Post v Artale

2018 NY Slip Op 30691(U)

April 13, 2018

Supreme Court, Suffolk County

Docket Number: 29296/2012

Judge: Jr., Paul J. Baisley

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Short Form Order

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART XXXVI SUFFOLK COUNTY

COPY

PRESENT:
HON. PAUL J. BAISLEY, JR., J.S.C.

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KEVIN POST,

Plaintiff,

-against-

JOSEPH ARTALE, D.O., STEPHEN HENESCH, D.O., RADIOLOGY CONSULTING OF LONG ISLAND, PLLC, WILLIAM DISANTI, M.D., ISLAND GASTROENTEROLOGY CONSULTANTS, P.C., and GOOD SAMARITAN HOSPITAL,

Defendants.

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INDEX NO.: 29296/12
MOTION DATE: 6/8/17
MOTION SEQ. NO.: 001 MotD
MOTION SEQ. NO.: 002 MG

PLAINTIFF'S ATTORNEYS:
Levine & Grossman, Esqs.
114 Old Country Road
Mineola, New York 11501

DEFENDANTS' ATTORNEYS:
Santangelo, Benvenuto & Slattery, Esqs.
Attorneys for Defendants Disanti and
Island Gastroenterology Consultants
1800 Northern Boulevard
Roslyn, New York 11576

Bower Law, P.C.
Attorneys for Artale, Henesch, Radiology
Consulting of Long Island and
Good Samaritan Hospital
1200 RXR Plaza
Uniondale, New York 11556

Upon the following papers numbered 1 to 16 read on these motions for summary judgment : Notice of Motion/ Order to Show Cause and supporting papers 1 - 6, 7 - 10 ; Notice of Cross Motion and supporting papers __; Answering Affidavits and supporting papers 11 ; Replying Affidavits and supporting papers 12 - 14, 15 - 16 ; Other ____; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that the following motions are combined herein for disposition; and it is further

ORDERED that the motion (motion sequence no. 001) of defendants Joseph Artale, D.O., Stephen Henesch, D.O., Radiology Consulting of Long Island, PLLC and Good Samaritan Hospital for summary judgment dismissing the complaint is decided as set forth herein; and it is further

ORDERED that the motion (motion sequence no. 002) of defendants William DiSanti, M.D. and Island Gastroenterology Consultants, P.C. for summary judgment is granted and the complaint is hereby severed and dismissed as to these defendants.

Plaintiff commenced this medical malpractice action to recover damages for personal injuries he allegedly sustained as a result of the defendants' negligent medical care and treatment from December 29, 2011, to January 9, 2012. In the complaint as amplified by the bill of particulars, it is alleged, among other things, that on December 30, 2011, at 12:39 a.m., plaintiff presented to the emergency room of defendant Good Samaritan Hospital seeking treatment for

abdominal pain. While in the emergency room, plaintiff was examined and treated by defendant Joseph Artale, D.O. Defendant Stephen Henesch, D.O., was the diagnostic radiologist on duty that night. Defendant William DiSanti, M.D., an employee of defendant Island Gastroenterology Consultants, P.C., examined plaintiff the day he was discharged from the emergency room.

Plaintiff testified that he worked at his construction job the day of December 29, 2011, without any abdominal discomfort. It was after eating dinner in a restaurant that evening he began experiencing severe abdominal pain and went to the emergency room of Good Samaritan Hospital. Plaintiff testified that he complained to the triage nurse of pain in the lower right side of his abdomen rated on a scale as 10 out of 10. He denies telling any medical provider that he was experiencing right upper abdominal pain.[1] Plaintiff did not recall many of the events or discussions which followed, or the results of the ultrasound or laboratory tests, but remembered that he had been physically examined by a doctor in the emergency room and given an IV which somewhat lessened his abdominal pain. Plaintiff also recalled being discharged and advised to follow-up with a gastroenterologist. Upon arriving home at approximately 4:00 a.m., he continued to experience discomfort in his abdominal area but did not vomit or have diarrhea. An appointment was made to see Dr. DiSanti in the afternoon of the day he was discharged. During his deposition, plaintiff did not have an independent recollection of the office visit but recalled telling Dr. DiSanti that he had pain on the bottom right side of his abdomen.

Dr. Artale testified that appendicitis is an inflammation of the vermiform appendix, which is the organ on the large intestine and generally in the right lower quadrant. Symptoms of appendicitis include lower right quadrant abdominal pain, mild nausea, loss of appetite and fever. Dr. Artale testified that upon physically examining plaintiff, there were no positive findings of pain in his lower right quadrant, plaintiff was afebrile and he did not report a loss of appetite. Dr. Artale continued that although plaintiff reported he had vomited three times over the past weeks, no determination was made as to the cause. Upon questioning, Dr. Artale testified a viral syndrome and gastritis could cause a patient to vomit. Dr. Artale testified that based on the history given and his physical examination of plaintiff, appendicitis was not considered. He further testified, as appendicitis was not included in his differential diagnosis, a CT scan was not ordered.

Dr. Artale testified that his physical examination of plaintiff revealed pain in the right upper quadrant of the abdomen and the epigastrium, which is midline between the upper quadrants, leading him to a differential diagnosis of viral syndrome, cholecystitis, pancreatitis, kidney stone, and gastritis. Dr. Artale ordered a total abdominal ultrasound, which would not capture a view of an adult patient's appendix, and a series of laboratory tests. Dr. Artale diagnosed epigastric abdominal pain, based on the laboratory and ultrasound results. He

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[1]The certified hospital records reflect that while in triage plaintiff complained of generalized pain and the objective statement section indicates epigastric tenderness. Similarly, the note in the hospital records under the section, "History of Present Illness," reflects that plaintiff reported intermittent abdominal pain for two weeks which he attributed to cramps and that "since eating at 7:30, the pain became constant, sharp, located in the RUQ [right upper quadrant], radiating to back." At the end of the note appears "Joseph Artale, DO 12/30/11 01:38."

physically re-examined plaintiff after receiving the aforementioned results, and as plaintiff reported feeling better, he was discharged from the emergency room with a prescription for Nexium and instructions that should his pain pattern change, migrate or become worse or if vomiting occurred, he should return to the emergency room. Dr. Artale also recommended that plaintiff follow up with a gastroenterologist. Dr. Artale testified that after he discharged plaintiff, he did not have any further conversation or contact with him.

Dr. Henesch testified he was the radiologist on duty to interpret radiological studies for the emergency room. Dr. Henesch explained that as an emergency room radiologist, he does not examine patients nor does he determine what radiologic diagnostic testing to perform, as that determination is made by the examining physician. Dr. Henesch testified that he interpreted the complete abdominal ultrasound images taken by the technologist based on the order and differential diagnosis of epigastric pain given by Dr. Artale. Dr. Henesch further testified that as the ultrasound images were unremarkable, he dictated his findings, which generated a report that was transmitted electronically to the emergency room department. Because there were no positive findings on the ultrasound, Dr. Henesch did not speak to Dr. Artale or anyone in the emergency room.

During his deposition, Dr. DiSanti did not have an independent recollection of plaintiff's office visit of December 30, 2011; thus, he testified as to his custom and practice and referred to plaintiff's medical chart kept by Island Gastroenterology. Dr. DiSanti testified that his custom and practice upon seeing a patient with complaints of abdominal pain was to take a history and to perform a full abdominal examination. Dr. DiSanti testified that plaintiff's history included a notation of epigastric pain since the night before, vomiting for two weeks and antibiotics taken the week before. Dr. DiSanti testified that antibiotics can cause one to have loose bowel movements and diarrhea. Based on the notes in the medical chart, upon physical examination, plaintiff did not have any pain or tenderness in his abdomen. Dr. DiSanti diagnosed acute gastroenteritis, a condition characterized by a culmination of epigastric pain, nausea, vomiting and diarrhea, peptic ulcer disease/gastritis and clostridium difficile colitis. Dr. DiSanti testified that the treatment for such a diagnosis is supportive care, that is, hydrating with water and Gatorade and eating a BRAT (bananas, rice, apples and toast) diet. Dr. DiSanti did not consider appendicitis because plaintiff was not having any abdominal pain, did not have a fever, and the laboratory tests performed in the emergency room revealed that his white blood cell count was normal. Plaintiff was given a prescription for a stool test, Prilosec was recommended, and it was noted in his chart that an endoscopy would be ordered by the next week if there was no improvement. Dr. DiSanti testified that it was his custom and practice to tell a patient to call and come back to the office if the pain increased or did not improve in the next day or so. Dr. DiSanti did not have any further involvement with plaintiff's care and treatment after the office visit.

On January 1, 2012, plaintiff returned to the emergency room of Good Samaritan Hospital with complaints of right lower quadrant abdominal pain, fever, vomiting and diarrhea. He was examined and a CT scan ordered which revealed that he had an inflamed appendix. A surgical consult was ordered, he was diagnosed with appendicitis with perforation and urgent surgery scheduled. During surgery, a perforated appendix with periappendiceal abscess was discovered,

and the appendix was retrocecal. His appendix was removed and the abscess drained. He remained in Good Samaritan Hospital until January 9, 2012.

In his complaint, as amplified by his bill of particulars, plaintiff alleges that while in the emergency room on December 29-30, 2011, defendants Good Samaritan Hospital, Dr. Artale and Dr. Henesch were negligent, *inter alia*, in failing to include appendicitis or retrocecal appendicitis in their diagnoses or order appropriate tests to rule out such condition; in incorrectly interpreting the diagnostic tests performed; in failing to perform a proper physical examination; and in failing to obtain consultations with appropriate specialists. Plaintiff also alleges that Good Samaritan Hospital and Dr. Artale were negligent in failing to recognize the significance of and determine the etiology of plaintiff's symptoms, ignoring and disregarding plaintiff's complaints of right lower quadrant abdominal pain, and failing to admit him into the hospital as a patient. Plaintiff makes similar allegations as to Dr. DiSanti and the medical professionals at Island Gastroenterology who allegedly participated in his care and treatment during the office visit on December 30, 2011. Additionally, it is alleged that Good Samaritan Hospital failed to select and retain competent physicians, and that defendant Radiology Consulting of Long Island, PLLC ("RCLI"), failed to employ individuals who possessed the adequate skill, knowledge and qualifications to render radiological treatment, and failed to supervise the individuals who provided radiological treatment to plaintiff.

Issue has been joined, discovery completed and the note of issue filed. Defendants Good Samaritan Hospital, Dr. Artale, Dr. Henesch and RCLI now move for summary judgment in their favor. Defendants Dr. DiSanti and Island Gastroenterology separately move for summary judgment dismissing the complaint.

To impose liability upon a physician for medical malpractice, a plaintiff must prove that the physician deviated or departed from accepted community standards of practice, and that such departure was a proximate cause of the plaintiff's injuries (*see, Gullo v Bellhaven Ctr. for Geriatric Rehabilitative Care, Inc.*, 157 AD3d 773, ___ NYS3d___ [2d Dept 2018]; *Feuer v Ng*, 136 AD3d 704, 24 NYS3d 198 [2d Dept 2016]; *Senatore v Epstein*, 128 AD3d 794, 9 NYS3d 362 [2d Dept 2015]). Proximate cause requires proof that the defendant's deviation of care was a substantial factor in bringing about the injury (*see, Wild v Catholic Health Sys.*, 21 NY3d 951, 969 NYS2d 846 [2012]; *Lyons v McCauley*, 252 AD2d 516, 675 NYS2d 375 [2d Dept 1998]). Where a plaintiff alleges that the defendant negligently delayed in diagnosing and treating a condition, proximate cause may be predicated on the theory that the defendant diminished the patient's chance of a better outcome or increased the injury (*D.Y. v Catskill Regional Med. Ctr.*., 156 AD3d 1003, 66 NYS3d 368 [3d Dept 2017]; *see, Goldberg v Horowitz*, 73 AD3d 691, 901 NYS2d 95 [2d Dept 2010]).

On a motion for summary judgment, a defendant has the initial burden of establishing through medical records and competent expert affidavits the absence of any departure from good and accepted medical practice or that the plaintiff was not injured thereby (*see, Gullo v Bellhaven Ctr. for Geriatric Rehabilitative Care, Inc., supra*; *Stucchio v Bikvan*, 155 AD3d 666, 63 NYS3d 498 [2d Dept 2017]; *Mackauer v Parikh*, 148 AD3d 873, 49 NYS3d 488 [2d Dept 2017]; *Feuer v*

Ng, supra). Furthermore, to satisfy the burden, a defendant must address and rebut the specific allegations of malpractice set forth in the plaintiff's bill of particulars (*see, Mackauer v Parikh, supra*; *Wall v Flushing Hosp. Med. Ctr.*, 78 AD3d 1043, 912 NYS2d 77 [2d Dept 2010]). Once this burden is satisfied, in opposition a plaintiff must submit a physician's affidavit attesting to the defendant's departure from accepted practice, and that such departure was a competent producing cause of injury, "but only as to those elements on which the defendant met the *prima facie* burden" (*Stucchio v Bikvan, supra* at 667; *Mackauer v Parikh, supra* at 876). Summary judgment is inappropriate in a medical malpractice action where the parties present conflicting opinions by medical experts (*see, Stucchio v Bikvan, supra*; *Contreras v Adeyemi*, 102 AD3d 720, 958 NYS2d 430 [2d Dept 2013]).

In support of their motion, defendants Dr. Artale, Dr. Henesch and Good Samaritan Hospital rely on the affirmations of David A. Fisher, M.D. and James G. Ryan, M.D. Dr. Fisher has been board certified in radiology since 1994 and has worked in emergency departments as a diagnostic radiologist. Dr. Fisher affirms that he reviewed the pleadings, bills of particulars, all of the deposition transcripts, and plaintiff's medical records and radiological studies. Dr. Fisher states that, as plaintiff was given a differential diagnosis of epigastric pain by Dr. Artale, the claims against Dr. Henesch that he failed to evaluate plaintiff's appendix are baseless. Dr. Fisher asserts that the complete abdominal ultrasound ordered by Dr. Artale was properly performed by the technologist and properly interpreted by Dr. Henesch. Therefore, Dr. Fisher opines, to a reasonable degree of medical certainty, that Dr. Henesch did not commit any of the alleged departures nor any departures from the applicable standards of care.

Dr. Fisher also asserts that the documents and testimony he reviewed are devoid of any evidence that anyone employed by RCLI was involved in plaintiff's care and treatment at Good Samaritan Hospital. Therefore, Dr. Fisher concludes, the allegations that RCLI departed from applicable standards are unsubstantiated.

Dr. Ryan is licensed in New York and board certified in emergency medicine. Dr. Ryan asserts that he reviewed the pleadings, deposition transcripts, hospital and medical records. Dr. Ryan sets forth what a thorough physical examination and clinical evaluation consists of in a patient complaining of abdominal pain when presenting to the emergency room. He states that Dr. Artale properly obtained his own history of plaintiff, inquired of and considered plaintiff's reported complaints, and performed an appropriate assessment and head to toe physical examination of plaintiff. Dr. Ryan concludes to a reasonable degree of medical certainty that Dr. Artale did not depart from accepted medical care by placing plaintiff into a category of patients complaining of abdominal pain that is treated symptomatically in an emergency room setting and thereafter with follow-up reassessments if the patient's complaints continue.

Dr. Ryan states CT studies have related risks which include radiation which can be harmful to a young 22-year old such as plaintiff. He states that the applicable standard of care requires emergency room doctors, in the absence of clear signs and symptoms warranting and requiring CT studies, to weigh the potential benefits of such studies against the potential harm. Dr. Ryan opines that Dr. Artale acted appropriately at all times in formulating his working differential diagnosis given plaintiff's presentation, condition and complaints which did not

support or warrant inclusion of appendicitis, and by extension, did not require appendicitis be ruled in or ruled out with a CT scan. Dr. Ryan further states it is impractical and unrealistic to require an emergency room doctor to request a surgical or gastrointestinal consult for every adult patient presenting to an emergency room with complaints of abdominal pain, and such is not the standard of care. Moreover, Dr. Ryan states that such a consult was not warranted here as plaintiff was not in acute distress, did not have a fever, his white blood count and vital signs were normal and clinical improvement was reported with the treatment given by Dr. Artale.

Additionally, Dr. Ryan asserts that upon re-evaluation at approximately 3:00 a.m., plaintiff's abdomen was non-tender and soft, and there were no indications of an emergent condition or situation requiring further workup, evaluation in the emergency room or admission to the hospital at that time. Thus, Dr. Ryan opines, to a reasonable degree of medical certainty, that Dr. Artale's treatment and discharge of plaintiff to home with follow-up instructions were rendered in accordance with all applicable standards of care and did not proximately cause plaintiff's claimed injuries and outcome.

In support of their motion, defendants Dr. DiSanti and Island Gastroenterology have submitted the expert affirmation of Ian Storch, M.D., who affirms that he is licensed to practice in New York and board certified in internal medicine and gastroenterology. Dr. Storch affirms that he reviewed the pleadings, bill of particulars, the medical records of Good Samaritan Hospital, the medical records of Dr. DiSanti/Island Gastroenterology, and the deposition transcripts. He opines within a reasonable degree of medical certainty that Dr. DiSanti at all times comported with accepted standards of medical practice and in no manner contributed to the injuries sustained by plaintiff.

Dr. Storch explains that in the medical records of these defendants are copies of the emergency department records provided to plaintiff upon discharge, the radiology report from the ultrasound of the abdomen and the results of laboratory testing from which Dr. DiSanti noted in his chart were normal. The chart reveals that Dr. DiSanti performed a physical examination which included palpating and percussing plaintiff's abdomen. Dr. DiSanti did not find any abdominal pain or tenderness, found the abdomen to be soft with no pain or rigidity when percussing and no guarding or rebounding tenderness when he pushed on the four quadrants of plaintiff's abdomen. Thus, Dr. Storch opines, there is no merit to plaintiff's claim that there was a failure to diagnose acute appendicitis when at the time of the office visit plaintiff did not exhibit any of the signs or symptoms consistent with such diagnosis.

Dr. Storch further opines that based upon the plaintiff's history of epigastric pain, lack of fever, a normal white blood count, complaints of vomiting for two weeks and diarrhea, it was appropriate for Dr. DiSanti to suspect acute gastroenteritis, peptic ulcer disease/gastritis and to recommend Prilosec, a BRAT diet, and an upper endoscopy if there was no improvement in a week. Moreover, Dr. Storch opines that there was no medical indication for Dr. DiSanti to order or refer plaintiff for a CT scan or have him return to the emergency room when there were no objective or subjective findings to suspect acute appendicitis. Dr. Storch concludes, within a

reasonable degree of medical certainty, that Dr. DiSanti did not deviate from the standards of care existing in the medical community, and that the treatment rendered by Dr. DiSanti did not proximately cause the injuries alleged by plaintiff.

The evidence proffered by defendants on motion sequence no. 001, which addresses the specific allegations of medical malpractice set forth in the plaintiff's bill of particulars, is sufficient to establish *prima facie* that Dr. Artale, Dr. Henesch and RCLI are entitled to summary judgment dismissing the complaint (*see, Gullo v Bellhaven Ctr. for Geriatric Rehabilitative Care, Inc., supra*). Similarly, through the affidavit of Dr. Storch, which addresses the specific allegations in plaintiff's bill of particulars, Dr. DiSanti and Island Gastroenterology have also established their entitlement to summary judgment (*see, id.*). Thus, the burden shifts to plaintiff to produce evidentiary proof in admissible form sufficient to raise a triable issue of fact.

As plaintiff does not oppose motion sequence no. 001 with respect to Dr. Henesch and RCLI, summary dismissal of the complaint as to these defendants is granted. Plaintiff's counsel also states that no direct claims are being asserted against Good Samaritan Hospital; therefore, plaintiff only opposes the motion on the issue of the hospital's vicarious liability. In reply, defendants argue that plaintiff has not asserted a claim for vicarious liability; therefore, summary judgment should be granted in favor of Good Samaritan Hospital and the complaint dismissed.

In opposition to both motions, plaintiff submits the redacted affirmation of a board certified emergency medicine physician and offers an unredacted version for the court's *in camera* review. Plaintiff argues that based on his expert's opinion, he had appendicitis and retrocecal appendicitis on December 29-30, 2011, which Dr. Artale and Dr. DiSanti failed to diagnose, thereby departing from the standard of care. As set forth in the affirmation of plaintiff's expert, the failure to include appendicitis and retrocecal appendicitis in the differential diagnosis resulted in a failure to order a CT scan of the abdomen and perform other tests causing a delay in diagnosing appendicitis. Such delay by both physicians, plaintiff's expert states, caused plaintiff's appendix to rupture and evolve into an abscess on January 1, 2012. Plaintiff's expert continues that the rupture allowed the infected contents of the appendix and abscess to spread through plaintiff's abdominal cavity ultimately causing peritonitis, an abdominal infection, requiring the need for a more invasive open exploratory laparotomy, open appendectomy, drainage of abscess and antibiotic irrigation abdominal washout, rather than the minimally invasive laparoscopic appendectomy. Plaintiff's expert concludes that the failures in the treatment and diagnosis by Dr. Artale and Dr. DiSanti were a departure from the applicable standard of care and the delay in properly diagnosing plaintiff was the proximate cause of the need for more invasive and additional surgery, which prolonged plaintiff's recovery, pain and suffering.

A physician offering an opinion in a medical malpractice action must establish his or her credentials as a specialist in the same field as the purported negligent physician, or lay a foundation to demonstrate that he or she possesses the requisite skill, training, education, knowledge or experience from which it can be assumed that the opinion rendered is reliable (*see, Lavi v NYU Hosps. Ctr.*, 133 AD3d 830, 21 NYS3d 135 [2d Dept 2015]; *Tsimbler v Fell*, 123 AD3d 1009, 999 NYS2d 863 [2d Dept 2014]). Here, plaintiff's expert is not a gastroenterologist

and the affirmation fails to indicate that he or she had any specific training or expertise in the field. The affidavit does not indicate that plaintiff's expert had familiarized himself or herself with the relevant literature or otherwise set forth how he or she was, or became, familiar with the applicable standards of care for a gastroenterologist. Therefore, the opinion of the plaintiff's expert is of no probative value as to Dr. DiSanti and Island Gastroenterology (*see, Feuer v Ng*, 136 AD3d 704, NYS3d 198 [2d Dept 2016]; *Lavi v NYU Hospitals Ctr.*, *supra*; *Tsimbler v Fell*, *supra*). Therefore, summary judgment is granted and the complaint is dismissed as to Dr. DiSanti and Island Gastronenterology.

Even if plaintiff's expert affirmation was sufficient, summary judgment in favor of these defendants is warranted. The Island Gastroenterology medical records reflect that at the time of the office visit, plaintiff was not exhibiting any symptoms or signs of appendicitis when he was examined by Dr. DiSanti (*see, MacKauer v Parikh*, *supra*; *Riviera v Jothianandan*, 100 AD3d 542, 954 NYS2d 94 [1st Dept 2012]). Moreover, plaintiff's expert's assertion that Dr. DiSanti should have ordered a CT scan or referred him back to the emergency room is unpersuasive given the absence of physical findings justifying same.

However, as a board certified emergency medicine physician, the affirmation of plaintiff's expert is sufficient to raise an issue of fact as to whether Dr. Artale departed from good and accepted medical practice and if such departure was a proximate cause of plaintiff's injuries. In view of the experts' conflicting affidavits, issues of credibility are raised thereby precluding the granting of summary judgment in favor of Dr. Artale (*see, Stucchio v Bikvan*, *supra*; *Contreras v Adeyemi*, *supra*).

Contrary to defendants' contention in their reply, plaintiff has not improperly for the first time in opposition to motion sequence no. 001 asserted a new theory that Good Samaritan Hospital should be held vicariously liable for the actions of Dr. Artale. This theory is included in plaintiff's bill of particulars, "the purpose of which is to amplify the pleadings, limit the proof, and prevent surprise at trial" (*Contreras v Adeyemi*, *supra* at 722; *see, Shanoff v Golyan*, 139 AD3d 932, 34 NYS3d 78 [2d Dept 2016]). "A bill of particulars in a medical malpractice action must provide a general statement of the acts or omissions constituting the alleged negligence" (*Shanoff v Golyan*, *supra* at 934; *Contreras v Adeyemi*, *supra* at 722).

Here, in the bill of particulars provided in response to Dr. Artale's demands, plaintiff claims that the negligent acts occurred at Good Samaritan Hospital and that, *inter alia*, Dr. Artale failed to include appendicitis in the differential diagnosis and to order a CT scan of the abdomen. In the bill of particulars responsive to the demands of Good Samaritan Hospital, plaintiff claims that Dr. Artale was employed by Good Samaritan Hospital. These statements are sufficiently informative to apprise Good Samaritan Hospital of plaintiff's intention to hold it vicariously liable if it is established that Dr. Artale departed from acceptable standards of care (*see, Contreras v Adeyemi*, *supra*). Furthermore, Good Samaritan Hospital has not demonstrated, *prima facie*, that Dr. Artale was not its employee, and thus could not be held vicariously liable for his acts (*id*). Therefore, summary judgment is not warranted in its favor.

"It is black letter law that a party may not raise new claims for the first time in opposition to summary judgment" (*Brandon v City of New York*, 705 F Supp 2d 261, 278 [SDNY 2010]). Lacking in merit is defendants' assertion that plaintiff is attempting to assert a new claim of failure to diagnose retrocecal appendicitis. Based on the deposition testimony of the physicians and plaintiff's expert, retrocecal appendicitis is an inflamed appendix, and retrocecal refers to the position of the appendix. Thus, based on the evidence before the court, plaintiff is not asserting a new claim.

To summarize, regarding motion sequence no. 001, summary judgment is granted to the extent of severing and dismissing the claims of medical malpractice asserted against defendants Dr. Henesch and Radiology Consulting of Long Island and the direct claims of medical malpractice asserted against Good Samaritan Hospital. The claims of medical malpractice as asserted against Dr. Artale and the claims of vicarious liability asserted against Good Samaritan Hospital remain viable. Regarding motion sequence no. 002, summary judgment is granted in favor of Dr. DiSanti and Island Gastroenterology Consultants, and the complaint is severed and dismissed as to these defendants.

Dated: April 13, 2018

J.S.C.