

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

Delos-Santos v. Kaisman

2025 NY Slip Op 07377 (App. Div. 2025) · No. 2023-05901 · Decided December 31, 2025

SUMMARY

The New York Appellate Division, Second Department affirmed an order denying Arden Kaisman's motion for summary judgment in a medical malpractice and lack-of-informed-consent action. The court held that the defendant's expert affidavit failed to address all specific malpractice allegations and that the submissions did not establish, as a matter of law, that the plaintiff had received adequate informed consent.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Lara J. Genovesi, J.P.; Cheryl E. Chambers, J.; Janice A. Taylor, J.; Phillip Hom, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	December 31, 2025
DOCKET	2023-05901
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant Arden Kaisman appealed from an order denying his motion for summary judgment dismissing the amended complaint insofar as asserted against him in an action alleging medical malpractice and lack of informed consent.
STANDARD OF REVIEW	On a motion for summary judgment in a medical malpractice action, the defendant must make a prima facie showing that he did not depart from the accepted standard of care or that any departure was not a proximate cause of the plaintiff's injuries. The defendant must address and rebut each specific malpractice allegation in the complaint and bill of particulars; failure to make that prima facie showing requires denial of the motion regardless of the sufficiency of the opposing papers.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion

PARTIES

Arden Kaisman v. Yissel Delos-Santos

TOPICS

medical malpractice

informed consent

summary judgment

standard of care

proximate cause

PRACTICE AREAS

medical malpractice

informed consent

health law

civil procedure

QUESTIONS PRESENTED

1. Whether the defendant established prima facie entitlement to summary judgment on the medical malpractice claim by addressing and rebutting all specific allegations of departure and proximate causation.
2. Whether the defendant established prima facie entitlement to summary judgment on the lack-of-informed-consent claim through the consent form, deposition testimony, and other submissions.

HOLDINGS

1. The defendant was not entitled to summary judgment because his expert affidavit failed to address and rebut all of the specific allegations of medical malpractice and therefore failed to eliminate all triable issues of fact concerning the alleged departures and proximate cause.
2. The defendant was not entitled to summary judgment because his submissions did not establish prima facie that the plaintiff was informed, in a language she could understand, of the risks, benefits, and alternatives to the endoscopic lumbar discectomy, and the evidence revealed a factual dispute concerning informed consent.

KEY QUOTATIONS

“A defendant seeking summary judgment in a medical malpractice action must make a prima facie showing either that he or she did not depart from the accepted standard of care or that any departure was not a proximate cause of the plaintiff's injuries” ([*1])

“In order to sustain this burden, the defendant must address and rebut any specific allegations of malpractice set forth in the plaintiff's bill of particulars” ([*1])

“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])

“Since the defendant failed to eliminate all triable issues of fact, the Supreme Court properly denied his motion for summary judgment dismissing the amended complaint insofar as asserted against him, regardless of the sufficiency of the plaintiff's opposition papers” ([*2])

FACTUAL BACKGROUND

The plaintiff sought treatment for pain and discomfort on the left side of her body. She alleged that Kaisman performed an endoscopic lumbar discectomy on the right side, failed to take appropriate postoperative measures to mitigate nerve damage, and failed to inform her of the possible risks, benefits, and alternatives associated with the procedure. Kaisman's expert affidavit and motion submissions did not address all of the specific malpractice allegations and did not establish that the plaintiff received informed consent in a language she could understand.

PROCEDURAL HISTORY

The plaintiff commenced the action in December 2018. After discovery was completed, Kaisman moved for summary judgment. The Supreme Court, Kings County, denied the motion, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- M.T. v. Lim, 203 AD3d 778, 778
- Fairchild v. Lerner, 229 AD3d 506, 508-509
- Huichun Feng v. Accord Physicians, PLLC, 194 AD3d 795, 796-797
- Prunty v. Mehta, 223 AD3d 760, 761-762
- Winegrad v. New York Univ. Med. Ctr., 64 NY2d 851, 853
- Mattocks v. Ellant, 231 AD3d 813, 817
- Pirri-Logan v. Pearl, 192 AD3d 1149, 1151
- Palmeiro v. Luchs, 202 AD3d 989, 992
- Guinn v. New York Methodist Hosp., 212 AD3d 787, 789