

Lynch v Siedburg

2018 NY Slip Op 34102(U)

October 2, 2018

Supreme Court, Onondaga County

Docket Number: Index No. 2017EF258S

Judge: James P. Murphy

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At a Motion Term of the Supreme Court held in and for the County of Onondaga at the Courthouse in Syracuse, New York on 21, June 2018.

PRESENT: Honorable James P. Murphy
Justice of the Supreme Court

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ONONDAGA

MICHAEL F. LYNCH,

Plaintiff,

ORDER

-vs-

BRUCE H. SIEDBURG, DDS,

Index No.: 2017EF2585
RJI No.: 33-17-2359

Defendant.

The Plaintiff having filed a motion seeking an Order granting the Plaintiff Summary Judgment against the Defendant on the issue of liability and culpable conduct;

AND the Defendant having move this Court for an Order granting the Defendant Summary Judgment dismissing the Plaintiff's complaint and its entirety and with prejudice and the Court having entertained oral argument at a regular motion term held before the Court on 21 June, 2018;

AND after hearing **JAMES A. MEGGESTO, ESQ.** in support of the motion granting the Plaintiff Summary Judgment and in opposition to the Defendant's motion for Summary Judgment and after hearing **DAN R. RYAN, ESQ.** of counsel to **SMITH, SOVIK, KENDRICK & SUGNET, PC** in opposition to the Plaintiff's motion and in the support of the Defendants motion and due deliberation by the Court having been had, the Court denied the motion of the Plaintiff and reserved decision on the Defendant's motion for Summary Judgment;

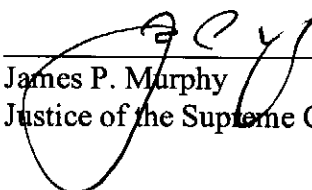
AND both counsel having submitting post argument submissions in support of their respective positions and due deliberation by the Court having been had and the Court having issued a written Decision dated October 2, 2018, a copy of which is attached hereto and made a part hereof, it is

ORDERED AND ADJUDGED that Plaintiff's motion for Summary Judgment is denied; and it is further

ORDERED AND ADJUDGED that Defendant's motion for Summary Judgment is in all respects denied.

Dated: October 10, 2018

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James P. Murphy
Justice of the Supreme Court

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

MICHAEL F. LYNCH,

Plaintiff,

DECISION

vs.

Index No. 2017EF2585
RJI No. 33-17-2359

BRUCE H. SIEDBERG, DDS,

Defendant.

APPEARANCES:

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SMITH, SOVIK, KENDRICK & SUGNET, PC
By: James D. Lantier, Esq.; Daniel R. Ryan, Esq.
Attorneys for Defendant
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Syracuse, NY 13202

MURPHY, J.

In this action for dental malpractice commenced by Plaintiff, Michael F. Lynch, against Defendant, Bruce H. Siedberg, DDS, Plaintiff, by Notice of Motion dated March 5, 2018, seeks an Order granting Plaintiff summary judgment against Defendant on the issue of liability and culpable conduct. Plaintiff further seeks an Inquest on damages. Defendant, by Notice of Motion dated April 16, 2018, also seeks an Order granting Defendant summary judgment dismissing Plaintiff's Complaint in its entirety, with prejudice.

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By way of background, this action for dental malpractice was commenced by Plaintiff against Defendant by the electronic filing of a Summons and Complaint on June 20, 2017. Plaintiff's Complaint alleges that due to Defendant's carelessness and negligence, Plaintiff has been seriously injured due to Defendant's negligence in performing a root canal on the wrong tooth. More specifically, Plaintiff alleges that he was referred to Defendant by his dentist, Michael P. Teluk, D.D.S., for an evaluation of his tooth number 29, which took place on July 15, 2016. Based upon Defendant's evaluation, Plaintiff thereafter elected to proceed with the root canal, which occurred on August 10, 2016, and which was performed by Defendant. Plaintiff alleges that Defendant mistakenly performed a root canal on tooth number 28, when in fact, Plaintiff's evaluation and targeted root canal was for tooth number 29. Importantly, following the procedure, Defendant brought Plaintiff into his office and admitted the mistake of performing the root canal on the wrong tooth. Defendant does not dispute this. Plaintiff thereafter followed up with his original dentist, Dr. Teluk, who performed restorative services on Plaintiff's teeth, including tooth number 28, which services were paid to his office by Defendant.

On the return date of the motions, the Court denied Plaintiff's motion seeking summary judgment. The Court further reserved decision on Defendant's motion, and allowed the parties to submit further argument on the issue of proximate cause. The Court now considers Defendant's motion.

In support, Defendant submits his Affidavit, sworn to on April 16, 2018, stating that his care and treatment of Plaintiff is limited to two office visits on August 10, 2016 and August 31, 2016. Defendant discussed various treatment options with Plaintiff, including: (1) the option to undergo a second root canal of tooth number 29; (2) the option to extract tooth number 29 rather than perform a root canal; and (3) the option to refuse any treatment. *See*, Seidberg Aff., ¶ 11.

Plaintiff elected to proceed with the root canal during the August 10, 2016, visit.

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Defendant points to the informed consent form that Plaintiff executed prior to the root canal procedure on August 10, 2016, procedure. Defendant states that based on the spacing of Plaintiff's teeth and the presence of similar restorative fillings, he identified tooth number 28 as the target tooth. He states that: "Tooth number 28 and tooth number 29 both had similar restorative fillings." He injected the lower right quadrant of Plaintiff's jaw with lidocaine in order to numb the area around teeth numbers 28, 29 and 30. He placed a rubber dam around the tooth, and that immediately upon entering tooth number 28, there was a gush of blood from the tooth which is indicative of inflamed pulp tissues. *Id.*, ¶¶ 21 and 22. He states that in all likelihood, "it was tooth number 28 that was causing plaintiff's pain." He then re-looked at the X-rays of the tooth he had entered and determined that the root canal he was performing was on tooth number 28, not 29. Defendant opines that based upon the presence of blood and inflamed pulp tissue "plaintiff's tooth number 28 required a root canal procedure . . . and that the presence of blood and inflamed pulp tissue in tooth number 28 was a primary cause of the pain and sensitivity Plaintiff was experiencing in the lower right quadrant of his jaw and that his performance of a root canal on tooth number 28 did not result in any injury to Plaintiff." *Id.*, ¶ 25.

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After completing the root canal procedure on tooth number 28, he turned his attention to tooth number 29 and performed a root canal procedure on the initial target tooth, tooth number 29. Defendant further opines that while tooth number 28 was not the initial target tooth, he states that he "did not depart or deviate in any way from good and acceptable endodontic practices in my care and treatment of Plaintiff." He further states: "Further, the root canal for tooth number 28 did not cause any injury to Plaintiff outside of the known and accepted complications." *Id.*, ¶ 34.

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In opposition, Plaintiff submits the Affirmation of Michael P. Teluk, D.D.S., dated May 30, 2018, who states that he referred Plaintiff to Defendant for an evaluation of tooth number 29 on July 15, 2016. Thereafter, he was contacted by Defendant on August 15, 2016, who stated in sum and substance that he performed a root canal on tooth number 28 by mistake. Dr. Teluk opines that the root canal on tooth number 28 “by mistake deviates from the standard of dental care in the Central New York community.” *See*, Teluk Aff., ¶¶ 4-5.

The law is well established that a defendant in a dental malpractice actions bears the initial burden of establishing that there was no departure from accepted standards of practice or that plaintiff was not injured thereby. *See, Menard v. Feinberg*, 60 A.D.3d 1135 (3d Dept. 2009); *see also, Deutsch v. Chaglassian*, 71 A.D.3d 718 (2d Dept. 2010); *see also, Amodio v. Rolpert*, 52 A.D.3d 1078 (3d Dept. 2008).

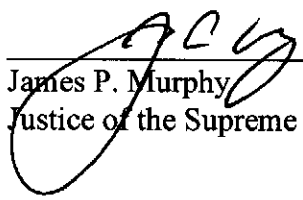
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Here, based upon the discussion set forth below, the Court finds that Defendant fails to meet his prima facie burden thereby defeating his motion for summary judgment. *See, Fagan v. Panchal*, 77 A.D.3d 705 (2d Dept. 2010). First, it is undisputed by Defendant’s own testimony, and his Affidavit, that he performed a root canal on the wrong tooth. This arguably is a clear admission of negligence. It is further undisputed that he advised Plaintiff and Plaintiff’s dentist, Dr. Teluk, that Defendant’s treatment of Plaintiff’s tooth number 28 was by mistake. While Defendant concedes that he made a mistake, his argument that performing a root canal on tooth number 28 did not cause any injury to Plaintiff outside of the “known and accepted complications,” is not borne out by the facts of this case. The facts herein show that following the root canals on teeth numbers 28 and 29, Plaintiff received restorative dentistry with respect to tooth number 28 by his dentist, Dr. Teluk. Defendant offered to pay for the cost of Plaintiff to

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 have two crowns made by Dr. Teluk for teeth numbers 28 and 29. *Id.*, ¶ 32. Based upon this, the Court finds that the issue of whether Defendant’s mistaken root canal procedure on tooth number 28, proximately caused Plaintiff damages requiring the need for restorative dentistry on tooth number 28 constitutes an issue of fact to be determined by a jury. *See, Hain v. Jamison*, 28 N.Y.3d 524 (2016), where the Court of Appeals stated that “typically the question of whether a particular act of negligence is a substantial cause of the plaintiff’s injuries is one to be made by the fact finder”

Accordingly, based on all of the foregoing, the Court denies Defendant’s motion for summary judgment. The above constitutes the Decision of the Court. Plaintiff’s attorney shall electronically file a proposed Order to the Court, on notice to opposing counsel, within fifteen (15) days of the date of this Decision.

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 Dated: October 2, 2018

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 James P. Murphy
 Justice of the Supreme Court