inc.*, 177 A.D.3d 796, 114 N.Y.S.3d 78 (2d Dept. 2019).

As to Integra's alternative request for contractual indemnification, the right of the indemnitor "depend[ed] upon the specific language of the contract." *Sherry v. Wal-Mart*

¹⁹ The distinction between the correctness (or not) of Integra's underlying nursing assessments of the patient's PCA needs on the one hand and the application of the Medicaid law to such assessments on the other hand, seemed to have entirely eluded Integra's counsel, as indicated by the latter's contentions (in ¶¶ 15 and 17 of her Reply Affirmation) that: (1) Attorney Spielberger concurred, "on his independent review," with Integra's position that the patient was not entitled to split-shift coverage; and (2) Attorney Spielberger was "proffered as an expert on the actual issue at bar: whether Integra appropriately denied the plaintiff's request for enhanced care [for the patient] because, as shown by [Integra's] nursing assessments, [the patient] did not qualify for that care, and Medicaid would not cover it" (unnecessary capitalization omitted).

²⁰ Integra's reliance on *Tanzman v. Ghislaine*, 205 A.D.3d 837, 165 N.Y.S.3d 863 (2d Dept. 2022), was misplaced. Although one of the moving defendants in *Tanzman* was a managed long-term care plan, the Second Judicial Department circumscribed its rulings to the narrow holding that "the defendants [consisting, collectively, of the home-health aide, the home-healthcare agency, and the managed long-term care plan] established, prima facie, that they did not have a duty to monitor the decedent continuously throughout the night . . . , and that [, in any event,] any alleged breach of duty was not a proximate cause of the decedent's injuries." *Tanzman*, 205 A.D.3d 837. Significantly, however, the *Tanzman* Court did not address the point (which, unlike on appeal in *Tanzman*, was at issue here) whether the managed long-term care plan properly or improperly denied split-shift coverage to the decedent in the first place.

Stores E., L.P., 67 A.D.3d 992, 889 N.Y.S.2d 251 (2d Dept. 2009) (internal quotation marks omitted). “When a party is under no legal duty to indemnify, a contract assuming that obligation must be strictly construed to avoid reading into it a duty which the parties did not intend to be assumed.” *Hooper Assocs. v. AGS Computers*, 74 N.Y.2d 487, 549 N.Y.S.2d 365 (1989). The indemnification provision at issue specified that “[i]f each party claims and is entitled to indemnity from the other, the liability of each to the other will be their amount of comparative fault.”²¹ Because it was not determined (at this juncture) whether the patient’s falls (and her resulting injuries) arose out of an act or omission of Home Health, an award of summary judgment to Integra would not be appropriate. *See Langner v. Primary Home Care Servs., Inc.*, 83 A.D.3d 1007, 922 N.Y.S.2d 431 (2d Dept. 2011).

The Court considered the parties’ remaining contentions and found them either moot or unavailing considering its determinations.²²

²¹ The indemnification clause of Integra’s Provider Agreement with Home Health, effective as of August 1, 2013, read in full, as follows:

“Each party to this Agreement will defend, indemnify, and hold harmless the other party from any claim, demand, loss, lawsuit, settlement, judgment, fine, or other liability, and all related expenses which may accrue therefrom (including reasonable attorney’s fees), arising from or in connection with third party claims alleging any negligence or otherwise wrongful act or omission of a party, its agents[,], or employees in the performance of a party’s respective obligations under this Agreement. *If each party claims and is entitled to indemnity from the other, the liability of each to the other will be their amount of comparative fault.*”

See Provider Agreement, § 6.2, page 9 (Exhibit 1 to Attorney Spielberger’s Affidavit) (emphasis added).

²² Under the circumstances of this case, the Court declined defendants’ invitation, pursuant to CPLR 3212 (g), to “examin[e] the papers before it and, in the discretion of the court, . . . if practicable, [to] ascertain what facts are not in dispute or are incontrovertible.” As the leading commentator on the CPLR noted, “[t]his subdivision of the CPLR is not invoked frequently, as in the vast majority of actions the summary judgment procedure will result in its grant, or denial, and nothing further need be considered or said.” Hon. Mark C. Dillon, 2023 Supplementary Practice Commentary, McKinney’s Cons Laws of NY, Book 7B, CPLR C3212:52 (online edition).

Conclusion

Based on the foregoing, it is

ORDERED that Dr. Schifter’s motion for summary judgment is denied in its entirety, and it is further

ORDERED that both branches of Integra’s motion for summary judgment are denied in their entirety, and it is further

ORDERED that to reflect the prior stipulated dismissal of Personal Touch Home Aides of New York, Inc., from this action, the caption is amended to read as follows:

-----X

NOREEN SANTORO, as the Executor of the
Estate of KATHLEEN ROHAN,
Plaintiff,

-against-

HOME HEALTH CARE SERVICES OF NEW YORK, INC.,
INTEGRA MLTC, INC., and
DAVID SCHIFTER, M.D.,
Defendants.

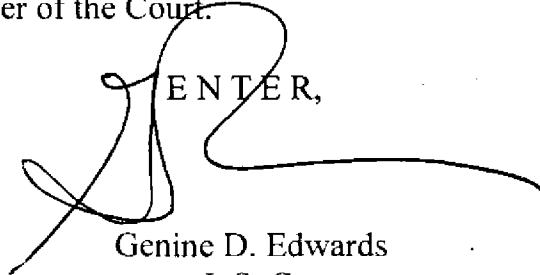
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; and it is further

ORDERED that plaintiff’s counsel shall electronically serve a copy of this Decision and Order with notice of entry on defendants’ respective counsel and shall electronically file an affidavit of service thereof with the Kings County Clerk, and it is further

ORDERED that all parties shall appear for an Alternative Dispute Resolution Conference on June 12, 2024, at 3:00 p.m.

This constitutes the Decision and Order of the Court.


ENTER,
Genine D. Edwards
J. S. C.