

**James v New York-Presbyt. Hosp.**

2023 NY Slip Op 34097(U)

November 15, 2023

Supreme Court, New York County

Docket Number: Index No. 805088/2019

Judge: Erika M. Edwards

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ERIKA M. EDWARDS**

**PART 10M**

*Justice*

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RUBY JAMES, as Administrator of the Estate of EDENA  
JAMES, Deceased,

Plaintiff,

**INDEX NO.** 805088/2019

**MOTION DATE** 11/09/2023

**MOTION SEQ. NO.** 007

- v -

NEW YORK-PRESBYTERIAN HOSPITAL, PRITISH IYER,  
M.D., JOSHUA DAVID GELERIS, M.D., "JOHN DOE 1,  
M.D.," "JANE DOE 1, M.D.," the first and last names being  
fictitious and presently unknown, NEW YORK CITY HEALTH  
& HOSPITALS CORPORATION, METROPOLITAN  
HOSPITAL CENTER, JONNA MERCADO, M.D., JUMANA  
CHALABI, M.D., LAURA DUTU, M.D., "JOHN DOE 2, M.D.,"  
"JANE DOE 2, M.D.," the first and last names being fictitious  
and presently unknown, FORT TRYON CENTER FOR  
REHABILITATION AND NURSING,

Defendants.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 160, 161, 162, 163,  
164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 199, 226, 231, 234

were read on this motion to/for SUMMARY JUDGMENT.

Upon the foregoing documents, the court grants Defendant Fort Tryon Center for  
Rehabilitation and Nursing's ("Fort Tryon") motion for summary judgment dismissal of Plaintiff  
Ruby James, as Administrator of the Estate of Edena James, Deceased's ("Plaintiff") complaint,  
without opposition. The court dismisses the complaint as against Fort Tryon and amends the  
caption to remove Fort Tryon as a party to this action.

Plaintiff brought this action against the defendants alleging medical malpractice,  
negligence, wrongful death and lack of informed consent. Plaintiff alleges in substance that  
Defendant Fort Tryon and the other defendants failed to prevent and treat the deceased Plaintiff's

pressure ulcers, malnutrition and other conditions, resulting in the Deceased Plaintiff's injuries and death.

Defendant Fort Tryon now moves for summary judgment dismissal of Plaintiff's complaint under motion sequence 007. Defendant Fort Tryon relies on the expert affidavits of Diane Yastrub, PhD, APRN-BC, MSC, MSN, CWCN, CDE and Lawrence N. Diamond, M.D. Defendant Fort Tryon argues in substance that there are no material issues of triable fact indicating that the care and treatment provided to the Deceased Plaintiff at its facility fell below the applicable standards of good nursing home and medical care and that there was no proximate cause for the deceased Plaintiff's alleged injuries or death.

Plaintiff failed to oppose the motion.

To prevail on a motion for summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact (*see* CPLR 3212[b]; *Zuckerman v New York*, 49 NY2d 557, 562 [1980]; *Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). In a medical malpractice action, a defendant doctor or provider moving for summary judgment must establish that in treating the plaintiff there was no departure from good and accepted medical practice or that any departure was not the proximate cause of the injuries alleged (*Roques v. Noble*, 73 AD3d 204, 206 [1st Dept 2010]; *Scalisi v Oberlander*, 96 AD3d 106, 120 [1st Dept 2012]; *Thurston v Interfaith Med. Ctr.*, 66 AD3d 999, 1001 [2d Dept 2009]; *Rebozo v Wilen*, 41 AD3d 457, 458 [2d Dept 2007]). It is well settled that expert opinion must be detailed, specific, based on facts in the record or personally known to the witness, and that an expert cannot reach a conclusion by assuming material facts not supported by the record (*see Roques*, 73 AD3d at 207; *Cassano v*

*Hagstrom*, 5 NY2d 643, 646 [1959]; *Gomez v New York City Hous. Auth.*, 217 AD2d 110, 117 [1st Dept 1995]; *Aetna Casualty & Surety Co. v Barile*, 86 AD2d 362, 364-365 [1st Dept 1982]; *Joyner-Pack v Sykes*, 54 AD3d 727, 729 [2d Dept 2008]).

In medical malpractice actions, to defeat the motion, a plaintiff must rebut the defendant's prima facie showing by submitting an affidavit from a physician attesting that the defendant departed from accepted medical practice and that the departure was the proximate cause of the injuries alleged (*Roques*, 73 AD3d at 207).

Summary judgment is "often termed a drastic remedy and will not be granted if there is any doubt as to the existence of a triable issue" (Siegel, NY Prac § 278 at 476 [5<sup>th</sup> ed 2011], citing *Moskowitz v Garlock*, 23 AD2d 943, 944 [3d Dept 1965]). Summary judgment should be awarded when a party cannot raise a factual issue for trial (*Sun Yan Ko v Lincoln Sav. Bank*, 99 AD2d 943, 943 [1<sup>st</sup> Dept 1984]; CPLR 3212[b]).

Here, the court finds that Defendant Fort Tryon demonstrated its entitlement to summary judgment in its favor as a matter of law and Plaintiff failed to oppose the motion, thereby conceding dismissal of the complaint as against this defendant.

Therefore, the court grants Defendant Fort Tryon's motion to dismiss the complaint as against it, the court dismisses the complaint as against Defendant Fort Tryon and the court amends the caption accordingly.

As such, it is hereby

ORDERED that the court grants Defendant Fort Tryon Center for Rehabilitation and Nursing's motion for summary judgment dismissal of Plaintiff Ruby James, as Administrator of the Estate of Edena James, Deceased's complaint, filed under motion sequence 007; and it is further

ORDERED that the court dismisses the complaint as against Defendant Fort Tryon Center for Rehabilitation and Nursing and directs the Clerk of the Court to enter judgment in favor of Defendant Fort Tryon Center for Rehabilitation and Nursing as against Plaintiff Ruby James, as Administrator of the Estate of Edena James, Deceased, with prejudice and without costs to any party; and it is further

ORDERED that the court amends the caption to remove the name of Defendant Fort Tryon Center for Rehabilitation and Nursing as a party to this action and directs the Clerk of the Court to amend the caption to the following:

-----X  
 RUBY JAMES, as Administrator of the Estate of EDENA  
 JAMES, Deceased,

Plaintiff,

-against-

NEW YORK-PRESBYTERIAN HOSPITAL, PRITISH  
 IYER, M.D., JOSHUA DAVID GELERIS, M.D., "JOHN  
 DOE 1, M.D.," "JANE DOE 1, M.D.," the first and last  
 names being fictitious and presently unknown, NEW YORK  
 CITY HEALTH & HOSPITALS CORPORATION,  
 METROPOLITAN HOSPITAL CENTER, JONNA  
 MERCADO, M.D., JUMANA CHALABI, M.D., LAURA  
 DUTU, M.D., "JOHN DOE 2, M.D.," and "JANE DOE 2, M.D.,"  
 the first and last names being fictitious and presently  
 unknown,

Defendants.

-----X  
 and it is further;

ORDERED that counsel for Defendant Fort Tryon Center for Rehabilitation and Nursing shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are

directed to mark the court’s records to reflect the amended caption pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address (www.nycourts.gov/supctmanh)].

This constitutes the decision and order of the court.

  
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<u>11/15/2023</u> DATE			<u>ERIKA M. EDWARDS, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE