

Smoluchowski v Shah

2025 NY Slip Op 32542(U)

June 25, 2025

Supreme Court, New York County

Docket Number: Index No. 805338/2022

Judge: Arthur F. Engoron

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

PRESENT: HON. ARTHUR F. ENGORON **PART** **37**

Justice

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<p>PETER SMOLUCHOWSKI,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>RAJIV SHAH, LEANDRA KROWSOSKI, BELLEVUE HOSPITAL CENTER, NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,</p> <p style="text-align: center;">Defendants.</p> <p>-----X</p>	<p>INDEX NO. <u>805338/2022</u></p> <p>MOTION DATE <u>01/31/2025</u></p> <p>MOTION SEQ. NO. <u>002</u></p>
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**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, were read on this motion for SUMMARY JUDGMENT.

Upon the foregoing documents, and for the reasons hereinbelow, the motion for summary judgment is granted in part and denied in part.

Background

This medical malpractice action arises out of treatment that defendants, Rajiv Shah D.O., Leandra Krowsoski M.D., Bellevue Hospital Center (“Bellevue”), and New York City Health and Hospitals Corporation (“NYCHH”), rendered to plaintiff, Peter Smoluchowski, from March 15, 2022 to March 22, 2022, while he was in defendants’ medical care. NYSCEF Doc. No. 1.

On March 15, 2022, upon plaintiff’s arrival at defendant Bellevue’s Emergency Department, the clinical indication noted that plaintiff, then 70 years old, had, inter alia, a “history of diabetes [and] coronary artery disease” and presented with “abdominal pain, one month of significant constipation and no bowel movement for four days.” NYSCEF Doc. Nos. 56, 57.

On March 16, 2022, defendant Dr. Krowsoski performed an exploratory laparotomy¹ on plaintiff “due to a concern for stercoral colitis and abscess.” NYSCEF Doc. No. 56. On March 20, 2022, the laparotomy was reopened, with a fascial closure. *Id.*

On March 22, 2022, plaintiff was transferred to NYU Langone. NYSCEF Doc. No. 56. After plaintiff moved to Maryland, on June 22, 2022, he underwent another operation by non-party Dr. Sayan at Anne Arundel Medical Center, consisting of “abdominal wall exploration, evacuation

¹ An exploratory laparotomy is “surgery to open up the abdomen” and “is done to find the cause of problems (such as pain or bleeding) that testing could not diagnose. It’s also used when an abdominal injury needs emergency medical care.” Cleveland Clinic, <https://my.clevelandclinic.org/health/treatments/24767-laparotomy> [last accessed June 17, 2025].

of large abdominal wall possible postoperative abscess and debridement of subcutaneous tissue underlying fascia for removal of large amount of previously placed suture material.” NYSCEF Doc. No. 43. On June 29, 2022, plaintiff was discharged. Id.

On October 25, 2022, plaintiff commenced the instant action against defendants by filing a verified complaint with two causes of action: (1) negligence; and (2) lack of informed consent. Id. Plaintiff alleges, inter alia, that: defendant Dr. Shah (a radiologist and employee of defendant Bellevue and NYCHH) improperly interpreted the March 15, 2022 CT scan of plaintiff’s abdomen and pelvis; on March 16, 2022, Dr. Krowsoski (a surgeon and employee of defendant Bellevue and NYCHH) unnecessarily performed an exploratory laparotomy on patient; and as a result, plaintiff was caused to undergo, inter alia, “a reopening of laparotomy” and to suffer personal injuries, such as emotional pain, anxiety, anguish and distress. NYSCEF Doc. No. 1.

On November 16, 2022, defendants Bellevue and NYCHH, and defendants Krowsoski and Shah filed separate verified answers, each containing a general denial and six affirmative defenses. NYSCEF Doc. Nos. 8, 10, 12.

On January 31, 2025, defendants collectively moved for summary judgment dismissing plaintiff’s complaint. NYSCEF Doc. No. 41.

In support of the motion, defendants submit, inter alia, expert affirmations of diagnostic radiologist Dr. Zina Ricci, and general surgeon Dr. Dan Seth Reiner. NYSCEF Doc. Nos. 44, 45. Dr. Ricci explains that stercoral colitis, which plaintiff’s experts agree the March 15, 2024 CT Scan (the “CT Scan”) indicated, “occurs when firm stool rubs against the rectal lining and causes pressure ulceration and colitis” and that it “carries a high mortality rate when complicated by bowel perforation.” Id. Dr. Ricci opines, inter alia, that Shah’s actions and interpretation of the CT Scan of plaintiff’s abdomen and pelvis were “entirely within” the standard of radiologic care, that Shah did not make the decision to perform surgery, and that no action or inaction by Shah proximately caused any injury to plaintiff. NYSCEF Doc. No. 44.

Additionally, Dr. Ricci opines that there is no merit to plaintiff’s claim that the CT Scan was improperly read as showing a perforation, as there is no evidence of bowel perforation indicated in Shah’s radiologic report. Id. Dr. Ricci notes that the report only states “small foci of air, possibly representing a mural abscess,” which she states refers to possible gas in the bowel wall, not outside the bowel wall. Id.

Defendant Krowsoski testified at her deposition that she reviewed the CT Scan, agreed with defendant Shah’s findings, and determined that surgery was warranted to prevent a perforation of the affected area. NYSCEF Doc. No. 52. Krowsoski further testified that she had a preoperative conversation with plaintiff. Id. On March 15, 2022, plaintiff signed a consent form attesting to, inter alia, that the risks, benefits, side effects and alternatives” to the procedure were discussed with and explained to him. NYSCEF Doc. No. 56 at page 670.

Dr. Reiner opines that Krowsoski’s actions following her review of Shah’s report, “in personally reviewing the films” and in collaborating with two additional Bellevue radiologists “fully met [the] standard of care.” NYSCEF Doc. No. 45. Dr. Reiner further opines that plaintiff’s case is

based on hindsight and that “operating on stercoral colitis before there is a perforation is highly preferred as once a perforation occurs, the mortality rate is much higher.” Id.

Dr. Reiner further opines that the fact that plaintiff “subsequently developed a wound infection in June of 2022 is not indicative of a departure from the standard of care but, rather, a risk of the procedure, which the patient understood and consented to prior to the initial March 16, 2022 surgery.” NYSCEF Doc. No. 45. Dr. Reiner concludes that the exploratory laparotomy “was the proper treatment” and that Krowsoski and NYCHH “fully comported with the standard of care in recommending and performing the March 16, 2022, exploratory laparotomy.” Id.

In opposition, plaintiff submits expert affirmations of a radiologist (“Expert 1”) and a vascular surgeon (“Expert 2”). NYSCEF Docs. No. 64. 65. Expert 1 states that upon an interpretation of stercoral colitis, the standard of care requires the radiologist “to look for potential perforation or abscess formation, which would indicate emergent treatment including surgical intervention.” NYSCEF Doc. No. 64. Expert 1 opines that here “there is no indication of a mural abscess in the right lateral rectal wall” and that defendant Shah “misread and improperly interpreted the March 15, 2022 study as suspicious for a mural abscess.” Id. Simply put, Expert 1 opines that Shah’s misinterpreted the CT Scan by concluding that plaintiff’s condition was worse than it actually was. Expert 1 concludes that Shah “departed from good and accepted medical practice in the improper interpretation of” the CT Scan. Id.

Expert 2 opines, inter alia, that “surgery was unnecessary” as “suspicion of stercoral colitis is not an indication for surgery” and that it was Shah’s “finding of suspicion for mural abscess that was critical to the evaluation of this case[,]” which resulted in the surgery. NYSCEF Doc. No. 65. Expert 2 points out, pursuant to plaintiff’s hospital records, that plaintiff’s post-operative diagnosis is constipation with “no evidence of abscess or stercoral colitis” (NYSCEF Doc. No. 67). Id.

Additionally, Expert 2, citing plaintiff’s deposition testimony (NYSCEF Doc. No. 50), opines that defendant Krowsoski failed to “obtain a proper informed consent prior to performing the exploratory laparotomy” as “[g]ood and accepted medical practice requires that a patient be advised the risks, benefits and alternatives of all proposed procedures.” Id. Expert 2 opines that Krowsoski also departed from “good and accepted practice” by not speaking directly with Shah prior to performing surgery, regardless of the fact that Shah’s shift had ended. Id. Expert 2 further opines that the “entirety of the clinical picture suggested non-perforated stercoral colitis that should have been initially treated with disimpaction and enemas.” Id.

In reply and further support of their motion, defendants argue, inter alia, that Shah did not proximately cause plaintiff’s injury, as his role was limited to interpreting the CT Scan, and that “he never saw or examined plaintiff and did not make the decision to operate.” NYSCEF Doc. No. 72.

Additionally, defendants contend that plaintiff’s Expert 2, a vascular expert, is not qualified to render opinions against Krowsoski, a critical care surgeon. Defendants note that Expert 2 did not address the consent form signed by plaintiff. Id. Defendants argue that, although the surgery

ultimately showed no abscess or stercoral colitis, Krowsoski “used her best medical judgment at the time.” Id.

Discussion

General Principles

“[A] physician need not be a specialist in a particular field if he nevertheless possesses the requisite knowledge necessary to make a determination on the issues presented.” Joswick by Joswick v Lenox Hill Hosp., 161 AD2d 352, 355 (1st Dept 1990). Defendants’ argument that plaintiff’s Expert 2, a vascular surgeon, is not qualified to render opinions against Krowsoski, a critical-care surgeon, fails. A physician need not be a specialist in a particular field as long as they possess the requisite knowledge, and in any event, Expert 2 completed a fellowship in critical care surgery and thus could be considered an expert in Krowsoski’s field. NYSCEF Doc. No. 65.

“Where a defendant makes a prima facie case of entitlement to summary judgment dismissing a medical malpractice action by submitting an affirmation from a medical expert establishing that the treatment provided to the injured plaintiff comported with good and accepted practice, the burden shifts to the plaintiff to present evidence in admissible form that demonstrates the existence of a triable issue of fact.” Bartolacci-Meir v Sassoon, 149 AD3d 567, 570 (1st Dept 2017). “Generally, the opinion of a qualified expert that a plaintiff’s injuries were caused by a deviation from relevant industry standards would preclude a grant of summary judgment in favor of the defendants. To defeat summary judgment, the expert’s opinion must demonstrate the requisite nexus between the malpractice allegedly committed and the harm suffered.” Anyie B. v Bronx Lebanon Hosp., 128 AD3d 1, 3 (1st Dept 2015) (internal citations and quotation marks omitted). “[A] doctor is not liable in negligence merely because a treatment, which the doctor as a matter of professional judgment elected to pursue, proves ineffective or a diagnosis proves inaccurate. Not every instance of failed treatment or diagnosis may be attributed to a doctor’s failure to exercise due care.” Nestorowich v Ricotta, 97 NY2d 393, 398 (2002).

Negligence

The Court rejects defendants’ argument that Shah could not have proximately caused plaintiff’s alleged injuries, as Shah radiological report largely led to plaintiff’s exploratory laparotomy.

The affirmations from plaintiff’s experts create triable issues of fact pursuant to: (1) Expert 1’s attestation that Shah “departed from good and accepted medical practice in the improper interpretation” of the CT Scan, and that Shah’s incorrect interpretation of a suspected mural abscess “is a departure from the standard of care and a proximate cause of injury as it directly indicates unnecessary surgical intervention” (NYSCEF Doc. No. 64); (2) Expert 2’s attestation that Krowsoski, the surgeon, departed from “good and accepted practice” by not speaking directly with Shah prior to performing surgery, and that such departure was a “proximate cause” of the injuries alleged (NYSCEF Doc. No. 65). Plaintiff’s affirmation from Expert 2 also states, inter alia, that plaintiff “should have been initially treated with disimpaction and enemas” rather than “proceeding with surgery[.]” NYSCEF Doc. No. 65.

The Court has considered defendants remaining arguments and finds them to be unavailing and/or non-dipositive.

Accordingly, summary judgment must be denied as to the negligence cause of action only.

Lack of Informed Consent

The lack of informed consent cause of action must be dismissed, as the pre-operative consent form signed by plaintiff makes clear that he gave an informed consent to the March 16, 2022, exploratory laparotomy (NYSCEF Doc. No. 56). Neither of plaintiff’s experts raised any issues as to plaintiff’s consent pursuant to the March 15, 2022 CT Scan, interpreted by Shah. Expert 2’s opinion that Krowsoski failed to “obtain a proper informed consent prior to performing the exploratory laparotomy” does not raise an issue of fact, as it is refuted by documentary evidence, which in addition to the consent form includes hospital records (NYSCEF Doc. No. 56) and Krowsoski’s testimony (NYSCEF Doc. No. 52), illustrating that plaintiff was advised of the risks, benefits, and alternatives to the March 16, 2022 exploratory laparotomy. Therefore, summary judgment must be granted as to the lack of informed consent cause of action only.

Conclusion

Thus, the motion for summary judgment by defendants, Rajiv Shah D.O., Leandra Krowsoski M.D., Bellevue Hospital Center, and New York City Health and Hospitals Corporation, is hereby denied in part and granted in part as follows: (1) denied as to plaintiff’s negligence cause of action; and (2) granted as to plaintiff’s lack of informed consent cause of action; and the Clerk is hereby directed to enter judgment accordingly.

6/25/2025
DATE


~~NON ARTHUR F. ENGORON~~
ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	<input type="checkbox"/>
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