

Russell v River Manor Corp.

2018 NY Slip Op 34483(U)

December 20, 2018

Supreme Court, Nassau County

Docket Number: Index No. 606029/16

Judge: Sharon M.J. Gianelli

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU – IAS/TRIAL PART 22
Present: HON. SHARON M.J. GIANELLI, J.S.C.**

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**MARILYN RUSSELL, as Temporary Administrator
Of the Estate of GEORGE RUSSELL, deceased,**

Plaintiff,

Index No. 606029/16

-against-

Mot. Seq. No. 002

**RIVER MANOR CORP.,
KINGSBROOK JEWISH MEDICAL CENTER,
ORLANDO B. CARPIO, M.D. and
ORLANDO CARPIO, M.D., P.C.,**

DECISION & ORDER

Defendants.

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Papers submitted on this motion:

Defendant River Manor’s Notice of Motion _____ X
Plaintiff’s Affirmation in Opposition _____ X
Defendant River Manor’s Affirmation and Exhibits in Support _____ X
Defendant River Manor’s Reply Affirmation _____ X
Defendant Kingsbrook’s Reply Affirmation _____ X

Background

Plaintiff Marilyn Russell’s underlying action against Defendant River Manor Corp. (hereinafter “River Manor”) is one for alleged negligence, medical malpractice, violation of PHL 2801-D, and wrongful death in connection with the care and treatment of Plaintiff’s decedent father. Plaintiff also seeks punitive damages based on an allegation of gross neglect.

In the instant action before the Court, Defendant River Manor moves for an Order granting Defendant summary judgment pursuant to CPLR § 3212 dismissing Plaintiff’s complaint and directing an Entry of Judgment in favor of River Manor.

Plaintiff opposes asserting that Defendant River Manor's expert affirmation is conclusory and lacking in the requisite specificity to support a summary judgment claim. Further, Plaintiff alleges that facts concerning the care rendered by Defendant River Manor create triable issues of fact which serves as a bar to summary judgment in favor of Defendant River Manor. The Court heard oral argument on November 15, 2018.

Underlying Facts

The decedent, George Russell, was admitted to Defendant River Manor Nursing Home (hereinafter "River Manor") on September 30, 2009 to undergo rehabilitation following a cerebro-vascular accident). The decedent remained at River Manor until he was transferred to Kingsbrook Jewish Medical Center (hereinafter "KJMC") on August 15, 2013 for treatment of a cough and fever. At the time of his admission to KJMC, Mr. Russell was eighty-one (81) years old, and suffered from numerous pre-existing conditions and multiple co-morbidities, including dementia, hypertension, and uncontrolled diabetes. Additionally, he had limited mobility, could not perform daily self-care, and also had several pressure ulcers. Mr. Russell was discharged from KJMC on August 23, 2013. On September 11, 2013, Mr. Russell was re-admitted to KJMC's intensive care unit from River Manor for the treatment of septicemia. On October 1, 2013, Mr. Russell was discharged to non-party New York Congregational Nursing Home and received no additional treatment at KJMC. During each stay at KJMC, the decedent was under the care of his doctor,

Defendant Dr. Orlando Carpio, and the KJMC staff tended to his daily care. On May 19, 2014, Mr. Russell was admitted to Brooklyn Hospital with a fever and tachycardia. Upon admission, he was found to have several other co-occurring conditions and illnesses. Mr. Russell died at Brooklyn Hospital on May 21, 2014. The Plaintiff, on behalf of the decedent, thereafter commenced this action to recover damages for negligence, medical malpractice, and wrongful death.

Law/Ruling

“In order to establish liability for medical malpractice, a plaintiff must prove that the defendant deviated or departed from accepted community standards of practice and that such departure was a proximate cause of the plaintiff’s injuries. On a motion for summary judgment, a defendant has the burden of establishing the absence of any departure from good and accepted medical practice or that the plaintiff was not injured thereby.” *Leavy v Merriam*, 133 A.D.3d 636, 637 [2015]. “Expert testimony is necessary to prove a deviation from accepted standards of medical care and to establish proximate cause.” *Lyons v. McCauley*, 252 A.D.2d 516, 517 [1998], citing *Koehler v. Schwartz*, 48 N.Y.2d 807 [1979]. The movant must make a *prima facie* showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact (see *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851 [1985]; see also *Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). Once such a *prima facie* showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible

form sufficient to raise material issues of fact which require a trial of the action (see *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320 [1986], see also *Zuckerman v. City of New York*, *supra*).

Here, Defendant River Manor made a *prima facie* showing warranting summary judgment by submitting the expert affirmation of Dr. Sharon Brangman, MD, FACP, AGSF, which provided a detailed account of the decedent's care and treatment while under admission at Defendant River Manor. The affirmation provided a detailed assertion that River Manor did not engage in negligence in the care and treatment of the decedent nor did it depart from accepted standards of care in his treatment, did not cause, contribute to, or exacerbate any of the decedent's injuries, and did not neglect decedent or otherwise deprive him of his rights or benefits as a resident of River Manor. Dr. Brangman concluded that the decedent's injuries and death were the unavoidable result of his progressing diabetes and vascular disease.

An affirmation in opposition submitted by Plaintiff's expert, Dr. Perry Starer, MD, alleged that Defendant River Manor's expert conclusions lacked required specificity and were conclusory. He further alleged that Defendant River Manor failed to follow an appropriate care plan, failed to provide decedent proper nutrition, departed from the appropriate standard of care leading to a worsening of the decedent's condition which resulted in serious injuries and was a proximate cause of his death.

Plaintiff's expert's assertions concerning the alleged deficiencies in Defendant River Manor's expert affirmation are contradicted by the very content and substance of Defendant River Manor's expert affirmation, which provides a sufficiently detailed account of the care rendered by River Manor to the decedent during his stay at River Manor. Further, as Plaintiff's expert cites Defendant River Manor's alleged lack of proper planning and care and deprivation of rights or benefits as a resident of River Manor as "a proximate cause" of Mr. Russell's death, Plaintiff's expert failed to sufficiently counter River Manor's expert's assertions that decedent's age, critical health status, pre-existing conditions (including pressure ulcers), significant co-morbidities, including diabetes and vascular disease and overall declining health led to his injuries and proximately caused his death.

Upon hearing oral argument and reviewing the submissions of the parties, as well as consideration of a totality of the facts and circumstances herein, Defendant River Manor's application for an Order awarding it summary judgment pursuant to CPLR § 3212 dismissing Plaintiff's complaint and directing an Entry of Judgment in favor of River Manor is **GRANTED**.

All requests not specifically addressed herein are **DENIED**.

This constitutes the Decision and Order of the Court.

DATE: December 20, 2018
Mineola, New York


HON. SHARON M.J. GIANELLI,
Justice of the Supreme Court
ENTERED

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NASSAU COUNTY
5 of COUNTY CLERK'S OFFICE