

Castro v Jamaica Hosp.

2023 NY Slip Op 34757(U)

March 21, 2023

Supreme Court, Queens County

Docket Number: Index No. 709769/2018

Judge: Peter J. O'Donoghue

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FILED: QUEENS COUNTY CLERK 03/22/2023 11:41 AM

INDEX NO. 709769/2018

NYSCEF DOC. NO. 157

RECEIVED NYSCEF: 03/22/2023



New YORK SUPREME COURT - QUEENS COUNTY

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

JOHN CASTRO AND GITI CASTRO

Index No.: 709769/2018

Plaintiff,

-against-

Motion Date: 11/16/2022

JAMAICA HOSPITAL, MEDISYS HEALTH NETWORK

and EMIL SILBERMAN, M.D

Motion Seq. Nos.: 3 and 4

Defendants.

JAMAICA HOSPITAL and MEDISYS HEALTH NETWORK,

Third-Party Plaintiffs,

-against-

VIRTUAL RADIOLOGIC CORPORATION AND SARA BANERJEE, M.D.,

Third-Party Defendants.

Motions bearing sequence numbers 3 and 4 are hereby consolidated for disposition. The following papers numbered as set forth below read on these motions by defendants JAMAICA HOSPITAL, MEDISYS HEALTH NETWORK and EMIL SILBERMAN, M.D (seq. no. 3) and third-party defendants VIRTUAL RADIOLOGIC CORPORATION AND SARA BANERJEE, M.D. (Seq. No. 4) for Orders pursuant to CPLR §3212, granting summary judgment in their favor; Dismissing the claims against them; and for any other relief the Court deems just and proper.

PAPERS NUMBERED

Seq. No. 3

N.M.-Affidavits-Exhibits..... 85-123
Answering Papers-Affidavits-Exhibits..... 146-148
Reply Affirmation-Exhibits..... 153

Seq. No. 4

N.M.-Affidavits-Exhibits..... 124-145
Answering Papers-Affidavits-Exhibits..... 149-152
Reply Affirmation-Exhibits..... 154-155

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Upon the foregoing papers it is ordered that the within motion by defendants JAMAICA HOSPITAL, MEDISYS HEALTH NETWORK and EMIL SILBERMAN, M.D (seq. no. 3) for an Order pursuant to CPLR §3212 granting summary judgment in their favor and dismissing the claims against them is granted. Movants established *prima facie* entitlement to summary judgment through the submission of the Expert Affirmation of Alan Z. Segal, MD, a physician duly licensed to practice medicine in New York and Board Certified in Neurology. Plaintiff's expert affirmation submitted in opposition to the motion fails to raise a question of fact with respect to the care and treatment rendered by moving defendants, sufficient to defeat the within motion.

The motion by third-party defendants VIRTUAL RADIOLOGIC CORPORATION AND SARA BANERJEE, M.D. (Seq. No. 4) for an Order pursuant to CPLR §3212 granting summary judgment in their favor and dismissing the claims against them is granted. Movants established *prima facie* entitlement to summary judgment through the submission of the Expert Affirmation of BRANDON GODBOUT, M.D, Board Certified in Emergency Medicine and JOHANNA FIFI, M.D., board certified in Psychiatry and Neurology, Vascular Neurology, Neuroendovascular Surgery, European Neuroradiology and Neurological Surgery. Plaintiff submitted in opposition the expert affirmation of a physician duly licensed to practice medicine in the State of New York and board certified in Internal Medicine, Endocrinology/Metabolism, and Emergency Medicine. This expert affirmation is insufficient as a matter of law to raise a triable issue of fact as the expert has failed to lay a foundation to permit testimony regarding the standard of care for a neuroradiologist.

Case dismissed in its entirety. The Clerk of the Court shall enter judgment in favor of defendants.

Dated: March 21, 2023



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