

Louz v Fatiha

2024 NY Slip Op 34962(U)

October 16, 2024

Supreme Court, Kings County

Docket Number: Index No. 504927/2021

Judge: Ellen M. Spodek

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This opinion is uncorrected and not selected for official publication.

At Part 63 of Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, New York, on the 16th day of October, 2024.

PRESENT:

HON. ELLEN SPODEK,
Justice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
ELI LOUZ,

Plaintiff,

-against-

JACK FATIHA, M.D. and JACK FATIHA, M.D., P.C.,

Defendants.
-----X

Index No. 504927/2021

DECISION
AND ORDER OF THE COURT

MS # 4

Order to Show Cause and Supporting Papers	NYSCEF Docs. 92, 93, 95-97
Affirmation in Opposition	None Submitted
Reply Affirmation	n/a
Filed Documents (Affidavits of Service)	NYSCEF Docs. 98-99

Defendant JACK FATIHA, M.D. moved by Order to Show Cause for an Order pursuant CPLR Article 78 to mandate that KINGS COUNTY CLERK and OFFICE OF MEDICAID INSPECTOR GENERAL vacate the Medicaid lien which was erroneously entered as a judgment lien against JACK FATIHA, M.D.; and to mandate that KINGS COUNTY CLERK remove any listings and entries that record, document and notice any Medicaid lien erroneously entered as a judgment lien against JACK FATIHA, M.D.

FILED

OCT 21 2024

KINGS COUNTY CLERK'S OFFICE

4042109

Factual Background and Procedural History

This case arises out of care and treatment received by plaintiff, Eli Louz between December 2016 and March 2021. Mr. Louz alleged that defendant Dr. Jack Fatiha, his primary care physician was negligent and failed to diagnose his chronic kidney disease.

Plaintiff commenced the instant medical malpractice action by filing a summons and complaint on or about March 1, 2021. NYSCEF Docs. 1.

A Verified Answer and Demand for a Verified Bill of Particulars, inter alia, was served on behalf of Defendants DR. JACK FATIHA and JACK FATIHA, M.D., P.C., on or about March 24, 2021. NYSCEF Docs. 3.

On April 13, 2022, when the action was still pending, respondent KINGS COUNTY CLERK entered a Medicaid lien as a judgment lien directly against DR. JACK FATIHA under case number 4042109.

On September 7, 2022, Defendants moved for summary judgment. NYSCEF Docs. 53-70.

On July 10, 2023, this Court granted Defendants' motion for summary judgment and dismissed Plaintiff's complaint with prejudice. NYSCEF Docs. 82.

No settlement or judgment granting any compensation or financial reward was entered in this matter.

Discussion

JACK FATIHA, M.D. is not and has never been the recipient of the subject Medicaid benefits. JACK FATIHA, M.D. was a defendant in the underlying medical malpractice lawsuit [Index No.: 504927/2021], where Plaintiff Eli Louz was a Medicaid recipient.

Based on the record, the Medicaid lien was erroneously entered as a judgment lien directly against JACK FATIHA, M.D. pursuant to the Notice of Lien served by the Office of the Medicaid

Inspector General pursuant to Social Services Law §104-b. NYSCEF Doc. 93. Notice of Lien is not a judgment or sufficient basis for a lien to be entered against any individuals, businesses, or their assets. Having a legal basis to pursue a Medicaid recovery from an individual, by itself, does not confer the authority to place a lien against that individual's property.

There are two main situations in which Medicaid liens may be imposed:

- 1) On the real property of a permanently institutionalized Medicaid recipient, to recover, at the time the property is sold, the cost of Medicaid provided to the permanently institutionalized individual. SSL Section 369(2)(a)(ii); and
- 2) On the proceeds of a Medicaid recipient's pending personal injury lawsuit, to recover from the liable third party the cost of Medicaid provided to the recipient. SSL Sections 104-b and 369(2)(c).

Pursuant to the Social Services Law §104-b and 369(2)(c), New York State Department of Health has a subrogation claim of repayment from the proceeds in medical malpractice actions. New York State Department of Health does not have a direct lien or claim against the defendant in the medical malpractice lawsuit.

Here, JACK FATIHA, M.D. was never a Medicaid beneficiary, and no proceeds were awarded, received or paid as a result of this medical malpractice action which is now dismissed pursuant to the Order granting Summary Judgment to JACK FATIHA, M.D. and JACK FATIHA, M.D., P.C.

Even if this matter was still pending, pursuant to SSL Sections 104-b and 369(2)(c), a Medicaid lien may only be imposed against the proceeds of a Medicaid recipient's pending personal injury lawsuit. There is no legal basis for this kind of a lien to be imposed on the real property or assets of a defendant in a personal injury lawsuit seeking recovery of the cost of Medicaid provided to the Medicaid recipient.

THEREFORE, upon oral argument and the order to show cause being unopposed, it is hereby

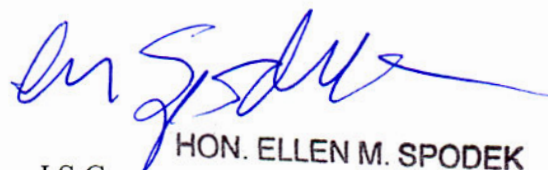
ORDERED, that Defendant Jack Fatiha's order to show cause and application for an order mandating that KINGS COUNTY CLERK and OFFICE OF MEDICAID INSPECTOR GENERAL vacate the Medicaid lien erroneously entered as a judgment lien against JACK FATIHA, M.D., and that KINGS COUNTY CLERK remove any listings and entries that record, document and notice any Medicaid lien erroneously entered as a judgment lien against JACK FATIHA, M.D. is GRANTED with prejudice, and it is further

ORDERED, that the Medicaid lien erroneously entered as a judgment lien against JACK FATIHA, M.D. is hereby vacated with prejudice upon the filing of a notice of entry, and it is further,

ORDERED that KINGS COUNTY CLERK is mandated upon receipt of notice of entry of this Order to remove any listings and entries that record, document and notice the Medicaid lien erroneously entered as a judgment lien against JACK FATIHA, M.D.

THIS CONSTITUTES THE ORDER AND JUDGMENT OF THE SUPREME COURT, KINGS COUNTY.

ENTERED:



HON. ELLEN M. SPODEK

J.S.C