

<b>Dumas v Adirondack Med. Ctr.</b>
2007 NY Slip Op 34559(U)
November 20, 2007
Supreme Court, Saratoga County
Docket Number: 2007-0337
Judge: Frank B. Williams
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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK

ORIGINAL

SUPREME COURT - COUNTY OF SARATOGA

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DAVID DUMAS as Administrator of the Estate of  
KIRSTEN LORRAINE DUMAS, and DAVID  
DUMAS, Individually and as Parent and Natural  
Guardian on behalf of ELIZABETH DUMAS, and  
JOSEPH DUMAS, Infants,

Plaintiffs,

-against-

ADIRONDACK MEDICAL CENTER, BRIM  
HEALTHCARE, INC., ELIZABETH BUCK, M.D.,  
EDWARD FROST, M.D., CATHERINE R. HILL,  
FNP/NPP, MICHAEL ELIO, M.D., RICHARD G.  
LAND, R.N., ANGELA L. GATKER, R.N.,  
SHARON ST. LOUIS, R.N., SUSAN M.  
McKILLIP, R.N., KASSIDY N. TODD, P.A.,  
JANE DOE 1, being a factitious name to designate  
certain unknown female nursing staff at the  
ADIRONDACK MEDICAL CENTER, JOHN DOE, I,  
being a fictitious name to designate certain unknown  
male nursing staff at the ADIRONDACK MEDICAL  
CENTER, VARINS AMBULANCE SERVICES, INC.,  
BRIAN P. CASTINE and TREVOR A. YATES,

Defendant.  
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**APPEARANCES:**

**POWERS & SANTOLA, LLP**  
(Laura M. Jordan, Esq., of Counsel)  
Attorneys for Plaintiffs

SARATOGA COUNTY  
CLERK'S OFFICE  
BALLSTON SPA, NY

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FILED

**DECISION AND ORDER**

Index No. 2007-0337  
RJI No. 45-1-2007-1165

**THUILLEZ, FORD, GOLD, BUTLER & YOUNG, LLP**  
(Kelly Michael Monroe, Esq., of Counsel)  
Attorneys for Defendants Adirondack Medical Center, Brim  
Healthcare, Inc., Elizabeth Buck, M.D., Edward Frost, M.D., Michael  
Elio, P.A., Richard G. Land, R.N., Angela L. Gatker, R.N., Sharon M.  
St. Louis, R.N., Susan M. McKillip, R.N., Cassidy N. Todd, PA., Jane  
Doe I, and John Doe I

**FRANK B. WILLIAMS, J.**

Defendants Elizabeth Buck, M.D., Edward Frost, M.D. and Cassidy N. Todd make this motion to dismiss the complaint for lack of personal jurisdiction pursuant to CPLR 3211 (a) (8) and/or 3212, as proper service of the Summons and Complaint upon them was not made.

With respect to Drs. Buck and Frost, service was made upon them by delivering the Summons and Complaint to a person of suitable age and discretion at their alleged actual place of business; namely, the Adirondack Medical Center, Lake Colby Drive, Saranac Lake, New York. The person to whom the Summons and Complaint were delivered was Adele S. Hodlin, Director of Quality and Clinical Resource Management, who affirmatively represented to the process server that defendants Buck and Frost were employed by and employees of the Adirondack Medical Center and that she was authorized, in her capacity as Director of Quality Management, to accept service on their behalf. Subsequently, the Summons and Complaint were mailed to defendants at their actual place of business located at 2249 State Route 86, Suite #3, Saranac Lake, New York.

Defendants allege that service of the Summons and Complaint upon Adele Hodlin at the Adirondack Medical Center does not constitute service at the defendants' actual place of business because defendants Buck and Frost are not employees of the Adirondack Medical Center.

In response to the motion to dismiss, plaintiffs argue that defendants Buck and Frost were properly served and that the Adirondack Medical Center is their actual place of business pursuant to CPLR 308 (6) which states "For purposes of this section, 'actual place of business' shall include any location that the defendant, through regular solicitation or advertisement, has held out as its place of business." Defendants Buck and Frost are members of Adirondack Internal Medicine & Pediatrics, P.C. On that website, defendants Buck's biography states she is "An active staff member of AMC, she serves as secretary of the Executive Committee and is vice Chair of the Ethics Committee." Similarly, defendant Frost's biography states "An active member of the AMC medical staff, he serves on the Physician Administration Operations Committee and the Bariatric Committee." It is plaintiffs' position that defendants Buck and Frost have affirmatively held out the Adirondack Medical Center as their place of business through their internet solicitation and advertisement.

The motion to dismiss is denied. Defendants have held out to the public that they are staff members of the Adirondack Medical Center and service upon them at the Adirondack Medical Center was proper pursuant to CPLR 308 (6). As there was no opposition to the

motion to dismiss by Kassidy Todd, that motion is granted.

This decision shall constitute the order of the court. Any matters not herein decided are denied.

DATED: November 20, 2007

Saratoga Springs, New York

ENTERED  
Kathleen A. Marchione  
*Kathleen A. Marchione*  
Saratoga County Clerk

*Frank B. Williams*  
HON. FRANK B. WILLIAMS  
JUSTICE OF THE SUPREME COURT

SARATOGA COUNTY  
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ENTERED

Papers Considered:

1. Notice of Motion to Dismiss and Affidavit of Kelly M. Monroe, Esq., dated August 8, 2007, with annexed exhibits.
2. Memorandum of Law by Kelly Michael Monroe, Esq., dated August 8, 2007.
3. Affidavit of Kassidy N. Todd, dated July 25, 2007.
4. Affidavit of Adele S. Hodlin, dated July 24, 2007.
5. Affirmation in Opposition of Laura M. Jordan, Esq., dated September 7, 2007, with annexed exhibits.
6. Memorandum of Law by Laura M. Jordan, Esq., dated September 7, 2007.

The court is filing the original decision and order together with original papers in the Saratoga County Clerk's Office. Attorneys for defendants to comply with CPLR 2220.