

Lieberman v Rock

2023 NY Slip Op 34032(U)

November 13, 2023

Supreme Court, New York County

Docket Number: Index No. 805325/2019

Judge: Erika M. Edwards

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ERIKA M. EDWARDS

PART 10M

Justice

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SANDRA LIEBERMAN,

INDEX NO. 805325/2019

Plaintiff,

- v -

**DECISION AND ORDER
AFTER INQUEST**

DR. ALEXANDER ROCK, DR. BUTLER REDD III, DR.
ROBERT WINEGARDEN, ROBERT F. WINEGARDEN,
D.D.S., P.C.,

Defendants.

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Plaintiff Sandra Lieberman (“Plaintiff”) brought this dental malpractice action against Defendants Dr. Alexander Rock (“Dr. Rock”), Dr. Butler Redd III (Dr. Redd), Dr. Robert Winegarden (“Dr. Winegarden”) and Robert F. Winegarden, D.D.S., P.C. (“Practice”) (collectively, “Defendants”).

In a decision and order, dated October 21, 2020 (NYSCEF Doc. No. 25), the court granted Plaintiff’s motion and entered default judgments against Defendants Dr. Rock, Dr. Winegarden and the Practice (collectively, “defaulting Defendants”) and ordered an inquest and assessment of damages. The court found that Plaintiff demonstrated sufficient proof of the facts constituting Plaintiff’s claim, as supported by an expert affidavit of Dr. Robert Vogel.

As per the court’s decision and order, dated August 9, 2023 (NYSCEF Doc. No. 29), the court scheduled an inquest for the assessment of Plaintiff’s damages against the defaulting Defendants, Dr. Rock, Dr. Winegarden and the Practice, on September 8, 2023, at 9:30 a.m. and the court directed Plaintiff to serve the defaulting Defendants with a copy of the decision and

order with Notice of Entry. Plaintiff duly served the defaulting Defendants on August 14, 2023.

Subsequently, the court granted Plaintiff's request to appear virtually.

The inquest was held virtually on September 8, 2023, via Microsoft Teams. None of the defaulting Defendants appeared for the inquest, either in person in the courtroom, or virtually on Microsoft Teams. None of the defaulting Defendants contacted the court or Plaintiff's counsel to request an adjournment, nor did any of them request a link to appear virtually. Plaintiff and Plaintiff's counsel appeared virtually. The court permitted Plaintiff's expert to testify via affidavit and he was available should the court wish to question him.

Plaintiff's evidence consisted of the affidavit of Plaintiff's expert, Michael Chesner, D.D.S., dated September 5, 2023, Plaintiff's testimony and three photographs of Plaintiff's mouth.

In his affidavit, Dr. Chesner stated in substance that he has been in private practice in general dentistry for almost fifty years and that although he does not surgically place implants, he routinely restores them and places the prosthesis on the implants. Dr. Chesner stated in substance that upon a review of the facts, Plaintiff went to the Practice on January 27, 2016, in response to an advertisement for a free consultation, inexpensive implants and inexpensive dentistry. Dr. Winegarden examined Plaintiff and explained that they would extract teeth, place implants and make a prosthesis for both her upper and lower arches for \$7,000, but she had to pay in full in advance of the treatment. Dr. Rock extracted teeth and placed three implants on her upper arch without performing a CT Scan. A lab technician, Raimone Perez, placed an upper temporary prosthesis. Dr. Chesner further stated in substance that additional implants were placed on Plaintiff's lower arch, but Plaintiff does not know how many. However, an x-ray taken at Columbia Dental College immediately after leaving the Practice did not show any implants.

Over the next three years, Plaintiff's prosthesis broke several times and Plaintiff repeatedly went back to the Practice for Mr. Perez to repair it. On many occasions, Plaintiff was forced to wait only to be told that they could not treat her and that she would have to come back another time. Plaintiff's temporary prosthesis continually broke and she was left with three implants and no teeth.

Dr. Chesner further stated that the x-rays, which were not admitted into evidence, and photographs demonstrate that Plaintiff had three implants and no teeth on her upper arch. In May 2019, Plaintiff returned to the Practice and found that the Practice was out of business. Plaintiff had three implants on her upper arch with no prosthesis and only a few decayed anterior lower teeth with no prosthesis. Plaintiff had difficulty chewing and she indicated that she appeared to be homeless.

Dr. Chesner further stated that based on his examination of the peri apical x-rays, the panoramic x-ray and photographs of Plaintiff's mouth, he believes with a reasonable degree of certainty that Plaintiff will require extensive implant supported prosthesis. He opined that Plaintiff would need eight new implants on each of her upper and lower arches, at \$4,000 each, for a total of \$32,000 per arch, or \$64,000 total, a CT Scan at \$400, plus an undetermined amount for potential additional costs for sinus surgery and bone grafts.

Dr. Chesner opined in substance that three implants on the upper arch were insufficient to support the prosthesis. He further stated that although Plaintiff may be able to chew for sustenance, "the chewing experience and enjoyment is grossly compromised."

Plaintiff testified in substance that she went to the Practice, which had several names, but was called Toothsavers or Universal, in response to an ad in the paper offering dental implants at what she believed to be a reasonable, inexpensive and cheap price. She met with Dr.

Winegarden, who was in charge of the Practice, and he agreed to do the implants in her entire mouth for \$7,000. He agreed to do as many implants as was necessary. She paid the full amount on the same day in three separate payments of \$3,500, \$3,150 and \$350 on three different credit cards. She was treated by Dr. Winegarden, Dr. Rock, Dr. Redd and the dental assistant, Mr. Raimone. She had to go back several times. Mr. Raimone gave her temporary dentures, but they kept falling out.

Plaintiff further testified that in May 2019, she arrived at the Practice and found a padlock on the door and a Sheriff's notice indicating that the Practice was closed. On her upper arch, all but two of her implants had fallen out and all of them fell out on the bottom. She had x-rays done at three different places, one at Columbia Presbyterian, one in New Jersey and one in Israel, but the estimates for her to get new implants was a minimum of \$25,000 to \$30,000, which was way too high for her to afford to get the work done. She stated that she was unable to get a partial.

Plaintiff further testified that she has difficulty chewing and she is distraught, disgusted, degraded and depressed by her appearance.

Three photographs of Plaintiff's mouth, which were taken on May 21, 2023, June 23, 2023, and late August 2023, respectively, were admitted into evidence. The court notes that the photographs of Plaintiff's mouth show that she has three implants on the top and four teeth, plus what appears to be a small piece of one tooth, on the bottom. Plaintiff testified in substance that another tooth fell out since the photographs were taken.

In his summation, Plaintiff's counsel requested punitive damages and he cited another case that he had against the Defendants, *Garber v. Lynn*, in which punitive damages were

awarded (*Garber v Lynn*, 79 AD3d 401 [1st Dept 2010]). Plaintiff's counsel did not suggest a specific dollar amount for compensatory or punitive damages.

In *Garber v. Lynn*, the First Department effectively increased a jury's award of \$25,000 for past and future pain and suffering to \$90,000 for past pain and suffering and \$60,000 for future pain and suffering and reduced a punitive damages award of \$260,000 to \$100,000.

In *Ambrose v. Rock*, after an inquest against the same defendants, this court awarded the Plaintiff \$80,000 for past pain and suffering, \$18,000 for past expenses and \$100,000 for punitive damages, for a total of \$198,000 (*Ambrose v. Rock*, 2022 NY Slip Op 31334[U] [Sup Ct, New York County 2022]). Unlike in the instant matter, the court found that Plaintiff failed to demonstrate the specific cost for future expenses to correct the improper implants.

Here, the court finds that the defaulting Defendants were duly served with the court's order scheduling the inquest, yet they failed to appear for the inquest. As an initial matter, the court finds the witnesses to be credible. The court also finds that Plaintiff demonstrated that the lab technician, Raimone Perez, performed dental work on Plaintiff without a dental license and that the other defaulting Defendants permitted and/or authorized such unlicensed dentistry services. Plaintiff demonstrated that the defaulting Defendants departed from good and accepted dental practice by improperly placing the dental implants and prosthesis in Plaintiff's upper and lower arch and failing to place a sufficient number of implants to support the upper prosthesis. Although it is unclear how many implants were placed in Plaintiff's lower arch, it is clear that there were none left and Plaintiff was left with no prosthesis and only three teeth, plus a portion of one tooth which all appeared to be in poor condition.

The court also finds that such departures were substantial factors in causing Plaintiff to suffer damages, which included difficulty chewing and no teeth which caused her to become

depressed and degraded over her appearance. The court also finds that Plaintiff demonstrated that she requires extensive future dental treatment to correct the damage caused by the defaulting Defendants.

The court also finds that Plaintiff demonstrated that the defaulting Defendants willfully, wantonly and recklessly permitted Raimone Perez, who was a dental assistant, to illegally perform the improper dental work on Plaintiff. As such, “[b]y having Perez fabricate, place and adjust plaintiff’s temporary bridge, Toothsavers was engaging in exactly the sort of willful or wanton negligence or recklessness that evinces a gross indifference to patient care, warranting deterrence, and supporting submission of the issue of punitive damages to the jury” (*id.* at 403).

The court finds that Plaintiff demonstrated future pain and suffering in the amount of \$30,000 for her continued difficulty chewing and her embarrassment and depression from her appearance until the condition is remedied, as well as the likely pain to undergo the additional dental procedures. However, since Plaintiff failed to state her age, the court cannot determine the estimated number of years for which to award any future damages.

Additionally, the court awards Plaintiff the following:

- 1) \$70,000 for past pain and suffering;
- 2) \$6,500 for Plaintiff’s payments to the Practice (which is slightly reduced, since there is no evidence that the examinations or diagnostic tests were improperly performed);
- 3) \$20,000 for future pain and suffering;
- 4) \$30,000 for the cost of future dental treatment to repair the negligent work, for additional implants and new prosthesis on her upper and lower; and
- 5) \$100,000 for punitive damages.


Therefore, the total amount awarded to Plaintiff is \$226,500.

As such, it is hereby

ORDERED that after the inquest held before the court on September 8, 2023, the court awards Plaintiff Sandra Lieberman \$226,500 in damages as against Defendants Dr. Alexander Rock, Dr. Butler Redd III, Dr. Robert Winegarten and Robert F. Winegarten, D.D.S., P.C.; and it is further

ORDERED that the court directs the Clerk of the Court to enter judgment in favor of Plaintiff Sandra Lieberman in the amount of \$226,500 as against Defendants Dr. Alexander Rock, Dr. Butler Redd III, Dr. Robert Winegarten and Robert F. Winegarten, D.D.S., P.C., jointly and severally.

This constitutes the decision and order after inquest of the court.


ERIKA M. EDWARDS, JSC

DATE: 11/13/2023

Check One: Case Disposed Non-Final Disposition
Check if Appropriate: Other (Specify _____)