

92 A.D.3d 533, 938 N.Y.S.2d 540, 2012 N.Y. Slip Op. 01182

Mirta E. Ramirez, as Executrix of Narciza Torres, Deceased, Appellant

v

Alcedo Cruz, M.D., et al., Respondents, et al., Defendants.

Supreme Court, Appellate Division, First Department, New York

February 16, 2012

Galasso, Langione, Catterson & LoFrumento, LLP, Garden City (James R. Langione of counsel), for appellant.
Schiavetti, Corgan, DiEdwards & Nicholson, LLP, New York (Samantha E. Quinn of counsel), for Alcedo Cruz, M.D., respondent.
Bartlett, McDonough & Monaghan, LLP, White Plains (Adonaid C. Medina of counsel), for Francisco Bautista, M.D., respondent.
Westermann Sheehy Keenan Samaan & Aydelott, LLP, White Plains (Kenneth J. Burford of counsel), for Robert Plummer, M.D., respondent.

Order, Supreme Court, Bronx County (Betty Owen Stinson, J.), entered January 11, 2011, which, to the extent appealed from, granted the motion of defendant Alcedo Cruz, M.D. for summary judgment dismissing the complaint, unanimously affirmed, without costs. Judgments (same court and Justice), entered February 7, 2011, dismissing the complaint against defendants Francisco Bautista, M.D. and Robert Plummer, M.D., unanimously affirmed, without costs. Appeal from the order entered January 11, 2011, to the extent it granted Dr. Bautista's and Dr. Plummer's motions for summary judgment dismissing the complaint, unanimously dismissed, without costs, as subsumed in the appeals from the judgments.

In this medical malpractice action, plaintiff, as executrix of the estate of Narciza Torres, alleges that defendants-respondents doctors departed from good and accepted medical practice by failing to timely diagnose Torres with colon cancer, which had metastasized to her liver and caused her death. Defendants-respondents met their prima facie showing that they did not depart from good and accepted practice by submitting their deposition testimony, plaintiff's hospital and medical records, and their detailed affidavits showing that their treatment of plaintiff complied with good and accepted standards of medical practice (*see Joyner-Pack v Sykes*, 54 AD3d 727, 729 [2008]; *Toomey v Adirondack Surgical Assoc.*, 280 AD2d 754, 755 [2001]).
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Plaintiff failed to raise triable issues of fact. The expert affidavit of her hematologist/oncologist stating that defendants deviated from good and accepted practice lacked supporting facts and, therefore, was conclusory (*see Diaz v New York Downtown Hosp.*, 99 NY2d 542, 544 [2002]). The expert affidavit of her internist/gastroenterologist, whose name has been redacted, was similarly conclusory, and also was flawed by its misstatements of the evidence and unsupported assertions (*see Wong v Goldbaum*, 23 AD3d 277 [2005]). *534

We have reviewed the remaining contentions and find them to be unavailing. Concur—Freedman, J.P., Sweeny, Renwick, DeGrasse and Román, JJ.