

Westmoreland v Badani

2025 NY Slip Op 34350(U)

November 5, 2025

Supreme Court, New York County

Docket Number: Index No. 805412/2020

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

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TRACY WESTMORELAND,
Plaintiff,

INDEX NO. 805412/2020

MOTION DATE 02/19/2025

MOTION SEQ. NO. 003

- v -

KETAN KISHORE BADANI, MOUNT SINAI WEST, MOUNT SINAI HEALTH SYSTEM, INC., MOUNT SINAI HEALTH, INC., and MOUNT SINAI HOSPITALS GROUP, INC

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 86, 87

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, oral arguments having been heard, and no opposition or appearances by the Plaintiff made hereto, the Defendants KETAN KISHORE BADANI, M.D. s/h/a KETAN KISHORE BADANI, M.D. a/k/a KETAN K. BADANI, M.D. a/k/a KETAN BADANI, M.D., ST. LUKE'S-ROOSEVELT HOSPITAL CENTER s/h/a MOUNT SINAI WEST, MOUNT SINAI HEALTH SYSTEM, INC., MOUNT SINAI HEALTH, INC. and MOUNT SINAI HOSPITALS GROUP, INC., move for an Order, pursuant to CPLR 3212, granting summary judgment on their behalf and dismissing this matter with prejudice against said Defendants.

Plaintiff submits no opposition and did not appear for oral arguments scheduled for November 5th, 2025.

A defendant physician moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law by establishing the absence of a triable issue of fact as to his or her alleged departure from accepted standards of medical practice, and by establishing

that the Plaintiff was not injured by such treatment (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Frye v Montefiore Med. Ctr.*, 70 AD3d 15 [1st Dept 2009]; *McGuigan v Centereach Mgt. Group, Inc.*, 94 AD3d 955 [2d Dept 2012]; *Sharp v Weber*, 77 AD3d 812 [2d Dept 2010]; see generally *Stukas v Streiter*, 83 AD3d 18 [2d Dept 2011]). To satisfy this burden, a Defendant must present expert opinion testimony that is supported by the facts in the record, addresses the essential allegations in the complaint or the bill of particulars, and is detailed, specific, and factual in nature (see *Roques v Noble*, 73 AD3d 204, 206 [1st Dept 2010]; *Joyner-Pack v Sykes*, 54 AD3d 727 [2d Dept 2008]; *Koi Hou Chan v Yeung*, 66 AD3d 642 [2d Dept 2009]; *Jones v Ricciardelli*, 40 AD3d 935 [2d Dept 2007]).

In support of their motion, Defendants submits the medical expert affirmation of Dr. David M. Albala, M.D. (“Dr. Albala”), a board-certified Urologist, who opines to a reasonable degree of medical certainty that Dr. Badani did not depart from good and accepted standards of dental care in his treatment of the plaintiff and none of the care rendered by Dr. Badani approximately caused or brought about the injuries as claimed by the plaintiff in his Bills of Particulars. Specifically, Dr. Albala opines that Dr. Badani’s care throughout the pre-operative, surgical, and post-operative phases met the standard of care.

Regarding the Pre-operative Evaluation, Dr. Albala opines that Dr. Badani’s history, physical examination, and review of relevant patient history—including issues like Benign Prostatic Hyperplasia (“BPH”) and urinary tract concerns—to be appropriate. Dr. Albala notes that Dr. Badani’s assessment, management, and plan of care, along with ordered imaging and lab tests, were correct for evaluating the patient's hematuria, BPH, and Lower Urinary Tract Symptoms (LUTS), and for differentiating potential causes. Further, Dr. Albala opines that the decision to perform bladder irrigation, the attempted passing of a catheter (and the documentation of its

inability to pass), and the ultimate treatment recommendation for a simple prostatectomy were all deemed appropriate and correct, and the choice of performing a robotic-assisted simple prostatectomy (RASP) was considered reasonable and appropriate because a simple prostatectomy is the standard of care for large prostates, and no universal standard dictates the specific surgical technique.

Concerning the Surgery, Dr. Albala opines that Dr. Badani performed the RASP in accordance with the standard of care, demonstrating a solid understanding of the relevant anatomy. Specifically, Dr. Albala opines that Dr. Badani correctly removed the appropriate amount of prostate tissue to achieve the goal of relieving obstruction, noting that there are no specific standards for the exact volume to be excised. Crucially, Dr. Albala notes that the goal of the procedure—to relieve the urinary obstruction—was achieved, as the Plaintiff’s post-operative symptoms, including hematuria and voiding, improved.

On the matter of Causation, Dr. Albala opines that Dr. Badani did not cause or create the need for any additional surgery, and the success of Dr. Badani’s procedure is demonstrated by the well-documented improvement in the Plaintiff’s symptoms following the simple prostatectomy, including the resolution of hematuria and adequate voiding. Finally, Dr. Albala confirmed that Dr. Badani appropriately discussed all relevant risks and benefits and properly obtained Informed Consent, detailing an extensive list of potential complications.

The Court finds that the Defendants have established prima facie entitlement to judgment as a matter of law based on Dr. Albala’s expert affirmation, which demonstrates that the care and treatment provided by Defendants were consistent with the standards of good and accepted medical practice at all times, and that Plaintiff’s alleged injuries were not caused by any action or omission

by the Defendants. (*Ducasse v New York City Health & Hospital Corp.*, 148 AD3d 434, 436 [1st Dept 2017]).

Once the defendant meets their burden, the burden shifts to the plaintiff, who must rebut the defendant's prima facie showing (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). "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" (*Murphy v Chinatown Cardiology, P.C.*, 220 AD3d 539, 540 [1st Dept 2023] [quotation marks and citations omitted]).

In this case, the Plaintiff offered no opposition, specifically failing to provide an expert affirmation. Because the Plaintiff offered no opposition or expert affirmation, s/he failed to satisfy her/his burden of rebutting the Defendants' prima facie showing.

As Plaintiff has failed to establish that Defendant Dr. Badani departed from the standard of care or that any of his actions and/or inactions caused the claimed injuries, the Complaint as against the Mount Sinai Defendants must also be dismissed as the only claims against these entities are for vicarious liability.

Thus, the Court grants the Defendants' motion in its entirety.

Accordingly, it is hereby

ORDERED that the Defendants' motion is granted in its entirety; and it is further

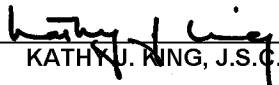
ORDERED that the Plaintiff's complaint is dismissed as against Defendants KETAN KISHORE BADANI, M.D. s/h/a KETAN KISHORE BADANI, M.D. a/k/a KETAN K. BADANI, M.D. a/k/a KETAN BADANI, M.D., ST. LUKE'S-ROOSEVELT HOSPITAL CENTER s/h/a MOUNT SINAI WEST, MOUNT SINAI HEALTH SYSTEM, INC., MOUNT SINAI HEALTH, INC. and MOUNT SINAI HOSPITALS GROUP, INC., in its entirety; and it is further

ORDERED within twenty (20) days of the date of this Order, that the moving Defendants are to serve a copy of this Order on the Plaintiff via first-class certified mail to her/his last known address; and it is further

ORDERED that, within twenty (20) days of the date of this Order, the moving Defendants shall serve a copy of this Order upon the County Clerk and the Clerk of the General Clerk’s Office, which shall be effectuated in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases, accessible at the “E-Filing” page on the court’s website, and, to comply with those procedures, the moving Defendant shall (1) upload this Order to the NYSCEF system under document title “SERVICE ON SUPREME COURT CLERK (GENL CLERK)W/COPY OF ORDER,” and (2) separately file and upload the notice required by CPLR 8019(c) a completed Form EF-22, along with a copy of this Order under document title “NOTICE TO COUNTY CLERK CPLR 8019(C),” and the County Clerk and all appropriate court support offices shall thereupon amend the court records accordingly; and it is further

ORDERED that the Clerk is directed to enter judgment in accordance with this Order.

This Constitutes the Decision and Order of the Court.

<u>11/5/2025</u> DATE		 KATHY J. KING, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE