SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: PART 55

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STATE OF NEW YORK *ex rel.* DOREEN L. LIGHT,

Plaintiff,

- against -

MYRON R. MELAMED, JOSEPH MELAMED, DANIEL MELAMED, UNIVERSITY PATHOLOGY, P.C., and the ESTATE OF MYRON R. MELAMED,

Defendants.

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DECISION/ORDER
Index No. 101451/2014
Mot. Seq. No. 003

Hon. James E. d'Auguste

In this *qui tam*[1] action brought on behalf of the State of New York (the "State"), defendants Dr. Joseph Melamed and Dr. Daniel Melamed ("movants") seek pre-answer dismissal of plaintiff Doreen L. Light's ("plaintiff" or "plaintiff-relator") Amended Complaint, pursuant to CPLR 3211 (a)(1), (a)(7), and (a)(8), for lack of documentary evidence, failure to state a cause of action, and lack of personal jurisdiction over Joseph,[2] a North Carolina resident. For the reasons stated herein, this Court finds that plaintiff's Amended Complaint, construed in the light most favorable to the plaintiff, fails to state a cause of action under the New York False Claims Act (New York State Finance Law ("Finance Law") §§ 187 *et seq.*) ("NYFCA"). Accordingly, movants application is granted, and the instant action is dismissed in its entirety.[3]

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[1] "*Qui tam* is an abbreviation for '*qui tam pro domino rege quam pro se ipso in hac parte sequitur*,' which means 'who pursues this action on our Lord the King's behalf as well as his own.'" *Rockwell Int'l Corp. v. U.S.*, 549 U.S. 457, 463 n.2 (2007), *reh'g denied*, 550 U.S. 954 (2007).

[2] As there are multiple related Dr. Melameds involved in this action, the Court refers to the decedent's, Dr. Myron R. Melamed's, sons by their first names for the purpose of clarity.

[3] The action is also dismissed as to the non-appearing and non-moving defendants: Dr. Myron R. Melamed (deceased), University Pathology, P.C. (defunct), and the Estate of Myron R. Melamed (closed with administrator discharged).

Background

Plaintiff commenced this action by filing an initial Complaint alleging violations of the NYFCA in 2014. After the Office of the Attorney General, on behalf of the State, declined to intervene in this litigation on December 26, 2017, plaintiff elected to continue the action, pursuant to Finance Law section 190(2)(f). On January 19, 2019, plaintiff filed her Amended Complaint alleging a reverse false claim against defendants Dr. Myron R. Melamed ("Dr. Melamed"), Joseph Melamed, Daniel Melamed, University Pathology, P.C. ("UP"), and the Estate of Myron R. Melamed (the "Estate") (collectively, "defendants") for alleged estate tax fraud under the NYFCA. Specifically, the Amended Complaint alleges that defendants violated sections 189(1)(c), (d), and (g) of the Finance Law.

Plaintiff, who was employed for many years as administrator of Dr. Melamed's wholly-owned company, UP, and worked closely with Dr. Melamed for more than twenty years (NYSCEF Doc. No. 32, ¶¶ 2, 17),[4] alleges the following: Dr. Melamed was a prominent pathologist, medical author, and professor who, among other things, chaired Memorial Sloan Kettering Hospital Center's pathology department from 1979 to 1989 and served as director of pathology at Westchester Medical Center from 1991 to 2007. *Id.*, ¶¶ 22-23. Dr. Melamed founded UP in 1991, which included three medical testing laboratories, and he was its sole owner until its sale in 2012. *Id.*, ¶¶ 25-26. Dr. Melamed also made real estate purchases that contributed to his overall wealth, resulting in an estate that was ultimately worth over $12 million. *See id.*, ¶¶ 9, 36.

In or about June 2008, Dr. Melamed's accountants informed him that if he moved from New York to Florida, his estate would save around $1.5 million in taxes. *Id.*, ¶¶ 9, 37. The

[4] Plaintiff states in the Amended Complaint that she began working closely with Dr. Melamed "beginning in 1991 when he became Chairman of the Pathology Department." *Id.*, ¶ 17. Plaintiff states that "Dr. Melamed routinely shared information about his business and personal arrangements with her, including his financial documents and correspondence." *Id.*

Amended Complaint further alleges that to evade his tax obligations as a New York resident, Dr. Melamed conspired with his sons, movants Joseph and Daniel, as well as with his former company, UP, so that upon his death he would be deemed a resident of Florida, as opposed to a resident of New York. *See id.*, ¶¶ 29-34. Dr. Melamed transferred ownership of a home located at 35 Braeside Lane in Dobbs Ferry, New York (the "Dobbs Ferry house") into a Qualified Personal Residence Trust ("QPRT" or "the trust") in 1999, and the trust transferred the property to movants in 2008 or 2009. *Id.*, ¶¶ 28-32. Despite the transfer, Dr. Melamed lived in the Dobbs Ferry house, rent free, until the house was sold in April of 2013 for over $1 million. *Id.*, ¶¶ 33-34. The Amended Complaint alleges that the proceeds of the sale are also chargeable to the estate. *Id.*, ¶ 33. In addition, in or about December 2007, while still living in New York, Dr. Melamed purchased a condominium in Boca Raton, Florida (*id.*, ¶¶ 8, 36) and accepted a buyout from Westchester Medical Center to leave his position as Director of Pathology (*id.*, ¶ 53). Nonetheless, he continued to work in New York and stayed in Florida only occasionally and for short periods of time. *Id.*, ¶¶ 26, 35-38, 53. Upon his decline in 2013, with the exception of a few days in Florida, Dr. Melamed lived at or near movants' homes in Catskill, New York and North Carolina, and he underwent hip replacement surgery and rehabilitation in New York. *Id.*, ¶¶ 76-80. Dr. Melamed died in North Carolina, at Joseph's home, on September 18, 2013. *Id.*, ¶ 80.

The Amended Complaint also describes other steps Dr. Melamed allegedly took to hide his New York residence. *Id.*, ¶¶ 39-46. Among other things, in order to hide the fact that he was still living and working in Westchester County after 2008, plaintiff alleges that Dr. Melamed instructed her to create her own E-ZPass account, which he allegedly used after closing his own personal account (*id.*, ¶ 41); he also purportedly used plaintiff's bottle of "white-out" to alter his bank statements to exclude evidence of New York cash withdrawals that he made (*id.*, ¶ 44); and Dr.

Melamed also used a personal bank account in plaintiff's name to pay monthly expenses related to the upkeep of the Dobbs Ferry house from 2009 through 2013 (*id.*, ¶ 40). In addition, at the direction of Dr. Melamed's accountant, plaintiff alleges she was told that UP "should not issue any W-2 or 1099 tax forms relating to payments to Dr. Melamed" for his services, thereby hiding his true salary and his level of involvement with the New York-based company. *Id.*, ¶¶ 57-58. The Amended Complaint states that, "[a]t a minimum, Dr. Melamed earned $561,680 in taxable income from January 2008 to September 2013," and further claims that he did not report this income to the State and did not pay income tax on that amount as required by law. *Id.*, ¶ 75; *see also id.*, ¶¶ 67, 71, 73-74. Plaintiff further alleges that UP also committed fraud, along with Dr. Melamed, by hiding its payments to him during the years 2008 through 2010 (*id.*, ¶ 72), as UP reported that it only paid Dr. Melamed no income or some small amount of income during those years, when in fact UP paid him a substantially larger unreported amount of income (*id.*, ¶¶ 62-63, 66-67, 70-71).[5] To the extent the Amended Complaint can be read as asserting, the total unreported amount that UP paid Dr. Melamed, some $411,680 in total, should be aggregated with Dr. Melamed's income for the purposes of the $1 million financial limitation of the NYFCA in section 189(4)(a) of the Finance Law, discussed *infra*. *See id.*, ¶¶ 59, 98-102.

[5] In 2008, UP reported that it paid Dr. Melamed only $2,141 and that he worked only 1% of his time on the business; the cost of labor was separately reported as $1,473,882. *Id.*, ¶ 62. According to the Amended Complaint, UP records indicate that Dr. Melamed was paid $239,256 in 2008. *Id.*, ¶ 63. In 2009, UP reported that it paid Dr. Melamed nothing, although the tax return states that he worked 100% of his time on the business; the cost of labor was separately reported as $1,297,738. *Id.*, ¶ 66. According to the Amended Complaint, UP records indicate that Dr. Melamed was paid $149,256 in 2009. *Id.*, ¶ 67. In 2010, UP reported that it paid Dr. Melamed nothing, although the tax return states that he worked 100% of his time on the business; the cost of labor was separately reported as $1,132,780. *Id.*, ¶ 70. According to the Amended Complaint, UP records indicate that Dr. Melamed was paid $23,168 in 2010. *Id.*, ¶ 71. The Amended Complaint further states that UP reported $1.2 million in income in 2008, $1.3 million in 2009, and $778,384 in 2010. *Id.*, ¶¶ 61, 65, 69.

In lieu of an answer, Joseph and Daniel move to dismiss the Amended Complaint as against them. Movants argue that NYFCA does not apply to reverse claims for unpaid estate taxes. Specifically, they argue that NYFCA section 189(4)(a) limits tax claims to those asserted against individuals whose "net income or sales" is more than $1 million. NYSCEF Doc. No. 25, at 17. Movants argue that this language is "nonsensical" in the context of estate taxes, which rarely, if ever, have income or sales. *Id.* Movants also assert that NYFCA seeks to "'crack down on large-scale, multi-state corporate tax fraud schemes'" and not estate tax fraud. *Id.* at 18 (quoting Press Release, "A.G. Schneiderman Launches New Initiative To Bolster Recovery Of Taxpayer Dollars & Fight Government Fraud," (Jan. 27, 2011) (available at https://ag.ny.gov/press-release/ag-schneiderman-launches-new-initiative-bolster-recovery-taxpayer-dollars-fight)).

In addition, movants contend that plaintiff's Amended Complaint must be dismissed even if NYFCA applies to estate tax claims, because the Amended Complaint does not satisfy the requisite financial threshold. *Id.* at 20. Instead, the Amended Complaint alleges that UP paid Dr. Melamed $239,256 in 2008, $149,256 in 2009, and $23,168 in 2010, and that he received at least $561,680 in unreported taxable income between January 2008 and September 2013, totaling an amount of $973,360. *Id.* at 21. Movants contend that the Amended Complaint impermissibly and without legal basis aggregates the incomes of UP and Dr. Melamed. *Id.* Moreover, movants state that "[b]ecause the claims against [them] are premised upon or related to their father's taxpayer liability . . . the fact that [Plaintiff-]Relator has not established the $1 million threshold for tax claims under NYFCA as to Dr. Melamed is fatal to all her claims against Daniel and Joseph." *Id.* at 22. With respect to plaintiff's cause of action under Finance Law section 189(1)(c) for conspiracy, movants argue that absent the commission of a tort, there can be no conspiracy to commit a tort. *Id.* at 25-26.

In her opposition papers, plaintiff argues that the 2010 amendment to the NYFCA has a broad reach and does not exclude estate tax claims. NYSCEF Doc No. 52, at 6-7. Furthermore, plaintiff states that the statute's use of the phrase "net income or sales" does not exclude estate taxes from the reach of Finance Law section 189(4)(a)(i). *Id.* at 8-9. Instead, plaintiff claims that this section of the Finance Law is meant to be interpreted loosely because it relates to the income threshold required to maintain a claim under the NYFCA. *Id.* at 6, 9. Plaintiff also suggests that the aggregation of income of UP and Dr. Melamed is allowable despite the use of the word "person" in the statute because "'[w]ords in the singular number include the plural, and in the plural number include the singular.'" *Id.* at 13 (quoting *Toys R Us v. Silva*, 89 N.Y.2d 411, 421 (1996) (quoting N.Y. Gen. Constr. Law § 35). Plaintiff argues that the true intention of the statute is to reach individuals with assets of over $1 million even if their annual incomes do not reach this amount. *Id.* at 13-14. In another vein, plaintiff argues that the terms "net income or sales" cannot be strictly defined because the terms "net income" and "sales" do not apply in all circumstances. *Id.* at 9. Following this argument, plaintiff analogizes the facts, as alleged, with a company that has assets exceeding $1 million and no net income and argues that in such circumstances, liability still exists under the NYFCA. *Id.* at 9-10. Since the Estate's funds exceeded $1 million, plaintiff contends that the purported estate tax fraud is subject to liability under the NYFCA. *Id.* at 8-9.

In addition, according to plaintiff, UP was Dr. Melamed's alter ego, and therefore their incomes should be jointly considered. *Id.* at 11. The Amended Complaint alleges, *inter alia*, that from 2009 to 2011, UP's tax filings listed his Dobbs Ferry address as the company's main address (NYSCEF Doc. No. 32, ¶ 60); between 2008 and 2010, Dr. Melamed and UP conspired to hide the doctor's income tax obligations (*id.*, ¶ 59); Westchester Medical Center paid UP for consulting services even though Dr. Melamed performed those services himself (*id.*, ¶ 55); and that UP did

not issue tax forms to Dr. Melamed from 2008 to 2010 and the company also understated its payments to the doctor during the same time period (*id.*, ¶¶ 58-67). Plaintiff argues that because Dr. Melamed completely dominated UP's corporate form and used his company to avoid paying taxes to the State, the Court should pierce the corporate veil and aggregate their incomes for the purposes of Finance Law section 189(4)(a). NYSCEF Doc. No. 52, at 11-12.

In opposition to the instant motion, plaintiff also submits her own affidavit which claims, *inter alia*, that "Dr. Melamed treated the income generated by University Pathology as his own funds," paid himself bonuses at will, and used UP funds to pay his personal accountant. NYSCEF Doc. No. 53, ¶ 32 (Light Aff.). Plaintiff also claims that Dr. Melamed deposited funds into UP's account based on his unilateral judgment without any oversight. *Id.*, ¶ 33.

The Office of the Attorney General's Taxpayer Protection Bureau (the "Attorney General"), a non-party, filed a position letter because of its interest in the interpretation of the NYFCA. The AG notes that the legislature limited tax claims

> to those where the net income or sales of the person against whom the action could be brought exceeds $1 million for any taxable year subject to action, and to those where the damages pleaded exceed $350,000, ensuring that only substantial matters would be pursued under this provision, against taxpayers with significant financial stature.

NYSCEF Doc. No. 67, at 1-2. The Attorney General emphatically states that "the legislature placed no limitation as to the *type* of tax that could form the basis for a tax law claim under the NYFCA," and therefore estate tax claims are within the scope of the Act. *Id.* at 2 (emphasis in original). The Attorney General stresses that to exclude estate taxes from the purview of the NYFCA would "plainly and impermissibly create a limitation that the Legislature did not enact." *Id.* (internal quotation marks and citation omitted). The Attorney General takes no position as to

whether the threshold requirement in Financial Law section 189(4)(a) excludes the claim at hand, or whether the parties' other arguments have merit. *Id.*

In reply, movants reiterate that the NYFCA does not apply to estate taxes. *Id.* at 3. Movants reject plaintiff's broad interpretation of the phrase "net income or sales," stating that this ignores the plain meaning of the words. *Id.* at 4. Furthermore, movants claim that a decedent's income during his lifetime is irrelevant to any alleged estate tax fraud. *Id.* at 4-5. Movants also claim that both plaintiff and the Attorney General ignore the black letter law that statutes must be strictly construed. *Id.*; *see id.* at 10 (citing *CIFG Assur. N. Am., Inc. v. J.P. Morgan Sec. LLC*, 146 A.D.3d 60, 66 (1st Dep't 2016)). Movants restate that Dr. Melamed's income did not exceed $1 million for any year during the period in question, that UP's income is irrelevant to the alleged reverse false claim, and that plaintiff's alter ego theory is conclusory and insufficient to defeat the instant motion to dismiss. *Id.* at 11-15.

Discussion

The NYFCA subjects those individuals who knowingly submit false or fraudulent claims for payment or approval to the State to financial penalties along with recoupment of any overcharges. *State of New York ex rel. Grupp v. DHL Exp. (USA), Inc.*, 19 N.Y.3d 278, 288 (2012) ("*Grupp*"). The NYFCA also allows for the assertion of reverse false claims, which "occurs when someone uses a false record to avoid an obligation to pay the government." *State of New York ex rel. Seiden v. Utica First Ins. Co.*, 96 A.D.3d 67, 71 (1st Dep't 2012) ("*Seiden*"), *lv. denied*, 19 N.Y.3d 810 (2012). As is relevant here, pursuant to a 2010 amendment to NYFCA section 190(2)(a), a private individual may commence a *qui tam* action alleging a violation of New York's tax laws. *See Certain Underwriters at Lloyd's London Subscribing to Policy No. QK0903325 v. Huron Consulting Grp., LLC*, 127 A.D.3d 663, 664 (1st Dep't 2015) ("*Certain Underwriters*"), *lv.*

denied, 26 N.Y.3d 913 (2015); *see People v. Sprint Nextel Corp.*, 26 N.Y.3d 98, 106, 107 (2015), *cert denied*, 136 S. Ct. 2387 (2016). Conspiracy to violate NYFCA sections 189(1)(d) and (g) is subject to treble damages and other penalties. NYFCA § 1(c).

Plaintiff's first cause of action is based upon a violation of section 189(1)(g) of the Finance Law, alleging that defendants made fraudulent statements relating to estate tax issues. Section 189(1)(g) of the Finance Law states that a false claim violation arises when anyone "knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state or a local government." Pursuant to a 2010 amendment by the New York State Legislature ("Legislature"), Section 189(4)(a) states that this provision is applicable

> to claims, records, or statements made under the tax law only if (i) the net income or sales of the person against whom the action is brought equals or exceeds one million dollars for any taxable year subject to any action brought pursuant to this article; [and] (ii) the damages pleaded in such action exceed three hundred and fifty thousand dollars.

The purpose of the amendment was "'to provide an additional enforcement tool against those who file false claims under the Tax Law,' and thus 'deter the submission of false tax claims' while also 'providing additional recoveries to the State and to local governments.'" *Sprint*, 26 N.Y.3d at 107 (quoting Letter from State Dep't of Tax & Fin., dated Aug. 4, 2010, at 2; Bill Jacket, L. 2010, ch. 379, at 13).

Further, "[w]here the language of a statute is clear and unambiguous, courts must give effect to its plain meaning, as the literal language of a statute is generally controlling unless the plain intent and purpose of a statute would otherwise be defeated." *New York State Land Title Ass'n, Inc. v. New York State Dept. of Fin. Servs.*, 169 A.D.3d 18, 28 (1st Dep't 2019) (internal quotation marks and citation omitted). This Court cannot "resort to interpretative contrivances to

broaden the scope and application of unambiguous statutes." *Matter of 381 Search Warrants Directed to Facebook, Inc. (New York County Dist. Attorney's Off.)*, 29 N.Y.3d 231, 251-52 (2017) (internal quotation marks and citation omitted).

After careful consideration, the Court concludes that the financial limitations in Finance Law sections 189(4)(a)(i) and (ii) apply to all reverse tax false claim cases. As movants note, the statute is very specific in that it states it applies to tax cases "only if" the alleged perpetrator's net income or sales exceeds $1 million during one of the years at issue. Moreover, this restriction exists only with respect to false claims arising under the tax law. *Id.* "In matters of statutory interpretation, our primary consideration is to discern and give effect to the Legislature's intention." *Desrosiers v. Perry Ellis Menswear, LLC*, 30 N.Y.3d 488, 494 (2017) (citation omitted). Here, the Legislature has made its intentions clear in the words of the NYFCA itself. The Legislature may, upon reflection, determine to refine the financial prerequisites for false estate tax claim cases so that it applies to estates with values exceeding $1 million. On the other hand, the Legislature may not have intended the expansion into tax fraud to reach that far. However, those are legislative determinations rather than judicial determination for this Court to make. As such, this Court is constrained to construe and apply the financial limitations in sections 189(4)(a)(i) and (ii) of the Finance Law in accordance with the Legislature's desires. For this reason alone, plaintiff's claim under Finance Law section 189(1)(g) fails.

Further, plaintiff's additional attempts to bring this case within the purview of the NYFCA must fail. Plaintiff intimates that the sale of the Dobbs Ferry house in 2013 is chargeable to the estate and is part of Dr. Melamed's income. The Amended Complaint's allegations, however, indicate that the creation of the QPRT and subsequent transfer of the Dobbs Ferry house to Joseph and Daniel was perfectly legal. "A QPRT, as a creation of statute and IRS regulation, provides a

tax savings mechanism thought which, for example, a parent may transfer a residence to a child at a dramatically reduced estate and gift tax cost." *Ferrante v. Casey*, 89 Civ. 7062, B.A.P. Nos. CC-14-1222-KiTaPa, CC-14-1223-KiTaPa, at *2 (B.A.P. 9th Cir. 2015) (Mem. Op.). The purpose of the trust "is to lock in place the present day value . . . of the transferor's residence for gift tax purposes, less the value of the grantor's right to occupy the residence during the agreed upon term." *Del Broccolo v. Torres*, 4 Misc. 3d 510, 513 (Sup. Ct. Nassau County 2004). Any increase in the residence's value passes to the beneficiaries without the encumbrance of estate or gift taxes. *Id.* As long as the grantor, such as Dr. Melamed, survives the term during which the property is held in trust, the value of the residence is not included in the grantor's estate for tax purposes. *Id.* As the details in the Amended Complaint show, the Dobbs Ferry house was no longer part of Dr. Melamed's estate when it was sold or when he died and, therefore, the money from the sale was neither income made by Dr. Melamed nor chargeable to his estate. Accordingly, all of plaintiff's claims under the NYFCA as stated in the Amended Complaint must be dismissed.

Additionally, plaintiff's argument that this Court should, in this instance, pierce the corporate veil and add the corporate income of UP to that of Dr. Melamed, lacks merit. "The corporate form will only be disregarded where the arrangement is sham in nature." *State of New York ex rel. Banerjee v. Moody's Corp.*, 54 Misc. 3d 1201(A), at *7, *aff'd sub nom, Anonymous v. Anonymous*, 165 A.D.3d 19 (1st Dep't 2018). Plaintiff's allegations, even as supplemented by her affidavit, offer insufficient reasons to show that UP's corporate veil should be pierced. While plaintiff alleges general financial mismanagement and possible wrongdoing by Dr. Melamed between 2008 and 2012, she does not assert specific facts to indicate that Dr. Melamed completely dominated UP and its three laboratories. Although plaintiff points out that at least in some years, UP used Dr. Melamed's home address as its company address, this fact alone cannot be used to

pierce the corporate veil because plaintiff also claims, in the Amended Complaint, that, as the administrator at University Pathology, she worked "at University Pathology in Elmsford, New York." NYSCEF Doc No. 32, ¶ 44; *see id.*, ¶ 2. Plaintiff, in her Amended Complaint, designates a business location, specifically Elmsford, New York, that is different than Dr. Melamed's Dobbs Ferry address. The fact that UP used Dr. Melamed's home address as its company address for several years, on its own, is not evidence that Dr. Melamed was not adhering to corporate formalities to permit veil piercing in this instance. As such, plaintiff's claims under the NYFCA also fail for this reason.

In light of the foregoing, the Court need not reach the question of whether the NYFCA applies to estate tax claims, although it notes that "the Attorney General's Office is a proper executive agency to take a position on the interpretation of the False Claims Act," and therefore its position carries great weight unless the interpretation is "arbitrary or irrational." *State of New York ex rel. Campagna v. Post Integrations, Inc.*, 60 Misc. 3d 1231(A), at *3, *modified on other grounds*, 162 A.D.3d 592 (1st Dep't 2018). The Court also need not address the parties' other arguments as plaintiff's additional claims under Financial Law sections 189(1)(c) and (d) are barred by the financial limitations set forth in Financial Law sections 189(4)(a)(i) and (ii). As such, plaintiff's remaining claims under Financial Law sections 189(1)(c) and (d) are also dismissed as against all defendants.

Accordingly, it is

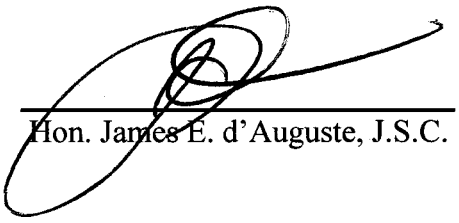
ORDERED that the motion is granted and the Amended Complaint is dismissed as against Joseph Melamed and Daniel Melamed; and it is further,

ORDERED that the remainder of the action is dismissed against non-moving defendants Dr. Myron R. Melamed, University Pathology, P.C., and the Estate of Myron R. Melamed who

have neither answered nor appeared in the instant action and, based upon this Court's holding, it does not appear that plaintiff's claims against these other parties are viable.

This constitutes the decision and order of this Court.

Dated: July 8, 2019



Hon. James E. d'Auguste, J.S.C.