

Samuel v Itzkovitz

2013 NY Slip Op 33688(U)

February 26, 2013

Sup Ct, Bronx County

Docket Number: 310282/08

Judge: Stanley B. Green

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This opinion is uncorrected and not selected for official publication.

At a IA 6 of the Supreme Court of the State of New York held in and for the County of Bronx, at the Courthouse at 851 Grand Concourse, Bronx, New York, on the 26th day of February 2013.

P R E S E N T:

HON. Hon. Stanley B. Green
Justice Supreme Court Bronx County

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MADELINE SAMUEL, as Administratrix of the Estate of PAMELYNN SAMUEL, deceased Index No.: 310282/08

against- ORDER

INA ITZKOVITZ, M.D., JAMES SILBERZWEIG, M.D.
KENNETH COOKE, M.D. and MANHATTAN'S
PHYSICIAN GROUP d/b/a MANHATTAN'S
PHYSICIAN GROUP OF UPPER MANHATTAN
Defendants.

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Upon reading and filing of the affirmation of Larry Wallace dated January 15, 2013 and the amended affirmation dated February 5, 2013, the exhibits annexed thereto including exhibit "D", the offer letter and closing papers stating that the settlement will be paid by Combined Coordinating Council, Inc. ("CCC"), 14 Penn Plaza, 225 West 34th Street, Suite 720, New York, NY 10122 on behalf of defendants INA ITZKOVITZ, M.D. and JAMES SILBERZWEIG, M.D. only. Defendant INA ITZKOVITZ, M.D. will pay \$300,000.00. Defendant JAMES SILBERZWEIG, M.D. will pay \$100,000.00. The action will be discontinued as to the remaining defendants KENNETH COOKE, M.D. and MANHATTAN'S and PHYSICIAN GROUP d/b/a MANHATTAN'S

PHYSICIAN GROUP OF UPPER MANHATTAN.

To compromise and settle a claim and cause of action for wrongful death of said decedent against defendants, INA ITZKOVITZ, M.D. and JAMES SILBERZWEIG, M.D., KENNETH COOKE, M.D. and MANHATTAN'S and PHYSICIAN GROUP d/b/a MANHATTAN'S PHYSICIAN GROUP OF UPPER MANHATTAN for the sum of FOUR HUNDRED THOUSAND (\$400,000.00) DOLLARS,

AND to allocate the entire amount of such recovery to the claim for and cause of action for the wrongful death of decedent,

AND, *inter alia*, to discontinue the cause of action for pain and suffering and release said defendants and their insuring entities from all suits and claims upon the payment of the aforesaid settlement in compliance with this order, to discontinue the underlying Supreme Court, Bronx County cause of action against the non-paying defendants; to fix and allow and pay to Wallace & Associates, P.C., their fees for services rendered and their disbursements; to allocate, fix and distribute the balance remaining thereafter, to collect and distribute the proceeds of settlement; to dispense with filing of a bond; and to execute and deliver the general releases and all necessary releases, discontinuances, contracts and any other papers necessary to effectuate the said settlement and compromise and the collection and distribution of said proceeds;

NOW, upon motion of Wallace & Associates, P.C., attorney for the plaintiff herein, it is hereby:

ORDERED, the application to compromise and settle a claim and cause of action for wrongful death of said decedent against defendants and to allocate the entire amount of the proceeds to the cause of action for wrongful death and for leave to discontinue the cause of action for

conscious pain and suffering is hereby granted; and it is further,

ORDERED, that the plaintiff, MADELINE SAMUEL, as the Administrator of the Estate of PAMELYNN SAMUEL, is authorized and empowered to settle and discontinue the claims and causes of action for conscious pain and suffering and wrongful death against defendants INA ITZKOVITZ, M.D. and JAMES SILBERZWEIG, M.D. and to discontinue the claims and causes of action for conscious pain and suffering and wrongful death against defendants, KENNETH COOKE, M.D. and MANHATTAN'S and PHYSICIAN GROUP d/b/a MANHATTAN'S PHYSICIAN GROUP OF UPPER MANHATTAN, and plaintiff is authorized to deliver to defendants and/or their attorneys and/or their insurance entities/carriers, such releases, discontinuances, contracts and any other papers or documents necessary to effectuate the settlement and collection and distribution of said proceeds, and it is further,

ORDERED, that the entire settlement sum of FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00) be and the same is hereby allocated to the cause of action for wrongful death, and so much of the action as was for conscious pain and suffering is discontinued with prejudice and without interest, costs and disbursements, and it is further

ORDERED, that so much of the cause of action as is against defendants, KENNETH COOKE, M.D. and MANHATTAN'S and PHYSICIAN GROUP d/b/a MANHATTAN'S PHYSICIAN GROUP OF UPPER MANHATTAN, be and the same is hereby discontinued with prejudice and without costs, and it is further

ORDERED, that the entire settlement shall be paid by defendants, INA ITZKOVITZ, M.D. and JAMES SILBERZWEIG, M.D. or their insuring entities upon receipt of a copy of this Order together with a general release and a stipulation of discontinuance, as follows:

A. From the \$400,000.00 settlement sum to be paid by or on behalf of defendants INA ITZKOVITZ, M.D. and JAMES SILBERZWEIG, M.D the following sums shall be paid to Wallace & Associates, P.C. as fee for services rendered inclusive of disbursements of \$8,631.55 to be paid to Wallace & Associates, P.C. for disbursements and legal fees of \$110,342.11, for a total of \$118,973.66

ORDERED, that subject to Surrogate's Court approval, the defendants, INA ITZKOVITZ, M.D. and JAMES SILBERZWEIG, M.D and/or their insuring entities shall pay the balance of \$281,026.34, to the distributees and that this amount is to be paid by CCC and held in escrow by Wallace & Associates, P.C., pending the issuance of a decree by Surrogate's Court concerning distribution of the settlement proceeds to the distributees, and it is further

ORDERED, that all sums set forth herein constitute damages on account of personal physical injury or physical sickness, within the meaning of 104(a)(2) of the Internal Revenue Code, and it is further

ORDERED, that the distribution of the settlement proceeds after deduction of attorney fees and disbursements shall be determined by the Surrogate Court, and it is further

ORDERED, that the filing of a bond or other security be and the same is hereby dispensed with

ORDERED, that upon collection of the settlement funds, the plaintiff's attorney shall pay all "due and payable expenses, excluding attorneys fees, approved by the court, such as medical bills, funeral costs and other liens on the estate in accordance with EPTL § 5-4.6 (a)(1).

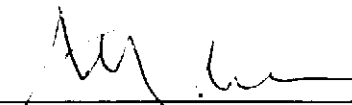
ORDERED, that all attorneys fees for prosecution of the wrongful death action inclusive of all disbursements, shall be immediately payable from the escrow account upon submission to

the trial court of proof of filing of a petition for allocation and distribution in the surrogate's court . . ." EPTL § 5-4.6 (a)(2). Annexed to this order is proof of filing of the Surrogate's Court Petition on February 21, 2013, and it is

ORDERED, that the plaintiff's attorney must continue to serve as attorney for the estate until the entry of a final decree in the surrogate's court in accordance with EPTL § 5-4.6 (a)(3).

Dated: Bronx, NY

ENTER



STANLEY B. GREEN