

Pietroforte v. Belle Harbor Home of the Sages, Inc.

Supreme Court of New York, Appellate Division, First Department

October 31, 2023, Decided; October 31, 2023, Entered

Index No. 805149/14, Appeal No. 948, Case No. 2022-02701

Reporter

220 A.D.3d 628 *; 197 N.Y.S.3d 220 **; 2023 N.Y. App. Div. LEXIS 5422 ***; 2023 NY Slip Op 05481 ****; 2023 WL 7135538

[****1] Helen Pietroforte, by Her Legal Guardian, Janet Brew, Appellant-Respondent, v Belle Harbor Home of The Sages, Inc., et al., Respondents-Appellants, and Marie A. Lippman, M.D., et al., Respondents, et al., Defendants. (And a Third-Party Action.)

Prior History: [***1] Order, Supreme Court, New York County (Erika Edwards, J.), entered on or about May 27, 2022, which, to the extent appealed from as limited by the briefs, granted defendants Marie A. Lippman, M.D.'s, Centerlight Healthcare, Inc. and Center for Nursing & Rehabilitation, Inc.'s (Centerlight/CNR), and Institute for Community Living, Inc. and Milestone Residence's (ICL/Milestone) motions for summary judgment dismissing all claims as against them, and granted defendants Belle Harbor Home of the Sages, Inc. and Belle Harbor Manor's (Belle Harbor) motion for summary judgment to the extent of dismissing all claims as against them except for the part of the negligence claim arising from their alleged negligent supervision and care of plaintiff between February 14, 2013 and February 18, 2013, unanimously affirmed, without costs.

[Pietroforte v. Belle Harbor Home of the Sages, Inc., 2022 N.Y. Misc. LEXIS 17544 \(N.Y. Sup. Ct., May 27, 2022\)](#)

Headnotes/Summary

Headnotes

Health — Nursing Homes — Medical Malpractice —

Health — Nursing Homes — Patient Neglect

Counsel: Rodriguez & Nathan, PLLC, Rockville Centre (Heather Nathan of counsel), for appellant-respondent.

Barry McTiernan & Moore LLC, New York (Suzanne M. Halbardier of counsel), for respondents-appellants.

Lewis Brisbois Bisgaard & Smith LLP, New York (Nicholas P. Hurzeler of counsel), for Marie A. Lippman, M.D., respondent.

Lester Schwab Katz & Dwyer, LLP, New York (Paul M. Tarr [***2] of counsel), for Institute for Community Living, Inc. and Milestone Residence, respondents.

Kaufman Borgeest & Ryan LLP, Valhalla (David Bloom of counsel), for Centerlight Healthcare, Inc. and Center for Nursing & Rehabilitation, Inc., respondents.

Judges: Before: Kern, J.P., Friedman, Kennedy, Pitt-Burke, JJ.

Opinion

[*628] [**221] The court correctly dismissed plaintiff's medical malpractice cause of action because defendants established prima facie their entitlement to summary judgment, and the report of plaintiff's expert, which, predated motion practice, was [*629] conclusory and did not address the points made by defendants' experts (*see Homan v David Seinfeld, M.D., PLLC, 164 AD3d 1147, 1148, 82 N.Y.S.3d 413 [1st Dept 2018]; Abalola v Flower Hosp., 44 AD3d 522, 522, 843 N.Y.S.2d 615 [1st Dept 2007]*). In addition, plaintiff's expert's report consisted of mere general allegations of medical malpractice and did not distinguish between the multiple defendants (*see Alvarez v. Prospect Hosp., 68 NY2d 320, 325, 501 N.E.2d 572, 508 N.Y.S.2d 923*

[\[1986\]](#); *Coronel v New York City Health & Hosps. Corp.*, 47 AD3d 456, 457, 848 N.Y.S.2d 876 [1st Dept 2008]). Further, as to defendant Centerlight/CNR, their purported failure to ensure that plaintiff took her prescribed medication cannot be the proximate cause of her fall from a window months later, where that medication protocol was changed after she left their facility.

The claims sounding in negligence against Dr. Lippman, Centerlight/CNR, and ICL/Milestone for their alleged failure to prevent plaintiff's fall necessarily [***3] fail, as plaintiff was not in their custody at the time of the incident (see [Estate of Benitez v City of New York](#), 193 AD3d 42, 47, 141 N.Y.S.3d 51 [1st Dept], lv denied 37 NY3d 906 [2021]). With regard to Belle Harbor, however, the record establishes a lack of proximate causation between its failure to administer the usual prescribed medication during plaintiff's temporary relocation to other facilities and plaintiff's fall after her return to its facility on February 14, 2013. However, the court correctly found that issues of fact exist as to, among other things, whether, after plaintiff's return, Belle Harbor knew or should have known that plaintiff was decompensating from a lack of compliance with her medication plan such that it should have taken further measures to monitor her behavior, and whether such [**222] alleged failures were a proximate cause of her injuries. Concur—Kern, J.P., Friedman, Kennedy, Pitt-Burke, JJ.

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