Ntumbanzondo ***v.*** **Bang** ***Chau***

Superior Court of Connecticut, Judicial District of New Haven At New Haven
January 7, 2014, Decided; January 7, 2014, Filed
CV116017893S

Reporter: 2014 Conn. Super. LEXIS 50; 2014 WL 341722

Mposo ***Ntumbanzondo*** et al. as Co-Administrators for the Estate of Bertozzi N. Mposo ***v.*** Bang ***Chau***, M.D. et al.
Notice: THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

Core Terms

decedent, patient, apparent authority, apparent agency, independent contractor, unconscious, internal quotation marks, emergency room, judicial district, doctrine, summary judgment, agent's, material fact, agency relationship, emergency care, malpractice, contractor, conscious, summary judgment motion, appellate court, actual agency, present case, supervision, vicarious, arrive

Judges: **[*1]** Robin L. Wilson, J.
Opinion by: Robin L. Wilson

Opinion

MEMORANDUM OF DECISION RE MOTION FOR SUMMARY JUDGMENT (#176)
FACTS

On December 7, 2011, the plaintiffs, Mposo ***Ntumbanzondo*** and Nsinga Nganswe as co-administrators for the estate of Bertozzi N. Mposo, filed a six-count revised complaint against the defendants, Bang ***Chau***, M.D., Northeast Emergency Medicine Specialists (NEMS), and Windham Community Memorial Hospital (Windham Hospital). Counts one, two, and three are claims for wrongful death against ***Chau***, NEMS, and Windham Hospital, respectively. Counts four, five, and six are claims for loss of chance against ***Chau***, NEMS, and Windham Hospital, respectively. In the revised complaint, the plaintiff alleges the following facts.

Chau is a licensed physician who is an employee of NEMS, which is a private practice group of physicians who provide emergency medical staffing to Windham Hospital.[1] The defendant is a member of the Hartford Health Care Corporation, which offers and provides medical care, treatment, and advice to patients at and from its medical facility in Windham, Connecticut.

On November 4, 2008, the decedent, Bertozzi N. Mposo, was admitted to the defendant's emergency room following her collapse and loss of consciousness at the University of Connecticut's student union. After arriving at the emergency room at 11:59 p.m., Mposo complained of extreme pain, diaphoresis, and a large mass on the right side of the neck. At 12:15 a.m., ***Chau*** examined Mposo and noted an expanding hematoma over the right neck with a tracheal deviation to the left. Subsequently, ***Chau*** intubated Mposo at 1:02 a.m. At 1:53 a.m., the nursing notes document that the neck mass had doubled in size since arrival at the emergency room and several attempts for central and peripheral venous lines were unsuccessful. At 2:39 a.m., Life Star arrived and ***Chau*** inserted a chest tube in the decedent. The decedent was subsequently transported via Life Star from Windham Hospital to Hartford Hospital. Once the decedent arrived at Hartford Hospital, the decedent was taken to the operating room where attempted control of bleeding and attempted intraoperative cardiac resuscitation were unsuccessful. The decedent was pronounced dead at 6:10 a.m.

The plaintiffs allege, *inter alia*, **[*3]** that the decedent's death was caused, in part, by the defendant's deviation from the applicable standards of care by (a) failing to arrange for the emergency transfer of a critically ill patient to a facility equipped to handle such patients; (b) failing to summon the appropriate emergency personnel to assist in providing critical care to the decedent; (c) failing to establish and maintain vascular access in order to determine the etiology of the expanding hematoma as well as to continue to provide fluids and blood products as needed; and (d) failing to provide emergency treatment to a critically ill patient in a timely manner, which in turn lead to treatment delays and transfer delays.

On June 21, 2013, the defendant filed the present motion for summary judgment accompanied, *inter alia*,

[1] For the sake of clarity, hereafter, all references to the defendant in this memorandum refer to Windham Hospital, the party **[*2]** moving for summary judgment.

by (1) an affidavit of Stephen W. Larcen, the president and chief operating officer of Windham Hospital; (2) the emergency care services agreement between the defendant and NEMS; and (3) portions of ***Chau***'s deposition testimony. In response, the plaintiffs filed an objection to the motion on September 23, 2013, accompanied, *inter alia*, by (1) a memorandum in support; (2) an affidavit of ***Ntumbanzondo***; **[*4]** and (3) the decedent's emergency department record. The defendant filed a reply to the plaintiffs' objection on October 23, 2013. This matter was heard at short calendar on November 18, 2013, where the defendant was offered an opportunity to submit a supplemental memorandum of law addressing whether the holding in *Center* ***v***. Kost, Superior Court, judicial district of New Haven, Docket No. CV-08-5021444-S (August 4, 2011, Wilson, J.) (52 Conn. L. Rptr. 426, 2011 Conn. Super. LEXIS 2005), should be applied in the present case. On December 2, 2013, the defendant submitted a supplemental memorandum addressing this issue. Subsequently, on December 16, 2013, the plaintiffs filed a response to the defendant's supplemental memorandum.

DISCUSSION

"Summary judgment is a method of resolving litigation when pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law . . . The motion for summary judgment is designed to eliminate the delay and expense of litigating an issue when there is no real issue to be tried." (Internal quotation marks omitted.) *Grenier* ***v***. Commissioner of Transportation, 306 Conn. 523, 534-35, 51 A.3d 367 (2012). **[*5]** "The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact." (Internal quotation marks omitted.) *Anastasia* ***v***. General Casualty Co. of Wisconsin, 307 Conn. 706, 711, 59 A.3d 207 (2013), quoting *DiPietro* ***v***. Farmington Sports Arena, LLC, 306 Conn. 107, 116, 49 A.3d 951 (2012). "In ruling on a motion for summary judgment, the court's function is not to decide issues of material fact, but rather to determine whether any such issues exist." (Internal quotation marks omitted.) *Maltas* ***v***. Maltas, 298 Conn. 354, 365, 2 A.3d 902 (2010). "A material fact has been defined adequately and simply as a fact which will make a difference in the result of the case." (Internal quotation marks omitted.) *Buell Industries, Inc.* ***v***. Greater New York Mutual Ins. Co., 259 Conn. 527, 556, 791 A.2d 489 (2002).

I

Actual Agency

The defendant first argues that the court should grant summary judgment in its favor on the **[*6]** ground that it is not liable for the actions of ***Chau*** pursuant to a theory of respondeat superior. Specifically, the defendant claims that it did not employ ***Chau***, and that he is instead employed by NEMS. Because NEMS is an independent contractor, the defendant asserts that ***Chau*** is not its agent and, thus, cannot be held liable under a theory of respondeat superior. The plaintiff counters that there are genuine issues of material fact as to whether the contract between the defendant and NEMS is so intrusive and controlling that it reaches the level of actual agency.

"[I]t is a general rule of agency law that the principal in an agency relationship is bound by, and liable for, the acts in which his agent engages with authority from the principal, and within the scope of the agent's employment . . . An agent's authority may be actual or apparent . . . Actual authority exists when [an agent's] action [is] expressly authorized . . . or . . . although not authorized, [is] subsequently ratified by the [principal]." (Internal quotation marks omitted.) *Ackerman* ***v***. Sobol Family Partnership, LLP, 298 Conn. 495, 508, 4 A.3d 288 (2010). In contrast, an independent contractor is "one who, exercising **[*7]** an independent employment, contracts to do a piece of work according to his own methods and without [being] subject to the control of his employer, except as to the rest of his work." (Internal quotation marks omitted.) *Panaro* ***v***. Electrolux Corp.., 208 Conn. 589, 604, 545 A.2d 1086 (1988).

"[T]he three elements required to show the existence of an agency relationship include: (1) a manifestation by the principal that the agent will act for him; (2) acceptance by the agent of the undertaking; and (3) an understanding between the parties that the principal will be in control of the undertaking . . . The existence of an agency relationship is a question of fact . . . Some of the factors [used] . . . in assessing whether such a relationship exists include: whether the alleged principal has the right to direct and control the work of the agent; whether the agent is engaged in a distinct occupation; whether the principal or the agent supplies the instrumentalities, tools, and the place of work; and the method of paying the agent . . . In addition, [a]n *essential ingredient of agency is that* the agent is doing something at the behest and for the benefit of the principal . . . Finally, the labels **[*8]** used by the parties in referring to their relationship are not determinative; rather, a court must look to the operative terms of their agreement or understanding." (Internal quotation marks omitted.)

Wesley v. Schaller Subaru, Inc., 277 Conn. 526, 543-44, 893 A.2d 389 (2006).

In the present case, the evidence submitted by the defendant in support of its motion demonstrates that ***Chau*** was not an actual agent of the defendant. The emergency care services agreement between the defendant and NEMS specifically states that NEMS "is an independent contractor and not a partner or agent of the hospital. The hospital shall exercise no control over the manner in which the medical duties of [NEMS] are performed. [NEMS] shall be solely responsible for the control and supervision of the [NEMS] physicians . . . and the payment to or on behalf of them of all distributions, wages and salaries, taxes, withholding payments, penalties, fees, professional education and seminar expenses, professional liability insurance premiums, contributions to insurance and pension or other deferred compensation plans of [NEMS] . . ." Def.'s Ex. C, p. 5. The agreement also states: "The hospital shall not exercise any **[*9]** control or direction over the medical aspects of providing emergency care services, which control and direction shall be the sole responsibility of [NEMS] . . ." Def.'s Ex. C, p. 3. Furthermore, the contract states: "This agreement shall not be construed to create any agency relationship between the hospital or any of its affiliates and [NEMS]." Def.'s Ex. C, p. 17. This contractual language is corroborated by the president and chief operating officer, Larcen, in his affidavit stating that at the time the decedent was treated at Windham Hospital, the defendant did not "employ, supervise or otherwise control any of the emergency room physicians . . ." Def.'s Ex. A, ¶5. Additionally, Larcen attests that NEMS physicians are not agents or employees of the defendant and that the defendant does not supervise, control, or direct any of the NEMS physicians, including ***Chau***. Def.'s Ex. A, ¶¶12, 14, 25. Finally, ***Chau*** also testified that he received his checks from NEMS. Def.'s Ex. F, p. 16.

The plaintiffs incorrectly assert, in their objection, that the defendant did not disclose the emergency care services agreement. The court finds this assertion perplexing because the plaintiffs, in fact, reference **[*10]** the agreement in their own objection to the motion and in their reply. Moreover, as previously discussed, the defendant filed the agreement, along with its motion for summary judgment. In considering the evidence cited above, the court concludes that the defendant has sufficiently demonstrated that there are no facts from which a reasonable jury could find that ***Chau*** was an actual agent of the defendant. Specifically, based on both the language of the emergency care services agreement and the sworn statements, no reasonable jury could find that the defendant retained actual control of NEMS' employees, including ***Chau***. Thus, the defendant has met its burden in showing that ***Chau*** was not an actual agent of the defendant.

Consequently, the burden shifts to the plaintiffs to raise issues of fact regarding whether an actual agency relationship existed between ***Chau*** and the defendant. See *Ramirez v.* Health Net of the Northeast, Inc., supra, 285 Conn. 11. The plaintiffs argue that the agreement between the hospital and the corporation shows the existence of an agency relationship because it demonstrates a manifestation by the defendant that NEMS will act for it and the agreement also shows an **[*11]** acceptance by NEMS of the undertaking. More particularly, the plaintiffs refer to the section in the agreement that states, "the hospital desires to assure the continued availability to its patients of complete emergency care services to be provided by a single group of physicians . . ."[2] Def.'s Ex. C, p. 1. This language in the agreement does not demonstrate an agency relationship between NEMS and the defendant. Rather, it merely recites the reason for entering into the agreement with NEMS. Additionally, the plaintiffs also argue that the defendant offered no evidence that it did not ratify the actions of ***Chau***. Specifically, the plaintiff points to the fact that ***Chau*** and NEMS held themselves out as employees of the defendant because ***Chau*** signed medical records on the defendant's letterhead and wore a coat with the defendant's logo. These examples, however, do not establish the elements required for actual agency. Instead, such factors may be used to demonstrate the existence of an *apparent* agency, which the court discusses in detail, infra. Accordingly, based on the record before the court, the plaintiff has failed to present issues of material fact that could support the existence **[*12]** of an actual agency.

II

Apparent Agency

Having determined that ***Chau*** was not an actual agent of the defendant, the court must next discuss whether ***Chau*** was an apparent agent. Such a determination requires a discussion regarding whether (1) apparent agency is recognized in Connecticut, and (2) if apparent agency exists in Connecticut, whether the decedent is

[2] The plaintiffs' memorandum in objection to the motion for summary judgment refers to page one of the agreement and quotes the language as: "Whereas, the hospital desires to make available to its patients and individuals in the hospital's community emergency medical services through an independent emergency medicine group." The court is unable to locate this exact language in the agreement and presumes that the plaintiffs intended to refer to the actual language quoted above.

required to rely on the apparent agency relationship between the defendant and NEMS in order for the doctrine to apply. The defendant argues that the plaintiffs' claim based on apparent agency is not legally viable pursuant to the Appellate Court holding in *L&V* Contractors, LLC *v*. Heritage Warranty Ins. Risk Retention Group, Inc., 136 Conn.App. 662, 47 A.3d 887 (2012). **[*13]** Additionally, the defendant also argues that, even if apparent agency is recognized under Connecticut law, the plaintiffs are unable to prove that the decedent relied upon any representations made by the defendant regarding the employment status of ***Chau*** because she was unconscious at the time. The plaintiffs counter that apparent agency is recognized in Connecticut and that summary judgment should be denied because disputed facts exist as to whether the factors for apparent authority are present in this case.

The Supreme Court first recognized the doctrine of apparent authority in *Fireman's Fund Indemnity Co. v*. Longshore Beach & Country Club, Inc., 127 Conn. 493, 18 A.2d 347 (1941). The court explained: ″Apparent and ostensible authority is such authority as a principal intentionally, or by want of ordinary care, causes or allows a third person to believe that the agent possesses. This authority to act as agent may be conferred if the principal affirmatively or intentionally, or by lack of ordinary care, causes or allows third persons to act on an apparent agency.″ (Internal quotation marks omitted.) *Id*., 496-97. The *Fireman's Fund* opinion, which explains and applies the doctrine of **[*14]** apparent authority, demonstrates that the doctrine is recognized in Connecticut.[3] Earlier this year, our Supreme Court recognized the continuing validity of the doctrine of apparent authority. *Patel v*. Flexo Converters U.S.A., Inc., 309 Conn. 52, 59-60 n.8, 68 A.3d 1162 (2013). The court explained, ″[a]pparent authority is that semblance of authority which a principal, through his own acts or inadvertences, causes or allows third persons to believe his agent possesses . . . Consequently, apparent authority is to be determined, not by the agent's own acts, but by the acts of the agent's principal . . . The issue of apparent authority is one of fact to be determined based on two criteria . . . First, it must appear from the principal's conduct that the principal held the agent out as possessing sufficient authority to embrace the act in question, or knowingly permitted [the agent] to act as having such authority . . . Second, the party dealing with the agent must have, acting in good faith, reasonably believed, under all the circumstances, that the agent had the necessary authority to bind the principal to the agent's action.″ (Internal quotation marks omitted.) *Id*.

Despite this binding Supreme Court precedent on apparent agency, our Appellate Court in *L&V* Contractors, LLC *v*. Heritage Warranty Insurance Risk Retention Group, Inc., supra, 136 Conn.App. 669, recently stated: ″Connecticut . . . has yet to apply the doctrine of apparent authority to allow for a principal to be held liable to a third person who was harmed by the tortious conduct of a person held out as the principal's agent.″ Consequently, there is currently conflicting authority with regard to the validity of the doctrine of apparent authority.

There is no appellate authority on this doctrine as it applies **[*16]** to tort liability in a medical malpractice context. ″Despite the lack of appellate guidance, numerous Superior Court decisions have addressed . . . whether a hospital can be held vicariously liable under a theory of apparent agency.″ *Center v*. Kost, supra, 52 Conn. L. Rptr. 431, 2011 Conn. Super. LEXIS 2005. Based on a thorough review of this state's case law, there is ample Superior Court authority in support of the proposition that apparent authority may be maintained as a cause of action in medical malpractice cases. See *Lohnes v*. Hospital of Saint Raphael, Superior Court, judicial district of New Haven, Docket No. CV-12-6034275-S, 2013 Conn. Super. LEXIS 895 (April 24, 2013, B. Fischer, J.), *Sheehy v*. Griffin Hospital, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-12-6011638-S (September 30, 2013, Brazzel-Massaro, J.) (56 Conn. L. Rptr. 697, 2013 Conn. Super. LEXIS 2188); *Bordonaro v*. Anesthesia Associates of Torrington, Superior Court, judicial district of Litchfield, Docket No. CV-10-6002739-S (October 23, 2012, Danaher, J.) (55 Conn. L. Rptr. 2, 2012 Conn. Super. LEXIS 2647); *Wellons v*. Bristol Hospital, Superior Court, judicial district of New Britain, Docket No. CV-09-5014713-S, 2012 Conn. Super. LEXIS 1226 (May 10, 2012, Sheridan, J.) (54 Conn. L. Rptr. 13); *Center v*. Kost, supra, 426, 2011 Conn. Super. LEXIS 2005;*Corey v*. Eastern Connecticut Health Network, Inc., Superior Court, judicial district of Hartford, Docket No. CV-09-5031120-S, 2011 Conn. Super. LEXIS 1918 (July 22, 2011, Sheldon, J.); **[*17]** *Spaulding v*. Rovner, Superior Court, judicial district of Stamford-Norwalk, Complex Litigation Docket, Docket No. X08-CV-04-4001232-S (April 3, 2009, Jennings, J.) (47

[3] Although it involved **[*15]** claims of breach of contract and strict liability, *Beckenstein v*. Potter & Carrier, Inc., 191 Conn. 120, 464 A.2d 6 (1983), is another case in which the Supreme Court recognized the existence of apparent authority as a legitimate legal doctrine. In *Beckenstein*, the court outlined the test for apparent agency, ultimately finding that the test was not satisfied because there was no evidence of reliance. *Id*., 141. This was not a negligence medical malpractice case like the present one, but it is an example of a case in which the Supreme Court recognized the existence of apparent authority.

Conn. L. Rptr. 544, 2009 Conn. Super. LEXIS 942); *Aube v.* Middlesex Hospital, Superior Court, complex litigation docket at Waterbury, Docket No. X10-CV-04-4010594-S, 2008 Conn. Super. LEXIS 2548 (October 3, 2008, Scholl, J.); *Francisco v.* Hartford Gynecological Center, Inc., Superior Court, judicial district of Hartford, Docket No. CV-92-0513841-S (March 1, 1994, Corradino, J.) (11 Conn. L. Rptr. 191, 1994 Conn. Super. LEXIS 521); *Koniak v.* Sawhney, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-93-042154-S, 1994 Conn. Super. LEXIS 95 (January 13, 1994, Rush, J.).

In *Davies v.* General Tours, Inc., 63 Conn.App. 17, 774 A.2d 1063, cert. granted on other grounds, *256 Conn. 926, 776 A.2d 1143 (2001)* (appeal withdrawn October 18, 2001), the court dealt with the issue of apparent authority in the context of whether a tour bus operator could be held liable for the negligent conduct of the employees of the independent contractor that provided services for its tours. Although **[*18]** the court did hold that, ″[apparent authority] is not a viable ground on which to premise liability against a defendant sued for the torts of an alleged agent″; *Id.*, 31; it did recognize that a hospital's relationship with independent contractors is different from that of a tour bus operator and independent contractor. *Id.*, 32. Specifically, the Appellate Court acknowledged that there are Superior Court cases regarding apparent agency that ″permit causes of action against hospitals for the acts or omissions of independent contractors who were held out by the hospitals to be employees . . .″ *Id.*

In *Cadavid v.* Ranginwala, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-12-6014019-S (June 24, 2013, Tobin, J.T.R.) (56 Conn. L. Rptr. 318, 321, 2013 Conn. Super. LEXIS 1409), the court held that medical malpractice claims may be asserted on the basis of apparent authority. The facts in that case are nearly identical to the present case, i.e. where a patient sought to hold a hospital liable for the negligent acts of a doctor who was allegedly cloaked with hospital authority. *Id.*, 318-19, 2013 Conn. Super. LEXIS 1409. The court distinguished the case before it from the Appellate Court's holdings in *L&V* Contractors and *Davies* on the **[*19]** basis that those cases were not grounded in professional medical negligence. *Id.*, 321, 2013 Conn. Super. LEXIS 1409. The court explained that *L&V* Contractors was an intentional tort case, and that in *Davies*, the court specifically noted that there is ″a meaningful distinction between *[Davies]* and cases involving negligence claims against hospitals.″ *Id.*, 320, 2013 Conn. Super. LEXIS 1409; see also *Center v.* Kost, supra, 52 Conn. L. Rptr. 431, 2011 Conn. Super. LEXIS 2005 (″the court in *Davies* distinguished itself from Superior Court cases where causes of actions were permitted against hospitals for acts of independent contractors who were held out to be employees″). The court in *Cadavid v.* Ranginwala, supra, 321, 2013 Conn. Super. LEXIS 1409, further reasoned that ″*L&V* Contractors was not decided in the medical malpractice context and, more importantly, that case does not address *Fireman's Fund* . . .″ (Citations omitted; internal quotation marks omitted.); see also *Carasone v.* Gemma Power Systems, LLC, (April 17, 2013, Wilson, J.) (55 Conn. L. Rptr. 914, 916, 2013 Conn. Super. LEXIS 848) (concluding that *L&V* Contractors is an appellate decision which did not overrule the *Fireman's Fund* case).

Moreover, ″[i]mportant policy reasons have been noted in decisions allowing medical malpractice claims against hospitals based on apparent **[*20]** authority . . . There is no analytical reason not to extend [apparent authority] to the hospital situation, in fact there are several good policy reasons for doing so . . . It would be absurd to require . . . a patient to be familiar with the law of respondeat superior and so inquire of each person who treated him . . . whether he . . . is an employee of the hospital or an independent contractor . . . Similarly . . . it would be unfair to allow the secret limitations on liability contained in a doctor's contract with the hospital to bind the unknowing patient . . . Public outrage would surely follow an announcement by a . . . hospital that it regards all staff doctors as completely independent professionals, conducts no supervision of their performance and takes no interest in their competence . . . The public should have a right to assume that the . . . hospital to which it goes for treatment exercises medical supervision over and is responsible for the negligence of medical personnel providing services whether the hospital styles them as independent contractors or not.″ (Citations omitted; internal quotation marks omitted.) *Cadavid v.* Ranginwala, supra, 56 Conn. L. Rptr. 321, 2013 Conn. Super. LEXIS 1409; see **[*21]** also *Lohnes v.* Hospital of Saint Raphael, supra, Docket No. CV12-6034275-S, 2013 Conn. Super. LEXIS 895. Based on the foregoing legal authority, this court concludes that apparent authority can be maintained as a viable theory of vicarious liability in the medical malpractice context.

Having established that apparent authority is a viable theory for alleging vicarious liability against hospitals for the actions of independent contractors in Connecticut, the court next addresses the defendant's argument that the decedent did not rely on the apparent agency relationship between the defendant and NEMS because she was unconscious.

It is noted at the outset that the defendant attempts to shift the burden onto the plaintiff by stating that ″the plaintiffs are unable to establish the reliance or good faith requirement . . .″ In a motion for summary judgment, however, the moving party has the burden to show the nonexistence of any issue of fact. *Ramirez v.* Health Net of the Northeast, Inc., 285 Conn. 1, 10-11, 938 A.2d 576 (2008). Here, the defendant has not met this burden because it has not submitted any evidence that shows the decedent did not rely on the apparent agency relationship between the defendant and ***Chau***. In **[*22]** particular, the defendant merely asserts that the decedent could not have relied on the defendant and ***Chau***'s relationship because she was unconscious. The defendant, however, did not produce any evidence that demonstrates the decedent was actually unconscious at all times when she was at the defendant's facility. To the contrary, the evidence submitted by the plaintiffs show that the decedent was ″awake″ and ″answer[ed] to verbal stimul[ation]″ while at the defendant's emergency room facility. Pls.' Ex. K, p. 10. Additionally, the plaintiffs allege in the complaint that after arriving at the defendant's emergency room, ″she *complained* of extreme pain, diaphoresis and a large mass on the right side of her neck.″ (Emphasis added.) It is inexplicable how the decedent could have complained of these symptoms while in an unconscious state and the defendant has submitted no evidence that disputes this allegation. Thus, at the very least, an issue of fact remains as to whether the decedent was actually unconscious the entire time while under the care of ***Chau***.

Even assuming, arguendo, that the decedent was unconscious the entire time, ″Connecticut courts have not required a plaintiff to prove **[*23]** detrimental reliance . . .″ *Center v.* Kost, supra, 52 Conn. L. Rptr. 430, 2011 Conn. Super. LEXIS 2005. In fact, at least one Superior Court case has even held that a plaintiff is not required to make a showing of any kind of reliance in order to recover on a theory of apparent agency. See *Francisco v.* Hartford Gynecological Center, Inc., supra, 11 Conn. L. Rptr. 193, 1994 Conn. Super. LEXIS 521 (″the basis of the [apparent authority] doctrine is that a patient in the plaintiff's situation would have had a right to assume the nurse was an agent of the center″).

Furthermore, the appellate court of Illinois decided a factually similar case in *Monti v.* Silver Cross Hospital, 262 Ill. App. 3d 503, 637 N.E.2d 427, 430, 201 Ill. Dec. 838 (Ill.App. 1994), where the court held that a patient need not be conscious in order to bring claims under an apparent agent theory. In that case, the plaintiff, suffering from a head injury that left her unconscious, was taken by ambulance to the defendant hospital's emergency room. *Id.*, 428. The hospital had no neurosurgeon on duty at the time. *Id.* Twelve hours later the plaintiff was transferred to a different hospital. *Id.* Subsequently, the plaintiff filed suit, and the (initial receiving) hospital moved for summary judgment on the ground that the defendant **[*24]** doctors were independent contractors and not the employees or agents of the hospital. *Id.* Summary judgment was granted and the plaintiff appealed. *Id.*, 429. The defendants argued on appeal that there was no apparent agency because the plaintiff was unconscious when she was brought to the emergency room and so ″did not select the hospital or otherwise rely upon the hospital to supply treating physicians.″ *Id.*, 430. The appellate court reversed, and concluded that it should not matter if the patient is conscious or unconscious, and found that a question of fact existed regarding apparent agency since ″[t]hose responsible for [the patient] sought care from the hospital, not from a personal physician, and thus, a jury could find that they relied upon the fact that complete emergency room care, including diagnostic testing and support services, would be provided through the hospital staff. The same is true for all seriously ill or badly injured patients, whether conscious or not, who come to a hospital emergency room for emergency medical care. Neither logic nor equity would be served by drawing a distinction between conscious and unconscious patients, allowing the former to recover on **[*25]** a theory of vicarious liability but not the latter.″ *Id.*; *Golden v.* Kishwaukee Community Health Services, 269 Ill. App. 3d 37, 645 N.E.2d 319, 326, 206 Ill. Dec. 314 (Ill.App. 1994) (same); see also *Nelsonv. Debbas*, 160 Md. App. 194, 862 A.2d 1083, 1093 (Md.App. 2004) (″[i]t would be absurd to expect that an emergency room patient, with no particular sophistication about the operation and management of hospitals . . . should inquire into who is, and who is not, an employee of the institution, rather than an independent contractor″); *Mehlman v.* Powell, 281 Md. 269, 378 A.2d 1121, 1124 (Md.App. 1977) (patient seeking emergency services from a hospital was relying on the hospital to provide them). Likewise, in the present case, it should not matter whether the decedent was unconscious or conscious because a jury could find that the plaintiffs, who were responsible for the decedent, reasonably relied on the fact that complete emergency room care would be provided by the defendant. Therefore, as a matter of equity and public policy, this court adopts the well reasoned and persuasive decision in *Monti* that an unconscious patient should be able to recover on a theory of vicarious liability.

In the present case, the record raises factual issues regarding the **[*26]** existence of an apparent agency relationship between ***Chau*** and the defendant. Specifically, ***Ntumbanzondo*** attests that ***Chau*** never informed him that he was an independent contractor of

Windham Hospital or that he was an employee of NEMS. Pls.' Ex. J ¶¶5, 6. Additionally, ***Chau*** wore a badge with his name that contained Windham Hospital, not NEMS. Pls.' Ex. M, p. 17. Moreover, the defendant's 2008 annual report states that "Windham Hospital has recruited a number of top quality new physicians to serve area patients" and it specifically discusses ***Chau***'s qualifications and portrays ***Chau*** as a part of its medical staff. Pls.' Ex. H. These facts suggest that a jury could reasonably find that the defendant held ***Chau*** out as an apparent agent, despite the fact that he was an independent contractor. "The issue of apparent authority is one of fact . . ." (Internal quotation marks omitted.) *Ackerman* ***v***. Sobol Family Partnership, LLP, supra, 298 Conn. 508. Accordingly, a finder of fact must decide whether (1) the defendant's conduct held ***Chau*** out as possessing sufficient authority to act as its agent and (2) a reasonable person could have believed, under all the circumstances, that ***Chau*** had the necessary **[*27]** authority to bind the defendant to his actions.

CONCLUSION

For the foregoing reasons, the defendant's motion for summary judgment is denied.

Wilson, J.