

Santos v Episcopal Social Serv. of N.Y., Inc.

2013 NY Slip Op 33717(U)

October 7, 2013

Sup Ct, Bronx County

Docket Number: 303922/09

Judge: Stanley B. Green

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NEW YORK SUPREME COURT - COUNTY OF BRONX

IA-6

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: IA-6

-----X
JACQUELINE SANTOS, as Administratrix of the Estate
of BLANCA SANCHEZ, Deceased and JACQUELINE
SANTOS, Individually,
Plaintiff,

INDEX NO.:303922/09

-against-

EPISCOPAL SOCIAL SERVICES OF NEW YORK, INC.,
ISABELLA GERIATRIC CENTER, INC., ISABELLA HOME,
ST. BARNABAS HOSPITAL, and MATTHEW KWIATEK, M.D.,

Defendant.

Present:
HON. STANLEY GREEN
J.S.C.

-----X

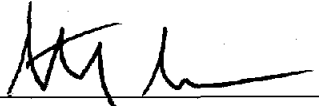
The following papers numbered 1 to 5 read on this motion
No. on the Calendar of

PAPERS NUMBERED

Notice of Motion -Exhibits and Affidavits Annexed.....	1
Answering Affidavit and Exhibits.....	2,3
Replying Affidavit and Exhibits.....	4,5
Sur-reply Affidavits and Exhibits.....	
Stipulation(s) - Referee's Report - Minutes.....	
Memoranda of Law.....	

Upon the foregoing papers, this motion is decided in accordance with the attached memorandum decision.

Dated: October 7, 2013



STANLEY GREEN, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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JACQUELINE SANTOS, as Administratrix of the Estate
of BLANCA SANCHEZ, Deceased and JACQUELINE
SANTOS, Individually,

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Plaintiff,

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EPISCOPAL SOCIAL SERVICES OF NEW YORK, INC.,
ISABELLA GERIATRIC CENTER, INC., ISABELLA HOME,
ST. BARNABAS HOSPITAL, and MATTHEW KWIATEK, M.D.,

Defendants.

DECISION

-----X

HON. STANLEY GREEN:

The motion by St. Barnabas Hospital (SBH) for summary judgment is granted only to the extent that SBH's liability, if any, is limited to vicarious liability for the alleged acts or omissions of Dr. Kwiatek.

Plaintiff claims that during decedent Sanchez's admission to SBH from December 13-15, 2006, SBH staff and Dr. Kwiatek failed to diagnose a Lisfranc injury to Sanchez' left foot.

On December 13, 2006, EMS brought Sanchez, age 53 and mentally retarded, from the group home where she resided to SBH for evaluation of her left leg and foot, which were swollen and ecchymotic after a fall that occurred earlier that day. The initial impression was a non-displaced fracture of the fourth metatarsal. She was evaluated by podiatry and noted to be non-weight bearing on the left foot. X-rays were ordered. Sanchez was placed into a posterior splint and a surgical shoe were applied. Due to her compromised mental status, Sanchez was unable to use crutches and the plan was for use of a wheelchair. However, the group home where she resided was not wheelchair accessible, so Sanchez was admitted to the hospital.

Dr. Kwiatek, an attending physician who worked in the SBH Radiology Department, read the

x-ray films of Sanchez's left foot and dictated a report on December 14, 2006 finding: "No acute fracture, dislocation or radiopaque foreign body is seen."

At 4:00 p.m. on December 14, 2006, Sanchez was evaluated by podiatry and it was noted that Sanchez's x-rays were reviewed and no fracture was seen. On December 15, 2005, Sanchez was discharged from SBH, with instructions to follow up at the Podiatry clinic on December 19, 2006. However, Sanchez did missed the appointment.

On January 25, 2007, Sanchez presented to SBH for a podiatry consult. At that time an x-ray study revealed a Lisfranc dislocation. Sanchez was admitted to SBH on March 6, 2006 and underwent open reduction surgery with internal and external fixation. She remained in the hospital until April 9, 2007. She subsequently underwent surgery to remove the external fixator.

SBH seeks dismissal of the complaint and all cross-claims against it the ground that the care and treatment provided by its staff was at all time within good and accepted practice and did not cause harm or injury to Sanchez. SBH also contends that its staff properly relied on the determination of Dr. Kwiatek, a private attending radiologist, that the x-rays did not show any fractures or dislocations.

In support of the motion, SBH submits the affirmation of Dr. Mitchell Strand, a Board Certified Emergency Medicine physician. Dr. Strand notes that Sanchez was properly evaluated by podiatry and that the x-rays of her left foot were interpreted by private attending radiologist Dr. Kwiatek as showing no acute fractures or dislocations. Dr. Strand opines that: (1) the care and treatment provided by SBH residents nursing staff and employees was within good and accepted medical practice and did not cause any harm, injury or damage to Sanchez; (2) it was within the accepted standard of care for the hospital staff to rely on the determination of Dr. Kwiatek that the x-rays did not show a fracture; and (3) that nothing occurred during Sanchez' stay at the hospital that

required a member of the staff to intervene and challenge the determination of Dr. Kwiatek.

Plaintiff contends that the x-rays taken on December 13, 2006 showed evidence of a Lisfranc injury and fracture and that Dr. Kwiatek and the SBH Podiatry resident departed from good and accepted standards of medical practice by failing to diagnose the Lisfranc injury and fractures. Plaintiff also contends that SBH is liable for the alleged malpractice of Dr. Kwiatek as well as the podiatry resident.

In opposition to the motion, plaintiff submits the affirmation of a Board Certified orthopedic surgeon who reviewed Sanchez's x-ray films and medical records, as well as the deposition testimony and Dr. Strand's affirmation and it is his opinion that Dr. Kwiatek and the SBH podiatric resident departed from good and accepted medical care by failing to diagnose Sanchez's Lisfranc injury and the fractures of the fourth metatarsal and cuboid bone.

Plaintiff's expert opines that the December 13, 2006 x-rays reveal evidence of a Lisfranc injury and fracture of the metatarsal and cuboid bones that should have raised a suspicion of the Lisfranc injury since these are injuries with a known association, but "in a clear departure from acceptable practice" Dr. Kwiatek failed to identify the Lisfranc injury as well as the associated fourth metatarsal and cuboid fractures of the left foot, which he opines "are clearly seen" on the x-rays.

Plaintiff's expert also opines that in formulating Sanchez's diagnosis and treatment plan, the podiatry resident was responsible for performing an independent evaluation of Sanchez's x-rays and that he deviated from standards of good and accepted medical care by failing to identify the Lisfranc injury in a timely fashion, depriving her of the opportunity of obtaining the optimal treatment for her injury.

It is well settled that where patients enter the hospital through the emergency room and do not seek treatment from a particular physician, the hospital is vicariously liable for the care and

treatment furnished by doctors and staff who are acting on behalf of the hospital (Mduba v. Benedictine Hospital, 52 AD2d 450). Here, the medical records and testimony show that Sanchez was brought to the ER by EMS and that when she arrived she was treated by the hospital staff and not a particular physician of her choosing. Therefore, if it is determined that Dr. Kwiatek failed to properly interpret the x-rays, then SBH is vicariously liable for his negligence, regardless of the fact that he is a private attending physician. Plaintiff's expert's affirmation raises triable issues of fact as to whether Dr. Kwiatek properly read and interpreted the December 13, 2006 x-rays. Accordingly SBH's motion for summary judgment must be denied.

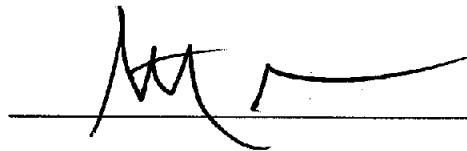
As to the alleged negligence of the podiatric resident, Dr. Strand's affirmation which describes the treatment rendered to Sanchez by SBH staff and the podiatric resident establishes, prima facie, that SBH staff's and podiatric resident's evaluation and treatment of Sanchez was within good and accepted standards of medical practice and that it was within the standard of care for them to rely on Dr. Kwiatek's interpretation of the x-rays. Thus, the burden shifted to plaintiff to present competent evidence sufficient to raise a material issue of fact as to whether their care and treatment of Sanchez was proper.

While plaintiff's expert opines that the podiatry resident had an independent duty to evaluate Sanchez' x-rays and deviated from the standards of good and accepted medical care by failing to identify the Lisfranc injury in a timely manner and that having undertaken to read the x-rays, the resident had a duty to read them "without negligence," he points to no other alleged departure by the resident in his care of Sanchez. Even assuming, arguendo, that the resident had a duty to review the x-rays, the "official" interpretation having been provided by Dr. Kwiatek, a radiologist, the resident's alleged failure to properly read the x-rays was not a proximate cause of the claimed injuries (Machac v. Anderson, 261 AD2d 811, citing Koepfel v. Park, 228 AD2d 288). Accordingly, St. Barnabas

Hospital's liability, if any, is limited to vicarious liability for the alleged acts or omissions of Dr. Kwiatek and all other claims as against SBH are dismissed.

This constitutes the decision and order of the court.

Dated: October 7, 2013

A handwritten signature in black ink, consisting of stylized, cursive letters, positioned above a horizontal line.

STANLEY GREEN, J.S.C.