

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

FACE

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RONALD PASQUALINO,

CASE NO: _____
FL BAR NO.: 353991

02003510

Plaintiff,

vs.

TLC THE LASER CENTER (INSTITUTE), INC., a
Maryland Corporation, operating as TLC Laser Eye Center,
Fort Lauderdale, JON S. JACOBS, O.D., and
STANLEY BRAVERMAN, M.D.,

Defendants.

COMPLAINT

The Plaintiff, RONALD PASQUALINO, by and through his undersigned attorney, hereby files his Complaint against the Defendants, TLC THE LASER CENTER (INSTITUTE), INC. operating as TLC LASER EYE CENTER - FORT LAUDERDALE, (hereinafter "TLC"), JON S. JACOBS, O.D., (hereinafter "Dr. Jacobs") and STANLEY BRAVERMAN, M. D. (hereinafter "Dr. Braverman"), and alleges:

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CLERK OF CIRCUIT COURT
BROWARD COUNTY, FLORIDA

COUNT I
GENERAL ALLEGATIONS

1. This is an action for damages that exceed the jurisdiction of this court.
2. At all times material hereto, the Plaintiff, RONALD PASQUALINO, was a resident of Broward County, Florida, is over the age of eighteen and is *sui juris*.
3. At all times material hereto, the Defendant, TLC, was a Maryland corporation authorized to do business in Florida and was doing business as TLC Laser Eye Center, located at 450 East Las Olas Blvd., Suite 130, Fort Lauderdale, Broward County, Florida.

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4. At all times material hereto, the Defendant, DR. JACOBS, was a licensed optometrist in the State of Florida and was Executive Director of the Defendant, TLC, Fort Lauderdale.

5. At all times material hereto, the Defendant, DR. BRAVERMAN, was a licensed medical doctor specializing in the area of ophthalmologist in the State of Florida and was the Director of Surgery of the Defendant, TLC, Fort Lauderdale. Dr. Braverman performs LASIK surgeries on a regular basis at TLC, Fort Lauderdale.

6. The Plaintiff has met all conditions precedent to §766.104, Florida Statutes and undersigned counsel certifies that a reasonable investigation of this claim gives rise to a good faith belief that grounds exist for medical malpractice against the defendants named herein. A copy of the Affidavit of James J. Salz, M. D. is attached hereto as **Exhibit "A"**.

7. Prior to December 9, 1999, the Plaintiff had worn corrective lenses for much of his life for nearsightedness.

8. In July of 1999, the Plaintiff was desirous of obtaining LASIK surgery, a treatment for nearsightedness using lasers.

9. On or about July 29, 1999, the Plaintiff presented himself to the defendant, TLC, for examination and screening for possible LASIK correction surgery.

10. The examination and screening including ocular measurements and topography mapping of both eyes.

11. Following the examination and screening of July 29, 1999, TLC determined the Plaintiff to be a candidate for LASIK and at the suggestion of the Defendants, was scheduled for surgery on both eyes simultaneously, December 9, 1999.

12. On December 8, 1999, the day before the scheduled surgery, the Plaintiff presented for additional topography mappings of both eyes.

13. On December 9, 1999, the Plaintiff underwent bilateral LASIK surgery, performed by Defendant, DR. BRAVERMAN, with a target of O.D. (right eye) plano and O.S. (left eye)-1.00 monovision.

14. Following the procedure, it initially appeared that the Plaintiff's eyes were stable. However, his visual acuity began to worsen and he returned to TLC on May 1, 2000 for examination. At the time of this visit, the Plaintiff complained of a dramatic drop in his visual acuity, more so on the left, with glare in both eyes. He returned again on May 30, 1999 and the examination again revealed a significant loss of visual acuity in the left eye. On June 20, 1999, another examination revealed a further drop in visual acuity and the Plaintiff was advised to undergo an enhancement procedure.

15. On June 22, 2000, the Defendant, DR. BRAVERMAN, performed an enhancement procedure on the Plaintiff's left eye. After one week, the Plaintiff had a significant drop in his visual acuity.

16. The Plaintiff was examined at the suggestion and direction of defendant, DR. BRAVERMAN and had topographic mapping done at least five (5) times at TLC following the June 22, 2000 enhancement procedure.

17. On November 4, 2000, the Defendant, DR. BRAVERMAN, performed yet another enhancement procedure on the Plaintiff's left eye and again, the Plaintiff experienced a significant drop in his visual acuity post operatively. He was ultimately fit with a hard, gas permeable contact

lense by Defendant, DR. JACOBS. However, the Plaintiff was never told why he had such a failed response to the original LASIK procedure or to the two (2) subsequent “enhancement” procedures.

18. Dissatisfied with the results and treatment, the Plaintiff sought a second opinion from Massachusetts Eye and Ear Institute, Boston, Massachusetts and at Bascom Palmer Eye Institute, where doctors diagnosed the Plaintiff as having keratoconus and informed him that he was never a candidate for LASIK and should never have had the LASIK procedure performed.

19. As a result of the negligent LASIK procedures that were performed and the failure to diagnose that the Plaintiff had keratoconus, the Plaintiff has suffered severe, debilitating and permanent injuries, including but not limited to damage to his corneas which now requires bilateral corneal transplants.

COUNT I
LACK OF INFORMED CONSENT

20. The Plaintiff reavers and realleges paragraphs 1 through 19 of the General Allegations above as if fully set forth herein and further alleges:

21. On or about July 29, 1999, the Plaintiff received a pre-procedure evaluation from the Defendants, TLC and DR. BRAVERMAN, which included but was not limited to topography mapping of the Plaintiff’s right and left eyes. The Plaintiff was not informed that he had keratoconus in both eyes, a condition that is contraindicated for LASIK surgery and placed the Plaintiff at risk for serious complications, including total loss of vision.

22. On December 8, 1999, the Plaintiff again received a pre-procedure evaluation at defendant, TLC from the Defendant, DR. BRAVERMAN, which included but was not limited to

topography mapping of the Plaintiff's right and left eyes. Again, the Plaintiff was not informed that he had keratoconus in both eyes and images reflected in the topography maps taken on December 8, 1999 show the Plaintiff was unstable and not a candidate for surgery on December 9, 1999.

23. Topography mapping performed on the Plaintiff prior to the subsequent "enhancement procedures" on June 22, 2000 and then on November 4, 2000, revealed unstable refractions and significant inferior corneal steepening indicative of post LASIK keratoectasia. As a result, neither enhancement surgery should have been performed.

24. The Defendants, TLC, DR. BRAVERMAN and DR. JACOBS, failed to advise the Plaintiff that he was risking loss of his vision by undergoing the initial LASIK procedure on both eyes as well as the two (2) subsequent "enhancement" procedures.

25. Had the Plaintiff been informed that he had keratoconus and was not a candidate for LASIK and was at risk for severe complications, including total loss of vision, Plaintiff would not have undergone the procedures.

26. As a result of the negligent LASIK procedures that were performed, the Plaintiff has suffered severe and permanent damage to both eyes resulting in bilateral corneal transplants, past and future pain and suffering, mental anguish, loss of earnings and loss of the ability to earn money in the future, inconvenience, loss of the enjoyment of life, medical expenses past and future.

COUNT II
NEGLIGENCE AGAINST STANLEY BRAVERMAN, M. D.

27. The Plaintiff reavers and realleges paragraphs 1 through 19 above as if fully set forth herein and further alleges:

28. At all times material hereto, Defendant, DR. BRAVERMAN, was an agent, apparent agent, servant and employee of TLC and acted on behalf of said co-defendant within the course and scope of his employment/agency for said Defendant and further, had a duty to exercise that degree of care and skill in examining, diagnosing, treating and performing eye surgery on the Plaintiff, commensurate with the professional standard of care.

29. The Defendant, DR. BRAVERMAN, was grossly negligent, careless and breached said duty as follows:

- a. Failing to properly examine and screen the Plaintiff pre-procedure;
- b. Failing to properly diagnose the Plaintiff's keratoconus;
- c. Failing to determine that the Plaintiff was not a proper candidate for LASIK;
- d. Approving the Plaintiff and recommending Plaintiff for LASIK procedure when Defendant knew or should have known that the Plaintiff had keratoconus and was not a candidate for the procedure;
- e. Incorrectly reading the topography maps of the Plaintiff or alternatively, by not recognizing that the topography maps Defendant, BRAVERMAN, used to screen the Plaintiff were topography maps of someone other than the Plaintiff.
- f. Utilizing topography maps of someone other than the Plaintiff in pre-screening the Plaintiff for LASIK;
- g. Negligently performing two (2) "enhancement" procedures on the Plaintiff when Defendant knew or should have know that the Plaintiff had keratoconus.
- h. Negligently performing the original LASIK procedure and two (2)

- a. properly examine and screen the Plaintiff pre-procedure;
- b. properly diagnose Plaintiff's keratoconus;
- c. determine that the Plaintiff was not a proper candidate for LASIK;
- d. that the LASIK procedures were not appropriate procedures for the Plaintiff when Defendant knew or should have known that the Plaintiff had keratoconus and was not a candidate for the LASIK procedures;
- e. correctly performed and/or read the topography maps of the Plaintiff or alternatively, failing to recognize that the topography maps Defendant, BRAVERMAN, used to screen the Plaintiff were topography maps of someone other than the Plaintiff.

34. Defendant, DR. JACOBS, also breached his professional duty to the Plaintiff by negligently permitting the performance of the original LASIK procedure and two (2) subsequent enhancement procedures on the Plaintiff after the agents, apparent agents and employees of defendant, TLC, relied on incorrect, inaccurate and/or improperly read and interpreted topography maps which would have revealed that the Plaintiff had keratoconus.

35. As a result of the negligence of Defendant, DR. JACOBS, the Plaintiff has suffered severe and permanent damage to both eyes resulting in bilateral corneal transplants, past and future pain and suffering, mental anguish, loss of earnings and loss of the ability to earn money in the future, inconvenience, loss of the enjoyment of life, medical expenses past and future.

WHEREFORE, the Plaintiff demands judgment against this Defendant for all damages and further demands a trial by jury on all issues so triable.

COUNT IV
Vicarious Liability of TLC

36. The Plaintiff repeats and realleges paragraphs 1 through 19 of the General Allegations as if fully set forth herein and alleges further:

37. At all times material hereto, the Defendants, DR. BRAVERMAN and DR. JACOBS, were employees, agents or apparent agents of the Defendant, TLC, and were acting within the course and scope of their employment and authority.

38. At all times material hereto, the Defendant, TLC, is responsible and vicariously liable for the negligent acts or omissions of its employees, agents or apparent agents acting within the course and scope of their employment or agency.

39. At all times material hereto, the negligent acts or omissions and breach of duty as set forth herein by and through its agents, representatives, apparent agents and/or employees fell below the prevailing professional standard of care.

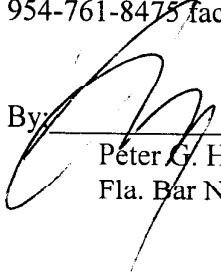
40. As a direct and proximate result of the negligence of the Defendant, TLC, the Plaintiff has suffered severe and permanent damage to both eyes resulting in bilateral corneal transplants, past and future pain and suffering, mental anguish, loss of earnings and loss of the ability to earn money in the future, inconvenience, loss of the enjoyment of life, medical expenses past and future.

WHEREFORE, the Plaintiff demands judgment against this Defendant for all damages and further demands a trial by jury on all issues so triable.

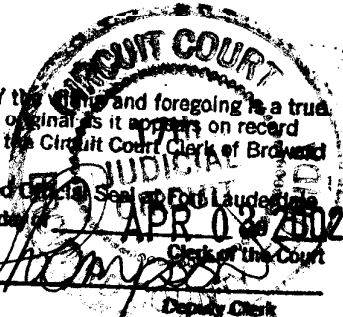
Pasqualino v. TLC, etc.

Dated this 18th day of February, 2002.

TRIPP SCOTT
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By: 
Peter C. Herman
Fla. Bar No. 353991

STATE OF FLORIDA
BROWARD COUNTY
I DO HEREBY CERTIFY that the foregoing is a true and correct copy of the original as it appears on record and file in the office of the Circuit Court Clerk of Broward County, Florida.
WITNESS my hand and Seal at Fort Lauderdale, Florida, this the 18 day of February, 2002.


W. D. Thompson
Deputy Clerk

possibly keratoconus;

b. There is marked difference in the black and white copies of the topography dated 12/8/99 and 12/9/99 and the color copies with Mr. Pasqualino's name and exactly the same date and time as the black and white copies. It is clear that the color copies are not the same as the black and white copies. This is apparent from the general appearance of the maps and the distinctly different SimK values for each eye on the black and white and color copies. The color copies are not suspicious for keratoconus and most likely represent maps from another patient. For example, Mr. Pasqualino was found to have 3.5 D of astigmatism with the steep axis at 5 degrees on his refraction recorded on 12/9/99. The black and white maps of 12/8/99 indicates almost 3 D of astigmatism with the steep axis at 6 degrees and the map of 12/9/99 indicates almost 3 D of astigmatism with the steep axis at 12 degrees. Both of these black and white maps would be consistent with Mr. Pasqualino's refraction for that eye. The color maps of the same dates indicate only about 1 D of astigmatism, which is not consistent with his refraction for that eye.

c. The colored map dated 7/29/99 reflect SimK values for the right eye that are considerable different than the black and white maps of 12/8/99 and 12/9/99. If these are truly both images of Mr. Pasqualino's right eye then he was unstable and not a candidate for surgery. In fact, this color image cannot be of Mr. Pasqualino because the left eye color map of the same date clearly shows the typical postoperative central flattening (blue zone) typical of a postoperative patient. Of course, Mr. Pasqualino did not have surgery until 12/9/99.

d. The refractions prior to the surgery on the left eye on 6/22/00 and then on 11/4/00 were unstable and the topography showed significant inferior corneal steepening indicative of post LASIK keratoectasia and neither surgery should have been performed.

4. Clearly, based upon the foregoing, it seems apparent that someone tried to substitute

