

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: HON. RALPH P. FRANCO, Justice

JAMES J. PATERSON, ETC.,

TRIAL/IAS, PART 11
NASSAU COUNTY

Plaintiff(s),

-against-

INDEX No.: 3996/01
MOTION SEQ. 3,4 &5

MIHAID, DIMANDESCU, M.D. et al,

Defendant(s).

The following papers read on this motion:

- Notice of Motion/ Order to Show Cause....._____
- Answering Affidavits....._____
- Replying Affidavits....._____

Motion (seq. no. 3) by attorney for defendants Huntington Hospital, Mihai D. Dimancescu, M.D., Mihaid D. Dimancescu, M.D., P.C., Alan Mechanic, M.D., Alan Mechanic, M.D., P.C., and Neurological Surgery and Neurology, P.C. for an order dismissing all claims as against Huntington Hospital with respect to alleged acts and/or omissions on the part of Dr. Michael Streiter is denied.

Unopposed motion (seq. no. 4) by attorney for defendants Stephen Burstein, M.D., Stephen D. Burstein, M.D., P.C., for an order pursuant to CPLR 3212 granting him summary judgment dismissing the complaint as against him is granted. Stephen D. Burstein, M.D. and Stephen D. Burstein, M.D. P.C. shall be deleted from the caption as party defendant.

Cross-motion (seq. no. 5) by attorney for plaintiff for an order pursuant to CPLR

3001 declaring Huntington Hospital to be vicariously liable for acts of Dr. Michael Streiter is denied.

This is an action to recover damages for medical malpractice and wrongful death.

The gravamen of the complaint is that each of the defendants negligently failed to timely diagnose and treat a cerebral aneurysm prior to October 21, 1995 and that had such a diagnosis been made, decedent could have had the surgery prior to the rupture of the aneurysm.

The pertinent facts are as follows:

On October 3, 1995, Mrs. Paterson was admitted to Huntington Hospital through the emergency room. She was noted to be confused, and multiple abrasions and contusions were found about her body. Ms. Paterson was assigned by the hospital to Robin Thompson, M.D. At said time, Dr. Thompson was on the hospital's "on-call" schedule covering for medicine. Dr. Thompson called in Beatrice Engstrand, M.D., to provide neurological care and treatment. Dr. Engstrand then called for a consult with Alan Mechanic, M.D. but his partner, Dr. Dimancescu first examined Mrs. Paterson on October 4, 1995.

During Mrs. Paterson's hospitalization at Huntington, several radiology studies were performed. On October 3, 1995, while Mrs. Paterson was in the emergency room, a CT scan was performed by Dr. Laucella. The emergency CT scan demonstrated an acute intracerebral hematoma and the question of aneurysm hemorrhage was raised. (See exhibit J). On October 5, after Mrs. Paterson was admitted, a second CT scan was performed in the hospital and interpreted by Dr. Robert Goodman. This CT scan of the head revealed a "frontal hemorrhage contusion and a questionable left small frontal contusion." On October 10, 1995, Dr. Engstrand

ordered a magnetic resource imaging and a magnetic resonance angiogram ("MRI/MRA"). On October 11, 1995, Mrs. Paterson was taken off hospital premises to MRI of Huntington, P.C. to have these studies performed. Dr. Streiter performed and reported on such studies. In his report dated October 11, 1995, Dr. Streiter found as follows:

"Those earlier CT scans demonstrated bifrontal hematomas right side greater than left. Residual hemorrhage and edema is identified in the right frontal lobe and lesser in extent in the left frontal lobe. The degree of edema and mass effect associated with this hematoma is greater than that seen October 5, 1995. This is appreciated by the mass effect on the lateral ventricles, right side greater than left. Significant shift across the midline is not identified."

Mrs. Paterson remained at Huntington Hospital until October 21, 1995. On this date, Dr. Burstein became involved with Mrs. Paterson. According to the Huntington Hospital's Consultation Report, Mrs. Paterson was "being prepared for a rehabilitation center for cognitive therapy when this a.m. she apparently collapsed." After examining Mrs. Paterson for the first time, Dr. Burstein felt that she needed a surgical procedure, a craniotomy, but required a cerebral angiogram prior to surgery. Unfortunately, Dr. Burstein was unable to obtain an angiogram at Huntington Hospital. Consequently, Dr. Burstein made arrangements to transfer Mrs. Paterson to North Shore University Hospital ("NSUH"). On October 21, 1995, Mrs. Paterson had an angiogram and underwent a craniotomy at NSUH. On November 16, 1995, she was transferred for rehabilitation. On March 20, 1999, Mrs. Paterson passed away.

Turning first to Dr. Burstein's motion, this court recognizes that there appears to be no opposition to Dr. Burstein's motion for summary judgment dismissing the complaint as against him. Accordingly, such relief is granted.

Prior to addressing the issue as to whether Huntington Hospital can be held vicariously liable for the acts and/or omissions of Dr. Streiter, this court notes the following: Dr. Thompson was originally named a defendant but was dismissed on a motion for summary judgment; neither Dr. Laucella, Dr. Goodman or Dr. Streiter were ever named as defendants; and Dr. Streiter has not been deposed. In a bill of particulars dated October 31, 2002, plaintiff alleges that Huntington Hospital should be held vicariously liable for each of them. Specifically, the movant anticipates that plaintiff will contend that Dr. Streiter failed to properly interpret the MRI/MRA and/or failed to make appropriate recommendation in connection with his interpretation and that the hospital is responsible for his acts or omissions.

While Dr. Streiter admits that he is a shareholder and employee of MRI of Huntington, P.C. and Medical Arts Radiology Group, P.C., he denies that he is or ever has been an employee of Huntington Hospital. As to MRI of Huntington, P.C., Dr. Streiter submits that most patients are not seen during hospital admissions but off-premises. Regarding Medical Arts Radiology Group, P.C., it supposedly maintains facilities and sees patients off Huntington Hospital premises. In addition, it performs radiology services within Huntington Hospital.

Ordinarily, a hospital may not be held liable for the malpractice of a physician who is not an employee of the hospital. **Ryan v New York City Health & Hospitals Corp.**, 220 AD2d 734; **Sledziewski v Cioffi**, 137 AD2d 186, 188-189). However, a hospital may be held vicariously liable for the acts of independent physicians if the patient enters the hospital through the emergency room and seeks treatment from the

hospital, not from a particular physician (see, **Mduba v Benedictine Hosp.**, 52 AD2d 450, 453, see also, **Noble v Porter**, 188 AD2d 1066, **Agustin v Beth Israel Hosp.**, 185 AD2d 203, 205-206, **Soltis v State of New York**, 172 AD2d 919).

As the court observed in **Rivera v Bronx-Lebanon Hospital Center**, 70 AD2d 794, 796 there may be circumstances under which liability may be imposed for independent contractors, and such answer lies in the degree of control exercised by the hospital. Here, it is undisputed that Mrs. Paterson first sought emergency treatment from the Hospital, not from any specific physician. (See **Schiavone v Victory Memorial Hospital**, 292 AD2d 365; see also **Felter v Mercy Community Hospital of Port Jervis**, 244 AD2d 385).

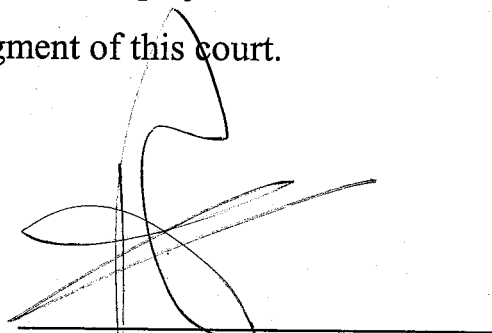
Affording the plaintiff the benefit of every possible inference and taking into consideration Mrs. Paterson's mental and physical status at the time, this court finds that issues of fact have been raised as to whether the hospital may be held vicariously liable for Dr. Streiter's alleged acts and/or omissions. In particular, questions of fact exist regarding the nature of the relationship between Huntington Hospital and Dr. Streiter and/or the level of control or supervision, if any, the hospital exercised over him. (cf **Klippel v Rubinstein**, 300 AD2d 448 lv to app den, 100 NY2d 508). As noted above, Mrs. Paterson presented herself to the emergency room at Huntington Hospital, and remained a patient of this hospital from October 3, 1995 through October 21, 1995 when she was transferred to NSUH. Further, it appears from the record submitted that the hospital had sufficient control over the services provided by Dr. Streiter in that it: arranged for Mrs. Paterson's MRI and MRA tests, transported her to the test, provided Dr. Streiter with films taken at the hospital for comparison, had Dr. Streiter make room on one day's notice for the performance of the test and transported Mrs. Paterson back to her room without ever discharging Mrs. Paterson

from its care. Under these circumstances, the issue as to whether the hospital may be held vicariously liable for Dr. Streiter's acts and/or omission should be resolved by the trier of facts.

In view of the foregoing, the hospital's motion and plaintiff's motion are both denied.

The action is dismissed as against Dr. Burstein with prejudice.

This decision constitutes the order and judgment of this court.



Dated: December 3, 2003

3996.3.4.5.

Hon. Ralph P. Franco, J. S. C.

ENTERED
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NASSAU COUNTY
COUNTY CLERK'S OFFICE