

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. GEOFFREY J. O'CONNELL

Justice

TRIAL/IAS, PART 10

NASSAU COUNTY

JOSEPH GABEL, DOUGLAS GABEL and
CATHERINE GABEL, Individually,

Plaintiff(s),

-against-

INDEX No. 182/99

HAKESH SHAH, M.D., BAB RADIOLOGY,
ALAN BIGMAN, M.D., and BRENT PAWLECKI,
M.D.,

Defendant(s).

MOTION DATE: 10/18/02

MOTION SEQ. No. 3

The following papers read on this motion:

Notice of Motion/Affirmation/Exhibits

Affirmation in Opposition/Exhibits

Reply Affirmation

Defendant ALAN BIGMAN, M.D. seeks an Order granting him summary judgment pursuant to CPLR § 3212, dismissing all claims and cross claims asserted against him. Plaintiff opposes.

In this action plaintiff JOSEPH GABEL contends that defendants are responsible for damages incurred to the commission of medical malpractice in the treatment of a wrist injury. Plaintiff was treated by Dr. BRENT PAWLECKI at DOCTORS IMMEDIATE CARE facility on September 27, 1999. Plaintiff alleges that Massapequa Medical Associates P.C. did business as Doctors Immediate Care, a business which plaintiffs claim was partly owned by BIGMAN. Plaintiffs also claim that BIGMAN did not properly interpret JOSEPH GABEL's x-rays in connection with the malpractice.

Gabel v. Shah, M.D., et al.

Counsel for Defendant BIGMAN argues that BIGMAN did not participate in the diagnosis, treatment or care to the plaintiff, and thus is entitled to a dismissal of the claims against him. There is no affidavit from BIGMAN. Counsel provides no documentary evidence to support his claims that BIGMAN was not the owner, or part owner of the facility where the alleged malpractice occurred.

Counsel for plaintiffs oppose, noting that BIGMAN admitted he was an owner of DOCTORS IMMEDIATE CARE and is therefore vicariously responsible for acts of malpractice committed there.

Counsel for BIGMAN argues that he was only a shareholder in the entity, Massapequa Medical Associates, which owned DOCTORS IMMEDIATE CARE. This statement by defense counsel is in contradiction to the sworn affidavit of BIGMAN wherein he states that he was a part owner of DOCTORS CARE.(Opposition, Exh. 1). The Defendant offers no affidavit of BIGMAN himself denying ownership, nor does he provide any documentary evidence, in the form of corporate shareholder documents to support his contentions or to contest the prior sworn statement of his own client.

There is no evidence presented demonstrating any corporate formalities were met with respect to this entity which might relieve Defendant of possible liability.

Based on the proof presented, the motion is Denied as there is a triable issue of fact whether BIGMAN owned defendant DOCTORS IMMEDIATE CARE at the time of the alleged malpractice, and could be found vicariously liable for the actions of the employees.

It is, SO ORDERED.

Dated:

Oct 28, 2002

ENTERED

Geoffrey J. O'Connell
HON. GEOFFREY J. O'CONNELL, J.S.C.

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**NASSAU COUNTY
COUNTY CLERK'S OFFICE**