

Rodriguez v Bagloo

2025 NY Slip Op 30289(U)

January 24, 2025

Supreme Court, New York County

Docket Number: Index No. 805381/2020

Judge: John J. Kelley

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY **PART** **IAS MOTION 56EFM**

Justice

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ADA RODRIGUEZ,

Plaintiff,

- v -

MELISSA BAGLOO, M.D., AMANDA POWERS, M.D., NEW YORK-PRESBYTERIAN HOSPITAL, THE UNIVERSITY HOSPITAL OF COLUMBIA AND CORNELL, MOUNT SINAI MORNINGSIDE as Successor in Interest to MOUNT SINAI ST. LUKE'S, MOUNT SINAI WEST as Successor in Interest to ST. LUKE'S ROOSEVELT HOSPITAL, MOUNT SINAI HEALTH SYSTEM as Successor in Interest to ST. LUKE'S ROOSEVELT HOSPITAL CENTER, UNIVERSITY HOSPITAL OF COLUMBIA UNIVERSITY COLLEGE OF PHYSICIANS & SURGEONS, DOMINGO NUNEZ, M.D., and NYU LANGONE RADIOLOGY-NRAD,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90

were read on this motion to/for SUMMARY JUDGMENT/X-MOTION SUMMARY JUDGMENT.

In this action to recover damages for medical malpractice based on alleged departures from good and accepted practice, and under the theory of res ipsa loquitur, the plaintiff moves pursuant to CPLR 3212 for summary judgment on the issue of liability as against the defendants Melissa Bagloo, M.D., Amanda Powers, M.D., New York-Presbyterian Hospital, the University Hospital of Columbia and Cornell (NYPH), Mount Sinai Health System, as Successor in Interest to St. Luke's Roosevelt Hospital Center, University Hospital of Columbia University College of Physicians and Surgeons (P&S), and NYU Langone Radiology-NRAD.¹ Bagloo, Powers,

¹ In an order dated March 31, 2022 (SEQ 001), this court granted the motion of the defendants Domingo Nunez, M.D., Mount Sinai Morningside (Morningside), as successor in interest to Mount Sinai St. Luke's, and Mount Sinai West (West), as successor in interest to St. Luke's-Roosevelt Hospital, to dismiss, as time-barred, the complaint insofar as asserted against them.

NYPH, and P&S (collectively the NYPH defendants) oppose the motion, and cross-move for summary judgment dismissing the complaint insofar as asserted against them on the ground that the action is time-barred as to them.² The plaintiff opposes the cross motion. The cross motion is granted, and the complaint is dismissed insofar as asserted against the NYPH defendants. The motion is denied as academic.

On June 22, 2009, the plaintiff underwent a gastric lap band procedure at NYPH, which involved the placement of a laparoscopic lap band inside of her abdomen. The plaintiff alleged in her complaint that, on September 6, 2011, NYPH surgeons Bagloo and Powers performed a laparoscopic surgical removal of the gastric lap band, but that they “failed to remove the entire lap band.” She followed up with the former defendant St. Luke’s Roosevelt Hospital on May 2, 2012, complaining of abdominal pain. On November 21, 2019, surgeon Panagiotis Manolas, M.D., removed “translucent tubing measuring 2.2 cm in length and 0.9 cm in diameter” from the plaintiff’s abdomen. The crux of the plaintiff’s claim is that Bagloo and Powers committed malpractice when they failed to remove all of the band material. She further contended that she timely commenced this action because the tubing constituted a “foreign object” that she only discovered when it was removed in 2019, thus bringing her claim within the purview of the “foreign object” exception to the two-year-and-six month medical malpractice limitations period CPLR 214-a, which provides that, where a medical malpractice action

“is based upon the discovery of a foreign object in the body of the patient, [it] may be commenced within one year of the date of such discovery or of the date of discovery of facts which would reasonably lead to such discovery.”

The initial issue that must be determined here is whether the subject tubing was a foreign object, or, rather, was a component of an implantation or fixation device and, hence,

² The court notes that, although the plaintiff named Mount Sinai Health System, as Successor in Interest to St. Luke’s Roosevelt Hospital Center, as a defendant, and served it with process on December 14, 2020 pursuant to Business Corporation Law § 306, that defendant never answered the complaint, and the plaintiff has never taken any steps to enter a default judgment against it. In addition, the plaintiff named NYU Langone Radiology-NRAD as a defendant, but has not established that she ever served that defendant with process.

whether the action is time-barred insofar as asserted against the NYPH defendants. If the tubing is deemed to be a foreign object, the plaintiff timely commenced this action on November 23, 2020, which was the first business date one year after her discovery of the object on November 21, 2019 (see General Construction Law §§ 25-a, 58). If the tubing is deemed to be an integral part of an implantation or fixation device, this action is time-barred as against the NYPH defendants, inasmuch as the plaintiff was obligated to commence the action against them on or before March 6, 2014, or two years and six months after the September 6, 2011 surgery (see *id.*), which was the last date that she treated with the NYPH defendants.

It is well settled that the movant on a summary judgment motion “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985] [citations omitted]). The motion must be supported by evidence in admissible form (see *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]), as well as the pleadings and other proof such as affidavits, depositions, and written admissions (see CPLR 3212). The facts must be viewed in the light most favorable to the non-moving party (see *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). In other words, “[i]n determining whether summary judgment is appropriate, the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility” (*Garcia v J.C. Duggan, Inc.*, 180 AD2d 579, 580 [1st Dept 1992]). Once the movant meets his or her burden, it is incumbent upon the non-moving party to establish the existence of material issues of fact (see *Vega v Restani Constr. Corp.*, 18 NY3d at 503). A movant's failure to make a prima facie showing requires denial of the motion, regardless of the sufficiency of the opposing papers (see *id.*; *Medina v Fischer Mills Condo Assn.*, 181 AD3d 448, 449 [1st Dept 2020]).

“The drastic remedy of summary judgment, which deprives a party of his [or her] day in court, should not be granted where there is any doubt as to the existence of triable issues or the issue is even ‘arguable’” (*De Paris v Women's Natl. Republican Club, Inc.*, 148 AD3d 401, 403-

404 [1st Dept 2017]; see *Bronx-Lebanon Hosp. Ctr. v Mount Eden Ctr.*, 161 AD2d 480, 480 [1st Dept 1990]). Thus, a moving defendant does not meet his or her burden of affirmatively establishing entitlement to judgment as a matter of law merely by pointing to gaps in the plaintiff's case. He or she must affirmatively demonstrate the merit of his or her defense (see *Koulermos v A.O. Smith Water Prods.*, 137 AD3d 575, 576 [1st Dept 2016]; *Katz v United Synagogue of Conservative Judaism*, 135 AD3d 458, 462 [1st Dept 2016]).

The NYPH defendants preserved their statute of limitations defense by raising it in their respective answers (see CPLR 3211[e]), and, thus, they may now invoke that affirmative defense as a basis for their summary judgment cross motion (see *McLearn v Cowen & Co.*, 60 NY2d 686, 689 [1983]; *Rich v Lefkovits*, 56 NY2d 276, 282 [1982]; *Higgins v Goyer*, 2018 NY Slip Op 33520[U], *2, 2018 NY Misc LEXIS 9607, *3 [Sup Ct, Rensselaer County, Nov. 1, 2018]; *Lusitano Enters., Inc. v Horton Bros., Inc.*, NY Slip Op 32011[U], 2018 NY Misc LEXIS 3587 [Sup Ct, Suffolk County, Aug. 14, 2018]). In connection with a motion for summary judgment dismissing a complaint as time-barred, “a defendant must establish, prima facie, that the time within which to sue has expired. Once that showing has been made,” the burden shifts to the plaintiff to raise a triable issue of fact as to “whether the statute of limitations has been tolled, an exception to the limitations period is applicable, or the plaintiff actually commenced the action within the applicable limitations period” (*Flintlock Constr. Servs., LLC v Rubin, Fiorella & Friedman, LLP*, 188 AD3d 530, 531 [1st Dept 2020], quoting *Quinn v McCabe, Collins, McGeough & Fowler, LLP*, 138 AD3d 1085, 1085-1086 [2d Dept 2016]; see *MLB Sub I, LLC v Clark*, 201 AD3d 925, 927 [2d Dept 2022]; *Murray v Charap*, 150 AD3d 752 [2d Dept 2017]; *Precision Window Sys., Inc. v EMB Contr. Corp.*, 149 AD3d 883, 884 [2d Dept 2017]; *Guzy v New York City*, 129 AD3d 614, 615 [1st Dept 2015]; *Williams v New York City Health & Hosps. Corp.*, 84 AD3d 1358 [2d Dept 2011]; *Rakusin v Miano*, 84 AD3d 1051 [2d Dept 2011]).

As relevant here, “[i]n determining whether an object which remains in the patient constitutes a ‘foreign object,’ the courts should consider the nature of the materials implanted in

a patient, as well as their intended function” (*Rockefeller v Moront*, 81 NY2d 560, 564 [1993]; see *Leace v Kohlroser*, 151 AD3d 707, 709 [2d Dept 2017]). As the Court of Appeals has explained it,

“Several general principles may be distilled from our cases considering the foreign object exception: (1) tangible items (clamps, scalpels, sponges, etc.) introduced into a patient's body solely to carry out or facilitate a surgical procedure are foreign objects if left behind (*Flanagan [v Mount Eden Gen. Hosp.*, 24 NY2d 427 (1969)], and dicta in *Rockefeller [v Moront*, 81 NY2d 560 (1993)] and *LaBarbera [v New York Eye & Ear Infirmary*, 91 NY2d 207, 212 (1998)]; (2) the alleged failure to timely remove a fixation device does not transform it into a foreign object (*Rodriguez [v Manhattan Medical Group, P.C.*, 77 NY2d 217 (1990)] and *LaBarbera*); (3) nor does a fixation device become a foreign object if inserted in the wrong place in the body (*Rockefeller*); (4) failure to timely remove a fixation device is generally akin to misdiagnosis (*Rodriguez*), and improper placement of a fixation device is most readily characterized as negligent medical treatment (*Rockefeller*); and (5) the legislature, in enacting CPLR 214-a, directed the courts not to exploit the rationale supporting *Flanagan* to expand the discovery exception for foreign objects beyond the rare *Flanagan* fact pattern, and explicitly commanded that chemical compounds, fixation devices and prosthetic aids or devices are never to be classified as foreign objects ([*Matter of Beary [v City of Rye*, 44 NY2d 398 (1978) [reversing, among other decisions,] (*Merced v New York City Health & Hosps. Corp.*, 56 AD2d 553 [1st Dept 1977]), *Rodriguez*, *Rockefeller*, *LaBarbera* and the legislative history of CPLR 214-a)”

(*Walton v Strong Mem. Hosp.*, 25 NY3d 554, 571 [2015]).

In *Walton*, the Court of Appeals determined that a fragment from a catheter that had been placed solely for the purpose of recording atrial pressure during a patient's heart surgery, more than 22 years before it was discovered, was a foreign object for purposes of the discovery rule under CPLR 214-a. Specifically, the Court concluded that, inasmuch as the catheter performed no securing or supporting role during or after the surgery, it was not a fixation device, and was not categorically excluded from the foreign object exception of CPLR 214-a.

Here, in connection with their cross motion, the NYPH defendants established their prima facie entitlement to judgment as a matter of law by submitting or relying upon the pleadings, the plaintiff's bills of particulars, relevant medical records, and the transcripts of the parties' deposition testimony. They also submitted an attorney's affirmation, a statement of allegedly undisputed material facts, a memorandum of law, and an affidavit from the defendant

Bagloo, in which she concluded that the tubing was a fixation device rather than a foreign object.

Bagloo first explained that the plaintiff's initial June 22, 2009 surgery involved the placement of a "gastric band, tubing, and port." She asserted that

"[a] gastric band is a tube-like object that is placed around the upper portion of the stomach to form an adjustable ring that is then connected to a port via tubing. The gastric band, tubing, and port that were placed during the surgery on June 22, 2009 were implanted as a measure to restrict the amount of food Ms. Rodriguez could eat in order to facilitate weight loss. The placement of those objects in Ms. Rodriguez's body served that purpose."

Bagloo further averred that the purpose of the September 6, 2011 gastric lap-band removal procedure that she had performed, with the assistance of the defendant Powers, "was to extract all of the gastric lap band material, *meaning the gastric band, tubing, and port*" (emphasis added). Hence, she opined that any tubing that had been placed during the June 22, 2009 surgery was a purposefully placed fixation device, and not a foreign object. In this respect, she expressly rejected the plaintiff's contention that she either introduced a "tube-like" object into the plaintiff's abdomen during the 2011 surgery, or that she left such an object in the plaintiff's abdomen when removing the gastric lap-band material. Specifically, she asserted that

"[a]t no point did I introduce any translucent plastic tubing, including tubing measuring 2.2 cm in length and 0.9cm in diameter. Rather, the procedure involved removing the gastric band, its tubing, and the port. I did so by employing standard medical instruments: a laparoscope, harmonic scalpel, and laparoscopic trocars, as documented in my operative report. None of these instruments are created with translucent plastic tubing with the aforementioned measurements."

Bagloo expressly asserted that, in any event, the band, tubing, and port "were removed in their entirety," and that she further documented that all counts were correct at the conclusion of the case, meaning that "any foreign body that I introduced during the case was accounted for at the conclusion of the operative procedure."

Bagloo nonetheless asserted that, even if she had left some tubing in the plaintiff's abdomen after the conclusion of the September 6, 2011 surgery, she satisfied the applicable

standard of care in the performance of the surgery, inasmuch as she employed “excellent surgical technique and proper visualization,” as described in her own operative report. In any event, she opined that a

“portion of the gastric band, tubing, and/or port can be left behind as a known risk of the complicated surgical lap band removal procedure even when, as I believe was the case here, this procedure is performed in a manner consistent with good and accepted medical practice.”

In opposition to the NYPH defendants’ cross motion, the plaintiff, submitted, among other things, the affirmation of surgeon Michael Stanley Drew, M.D. Dr. Drew agreed with Bagloo that the June 22, 2009 surgery involved the placement of a gastric band, tubing, and lab-band port. He then quoted from the operative report referable to the June 22, 2009 procedure, which stated that “[t]he band tubing was brought out through a subcutaneous tunnel to the 15mm port site. The band tubing was attached to the Lap-Band port.” He further noted that, according to Bagloo’s September 6, 2011 operative report, the gastric lap band was removed “in [its] entirety via the 15mm port.”

Although Dr. Drew disagreed with Bagloo that the tubing had, in fact, been removed in its entirety on September 6, 2011, he did not contradict Bagloo’s opinion that the tubing was an integral part of the lap-band material, and he did not expressly state that the tubing had no remaining function after the June 22, 2009 surgery. Rather, he explicitly agreed with Bagloo that

“the . . . object that was removed from the Plaintiff Ada Rodriguez’s abdominal wall *was a part of the gastric lap band* (namely a portion of the tube) initially placed inside the Plaintiff on June 22, 2009”

“It is without a doubt that the ‘translucent plastic tubing’ removed from the Plaintiff Ada Rodriguez’s abdominal wall on November 21, 2019 *was a piece of the gastric lab band* (more specifically, a part of the tube) that should have been completely removed during the course of the September 6, 2011 laparoscopic removal surgery conducted by the Defendant Melissa Bagloo, M.D., and the Defendant Amanda Power, M.D.

“The above-noted object *clearly constitutes fragments remaining* from the removal of the original gastric lap band by the surgeons, the Defendant Dr. Melissa Bagloo, M.D., and the Defendant Amanda Powers, M.D.”

(emphasis added). Although Dr. Drew asserted that “the above-noted object served no intended continuing treatment purpose” subsequent to the September 6, 2011 removal surgery, he did not opine, let alone suggest, that it served no intended clinical purpose between June 22, 2009, when it was first placed, and September 6, 2011, when it was removed. In other words, he did not contradict Bagloo’s opinion that the tubing was an integral, functioning part of the gastric lap band, as opposed to an object like the catheter in *Walton*, which should have been removed as part of the initial surgical process, but nonetheless was permitted to remain in the patient’s body, while serving no medical function during the time it remained there.

Since the NYPH defendants established, prima facie, that the subject tubing was an implantation or fixation device, and not a foreign object, they established that this action was time-barred as to them. Because the plaintiff failed to raise a triable issue of fact with respect to this issue, the NYPH defendants’ cross motion must be granted, and the complaint must be dismissed insofar as asserted against them.

Inasmuch as the complaint is being dismissed as time-barred insofar as asserted against the NYPH defendants, the plaintiff’s motion for summary judgment on the complaint has been rendered academic. Even were the court to consider the motion on the merits, it must be denied.

Generally, “[e]xpert testimony is necessary to prove a deviation from accepted standards of medical care and to establish proximate cause” (*McAlwee v Westchester Health Assoc., PLLC*, 163 AD3d 549, 551 [2d Dept 2018], quoting *Burns v Goyal*, 145 AD3d 952, 954 [2d Dept 2016]). Because the plaintiff did not support her initial summary judgment motion with an expert affirmation or affidavit, she has not established her prima facie entitlement to judgment as a matter of law in connection with her medical malpractice cause of action that was premised upon a specific departure from good and accepted practice.

With respect to the medical malpractice cause of action premised upon the doctrine of res ipsa loquitur,

“[w]idespread consensus exists . . . that a narrow category of factually simple medical malpractice cases requires no expert to enable the jury reasonably to conclude that the accident would not happen without negligence. Not surprisingly, the oft-cited example is where a surgeon leaves a sponge or foreign object inside the plaintiff’s body”

(*Kambat v St. Francis Hosp.*, 89 NY2d 489, 496 [1997]; see Prosser and Keeton, Torts § 40, at 256-257 [5th ed]). Thus, although a plaintiff asserting a medical malpractice claim usually must demonstrate that the defendant physician deviated from acceptable medical practice, and that such deviation was a proximate cause of the plaintiff’s injury (see *Rivera v Kleinman*, 16 NY3d 757, 759, [2011]; *Frye v Montefiore Med. Ctr.*, 70 AD3d at 24; *Terranova v Finklea*, 45 AD3d at 572; *Zellar v Tompkins Community Hosp.*, 124 AD2d 287, 288-289 [3d Dept 1986]), the theory of res ipsa loquitur may be applied to occurrences “[w]here the actual or specific cause of an accident is unknown” (*Kambat v St. Francis Hosp.*, 89 NY2d at 494). Under such circumstances, “a jury may . . . infer negligence merely from the happening of an event and the defendant’s relation to it” (*id.*; see *States v Lourdes Hosp.*, 100 NY2d 208, 211-212 [2003]; Restatement [Second] of Torts § 328D). To establish a prima facie case of negligence in support of a res ipsa loquitur charge, plaintiff must establish three elements:

“[1.] the event must be of a kind that ordinarily does not occur in the absence of someone’s negligence;

“[2.] it must be caused by an agency or instrumentality within the exclusive control of the defendant; and

“[3.] it must not have been due to any voluntary action or contribution on the part of the plaintiff”

(*Kambat v St. Francis Hosp.*, 89 NY2d at 494; see *James v Wormuth*, 21 NY3d 540, 545-546 [2013]; *Ebanks v New York City Tr. Auth.*, 70 NY2d 621, 623 [1987]; Prosser and Keeton, Torts § 39 at 244 [5th ed]). Res ipsa loquitur, a doctrine of ancient origin (see *Byrne v Boadle*, 2 H & C 722, 159 Eng Rep 299 [1863]), derives from the understanding that some events ordinarily do

not occur in the absence of negligence (*see id.*; *see also Dermatossian v New York City Tr. Auth.*, 67 NY2d 219, 226 [1986]). Once a plaintiff satisfies the burden of proof on these three elements, the *res ipsa loquitur* doctrine permits the jury to infer negligence from the mere fact of the occurrence (*see States v Lourdes Hosp.*, 100 NY2d at at 211-212; *Kambat v St. Francis Hosp.*, 89 NY2d at 495). Thus, for example, where “a foreign object is left in the body of the patient, or the patient, while anesthetized, experiences an unexplained injury in an area which is remote from the treatment site” (*McCarthy v Northern Westchester Hosp.*, 139 AD3d 825, 827 [2d Dept 2016] [citation omitted]), the invocation of the doctrine of *res ipsa loquitur* may be warranted (*see id.*; *see also Mattison v OrthopedicsNY, LLP*, 189 AD3d 2025, 2027 [3d Dept 2020]; *Swoboda v Fontanetta*, 131 AD3d 1042, 1045 [2d Dept 2015]; *DiGiacomo v Cabrini Med. Ctr.*, 21 AD3d 1052, 1054 [2d Dept 2005]; *Escobar v Allen*, 5 AD3d 242, 243 [1st Dept 2004]; *Leone v United Health Servs.*, 282 AD2d 860, 860-861 [3d Dept 2001]; *Hill v Highland Hospital*, 142 AD2d 955, 956 [4th Dept 1988]).

Here, however, the plaintiff failed to establish, *prima facie*, that the tubing that was removed in 2019 was a foreign object to which the doctrine of *res ipsa loquitur* could be applied. Even if she had made such a showing, the NYPH defendants would have raised a triable issue of fact with Bagloo’s affidavit, in which she asserted that the tubing was not a foreign object. Hence, the plaintiff’s motion would have been denied even if the action had been commenced in a timely fashion as to the NYPH defendants.

Moreover, the plaintiff, in her motion, made no attempt to establish her *prima facie* entitlement to judgment as a matter of law as against the defendants Mount Sinai Health System, as Successor in Interest to St. Luke’s Roosevelt Hospital Center, and NYU Langone Radiology-NRAD. The court, on its own motion, now dismisses the complaint insofar as asserted against those defendants for the reasons explained below.

A defendant is deemed to be in default when he or she fails timely to “appear” or “plead” in an action (CPLR 3215[a]; see *Manhattan Telecom. Corp. v H & A Locksmith, Inc.*, 109 AD3d 699, 700-701 [1st Dept 2013]). CPLR 3215(c) recites that:

“If the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the court shall not enter judgment but shall dismiss the complaint as abandoned, without costs, upon its own initiative or on motion, unless sufficient cause is shown why the complaint should not be dismissed. A motion by the defendant under this subdivision does not constitute an appearance in the action.”

On December 14, 2020, the plaintiff caused the amended summons and complaint to be served upon the defendant Mount Sinai Health System, as Successor in Interest to St. Luke’s Roosevelt Hospital Center, by delivering two copies of the summons and complaint to the New York State Secretary of State. That defendant thus had 30 days after December 14, 2020 (see CPLR 3012[c]), or until January 13, 2021, within which to answer, move with respect to the complaint, or otherwise appear in the action. That defendant did not answer, move, or appear in the action by that date and, in fact, has never answered, moved, or appeared. It thus was in default as of January 14, 2021. The plaintiff, in turn, thus had until January 14, 2022, that is, one year thereafter (see General Construction Law § 58) to take proceedings for the entry of a default judgment against that defendant. The plaintiff, however, failed to “take any proceedings for the entry of judgment” against that defendant by that date. “The language of CPLR 3215(c) is not discretionary, and a claim for which a default judgment is not sought within the requisite one-year period will be deemed abandoned” (*Wells Fargo Bank, N.A. v Martinez*, 181 AD3d 470, 471 [1st Dept 2020]; see *HSBC Bank USA, N.A. v Stone*, 174 AD3d 866, 867 [2d Dept 2019]). Consequently, the complaint must be dismissed against Mount Sinai Health System, as Successor in Interest to St. Luke’s Roosevelt Hospital Center.

Where, as here, it appears that NYU Langone Radiology-NRAD was never properly or timely served with a copy of the summons and complaint within 120 days after the November 23, 2020 commencement of the action (see CPLR 306-b), and it made no appearance in this

action, the court never obtained jurisdiction over it, and dismissal of the complaint insofar as asserted against it is warranted (*see Diaz v Perez*, 113 AD3d 421, 421 [1st Dept 2014]; *see also Peralta v City of New York*, 206 AD3d 415, 416 [1st Dept 2022]). The court notes that the plaintiff never sought an extension of time within which to serve process upon NYU Langone Radiology-NRAD. Even if she did serve process upon it within the 120-day period required by CPLR 306-b, that is, on or before March 22, 2021 (see General Construction Law §§ 20, 25-a), more than one year has elapsed since that defendant would have been in default for failing to answer the complaint. Since the plaintiff did not take steps to enter a default judgment against NYU Langone Radiology-NRAD within that one-year period, CPLR 3215(c) would, under those circumstances, compel the court to dismiss the complaint as against that defendant as well (*see Wells Fargo Bank, N.A. v Martinez*, 181 AD3d at 471; *HSBC Bank USA, N.A. v Slone*, 174 AD3d at 867). Hence, the complaint is dismissed insofar as asserted against NYU Langone Radiology-NRAD.

Accordingly, it is

ORDERED that the plaintiff's motion for summary judgment on the issue of liability is denied; and it is further,

ORDERED that the motion of the defendants Melissa Bagloo, M.D., Amanda Powers, M.D., New York-Presbyterian Hospital, the University Hospital of Columbia and Cornell, and University Hospital of Columbia University College of Physicians and Surgeons for summary judgment dismissing the complaint insofar as asserted against them is granted, and the complaint is dismissed insofar as asserted against Melissa Bagloo, M.D., Amanda Powers, M.D., New York-Presbyterian Hospital, the University Hospital of Columbia and Cornell, and University Hospital of Columbia University College of Physicians and Surgeons; and it is further,

ORDERED that the action is severed as against Melissa Bagloo, M.D., Amanda Powers, M.D., New York-Presbyterian Hospital, the University Hospital of Columbia and Cornell, and University Hospital of Columbia University College of Physicians and Surgeons; and it is further,

ORDERED that the Clerk of the court shall enter judgment dismissing the complaint insofar as asserted against the defendants Melissa Bagloo, M.D., Amanda Powers, M.D., New York-Presbyterian Hospital, the University Hospital of Columbia and Cornell, and University Hospital of Columbia University College of Physicians and Surgeons; and it is further,

ORDERED that, on the court's own motion, the complaint is dismissed insofar as asserted against the defendants Mount Sinai Health System, as Successor in Interest to St. Luke's Roosevelt Hospital Center, and NYU Langone Radiology-NRAD.

This constitutes the Decision and Order of the court.

1/24/2025
DATE

JOHN J. KELLEY, J.S.C.

MOTION:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION			
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
CROSS MOTION:	<input checked="" type="checkbox"/>	CASE DISPOSED			<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE