

Forgione v Rivas
2024 NY Slip Op 35605(U)
June 3, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 617856/2021
Judge: George M. Nolan
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SHORT FORM ORDER

INDEX No. 617856/2021
CAL. No. 202300683MMSUPREME COURT - STATE OF NEW YORK
I.A.S. PART 55 - SUFFOLK COUNTY**PRESENT:**Hon. GEORGE M. NOLAN
Justice of the Supreme CourtMOTION DATE 9/28/23
ADJ. DATE 2/15/24
Mot. Seq. # 002 MG-----X
ANTHONY FORGIONE,

Plaintiff,

- against -

DONI MARIE RIVAS, D.O., RACHEL
GOLDSTEIN, PA-C, PROGRESSIVE
EMERGENCY PHYSICIANS, PLLC,
PROGRESSIVE EMERGENCY PHYSICIANS
MANAGEMENT, LLC and LONG ISLAND
COMMUNITY HOSPITAL,Defendants.
-----XRAPPAPORT, GLASS, LEVINE &
ZULLO, LLP
Attorney for Plaintiff
1355 Motor Parkway
Islandia, New York 11749MCHENRY & HORAN
Attorney for Defendants Doni Segerivas,
D.O., Rachel Goldstein, PA-C, Progressive
Emergency Physicians, PLLC
626 RXR Plaza, 6th Floor, West Tower
Uniondale, New York 11556LEWIS JOHS AVALLONE AVILES, LLP
Attorney for Defendant Long Island
Community Hospital
1377 Motor Parkway, Suite 400
Islandia, New York 11749

Upon the following papers read on this e-filed motion for summary judgment: Notice of Motion/Order to Show Cause and supporting papers by defendants Segerivas, D.O., Goldstein PA-C, and Progressive Emergency Physicians, PLLC, dated September 1, 2023; Notice of Cross-Motion and supporting papers ____; Answering Affidavits and supporting papers ____; Replying Affidavits and supporting papers ____; Other ____; it is

ORDERED that the motion by defendants Doni Segerivas, D.O., sued herein as Doni Marie Rivas, D.O., Rachel Goldstein, PA-C, and Progressive Emergency Physicians, PLLC, for summary judgment dismissing the complaint against them and to amend the caption by striking their names is granted.

Forgione v Rivas, D.O.
Index No. 617856/2021
Page 2

This is a medical malpractice action to recover damages for injuries allegedly arising from the treatment of plaintiff Anthony Forgione by defendants Doni Segervias, D.O., sued herein as Doni Marie Rivas, D.O. ("Dr. Rivas"), Rachel Goldstein, PA-C ("PA Goldstein"), Progressive Emergency Physicians, PLLC, and Progressive Emergency Physicians Management LLC, on July 21, 2019. Plaintiff alleges that Dr. Rivas and PA Goldstein were negligent in, among other things, failing to properly treat him by suturing his left palm laceration without checking for underlying tendon or nerve damage and failing to obtain a consultation with a hand specialist. By so-ordered stipulation, the action was discontinued as against Long Island Community Hospital. The Court notes that defendant Progressive Emergency Physicians Management, LLC, failed to appear in the action.

The facts of this case, subject to some dispute, can be summarized as follows: on July 21, 2019, plaintiff presented to Long Island Community Hospital with complaints of a laceration to his left palm that he sustained by falling on a glass bottle. PA Goldstein examined plaintiff, and Dr. Rivas reviewed her documentation and agreed with the treatment plan. PA Goldstein closed the wound with four sutures to the subcutaneous fat and ten sutures to the skin. Dr. Rivas did not personally examine plaintiff.

Dr. Rivas, PA Goldstein, and Progressive Emergency Physicians now move for summary judgment dismissing the complaint against them on the grounds that they did not deviate from the standard of care in their treatment of plaintiff and that such treatment did not cause his injuries. Movants also seek to amend the caption by striking their names. They submit, in support of the motion, copies of the pleadings and the bills of particulars, the transcripts of the deposition testimony of plaintiff, Dr. Rivas, and PA Goldstein, medical records, and the expert affirmation of Joel Bartfield, M.D. In opposition, plaintiff argues that triable issues of fact remain as to whether Dr. Rivas and PA Goldstein departed from the accepted standards of care and whether their treatment caused his injuries. Plaintiff submits, in opposition, the transcript of the deposition testimony of Melanie Forgione and the expert affidavit of Peter J. Apel, M.D.

Healthcare providers owe a duty of reasonable care to their patients while rendering medical treatment; a breach of this duty constitutes medical malpractice (*Dupree v Giugliano*, 20 NY3d 921, 958 NYS2d 312 [2012]; *Scott v Uljanov*, 74 NY2d 673, 675, 543 NYS2d 369 [1989]; *Tracy v Vassar Bros. Hosp.*, 130 AD3d 713, 13 NYS3d 226 [2d Dept 2015]). To recover damages for medical malpractice, a plaintiff patient must prove both that his or her healthcare provider deviated or departed from good and accepted standards of medical practice, and that such departure proximately caused his or her injuries (*Gross v Friedman*, 73 NY2d 721, 535 NYS2d 586 [1988]; *Bilyavskiy v Parikh*, 197 AD3d 605, 152 NYS3d 721 [2d Dept 2021]; *Samer v Desai*, 179 AD3d 860, 116 NYS3d 377 [2d Dept 2020]). To establish prima facie entitlement to summary judgment in a medical malpractice action, a defendant healthcare provider must prove, through medical records and competent expert affidavits, the absence of any departure from good and accepted standards of medical practice, or, if there was a departure, that such departure did not proximately cause the plaintiff's injuries (*Santiago v Abramovici*, 226 AD3d 720, 208 NYS3d 289 [2d Dept 2024]; *Sunshine v Berger*, 214 AD3d 1020, 186 NYS3d 326 [2d Dept 2023]; *Mirshah v Obedian*, 200 AD3d 868, 158 NYS3d 226). The defendant must address and rebut specific allegations of malpractice set forth in the plaintiff's bill of particulars (*Mirshah v Obedian*, 200 AD3d 868, 158 NYS3d 226; *Huichun Feng v Accord Physicians, PLLC*, 194 AD3d 795, 148 NYS3d 234 [2d Dept 2021]).

Forgione v Rivas, D.O.
Index No. 617856/2021
Page 3

Movants' submissions established a prima facie case of entitlement to summary judgment dismissing the medical malpractice claim against them by demonstrating the absence of a deviation or departure from good and accepted standards of medical practice in the medical treatment rendered to plaintiff, and lack of causation (see *Borodkin v Friedwald Ctr. for Rehabilitation & Nursing, LLC*, 225 AD3d 657, 206 NYS3d 710 [2d Dept 2024]; *Sunshine v Berger*, 214 AD3d 1020, 186 NYS3d 326; *Mirshah v Obedian*, 200 AD3d 868, 158 NYS3d 226). Dr. Bartfield opines that PA Goldstein properly examined plaintiff's left hand by checking for sensation, and checking the flexion and extension of each of plaintiff's fingers. He explains that the initial testing of the median nerve includes testing sensation in the fingers individually, and that testing of the muscles and tendons includes strength testing, such as active movement. Dr. Bartfield states that visualization of nerves and tendons in a laceration of the proximal aspect of the palm is often not possible in an emergency room setting. Dr. Bartfield opines that the resolved tingling in plaintiff's fingers was likely neuropraxia, a temporary stunning of the nerve that causes temporary tingling. He also opines that, based on plaintiff's signs and symptoms, including resolved neuropraxia, sensation in all digits, and flexion and extension of all fingers, there was no indication of injury to the FDS or median nerve. Dr. Bartfield opines that as the physical examination revealed no deficits in range of motion or sensation, PA Goldstein was not required to arrange for a follow-up with a hand specialist. Finally, Dr. Bartfield opines that Dr. Rivas properly supervised PA Goldstein when she reviewed PA Goldstein's documentation of plaintiff's presentation, agreed with her treatment plan, and co-signed the chart entry.

Movants having met their initial burden on the motion, the burden shifted to plaintiff to submit admissible evidence raising triable issues of fact (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Santiago v Abramovici*, 226 AD3d 720, 208 NYS3d 289). In his affidavit, Dr. Apel opines that Dr. Rivas and PA Goldstein did not perform a proper history or examination. He states that the full extent of plaintiff's injury was present when plaintiff presented to the emergency department and that it did not further develop or progress anytime after. He states that it is not possible that plaintiff had any sensation in his thumb, index finger, or middle finger on July 21st, as the September 3, 2019 surgical report notes a complete laceration of the median nerve. Dr. Apel opines that any testimony or medical records describing normal sensation in plaintiff's left hand on July 21st is erroneous. He further opines that Dr. Rivas and PA Goldstein's failure to timely refer plaintiff to a hand specialist led to a delay in care and deprived him of a higher likelihood of a superior outcome, and was a substantial factor in causing his injuries, as he would have been able to have a direct suture of the severed nerve ends and avoided need for a graft. However, Dr. Apel's conclusory affidavit failed to raise a triable issue of fact, as it failed to address specific assertions made by Dr. Bartfield and to explain the reasoning for the opinions contained therein (see *Barnaman v Bishop Hucles Episcopal Nursing Home*, 213 AD3d 896, 184 NYS3d 800 [2d Dept 2023]; *Arra v Kumar*, 200 AD3d 949, 159 NYS3d 108 [2d Dept 2021]).

As "business corporations are liable under the doctrine of respondeat superior for the torts of their employees committed within the scope of the corporate business . . . professional service corporations are similarly vicariously liable for the torts of their servants" (*Poplawski v Gross*, 81 AD3d 801, 802-803, 917 NYS2d 247 [2d Dept 2011], quoting *Connell v Hayden*, 83 AD2d 30, 46, 443 NYS2d 383 [2d Dept 1981]). Here, the evidence demonstrated that Progressive Emergency Physicians is a professional limited liability company; thus, it is vicariously liable under the doctrine of respondeat superior for wrongful acts committed by its employees and agents (see *Poplawski v Gross*, 81 AD3d 801, 917 NYS2d 247; *Keitel v Kurtz*, 54

Forgione v Rivas, D.O.
Index No. 617856/2021
Page 4

AD3d 387, 866 NYS2d 195 [2d Dept 2008]; *Monir v Khandakar*, 30 AD3d 487, 818 NYS2d 224 [2d Dept 2006]). However, as the submissions demonstrated that its employees, Dr. Rivas and PA Goldstein, were not negligent in plaintiff's medical treatment, the complaint as asserted against Progressive Emergency Physicians is dismissed.

Accordingly, the motion is granted.

The caption shall be amended by deleting Dr. Rivas, PA Goldstein, and Progressive Emergency Physicians, and the action is severed and shall continue as against the remaining defendant. The caption of this action is hereby amended to read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
ANTHONY FORGIONE,

Plaintiff,

-against-

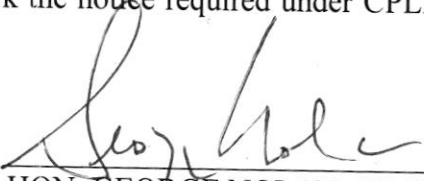
PROGRESSIVE EMERGENCY PHYSICIANS
MANAGEMENT, LLC and LONG ISLAND
COMMUNITY HOSPITAL,

Defendants.

-----X

The movants shall promptly serve a copy of this order with notice to its entering upon the parties and upon the clerk of the court, who shall mark the court's records to reflect the amended caption. The movants also shall promptly serve upon the county clerk the notice required under CPLR 8019 (c) to amend the caption of this action as specified in this order.

Dated: June 3, 2024



HON. GEORGE NOLAN, J.S.C.

____ FINAL DISPOSITION X NON-FINAL DISPOSITION