

**Lara v Mount Sinai Hosp.**

2024 NY Slip Op 33952(U)

November 6, 2024

Supreme Court, New York County

Docket Number: Index No. 805250/2020

Judge: Judith N. McMahon

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

**PRESENT: HON. JUDITH N. MCMAHON PART 30M**

*Justice*

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IVELISSE LARA,

Plaintiff,

- v -

THE MOUNT SINAI HOSPITAL, JOHN CARIDI, JUAN  
GARCIA, JUNEL GUTIERREZ ABRASIA, JASON  
GREENMAN, JOHN O'REILLY, THE NEW YORK AND  
PRESBYTERIAN HOSPITAL

Defendant.

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INDEX NO. 805250/2020  
MOTION DATE 10/29/2024  
MOTION SEQ. NO. 002 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 48, 49, 50, 51, 52, 53, 54, 55, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 103, 105, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 141, 143, 144

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 104, 106, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 142, 145

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, it is ordered that the motion for summary judgment by defendants The Mount Sinai Hospital and John Caridi, M.D. s/h/a John Caridi (Motion Seq. No. 002) is granted as to Dr. Caridi as unopposed, and the balance of the motion is denied. The motion for summary judgment of the defendants Juan Carlos Garcia, M.D., Junel Gutierrez Abrasia (R.N.), Jason Andrew Greenman, M.D., John Isaiah O'Reilly, M.D., and The New York and Presbyterian Hospital (hereinafter "NYPH") (Motion Seq. No. 003) is granted solely as to nurse Abrasia. The balance of the motion is denied.

This medical malpractice action involves allegations of a failure to effectuate the timely transfer of plaintiff, 49 year old Ivelisse Lara, from NYPH's emergency department, to Mount Sinai Hospital on December 17, 2018 through December 18, 2018, in the setting of a claimed

neurosurgical emergency. Plaintiff claims that because of the defendants' negligence she now suffers from paraplegia.

It is undisputed that plaintiff has been disabled since 1994 from kyphoscoliosis secondary to Pott's disease. On December 7, 2018, she underwent posterior spinal fusion surgery from T4-T5 through L2-L3 which was performed by Dr. Caridi at The Mount Sinai Hospital. The procedure to decompress, stabilize and correct the spinal deformity was successful, and plaintiff was discharged home on December 11, 2018. That was the last time that Ms. Lara saw Dr. Caridi, who was not scheduled to perform a second surgical procedure until he returned from vacation.

At 5:47 p.m. on December 17, 2018, plaintiff presented by ambulance to the emergency department of NYPH with complaints of back and abdominal pain, and an inability to feel her legs. She was triaged at level 3 (urgent), and it was noted that plaintiff was status-post scoliosis fusion correction and complaining of difficulty ambulating and numbness to the lower extremity. Dr. Greenman provided a telehealth visit and authored a note at 8:39 p.m. The plan was an IV line, labs, possible spinal imaging, and transfer to Mount Sinai, where the decompression surgery had been performed. Imaging was deferred until a full neurological exam. Plaintiff was not seen or personally examined by any NYPH physician for over seven hours, and no imaging whatsoever was performed during her stay at NYPH.

At 1:15 a.m. Dr. O'Reilly saw plaintiff (who demonstrated a 0 out of 5 strengths in the bilateral lower extremities) and documented his discussion with Mount Sinai neurosurgery that Ms. Lara was to be transferred there. The Mount Sinai transfer document shows a request time of 1:35 a.m., an initiation time of 3:46 a.m., and an assignment time of 4:02 a.m. EMS arrived at

NYPH at 5:09 a.m. and plaintiff was discharged at 5:16 a.m. She finally arrived at Mount Sinai at 6:04 a.m. on December 18, 2018.

At Mount Sinai it was noted that plaintiff's symptoms were gradually worsening, and she was now tachycardic. An MRI of the spine revealed acute posterior extra medullary hematoma at T-7 causing severe cord compression at T-7 through T-10. Plaintiff underwent a T6-T7 laminectomy for evacuation of the hematoma as well as exploration of T-4-L-3 instrumentation. The pre and post operative diagnosis were spinal cord compression.

NYPH and its physicians move for summary judgment on the grounds that they timely and properly effectuated plaintiff's transfer to Mount Sinai, and that her hematoma and infarction occurred before she presented to NYPH, such that her outcome was already predetermined prior to any care (or lack thereof) rendered at NYPH.

Mount Sinai moves for summary judgment on the grounds that it properly met the standard of care by quickly accepting plaintiff for transfer and facilitating same, assessing her spinal cord compression and other neurological symptoms, and ordering a stat imaging of plaintiff's spine for further assessment. Mount Sinai maintains that it was not contacted by NYPH until 3:36 a.m. and that by 4:04 a.m. the overall transfer process was completed. Once plaintiff arrived at Mount Sinai's ER, she was timely evaluated, underwent radiological studies, consulted with neurosurgery, and was in the operating room undergoing surgery by 11:34 a.m.

To prevail on a motion for summary judgment, the proponent must make *prima facie* showing of entitlement to judgment as a matter of law, through admissible evidence demonstrating the absence of any material issue of fact (*see Klein v. City of New York*, 89 NY2d 833 [1996]; *Ayotte v. Gervasio*, 81 NY2d 1062[1993]; *Alvarez v. Prospect Hospital*, 68 NY2d 320 [1986]).

“Since summary judgment is the equivalent of a trial, it has been a cornerstone of New York jurisprudence that the proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law” (*Ostrov v. Rozbruch*, 91 AD3d 147 [1<sup>st</sup> Depot. 2012]).

In support of its motion, The NYPH defendants submit the affirmations of an emergency medicine expert, John Marshall, M.D. (*see* NYSCEF Doc. No. 81), a neurosurgeon, Mark N. Hadley, M.D. (*see* NYSCEF Doc. No. 82), and a neuroradiologist, Gordon Sze, M.D. (*see* NYSCEF Doc. No. 83) each of whom opine that the transfer to Mount Sinai was timely, that plaintiff was properly evaluated at NYPH, and that the hematoma occurred well before her presentation to NYPH and paraplegia would have been her unfortunate outcome.

In support of its motion, The Mount Sinai Hospital submits the affirmation of an emergency medicine expert, Saul Melman, M.D. (*see* NYSCEF Doc. No. 50), and a neurosurgeon, Daniel Sciubba, M.D. (*see* NYSCEF Doc. No. 51) who attest that the Mount Sinai staff was prompt and timely in ordering imaging, within the standard of care, and that even if plaintiff’s hematoma had been evacuated on the afternoon of December 17<sup>th</sup>, she would still have suffered irreversible damage to her spinal cord. These experts further opine that despite Mount Sinai’s quick diagnosis and treatment, the likelihood that plaintiff would ever recover functional strength was extremely rare because the hematoma developed and began compressing her spinal cord well before December 17, 2018.

“The affirmation of defendants’ experts was sufficient to meet defendants’ *prima facie* burden of establishing the absence of a departure from good and accepted medical practice, or that any such departure was not a proximate cause of plaintiff’s alleged injuries” (*Einach v. Lenox Hill Hosp.*, 160 AD3d 443 [1<sup>st</sup> Dept. 2018]).

“Where a defendant makes a *prima facie* case of entitlement to summary judgment dismissing a medical malpractice action by submitting an affirmation from a medical expert establishing that the treatment provided to the injured plaintiff comported with good and accepted practice, the burden shifts to the plaintiff to present evidence in admissible form that demonstrates the existence of a triable issue of fact” (*Bartolacci-Meir v. Sassoon*, 149 AD3d 567 [1<sup>st</sup> Dept. 2017]; *see also DeCintio v. Lawrence Hosp.*, 25 AD3d 320 [1<sup>st</sup> Dept. 2006]; *Ducasse v. New York City Health & Hosps. Corp.*, 148 AD3d 434 [1<sup>st</sup> Dept. 2017]; *Zuckerman v. City of New York*, 49 NY2d 557 [1980]).

In opposition to the motions, plaintiff submits the detailed affirmation S. Murthy Vishnubhakat, M.D. (*see* NYSCEF Doc. No. 123), who emphasizes that NYPH did not perform any radiologic imaging during the 11 ½ hours plaintiff was there, nor did it treat the hematoma or timely effectuate plaintiff’s transfer to Mount Sinai. Dr. Vishnubhakat finds that both hospitals departed from the standard of care in numerous ways and, *inter alia*, that defendants’ delays in diagnosis and treatment further doomed plaintiff of her last clear chance of neurologic recovery.

Plaintiff’s expert raises clear questions of fact sufficient to defeat summary judgment. “The medical experts’ conflicting opinions raise issues of fact that must be resolved at trial” (*Hendricks v. Transcare New York, Inc.*, 158 AD3d 477 [1<sup>st</sup> Dept. 2018]). As such, except for the motions made by defendant John Caridi, M.D., and Nurse Junel Gutierrez Abrasia, the defendants’ motions for summary judgment are denied.

Accordingly, it is

ORDERED that Motion Seq. No. 002 is granted as to Dr. Caridi, and the balance of the motion is denied; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Dr. Caridi severing and dismissing the complaint and all cross claims against this defendant; and it is further

ORDERED that Motion Seq. No. 003 is granted as to Nurse Abrasia, and the balance of the motion is denied; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Junel Gutierrez Abrasia, R.N., severing and dismissing the complaint and all cross claims against Nurse Abrasia; and it is further

ORDERED that any and all additional requests for relief are hereby denied; and it is further

ORDERED that the remaining parties shall appear for a pre-trial conference via Microsoft Teams on **February 3, 2025, at 11: 15 a.m.**

11/6/2024  
DATE

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION

APPLICATION:  GRANTED  SETTLE ORDER  GRANTED IN PART  OTHER

CHECK IF APPROPRIATE:  INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE

JUDITH N. MCMAHON, J.S.C.

**Hon. Judith N. McMahon  
J.S.C.**