

**Asary v Rando**

2024 NY Slip Op 32974(U)

August 19, 2024

Supreme Court, Kings County

Docket Number: Index No. 3730/2015

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 19<sup>th</sup> day of August 2024.

P R E S E N T:

HON. GENINE D. EDWARDS,  
Justice.

-----X  
MARY ASARY, as Administratrix of the Estate of  
THERESA ARRA, deceased,

Plaintiff,

-against-

GIUSEPPE RANDO, M.D., JOCK A. AVOLIO, M.D.,  
ANIL P. HINGORANI, M.D., BETH ISRAEL  
MEDICAL CENTER and LUTHERAN MEDICAL  
CENTER,

Defendants.

DECISION AND ORDER

Index No. 3730/2015

Mot. Seq. #18 & 21

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

NYSCEF Doc Nos.:

Notices of Motion, Affirmations, and Exhibits.....14-31, 68-90  
Affirmations in Opposition and Exhibits.....94-97, 98-100  
Reply Affirmations and Exhibits.....102-103, 105

In this action to recover damages for medical malpractice, defendants

LUTHERAN MEDICAL CENTER (“LMC”) and ANIL P. HINGORANI, M.D. (“Dr. Hingorani”), separately moved for summary judgment, pursuant to CPLR §3212, dismissing all claims of MARY ASARY, as Administratrix of the Estate of THERESA ARRA, deceased (“Plaintiff”). Plaintiff opposed both motions.

**Summary**

Plaintiff’s mother, Theresa Arra (“decedent”), age 69, presented to LMC on June 17, 2013, with complaints of right foot pain since June 13<sup>th</sup>, when she stubbed her toe.

On June 21, 2013, nonparty Dr. Lucido amputated the decedent's right third and fourth toe and resected the metatarsal heads with assistance from Drs. Tamir Danilov and Khaled Madi. The following day, the podiatry department ("Podiatry") identified 50% fibrotic tissue at the site of the decedent's amputations with a small island of necrosis and no active bleeding. An ulcer on the right dorsal lateral aspect of decedent's right foot was also noted. Podiatry discussed the case with plaintiff and advised that circulation in her foot was compromised. Moreover, decedent's toes were not healing as expected and all three physicians indicated that decedent would need an amputation below the right knee. Decedent refused.

On June 27, 2013, Dr. Hingorani performed a procedure consisting of common femoral artery cannulation with ultrasound-guidance, aortoiliac angiogram, and selective cannulation of the right iliac, superficial femoral, popliteal, and peroneal artery and balloon angioplasty with stenting of the right tibioperoneal artery with infusion of tPA power pulse with right tibioperoneal artery thrombolysis and placement of infusion catheter. A catheter was left in the popliteal artery to infuse tPa and heparin. Because decedent was undergoing tPa thrombolysis, the remainder of the procedure was postponed, and the diagnosis was non-healing wounds. Decedent was scheduled to return to the operating room the following day for removal of sheath catheters and further assessment of her vasculature.

A right lower extremity angiogram was performed on June 28<sup>th</sup>. Decedent's toes and foot were not healing as expected and another vascular surgeon at LMC, Dr.

Holtman, gave a second opinion and determined that decedent would best be served by a below the knee amputation. Plaintiff subsequently arranged for decedent's transfer to Beth Israel Medical Center for further vascular intervention intended to salvage her right foot.

### Standard of Review

The essential elements of medical malpractice are: (1) a deviation or departure from accepted medical practice, and (2) evidence that such departure was a proximate cause of injury. *Neumann v. Silverstein*, 227 A.D.3d 914, 209 N.Y.S.3d 584 (2d Dept. 2024); *Dye v. Okon*, 203 A.D.3d 702, 160 N.Y.S.3d 641 (2d Dept. 2022). "On a motion for summary judgment dismissing the complaint in a medical malpractice action, the defendant [medical provider] has the initial burden of establishing the absence of any departure from good and accepted medical practice or that the plaintiff was not injured thereby." *Corujo v. Caputo*, 224 A.D.3d 729, 205 N.Y.S.3d 174 (2d Dept. 2024); *Sunshine v. Berger*, 214 A.D.3d 1020, 186 N.Y.S.3d 326 (2d Dept. 2023). If the movant fails to establish a prima facie case the motion must be dismissed. *Neumann v. Silverstein*, 227 A.D.3d 914.

### Discussion

#### LMC

LMC relied upon the affirmations of its experts, vascular surgeon William D. Suggs, M.D. ("Dr. Suggs") and podiatrist Dr. Thomas M. DeLauro ("Dr. DeLauro"), who both opined that, based on their review of the medical records, the deposition

testimony, and the pleadings, LMC did not depart from good and accepted medical practice in the care and treatment of the decedent, and that no alleged act or omission on its part caused or contributed to decedent's alleged injuries, unnecessary surgeries or right foot amputation. However, Dr. Suggs' opinion was conclusory with respect to the alleged "technical limitations" of the decedent's arterial duplex sonogram. Questions remain as to what the technical limitations are, did the technical limitations affect the sonogram, why was it appropriate to rely upon the sonogram in the face of the technical limitations, inter alia. *Rosenzweig v. Hadpawat*, \_\_ A.D.3d \_\_, 2024 WL 3434362 (2d Dept. 2024) ("defendants' experts' conclusory assertions were insufficient to make a prima facie showing"); *Neumann v. Silverstein*, 227 A.D.3d 914.

It is not the function of a Court deciding a summary judgment motion to make credibility determinations or findings of fact, but rather to identify material triable issues of fact, or point to the lack thereof. *Abruzzi v. Maller*, 221 A.D.3d 753, 766, 199 N.Y.S.3d 190, 202 (2d Dept. 2023). Furthermore, the Court is required to view the evidence in the light most favorable to the nonmovant. *Silveri v. Glaser*, 166 A.D.3d 1044, 87 N.Y.S.3d 254 (2d Dept. 2018). Considering that LMC failed to establish a prima facie case, this Court did not consider plaintiff's opposition. *Neumann v. Silverstein*, 227 A.D.3d 914.

**Dr. Anil P. Hingorani**

Dr. Hingorani contended that he is entitled to summary judgment because he was not involved in the procedures performed on June 21, 2013 or June 28, 2013.

Moreover, regarding the June 27<sup>th</sup> procedure, the decedent was appropriately treated and there were no departures from the standard of care. Dr. Hingorani asserted that none of the decedent's alleged injuries were proximately caused by anything he did or allegedly failed to do. Furthermore, the decedent gave informed consent for all procedures. In support of his position, Dr. Hingorani proffered the affirmation of James Lukan, M.D. ("Dr. Lukan"), a vascular surgeon.

Dr. Lukan opined that based upon his review of the medical records and the deposition testimony of all parties, the decedent was provided with the proper care in accordance with the standards of care. Dr. Lukan indicated that none of the care and treatment provided by Dr. Hingorani was the proximate cause of the decedent's alleged injuries. But Dr. Lukan's affirmation was wholly conclusory and did not sustain Dr. Hingorani's prima facie burden. *George v. Plotnitskiy*, 222 A.D.3d 730, 201 N.Y.S.3d 205 (2d Dept. 2023); *Martinez v. Orange Regional Medical Center*, 203 A.D.3d 910, 165 N.Y.S.3d 573 (2d Dept. 2022); *Nodar v. Pascaretti*, 200 A.D.3d 697, 158 N.Y.S.3d 211 (2d Dept. 2021) ("a defendant's expert affidavit that "merely recount[s] the treatment rendered and opine[s] in a conclusory manner that such treatment did not represent a departure from good and accepted medical practice" is insufficient to meet this burden.")

Since Dr. Hingorani failed to shoulder his prima facie burden, denial of his motion is warranted regardless of the sufficiency of the opposing papers. *Huichun Feng v. Accord Physicians, PLLC*, 194 AD3d 795, 796, 148 N.Y.S.3d 234 (2d Dept. 2021).

The Court considered defendants' remaining contentions and found them unavailing.

**Conclusion**

Based upon the foregoing it is

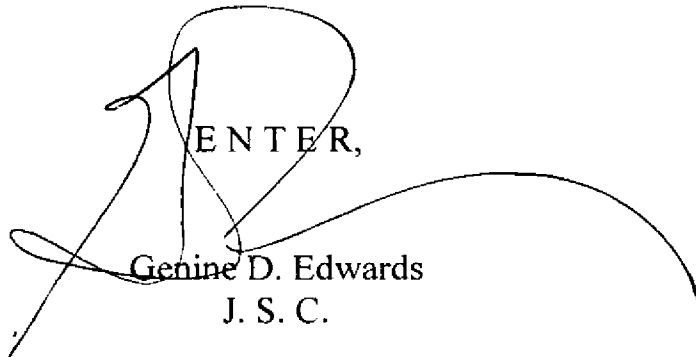
**ORDERED** that Lutheran Medical Center's motion for summary judgment is denied, and it is further

**ORDERED** that Anil P. Hingorani's motion for summary judgment is denied, and it is further

**ORDERED** that plaintiff's counsel shall electronically serve a copy of this Decision and Order with notice of entry on the other parties' 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 November 27, 2024, at 10:30AM.

This constitutes the Decision and Order of the Court.

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

Researched and drafted with assistance from Valeria Ortiz Marzan, a rising 3L at New York Law School.