

**Coronel v Chandra**

2025 NY Slip Op 32988(U)

August 1, 2025

Supreme Court, Kings County

Docket Number: Index No. 516254/2017

Judge: Consuelo Mallafre Melendez

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 15 of the Supreme Court of the State of NY, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 1st day of August 2025.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
RAFAEL A. CORONEL, as Administrator of the Estate of  
FEMALE CORONEL a/k/a K.M.C.M., RAFAEL CORONEL,  
Individually and ROSA CORONEL, Individually,

Plaintiffs,

-against-

INDRA CHANDRA, as the Executor of the Estate of  
PRASANTA C. CHANDRA, Deceased, ST. NICHOLAS OB  
GYN ASSOCIATES, P.C., SHIRLEY WEBBE, D.O., STEVEN  
SWANCOAT, M.D., DR. MUKHERJEE a/k/a DR.  
MUKERGEE a/k/a DR. MUKERJEE, BALI K. RAVA, M.D.,  
INTERCOUNTY OBSTETRICS & GYNECOLOGY  
ASSOCIATES, P.C. and WYCKOFF HEIGHTS MEDICAL  
CENTER,

Defendants.

-----X  
**HON. CONSUELO MALLAFRE MELENDEZ, J.S.C.**

Recitation, as required by CPLR §2219 [a], of the papers considered in the review:

NYSCEF #s:

Seq. 7: 133 – 150, 201 – 204, 205, 213

Seq. 10: 230 – 232, 233, 234 – 235

Defendants Indra Chandra, as Executor of the Estate of Prasanta Chandra, M.D. (“Dr. Chandra”), St. Nicholas Ob Gyn Associates, and Bali K. Rava, M.D. (“Dr. Rava”) move (Seq. No. 10) for an Order, pursuant to CPLR 2221 (d), granting leave to reargue the prior motion (Seq. No. 7) and decision dated February 22, 2024, and upon reargument, granting summary judgment to the moving defendants to the extent of dismissing any claims of vicarious liability against Dr. Chandra, Dr. Rava, or St. Nicholas Ob Gyn Associates for the acts and omissions of co-defendant Dr. Mukherjee (sued herein as Dr. Mukherjee a/k/a Dr. Mukergee a/k/a Dr. Mukerjee).

Plaintiffs oppose the motion.

In the decision dated February 22, 2024, the Court considered the summary judgment motion of the movants, as well as the summary judgment motion of co-defendant Wyckoff Heights Medical Center and the unopposed summary judgment motion of Shirley Webbe, D.O. The Court's decision and order held, *inter alia*, the motion of Dr. Chandra, St. Nicholas Ob Gyn Associates, P.C., and Dr. Rava was granted to the extent of dismissing the cause of action for lack of informed consent, and their motion was otherwise denied.

CPLR 2221 (d) provides that a party may move to reargue "based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion."

The Court notes that a motion to reargue must be made within 30 days of service of the order and notice of entry. In this case, the action was stayed by the death of defendant Dr. Chandra shortly following the notice of entry. The stay was lifted on April 28, 2025 when a representative of the estate was substituted for the deceased party. As the time to reargue pursuant to CPLR 2221 (d) was tolled by that stay, the instant motion was timely filed on May 7, 2025.

The prior decision addressed the direct claims against the movants and found issues of fact as to their primary liability. The Court did not make any determinations on the issue of vicarious liability, although this theory/claim was discussed in the movant's papers. For this reason, the Court agrees with the movants that those facts and arguments were overlooked. Therefore, leave to reargue the motion, *only* as to the issue of vicarious liability for Dr. Mukherjee, is granted.

In brief, this case involves the death of an infant from alleged medical malpractice during labor and delivery. Dr. Chandra, president of St. Nicholas Ob Gyn Associates, P.C., was the patient's private ob/gyn. Dr. Rava was an attending ob/gyn at the hospital. Dr. Mukherjee, who was never deposed in this action, was covering for Dr. Chandra during some or all of the patient's

admission and ultimately performed the C-section.

In their original moving papers, the movants cited to the testimony of Dr. Chandra that Dr. Mukherjee was an “independent practitioner” who “covers me for deliveries sometimes,” and in those times Dr. Mukherjee would be “in charge of the patient” (Dr. Chandra deposition tr at 94-95). Dr. Rava, who was not associated with Dr. Chandra or St. Nicholas Ob Gyn Associates, P.C., also testified that he knew Dr. Mukherjee as someone who covered for Dr. Chandra (Dr. Rava deposition tr at 28-29). There is no evidence that Dr. Mukherjee was an employee of St. Nicholas Ob Gyn Associates, P.C., Dr. Chandra, or Dr. Rava.

It is well established the respondeat superior theory of vicarious liability applies only to employees acting within the scope of employment, not independent contractors (*see generally Bennett v State Farm Fire and Cas. Co.*, 198 AD3d 857, 857 [2d Dept 2021]; *Fuessel v Chin*, 179 AD3d 899, 901 [2d Dept 2020]). The Court of Appeals has held that the connection between an independent physician “covering” for another does not alone give rise to vicarious liability (*see Kavanaugh by Gonzales v Nussbaum*, 71 NY2d 535, 548-549 [1988]; *McAlwee v Westchester Health Assoc., PLLC*, 163 AD3d 549, 552 [2d Dept 2018]; *Reeck v Huntington Hosp.*, 215 AD2d 464, 465 [2d Dept 1995]).

The Court finds that the movants, in their initial motion, established prima facie entitlement to summary judgment on the issue of whether they are vicariously liable for the acts and omissions of Dr. Mukherjee, supported by the testimony of Dr. Chandra and Dr. Rava. Plaintiffs failed to raise an issue of fact or address this issue in their prior opposition papers. Therefore, summary judgment should have been granted in the movants’ favor as to the vicarious liability claims.

Contrary to Plaintiff’ argument, raised for the first time in opposition to this motion to reargue, the *Mduba* exception for hospitals where “a patient comes to the emergency room seeking

treatment from the hospital and not from a particular physician of the patient's choosing" is not applicable here (*Muslim v Horizon Med. Group, P.C.*, 118 AD3d 681, 684 [2d Dept 2014], citing *Mduba v Benedictine Hosp.*, 52 AD2d 450, 454 [3d Dept 1976]).

Accordingly, upon reargument, the Court modifies its prior decision and order dated February 22, 2024, only to the extent of adding that summary judgment is granted to Dr. Chandra, St. Nicholas Ob Gyn Associates, P.C., and Dr. Rava on the issue of any alleged vicarious liability for the acts or omissions of Dr. Mukherjee, and any vicarious liability claims against them for the acts and omissions of Dr. Mukherjee are dismissed.

It is hereby:

**ORDERED** that Defendants' motion (Seq. No. 10), pursuant to CPLR 2221 (d), seeking leave to reargue the prior motion (Seq. No. 7) on the issue of vicarious liability for Dr. Mukherjee only, is **GRANTED**; and it is further

**ORDERED** that upon reargument, summary judgment is **GRANTED TO THE EXTENT** that all vicarious liability claims against the Estate of Dr. Chandra, St. Nicholas Ob Gyn Associates, P.C., and Dr. Rava for the acts and omissions of Dr. Mukherjee are dismissed; and it is further

**ORDERED** that the Court otherwise adheres to the decision and order dated February 22, 2024.

This constitutes the decision and order of this Court.

ENTER.



Hon. Consuelo Mallafre Melendez

J.S.C.