

**Crafton v Montefiore Med. Ctr. Moses Campus
Emergency Room**

2025 NY Slip Op 35487(U)

January 21, 2025

Supreme Court, Westchester County

Docket Number: Index No. 59232/2021

Judge: Lewis J. Lubell

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

To commence the statutory time
period for appeals as of right
(CPLR 5513[a]), you are
advised to serve a copy of
this order, with notice of
entry, upon all parties.

P R E S E N T:

HON. LEWIS J. LUBELL
JUSTICE OF THE SUPREME COURT

RANDY CRAFTON,

Petitioner(s),

-against-

DECISION & ORDER

Index No.: 59232/2021

MONTERFIORE MEDICAL CENTER MOSES
CAMPUS EMERGENCY ROOM and SANS SOUCI
REHABILITATION AND NURSING CENTER,

Respondent(s).

Defendant Sans Souci Rehabilitation and Nursing Center moves (**Motion #4**) for summary judgment.

The following papers were read:

Notice of Motion, Affirmations (2), Exhibits (15), and Statement	1-19
Affirmation in Opposition, Exhibits (12), Statement, and Memo of Law	20-34
Affirmation in Reply	35

By way of background, on November 5, 2019, plaintiff was transferred to defendant Montefiore Medical Center Moses Campus Emergency Room (Montefiore) following his presentation to Montefiore New Rochelle Hospital that morning with a history of a fall at home and left sided hemiplegia for several days. From November 5, 2019 until November 25, 2019, plaintiff remained at Montefiore and received various care and treatment. On November 25, 2019, plaintiff was transferred to defendant San Souci Rehabilitation and Nursing Center (San Souci). From November 25, 2019 to November 27, 2019, plaintiff remained at San Souci and received various care and treatment. On November 27, 2019, plaintiff was transferred to non-party St. John's Hospital (St. John's). From November 27, 2019 until December 6, 2019, plaintiff remained at St. John's and received various care and treatment. On December 6, 2019, plaintiff was transferred back to San Souci where he remains. This action ensued. As to San Souci, the complaint, as amended, sets forth claims for negligence, medical malpractice, negligent hiring, retention, and supervision, negligence *per se*, under Public Health Law (PHL) § 2801-d, under PHL § 2803-c, breach

of contract, and breach of implied warranty. On May 8, 2024, plaintiff filed the note of issue. Now, San Souci moves for summary judgment.

On a motion for summary judgment, the Court is to determine whether genuine issues of material fact exist or whether judgment can be granted to a party on the proof submitted as a matter of law (*see Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). The movant makes a *prima facie* showing of entitlement to judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any genuine issue of material fact (*see Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

In support of the motion, San Souci proffers, among other things, the expert affirmation of Cameron Hernandez, M.D., who is board certified in internal medicine and geriatric medicine. Dr. Hernandez indicates that she reviewed the relevant medical records, the bills of particulars, and the relevant deposition testimony. Based thereon as well as experience, Dr. Hernandez opines that San Souci's care and treatment of plaintiff comported with accepted medical practice and that no act or omission by San Souci was a proximate cause of the alleged injuries. Based hereon, San Souci contends that all causes of action sounding in violations of the PHL, any related regulations or statutes, negligence, negligent hiring, gross negligence, punitive damages should be dismissed with prejudice. San Souci also contends that the claim for negligent hiring, retention, and supervision fails because plaintiff has failed to identify a single individual to whom this cause of action is directed.

San Souci has not made a *prima facie* showing as to plaintiff's claims for negligence, negligent hiring, retention, and supervision, negligence *per se*, under Public Health Law (PHL) § 2801-d, under PHL § 2803-c, breach of contract, and breach of implied warranty. San Souci has failed to articulate how the proffered evidence establishes a *prima facie* showing as to these claims, but merely asserts that Dr. Hernandez's affirmation is sufficient and that no evidence has been produced to support these various claims. As to the claim for negligent hiring, retention and supervision, San Souci has failed to demonstrate that it sought this information and plaintiff failed to provide it.

However, based on Dr. Hernandez's affirmation, San Souci has made a *prima facie* showing on the claim for medical malpractice and, as such, the burden of going forward shifts to the opponent of the motion to produce evidentiary proof in admissible form sufficient to establish the existence of a genuine issue of material fact (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

In opposition, plaintiff proffers, among other things, the expert affirmation of a physician, who is board certified in internal medicine and geriatric medicine (Physician I). Physician I indicates that s/he reviewed the pleadings, including bills of particulars, discovery materials (including depositions), the medical records, and the documents submitted for this motion, including statement of material facts and expert affirmation submitted by the movant. Based thereon as well as experience, Physician I opines, among

other things, that San Souci failed to appropriately address plaintiff's risk of developing contractures and failed to respond to plaintiff's development of contractures. Physician I opines that San Souci departed from accepted medical practice in failing to appropriately address plaintiff's risk of developing pressure ulcers and failed to respond to plaintiff's development of pressure ulcers. Physician I also opines that San Souci departed from accepted medical practice by failing to appropriately manage plaintiff's weight, nutrition, and glucose levels. Physician I further opines that San Souci departed from accepted medical practice by failing to appropriately address plaintiff's risk of falling and by maltreating him. Physician I opines that the identified departures proximately caused and/or substantially contributed to the alleged injuries.

In reply, San Souci contends, among other things, that Physician I fails to establish that s/he is qualified to opine on the nursing home standards of practice. In addition, San Souci contends that Physician I's opinions regarding falls and maltreatment are new claims, which were not previously pled and should thus be disregarded. Regardless, San Souci contends that Physician I's opinion are conclusory and unsupported by the evidence.

Regarding the qualifications of Physician I, the Court notes that Physician I indicated that s/he is board certified in internal medicine and geriatrics and s/he is "familiar with the accepted standards of care in subacute facilities and acute care facilities." As this is evidence proffered by the non-moving party in response to a motion for summary judgment, the Court must view it in the light most favorable to plaintiff (*see Pearson v Dix McBride, LLC*, 63 AD3d 895, 895 [2d Dept 2009]). Given this posture, the Court accepts the qualifications of Physician I to opine as to the care rendered to plaintiff in a nursing facility. This finding is only for the purpose of this motion.

Regarding the purportedly new claims relating to falls and maltreatment, the Court has reviewed the bills of particulars and finds no allegation that relating to either departure. As such, these departures will be disregarded.

Regarding the sufficiency of Physician I's opinions, it is well settled that where conflicting affidavits and other contradictory evidence is submitted, summary judgment is not appropriate (*see Webar, Inc. v Capra*, 212 AD2d 594, 596 [2d Dept 1995]). The reasoning is that it is not within the purview of the Court to resolve issues of credibility on a motion for summary judgment (*see Halkias v Otolaryngology-Facial Plastic Surgery Associates, P.C.*, 282 AD2d 650, 651 [2d Dept 2001] ["Resolution of issues of credibility of both expert and lay witnesses and the accuracy of their testimony are matters within the province of the jury."]). Viewing the evidence in the light most favorable to the non-moving party (*see Pearson*, 63 AD3d at 895), plaintiff has proffered sufficient evidence via the expert affirmation of Physician I to raise a genuine issue of material fact.

To the extent not specifically addressed herein, the Court finds San Souci's remaining contentions to be without merit. Based on the foregoing, it is hereby

ORDERED that **Motion #4**, as to the claim for medical malpractice, is DENIED as to the departures identified by Physician I, excepting the departures relating to falls and maltreatment, and is otherwise GRANTED; and it is further

ORDERED that **Motion #4**, as to the remaining claims, is DENIED.

Dated: January 21, 2025
White Plains, New York


HON. LEWIS J. LUBELL
Justice of the Supreme Court