

Marata v DeGroat
2024 NY Slip Op 35211(U)
January 25, 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 <u>30001</u> (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 Index #: 20642/12
ROSARIO MARATA, as Administrator of the Estate of **DECISION/ORDER**
the Estate of RICARDO MARATA, Deceased,

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	1
ANSWERING AFFIRMATION	2
REPLY AFFIRMATION	3

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

Motion by third-party defendant, Jin S. Park, M.D., for summary judgment (CPLR

3212) and dismissal of third-party plaintiff's complaint, which alleges medical malpractice, wrongful death and indemnification/contribution is granted. The facts for the underlying action can be summarized as follows. Decedent presented to the emergency room of defendant, St. Joseph's Hospital (St. Joseph's), 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 NG tube, IV fluids, medications, and discharged on January 29. 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, and decedent was discharged on November 26. According to plaintiff's bill of particulars, defendants failed to properly perform and/or interpret abdominal x-rays and CT scans, and failed to diagnose mesenteric vein thrombosis and mesenteric ischemia.

The initial burden is on Dr. Park to make 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 it does, then the burden shifts to St. Joseph's 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. Park provides an expert affirmation from Dr.

Evan Mair, a board certified radiologist, who opines that the care and treatment rendered by Dr. Park was in accordance with good and accepted medical practice. Specifically, Dr. Mair opines that the CT scan and small bowel study interpreted by Dr. Park showed no evidence of either mesenteric vein thrombosis or mesenteric ischemia. Based on the aforementioned, the Court is satisfied that Dr. Park has met his burden for summary judgment, (*Zuckerman v City of NY*, 49 NY2d 557 [1980]; *Kaffka v NY Hospital*, 228 AD2d 332 [1st Dept 1996]), which now shifts to St. Joseph's to demonstrate that issues of fact exist to warrant a trial.

In opposition, St. Joseph's must provide, *inter alia*, an affidavit and/or affirmation from an expert(s) who opines to a reasonable degree of medical certainty that Dr. Park departed from the standard of care, and that such departure was a proximate cause of decedent's injuries and/or death. (*Mortensen v Memorial*, 105 AD2d 151 [1st Dept 1984].) St. Joseph's expert must address the specific assertions made by Dr. Park's expert, (*Lowe v Japal*, 170 AD3d 701 [2d Dept 2018]), and set forth a specific departure(s) that proximately caused decedent's injuries and/or death. (*Amsler v Verrilli*, 119 AD2d 786 [2d Dept 1986].) Here, plaintiff provides an expert affirmation by Dr. Victor Scarmato, a board certified radiologist, who opines that Dr. Park under read the CT scan of January 28 without specifically stating that this was a departure. He agrees with Dr. Park's opinion that there was an obstruction, but Dr. Scarmato opines that the image reveals a high-grade obstruction with edema in the mesentery and engorged blood

vessels that could signify a potential gangrenous process was underway to consider surgical exploration.

Dr. Scarmato also opines that Dr. Park's interpretation on November 24 that the small bowel series were within normal limits, was a departure. According to Dr. Scarmato, there were dilated loops of small bowel with a collapsed distal ileum and colon suggesting a partial small bowel obstruction. He also opines that the jejunum is on the right side of the abdomen and the ileum is on the left side, suggesting a partial malrotation. However, at no point does Dr. Scarmato establish any proximate cause between Dr. Park's interpretation and decedent's injuries and/or wrongful death. Given this deficiency, the motion for summary judgment is granted, the third-party action is dismissed as against Dr. Park, and the clerk is directed to enter judgment in Dr. Park's favor. Dr. Park is directed to serve a copy of this decision with notice of entry by first class mail upon plaintiff within 30 days of receipt of copy of same. This constitutes the decision and order of this court.

____ 1/25/24 ____
Dated

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