

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Lee v. Montefiore Med. Ctr.

2025 NY Slip Op 06814 (Supreme Court of the State of New York Appellate Division First Department 2025) ·
No. Index No. 20565/16; Appeal No. 5313; Case No. 2024-04242 · Decided December 9, 2025

SUMMARY

The Appellate Division, First Department reversed the denial of Montefiore Medical Center’s motion for summary judgment and dismissed the direct claims against it. Although plaintiff raised an issue of fact regarding the hospital’s maintenance of a rotablator, the court held that any departure was not a proximate cause or substantial factor in causing the decedent’s injuries because Dr. Shih independently chose to perform additional angioplasty procedures.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Moulton, J.P.; Kapnick, J.; Mendez, J.; Shulman, J.; Hagler, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, First Department
DECIDED	December 9, 2025
DOCKET	Index No. 20565/16; Appeal No. 5313; Case No. 2024-04242
DISPOSITION	reversed
PROCEDURAL POSTURE	Montefiore Medical Center appealed from an order denying its motion for summary judgment dismissing the direct claims against it.
STANDARD OF REVIEW	Summary judgment is proper where the movant establishes entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue; the appellate court reviewed the motion as a matter of law.
PRECEDENTIAL VALUE	published
PARTIES	Montefiore Medical Center v. Marian Lee, as Administratrix of the Estate of Mary Tsong Lee

TOPICS

medical malpractice

professional negligence

summary judgment

proximate cause

standard of review

PRACTICE AREAS

medical malpractice

professional negligence

medical device maintenance

summary judgment

appellate procedure

QUESTIONS PRESENTED

1. Whether Montefiore was entitled to summary judgment on the direct claims despite a factual dispute concerning whether it deviated from the standard of care by failing to ensure that the rotablator was functional.
2. Whether any alleged failure by Montefiore to maintain or test the rotablator was a proximate cause or substantial factor in causing the decedent's injuries.

HOLDINGS

1. Montefiore established its prima facie entitlement to summary judgment because any alleged departure from accepted practice in maintaining or testing the rotablator was not a proximate cause or substantial factor in causing the decedent's injuries.
2. Montefiore's submission of the device's maintenance records on reply was improper, and the records in any event did not establish that the inspections complied with accepted practice.

KEY QUOTATIONS

*“Nonetheless, Montefiore established its prima facie entitlement to summary judgment because any such departure was not a proximate cause or substantial factor in causing decedent's injuries” ([*1])*

*“Under these circumstances, Montefiore cannot be held responsible for any direct claims asserted against it by plaintiff.” ([*1])*

FACTUAL BACKGROUND

Montefiore represented that it had a functioning rotablator available for the decedent's proposed atherectomy, but the device's foot pedal malfunctioned. After discovering that the rotablator was not functioning, Dr. Shih elected to perform six angioplasty procedures rather than postpone the atherectomy, although the decedent was hemodynamically stable. The last angioplasty procedure dissected the decedent's left main artery, causing the injuries underlying the claims.

PROCEDURAL HISTORY

The Supreme Court, Bronx County, entered an order on or about July 3, 2024, denying Montefiore's motion for summary judgment dismissing all direct claims against it. The Appellate Division, First Department, unanimously reversed on the law, granted the motion, and dismissed the direct claims against Montefiore.

DISPOSITION

reversed

CASES CITED

- Matter of Kennelly v. Mobius Realty Holdings LLC, 33 A.D.3d 380, 381 (1st Dep't 2006)
- Anyie B. v. Bronx Lebanon Hosp., 128 A.D.3d 1, 3 (1st Dep't 2015)
- Malone v. Kim, 96 A.D.3d 477, 477 (1st Dep't 2012)

OPINION

PER CURIAM.

Lee v Montefiore Med. Ctr. (2025 NY Slip Op 06814) Lee v Montefiore Med. Ctr. 2025 NY Slip Op 06814 Decided on December 09, 2025 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: December 09, 2025 Before: Moulton, J.P., Kapnick, Mendez, Shulman, Hagler, JJ. Index No. 20565/16|Appeal No. 5313|Case No. 2024-04242| [*1]Marian Lee, as Administratrix of the Estate of Mary Tsong Lee, Plaintiff-Respondent, v Montefiore Medical Center, Defendant-Appellant, Anthony Shih, M.D., Defendant.

Shaub, Ahmuty, Citrin & Spratt, LLP, Lake Success (Nicholas Tam of counsel), for appellant. Lesch & Lesch, P.C., Bronx (Beth S. Gereg of counsel), for respondent. Order, Supreme Court, Bronx County (Michael A. Frishman, J.), entered on or about July 3, 2024, which, to the extent appealed from as limited by the briefs, denied the motion of Montefiore Medical Center for summary judgment dismissing all direct claims as against it, unanimously reversed, on the law, without costs, the motion granted and the direct claims against Montefiore dismissed.

Plaintiff raised a question of fact as to whether Montefiore deviated from accepted practice in not ensuring that the rotablator was functional prior to decedent's proposed atherectomy. Montefiore's expert opined that accepted practice did not dictate that Montefiore own a rotablator or, if it did, that the hospital perform routine testing outside of its imminent use.

However, plaintiff's expert opined that the standard of care required Montefiore to properly maintain the rotablator where it represented that it had a functioning rotablator available for use. Plaintiff's expert also opined that because the manufacturer offered service contracts for the device, which had other non-single use components, including the foot pedal that malfunctioned here, the device could be subjected to regular inspection.

Although Montefiore submitted the maintenance records for the device, it did so on reply which was improper (see Matter of Kennelly v Mobius Realty Holdings LLC, 33 AD3d 380, 381 [1st Dept 2006]). In any event, the maintenance records simply reveal periodic visual and electrical

safety inspections, with no indication as to whether these inspections comported with accepted practice.

Nonetheless, Montefiore established its prima facie entitlement to summary judgment because any such departure was not a proximate cause or substantial factor in causing decedent's injuries (see *Anyie B. v Bronx Lebanon Hosp.*, 128 AD3d 1, 3 [1st Dept 2015]; *Malone v Kim*, 96 AD3d 477, 477 [1st Dept 2012]). Upon discovering that the rotablator was not functioning, both experts agree that defendant Dr. Shih had several options, including postponing the atherectomy, as the decedent's condition was hemodynamically stable at that point.

Instead, Dr. Shih independently decided to perform six angioplasty procedures, the last of which ultimately dissected decedent's left main artery. Under these circumstances, Montefiore cannot be held responsible for any direct claims asserted against it by plaintiff. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: December 9, 2025

PER CURIAM.

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