

**Belfiore v Allure Plastic Surgery Ctr.**

2011 NY Slip Op 30022(U)

January 4, 2011

Supreme Court, New York County

Docket Number: 103936/09

Judge: Joan B. Lobis

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Joan B. Lobis

PART 6

Index Number : 103936/2009

BELFIORE, AMANDA

vs

ALLURE PLASTIC SURGERY

Sequence Number : 003

DISMISS

INDEX NO. \_\_\_\_\_

MOTION DATE 8/24/10

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

1-9

10-15; 15A

16

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**MOTION DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION AND ORDER**

**FILED**

JAN 07 2011

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 1/4/11

J.S.C.  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY: IAS PART 6**

-----X  
AMANDA BELFIORE,

Plaintiff,

-against-

ALLURE PLASTIC SURGERY CENTER, ELLIOT  
M. HELLER, M.D., ADVANCED SURGICAL ARTS  
CENTER, LLC, SHAIN A. CUBER and ASSOCIATES  
IN PLASTIC SURGERY,

Defendants.

-----X  
JOAN B. LOBIS, J.S.C.:

Index No. 103936/09

**Decision and Order**

**FILED**

JAN 07 2011

NEW YORK  
COUNTY CLERK'S OFFICE

Defendants Advanced Surgical Arts Center, LLC ("Advanced"), Shain A. Cuber, and Associates in Plastic Surgery ("Associates") move, pursuant to C.P.L.R. Rule 3211(a)(8), for an order dismissing the complaint for lack of personal jurisdiction over these three defendants. For the reasons, set forth below the motion to dismiss is granted to the extent of dismissing the action solely against Advanced.

This action, sounding in medical malpractice, arises out of a bilateral breast augmentation performed on plaintiff in the summer of 2007. In July 2007, plaintiff, a resident of New Jersey, consulted with Shain A. Cuber, M.D., a plastic surgeon, about a possible breast augmentation at Associates' office at 1150 Amboy Avenue in Edison, New Jersey (the "New Jersey Office"). On July 30, 2007, Dr. Cuber performed the surgery on plaintiff's breasts at Advanced, a surgical facility maintained in the same building as Associates. Following the surgery, plaintiff experienced pain and was dissatisfied with the size and shape of her right breast. Plaintiff visited Dr. Cuber at the New Jersey Office for several follow-up appointments and underwent two additional procedures. Plaintiff continued to experience pain and remained unsatisfied with her appearance. In January 2008, plaintiff ended her treatment with Dr. Cuber. Thereafter, a woman named Maria from the New Jersey Office referred plaintiff to Elliot Heller, M.D.

In February 2008, Dr. Heller treated plaintiff at the offices of Allure Plastic Surgery ("Allure"), located in Staten Island, New York.

The moving defendants assert that since Advanced and Associates are located in New Jersey and do not own or maintain any property in New York, they are not present in this state as a predicate for personal jurisdiction. While they acknowledge a relationship with Allure, they assert that the relationship is limited to online advertising and cross-marketing, which is insufficient for jurisdictional purposes. They further argue that Dr. Cuber is a citizen of New Jersey, is an employee of Associates, and has no private office in New York. The moving defendants acknowledge, however, that Dr. Cuber is licensed in New York.

In opposition, plaintiff argues that the motion should be denied on procedural and substantive grounds. Plaintiff contends that the motion is untimely and unsupported by affidavits of persons with actual knowledge of the facts. Plaintiff further maintains that Associates is a group practice founded by Dr. Cuber and three other doctors. Plaintiff asserts that Allure is not a facility independent from Associates; rather, Allure is the name for Associates' office in Staten Island. In support of her assertions, plaintiff points to Dr. Heller's examination before trial ("EBT") testimony and attaches multiple print-outs of websites that show Associates' purported connection with New York. As to Advanced, plaintiff argues that it is subject to jurisdiction in New York because Dr. Heller has an interest in the limited liability corporation that operates the facility.

As a preliminary matter, the motion is not untimely nor procedurally defective. The moving defendants' answers raised the affirmative defense of lack of personal jurisdiction, thereby preserving their right to make this motion. Furthermore, Dr. Miller's and Dr. Cuber's affidavits attached to the motion

provide factual support their legal arguments.

Turning to the substantive issues in the motion, the Court of Appeals in Laufer v. Ostrow, 55 N.Y.2d 305 (1982), set forth that jurisdiction over a foreign corporation is dependent on whether the corporation engaged in a “continuous and systematic course of doing business” (id. at 309 [internal quotation marks omitted]) as to be considered present in the New York. Id. at 310. The test is whether the corporation’s activities in New York, as a whole, are such that the corporation is “present” in New York on a fairly permanent and continuous basis, and whether the corporation’s contacts with New York are such that it is reasonable and just to require the corporation to defend the action in New York. Id. Here, Dr. Heller’s EBT testimony, as well as the websites setting forth that Associates “has proudly served New York and New Jersey for more than 15 years” and identifying Allure’s office on Staten Island as its own, are sufficient to satisfy the test for long arm jurisdiction. See Bryant v. Finnish Nat’l. Airline, 15 N.Y.2d 426, 432 (1965). Dr. Cuber is similarly subject to this court’s jurisdiction. He admits that he maintains a New York medical license. He is listed as affiliated with Allure and Associates, and one of plaintiff’s medical records from her visits with Dr. Cuber bears “Allure Ambulatory Surgical Center” in the heading. Furthermore, although Dr. Cuber denies regularly working at the Staten Island Office, he admits that he has worked there for the day “on occasion” without quantifying the number of days. He is also listed in an online directory for New York plastic surgeons as working out of Allure Plastic Surgery Center’s Manhattan office. There is no basis, however, for the court to exercise jurisdiction over Advanced (Lumbermens Mut. Cas. Co. v. Borden Co., 265 F. Supp. 99, 103 [S.D.N.Y. 1967]; Blackburne v. Homasote Co., 2 A.D.2d 973, 974 [2d Dep’t 1956]), and the complaint is dismissed as against that defendant. Accordingly, it is hereby

ORDERED the motion to dismiss is granted to the extent of dismissing the action against Advanced Surgical Arts Center, LLC, and the complaint is dismissed against said defendant, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the moving parties shall serve a copy of this order with notice of entry upon the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that the remainder of the motion is denied; and it is further

ORDERED that the remaining parties shall appear for their previously scheduled status conference on January 25, 2011, at 10:00 a.m.

Dated: January 4, 2011

**FILED**

JAN 07 2011

NEW YORK  
COUNTY CLERK'S OFFICE

  
\_\_\_\_\_  
JOAN B. LOBIS, J.S.C.