

**Marata v DeGroat**

2024 NY Slip Op 35188(U)

February 22, 2024

Supreme Court, Bronx County

Docket Number: Index No. 20642/12

Judge: Joseph E. Capella

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.

**NEW YORK SUPREME COURT - COUNTY OF BRONX  
PART 23**

-----X  
**Rosario Marata, as Administrator of the Estate of  
Ricardo Marata, Deceased,**

Index #: **20642/12**  
**DECISION/ORDER**

Plaintiff,

- against -

Present:  
**Hon. Joseph E. Capella**  
J.S.C.

**Stephen F. DeGroat, Administrator of the Estate of  
Nadro T. San Diego, M.D., Jose T. Bonoan, M.D.,  
Metropolitan NY Medicine and Infectious Diseases, P.C.,  
Frederick Fallick, M.D., Jose L. Lantin, M.D., Gastroenterolgy  
of Westchester, OBS, PLLC, Teresa Hervada, M.D., Alan  
R. Go, M.D., Alan R. Go, M.D., P.C., Namrate Patel, M.D.,  
Bronx River Medical Associates, P.C., St. Joseph’s Hospital  
and Medexcel Emergency Physicians Services of Yonkers,**

Defendants.

-----X  
**St. Joseph’s Hospital,**

Third-Party Plaintiff,

- against -

**Luigi Arena, M.D., Jin S. Park, M.D., and St. Joseph  
Medical Imaging, P.C.,**

Third-Party Defendants.

-----X  
The following papers numbered 1 to 3 read on this motion dated March 3, 2023.

<u>PAPERS</u>	<u>NUMBERED</u>
NOTICE OF MOTION & AFFIRMATION	<b>1</b>
ANSWERING AFFIRMATION	<b>2</b>
REPLY AFFIRMATION	<b>3</b>

UPON THE FOREGOING CITED PAPERS, THE DECISION/ORDER IN THIS MOTION IS AS FOLLOWS:

Motion by third-party defendants, Luigi Arena, M.D., and St. Joseph Medical

Imaging, P.C. (collectively referred to as Dr. Arena), for summary judgment (CPLR 3212) and dismissal of third-party plaintiff's complaint which incorporates plaintiff's allegations of medical malpractice and wrongful death, is granted.<sup>1</sup> The facts for the underlying action can be summarized as follows. Decedent presented to the emergency room of third-party plaintiff, St. Joseph's Hospital, on January 28, 2009, with complaints of right upper quadrant pain and loss of appetite. A CT scan of the abdomen and pelvis was interpreted by Dr. Park, who noted that the colon was decompressed, raising the possibility of either stenosis or early obstruction of the distal small bowel loops. Decedent was treated with placement of an NG tube, IV fluids, medications, and discharged on January 29. During this admission, the attending physician (defendant-Dr. Bonoan) requested a surgical consultation from Dr. Go, who made a diagnosis of ileus and recommended follow up with the gastrointestinal consults after discharge.

Decedent presented again to St. Joseph's on November 22, 2009, with complaints of abdominal pain, chills, nausea and vomiting. A CT scan of the small bowel taken November 24 was interpreted by Dr. Park as normal. On November 25, Dr. Arena read two CT scans, one of the abdomen in which he found "no pancreatic mass is visible," and one of the pelvis in which he found to be "negative." Decedent was discharged on November 26. Decedent was admitted to St. Joseph's again on November 29, 2009, and at around 5:20 p.m., Dr. Go provided a surgical consultation which recommended

---

<sup>1</sup> Third-party defendant, Jin S. Park, M.D., was already granted summary judgment in an earlier decision dated January 25, 2024.

diagnostic laparoscopy for possible bowel restriction. On November 30, Dr. Arena read a CT scan of the abdomen and his impression was “generalized small bowel distention consistent with ileus or early small bowel obstruction.” Dr. Arena also read a CT scan of the pelvis, and his impression was once again “negative.” No surgery took place on November 30, but Dr. Hervada did meet decedent that day and placed a nasogastric tube. On the morning of December 1, decedent was found unresponsive by the overnight nursing staff, and required resuscitation. Dr. Go performed surgery on December 1 and 2, and on each occasion gangrenous bowel was removed. The bill of particulars by third-party plaintiff, St. Joseph’s Hospital, incorporates by reference plaintiff’s bill of particulars, which alleges that defendants failed to, *inter alia*, diagnose antiphospholipid syndrome, venous thrombosis and mesenteric ischemia on imaging causing gangrene of the small bowel, shock, multi-organ system failure and death.

Dr. Arena has the initial burden to establish a *prima facie* showing of an entitlement to summary judgment as a matter of law by tendering sufficient evidence to eliminate any material issues of fact. (*Alvarez v Prospect*, 68 NY2d 320 [1986].) If he does, then the burden shifts to third-party plaintiff to produce evidentiary proof in admissible form sufficient to create issues of fact to warrant a trial (*Alvarez*, 68 NY2d 320), and denial of summary judgment. In support of the motion, Dr. Arena provides an expert affirmation from Dr. Tariq N. Gill, a board certified radiologist, who opines that Dr. Arena’s interpretation and report of the November 25 CT was in accordance with

prevailing standards of care. Dr. Gill states that his review of the abdominal CT interpreted by Dr. Arena reveals a mild and resolving small bowel obstruction. According to Dr. Gill, Dr. Arena's description of "no bowel obstruction" is appropriate since there was no complete obstruction, and the partial obstruction was significantly improved that day. Dr. Gill opines that there is no evidence of antiphospholipid syndrome, venous thrombosis or mesenteric ischemia on this study.

Dr. Gill further opines that Dr. Arena's interpretation of the November 30 CT was complete and correct as it revealed another partial small bowel obstruction. According to Dr. Gill, "early" small bowel obstruction is synonymous with partial obstruction, and there is no evidence of antiphospholipid syndrome, venous thrombosis or mesenteric ischemia on this study. Dr. Gill opines that there is no evidence of small bowel gangrene on any of the studies he reviewed, and the radiological studies demonstrate that decedent had chronic, intermittent, partial small bowel obstructions. He concludes that it cannot be said that radiological act or omission by Dr. Arena caused any injury to decedent. Therefore, based on the aforementioned, the Court is satisfied that Dr. Arena has met his burden for summary judgment, (*Zuckerman v City of NY*, 49 NY2d 557 [1980]; *Kaffka v NY Hospital*, 228 AD2d 332 [1<sup>st</sup> Dept 1996]), which now shifts to third-party plaintiff to demonstrate that issues of fact exist to warrant a trial.

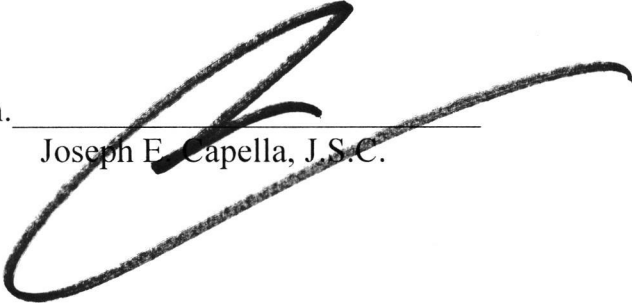
In opposing the opinions by Dr. Gill, third-party plaintiff must come forward with a qualified expert who can, *inter alia*, opine to a reasonable degree of medical certainty

that Dr. Arena departed from the standard of care, (*Canter v Mulnick*, 93 AD2d 751 [1<sup>st</sup> Dept 1983]), and (emphasis added) that such departure was a proximate cause of plaintiff's injuries. (*Mortensen v Memorial*, 105 AD2d 151 [1<sup>st</sup> Dept 1984].) In opposition, third-party plaintiff provides an expert affirmation by Dr. Victor Scarmato, a board certified radiologist, who opines that the November 25 CT imaging was under read by Dr. Arena for a high grade small bowel obstruction. Dr. Scarmato opines that the small bowel was dilated, with the colon collapsed, and dilated proximal loops are seen and collapsed distal loops of small bowel and colon are seen. Dr. Scarmato also opines that Dr. Arena's interpretation of the November 30 CT scan departed from accepted standards of radiology practice. According to Dr. Scarmato, failing to compare the November 30 CT scan to the prior abdominal CT scan of November 25, and failure to document the comparison in the report, was a departure. He opines that the November 30 CT scan reveals a high grade small bowel obstruction, with signs of ischemia, with fluid and edema in the mesentery. While Dr. Scarmato sets forth the departures allegedly committed by Dr. Arena with regard to the interpretations of the CT scans in question, even viewing the evidence in a light most favorable to third-party plaintiff, (*O'Sullivan v Presbyterian*, 217 AD2d 98 [1<sup>st</sup> Dept 1995]), he does not address causation. (*Mortensen*, 105 AD2d 151.) In other words, Dr. Scarmato does not establish that anything would have changed for decedent had the CT scans been interpreted as he suggests.

Therefore, based on the aforementioned, the motion by third-party defendants,

Luigi Arena, M.D., and St. Joseph Medical Imaging, P.C. (St. Joseph Imaging), for summary judgment (CPLR 3212) is granted, third-party plaintiff's complaint against Dr. Arena and St. Joseph Imaging is dismissed, and the Clerk is ordered to enter judgment accordingly. Dr. Arena and St. Joseph Imaging are directed to serve a copy of this decision with notice of entry upon all sides within 20 days of receipt of copy of same. This constitutes the decision and order of this court.

2/22/24  
Dated

Hon.   
Joseph E. Capella, J.S.C.