

**Birnbaum v Greco**

2021 NY Slip Op 33919(U)

April 30, 2021

Supreme Court, Queens County

Docket Number: Index No. 711716/2018

Judge: Peter J. O'Donoghue

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NEW YORK SUPREME COURT - QUEENS COUNTY

**FILED  
4/30/2021  
1:01 PM  
COUNTY CLERK  
QUEENS COUNTY**

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

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JEFFREY BIRNBAUM and LINDA BIRNBAUM,

Plaintiffs,

Index No.: 711716/18

-against-

Motion Date: 12/16/2020

JEFFREY GRECO, STELIOS KOUTSOUMBELIS,  
EVAN GREEN, TARYN ELCOCK, DANIELLE TURRIN,  
TIFFANY MOADEL, ROHIT BINOD VERMA, NORTH SHORE UNIVERSITY HOSPITAL,  
NORTHWELL HEALTH UNIVERSITY ORTHOPAEDIC ASSOCIATES, NORTHWELL  
HEALTH PHYSICIAN PARTNERS ORTHOPAEDIC INSTITUTE  
AT GARDEN CITY and NORTHWELL HEALTH, INC.,

Motion Seq. Nos.: 3&4

Defendants.  
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Motions bearing sequence numbers 3 and 4 of 12/16/2020 are hereby consolidated for disposition. The following papers numbered as set forth below and read on these motions by the defendants JEFFREY GRECO, EVAN GREEN, TARYN ELCOCK, DANIELLE TURRIN, TIFFANY MOADEL, ROHIT BINOD VERMA, NORTH SHORE UNIVERSITY HOSPITAL, and NORTHWELL HEALTH UNIVERSITY ORTHOPAEDIC ASSOCIATES, NORTHWELL HEALTH PHYSICIAN PARTNERS ORTHOPAEDIC INSTITUTE AT GARDEN CITY and NORTHWELL HEALTH, INC. ("the NORTHWELL DEFENDANTS") (Seq. No.3) for an Order Pursuant to CPLR §3212, granting summary judgment to these moving defendants, dismissing plaintiffs' claims on the ground that there are no triable issues of fact and that the moving defendants cannot be held liable as a matter of law; and defendant STELIOS KOUTSOUMBELIS (Seq. No.4) for an Order pursuant to CPLR §3212 granting summary judgment and dismissing the plaintiff s Complaint as to defendant, STELIOS KOUTSOUMBELIS, M.D..

PAPERS  
NUMBERED

Seq. No. 3

N.M.-Affidavits-Exhibits..... 97-132  
Opposition Papers-Affidavits-Exhibits..... 160-168  
Reply Papers-Affidavits-Exhibits..... 190

Seq. No. 4

N.M.-Affidavits-Exhibits..... 135-155  
Opposition Papers-Affidavits-Exhibits..... 169-177  
Reply Affirmations-Exhibits..... 188-189

Upon the foregoing papers it is ordered that the motion by defendants JEFFREY GRECO, EVAN GREEN, TARYN ELCOCK, DANIELLE TURRIN, TIFFANY MOADEL, ROHIT BINOD VERMA, NORTH SHORE UNIVERSITY HOSPITAL, NORTHWELL HEALTH UNIVERSITY ORTHOPAEDIC ASSOCIATES, NORTHWELL HEALTH PHYSICIAN PARTNERS ORTHOPAEDIC INSTITUTE AT GARDEN CITY and NORTHWELL HEALTH, INC. (Seq. No.3) for an Order pursuant to CPLR §3212, granting summary judgment to these moving defendants, dismissing plaintiffs' claims on the ground that there are no triable issues of fact and that the moving defendants cannot be held liable as a matter of law is decided as follows:

The branch of the motion by defendant JEFFREY GRECO for an Order pursuant to CPLR §3212, granting summary judgment is denied. Questions of fact exist, including but not limited to, whether DR. JEFFREY GRECO, the emergency department physician, departed from the accepted standard of care during the **August 21, 2017** emergency department presentation by (1) failing to rule out an infectious process; and/or (2) failing to admit plaintiff to the hospital for an immediate work-up for spinal infection, further imaging studies, and CT guided fluoroscopic aspiration of fluid at C5-C6; and/or (3) failing to treat with broad spectrum antibiotics; and/or (4) improperly discharging plaintiff; and if so, whether such departure(s) was(were) a substantial factor(s) in causing a delay in diagnosis and treatment of a spinal epidural abscess and causing plaintiff's injuries which may require resolution at trial.

The branch of the motion by defendant EVAN GREEN for an Order pursuant to CPLR §3212, granting summary judgment is granted. DR. GREEN was the orthopedic resident who examined plaintiff during the August 21, 2017 and August 24, 2017 emergency department presentations. As a resident, DR. GREEN worked under the supervision of the attending physician DR. STELIOS KOUTSOUMBELIS and ROHIT BINOD VERMA . There is no evidence that DR. GREEN exercised independent judgment or that or that any orders by his supervising doctors were contraindicated. (See Poter v. Adams, 104 A.D.3d 925 [2d Dept. 2013].)

The branch of the motion by defendant ROHIT BINOD VERMA for an Order pursuant to CPLR §3212, granting summary judgment is denied. Questions of fact exist, including but not limited to, whether DR. ROHIT BINOD VERMA departed from the accepted standard of care during plaintiff's August 24, 2017 office visit by (1) failing to recognize that plaintiff's laboratory values including, white blood cell count, C-Reactive Protein, Sedimentation rate and neutrophils were all elevated; and/or (2) failing to arrange transfer to a hospital where plaintiff could be admitted for further work; (3) failure to compare and contrast plaintiff's symptoms and complaints between August 21,

2017 and August 24, 2017; and if so, whether such departure(s) was(were) a substantial factor(s) in causing a delay in diagnosis and treatment of a spinal epidural abscess and causing plaintiff's injuries which may require resolution at trial.

The branch of the motion by defendant TARYN ELCOCK for an Order pursuant to CPLR 3212, granting summary judgment is denied. Questions of fact exist, including but not limited to, whether defendant TARYN ELCOCK, a triage nurse in the Emergency Department, departed from the accepted standard of care during the **August 26, 2017** emergency department presentation by (1) failing to assess plaintiff's neurological status; and/or (2) failing to assign Mr. Birnbaum an appropriate acuity level of either Level I or Level II; and if so, whether such departure(s) was(were) a substantial factor(s) in causing a delay in diagnosis and treatment of a spinal epidural abscess and causing plaintiff's injuries which may require resolution at trial.

The branch of the motion by defendant DANIELLE TURRIN for an Order pursuant to CPLR 3212, granting summary judgment is denied. Questions of fact exist, including but not limited to, whether defendant DR. DANIELLE TURRIN, an Emergency Department physician departed from the accepted standard of care during the **August 26, 2017** emergency department presentation by failing to timely notify Dr. Verma, the attending orthopedic surgeon, of plaintiff's inability to tolerate the MRI without sedation; and if so, whether such departure was a substantial factor in causing a delay in diagnosis and treatment of a spinal epidural abscess and causing plaintiff's injuries which may require resolution at trial.

The branch of the motion by defendant TIFFANY MOADEL for an Order pursuant to CPLR 3212, granting summary judgment is denied. Questions of fact exist, including but not limited to, whether defendant DR. TIFFANY MOADEL, an Emergency Department physician, departed from the accepted standard of care during the **August 26, 2017** emergency department presentation by failing to order an MRI with sedation STAT immediately upon learning plaintiff did not tolerate the MRI without sedation; and if so, whether such departure was a substantial factor in causing a delay in diagnosis and treatment of a spinal epidural abscess and causing plaintiff's injuries which may require resolution at trial.

The motion by defendant STELIOS KOUTSOUMBELIS , M.D. (Seq. No.4) for an Order pursuant to CPLR §3212 granting summary judgment and dismissing the plaintiff's Complaint as to defendant, STELIOS KOUTSOUMBELIS, M.D. is denied. Questions of fact exist, including but not limited to, whether STELIOS KOUTSOUMBELIS, M.D. departed from the accepted standard of care by (1) failing to timely diagnose a spinal epidural infection;

and/or (2) failing to appreciate abnormal lab data; and/or (3) failing to conference with plaintiff's referring physician, Dr. Smith; and/or (4) failing to order a gadolinium-enhanced MRI; and if so, whether such departure(s) was(were) a substantial factor(s) in causing a delay in diagnosis and treatment of a spinal epidural abscess and causing plaintiff's injuries which may require resolution at trial.

The branch of the motion by defendant North Shore University Hospital is denied ("NSUH"). NSUH potentially may be found vicariously liable for the care and treatment by defendants JEFFREY GRECO and/or ROHIT BINOD VERMA and/or TARYN ELCOCK and/or DANIELLE TURRIN and/or TIFFANY MOADEL and/or STELIOS KOUTSOUMBELIS , M.D. if any of these defendants are found liable.

The branch of the motion by the NORTHWELL DEFENDANTS is granted without opposition.

Plaintiff's request for a further deposition of the defendants with respect to the metadata for plaintiff's records at Defendant NORTH SHORE UNIVERSITY HOSPITAL is granted to the extent that plaintiff may depose defendants JEFFREY GRECO; DANIELLE TURRIN; and STELIOS KOUTSEMBELIS with respect to the metadata. Each deposition shall not exceed two (2) hours and shall be completed prior to the next conference on August 10, 2021.

The amended caption shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

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JEFFREY BIRNBAUM and LINDA BIRNBAUM,

Plaintiffs,

Index No.: 711716/18

-against-

Motion Date: 12/16/2020

JEFFREY GRECO, STELIOS KOUTSOUMBELIS,  
TARYN ELCOCK, DANIELLE TURRIN,  
TIFFANY MOADEL, ROHIT BINOD VERMA, NORTH  
SHORE UNIVERSITY HOSPITAL,

Motion Seq. Nos.: 3&4

Defendants.  
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Dated: April 30, 2021

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ETER J. O'DONOGHUE, J.S.C.

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