

Koller v Kolev

2025 NY Slip Op 34878(U)

December 16, 2025

Supreme Court, New York County

Docket Number: Index No. 453611/2021

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

-----X

CAROLINE KOLLER,

Plaintiff,

- v -

TAMARA KOLEV, MOUNT SINAI BETH ISRAEL, and
MOUNT SINAI HEALTH SYSTEM,

Defendants.

-----X

INDEX NO. 453611/2021

MOTION DATE 09/23/2025

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 178, 179, 180, 181

were read on this motion to/for REARGUMENT/RECONSIDERATION.

This is an action to recover damages for medical malpractice based on alleged departures from good and accepted practice. In an order dated July 18, 2025, this court, among other things, denied that branch of the motion of the defendants Tamara Kolev and Mount Sinai Beth Israel (together the Beth Israel defendants) which was for summary judgment dismissing the medical malpractice cause of action insofar as asserted against them (MOT SEQ 001). The Beth Israel defendants now move pursuant to CPLR 2221(d) for leave to reargue that branch of their motion which was for summary judgment dismissing so much of the medical malpractice cause of action, insofar as asserted against them, as was premised upon alleged departures from good practice with respect to treatment that they rendered to the plaintiff on or before July 27, 2018. They further request that, upon reargument, this court grant that branch of their motion seeking summary judgment dismissing claims concerning treatment that they rendered on or before July 27, 2018, and limit the issues for trial to the care and treatment that occurred on or after April 22, 2019. The plaintiff opposes the motion. The motion is granted to the extent that leave to reargue is granted, and, upon reargument, the court awards summary judgment to

the Beth Israel defendants dismissing any claims of malpractice arising from treatment or care that they rendered to the plaintiff on or before July 27, 2018. The motion is otherwise denied.

As the Appellate Division, First Department, has explained,

“[a] motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing ‘that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision’”

(*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992], quoting *Schneider v Solowey*, 141 AD2d 813, 813 [2d Dept 1988]; see *O’Brien v Kaplan*, 238 AD3d 609, 610 [1st Dept 2025]; *Matter of Setters v AI Props. & Devs. (USA) Corp.*, 139 AD3d 492, 4492 [1st Dept 2016]). The Beth Israel defendants now contend that the court overlooked or misapprehended the fact that the plaintiff’s experts did not render any opinion that the Beth Israel defendants departed from good and accepted practice at any time prior to April 22, 2019 by failing to suspect the presence of cancer, perform the appropriate testing for the presence of such cancer, or render appropriate treatment in connection with that cancer.

The court rejects the Beth Israel defendants’ contention that the plaintiff’s experts failed to render any opinion with respect to each and every examination conducted, test performed, and treatment rendered by those defendants to the plaintiff prior to April 22, 2019. Rather, the court concludes that it did not overlook or misapprehend any facts or law presented to it in connection with that branch of the Beth Israel defendants’ motion seeking summary judgment dismissing claims of malpractice arising prior to April 22, 2019, since the plaintiff’s experts rendered opinions concerning Kolev’s September 14, 2018 examination. In this respect, the court notes that, in its July 18, 2025 order, it recited that

“the plaintiff’s OB/GYN expert additionally opined that *Kolev deviated from the standards of good and accepted gynecological practice on September 14, 2018 by failing to order a pelvic ultrasound* when the plaintiff then complained of “internal vaginal pain,” with odorous discharge, burning, itching, and urinary hesitancy, instead attributing these symptoms to vaginitis, without ruling out other structural causes that required an ultrasound. The expert further faulted Kolev for failing to direct the plaintiff to return for a follow-up appointment and examination one to two weeks hence in light of the inflammation reported on the

PAP smear. *The expert thus concluded that, in fact, the plaintiff had developed vaginal cancer as early as September 2018 that was progressively worsening between that time and August 2019, and that standards of accepted gynecological practice required Kolev, as of April 2019, to have formulated a differential diagnosis that included cervical cancer*"

and that

"[t]he OB/GYN also rejected the defendants' experts' opinion that the 2018 PAP smear had ruled out cervical cancer in April 2019, as well as Dr. Dweck's conclusion that the plaintiff's complaints in April 2019 'did not warrant cancer screening via another pap smear,' since 'this was not just screening for cervical cancer,' inasmuch as the plaintiff 'was symptomatic for cervical cancer' and a biopsy of the bleeding area 'needed to be done.' *The expert asserted that the PAP smear from 2018 'could have missed the cancer and produced a false negative,' since 'PAP smears can produce 20% false negatives,'*"

while explaining that the plaintiff's expert oncologist

"concluded that based upon the typical characteristics and growth rate of cervical cancer, *the plaintiff's reported symptoms between September 2018 through October 2019, and the fact that the plaintiff was diagnosed with stage 3C1 cervical cancer in October 2019, she had precancerous cells, or a very early stage 1 cancer, in September 2018, which progressed to stage 1 in April 2019, then to late stage 2 or a very early stage 3 in August 2019, and ultimately to advanced stage 3C1 in October 2019.*"

(emphasis added). The court agrees with the Beth Israel defendants, however, that it overlooked the fact that the plaintiff's experts did not render any opinion as to departures from good and accepted practice in connection with examinations, testing, diagnoses, and treatment occurring on or before July 27, 2018, despite the plaintiff's allegations in her complaint that Kolev performed a pap smear on that date. Rather, in connection with the events of 2018, the plaintiffs' experts only opined that the Beth Israel defendants' initial departure from good and accepted practice began as of September 14, 2018.

Accordingly, it is,

ORDERED that the motion of the defendants Tamara Kolev and Mount Sinai Beth Israel for leave to reargue is granted, and, upon reargument, the order dated July 18, 2025 is modified by (a) vacating the provisions thereof implicitly denying that branch of their motion which was for summary judgment dismissing any claim to recover for medical malpractice arising from alleged

departures from good and accepted practice that occurred on or before July 27, 2018, and (b) substituting therefor a provision granting that branch of their motion, the court otherwise adheres to its determination in the order dated July 18, 2025, and the motion is otherwise denied.

This constitutes the Decision and Order of the court.

12/16/2025
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE