

Swartz v Chason

2025 NY Slip Op 32627(U)

July 9, 2025

Supreme Court, New York County

Docket Number: Index No. 805208/2021

Judge: Kathy J. King

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

PRESENT: HON. KATHY J. KING PART 06

Justice

-----X

LIA SWARTZ,

Plaintiff,

- v -

ERIC CHASON, and CPS DENTISTRY,

Defendants.

-----X

INDEX NO. 805208/2021

MOTION DATE 10/24/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62 were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing papers, Defendant Eric Chason, DDS (“Dr.Chason”) and CPS Dentistry¹ move for an Order pursuant to CPLR 3212 granting summary judgment and dismissing Plaintiff’s complaint with prejudice and directing the Clerk to enter judgment in favor of the Defendant.

Plaintiff Lia Swartz opposes the motion.

BACKGROUND

This dental malpractice action arises from the dental care and treatment rendered to Plaintiff by the Moving Defendant. The gravamen of Plaintiff’s allegations is that Dr. Chason was negligent from December 2, 2020 to January 8, 2021, and, as a result of his departures from the

¹ While the notice of motion indicates that Defendant CPS Dentistry moves for summary judgement, the moving papers are silent as to requested relief as to said Defendant. The Court also notes that Plaintiff’s complaint does not make any allegations against said Defendant. Accordingly, this branch of Defendant’s motion is denied as moot.

standard of care, Plaintiff sustained injuries causing severe dental pain and the need to undergo several surgeries.

Plaintiff Lia Swartz first presented to Dr. Chason on December 2, 2020, for a consultation regarding esthetic restoration to correct the appearance of her teeth. After examining Plaintiff and performing a series of full mouth x-rays, Dr. Chason recommended root canal treatment for tooth number 9 and root canal retreatment for teeth Nos.4, 5 and 14, prior to proceeding with any aesthetic restoration. Plaintiff agreed to a portion of the treatment plan in that she agreed to the placement of crowns on teeth Nos. 4 through 12 and 14 and whitening of her non-treated teeth. The treatment plan included gingivectomies on teeth Nos. 8 and 9 to achieve a better aesthetic outcome.

On December 15, 2020, Plaintiff's second visit, Dr. Chason performed the gingivectomies, removed the Plaintiff's existing crowns, and prepared her teeth for placement of new crowns. Her previous dental work, largely performed in her native Georgia before she came to the United States, was substandard, necessitating Dr. Chason to rebuild significant portions of her teeth. He provided the Plaintiff with a temporary bridge to use while the permanent crowns were being fabricated. Plaintiff alleges that she was never told about the gingivectomies.

Following the treatment on December 15, 2020, Plaintiff complained of pain via text messaging and returned to Dr. Chason the following day. After examining the Plaintiff, he offered to make a new temporary prosthetic from a different material. On December 18, 2020, Dr. Chason placed a new temporary bridge which he split into 3 separate pieces.

Plaintiff was next seen on December 29, 2020, when they discussed her options for aesthetic crown styles. The next visit was on January 6, 2021 for try-ins of her crowns before they were finalized. The crowns for teeth Nos. 9 and 10 did not sit properly and Plaintiff expressed

dissatisfaction with the aesthetics of the crowns. However, she refused treatment, including, *inter alia*, allowing Dr. Chason to take new impressions of her mouth for the purpose of correcting these issues.

Plaintiff's final visit to Dr. Chason took place on January 8, 2021, after Plaintiff told Dr. Chason, via text, that she had lost faith in him and had obtained a second opinion. Dr. Chason offered to have his colleague, Dr. Frank DiCicco, complete the treatment plan, or, in the alternative, to give Plaintiff a refund of monies she had paid to date for the treatment rendered. Dr. Chason also prescribed to Plaintiff an antibiotic to treat any potential infection at tooth No 9. Plaintiff met with Dr. DiCicco on or about January 11, 2021, but decided not to complete the treatment with him.

The record shows that, following her treatment with Dr. Chason, Plaintiff consulted with multiple non-party dentists, including Dr. Duong and Dr. Rubenstein at Bensonhurst Dental, who performed root canal treatments between February 26, 2021 and May 7, 2021; Dr. Siegel, who first treated Plaintiff on April 20, 2021; and Dr. Kaner, who commenced a full arch crown lengthening on October 25, 2021. Plaintiff abandoned her care with Dr. Siegel and Dr. Kaner before returning to Bensonhurst Dental for treatment between April 1, 2022 and May 19, 2022.

On July 9, 2021, Plaintiff filed a complaint against Dr. Chason asserting causes of action in medical malpractice and lack of informed consent. Plaintiff alleges that, as a result of Dr. Chason's departures from acceptable standards of dental care, she sustained injuries including: the necessity to redo all the dental work done by Dr. Chason; severe pain and sensitivity due to the over-prepping the teeth to the levels of the alveolar bone, pulp chambers and nerves; the need for eleven root canal treatments and ten crown lengthening treatments; the destruction of dentition

with bleeding gums; food traps due to improper margins provided; loose temporary bridges; and headaches, jaw pain and fear of choking because of the loose bridges.

Defendant now moves for summary judgment pursuant to CPLR 3212.

DISCUSSION

I. SUMMARY JUDGMENT AS TO MEDICAL MALPRACTICE

A proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by submitting admissible evidence that demonstrates the absence of material issues of fact that would require a trial (*see Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]; *see also Winegrad v New York University Medical Center*, 64 NY2d 851, 853 [1985]). In a medical malpractice action, a movant must provide evidentiary proof in the form of expert opinions and factual evidence establishing that the defendant complied with accepted standards of medical care and practice and/or the defendant's conduct was not a proximate cause of plaintiff's alleged injuries (*see NY Public Health Law § 2805-d*; *see also Alvarez*, 68 NY2d 325 [1986]).

In support of his motion, Defendant submits the expert affirmation of Dr. Leila Jahangiri, D.D.S, a board-certified prosthodontist. Based on her review of the records, she opines, within a reasonable degree of medical certainty, that Dr. Chason did not depart from good and accepted standards of prosthodontic care in treating the Plaintiff, and that no acts or omissions by Dr. Chason caused any of the Plaintiff's claimed injuries.

Specifically, Dr. Jahangiri asserts that Dr. Chason properly initiated treatment by obtaining a thorough medical and dental history and evaluating the Plaintiff's dental condition through clinical examinations and radiographs. She highlights that the records indicate Dr. Chason's decision to proceed without immediate root canal re-treatments was based on Ms. Swartz's election, her advisement that these teeth were asymptomatic, and the understanding that

these treatments could be completed after the restorative work. Dr. Jahangiri also notes that Dr. Chason appropriately recommended root canal treatments before proceeding with aesthetic restoration. According to Dr. Jahangiri, it was not a deviation from the standard of care to proceed with the aesthetic restoration treatment without first performing these root canal re-treatments.

Dr. Jahangiri further contends that the record contains no evidence indicating that the Plaintiff's teeth were overprepared, nor that subsequent root canals or re-treatments were related to Dr. Chason's care. Similarly, she finds no evidence that the provisional restorations were improperly fabricated. Additionally, Dr. Jahangiri opines that Dr. Chason reasonably determined that gingivectomies were necessary on teeth 8 and 9 before restoration, and his preparation of teeth 4 through 14 for crown restoration also adhered to the standard of care. She explains that, before treatment, Dr. Chason properly prepared for the provisional restoration by taking impressions of the Plaintiff's teeth and appropriately split the restoration into three parts to address the Plaintiff's discomfort. Dr. Jahangiri emphasizes that it is acceptable clinical practice to determine the need for crown lengthening after temporization.

Finally, Dr. Jahangiri concludes that Dr. Chason provided appropriate follow-up care. The inability to complete the final restoration was not due to any departure from the standard of care. Instead, she posits that many of the Plaintiff's alleged injuries are attributable to underlying psychological conditions and/or unrealistic expectations regarding treatment and results, rather than Dr. Chason's care.

Based on the expert affirmation of Dr. Jahangiri, the Court finds that Dr. Chason has demonstrated his prima facie entitlement to summary judgment as a matter of law that he did not depart from accepted standards of medical practice in his care and treatment of the Plaintiff, and that the Plaintiff's injuries were not proximately caused by any act and/or omission by him (*see*

Steinberg v Lenox Hill Hosp., 148 AD3d 612 [1st Dept 2017]; *Camacho v Pintauro*, 210 AD3d 578 [1st Dept 2022]).

Once the defendant physician makes a prima facie showing for summary judgment, the burden shifts to the plaintiff to demonstrate, by admissible evidence, the existence of a material issue of fact that requires resolution at trial (see *Zuckerman v City of New York*, 49 NY2d 557, 558-59 [1980]). In a medical malpractice action, plaintiff must show, through a medical expert, both a deviation from accepted standards of medical care and that the treatment rendered by the moving defendant was a proximate cause of plaintiff's injuries (see e.g., *Prete v Rafla-Demetrious*, 224 AD2d 674 [2d Dept 1996]; *Canter v Mulnick*, 60 NY2d 689 [1983]; see also *Fridovich v David*, 188 AD2d 984 [3d Dept 1992]; *Ferrara v South Shore Orthopedic Associates*, 178 AD 2d 364 [1st Dept 1991]).

In opposition, Plaintiff submits the expert affidavit of an unidentified prosthodontist² specializing in restorative work, including crowns, bridges, removable dentures, and implant restorations, who opines, to a reasonable degree of medical certainty, that Dr. Chason departed from good and accepted standards of prosthodontic care, causing the Plaintiff's claimed injuries.

Specifically, Expert A asserts that the preparations of teeth Nos. 6 through 13 were overly invasive, extending to the alveolar bone level with subgingival margins, which is inconsistent with the standard of care and resulted in tooth sensitivity. Expert A attributes the Plaintiff's severe dental pain to irreversible pulpitis, resulting from Dr. Chason preparing the teeth too close to the pulp chamber and placing the prep/temp directly on the alveolar bone. This overpreparation, according to Expert A, also caused the temporaries to be loose and the gums to be swollen and irritated.

² Plaintiff redacted her expert's name under CPLR 3101(d); this expert will be referred to as "Expert A."

Expert A further contends that Dr. Chason deviated from the standard of care by proceeding with the restoration without first performing root canal treatments and by placing crowns over infected teeth. It was also a departure from the standard of care, in Expert A's opinion, to perform gingivectomies on the same day as the final preparation, as the gums required time to heal to a point of stability. Expert A opines that as a direct result of Dr. Chason's departures from the standard of care in performing restorations on teeth with short-filled endodontics and/or periapical pathologies, Plaintiff had to undergo multiple emergency root canals after the restoration. Finally, Expert A concludes that the Plaintiff did not have unreasonable expectations and that all resulting damages and injuries were caused by Dr. Chason.

The Court finds that Expert A's affirmation raises triable issues of fact sufficient to rebut the defendant's prima facie showing to summary judgment. "Summary judgment is not appropriate ... [when] the parties [submit] conflicting medical expert opinions because [s]uch conflicting expert opinions will raise credibility issues which can only be resolved by a jury" (*Cummings v Brooklyn Hosp. Ctr.*, 147 AD3d 902, 904 [2d Dept 2017], quoting *DiGeronimo v Fuchs*, 101 AD3d 933 [2d Dept 2012] [internal quotation marks omitted]; see *Elmes v Yelon*, 140 AD3d 1009 [2d Dept 2016]; *Leto v Feld*, 131 AD3d 590 [2d Dept 2015]).

II. SUMMARY JUDGMENT AS TO LACK OF INFORMED CONSENT

It is well settled that a defendant moving for summary judgment on a lack of informed consent claim must demonstrate that the plaintiff was informed of the alternatives to and the reasonably foreseeable risks and benefits of the treatment (*Henry v Bezalel Rehabilitation & Nursing Ctr.*, 2020 NY Slip Op30369(U) [Sup Ct, NY County 2020]). A defendant may satisfy his or her burden of demonstrating a prima facie entitlement to judgment as a matter of law in

connection with such a cause of action where a patient signs a consent form indicating his or her understanding of the possible risks of the procedure along with corroborating medical records (see *Bamberg-Taylor v Strauch*, 192 AD3d 401, 401-402 [1st Dept 2021]). see *Johnson v Staten Is. Med. Group*, 82 AD3d 708, 709 [2d Dept 2011] [holding that where the plaintiff signed an informed consent form, the form itself was sufficient to carry the defendants' prima facie burden on summary judgment]).

In support of this aspect of Defendant's motion, Dr. Jahangiri opines that Dr. Chason obtained informed consent for the restorative treatment plan. Dr. Jahangiri's opinion is based on Dr. Chason's office records, which reflect that Dr. Chason discussed Ms. Swartz's treatment options, and that Ms. Swartz signed the recommended treatment plan. The deposition testimonies of both Ms. Swartz and Dr. Chason further corroborate Dr. Chason's records, confirming that Ms. Swartz was properly informed and consented to the proposed treatment plan. Ms. Swartz's own testimony also confirms that she was advised of the need for root canal treatment and re-treatments, and that after being informed of the risks and alternative treatment options, she elected not to proceed with these procedures. Based on Dr. Chason's office records and Dr. Jahangiri's expert opinion, Dr. Chason has established prima facie entitlement to summary judgment on this claim.

The Court finds, however, that Plaintiff rebuts the Defendant's prima facie showing with Expert A's opinion, which directly contradicts Dr. Jahangiri's analysis regarding informed consent. Expert A asserts Dr. Chason failed to obtain informed consent, a conclusion supported by the complete absence of a consent form in the clinical records and Ms. Swartz's deposition testimony. Expert A states the standard of care required Dr. Chason to discuss all foreseeable complications and necessary additional treatments, but Ms. Swartz testified no such discussion

occurred, and Dr. Chason's records contain only boilerplate language. Moreover, Expert A highlights Dr. Chason's failure to discuss the likely need for crown lengthening, issues with large restorations, or the necessity of posts and cores, despite mentioning some root canal needs. Expert A concludes Dr. Chason's high-risk, incomplete, and defective plan, which lacked documented crucial discussions, prevented Ms. Swartz from giving informed consent, a direct violation of the standard of care.

Plaintiff, therefore, raises an issue of fact regarding this branch of the Moving Defendant motion, and the Court denies the request for summary judgment as to the Plaintiff's lack of informed consent claim.

Accordingly, it is hereby

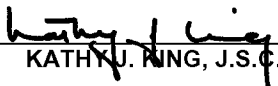
ORDERED that the summary judgment motion of Defendant Eric Chason, DDS, is denied in its entirety; and it is further

ORDERED that the summary judgment motion of Defendant CPS Dentistry is denied as moot; and it is further

ORDERED that the Plaintiff is to serve a copy of this order upon the Defendant Eric Chason, DDS, with notice of entry within twenty (20) days of entry of this order; and it is further

ORDERED, that the parties are directed to appear for a settlement conference on September 23, 2025, at 2:30pm, at 60 Centre Street, Room #351, New York, NY 10007.

This constitutes the decision and order of the Court.

<u>7/9/2025</u> DATE					 KATHY J. KING, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/> REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	