Froumy v Hriljac
2025 NY Slip Op 35194(U)
December 9, 2025
Supreme Court, New York County
Docket Number: Index No. 805118/2017
Judge: Kathy J. King
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. KATHY J. KING** **PART** **06**

Justice

---X

THOMAS FROUMY,

Plaintiff,

- v -

INGRID HRILJAC, M.D., ALPHONS POMP, M.D., and NEW YORK PRESBYSTERIAN HOPSITAL/NEW YORK WEILL CORNELL MEDICAL CENTER,

Defendants.

---X

INDEX NO. 805118/2017

MOTION DATE 12/06/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

Defendants Ingrid Hriljac, M.D. ("Dr. Hriljac"), Alphons Pomp, M.D. s/h/a Alphons Pomp, M.D. ("Dr. Pomp"), and the New York and Presbyterian Hospital s/h/a New York Presbyterian Hospital/ New York Weill Cornell Medical Center ("NYPH") (collectively "Defendants") move for summary judgment, pursuant to CPLR 3212, dismissing Plaintiff's complaint with prejudice, and directing the Clerk of the Court to enter judgment in favor of Defendants and against Plaintiff, or, pursuant to CPLR 3212(e) and (g), granting summary judgment as to any claim or theory of liability as to which the Court finds that Plaintiffs have failed to raise an issue of fact.

Plaintiff, Thomas Froumy, opposes Defendants' motion.

BACKGROUND

Plaintiff first consulted Dr. Pomp for bariatric surgery on January 6, 2014. He weighed 322 pounds and had a BMI of 40.8. His significant medical history included coronary artery disease, hyperlipidemia, obstructive sleep apnea, together with former cigarette smoking, and alcohol consumption. After noting the Plaintiff's medical history and comorbidities, Dr. Pomp's assessment was that Plaintiff had morbid obesity for which bariatric surgery was recommended. Dr. Pomp discussed the potential risks and complications of various laparoscopic procedures including gastric bypass, sleeve gastrectomy, and adjustable gastric banding. Dr. Pomp recommended laparoscopic bariatric surgery, but the Plaintiff initially was undecided.

He returned to Dr. Pomp on February 2, 2015. He weighed 346 pounds, an increase of 24 pounds since the initial consultation, and his BMI was 43.25. They re-discussed surgical options and the associated potential risks, benefits and alternatives continuing to discuss surgical options, and ultimately decided on a sleeve gastrectomy to be performed on March 24, 2015. Dr. Pomp then directed him to obtain preoperative clearance from his internist and cardiologist, along with a nutritionist and a psychologist.

Preoperative clearances were completed as follows: nutritional consultations on February 12 and 19, 2015; psychological clearance on February 18, 2015; and medical clearance on February 26, 2015. The medical clearance noted a low cardiac risk due to the Plaintiff's non-diabetic status and unlimited exercise tolerance with stairs. A subsequent EKG on March 11, 2015, was normal. Plaintiff had his final preoperative visit with Dr. Pomp on March 11, 2015.

The following week, on March 20, 2015, Dr. Hriljac, Plaintiff's cardiologist, and Dr. Pomp, decided the Plaintiff should discontinue Plavix 3-4 days preoperatively while continuing aspirin, as it had been more than one year since his stenting procedure, and this would reduce the risk of bleeding. Thereafter, on March 23, 2015, Dr. Hriljac, who had been treating Plaintiff since

February 14, 2011, provided cardiac clearance for surgery, based on Plaintiff's physical examination and lab work. Her assessment was that despite an increased risk for perioperative cardiac events, Plaintiff was asymptomatic, and no further testing or intervention was indicated.

On March 24, 2015, Plaintiff presented to NYPH for the sleeve gastrectomy weighing 431 pounds with a BMI of 44.4. The morning of the procedure, he had taken Amlodipine, Losartan, Coreg, Prevacid, Prozac, and Cymbalta. Although the surgery was documented as uncomplicated, Plaintiff began complaining of head and chest pain, and ST elevations were noted on the heart monitor at approximately 7:30 p.m. in the Post-Anesthesia Care Unit ("PACU"). Sublingual nitroglycerin was administered, and an anterior wall ST elevation myocardial infarction ("STEMI") code was called. Drs. Daniel Feldman, Katherine Gray, Shirley Cohen, and Tracey Paul, all non-parties, responded to the code, ordering labs and an EKG. Plaintiff was placed on oxygen, pressors, and nitroglycerine. At 8:00 p.m., a chest x-ray and another EKG were ordered due to persistent chest pain, although Plaintiff reported a decrease in pain and his oxygen saturation remained above 86%. He denied shortness of breath and was given beta-blockers and aspirin. The second EKG revealed persistent ST elevations, and Plaintiff became increasingly uncomfortable with increasing oxygen requirements. A bedside echocardiogram was consistent with a myocardial infarction, and he was transferred to the Catheterization Lab.

Upon examination and treatment, it was determined that Plaintiff had suffered a STEMI, caused by the sudden formation of a blood clot within a stent in the left anterior descending coronary artery. A thrombectomy was performed by non-party Dr. Luke Kim to remove the clot, and an intra-aortic balloon pump, followed by an Impella device was inserted for hemodynamic support. Dr. Hriljac learned from Dr. Kim and Dr. Maria Karas, a heart failure cardiologist, that the clot found in the patient's LAD stent was a sudden, acute blood clot. Following the STEMI,

Plaintiff remained intubated and sedated through April 1st. During this time, Dr. Barry Hartman performed an infectious disease consultation on March 31st and assessed that Plaintiff did not have an infection. By April 14th, the groin site of the prior Impella which had begun to ooze, was described as clean, dry and intact. An EEG on April 14th was without any evidence of seizures. However, a rapid response was called on April 15th after Plaintiff exhibited hypoxic respiratory failure. He was briefly intubated but was extubated by April 17th. An MRI on April 19th revealed chronic left cerebellar and left frontal infarcts. Plaintiff remained hospitalized until April 23, 2015, when he was discharged home. Thereafter, in September 2017, Plaintiff received a heart transplant.

Plaintiff commenced the within action by the filing of a Summons and Complaint on March 27, 2017, asserting a cause of action sounding in medical malpractice against Defendants, Dr. Pomp and Dr. Hriljac, and a claim that NYPH is vicariously liable for the named co-defendants. Specifically, Plaintiff alleges, *inter alia*, that Defendants were negligent by: failing to properly treat his obesity and cardiac disease; misdiagnosing Plaintiff's condition; failing to obtain proper medical clearance before surgery and/or anesthesia; ignoring signs of cardiac dysfunction, and providing inadequate prescription of antimacrobials. As a result of these claimed departures, Plaintiff alleges that he sustained an acute STEMI with 100% occlusion of the LAD, cardiogenic shock resulting in the insertion of an intra-aortic balloon pump, severe left ventricular dysfunction, placement of an Implantable Cardioverter Defibrillator, respiratory failure, and the need for a heart transplant.

Plaintiff further alleges a cause of action for lack of informed consent.

Upon serving their respective Answers on May 11, 2017, Defendants now move for summary judgment and dismissal of the Complaint against Dr. Pomp, Dr. Hriljac, and NYPH.

Plaintiff opposes the motion.

SUMMARY JUDGMENT AS TO MEDICAL MALPRATICE OF DR. HRILJAC AND DR. POMP

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, or 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]). Furthermore, to satisfy his or her burden on a motion for summary judgment, a defendant must address and rebut specific allegations of malpractice set forth in the plaintiff's bill of particulars (*see Wall v Flushing Hosp. Med. Ctr.*, 78 AD3d 1043 [2d Dept 2010]; *Grant v Hudson Val. Hosp. Ctr.*, 55 AD3d 874 [2d Dept 2008]; *Terranova v Finklea*, 45 AD3d 572 [2d Dept 2007]).

Defendants, in support of their motion, submit the affidavit of Scott Shikora, MD ("Dr. Shikora") a board-certified general surgeon, who opines to a reasonably degree of medical certainty, that the Defendants did not depart from the standard of medical care in treating the Plaintiff, and that all treatment rendered was appropriate and did not cause, or contribute to, the Plaintiff's alleged injuries. Specifically, he opines that Plaintiff was an appropriate candidate for a

sleeve gastrectomy because he was medically obese and had failed to lose weight using numerous conservative weight loss measures.

Dr. Shikora further opines that Dr. Pomp appropriately discussed the potential risks, benefits, and alternatives for bariatric surgery with Plaintiff and advised him that the sleeve gastrectomy was the more effective weight loss option for men with morbid obesity. Dr. Shikora specifically noted that Dr. Pomp appropriately identified sleeve gastrectomy as the more effective weight loss option for men with morbid obesity. Contrary to Plaintiff's claim that he was rushed into surgery without proper medical clearances, Dr. Shikora found that Dr. Pomp mandated the requisite preoperative psychological, nutritional, and cardiology clearances.

Furthermore, Dr. Shikora opined that Dr. Pomp's execution of the sleeve gastrectomy adhered to the standard of medical care, emphasizing that intraoperative medical records showed no adverse events, with the Plaintiff's vital signs and hemodynamics remaining stable throughout the procedure. With a reasonable degree of medical certainty, Dr. Shikora asserted that Dr. Pomp's requirement for cardiac clearance prior to the procedure demonstrated an appropriate appreciation for the risk of myocardial infarctions, a rare but recognized complication of bariatric surgery. Ultimately, Dr. Shikora concluded that the Plaintiff's STEMI clot was acute and opined that myocardial infarctions are rare but known complications to bariatric surgery.

Defendants also submit the expert affirmation of John Fox, MD ("Dr. Fox"), an interventional cardiologist, who affirmed within a reasonable degree of medical certainty, that Dr. Hriljac did not deviate from the standard of care in their treatment of Plaintiff, and opines that Dr. Hriljac's pre-operative clearance for Plaintiff's bariatric surgery was appropriate given Plaintiff's asymptomatic and functional status, absence of shortness of breath or chest pain, normal EKG, and low-risk stress test. According to Dr. Fox, the standard of care did not require any additional

tests, such as an echocardiogram or nuclear stress test, and such findings, in any event, would not have changed the preoperative clearance process. Dr. Fox also opined that it was appropriate for Dr. Hriljac to discontinue Plavix preoperatively but continue aspirin. According to Dr. Fox, the combination of Plavix and aspirin is only indicated within one year of stenting, and Plaintiff's last stenting procedure was in 2013, so there was no indication for him to remain on Plavix by March 2015. Based on these reasons, Dr. Fox concluded that Dr. Hriljac complied with the standard of care with respect to the preoperative cardiac clearance.

As to NYPH, both Drs. Shikora and Fox proffered opinions regarding the post-STEMI care at NYPH. First, Dr. Fox opined that upon arrival of the STEMI team, Plaintiff was appropriately placed on oxygen, pressors, and nitroglycerine, and given a medical work-up. Dr. Fox indicated that it was appropriate to bring Plaintiff to the Catheterization Lab in light of his EKGs, echocardiogram, and clinical presentation, at that time. Based on review of the Catheterization Lab records, Dr. Fox agreed that the thrombectomy to remove the 100% acute clot in the LAD was appropriately performed by Dr. Kim. He also agreed that it was appropriate for Dr. Kim to insert an intra-aortic balloon pump and then an Impella to provide hemodynamic support, as well as to consult with the ECMO (Extracorporeal Membrane Oxygenation) team for further support if needed.

In regard to Plaintiff's claims that he had an infection as a result of the sleeve gastrectomy and hospitalization at NYPH, Dr. Shikora opined that there is no evidence Plaintiff ever had an infection during the time when he was febrile with leukocytosis and tachycardia. He indicates that NYPH staff appropriately placed Plaintiff on broad spectrum antibiotics to be safe and consulted with infectious disease specialist, Dr. Barry Hartman. Further, Dr. Shikora found no such evidence that NYPH failed to diagnose an infection. In this regard, even though Plaintiff experienced oozing

at the right groin wound site where the Impella had been placed on April 4th, Dr. Shikora noted that the wound site was documented to be clean, dry, and intact with no evidence of pus leakage and/or abscess development indicative of infection. As to Plaintiff's claim that NYPH failed to diagnose a stroke, Dr. Sahikora further opined that there was no evidence of any hypoxic injuries, neurological deficits or extremity weakness that developed during the NYPH admission, indicating a neurosurgery consultation.

In further support of their motion, Defendants also assert that the alleged departures of Defendants were not the proximate cause of Plaintiff's alleged injuries. Here, both of Defendants' experts concur that Plaintiff experienced a known but rare and unpredictable complication of bariatric surgery when he developed a STEMI, which was appreciated by Dr. Pomp in requiring preoperative cardiac clearance. Specifically, Dr. Fox opined that the occlusion in the LAD stent was an acute thrombosis and was not the result of in-stent restenosis. Citing the Catheterization Lab imaging, Dr. Fox explained that LAD flow is nearly entirely restored after the thrombectomy, which indicates that the occlusion was the result of clot and not restenosis. Dr. Fox further opined that because an acute clot is a rare complication that developed at the time of the myocardial infarction, there is no proximate cause between the Defendants' actions and/or inactions and the Plaintiff's outcome.

Based on the opinions set forth in Dr. Fox's affirmation and Dr. Sahikora's affidavit, respectively, the Court finds that Dr. Hriljac, Dr. Pomp, and NYPH have satisfied their prima facie burden of showing that the care and treatment rendered was within the standard of care, and did not proximately cause any of the injuries alleged by Plaintiff.

Once the defendant establishes prima facie entitlement to judgment as a matter of law, the burden shifts to the plaintiff to demonstrate the existence of a triable issue of fact by submitting an

expert's affidavit or affirmation attesting to a departure from accepted medical practice and that such departures were a competent producing cause of the plaintiff's injuries (*see Roques,* 73 AD3d at 207; *Landry v Jakubowitz*, 68 AD3d 728 [2d Dept 2009]; *Luu v Paskowski*, 57 AD3d 856 [2d Dept 2008]).

In the case at bar, Plaintiff, in opposition, submits the redacted affirmation of a board-certified Internist and Cardiologist[1] "familiar with the standard of medical care applicable to preoperative cardiac clearance for bariatric surgery, STEMI, cardiac stress testing, nuclear stress tests, ECGs, and cardiac catheterizations."

As a threshold matter, the Court notes that Expert A fails to rebut Defendants' prima facie showing as to Dr. Pomp, therefore, Defendants' motion is granted as to Dr. Pomp, and any claims that NYPH is vicariously liable for the actions and/or inactions of Dr. Pomp are dismissed.

As to the remaining Defendants, Expert A opines, to a reasonable degree of medical certainty, that Defendants Dr. Hriljac and NYPH departed from good and accepted standards of medical care and practice when they provided Plaintiff with cardiac clearance for his bariatric surgery on March 24, 2015, without performing a nuclear stress test with imaging. Expert A opines that "a nuclear stress test in March 2015 would have revealed the presence of severe ischemia in the LAD distribution, consistent with recurrent restenosis of the LAD stent." Expert A further opines that the acute occlusion was accompanied by in-stent restenosis which would have been discoverable by proper nuclear imaging prior to the March 24, 2015, surgery.

The Court finds that Expert A raises a triable issue of fact regarding whether Dr. Hriljac departure from accepted standards of medical care, and whether such departure was a substantial factor in causing Plaintiff's injuries, including but not limited to, 100% occlusion of the ostial

---

[1] Plaintiff redacted the expert's name pursuant to CPLR 3101(d) and said expert shall hereinafter be referred to as "Expert A."

LAD, STEMI, and the need for a heart transplant. "Summary judgment is not appropriate . . . [when] the parties [submit] conflicting medical expert opinions because [s]uch conflicting expert opinions will raise credibility issues which can only be resolved by a jury" (*Cummings v Brooklyn Hosp. Ctr.*, 147 AD3d 902, 904 [2d Dept 2017], quoting *DiGeronimo v Fuchs*, 101 AD3d 933 [2d Dept 2012] [internal quotation marks omitted]; *see Elmes v Yelon*, 140 AD3d 1009 [2d Dept 2016]; *Leto v Feld*, 131 AD3d 590 [2d Dept 2015]).

As to Defendant NYPH, an employer is only vicariously liable for the actions of its employees, and it cannot be held responsible for the acts or omissions of a physician who is an independent contractor (*see Hill v St. Clare's Hosp.*, 67 NY2d 72, 79 [1986]; *Pratt v Haber*, 105 AD3d 429, 429 [1st Dept 2013]). Here, Defendants fail to make a prima facie showing that Dr. Hriljac is not an employee or agent of NYPH. Defendants' reliance on *Pratt v Haber*, 105 AD3d 429 [1st Dept 2013], is misplaced, since a clear explanation of the relationship between NYPH, Weill Cornell Medical College, and Dr. Hriljac has not been established. Plaintiff and Defendants both rely on Dr. Hriljac's deposition testimony to support opposing conclusions regarding Dr. Hriljac's employment status, thus, summary judgment is not warranted, as to care rendered by Dr. Hriljac preoperatively. When triable issues of fact exist as to the care and treatment by a physician-employee, and whether such treatment proximately caused Plaintiff's alleged injuries, dismissal is not warranted against the employer-hospital (*see Sessa v Peconic Bay Medical Center*, 200 AD3d 1085 [2d Dept 2021]; *Klippel v Rubinstein,* 300 AD2d 448 [2d Dept 2002]; *Rivera v County of Suffolk*, 290 AD2d 430 [2d Dept 2002]).

The Court notes, however, that Plaintiff has failed to rebut NYPH's prima facie showing for summary judgment regarding Plaintiff's post operative and post STEMI treatment, warranting dismissal of these claims.

SUMMARY JUDGMENT AS TO LACK OF INFORMED CONSENT

A defendant moving for summary judgment on a lack of informed consent claim must demonstrate that the plaintiff was informed of the reasonably foreseeable risks, benefits and alternatives of the treatment (*Henry v Bezalel Rehabilitation & Nursing Ctr.*, 2020 NY Slip Op30369(U) [Sup Ct, NY County 2020]; *Koi Hou Chan v Yeung*, 66 AD3d 642, 643 [2d Dept 2009]. A defendant may satisfy his or her burden of demonstrating a prima facie entitlement to judgment as a matter of law in connection with such a cause of action where a patient signs a consent form indicating his or her understanding of the possible risks of the procedure along with corroborating medical records (*see Bamberg-Taylor v Strauch*, 192 AD3d 401, 401-402 [1st Dept 2021]).

Here, the records, deposition testimony, and affidavit of Dr. Shikora reveal that Dr. Pomp and Plaintiff thoroughly discussed Plaintiff's medical history, surgical options, the risks and benefits of each procedure, and various clearances required before even scheduling surgery. In opposition, Plaintiff fails to provide expert medical testimony to prove the insufficiency of the information disclosed to the Plaintiff (CPLR 4401-a) ["the motion court correctly dismissed the second cause of action alleging lack of informed consent as plaintiff's papers did not address this claim"]).

Based on these reasons, the branch of Defendant's motion seeking dismissal of Plaintiff's claim of lack of informed consent, is granted.

Accordingly, it is hereby

ORDERED that Defendants' motion for summary judgment, is granted pursuant to CPLR 3212 as follows: 1. Dismissing Plaintiff's complaint against Alphons Pomp, M.D. s/h/a Alphons Pomp, M.D, and dismissing any claims of vicarious liability against New York and Presbyterian

Hospital s/h/a New York Presbyterian Hospital/ New York Weill Cornell Medical Center for the care and treatment rendered by Alphons Pomp, M.D. s/h/a Alphons Pomp, M.D; 2. Dismissing Plaintiff's second cause of action for the lack of informed consent against Defendants Ingrid Hriljac, M.D., and Presbyterian Hospital s/h/a New York Presbyterian Hospital/ New York Weill Cornell Medical Center; and 3. Dismissing any and all claims regarding Plaintiff's post operative and post STEMI treatment against Defendants Presbyterian Hospital s/h/a New York Presbyterian Hospital/ New York Weill Cornell Medical Center; and it is further

ORDERED that Defendants' motion in all other respects is denied in its entirety; and it is further

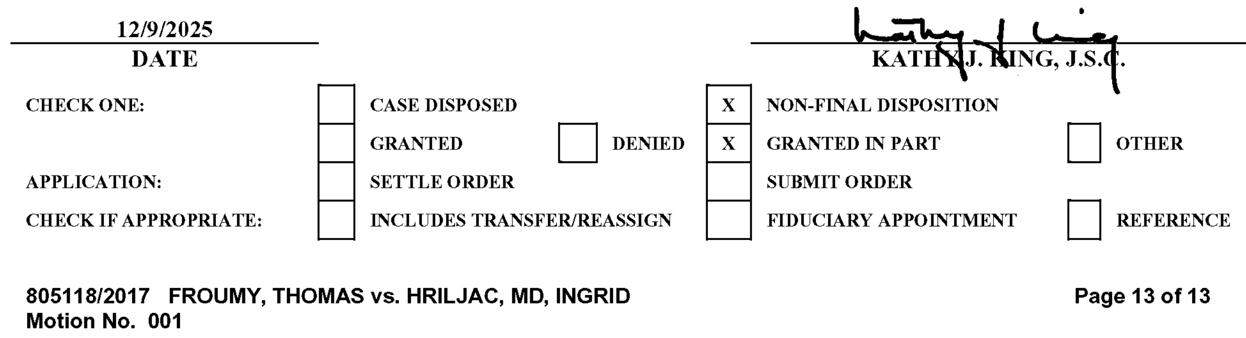
ORDERED that such service upon the Clerk of the Court be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh)] by the Defendants' counsel within twenty (20) days of the date of this Order; and it is further

ORDERED that the County Clerk is directed to enter judgement in accordance with this Order; and it is further

ORDERED that the Defendants are directed to serve a copy of this Order upon the Plaintiff by first class regular mail to his last known address and to his respective counsel's business office, if any, within twenty (20) days of the date of this Order; and it is further

ORDERED that the remaining parties shall appear for a virtual settlement/pre-trial conference on February 18, 2026, at 10am, after consultation with the Court's Alternative Dispute Resolution (ADR) department. The ADR Order and specific date, time, and appearance link for the virtual conference shall be set forth in subsequent correspondences by the Court.

This constitutes the decision and order of the Court.



12/9/2025
DATE

KATHY J. KING, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION		
		GRANTED		DENIED	X	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE