

**Chammah v Dibner-Garcia**

2025 NY Slip Op 33635(U)

September 23, 2025

Supreme Court, Kings County

Docket Number: Index No. 503219/19

Judge: Genine D. Edwards

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 1 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 23rd day of September 2025.

PRESENT:

HON. GENINE D. EDWARDS,  
Justice.

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GABRIEL CHAMMAH, as Administrator of  
the Estate of MIRIAM CHAMMAH, a/k/a  
MIRIAM M. BENSOUSSAN, Deceased, and  
GABRIEL CHAMMAH, Individually,

Plaintiffs,

-against-

LORA DIBNER-GARCIA, C.N.M.,  
SHIRA ALTER, M.D., and  
BORO PARK OBSTETRICS AND GYNECOLOGY, P.C.,

Defendants.  
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DECISION AND ORDER

Index No. 503219/19

Mot. Seq. Nos. 6

The following e-filed papers read herein:

NYSCEF Doc Nos.:

Notice of Motion, Affirmations, and Exhibits.....	339-351
Affirmations (Affidavits) in Opposition and Exhibits.....	356-357; 358; 360
Reply Affirmations and Exhibits.....	363

Upon the foregoing papers and after oral argument, plaintiffs’ motion for leave to reargue the prior motions for summary judgment is granted, and, upon reargument, the motion for summary judgment of defendant Maimonides Medical Center (“MMC”) in Seq. No. 4 is denied in its entirety; the joint summary judgment motion of defendants Boro Park Obstetrics and Gynecology, P.C. (“BPOG”) and its midwives, CNM Lindsay Kraus, CNM Diane Nicholson, and CNM Lora Dibner-Garcia (collectively, the “private midwife team”), in Seq. No. 2; is denied in its entirety; and the joint motion of BPOG’s private obstetricians, defendants Jack Troper, M.D., Elaine Sklar, M.D., Shira Alter, M.D., and Matthew Silverman, M.D. (the “private physician team”). in Seq. No. 5, is granted as to Drs. Troper and Silverman, but is denied as to Drs. Sklar and Alter; and, thereupon, decretal paragraphs 2 through 7 of this Court’s Order, dated May 8, 2025, are amended and restated in their entirety, as more fully set forth in the decretal paragraphs below.<sup>1</sup>

<sup>1</sup> Nothing herein affects decretal paragraph 1 of the prior order which granted CNM Korine’s motion (in Seq. No. 3) for approval of the stipulated dismissal of plaintiffs’ claims against her.

A motion for leave to reargue is addressed to the sound discretion of the court and is properly granted upon a showing that the court overlooked or misapprehended the facts and/or the law or mistakenly arrived at its earlier decision. *See McGill v. Goldman*, 261 A.D.2d 593, 691 N.Y.S.2d 75 (2d Dept. 1999). “Summary judgment is a drastic remedy that deprives a litigant of his or her day in court, and it should only be employed when there is no doubt as to the absence of triable issues.” *Bonaventura v. Galpin*, 119 A.D.3d 625, 988 N.Y.S.2d 886 (2d Dept. 2014) (internal quotation marks omitted). “The function of the court on a motion for summary judgment is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist.” *Stukas v. Streiter*, 83 A.D.3d 18, 918 N.Y.S.2d 176 (2d Dept. 2011) (internal quotation marks omitted). “Additionally, in determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmovant.” *Pearson v. Dix McBride, LLC*, 63 A.D.3d 895, 883 N.Y.S.2d 53 (2d Dept. 2009).

Here, plaintiffs made sufficient arguments that there was conflicting expert testimony, thereby creating a credibility battle that is properly left to a jury for its resolution. The competing expert affirmations raised multiple disputed issues of triable fact relating to (for example):

(1) whether MMC was vicariously liable for the alleged concurrent and/or independent negligence of its employees and agents, including MMC’s Nurse Ingrid Joseph and its blood bank personnel; for its alleged failure to escalate the care of the patient’s high-risk pregnancy to its chief resident or attending physician; for the alleged failure of its personnel to continuously monitor the patient’s blood pressure and other vital signs; for the alleged delays of MMC’s rapid response team and its other personnel in answering (and managing) the patient’s code (including an unexplained failure to keep a code sheet for recording the events); and for its alleged multiple delays in preparing for (and in delivering) blood products to the patient for her successive massive blood transfusions made necessary by her ongoing post-partum hemorrhage;

(2) whether BPOG’s private midwifery team of CNM Lindsay Kraus, CNM Diane Nicholson, and CNM Lora Dibner-Garcia (individually and collectively) departed from accepted midwifery practice by managing the patient’s pregnancy (which was complicated

by her severe symptomatic polyhydramnios and by her post-partum hemorrhage in her last delivery), by performing and managing her induction, and by performing the artificial rupture of her membranes – all by the private midwifery team acting essentially on its own – instead of transferring (or escalating the level of) the patient’s care to obstetricians and maternal-fetal medicine specialists; and, at a minimum, by preparing in advance of the patient’s delivery for her potential post-partum hemorrhage and by closely collaborating with the obstetricians/MFM specialists at each stage of the patient’s care;

(3) whether Drs. Sklar and Alter as the members of BPOG’s private physician team departed from accepted standards of obstetrical care by permitting (either explicitly or implicitly) to have the private midwifery team manage the patient’s high-risk pregnancy essentially on its own; whether Drs. Sklar and Alter properly prepared for the known risks of the patient’s polyhydramnios and its sequelae; whether Drs. Sklar and Alter appropriately collaborated and communicated with the private midwifery team (as well as with MMC’s nurses and other healthcare personnel); and whether Dr. Alter allegedly failed to examine the patient sooner than she did;

(4) whether the patient’s correct diagnosis was uterine atony with post-partum hemorrhage and disseminated intravascular coagulation, rather than an amniotic fluid embolism in which instance (according to defendants’ experts) nothing could have been done to change the patient’s outcome; and

(5) whether the foregoing alleged departures (individually and collectively) “decreased the chances of a better outcome or increased the [patient’s] injuries.” *Hanna v. Staten Is. Univ. Hosp.*, 232 A.D.3d 585, 220 N.Y.S.3d 424 (2d Dept. 2024).

It is for a jury to determine whether MMC, BPOG’s private midwife team, and/or Drs. Sklar and Alter (as BPOG’s members of the private physician team), individually and collectively, were at fault for any/all of the alleged departures and injuries.

Accordingly, it is

**ORDERED** that leave to reargue the prior motions is granted and, upon reargument, paragraphs 2 through 7 of this Court’s Order, dated May 8, 2025, are amended and restated

to read in their entirety as follows (with the paragraph numbering added for ease of reference):

[¶ 2] ORDERED that MMC's motion is *denied in its entirety*, and it is further

[¶ 3] ORDERED that that the joint summary judgment motion of BPOG and its midwives CNMs Kraus, Nicholson, and Dibner-Garcia is *denied in its entirety*, and it is further

[¶ 4] ORDERED that the joint motion of Drs. Troper, Sklar, Alter, and Silverman is *granted to the extent* that all claims against Drs. Troper and Silverman are dismissed with prejudice and without costs/disbursements, and the remainder of their motion is denied, and it is further

[¶ 5] ORDERED that the clerk is directed to enter a judgment in favor of Drs. Troper and Silverman, and it is further

[¶ 6] ORDERED that the judgment, dated May 23, 2025, in favor of MMC (NYSCEF Doc No. 323), and the judgment, dated May 29, 2025, in favor of CNMs Kraus and Nicholson (NYSCEF Doc No. 327) are both vacated, and it is further

[¶ 7] ORDERED that the action is severed and continued against MMC, BPOG, CNMs Kraus, Nicholson, and Dibner-Garcia as well as against Drs. Sklar and Alter, with the amended caption to read as follows:

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GABRIEL CHAMMAH, as Administrator of  
the Estate of MIRIAM CHAMMAH, a/k/a  
MIRIAM M. BENSOUSSAN, Deceased, and  
GABRIEL CHAMMAH, Individually,

Plaintiffs,

-against-

ELAINE SKLAR, M.D.,  
LINDSAY KRAUS, C.N.M.,  
DIANE NICHOLSON, C.N.M.,  
LORA DIBNER-GARCIA, C.N.M.,  
SHIRA ALTER, M.D.,  
BORO PARK OBSTETRICS AND GYNECOLOGY, P.C.,  
and MAIMONIDES MEDICAL CENTER,

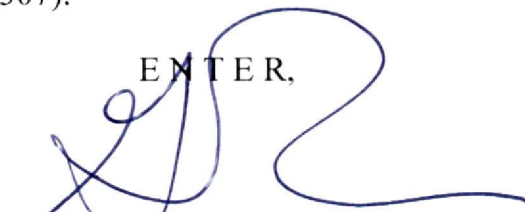
Defendants.  
-----X

; and it is further

**ORDERED** that plaintiffs’ counsel shall electronically serve a copy of this supplemental order with notice of entry on the other parties’ respective counsel and shall electronically file an affidavit of service thereof with the Kings County Clerk, and it is further

**ORDERED** that the parties are directed to appear remotely at an Alternative Dispute Resolution Conference on October 8, 2025, at 12:30 PM.

This constitutes the Decision and Order of this Court which supersedes the Court’s prior order, dated May 8, 2025 (NYSCEF Doc No. 307).

ENTER,  
  
Hon. Genine D. Edwards  
J.S.C.