Short Form Order

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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GENEROSA DELAROSA,

Plaintiff,

-against-

ST. CATHERINE OF SIENA MEDICAL CENTER, HARITHA VEERAMACHANENI, M.D., JOSEPH LINDNER, P.A., LONG ISLAND PLASTIC SURGICAL GROUP, P.C., and JUSTIN MARGOLIS, M.D,

Defendants.

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Index No. 706611/2020

Part MDP
Motion Date: May 14, 2025

Calendar No. 10
Sequence No. 2

The following papers numbered EF-149 to EF-233 read on this motion by defendants HARITHA VEERAMACHANENI, M.D. and LONG ISLAND PLASTIC SURGICAL GROUP, P.C. for summary judgment and dismissal of plaintiff's Complaint pursuant to CPLR §3212.

	Papers Numbered
Notice of Motion, Affirmation, Exhibits……	EF149-EF154
Affirmation in Opposition, Exhibits……...	EF198-221
Reply Affirmation……...	EF232-EF233

Upon the foregoing papers, it is ordered that this motion is determined as follows:

Defendants Haritha Veeramachaneni, M.D. and Long Island Plastic Surgical Group, P.C.'s motion for summary judgment and dismissal of plaintiff's Complaint is granted, as defendants eliminated all triable issues of material fact regarding whether they departed from accepted standards of care or proximately caused plaintiff's injuries. (*See generally DiLorenzo v. Zaso*, 148 A.D.3d 1111 [2d Dept. 2017].)

Plaintiff commenced this action for medical malpractice and lack of informed consent against defendants for care and treatment rendered during and after Dr. Veeramachaneni performed a DIEP flap bilateral breast reconstruction procedure on July 8, 2019. Plaintiff filed

the Summons and Complaint on June 4, 2020, and issue was joined by moving defendants via the filing of their Verified Answer on June 16, 2020.

Defendants argue they are entitled to summary judgment and dismissal of plaintiff's Complaint and present the pleadings, Bills of Particulars, deposition testimony, plaintiff's medical records, and expert affirmation of Robert T. Grant, M.D. in support of their motion. Defendants also incorporated and relied upon co-defendant PA Lindner's expert affirmation by William Suggs, M.D. in presenting their evidence. Defendants argue the evidence shows they did not depart from accepted standards of care or cause plaintiff's injuries, but rather rendered care and treatment in accord with good and accepted practices. Defendants further argue plaintiff's claim for lack of informed consent must be dismissed because Dr. Veeramachaneni properly obtained plaintiff's informed consent prior to the surgery on July 8, 2019, and the claim is improperly alleged against Long Island Plastic Surgery Group, P.C. as a medical facility. Defendants further argue plaintiff's claims against Long Island Plastic Surgery Group, P.C. fail as a matter of law because plaintiff failed to make any independent allegations against its employees.

Defendants present the expert affirmation of Dr. Robert T. Grant in support of their motion. Dr. Grant affirmed to being a physician licensed in New York and board-certified in general surgery and plastic surgery. He affirmed to be familiar with the applicable standards of care in plastic surgery in 2019, including but not limited to the performance of DIEP flap breast reconstruction procedures. Dr. Grant further affirmed to reviewing the pleadings, plaintiff's medical records, and the deposition testimony in rendering opinions. Based upon his review of the foregoing, Dr. Grant opined within a reasonable degree of medical certainty that defendants did not depart from accepted standards of care or proximately cause plaintiff's injuries.

Dr. Grant opined Dr. Veeramachaneni's recommendation for a DIEP flap surgery was a reasonable option within the standard of care. He opined it was reasonable for Dr. Veeramachaneni to wait until plaintiff completed chemotherapy and quit smoking before proceeding with the surgery, which entails using the patient's own abdominal tissue to reconstruct her breasts. Dr. Grant also opined Dr. Veeramachaneni appropriately obtained a CT-angiogram prior to the DIEP surgery to evaluate plaintiff's vasculature for the surgery.

Dr. Grant opined Dr. Veeramachaneni appropriately obtained plaintiff's informed consent within the standard of care. He opined plaintiff had numerous informed consent interactions in 2018 with Dr. Deitch, who performed her mastectomy and explained the DIEP flap reconstruction procedure. Dr. Grant opined plaintiff signed an eight-page comprehensive informed consent form at the time of the initial mastectomy/tissue expander reconstruction surgery in 2018, indicating she understood the risks of the procedure. Dr. Grant also reviewed the deposition testimony and opined Dr. Veeramachaneni answered plaintiff's questions and concerns regarding the DIEP flap reconstruction surgery during two preoperative visits. He further opined plaintiff was given ample

opportunity to go over the procedure, and acknowledged she was advised of the nature and effect of the operation, risks involved and possible alternatives. Dr. Grant opined Dr. Veeramachaneni appropriately obtained informed consent prior to the DIEP procedure, and a reasonable person in plaintiff's position with knowledge of all the risks attendant to surgery, including death, would not refuse the procedure if told of the risk of nerve damage.

Dr. Grant opined Dr. Veeramachaneni appropriately performed the DIEP flap surgery on July 8, 2019. Dr. Grant reasoned Dr. Veeramachaneni documented plaintiff's positioning on the operating room (OR) table, the use of a Bair Hugger blanket, gel padding, and pillows for offloading. He opined these measures were appropriate and consistent with the standard of care. Dr. Grant opined Dr. Veeramachaneni employed appropriate technique in harvesting the flaps and preparing them for transfer to the breast, and it was reasonable to utilize the second vein for the flap. Dr. Grant opined Dr. Veeramachaneni appropriately ordered two doses of Heparin during the surgery and explained how she performed the surgery over the course of fifteen hours by cutting into plaintiff's abdomen, removing tissue, and reconstructing plaintiff's breasts with the abdominal tissue. Dr. Grant also noted Dr. Veeramachaneni testified plaintiff was mostly lying flat for the surgery, but had to be flexed at the hips to close the abdomen. Dr. Grant opined plaintiff was properly positioned throughout the surgery and neuropraxia is not indicative of improper positioning. Dr. Grant also opined the surgery was not unreasonably prolonged and explained the complexity of the surgery warranted a longer surgical time. He further opined it was appropriate and required for Dr. Veeramachaneni to revise the flap and ensure adequate perfusion before insetting the flap, which added additional time to the surgery but was appropriate under the circumstances.

Dr. Grant also opined Dr. Veeramachaneni did not fail to timely diagnose plaintiff's compartment syndrome and acted within the standard of care. Dr. Grant opined it was appropriate for Dr. Veeramachaneni to suspect neuropraxia based upon plaintiff's complaints of pain and burning and the duration of the surgery. Dr. Grant also opined Dr. Veeramachaneni appropriately requested a lower extremity doppler to rule out deep vein thrombosis (DVT), stayed in contact with hospital staff to be kept abreast of plaintiff's condition, and timely requested a vascular consult to rule out compartment syndrome. Dr. Grant reasoned based upon the medical records and deposition testimony, Dr. Veeramachaneni was in communication with hospital staff regarding plaintiff on July 9, 2019 and spoke to Dr. Margolis on July 9th between 5:00 and 6:00pm regarding the possibility of compartment syndrome. Dr. Grant also opined an earlier vascular surgery consult would not have changed the outcome, as Dr. Margolis ruled out the presence of compartment syndrome when he saw plaintiff on July 9th. He further opined it was reasonable for Dr. Veeramachaneni to rely on Dr. Margolis' medical judgment in ruling out compartment syndrome on July 9th. Dr Grant opined any claim that Dr. Veeramachaneni improperly performed the fasciotomy is without merit, as she did not assist in that procedure. Based upon the foregoing, defendants argue they are entitled to summary judgment and dismissal of plaintiff's Complaint.

Plaintiff opposes the motion and argues defendants failed to eliminate all triable issues of fact regarding whether they departed from accepted standards of care or proximately caused her injuries. Plaintiff presented the pleadings, parties' deposition testimony, and an expert affirmation in support of the opposition. She argues defendants failed to establish entitlement to summary judgment, and her expert affirmation raises issues of fact as to whether defendants' medical and surgical care resulted in plaintiff's injuries, including delay in diagnosis of her bilateral lower extremity compartment syndrome as well as pain and suffering.

Plaintiff presented the expert affirmation of a physician licensed in New Jersey and Pennsylvania and board-certified in general and vascular surgery in support of her opposition. Plaintiff's expert affirmed to being familiar with compartment syndrome, fasciotomies, and the applicable standard of care in 2019. Plaintiff's expert further affirmed to reviewing the motion papers, Dr. Suggs and Dr. Grant's affirmations, the deposition testimony, and plaintiff's medical records in rendering opinions. Based upon the foregoing materials, plaintiff's expert opined to a reasonable degree of medical certainty that defendants departed from accepted standards of care and proximately caused plaintiff's injuries, including the severity of her compartment syndrome, nerve and muscle damage, bilateral drop foot, severe pain, scarring, and pain with walking.

Plaintiff's expert explained compartment syndrome occurs when there is a buildup of pressure in an extremity that causes ischemic injury to the muscles and nerves, depriving the extremity of blood flow. Plaintiff's expert further explained compartment syndrome is a surgical emergency and must be immediately investigated because ischemic injury increases until it is resolved. The expert opined the standard of care in 2019 dictates that if a doctor considers compartment syndrome as a possible diagnosis, it must be ruled out either by measuring the compartment pressures or upon confirmation of the diagnosis, and pressure must be relieved as soon as possible because the longer compartment syndrome progresses, the more muscle and/or nerve loss will occur.

Plaintiff's expert noted as soon as plaintiff woke up from surgery, she had unexplained bilateral leg pain described as a 10/10 and the worst pain ever, and opined the standard of care required compartment syndrome to be immediately suspected and investigated. Plaintiff's expert further opined the length of surgery, intraoperative positioning, sequential compression device placement intraoperatively and postoperatively, anticoagulation, and plaintiff's obesity were risk factors for acute compartment syndrome. The expert opined plaintiff's severe, unexplained lower extremity pain following prolonged surgery strongly suggested compartment syndrome, and the medical care providers failed to timely and properly consider and rule out her surgical emergency. Plaintiff's expert further opined plaintiff's lab work revealed severely elevated CPK, which is indicative of muscle necrosis, a hallmark of compartment syndrome. The expert further opined this should not have been attributed solely to plaintiff's DIEP surgery, but should have further increased clinical suspicion that plaintiff was suffering from compartment syndrome.

Plaintiff's expert also explained that sometimes the classic signs of compartment syndrome are late findings, and their absence should not dissuade a doctor from including it in the differential diagnosis. Plaintiff's expert further explained if compartment syndrome is suspected, the clinician should obtain compartment pressure measurements via inserting a Stryker needle manometer into the compartment to determine if there is a buildup of pressure. Plaintiff's expert opined in plaintiff's case, obtaining compartment pressures within six to eight hours after surgery was of great importance and compartment syndrome should have been immediately and appropriately investigated as soon as she woke up from her surgery complaining of extreme bilateral leg pain. The expert opined had plaintiff's compartment pressures been measured during that timeframe, they would have been elevated and led to earlier intervention through fasciotomy, and this delay was a substantial contributing factor to the progression of plaintiff's bilateral lower extremity compartment syndrome and resultant injuries. The expert further opined an earlier diagnosis would have still required bilaterial fasciotomies of plaintiff's lower extremities, but the nerve and muscle damage would have been substantially less had the fasciotomies been properly and timely performed.

Plaintiff's expert opined to a reasonable degree of medical certainty that Dr. Veeramachaneni departed from good and accepted medical and surgical practice in the care she rendered to plaintiff following her surgery on July 9, 2019. Plaintiff's expert opined Dr. Veeramachaneni knew plaintiff woke up from a fifteen-hour surgery immediately experiencing excruciating bilateral leg pain, which should have instantly triggered an investigation for compartment syndrome instead of thinking plaintiff was suffering from transient neuropraxia. Plaintiff's expert opined Dr. Veeramachaneni departed from the standard of care by not including compartment syndrome in her differential diagnosis, rather than exploring neuropraxia and DVT. The expert opined good and accepted practice required Dr. Veeramachaneni to have acute compartment syndrome at the top of her differential diagnosis because of its potentially devastating consequences. Plaintiff's expert further opined Dr. Veeramachaneni departed from the standard of care by not ordering compartment pressures or a vascular surgery consult in a timely fashion. Plaintiff's expert opined Dr. Veeramachaneni's departures caused a significant delay in diagnosis which was a substantial contributing factor to the progression of plaintiff's compartment syndrome and injuries.

Plaintiff's expert disagreed with defendants' experts who opined Dr. Veeramachaneni acted in accord with the standard of care. The expert disagreed that Dr. Veeramachaneni acted in accord with the standard of care in relying on Dr. Margolis' determination that plaintiff was not suffering from compartment syndrome in the early evening of July 9th. Plaintiff's expert opined compartment syndrome should have been suspected hours earlier and ruled out through careful examination and obtaining compartment pressures, which was not done. The expert opined Dr. Margolis' findings in the early evening of July 9th did not absolve defendants of their failure to include compartment syndrome as part of the differential diagnosis and properly rule it out earlier.

Plaintiff's expert also disagreed that Dr. Veeramachaneni properly considered neuroproxia following the surgery and acted properly in requesting a consultation from Dr. Margolis, and opined Dr. Veeramachaneni was required under the standard of care to suspect compartment syndrome in light of plaintiff's complaints, clinical signs and laboratory findings much earlier. Plaintiff's expert opined plaintiff's continuous pain, further complaints and clinical findings post-surgery required Dr. Veeramachaneni to suspect compartment syndrome and act quickly to diagnose it or rule it out. Based upon the foregoing, plaintiff argues defendants failed to demonstrate they are entitled to summary judgment.

Pursuant to CPLR §3212, "[a] motion [for summary judgment] shall be granted if . . . the cause of action . . . [is] established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." (CPLR 3212 [b]; *Rodriguez v. City of New Yor*k, 31 N.Y.3d 312 [2018].) The motion for summary judgment must also "show that there is no defense to the cause of action." (*Id*.). The party moving for summary judgment must make a prima facie showing that it is entitled to summary judgment by offering admissible evidence demonstrating the absence of any material issues of fact and it can be decided as a matter of law. (CPLR § 3212 [b]; *see Jacobsen v New York City Health and Hosps. Corp.*, 22 N.Y.3d 824 [2014]; *Brill v City of New York*, 2 N.Y.3d 648 [2004].) In deciding a summary judgment motion, the court does not make credibility determinations or findings of fact. Its function is to identify issues of fact, not to decide them. (*Vega v. Restani Constr. Corp*., 18 N.Y.3d 499, 505 [2012].) Once a prima facie showing has been made, however, the burden shifts to the non-moving party to prove that material issues of fact exist that must be resolved at trial. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980].)

In moving for summary judgment in a medical malpractice action, the defendant must establish a prima facie case that there was no departure from good and accepted medical practice or that the plaintiff was not injured thereby, and the plaintiff in opposition must submit evidentiary facts or materials to demonstrate the existence of a triable issue of fact. (*Stukas v. Streiter*, 83 A.D.3d 18, 24 [2d Dept. 2011].) In presenting opposition to raise a triable issue of fact, the plaintiff is required to provide an affidavit of merit by a medical expert, and the failure to submit an affidavit by a medical expert competent to attest to the meritorious nature of the plaintiff's claims requires dismissal of the Complaint. (*Id.* at 28.) Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions. (*Buch v. Tenner*, 204 A.D.3d 635, 638 [2d Dept. 2022].) In general, a hospital may be vicariously liable for the negligence or malpractice of its employees acting within the scope of employment under the doctrine of *respondeat superior*. (*Valerio v. Liberty Behavioral Mgt. Corp.*, 188 A.D.3d 948 [2d Dept. 2020].)

To establish a cause of action to recover damages based upon lack of informed consent, a plaintiff must prove "(1) that the person providing the professional treatment failed to disclose alternatives thereto and failed to inform the patient of reasonably foreseeable risks associated

with the treatment, and the alternatives, that a reasonable medical practitioner would have disclosed in the same circumstances, (2) that a reasonably prudent patient in the same position would not have undergone the treatment if he or she had been fully informed, and (3) that the lack of informed consent is a proximate cause of the injury." (*Gilmore v. Mihail*, 174 A.D.3d 686, 688 [2d Dept. 2019].)

Defendants Dr. Veeramachaneni and Long Island Plastic Surgical Group, P.C. established a prima facie entitlement to summary judgment, as they demonstrated through the documentary evidence and expert affirmations that they did not depart from accepted standards of care or proximately cause plaintiff's injuries. Defendants demonstrated through the deposition testimony, medical records, and Dr. Grant's affirmation that Dr. Veeramachaneni appropriately recommended the DIEP flap surgery and appropriately waited until plaintiff was done with chemotherapy and quit smoking to do the procedure. They demonstrated Dr. Veeramachaneni appropriately obtained informed consent from plaintiff, as she obtained an eight-page consent form signed by plaintiff, and discussed the risks and benefits of the procedure with her before obtaining her consent. Defendants further demonstrated Dr. Veeramachaneni properly positioned plaintiff throughout the procedure and properly performed the surgery. Defendants further demonstrated Dr. Veeramachaneni rendered appropriate post-surgery care by evaluating and monitoring plaintiff, including compartment syndrome in the differential diagnosis and timely obtaining a vascular surgery consult. Defendants demonstrated Dr. Veeramachaneni appropriately relied upon Dr. Margolis' determination that compartment syndrome was not present after performing the vascular surgery consult on July 9th. They demonstrated through the medical evidence and Dr. Grant's affirmation that an earlier consult would not have revealed the presence of compartment syndrome and would not have changed plaintiff's outcome. Defendants further demonstrated none of Dr. Veeramachaneni's actions or inactions proximately caused plaintiff's injuries. Defendants also demonstrated there are no direct claims against Long Island Plastic Surgical Group, P.C.'s employees, and it cannot be held vicariously liable for defendant Dr. Veeramachaneni, as she did not depart from accepted standards of care. Based upon the foregoing, defendants established a prima facie entitlement to judgment as a matter of law.

Plaintiff failed to raise a triable issue of material fact in dispute, as plaintiff's expert failed to sufficiently rebut Dr. Grant's findings and opinions regarding Dr. Veeramachaneni's care and treatment of plaintiff. Plaintiff's expert's opinions were limited to Dr. Veeramachaneni's post-operative care and treatment on July 9th , and the opinions that Dr. Veeramachaneni departed from the standard of care were conclusory and unsupported by the medical evidence. (*See Mendoza v. Maimonides Med. Ctr.*, 203 A.D.3d 715, 716 [2d Dept. 2022]["General and conclusory allegations of medical malpractice, however, unsupported by competent evidence tending to establish the essential elements of medical malpractice, are insufficient to defeat a defendant physician's summary judgment motion."]; *see also Lowell v. Flom*, 195 A.D.3d 801, 803 [2d Dept. 2021][holding that an expert opinion that is contradicted by the record or relies upon facts that are

not supported by the record is speculative, conclusory, and insufficient to defeat summary judgment].) Plaintiff's expert failed to sufficiently refute Dr. Grant's opinion that based upon the medical records, compartment syndrome was a part of Dr. Veeramachaneni's differential diagnosis on July 9th. With respect to the timelines of the compartment syndrome diagnosis, plaintiff's expert failed to sufficiently rebut Dr. Grant's opinion that Dr. Veeramachaneni was kept abreast of plaintiff's status and timely ordered the vascular surgery consult. Plaintiff's expert failed to address Dr. Grant's opinion that even if Dr. Veeramachaneni had obtained an earlier vascular surgery consultation, it would not have changed the outcome because when Dr. Margolis performed his vascular surgery evaluation, he determined plaintiff did not have compartment syndrome. The expert further failed to sufficiently refute Dr. Grant's opinion that Dr. Veeramachaneni appropriately relied upon Dr. Margolis' consult and determination that plaintiff did not have compartment syndrome as of July 9th, and failed to sufficiently raise an issue of fact whether Dr. Veeramachaneni's actions or inactions proximately caused plaintiff's injuries.

Plaintiff also failed to raise a triable issue of material fact in dispute with respect to her claim for lack of informed consent, as she failed to sufficiently rebut that portion of defendants' motion with competent, admissible evidence. (*See Keun Young Kim v. Lenox Hill Hosp.*, 156 A.D.3d 774, 775 [2d Dept. 2017][holding that in opposing a motion for summary judgment, a plaintiff must demonstrate the existence of a triable issue of fact as to the elements on which the defendant has met his or her initial burden].) As plaintiff's expert presented no opinions with regard to the claim for lack of informed consent, there are no triable issues of fact. Based upon the foregoing, plaintiff failed to rebut defendants' prima facie case and failed to demonstrate dismissal is not warranted.

Accordingly, defendants Long Island Plastic Surgical Group, P.C. and Haritha Veeramachaneni, M.D.'s motion for summary judgment and dismissal of plaintiff's Complaint pursuant to CPLR §3212 is granted. It is hereby

ORDERED that plaintiff's Complaint is dismissed as to defendants LONG ISLAND PLASTIC SURGICAL GROUP, P.C. and HARITHA VEERAMACHANENI, M.D.

This constitutes the decision and Order of the Court.

Dated: June 13, 2025

Tracy Catapano-Fox

Hon. Tracy Catapano-Fox, J.S.C.