

**Fortune v Good Samaritan Hosp.**

2011 NY Slip Op 33755(U)

September 21, 2011

Sup Ct, Suffolk County

Docket Number: 3787-09

Judge: Denise F. Molia

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## SUPREME COURT - STATE OF NEW YORK I.A.S. Part 39 - SUFFOLK COUNTY

PRESENT:

Hon. DENISE F. MOLIA,  
Justice

KATHY FORTUNE, as Administratrix of the Estate  
of BOBIE JOLIENE FORTUNE, decedent,

Plaintiff,

- against -

GOOD SAMARITAN HOSPITAL, JOAN MARIE  
KENNEDY, N.P., ADHI SHARMA, M.D.,  
BRIANNA VITE, P.A., SARA TREGERMAN, M.D.,  
NORMAN CRUZ, N.P., GREGG M. SZERLIP, D.O.,  
ALICE CAMACHO, M.D., LONG ISLAND  
MEDICAL ASSOCIATES, INC., CVS PHARMACY,  
INC., and CVS ALBANY, L.L.C.,

Defendants.

CASE DISPOSED: NO  
MOTION R/D: 4/19/11  
SUBMISSION DATE: 7/1/11  
MOTION SEQUENCE No.: 013 MOT D  
014 XMOT D  
015 XMOT D  
016 XMOT D  
017 XMOT D  
018 XMOT D

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See Annexed List

Upon the following papers filed and considered relative to this matter:

Notice of Motion dated March 22, 2011; Affirmation dated March 22, 2011; Exhibits A through H annexed thereto; and upon due deliberation; it is

**ORDERED**, that the **Motion** by defendant Gregg M. Szerlip, D.O. (013), for an Order (1) directing the plaintiff to provide Arons authorizations permitting movant's counsel to speak with the Medical Examiner's Office concerning the autopsy performed on the plaintiff's decedent in this matter; (2) directing the plaintiff to provide an authorization for the complete Police Department file without redaction; and (3) directing the plaintiff to provide a Supplemental Bill of Particulars as to outstanding items; the **Cross Motion** by defendants Good Samaritan Hospital Medical Center.; Joan Kennedy, NP, Brianna Vite, PA, Norman Cruz, NP, and Sara Tregerman, MD (014), for an Order (1) directing the plaintiff to provide Arons authorizations permitting cross movants' counsel to speak with the Medical Examiner's Office concerning the autopsy performed of the plaintiff's decedent in this matter; (2) directing the plaintiff to provide an authorization for a complete and unredacted file of the Police Department; and (3) directing the

(RST)

plaintiff to provide a Supplemental Bill of Particulars; the **Cross Motion** by defendants CVS Albany, LLC, i/s/h/a CVS Pharmacy, Inc., and CVS Albany, LLC (**015**), for an Order (1) directing plaintiff to provide Arons authorizations permitting cross movant's counsel to speak with the Medical Examiner's Office concerning the autopsy performed on the plaintiff's decedent in this matter; (2) directing the plaintiff to provide an authorization for the complete Police Department file without redaction; and (3) directing plaintiff to provide a Supplemental Bill of Particulars as to outstanding items; **Cross Motion** by defendant Alicia U. Camacho, M.D. (**016**), for an Order (1) compelling plaintiff to provide Arons authorizations permitting defendant Alicia Camacho, M.D., to speak with the Suffolk County Medical Examiner's Office concerning the autopsy of plaintiff's decedent; (2) directing plaintiff to provide an authorization for the complete and unredacted Suffolk County Police Department file regarding decedent's death; and (3) directing plaintiff to provide a Supplemental Bill of Particulars regarding special damages; **Cross Motion** by defendants CVS Albany, LLC, i/s/h/a CVS Pharmacy, Inc., and CVS Albany, LLC (**018**), for an Order (1) directing the plaintiff to provide Arons authorizations permitting cross movant's counsel to speak with the Medical Examiner's Office concerning the autopsy performed on the plaintiff's decedent in this matter; (2) directing the plaintiff to provide an authorization for the complete Police Department file without redaction; and (3) directing plaintiff to provide a Supplemental Bill of Particulars as to outstanding items; **Cross Motion** by defendant Long Island Medical Associates, Inc. (**019**), for an Order (1) directing the plaintiff to provide Arons authorizations permitting cross movant's counsel to speak with the Medical Examiner's Office concerning the autopsy performed on the plaintiff's decedent in this matter; (2) directing plaintiff to provide an authorization for a complete copy of the Police Department file without redaction; (3) directing the plaintiff to provide a Supplemental Bill of Particulars as to outstanding items; are considered together and decided as follows:

**ORDERED**, that within twenty (20) days from receipt of a copy of this Order with notice of entry, the plaintiff is directed to provide defendants Good Samaritan Hospital, Joan Marie Kennedy, N.P., Brianna Vite, P.A., Sarah Tregerman, M.D., Norman Cruz, N.P., Gregg M. Szerlip, D.O., Alice Camacho, M.D., Long Island Medical Associates, Inc., CVS Pharmacy, Inc., and CVS Albany, L.L.C., with Arons authorizations permitting defendant Alice Camacho, M.D., and counsel for all other defendants seeking the instant relief, to speak with the employee's of the Suffolk County Medical Examiner's Office concerning the autopsy performed on the plaintiff's decedent, Bobie Joliene Fortune; and it is further

**ORDERED**, that within twenty (20) days from receipt of a copy of this Order with notice of entry, the plaintiff is directed to provide defendants Good Samaritan Hospital, Joan Marie Kennedy, N.P., Brianna Vite, P.A., Sarah Tregerman, M.D., Norman Cruz, N.P., Gregg M. Szerlip, D.O., Alice Camacho, M.D., Long Island Medical Associates, Inc., CVS Pharmacy, Inc., and CVS Albany, L.L.C., with an authorization to obtain the complete and unredacted Suffolk County Police Department file regarding the death of the plaintiff's decedent; and it is further

**ORDERED**, that within twenty (20) days from receipt of a copy of this Order with notice of entry, the plaintiff is directed to provide defendants Good Samaritan Hospital, Joan Marie Kennedy, N.P., Brianna Vite, P.A., Sarah Tregerman, M.D., Norman Cruz, N.P., Gregg M. Szerlip, D.O., Alice Camacho, M.D., Long Island Medical Associates, Inc., CVS Pharmacy, Inc., and CVS Albany, L.L.C., with a Supplemental Bill of Particulars as to all outstanding items; and it is further

**ORDERED**, that the **Cross Motion** by defendant Adhi Sharma, M.D. (**017**), pursuant to CPLR 3124 and 3126, for an Order striking the Complaint for willfully refusing to comply with

the discovery demands of Adhi Sharma, M.D., dated July 28, 2010, and the Order of this Court dated November 23, 2010, or in the alternative, precluding plaintiff from offering evidence against Adhi Sharma, M.D., at the time of the trial of this action, is granted to the extent that it is

**ORDERED**, that within twenty (20) days from receipt of a copy of this Order with notice of entry, the plaintiff is directed to provide defendant Adhi Sharma, M.D., with a full and complete response to all outstanding disclosure demands; and it is further

**ORDERED**, that upon the failure of the plaintiff to provide the defendant Adhi Sharma, M.D., with a full and complete response to all outstanding disclosure demands within twenty days from receipt of a copy of this Order with notice of entry, the plaintiff shall be precluded from offering evidence against Adhi Sharma, M.D., at the trial of this action.

The instant action is one sounding in medical malpractice and was commenced by the mother and administratrix of the Estate of the then nineteen year old plaintiff's decedent, Bobie Joliene Fortune. Pursuant to the Bill of Particulars, the plaintiff alleges that the defendants improperly prescribed the decedent a combination of medications, including Flexeril, Cymbalta, and Skelaxin, which led to her death on August 3, 2007. The Suffolk County Police arrived at the scene, conducted an investigation, removed medication vials from the scene, and photographed both the scene and the decedent. Subsequently, an autopsy was performed by Dr. James C. Wilson of the Suffolk County Medical Examiner's Office and a report was issued.

The defendants are now seeking authorizations permitting them to interview employee's of the Medical Examiner's Office in order to discuss the autopsy findings and results. The plaintiff has refused to provide the authorizations, taking the position that Arons authorizations are to be provided only for "health care providers" which does not include a Medical Examiner conducting an autopsy.

In the seminal case of Arons v. Jutkowitz, 9 N.Y.3d 393, 850 N.Y.S.2d 345, 880 N.E.2d 831, the Court of Appeals held that defense counsel in medical malpractice actions are entitled to interview treating physicians of the plaintiff at any time during the pendency of the action. Here, the defendants have requested an authorization to interview personnel from the Office of the Suffolk County Medical Examiner, including any physicians involved in performing the autopsy of Bobie Joliene Fortune. Under the circumstances of this action, it would be reasonable for the defendants to be able to review the full and complete copy of the medical examiner's file, as well as to have the opportunity to discuss the findings of the autopsy with the performing physician. The fact that the physician who performed the autopsy did not "treat" the decedent while she was alive, would not appear to extract him or her from the definition of "treating physicians" as contemplated by the Court of Appeals in Arons v. Jutkowitz. The intent of the decision was to facilitate disclosure and permit defense counsel to speak with those medical providers who are critical to the issues involved in medical malpractice cases. The plaintiffs would not be prejudiced by the granting of the relief sought, while the information obtained by the defendants would seem to be relevant, and possibly critical, to their defense.

The foregoing constitutes the Order of this Court.

Dated: September 21, 2011

*Hon. Denise F. Molia*

HON. DENISE F. MOLIA J.S.C.

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