

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

Ford v. Litvak

Ford, 2026 NY Slip Op 01492 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2026) · No. 2021-02177 · Decided March 18, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order denying the defendant physician's motion for summary judgment in an action alleging medical malpractice and lack of informed consent. The court held that conflicting expert opinions raised triable issues of fact regarding the failure to confirm that the plaintiff had a gallbladder before surgery and regarding informed consent.

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.; Valerie Brathwaite Nelson, J.; Phillip Hom, J.; Elena Goldberg Velazquez, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	March 18, 2026
DOCKET	2021-02177
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order denying his motion for summary judgment dismissing the complaint in an action alleging medical malpractice and lack of informed consent.
STANDARD OF REVIEW	On a motion for summary judgment, a physician-defendant must make a prima facie showing that there was no departure from good and accepted medical practice or that the physician's acts were not a proximate cause of injury. If that showing is made, the burden shifts to the plaintiff to raise a triable issue of fact. Summary judgment is inappropriate where the parties submit conflicting medical expert opinions.
PRECEDENTIAL VALUE	published

TOPICS

medical malpractice

informed consent

summary judgment

standard of care

appellate procedure

PRACTICE AREAS

medical malpractice

personal injury

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QUESTIONS PRESENTED

1. Whether the defendant was entitled to summary judgment on the medical-malpractice claim after submitting expert evidence that his treatment complied with accepted medical practice and did not cause injury.
2. Whether the plaintiff raised a triable issue of fact on the medical-malpractice claim through contrary expert evidence.
3. Whether the defendant was entitled to summary judgment on the lack-of-informed-consent claim based on expert evidence, deposition testimony, and a signed consent form.
4. Whether the plaintiff raised a triable issue of fact on the lack-of-informed-consent claim through a contrary expert affirmation.

HOLDINGS

1. The defendant established a prima facie entitlement to summary judgment on the medical-malpractice claim, but the plaintiff's expert affirmation raised a triable issue of fact concerning whether the defendant departed from the standard of care and whether that departure caused injury. Summary judgment was therefore properly denied.
2. The defendant established a prima facie entitlement to summary judgment on the lack-of-informed-consent claim, but the plaintiff's expert affirmation raised triable issues of fact. The claim therefore could not be dismissed on summary judgment.

KEY QUOTATIONS

"To establish a physician's liability for medical malpractice, the "plaintiff must prove that the physician deviated or departed from accepted community standards of practice, and that such departure was a proximate cause of the plaintiff's injuries"" ([*1])

"Summary judgment is not appropriate in a medical malpractice action where the parties adduce conflicting medical expert opinions"" ([*1])

"Lack of informed consent is a distinct cause of action requiring proof of facts not contemplated by an action based merely on allegations of negligence"" ([*2])

"The mere fact that the plaintiff signed a consent form does not establish the [defendant's] prima facie entitlement to judgment as a matter of law"" ([*2])

FACTUAL BACKGROUND

In February 2015, Stephen Litvak performed laparoscopic cholecystectomy surgery on Joshua Ford but was unable to locate Ford's gallbladder. A subsequent MRI revealed that Ford did not have a gallbladder. Ford alleged that Litvak committed malpractice and lacked informed consent by failing to review his medical records and failing to obtain preoperative CT or MRI imaging that could have revealed the absence of a gallbladder. Both sides submitted expert affirmations concerning the applicable standard of care, causation, and informed consent.

PROCEDURAL HISTORY

Joshua Ford commenced an action against Stephen Litvak after Litvak performed laparoscopic gallbladder-removal surgery despite being unable to locate a gallbladder, which a subsequent MRI showed Ford did not have. Litvak moved for summary judgment dismissing the complaint. The Supreme Court, Queens County, denied the motion, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- *Abruzzi v. Maller*, 221 AD3d 753, 755
- *Paglinawan v. Ing-Yann Jeng*, 211 AD3d 743, 744
- *Templeton v. Papathomas*, 208 AD3d 1268, 1270
- *Ortiz v. Wyckoff Hgts. Med. Ctr.*, 149 AD3d 1093, 1094
- *Xiao Yan Ye v. Din Lam*, 191 AD3d 827, 828
- *Mirshah v. Obedian*, 200 AD3d 868, 871
- *Gupta v. Lescale*, 224 AD3d 668, 669
- *Ruiz v. Opsha*, 192 AD3d 1055
- *Godel v. Benjy Goldstein & George Freud, D.D.S., PLLC*, 155 AD3d 939, 941
- *Jolly v. Russell*, 203 AD2d 527, 528
- *Pirri-Logan v. Pearl*, 192 AD3d 1149, 1151
- *Williams v. Levine*, 238 AD3d 960, 962
- *Friedberg v. Rodeo*, 193 AD3d 825, 826
- *Schussheim v. Barazani*, 136 AD3d 787, 789
- *Williams v. Levine*, 238 AD3d 960, 963
- *Pirri-Logan v. Pearl*, 192 AD3d 1149, 1152
- *Friedberg v. Rodeo*, 193 AD3d 825, 826-827
- *Godel v. Benjy Goldstein & George Freud, D.D.S., PLLC*, 155 AD3d 939, 942

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