SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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DRAGANA ZORIC, and JASON LEE,

Plaintiffs,

- v -

SOPHIE A. CHRISOMALIS, MOUNT SINAI HEALTH SYSTEM, INC., and THE MOUNT SINAI HOSPITAL,

Defendants.

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INDEX NO. 805168/2022

MOTION DATE 08/29/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 75, 76, 77, 78, 79, 80, 81, 82, 84

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

Upon the foregoing documents, Defendants SOPHIE A. CHRISOMALIS-CULVER, M.D. s/h/a "SOPHIE A. CHRISOMALIS, M.D. a/ka SOPHIE A. CHRISOMALIS-CULVER, M.D.," MOUNT SINAI HEALTH SYSTEM, INC., and THE MOUNT SINAI HOSPITAL, (collectively "moving Defendants") move for an Order:

1. Pursuant to CPLR § 2221(d) granting moving Defendants, leave to reargue the Decision and Order of The Honorable Kathy J King, decided on the record March 11, 2025, denying the moving defendants' motion for Summary Judgment; and
2. Upon re-argument, modifying the Court's Decision and Order and granting summary judgment as to the moving Defendants; or
3. In the alternative, should the Court decline to dismiss the action in its entirety, Defendant respectfully requests dismissal of those claims to which Plaintiff has offered no opposition.

Plaintiff opposes the Defendants' motion.

This is a medical malpractice action arising from an alleged failure to diagnose appendicitis in the plaintiff on April 9, 2021. Defendants moved for summary judgment (NYSCEF Doc.

34-56). The Court denied the motion based on a decision on the record dated March 11, 2025, finding triable issues of fact regarding the standard of care and causation (NYSCEF Doc. No. 72).

Defendants now move for leave to reargue the Court's decision pursuant to CPLR 2221(d).

DISCUSSION

It is well settled that a motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion but shall not include any matters of fact not offered on the prior motion" (CPLR 2221[d][2]).

Defendants contend that the Court erred by failing to dismiss specific claims in the Bill of Particulars (e.g., negligent hiring, lack of informed consent, and various specific clinical omissions) that were not specifically addressed by Plaintiff's expert.

As a preliminary matter, Plaintiff, in opposition, withdrew their claims for lack of informed consent, and negligent hiring, and negligent supervision, thus, that branch of the Defendants' motion is granted.

In support of re-argument, Defendants also contend that the Court misapprehended the law by considering Plaintiff's expert affirmation, arguing that the expert is unqualified, the affirmation was impermissibly redacted, and the opinions therein failed to establish proximate cause.

Defendants' reliance on *Richter v Menocal,* 216 AD3d 823 [2d Dept 2023] is misplaced, since Plaintiff offered an unredacted copy of the affirmation and the expert's curriculum vitae for *in camera* inspection at oral argument. Under CPLR 3101(d)(1)(i), a party in a medical malpractice action may omit the expert's name; where, as here, the Plaintiff is ready and willing to provide the unredacted original for the Court's review, the procedural requirements are satisfied.

Additionally, the Court finds no merit in the argument that a board-certified internist practicing as a "hospitalist" is unqualified to opine on the outpatient care provided by Dr. Chrisomalis. It is well-settled that a physician need not be a specialist in the same precise field as the defendant, provided they possess the requisite knowledge to render an opinion on the applicable standard of care (*Limmer v Rosenfeld*, 92 AD3d 609 [1st Dept 2012]).

Here, Plaintiff's expert performed an "internal medicine" workup for abdominal pain—including differential diagnosis and record-keeping—which falls squarely within the expert's expertise.

As to Defendants argue that Plaintiff's expert did not establish causation, Plaintiff's expert opined that Dr. Chrisomalis's diagnosis of "indigestion" and the alleged failure to perform a physical exam conveyed a lack of urgency directly influencing Plaintiff's subsequent actions. This creates a triable issue of fact regarding causation and the expert's reliance on Plaintiff's version of the facts (i.e., that no physical examination occurred) is permissible, as it is based on evidence in the record.

Accordingly, the Court maintains that Plaintiffs' expert's opinion is legally sufficient to create a triable issue of fact and raise credibility issues that must be submitted to 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]).

Lastly, Defendants argue that Plaintiff's affidavit, which asserted that Dr. Chrisomalis failed to perform a physical examination, contradicted her prior deposition testimony and should have been disregarded as a "feigned issue of fact."

A review of the deposition transcript shows that Plaintiff was asked an open-ended question regarding what she remembered. Her failure to list a physical examination in response to a general

"what do you remember" question is not inherently contradictory to a later specific statement that no such examination occurred. This distinguishes the present case from those where a party squarely contradicts a "yes" or "no" answer. As the non-moving party, Plaintiff is entitled to all favorable inferences. Whether the examination occurred is a quintessential credibility determination reserved for a jury (*see People v Romero,* 7 NY3d 633 [2006]).

Accordingly, it is hereby

ORDERED that Defendants' motion for leave to reargue is granted only as to the specific claims for lack of informed consent, negligent hiring, and negligent supervision, which Plaintiff previously withdrew; and it is further

ORDERED that, upon re-argument, the Court's Decision and Order dated March 11, 2025, is modified to the extent that the claims for lack of informed consent, negligent hiring, and negligent supervision are hereby dismissed; and it is further

ORDERED that the remainder of Defendants' motion for re-argument is otherwise denied.

This constitutes the Decision and Order of the Court.

4/15/2026
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

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