Short Form Order
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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RUSSELL BROWN,

Plaintiff,

-against-

GURUPRASAD SRINIVAS, M.D., and NORTH SHORE LONG ISLAND JEWISH MEDICAL CENTER,

Defendants.

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Index No. 714075/2020

Part MDP
Motion Date: December 11, 2024
Calendar No. 5

Sequence No. 5

The following papers numbered EF-69 through EF-106 read on this motion by defendant NORTH SHORE LONG ISLAND JEWISH MEDICAL CENTER for summary judgment and dismissal of plaintiff's Complaint pursuant to CPLR §3212.

	Papers Numbered
Notice of Motion, Affirmation, Exhibits……..	EF69-EF68
Affirmation in Opposition, Exhibits……	EF97-EF101
Reply Affirmation, Exhibits…….	EF105-EF106

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

Defendant North Shore Long Island Jewish Medical Center (hereinafter referred to as "LIJMC")'s motion for summary judgment and dismissal of plaintiff's Complaint pursuant to CPLR §3212 is granted. Plaintiff commenced this action for medical malpractice and lack of informed consent for injuries sustained from a fall during his care and treatment at defendant LIJMC from April 10, 2018 through April 15, 2018. Plaintiff filed the Summons and Complaint on August 26, 2020, and issue was joined by moving defendant on September 18, 2020.

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 for lack of informed consent, a plaintiff must prove 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, that a reasonably prudent patient in the same position would not have undergone the treatment had the patient been fully informed, and that the lack of informed consent is a proximate cause of the injury." (*Rich v. Donnenfeld*, 191 A.D.3d 909, 910 [2d Dept. 2021].)

Defendant LIJMC demonstrated a prima facie entitlement to summary judgment, through the pleadings, the parties' deposition testimony, plaintiff's medical records and expert affirmations from Dr. Elias Sakalis and Joy Alvarez, RN, BSN, MA in support of its motion. (*See Currie v. Oneida Health Sys., Inc.*, 222 A.D.3d 1284 [3d Dept. 2023].) Dr. Sakalis affirmed to be a licensed physician in New York who is board certified in Internal Medicine and reviewed the evidence in this action. He presented specific details of his knowledge, experience and familiarity in the standards of care of Emergency Medicine in 2018 and opined to a reasonable degree of medical certainty that defendant LIJMC staff rendered appropriate care within good and accepted medical practice, and none of its actions or omissions proximately caused plaintiff's injuries. Defendant

demonstrated through Dr. Sakalis' affirmation that plaintiff was properly assessed by defendant's staff four times prior to his fall, and he lacked the requisite morbidities to qualify as a high fall risk. Defendant LIJMC further demonstrated through the medical records, deposition testimony and Dr. Sakalis' affirmation that LIJMC staff properly assessed plaintiff and implemented appropriate fall risk precautions. It further demonstrated plaintiff became lightheaded, an unforeseeable change that could not be expected because he was fully ambulatory and asymptomatic. Defendant LIJMC also presented the affirmation of Nurse Alvarez, who affirmed to be a licensed nurse in New York and gave specific information regarding her knowledge and experience with the standard of care for nursing in 2018. She affirmed to reviewing the evidence and opined to a reasonable degree of nursing certainty that defendant LIJMC did not depart from good and accepted nursing standards in assessing plaintiff and implement a fall risk plan, and none of its actions or inactions were the proximate cause of plaintiff's injuries. Nurse Alvarez opined defendant LIJMC performed four fall risk assessments, and timely assessed plaintiff within twenty-four hours of admission, within the standard of care. She further opined LIJMC staff properly assessed plaintiff and implemented appropriate fall risk measures, including non-slip socks. Nurse Alvarez also opined LIJMC properly increased the fall risk measures on April 12, 2018, when plaintiff complained of dizziness. She also opined plaintiff was appropriately monitored and accompanied to the lounge, which was not where plaintiff fell. She disagreed that plaintiff should have been provided a wheelchair and one-to-one assistance, as neither of these interventions were appropriate or would have prevented plaintiff's fall. Nurse Alvarez opined that falls could occur even with appropriate interventions in place, which occurred here, and was not a result of deviations or departures by LIJMC.

Plaintiff failed to raise a triable issue of fact in dispute, as plaintiff failed to present competent, non-conclusory evidence that LIJMC departed from the applicable standard of care and caused plaintiff's injuries. (*See Murray v. Central Is. Healthcare*, 205 A.D.3d 1036 [2d Dept. 2022].) Plaintiff's expert affirmation from Dr. Terrance Baker is conclusory, vague and insufficient to raise a triable issue of fact. While Dr. Baker affirms to be a licensed physician in Maryland who is board certified in geriatric medicine, family medicine and emergency medicine, he failed to assert with specificity any knowledge, experience or familiarity with the standard of care in 2018 applicable to plaintiff's care and treatment. Further, Dr. Baker's opinion that defendant LIJMC departed from the standard of care is vague and conclusory, as he does not state the applicable standard of care for assessing and implementing a risk fall protocol. His opinion that plaintiff should have been provided a wheelchair and one-to-one assistance is conclusory and unsupported by the record. Dr. Baker also failed to sufficiently demonstrate the cause of plaintiff's fall, and how defendant LIJMC caused or contributed to its occurrence, and further failed to demonstrate defendant's alleged departures proximately caused plaintiff's injuries. As plaintiff failed to sufficiently demonstrate defendant LIJMC departed from the applicable standard of care in assessing him as a fall risk and implementing an appropriate fall risk plan, there are no issues of fact in dispute.

Accordingly, defendant North Shore Long Island Jewish Medical Center's motion for summary judgment and dismissal of plaintiff's Complaint pursuant to CPLR §3212 is granted. Plaintiff's Complaint is dismissed as to defendant North Shore Long Island Jewish Medical Center.

This constitutes the decision and Order of the Court.

Dated: January 3, 2025

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