

Desmornes v Brooklyn Hosp. Ctr.

2025 NY Slip Op 33961(U)

October 9, 2025

Supreme Court, Kings County

Docket Number: Index No. 509932/2022

Judge: Rupert V. Barry

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This opinion is uncorrected and not selected for official publication.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 13

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KRYSTEL-MARIE MARCELLE DESMORNES as	:
Administrator of the Estate of JEAN-DANIEL DESMORNES	:
Deceased, and KRYSTEL-MARIE MARCELLE	:
DESMORNES, individually, and MARIE MILDRED	: Cal. No.: 11 (MSQ No.: 4)
DESMORNES MEVS,	:
	:
Plaintiffs,	: Index No. 509932/2022
-against-	:
	: <u>DECISION & ORDER</u>
THE BROOKLYN HOSPITAL CENTER,	:
	:
Defendant.	:
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Recitation, as required by CPLR 2219(a), of the papers considered in the review of Defendant’s motion for summary judgment, dismissing Plaintiffs complaint against Defendant: NYSCEF Doc. Nos.: 76 - 113.

Upon due consideration of the papers filed in this matter, and after oral argument, this Court finds as follows:

This action concerns a fire in the Brooklyn Hospital Center (hereafter “BHC”) Emergency Department on March 26, 2020, involving Jean-Daniel Desmornes, who had been admitted to BHC with covid on March 25, 2020. Immediately after the fire, the FDNY examined the scene and FDNY Marshall John Urrico concluded that the fire was solely caused by Mr. Jean-Daniel Desmornes’ use of his frayed, after-market cellphone charging cable.

In support of its motion, BHC submits the medical records, the FDNY records, the deposition of its then BHC Chief Operating Officer, Robert Aucilino, the expert affirmation of Eugene West (hereafter “Mr. West”), and the expert affirmation of Mark Silberman, M.D. hereafter (“Dr. Silberman”). Mr. West is an expert in fire origin and cause, fire/arson related human factors and behavioral profiling, the management of major case fire incidents, fire department operations, fire incident sequencing, fire scene reconstruction, building codes and fire codes. Dr. Silberman is an expert in emergency medicine, internal medicine, pulmonary medicine, and critical care medicine. He is a physician licensed to practice medicine in New York State and is board-certified in Emergency Medicine and Internal Medicine, with sub-

certifications in Critical Care Medicine and Pulmonary Disease. He is presently the Chief of Emergency Medicine and the Medical Director of Acute Care Hospitalist Medicine at St. John's Riverside Hospital.

In opposition, Plaintiffs submit the affirmation of Richard P. Ruebenacker (hereafter "Mr. Ruebenacker"), a nurse and former New York City firefighter.

Discussion

A party moving for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, which requires the submission of sufficient evidence that no genuine triable issues of fact exist in the case (*see* CPLR 3212[b]).

"The elements of negligence are "(1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom" (*Abbott v Johnson*, 152 AD3d 730, 732 [2d Dept 2017] [*citing Solomon v City of New York*, NY2d 1026, 1027 [1985]). "A defendant moving for summary judgment dismissing a cause of action alleging negligence may generally sustain his or her *prima facie* burden by negating a single essential element of that cause of action" (*Brower v Staten Island Univ. Hosp.*, 233 AD3d 1019, 1019 [2d Dept 2024]). In a negligence action concerning a fire, sufficient evidence includes the Fire Marshal's report and the deposition testimony of the investigator who prepared that report, demonstrating the absence of negligence on the part of the defendant (*see, Utica First Ins. Co. v Gristmill Earth Realty Corp.*, 145 AD3d 1059, 1062 [2d Dept 2016]).

To maintain a medical malpractice action, not only must a deviation from accepted medical practice be demonstrated; also, an act or omission by a physician or hospital must be shown to be the proximate cause or a substantial factor in bringing about an injury to the plaintiff (*see, Peynado v Woodhull Med. & Mental Health Ctr.*, 239 AD3d 677 [2d Dept 2025]). In the absence of proof of such breach, or that such breach proximately caused injury to the plaintiff, the medical malpractice action must be dismissed as a matter of law (*see, id.*). Where the movant is a defendant doctor or hospital, sufficient evidence includes all

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relevant medical records and deposition testimony of the parties, demonstrating the absence of negligence on the part of the moving parties (*see, Alvarez v Prospect Hospital*, 68 NY2d 320, 325 [1986]).

Once a *prima facie* showing of entitlement to judgment as a matter of law has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact, which require resolution by a jury (*see, Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Here, TBHC has established a *prima facie* case of entitlement to summary judgment on all causes of action asserted against it. TBHC establishes a *prima facie* case via the FDNY records, the TBHC and Weill-Cornell medical records, deposition testimony of its then TBHC Chief Operating Officer Robert Aucilino, and the affirmations of its fire cause and origin expert, Mr. West, and medical expert, Dr. Silberman. TBHC establishes that Plaintiffs' claims, comprising solely of allegations of simple negligence and medical malpractice, are barred by the Emergency Disaster Treatment Protection Act [*former Public Health Law 3082(1)*] ("EDTPA") as it treated Mr. Desmornes during the EPTA's March 7, 2020-August 3, 2020, immunity time period, in good faith, and pursuant to the Public Health Law and the Covid emergency rule (*see, former Public Health Law 3082; Mera v New York City Health & Hosps. Corp.*, 220 AD3d 668, 669–70 [2d Dept 2023]). TBHC further establishes that, even if it was not immune from Plaintiffs' claims, there is no evidence that it deviated from the standard of care, because it adhered to the standard of care in its treatment, monitoring and supervision of Mr. Desmornes. TBHC establishes that there is no evidence that any alleged action or inaction by TBHC was the proximate cause of an injury to Mr. Desmornes. Furthermore, in addition to establishing a *prima facie* entitlement to summary on Plaintiffs' negligence and medical malpractice claims, this Court finds that TBHC establishes a *prima facie* entitlement to summary judgment as to the wrongful death action as well (*see, Roques v Noble*, 73 AD3d 204, 206 [2d Dept 2010]). Lastly, for that claim no longer exists (*see, Taggart v Costabile*, 131 AD3d 243, 257 [2d Dept. 2015]).

In opposition to TBHC's prima facie showing Plaintiffs have failed to raise a triable issue of fact on all causes of action asserted against TBHC.

Accordingly, for the aforementioned reasons, it is:

ORDERED that, the motion of TBHC for an order, pursuant to CPLR 3212, granting TBHC summary judgment dismissing the complaint including all causes of action insofar as asserted against TBHC is **GRANTED**, and the complaint is dismissed in its entirety with prejudice as against TBHC; and it is further

ORDERED that, the Clerk of the Court is directed to enter judgment in TBHC's favor. It is further

ORDERED that, all applications not specifically addressed herein are denied.

This constitutes the decision, order, and judgment of this Court.

Dated: October 9, 2025

ENTER,

R V BARRY

HON. RUPERT V. BARRY, J.S.C.