

Campbell v Carryl

2025 NY Slip Op 34477(U)

November 20, 2025

Supreme Court, New York County

Docket Number: Index No. 805033/2021

Judge: Arthur F. Engoron

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

-----X

KAMEISHA CAMPBELL,

Plaintiff,

- v -

STEPHEN S CARRYL, STEPHEN S. CARRYL, M.D., P.C.,
NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION,

Defendants.

-----X

INDEX NO. 805033/2021

MOTION DATE 01/13/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44,

were read on this motion for

SUMMARY JUDGMENT

Upon the foregoing documents, for the reasons stated at oral argument on September 22, 2025, and for the reasons stated hereinbelow, defendants' motion, pursuant to CPLR 3212, for summary judgment is granted in part and denied in part as follows.

Background

This medical malpractice action arises out of treatment that defendants, Stephen S. Carryl, M.D. ("Dr. Carryl") and New York City Health and Hospitals Corporation, rendered to plaintiff, Kameisha Campbell, between December 12 and December 24, 2019. NYSCEF Doc. No. 26.

On December 12, 2019, Dr. Carryl performed a voluntary gastric sleeve bypass surgery on plaintiff at Harlem Hospital. NYSCEF Doc. No. 26. The next day, December 13, 2019, plaintiff complained of lower left quadrant abdominal pain and an upper gastrointestinal study was ordered and performed. NYSCEF Doc. Nos. 26, 30. On December 14, 2019, plaintiff underwent a computed tomography ("CT") scan of her chest, abdomen, and pelvis and, on December 17, 2019, underwent another. NYSCEF Doc. No. 26.

On December 19, 2019, plaintiff reported a "popping" sensation in her abdomen, followed by severe abdominal pain. Later that day, Dr. Carryl performed an "exploratory laparoscopy, evacuation of hematoma, abdominal washout and drainage, intraoperative endoscopy." NYSCEF Doc. No. 26.

On December 24, 2019, plaintiff underwent an esophagogastroduodenoscopy, during which a self-expandable esophageal stent was placed, clips were used to repair an esophageal tear, and a nasogastric feeding tube was advanced. NYSCEF Doc. No. 26.

On December 27, 2019, plaintiff was transferred to Columbia Presbyterian Medical Center “for further endoscopic management possible stent placement and available Esophageal Thoracic Surgery team if required.” NYSCEF Doc. No. 26.

Plaintiff remained hospitalized through January 19, 2020, and alleges she was subsequently confined to her home until approximately June 30, 2020, except for medical appointments. Id.

On January 25, 2021, plaintiff sued defendants, asserting three causes of action: (1) negligence against Dr. Carryl; (2) lack of informed consent against Dr. Carryl; and (3) medical malpractice against New York City Health and Hospitals Corporation. Plaintiff alleges, inter alia, that defendants negligently failed properly to diagnose, care for, treat, and inform her and, as a result, she sustained multiple serious injuries, including gastric and esophageal leaks and perforations, sepsis, renal dysfunction, prolonged hospitalization, multiple invasive procedures, and ongoing physical and psychological harm. NYSCEF Doc. Nos. 1, 24.

Defendants now move, pursuant to CPLR 3212, for summary judgment dismissing the complaint in its entirety. NYSCEF Doc. 18.

Defendants argue that there was no deviation from the standard of care on behalf of the individual defendants and, therefore, the hospital defendant has nothing for which to be vicariously liable, and, further, that plaintiff consented to the underlying procedures. NYSCEF Doc. No. 33.

In support, defendant submits an affirmation of medical expert, bariatric surgeon Dr. Mitchell Roslin, M.D., a Board-certified surgeon, opining, inter alia, that defendants met the standard of care in all respects in all three procedures and that, based on his review of the record and “expertise in the field of bariatric surgery,” plaintiff “was properly informed of the risks, benefits, and alternatives of the procedures on December 12th and 19th.” NYSCEF Doc. No. 21.

Defendant also submits an affirmation of medical expert, gastroenterologist Dr. Edward Lung, M.D., also a Board-certified surgeon, opining, inter alia, that defendant’s decisions met the standard of care, and that plaintiff was properly informed of the risks of the underlying procedure including, specifically, the kind of perforation that occurred here. NYSCEF Doc. No. 22.

In opposition, plaintiff argues, inter alia, that defendants departed from the standard of care in treating her, and that there is a question of fact as to whether defendants informed her of the risks of leaks associated with the gastric sleeve procedure. NYSCEF Doc. No. 40.

In support, plaintiff submits an affirmation of her own medical expert, also a Board-certified surgeon, opining, inter alia, that her “complications require[d] prompt recognition by the surgery team to intervene and prevent the patient from developing peritonitis and sepsis” and that, because such intervention was not timely provided, defendants injured plaintiff. NYSCEF Doc. No. 39.

In reply, defendants argue, inter alia, that they are entitled to partial summary judgment as to their un rebutted points, and that plaintiff's claim there was a delay in transferring patient to a tertiary facility is a new claim. NYSCEF Doc. No. 44.

Discussion

A defendant in a medical malpractice action establishes prima facie entitlement to summary judgment by showing that in treating the plaintiff, he or she did not depart from good and accepted medical practice, or that any such departure was not a proximate cause of the plaintiff's alleged injuries. Once a defendant meets that burden, the plaintiff must rebut the prima facie showing via medical evidence attesting that the defendant departed from accepted medical practice and that such departure was a proximate cause of the injuries alleged.

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. To defeat summary judgment, the expert's opinion must demonstrate the requisite nexus between the malpractice allegedly committed and the harm suffered.

Anyie B. v Bronx Lebanon Hosp., 128 AD3d 1, 3 (1st Dept 2015) (internal citations and quotation marks omitted).

Here, a clear dispute exists between the plaintiff's expert, who states to reasonable degree of medical certainty that defendants deviated from the standard of care in treating plaintiff after the December 12, 2019 gastric sleeve bypass surgery and the various scans and procedures that followed it, and the defendants' experts who state, also to a reasonable degree of medical certainty, that the standard of care was satisfied. Accordingly, defendants' motion should be denied as to those claims.

However, there is no question of material fact as to whether plaintiff was informed of the risks associated with the procedures. Plaintiff was informed of the risks associated with each procedure and signed a written consent. NYSCEF Doc. Nos. 19, 22, 25, 26. Additionally, defendants have made undisputed prima facie showings that: the sleeve gastrectomy, exploratory laparoscopy, and endoscopic stenting were indicated and properly performed; the hematoma and splenic infarct were recognized risks, not departures; the esophageal tear was a recognized risk of stenting, promptly managed, and not caused by negligent technique; and that plaintiff has no viable negligent hiring or retention claim. NYSCEF Doc. Nos. 21, 22. Accordingly, defendants' motion should be granted as to those claims.

Plaintiff's claim that defendants departed from accepted medical practice by failing immediately to transfer her to a tertiary hospital should be dismissed as improperly raised for the first time in opposition to a summary judgment motion. See Keilany B. ex rel. Xiomara S. v City of New York, 122 AD3d 424, 425 (1st Dept 2014) ("The merits of plaintiffs' new theory of recovery, raised for the first time in opposition to [defendant hospital's] motion for summary judgment, will not be considered").

This Court has considered the parties remaining arguments and finds them to be unavailing and/or non-dispositive.

Conclusion

Thus, the motion by the defendants, Stephen S. Carryl, M.D., and New York City Health and Hospitals Corporation, for summary judgment dismissing the complaint against them is hereby denied as to plaintiff's claims that defendants deviated from the standard of care in treating and monitoring her after the December 12, 2019 gastric sleeve bypass surgery and in properly and timely following up on the December 14, 2019 CT Scan, the post-sleeve vital signs and bloodwork, and the December 17, 2019 CT scan, and is otherwise granted as to plaintiff's informed consent claim as well as the undisputed claims as indicated above, and the Clerk is hereby directed to enter judgment accordingly.

11/20/2025

DATE

HON. ARTHUR F. ENGORON

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE