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**UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO**

**YANIRA SANTIAGO-MARTÍNEZ &  
RAYMOND RAMÍREZ-CARABALLO,**  
in representation of minor J.R.S.,

**Plaintiffs,**

v.

**FUNDACIÓN DAMAS, INC. d/b/a  
HOSP. DAMAS, DR. JORGE  
MARTÍNEZ-COLÓN, and his spouse  
NORMA SOTO; et al.,**

**Defendants.**

**CIVIL NO. 16-1327 (GAG)**

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**OPINION & ORDER**

Presently before the Court is Fundación Damas, Inc.'s ("Fundación Damas" or "Defendant"), motion for summary judgment asserting defensive nonmutual issue preclusion to dismiss Yanira Santiago Martínez's and Raymond Ramírez Caraballo's ("Plaintiffs") above-captioned complaint solely as to Fundación Damas. (Docket No. 74). Plaintiffs opposed. (Docket No. 79). With leave of Court, Defendant replied and Plaintiffs sur-replied. (Docket Nos. 82, 85). Federal jurisdiction is predicated on diversity of citizenship under 28 U.S.C. § 1332(a)(1). For the ensuing reasons, the Court **GRANTS** Defendant's motion for summary judgment at Docket No. 74.

**I. Factual and Procedural Background**

On September 19, 2016, Plaintiffs filed an amended complaint alleging medical malpractice pursuant to Articles 1802 and 1803 of the Puerto Rico Civil Code, P.R. LAWS ANN. tit. 31, §§ 5141-42, against Fundación Damas and Dr. Jorge Martínez-Colón. (Docket No. 60). Plaintiffs seek to hold Fundación Damas vicariously liable for the negligent acts of the medical staff that treated Plaintiffs'

**Civil No. 16-1327 (GAG)**

1 minor son J.R.S. Id. ¶ 37. Plaintiffs’ medical malpractice claim against Fundación Damas is based  
2 on its liability as the owner and operator of Hospital Damas when the alleged malpractice was  
3 committed in the first half of the year 2010. Id.

4 On February 20, 2017, the Court denied without prejudice Defendant’s first motion for  
5 summary judgment and stayed this action because “the issue [was] . . . on appeal in the First Circuit  
6 in a related matter.” (Docket No. 71). See Vargas-Colón v. Fundación Damas, Inc., 864 F.3d 14 (1st  
7 Cir. 2017) (affirming dismissal of medical malpractice creditors’ lawsuit against Fundación Damas  
8 because of issue preclusion).

9 After the First Circuit rendered its Opinion in Vargas-Colón, the Court lifted the stay and  
10 Fundación Damas, once again, moved for summary judgment arguing that Plaintiffs “are barred  
11 under the concepts of privity and issue preclusion from filing this lawsuit” in light of the Bankruptcy  
12 Court’s decision regarding Hospital de Damas, Inc.’s Chapter 11 reorganization. (Docket No. 74 at  
13 2). In re Hosp. de Damas, Inc., Case No. 10-8844 (EAG), 2012 WL 1190651 (Bankr. D.P.R. Apr.  
14 9, 2012). Therein, the Bankruptcy Court denied medical malpractice creditors’ motion to dismiss  
15 Hospital de Damas Inc.’s bankruptcy petition. See In re Hosp. de Damas, 2012 WL 1190651, at \*1.  
16 The medical malpractice creditors argued that the owner of Hospital Damas’s license to operate was  
17 Fundación Damas and not Hospital de Damas, Inc. See id. at \*4-7. The Bankruptcy Court found that  
18 “Fundación Damas, a not-for-profit corporation, owns the real property on which the hospital facility  
19 known as Hospital Damas is located. Prior to 1987, it operated Hospital Damas. In 1987, Fundación  
20 Damas incorporated [Hospital de Damas, Inc.] and then leased the hospital facility to [Hospital de  
21 Damas, Inc.]” Id. at \*5. The Bankruptcy Court held that “the evidence presented establishes that the  
22 debtor [—Hospital de Damas, Inc.—] has been operating Hospital Damas since 1987.” Id. at \*6.

1           **II.     Standard of Review**

2           Summary judgment is appropriate when “the pleadings, depositions, answers to  
3 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no  
4 genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter  
5 of law.” Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); see FED. R. CIV. P. 56(a). “An issue is  
6 genuine if ‘it may reasonably be resolved in favor of either party’ at trial, . . . and material if it  
7 ‘possess[es] the capacity to sway the outcome of the litigation under the applicable law.’” Iverson  
8 v. City of Boston, 452 F.3d 94, 98 (1st Cir. 2006) (alteration in original) (internal citations omitted).

9           The moving party bears the initial burden of demonstrating the lack of evidence to support  
10 the nonmoving party’s case. Celotex, 477 U.S. at 325. “The burden then shifts to the nonmovant to  
11 establish the existence of at least one fact issue which is both genuine and material.” Maldonado-  
12 Denis v. Castillo-Rodríguez, 23 F.3d 576, 581 (1st Cir. 1994). The nonmovant may establish a fact  
13 is genuinely in dispute by citing particular evidence in the record or showing that either the materials  
14 cited by the movant “do not establish the absence or presence of a genuine dispute, or that an adverse  
15 party cannot produce admissible evidence to support the fact.” FED. R. CIV. P. 56(c)(1)(B). If the  
16 Court finds that a genuine issue of material fact remains, the resolution of which could affect the  
17 outcome of the case, then the Court must deny summary judgment. See Anderson v. Liberty Lobby,  
18 Inc., 477 U.S. 242, 248 (1986).

19           When considering a motion for summary judgment, the Court must view the evidence in the  
20 light most favorable to the nonmoving party and give that party the benefit of all reasonable  
21 inferences. Id. at 255. Moreover, at the summary judgment stage, the Court does not make credibility  
22 determinations or weigh the evidence. Id. Summary judgment may be appropriate, however, if the  
23 nonmoving party’s case rests merely upon “conclusory allegations, improbable inferences, and  
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1 unsupported speculation.” Forestier Fradera v. Mun. of Mayaguez, 440 F.3d 17, 21 (1st Cir. 2006)  
2 (quoting Benoit v. Tech. Mfg. Corp., 331 F.3d 166, 173 (1st Cir. 2003)).

3 **III. Legal Analysis and Discussion**

4 “Issue preclusion, sometimes referred to as collateral estoppel, ‘bars parties from re-litigating  
5 issues of either fact or law that were adjudicated in an earlier proceeding.’” Vargas-Colón, 864 F.3d  
6 at 25 (quoting Robb Evans & Assocs., LLC v. United States, 850 F.3d 24, 31 (1st Cir. 2017)); see  
7 also Taylor v. Sturgell, 553 U.S. 880, 892 (2008). “[T]he particular finding of fact that Fundación  
8 [Damas] argues[] is entitled to preclusive effect was made by the federal bankruptcy court.  
9 Therefore, federal common law controls the question of issue preclusion in this case.” Vargas-Colón,  
10 864 F.3d at 25; see also Taylor, 553 U.S. at 891 (“The preclusive effect of a federal-court judgment  
11 is determined by federal common law.”). The First Circuit has also recognized that issue preclusion  
12 is “no longer limited to ultimate issues: necessary intermediate findings can now be used to preclude  
13 relitigation.” Rodríguez-García v. Miranda-Marín, 610 F.3d 756, 771 (1st Cir. 2010) (quoting  
14 Biggins v. Hazen Paper Co., 111 F.3d 205, 210 (1st Cir. 1997)).

15 “The party asserting issue preclusion under federal common law must make a four-part  
16 showing: ‘that (1) both proceedings involve[] the same issue of law or fact, (2) the parties actually  
17 litigated that issue [in the prior proceeding], (3) the prior court decided that issue in a final judgment,  
18 and (4) resolution of that issue was essential to judgment on the merits.’” Vargas-Colón, 864 F.3d  
19 at 26 (quoting Robb Evans, 850 F.3d at 32 (alterations in original)).

20 In the present case, Fundación Damas has made the necessary showing to assert issue  
21 preclusion. First, the proceeding before the Bankruptcy Court involved the same issue of fact as to  
22 who was the owner and operator of Hospital Damas. See In re Hosp. de Damas, 2012 WL 1190651,  
23 at \*3-7. Second, the medical malpractice creditors actually litigated the issue via a motion to dismiss

**Civil No. 16-1327 (GAG)**

1 in the bankruptcy proceeding that included debtor’s opposition and creditors’ reply. See id. at \*1.  
2 Third, the Bankruptcy Court’s denial of the medical malpractice creditors’ motion to dismiss  
3 Hospital de Damas, Inc.’s bankruptcy petition was a final judgment. See Vargas-Colón v. Hosp.  
4 Damas, Inc., 561 F. App’x 17, 21 (1st Cir. 2014) (echoing district court’s determination that “the  
5 bankruptcy court had conclusively adjudicated the fact that [Hospital de Damas, Inc.] was . . . the  
6 hospital’s operator . . . and, thus, liable for the negligence that caused Plaintiff’s injuries.”); see also  
7 Vargas-Colón v. Fundación Damas, Inc., 157 F. Supp. 3d 106, 111 (D.P.R. 2016). Fourth, resolution  
8 of this factual issue was essential to judgment on the merits. The issue of who was the owner and  
9 operator was taken into consideration as part of the Bankruptcy Court’s decision to deny the motion  
10 to dismiss the bankruptcy petition due to the creditors’ failure in establishing “debtor’s lack of good  
11 faith and, by extension, that the debtor committed fraud.” In re Hosp. de Damas, 2012 WL 1190651,  
12 at \*7.

13 Plaintiffs contend that issue preclusion is inapplicable to the present case because it only  
14 applies exclusively to litigation between the same parties. (Docket No. 79 at 3-4). Plaintiffs cite  
15 Blonder-Tongue Lab’ys, Inc. v. Univ. of Ill. Found., 402 U.S. 313, 329 (1971), in support of the  
16 proposition that “it is still a violation of due process for a judgment to be binding on a litigant who  
17 was not a party or a privy and therefore has never had an opportunity to be heard.” (Docket No. 79  
18 at 3-4). In Blonder-Tongue, the Supreme Court stated,

19 Some litigants—those who never appeared in a prior action—may not be collaterally  
20 estopped without litigating the issue. They have never had a chance to present their  
21 evidence and arguments on the claim. Due process prohibits estopping them despite  
one or more existing adjudications of the identical issue which stand squarely against  
their position.

22 Id. at 329; see also Hansberry v. Lee, 311 U.S. 32, 40 (1940). Plaintiffs point out that “there is no  
23 identity of parties because none of them were party to the Hospital Damas[] bankruptcy proceeding

**Civil No. 16-1327 (GAG)**

1 or the Vargas-Colón case.” 864 F.3d 14; (Docket No. 79 at 5). Thus, Plaintiffs argue “that they never  
2 had a full and fair opportunity for judicial resolution of the ownership issue on the merits and that  
3 they have not actually litigated the ownership issue beforehand.” (Docket No. 79 at 5).

4 Defendant rebuts Plaintiffs’ argument asserting that issue preclusion *does* apply in this case  
5 even though Plaintiffs were not parties to the bankruptcy proceeding because “they are members of  
6 the same class of medical malpractice claimants that litigated said issue and their attorney is the  
7 same that represented the[] plaintiffs in the Bankruptcy Court.” (Docket No. 74 at 5). Therefore,  
8 Defendant claims Plaintiffs have had a full and fair opportunity for judicial resolution of the same  
9 issue of whether Fundación Damas or Hospital de Damas, Inc., owned and operated Hospital Damas  
10 when the malpractice occurred. (Docket No. 74 at 6).

11 “Under the concept of nonmutual issue preclusion, a defendant like Fundación [Damas] who  
12 was not a party to the earlier proceeding may still assert issue preclusion ‘to prevent a plaintiff from  
13 asserting a claim the plaintiff has previously litigated and lost against another defendant,’ Rodríguez-  
14 García, 610 F.3d at 771 (quoting Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 n.4 (1979)),  
15 provided that the party against whom issue preclusion is asserted ‘has had a full and fair opportunity  
16 for judicial resolution of the same issue,’ *id.* (quoting Fiumara v. Fireman’s Fund Ins. Cos., 746 F.2d  
17 87, 92 (1st Cir. 1984)).” Vargas-Colón, 864 F.3d at 28.

18 In the past, the Court “adhered to the doctrine of ‘mutuality of estoppel,’ which dictated that  
19 ‘unless both parties (or their privies) in a second action are bound by a judgment in a previous case,  
20 neither party (nor his privy) in the second action may use the prior judgment as determinative of an  
21 issue in a second action.”” Acevedo-García v. Monroig, 351 F.3d 547, 573 (1st Cir. 2003)  
22 (quoting Blonder-Tongue Lab’ys, 402 U.S. at 320–21); *see also* Rodríguez-García, 610 F.3d at 770.  
23 However, mutuality is no longer strictly required for the application of collateral estoppel in federal

**Civil No. 16-1327 (GAG)**

1 courts. Fiumara, 746 F.2d at 92. “Instead, the central question is ‘whether a party has had a full and  
2 fair opportunity for judicial resolution of the same issue.’” Rodríguez-García, 610 F.3d at 771  
3 (quoting Fiumara, 746 F.2d at 92).

4           Consequently, Plaintiffs’ argument that issue preclusion should not apply because the parties  
5 in this case are not identical to those in the Bankruptcy Court proceeding fails. A different defendant  
6 may assert defensive nonmutual issue preclusion when the party being estopped was a plaintiff in  
7 the original suit. See JOSEPH W. GLANNON, EXAMPLES & EXPLANATIONS CIVIL PROCEDURE 594-95  
8 (8th ed. 2018). Moreover, the First Circuit noted in Vargas-Colón that Fundación Damas “who was  
9 not a party to the earlier proceeding may still assert issue preclusion to prevent a plaintiff from  
10 asserting a claim the plaintiff has previously litigated and lost against another defendant” so long as  
11 Plaintiffs have had a full and fair opportunity for judicial resolution of the same issue. Vargas-Colón,  
12 864 F.3d at 28.

13           “[O]nce an issue is actually and necessarily determined by a court of competent jurisdiction,  
14 that determination is conclusive in subsequent suits based on a different cause of action involving a  
15 party to the prior litigation.” Montana v. U.S., 440 U.S. 147, 153 (1979). A fundamental precept of  
16 common-law adjudication embodied in issue preclusion “is that a ‘right, question or fact distinctly  
17 put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a  
18 subsequent suit between the same parties or their privies . . . .’” Id. (quoting S. Pac. R.R. Co. v.  
19 United States, 168 U.S. 1, 48-49 (1897)). “Issue preclusion requires ‘that the party to be precluded  
20 from relitigating an issue decided in a previous litigation was either a party or in privity with a party  
21 to the prior litigation.’” United States v. Rosado-Cancel, 917 F.3d 66, 69 (1st Cir. 2019) (quoting  
22 United States v. Bonilla Romero, 836 F.2d 39, 43 (1st Cir. 1987)).

**Civil No. 16-1327 (GAG)**

1 Under the concept of privity, “a non-party to an action nonetheless may be bound by the  
2 issues decided there if it substantially controls, or is represented by, a party to the action.” Bonilla  
3 Romero, 836 F.2d at 43. “The party estopped due to representation by a party to the action must  
4 have been ‘so closely related to the interest of the party to be fairly considered to have had his day  
5 in court.’” Id. (quoting In re Gottheiner, 703 F.2d 1136 (9th Cir. 1983)). “There must be a substantial  
6 identity of the parties such that the party to the action was the virtual representative of the party  
7 estopped.” Bonilla Romero, 836 F.2d at 43. “The Court considers not only the identity of interests  
8 between the two parties, but also ‘whether the party’s interests were fully represented in the earlier  
9 case, albeit by another.’” Rivera v. P.R. Elec. Power Auth., 4 F. Supp. 3d 342, 352 (D.P.R. 2014)  
10 (quoting Cnty. of Boyd v. U.S. Ecology, Inc., 48 F.3d 359, 361 (8th Cir. 1995)). “Whether a party  
11 is virtually representative of a non-party is a question of fact determined on a case-by-case basis.”  
12 Bonilla Romero, 836 F.2d at 43.

13 In the case at bar, the Court determines that the medical malpractice creditors in the  
14 Bankruptcy Court proceeding virtually represented Plaintiffs so as to establish that Santiago  
15 Martínez and Ramírez Caraballo have had a full and fair opportunity for judicial resolution of the  
16 same issue regarding who is liable for the medical malpractice in Hospital Damas. Plaintiffs are so  
17 closely related to the medical malpractice creditors’ interest to be fairly considered to have had their  
18 day in Court. They both seek to transfer the liability for the malpractice from Hospital de Damas,  
19 Inc., to Fundación Damas.

20 Plaintiffs and the medical malpractice creditors are so substantially identical to the point  
21 where the medical malpractice creditors virtually represented Plaintiffs because they both share the  
22 same interest of shifting liability from the same entities. Although neither Plaintiffs nor their attorney  
23 were involved in the bankruptcy proceeding, Plaintiffs’ interest were adequately represented.

**Civil No. 16-1327 (GAG)**

1 Accordingly, the Court holds that Plaintiffs and the medical malpractice creditors are privies and  
2 thus barred under defensive nonmutual issue preclusion from relitigating the issue of whether  
3 Fundación Damas is liable for the medical malpractice as the owner and operator of Hospital Damas.

4 Plaintiffs further argue that the Puerto Rico Court of Appeals' ruling in Narváez v. Hosp. de  
5 Damas (“Narváez”) on the ownership issue of Hospital Damas controls and constitutes the  
6 applicable law. KLAN-2012-1997, 2014 WL 718435 (T.C.A. Jan. 27, 2014); (Docket Nos. 79 at  
7 6, 8-9) (certified translation provided at Docket No. 68-4). In Narváez, the Puerto Rico Court of  
8 Appeals denied Fundación Damas's argument asserting “the affirmative defense of issue preclusion  
9 against another medical-malpractice creditor.” Vargas-Colón, 864 F.3d at 27. According to  
10 Plaintiffs, Narváez concluded that “despite the Bankruptcy Court's finding, ‘it [was] necessary to  
11 hold an evidentiary hearing where it is established, through evidence, the relationship between  
12 Fundación Damas and Hospital Damas.’” (Docket No. 79 at 8 (quoting Narváez, Docket No. 68-4  
13 at 36)). Thus, Plaintiffs posit that the Court should apply the Puerto Rico Court of Appeals'  
14 determination allowing evidentiary hearings regarding the issue of who is the owner and operator of  
15 Hospital Damas because “the one Court that examined the merits of the ownership issue was the  
16 Puerto Rico Court of Appeals.” (Docket No. 85 at 4).

17 Plaintiffs' argument fails as “federal common law governs the application of issue preclusion  
18 in this case” because the preclusive effect of the determination that Hospital de Damas, Inc., was the  
19 owner and operator of Hospital Damas “was made by the federal bankruptcy court.” Vargas-Colón,  
20 864 F.3d at 25, 30. “Therefore, federal common law controls the question of issue preclusion in this  
21 case.” Id. at 25; see also Taylor, 553 U.S. at 891 (“The preclusive effect of a federal-court judgment  
22 is determined by federal common law.”). The Bankruptcy Court resolved the contested issue prior  
23 to the Puerto Rico Court of Appeals. Thus, preclusive effect should be given to the Bankruptcy Court

1 because it was the judicial proceeding that chronologically occurred first. See Bath Iron Works Corp.  
2 v. Dir., Off. Of Workers' Comp. Programs, U.S. Dep't of Lab., 125 F.3d 18, 22 (1st Cir. 1997)  
3 (“[T]he point of collateral estoppel is that the first determination is binding not because it is right  
4 but because it is first . . .”).

5 **IV. Conclusion**

6 For the foregoing reasons, the Court **GRANTS** Fundación Damas’s motion for summary  
7 judgment at Docket No. 74.

8 **SO ORDERED.**

9 In San Juan, Puerto Rico this 18th day of May 2021.

10 *s/ Gustavo A. Gelpí*  
11 GUSTAVO A. GELPI  
12 United States District Judge  
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