

Gonzalez v Bellevue Hosp.

2025 NY Slip Op 30915(U)

March 13, 2025

Supreme Court, New York County

Docket Number: Index No. 805298/2022

Judge: Judith N. McMahon

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JUDITH N. MCMAHON PART 30M

Justice

RAQUEL ALMANZAN GONZALEZ, Plaintiff, - v - BELLEVUE HOSPITAL, NEW YORK CITY HEALTH AND HOSPITAL CORPORATION Defendant. INDEX NO. 805298/2022 MOTION DATE 03/06/2025 MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 50, 51, 52, 56, 57, 58, 59, 60, 61

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER)

Upon the foregoing papers, it is ordered that the motion for summary judgment by the defendants, NEW YORK CITY HEALTH AND HOSPITALS CORPRATION s/h/a BELLEVUE HOSPITAL and NEW YORK CITY HEALTH AND HOSPITALS CORPORATION (hereinafter "NYCHH") is granted to the extent that plaintiffs' "Second" Cause of Action for lack of informed consent is severed and dismissed, together with all of plaintiffs' claims regarding "negligence in conducting a C-section delivery followed by laparotomy and omentectomy in its OR on December 21, 2021" (see Plaintiffs' Verified Bill of Particulars; NYSCEF Doc. 5). The balance of defendant's CPLR 3212 motion is denied. The doctrine of res ipsa loquitur is inapplicable to this case and as such, plaintiffs' cross motion for summary judgment is likewise denied.

The plaintiffs' expert affirmations fail to address claims of lack of informed consent or negligence in NYCHH's performance of the cesarean section, laparotomy and omentectomy.

In this medical malpractice action, plaintiff Raquel Almanzan Gonzalez alleges that during her third (elective) cesarean section and subsequent emergent laparotomy and omentectomy on December 21, 2021, the defendant “left a foreign material in the form of excess suture material in the incisional cavity” (*see* NYSCEF Doc. No. 5) causing infection, injury and requiring further treatment. It is undisputed that on January 18, 2022, during a return visit to the non-party NYU Langone Brooklyn OBGYN for treatment of a pelvic abscess, Dr. Kin Ching Kong “noted prolene type suture hanging out the wound opening, and omental type tissue in the wound. Rinsed with sterile water and repacked. Pt was instructed to go back to NYU-Brooklyn ER for further eval. Pt aware and agreed” (*see* NYSCEF Doc. No. 42).

NYCHH moves for judgment dismissing the complaint on the grounds that it did not depart from the applicable standard of care, that the **absorbable** suture material was intentionally left in plaintiff’s pelvic cavity and used for a medical purpose (*i.e.*, the suture material was knotted several times), and that plaintiff’s injury was the result of “two co-occurring events”: the not unexpected breakdown at the site of the “T” incisions, and the internal sutures losing strength and starting to dissolve” (*see* NYSCEF Doc. No. 14, para. 20; Doc. No. 15, para. 15). Plaintiffs oppose the motion and cross move for judgment on liability as a matter of law, maintaining that the prolene material which plaintiff claims had clean ends and no surgical knots, was non-absorbable and was negligently left behind during the surgeries.

To prevail on a motion for summary judgment, the proponent must make *prima facie* showing of entitlement to judgment as a matter of law, through admissible evidence demonstrating the absence of any material issue of fact (*see Klein v. City of New York*, 89 NY2d 833 [1996]; *Ayotte v. Gervasio*, 81 NY2d 1062 [1993]; *Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]). Here, NYCHH has established entitlement to summary judgment by submitting the

factually based and detailed expert affirmations of Rachel Kassenoff, M.D., and Vance L. Smith, M.D., both of whom who conclude within a reasonable degree of medical certainty that NYCHH adhered to the standards of good and accepted medical practice, and that plaintiff's purported injuries did not result from any alleged malpractice.

Once the movant has met his or her burden on the motion, the nonmoving party must establish the existence of a material issue of fact (*see Vega v. Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). "The drastic remedy of summary judgment, which deprives a party of his 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'" (*DeParis v. Women's Natl. Republican Club, Inc.*, 148 AD3d 401 [1st Dept. 2017]; [internal citations omitted]). "It is not the court's function on a motion for summary judgment to assess credibility" (*Ferrante v. American Lung Assn.*, 90 NY2d 623, 631 [1997]).

Here, plaintiffs have raised a triable issue of fact as to whether the "surplus suture material" was indeed a foreign object that was negligently left behind after the surger(ies), and whether the material was non-absorbable. Material issues of fact which cannot be determined as a matter of law preclude an award of summary judgment. While evidence of injury alone does not mean that defendants were negligent (*see Landau v. Rappaport*, 306 AD2d 446 [1st Dept. 2003]), here the plaintiffs have raised a triable issue sufficient to defeat that branch of NYCHH's motion for summary judgment on their medical malpractice cause of action.

As previously indicated, however, NYCHH's motion is granted to the extent of severing and dismissing plaintiffs' cause of action for lack of informed consent.

Plaintiffs' cross motion for summary judgment on the issue of liability is denied, as this record does not establish a *prima facie* case of negligence in support of a *res ipsa loquitur* charge

(see, e.g., *McCarthy v. Northern Westchester Hospital*, 139 AD3d 825 [2d Dept. 2016]). The question remains whether the suture material was a non-absorbable foreign object unintentionally left behind, or whether it was an absorbable suture used for a medical purpose that was intentionally placed. That issue must be resolved by the finder of fact.

Accordingly, it is

ORDERED that the motion for summary judgment by NYCHH is granted to the extent that the “Second” cause of action is severed and dismissed, and the balance of the motion is denied; and it is further

ORDERED that plaintiffs’ claims as contained in the Verified Bill of Particulars as to negligent performance of the cesarean section, laparotomy and omentectomy are severed and dismissed; and it is further

ORDERED that plaintiffs’ cross motion is denied; and it is further

ORDERED that the Clerk enter judgment dismissing plaintiffs’ “Second” cause of action; and it is further

ORDERED that the parties appear for a virtual pre-trial conference via Microsoft Teams on **June 10, 2025, at 10:30 a.m.**

3/13/2025
DATE

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

HON. JUDITH N. MCMAHON

Hon. Judith N. McMahon
J.S.C.