

**Matos v Chefitz**

2014 NY Slip Op 32713(U)

January 31, 2014

Sup Ct, Bronx County

Docket Number: 0300632/2011

Judge: Douglas E. McKeon

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This opinion is uncorrected and not selected for official publication.

PART 19A

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX:

- Case Disposed
- Settle Order
- Schedule Appearance

-----X  
**MATOS, VICKI**

Index No. **0300632/2011**

-against-

Hon. **DOUGLAS MCKEON**,

**CHEFITZ, ALLEN M.D.**,

Justice.

-----X

The following papers numbered 1 to \_\_\_\_\_ Read on this motion, **SUMMARY JUDGMENT DEFENDANT**  
Noticed on **August 17 2012** and duly submitted as No. \_\_\_\_\_ on the Motion Calendar of \_\_\_\_\_

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

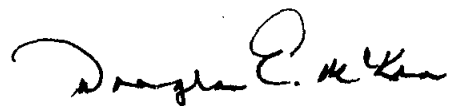
\_\_\_\_\_ motion is decided in accordance with the annexed  
decision and order of the Court.

So ordered.

FEB 11 2014

Motion is Respectfully Referred to:  
Justice: \_\_\_\_\_  
Dated: \_\_\_\_\_

Dated: 1 / 31 / 14

Hon.   
**DOUGLAS MCKEON, J.S.C.**

## SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX - PART IA-19A

-----X  
VICKI MATOS,

Plaintiff(s),

- against -

INDEX NO: 300632/11

ALLEN CHEFITZ, M.D., and  
MONTEFIORE MEDICAL CENTER,

Defendant(s)

DECISION/ORDER  
-----X**HON. DOUGLAS E. MCKEON**

Motion by defendant Montefiore Medical Center ("MMC") for summary judgment and an order deleting it from the caption is decided as follows.

This is a medical malpractice action stemming from the surgical repair of an abdominal incisional hernia with mesh, along with compartment separation and reconstruction. The repair was performed at MMC by the co-defendant Private Surgeon, Dr. Chefitz. The plaintiff subsequently developed a perforation of her transverse colon which movant argues was a known and accepted complication associated with this surgery. It resulted in post-operative complications and necessitated additional surgical repair. The Court notes that Dr. Chefitz was previously granted summary judgment without any opposition from plaintiff.

In support of the motion, movant has provided the Court with the expert affidavit of Dr. Jerald Wishner. Movant argues that plaintiff was admitted as a

private patient of co-defendant surgeon, was followed by Dr. Chefitz throughout the admission and treated by him during all dates of negligence alleged. Furthermore, movant argues that because there is no evidence that the staff at MMC exercised any independent medical judgment or that Dr. Chefitz's treatment plan for the patient was contraindicated so that MMC staff should have intervened, MMC is entitled to judgment as a matter of law. In opposition, plaintiff has provided the Court with the affidavit of Jeffrey S. Freed, M.D., a Board Certified General Surgeon, and with the affidavit of Anne Heuser R.N. The Court finds that neither plaintiff's counsel's supporting affirmation nor the experts' affirmations rebut MMC's showing of entitlement to judgment.

Plaintiff relies on the affirmation of former co-defendant, Dr. Chefitz, which was provided for the first time as an exhibit to plaintiff's opposition papers, six months after the completion of discovery. Plaintiff uses this self serving affirmation of Dr. Chefitz to inform the Court that the doctor was not contacted by anyone from MMC between the time he left the facility at approximately 8:00 a.m. on December 10, 2008 until he returned at approximately 2:30 p.m. on December 11<sup>th</sup>. This is an attempt to raise a question of fact as to whether MMC should have notified Dr. Chefitz about plaintiff's worsening condition. The Court rejects this attempt to distract the Court from the clear facts admitted by Dr. Chefitz under oath during his deposition testimony: that Ms. Matos was a private patient of his, and that he followed her post operatively and was aware of her condition throughout the post

operative period. See Exhibit G to MMC's motion at Page 147 and Page 44. Dr. Chefitz also testified at Page 147 of his deposition that his orders with respect to the plaintiff were carried out as he intended throughout the hospitalization. Additionally, the Court notes that plaintiff failed to oppose Dr. Chefitz's own motion for summary judgment thereby conceding the arguments raised therein, including the arguments asserted by Dr. Herron, co-defendant's expert. Dr. Herron's affidavit asserts the same arguments as those offered by Dr. Wishner herein. Both doctors opine that the CT findings taken in conjunction with the patient's hospital course up until the initial CT-scan of December 11<sup>th</sup> were consistent with a possible development of an abdominal abscess and that it was appropriate to await a second CT-scan to further evaluate the abdomen. Dr. Herron opined that as of the morning of December 11<sup>th</sup> the initial CT findings coupled with the other clinical and laboratory findings indicated a possible abdominal abscess which would not have been treated surgically anyway. Furthermore, both Dr. Wishner and Dr. Herron contend that plaintiff's claim that there was a failure to appreciate signs of peritonitis is unfounded. Finally, both doctors opine that any delay in effectuating the second surgical procedure had no cause or connection to plaintiff's alleged injury and subsequent hospital course.

The Court finds that plaintiff has failed to raise a triable issue of material fact sufficient to rebut MMC's showing of entitlement to judgment as a matter of law. As such, MMC's motion is granted.

So ordered.

Dated: 1/31/14



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Douglas E. McKeon, J.S.C.