

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Rosenzweig v. Singer

Rosenzweig, 2026 NY Slip Op 03836 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2020-07844, 2020-08706, 2021-00162 · Decided June 17, 2026

SUMMARY

The New York Appellate Division, Second Department, reversed judgments dismissing a dental malpractice cause of action against Alan B. Singer and the Hirsch defendants. The court held that the Hirsch defendants had withdrawn the relevant summary judgment request and that Singer failed to establish prima facie entitlement to summary judgment because his expert evidence did not rebut the specific malpractice allegations. The court reinstated the relevant claims and dismissed the appeal from the underlying order as no longer directly appealable after entry of judgment.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Francesca E. Connolly, J.P.; Paul Wooten, J.; Lourdes M. Ventura, J.; Phillip Hom, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	June 17, 2026
DOCKET	2020-07844, 2020-08706, 2021-00162
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiff appealed from an order granting defendants' summary-judgment motions and from two judgments dismissing the dental-malpractice claims against the Hirsch defendants and Alan B. Singer.
STANDARD OF REVIEW	On a motion for summary judgment in a dental-malpractice action, the defendant bears the initial burden of establishing the absence of a departure from good and accepted practice or that any departure was not a proximate cause of the plaintiff's injuries; the court reviews whether the movant eliminated all triable issues of fact and rebutted the specific allegations in the bill of particulars.
PRECEDENTIAL VALUE	Published

PARTIES

Bart P. Rosenzweig v. Alan B. Singer, Jack Hirsch, Jack M. Hirsch, D.M.D., Ronald W. Schwartz, D.M.D., P.C.

TOPICS

medical malpractice

summary judgment

appellate procedure

standard of review

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PRACTICE AREAS

medical malpractice

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appellate procedure

summary judgment

QUESTIONS PRESENTED

1. Whether the appeal from the September 23, 2020 order should be dismissed after judgments were entered.
2. Whether the Hirsch defendants could obtain summary judgment on claims based on acts occurring after October 14, 2007 when they had withdrawn that branch of their motion before the motion was decided.
3. Whether Singer established prima facie entitlement to summary judgment by rebutting all specific dental-malpractice allegations and demonstrating that he did not depart from good and accepted practice or cause the plaintiff's injuries.

HOLDINGS

1. The appeal from the September 23, 2020 order was dismissed because the right of direct appeal from the order terminated upon entry of the judgments; the issues raised by that order were reviewable on the appeals from the judgments.
2. The Hirsch defendants were not entitled to summary judgment on the dental-malpractice claims based on acts occurring after October 14, 2007 because they expressly withdrew that branch of their motion before Supreme Court decided it.
3. Singer failed to establish prima facie entitlement to summary judgment because his submissions did not eliminate all triable issues of fact or rebut all specific allegations of dental malpractice in the bill of particulars.

KEY QUOTATIONS

"In a dental malpractice action, the requisite elements of proof are a deviation or departure from accepted standards of dental practice, and that such departure was a proximate cause of the plaintiff's injuries" (*3)

"A defendant moving for summary judgment dismissing a cause of action alleging dental malpractice has the initial burden of establishing that he or she did not depart from good and accepted practice, or if there was such a departure, that it was not a proximate cause of the plaintiff's injuries" (*3)

"To sustain this burden, the defendant must address and rebut any specific allegations of malpractice set forth in the . . . bill of particulars" (*3)

FACTUAL BACKGROUND

From 2003 through August 2012, the plaintiff, then an infant, received dental treatment from Jack Hirsch. The plaintiff saw Alan B. Singer once on August 27, 2014; Singer did not personally examine the plaintiff or take radiographs. In June 2017, the plaintiff was diagnosed with an ameloblastoma in the left lower jaw and underwent tumor-removal and jaw-reconstruction surgery.

PROCEDURAL HISTORY

Rosenzweig commenced a dental-malpractice action in October 2017. After discovery, the Hirsch defendants and Singer moved for summary judgment; the Hirsch defendants also asserted statute-of-limitations grounds and later amended their motion to withdraw all requested relief except dismissal as time-barred. Supreme Court, Kings County, granted summary judgment dismissing the claims, and entered judgments on November 3 and December 3, 2020. The Appellate Division dismissed the appeal from the order as no longer directly appealable after entry of judgment, reviewed the order on the appeals from the judgments, reversed both judgments, and reinstated the relevant claims.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The dental-malpractice cause of action based on acts occurring after October 14, 2007 was reinstated against the Hirsch defendants, and the dental-malpractice cause of action was reinstated against Singer. The matter was not otherwise remanded with specific instructions.

CASES CITED

- Matter of Aho, 39 NY2d 241, 248
- JER Realty, LLC v Pick & Pack Hub, LLC, 236 AD3d 1004, 1004
- Howe v Jeremiah, 62 AD3d 751, 751
- Many v Lossef, 190 AD3d 721, 722
- Nelson v Lighter, 179 AD3d 933, 934
- Cujcuj v Jayadevan, 218 AD3d 436, 437
- Schmidt v Bangiyev, 210 AD3d 924, 924
- Koi Hou Chan v Yeung, 66 AD3d 642, 643
- LaVecchia v Bilello, 76 AD3d 548, 548
- Mathias v Capuano, 153 AD3d 698, 699
- Folkes v Brooklyn Oak Dental Care, P.C., 241 AD3d 508, 509
- Fagan v Panchal, 77 AD3d 705, 706
- Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853

OPINION

PER CURIAM.

Rosenzweig v Singer - 2026 NY Slip Op 03836 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions Rosenzweig v Singer 2026 NY Slip Op 03836 June 17, 2026 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

This decision is uncorrected and subject to revision before publication in the Official Reports. Bart P. Rosenzweig, appellant, v Alan B. Singer, etc., et al., respondents, et al., defendants. Supreme Court of the State of New York, Appellate Division, Second Judicial Department Decided on June 17, 2026 2020-07844, 2020-08706, 2021-00162, (Index No. 519910/17) Francesca E. Connolly, J.P.

Paul Wooten Lourdes M. Ventura Phillip Hom, JJ. Jordan R. Pine & Associates PLLC, Rock Hill, NY (Lisa Solomon of counsel), for appellant. Rawle & Henderson, LLP, New York, NY (William Spiegel and Elisa R. Karnis of counsel), for respondent Alan B. Singer. Kutner Friedrich, LLP, New York, NY (Tracy Solomon and John Krajewski of counsel), for respondents Jack Hirsch and Jack M. Hirsch, D.M.D. and Ronald W. Schwartz, D.M.D., P.C. [*1] DECISION & ORDER In an action, inter alia, to recover damages for dental malpractice, the plaintiff appeals from (1) an order of the Supreme Court, Kings County (Ellen M. Spodek, J.), dated September 23, 2020, (2) a judgment of the same court dated November 3, 2020, and (3) a judgment of the same court dated December 3, 2020.

The order, insofar as appealed from, granted that branch of the motion of the defendants Jack Hirsch and Jack M. Hirsch, D.M.D. and Ronald W. Schwartz, D.M.D., P.C., which was for summary judgment dismissing so much of the cause of action alleging dental malpractice as was based on alleged acts that occurred after October 14, 2007, insofar as asserted against them and granted that branch of the motion of the defendant Alan B. Singer which was for summary judgment dismissing the cause of action alleging dental malpractice insofar as asserted against him.

The judgment dated November 3, 2020, insofar as appealed from, upon the order, is in favor of the defendants Jack Hirsch and Jack M. Hirsch, D.M.D. and Ronald W. Schwartz, D.M.D., P.C., and against the plaintiff dismissing so much of the cause of action alleging dental malpractice as was based on alleged acts that occurred after October 14, 2007, insofar as asserted against those defendants.

The judgment dated December 3, 2020, insofar as appealed from, upon the order, is in favor of the defendant Alan B. Singer and against the plaintiff dismissing the cause of action alleging dental malpractice insofar as asserted against that defendant. ORDERED that the appeal from the order is dismissed; and it is further, ORDERED that the judgment dated November 3, 2020, is reversed insofar as appealed from, on the law, that branch of the motion of the defendants Jack Hirsch and

Jack M. Hirsch, D.M.D. and Ronald W. Schwartz, D.M.D., P.C., which was for summary judgment dismissing so much of the cause of action alleging dental malpractice as was based on alleged acts that occurred after October 14, 2007, insofar as asserted against them is deemed withdrawn, that [*2] portion of that cause of action insofar as asserted against those defendants is reinstated, and the order is modified accordingly; and it is further, ORDERED that the judgment dated December 3, 2020, is reversed insofar as appealed from, on the law, that branch of the motion of the defendant Alan B. Singer which was for summary judgment dismissing the cause of action alleging dental malpractice insofar as asserted against him is denied, that cause of action insofar as asserted against that defendant is reinstated, and the order is modified accordingly; and it is further, ORDERED that one bill of costs is awarded to the plaintiff payable by the respondents appearing separately and filing separate briefs.

The appeal from the order dated September 23, 2020, must be dismissed because the right of direct appeal therefrom terminated with the entry of the judgments in the action (see Matter of Aho, 39 NY2d 241, 248; JER Realty, LLC v Pick & Pack Hub, LLC, 236 AD3d 1004, 1004).

The issues raised on the appeal from the order are brought up for review and have been considered on the appeals from the judgments (see CPLR 5501[a][1]). From 2003 to August 2012, the plaintiff, then an infant, received dental treatment from the defendant Jack Hirsch. Between 2013 and 2017, the plaintiff's primary dentist was the defendant Anthony T. Vuong.

On one occasion, on August 27, 2014, the plaintiff presented to the office of the defendant Alan B. Singer for a dental appointment. It is undisputed that Singer did not personally examine the plaintiff or take radiographic imaging studies.

In June 2017, the plaintiff presented to Vuong complaining of pain and swelling in his jaw. The plaintiff was diagnosed with an ameloblastoma, a type of benign tumor, in the left lower jaw and underwent surgical removal of the tumor and jaw reconstruction surgery.

On October 15, 2017, the plaintiff commenced this action, inter alia, to recover damages for dental malpractice. Following the completion of discovery, Hirsch and the defendant Jack M. Hirsch, D.M.D. and Ronald W. Schwartz, D.M.D., P.C. (hereinafter together the Hirsch defendants), moved for summary judgment dismissing the complaint insofar as asserted against them and pursuant to CPLR 3211(a)(5) to dismiss so much of the complaint as was based on alleged acts that occurred before October 15, 2007, insofar as asserted against them on statute of limitations grounds under CPLR 208 and 214-a.

Singer moved, among other things, for summary judgment dismissing the complaint insofar as asserted against him. The plaintiff submitted papers in partial opposition to both motions. Before the motions were decided, the Hirsch defendants served an amended notice of motion that sought

dismissal of the entire complaint insofar as asserted against them as barred by the statute of limitations.

In papers filed in support of the amended motion, the Hirsch defendants clarified that their initial motion was "amended to remove all of the relief initially sought other than dismissal of the plaintiff's complaint as time-barred by the statute of limitations."

The plaintiff opposed the Hirsch defendants' amended motion and cross-moved for leave to amend the complaint and serve a second supplemental bill of particulars. In an order dated September 23, 2020, the Supreme Court, *inter alia*, considered the Hirsch defendants' motion and amended motion as a single motion sequence.

The court determined that the complaint was timely insofar as it was based on alleged acts that occurred after October 14, 2007. However, the court granted that branch of the Hirsch defendants' initial motion which was for summary judgment dismissing the dental malpractice cause of action insofar as asserted against them, determining that they met their *prima facie* burden and that the plaintiff failed to raise a triable issue of fact in opposition.

The court also granted that branch of Singer's motion which was for summary judgment dismissing the dental malpractice cause of action insofar as asserted against him. Thereafter, the court issued a judgment dated November 3, 2020, dismissing the complaint insofar as asserted against the Hirsch defendants and a judgment dated December 3, 2020, dismissing the complaint insofar as asserted against Singer.

The plaintiff appeals from so much of the judgment dated November 3, 2020, as dismissed so much of the dental malpractice cause of action as was [*3] based on alleged acts that occurred after October 14, 2007, insofar as asserted against the Hirsch defendants and so much of the judgment dated December 3, 2020, as dismissed the dental malpractice cause of action insofar as asserted against Singer.

The Supreme Court erroneously granted that branch of the Hirsch defendants' motion which was for summary judgment dismissing so much of the dental malpractice cause of action as was based on alleged acts that occurred after October 14, 2007, insofar as asserted against them, as they specifically withdrew that branch of the motion prior to the court's determination thereof (see *Howe v Jeremiah*, 62 AD3d 751, 751).

Therefore, we reverse the judgment dated November 3, 2020, insofar as appealed from and reinstate so much of the dental malpractice cause of action as was based on alleged acts that occurred after October 14, 2007, insofar as asserted against the Hirsch defendants. "'In a dental malpractice action, the requisite elements of proof are a deviation or departure from accepted standards of dental practice, and that such departure was a proximate cause of the plaintiff's injuries'" (*Many v Lossef*, 190 AD3d 721, 722, quoting *Nelson v Lighter*, 179 AD3d 933, 934).

"A defendant moving for summary judgment dismissing a cause of action alleging dental malpractice has the initial burden of establishing that he or she did not depart from good and accepted practice, or if there was such a departure, that it was not a proximate cause of the plaintiff's injuries" (*Cujcuj v Jayadevan*, 218 AD3d 436, 437 [internal quotation marks omitted]; see *Schmidt v Bangiyev*, 210 AD3d 924, 924). "To sustain this burden, the defendant must address and rebut any specific allegations of malpractice set forth in the... bill of particulars" (*Cujcuj v Jayadevan*, 218 AD3d at 437, quoting *Koi Hou Chan v Yeung*, 66 AD3d 642, 643; see *LaVecchia v Bilello*, 76 AD3d 548, 548).

Here, Singer failed to establish his prima facie entitlement to judgment as a matter of law dismissing the dental malpractice cause of action insofar as asserted against him because he failed to tender sufficient evidence to eliminate all triable issues of fact and rebut all of the specific allegations of dental malpractice set forth in the bill of particulars (see *Mathias v Capuano*, 153 AD3d 698, 699; *LaVecchia v Bilello*, 76 AD3d at 548).

Singer's expert relied, in part, on the American Dental Association guidelines, which were not attached to Singer's motion papers (see *LaVecchia v Bilello*, 76 AD3d at 548). Additionally, the expert's opinion was conclusory and failed to establish, among other things, that the ameloblastoma was not detectible at the time the plaintiff was treated at Singer's office and that Singer did not depart from good and accepted practice (see *Folkes v Brooklyn Oak Dental Care, P.C.*, 241 AD3d 508, 509; *Fagan v Panchal*, 77 AD3d 705, 706).

Accordingly, the Supreme Court should have denied that branch of Singer's motion which was for summary judgment dismissing the dental malpractice cause of action insofar as asserted against him regardless of the sufficiency of the plaintiff's opposition papers (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853). CONNOLLY, J.P., WOOTEN, VENTURA and HOM, JJ., concur.

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