

Kaur v Tsai
2020 NY Slip Op 34611(U)
May 22, 2020
Supreme Court, Queens County
Docket Number: Index No. 711421/16
Judge: Peter J. O'Donoghue
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NEW YORK SUPREME COURT - QUEENS COUNTY

FILED

Present: Honorable, PETER J. O'DONOGHUE IAS PART MD
Justice

**5/26/2020
12:24 PM**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

**COUNTY CLERK
QUEENS COUNTY**

Harveer Kaur and Jasbinder Singh,

Index No.: 711421/16

Plaintiff,

-against-

Motion Date: 12/04/19

Tony Tsai, The New York Fertility Center, Inc.
And The New York Hospital Medical Center of
Queens d/b/a New York-Presbyterian

Motion Seq. No: 3

Defendants.

The following papers numbered as set forth below read on this motion by the defendant The New York Hospital Medical Center of Queens d/b/a New York-Presbyterian ("the Hospital") for an order pursuant to CPLR 3212 granting summary judgment with respect to both vicarious and direct liability claims; and cross motion by plaintiff for a order precluding defendant Tony Tsai from offering any evidence or testimony at trial against the Hospital, precluding any claim for contribution under Article 14 from the Hospital, dismissing any claim for limited liability under Article 16 against the Hospital, and dismissing any claim under Article 15 of the General Obligations Law against the Hospital.

PAPERS
NUMBERED

N.M.-Affidavits-Exhibits.....	47-72
N.C.M.-Affidavits-Exhibits.....	82-84
Answering Papers-Affidavits-Exhibits.....	74-75-81; 85
Reply Affirmation-Exhibits.....	86, 87

Upon the foregoing papers and oral argument it is ordered that the motion by defendant Hospital for an order pursuant to CPLR 3212 granting summary judgment with respect to both vicarious and direct liability claims is granted. It is

undisputed that plaintiff was admitted to the hospital by her private attending physician defendant Tony Tai for scheduled surgery. A hospital cannot be held liable for the acts or omissions of private attending physicians. (See Hill v St. Clare's Hospital, 67 NY2d 72 [CA 1986].) Furthermore, the Hospital is "shielded from liability when its employees follow the orders of a [private] attending physician unless the latter's orders are so clearly contraindicated by normal practice that ordinary prudence requires inquiry into their correctness." (Sela v Katz, 78 AD3d 681 [2d Dept. 2010] quoting Fillipone v St. Vincent's Hospital and Med. Ctr. Of NY 253 AD2d 616, 618 [2d Dept. 1998].); see Toth v Community Hospital at Glen Cove, 22 NY2d 255 [NYCA 1968].) There is no evidence that Dr. Tsai's orders were clearly contraindicated. Finally, plaintiff does not allege negligence acts by any hospital staff.

The defendant Tony Tsai, who performed plaintiff's surgery, did not move for the affirmative relief of an award of summary judgment; however, in his affirmation in partial support of defendant Hospital's motion, he requests that the Court review the record and grant summary judgment in his favor based upon the expert affirmation of Dr. Douglas Phillips submitted by the Hospital. Upon review of the record, the Court denies defendant Tsai's application. Plaintiff established the applicability of the doctrine of *res ipsa loquitor* which allows a jury to infer negligence from the circumstances.

The cross motion by plaintiff for an order precluding defendant Tony Tsai from offering any evidence or testimony at trial against the Hospital, precluding any claim for contribution under Article 14 from the Hospital, dismissing any claim for limited liability under Article 16 against the Hospital, and dismissing any claim under Article 15 of the General Obligations Law against the Hospital is granted. (See Sellino v Kirtane, 73 AD3d 728 [2d Dept. 2010]; Johnson v Peloro, 62 Ad3d 955 [2d Dept. 2009].)

The amended caption shall read as follows:

(S E E N E X T P A G E)

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Dated: May 22, 2020

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Hon. Peter J. O'Donoghue, J.S.C.

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