

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LAWRENCE H. REIF,

Index No. 122758/01

Plaintiff,

- against -

AMENDED COMPLAINT

DR. ALAN SCHLUSSEL, DR. MARTIN L.
FOX, DR. WILLIAM TULLO, THE LASER
CENTERS, INC.,

Defendants.

FILED
JUN 26 2002
COUNTY CLERK'S OFFICE
NEW YORK

Plaintiff as and for his Amended Verified Complaint, by his
attorneys, alleges as follows:

I. The Parties. Jurisdiction and Venue

1. Plaintiff Lawrence H. Reif is an individual who resides in the State, City and County of New York. Plaintiff is an attorney admitted to practice law in the State of New York

2. Defendant Alan Schlusssel ("Dr. Schlusssel") is an adult individual who at all times relevant to this action was an optometrist licensed to practice and practicing optometry in the State of New York.

3. Defendant Martin L. Fox, M.D. ("Dr. Fox") is an adult individual who at all times relevant to this action was an ophthalmologist licensed to practice and practicing ophthalmic medicine within the State of New York.

4. Defendant Dr. William Tullo ("Dr. Tullo") is an adult individual who at all times relevant to this action was an optometrist licensed to practice and practicing optometry within the State of New York. At all relevant times, Drs. Schlusssel, Fox and Tullo maintained offices within the State, City and County of New York.

5. Defendant The Laser Centers, Inc..(the "Center," with Drs. Schlusssel, Fox and Tullo, the "Defendants") is a corporation licensed to practice medicine within the State of New York.. At all times relevant herein, the Center maintains numerous locations within the United States including in the State, City and County of New York.

II. The facts

6. At all relevant times, beginning from on or about February 22, 1989, Mr. Reif was an optometric patient of Dr. Schlusssel.

7. At all times until January of 2000, Mr. Reif wore eyeglasses. He suffered from poor vision due to astigmatism, was severely nearsighted, had convergence insufficiency with exo-deviation at near tasks, and suffered from strabismus.

8. At all relevant times, Dr. Schlusssel was or should have been aware of Mr. Reif's conditions described above.

9. From February 1989 to March 5, 1993, while under Dr. Schlusssel's care, Plaintiff's eyeglass prescription became stronger and the exo-deviation at near tasks worsened.

10. On or about April 23, 1997, Plaintiff returned for a follow up vision examination with Dr. Schlusssel. During this examination, Dr. Schlusssel did not measure the exo-deviation in Plaintiff's eyes.

11. On or, about August 11, 1999, Plaintiff returned for another follow-up vision examination with Dr. Schlusssel. During this examination, Dr. Schlusssel informed Plaintiff that he was an "excellent candidate" for laser eye surgery. This type of procedure is also referred to as "Lasik" eye surgery.

12. Lasik eye surgery is a form of laser surgery wherein a laser is used to reshape the cornea to help the eye focus better on light and to provide better vision.

13. During the August 11, 1999 eye examination, Dr. Schlusssel did not measure Plaintiff's pupils to determine whether or not he was an appropriate candidate for the procedure.

14. Plaintiff, in fact, was not a proper candidate for Lasik eye surgery, given his severe nearsightedness, severe astigmatism and very large pupils. Moreover, Plaintiff's condition of convergence insufficiency was a contraindication for Lasik eye surgery.

15. Nevertheless, after the August 11, 1999 eye examination with Dr. Schlusssel, Plaintiff, based upon his conversation with Dr. Schlusssel, considered having the Lasik eye surgery to improve his vision and, as represented by Dr. Schlusssel, to improve his lifestyle.

16. In reliance upon Dr. Schlusssel's recommendation, the Plaintiff agreed to have Lasik eye surgery. The surgery was scheduled for January 26, 2000, at the Center. The surgery was to be performed by Dr. Fox.

17. Prior to surgery, on or about January 12, 2000, Plaintiff returned to Dr. Schlusssel for a pre-operative evaluation. At that time, Plaintiff's subjective vision was OD 20/20 w/ - 5.00 = -2.25 x 095, OS 20/20 w/- 5.00 = -2.00 x 075, autorefractive OD -4.50 = 2.25 x 088, OS - 4.50 = -2.50 x 073, Keratometry OD/One Diopter astigmatism, OS/One Diopter astigmatism.

18. During this visit, Dr. Schlusssel did measure Plaintiffs pupils. He found that Plaintiffs pupils measured 6 mm in dim lighting.

19. Prior to the surgery, Plaintiff, concerned about the size of his pupils and how it may affect the Lasik eye surgery, questioned Dr. Schlusssel in that regard. Dr. Schlusssel informed Plaintiff that, although his pupils were large, he should not worry about their size.

20. At no time during this pre-operative evaluation did Dr. Schlusssel consider and/or evaluate or record the exo-deviation in Plaintiff's eyes.

21. At no time prior to performing the surgery did Dr. Fox perform a complete eye examination, including an evaluation for strabismus. On information and belief, Dr. Fox also did not review Dr. Schlusssel's records. Dr. Fox nevertheless determined that Plaintiff was a proper candidate for the surgery.

22. On or about January 26, 2000, Dr. Fox performed vision corrective Lasik eye surgery upon the Plaintiff at the Center.

23. On or about January 27, 2000, one day after the surgery, Dr. Tullo examined the Plaintiff: Plaintiff complained of seeing glare and having halo¹ and star burst vision².

24. On February 2, February 16, March 7 and April 25, 2000; respectively, Plaintiff was seen post-operatively by Dr. Schlusssel. During each visit, Plaintiff complained of eye discomfort including, but not limited to, dryness, pain, halos, glare, starbursts and fatigue. On April 25, 2000, Dr. Schlusssel noted horizontal striae and recommended that Plaintiff return to see Dr. Fox.

¹ Halo vision is a form of glare and refers specifically to fuzzy, cloudy light that moderately surrounds objects at night.

² Starburst is an optical effect surrounding brightly lit sharper points of light.

25. The post-operative symptoms of which the Plaintiff complained and from which he suffered are consistent with symptoms caused by striae of the flap. Upon information and belief, horizontal striae is a sign of corneal irregularity and represents a sign of poor flap position in the earliest days after surgery.

26. On or about May 1, 2000, Plaintiff was examined by Dr. Fox. Plaintiff informed Dr. Fox of the vision problems he was experiencing since surgery. Dr. Fox provided Plaintiff with an eyeglass prescription.

27. On or about May 9, 2000, Plaintiff returned to Dr. Schluskel with worsening symptoms. Dr. Schluskel again noted horizontal striae.

28. On June 13, 2000, upon the recommendation of Dr. Fox, Dr. Schluskel performed RGP hard contact lens test. The test, however, did not relieve Plaintiff of the halos and glare.

29. During his examination on June 13, 2000, Dr. Schluskel again noted the exo-deviation and striae.

30. Plaintiff is an attorney who practiced in the areas of leveraged lease and securitization financing, securities and general corporate law. As such, Plaintiff was required to read voluminous amounts of documents, often involving small-print reading. From the date of the Lasik eye surgery to date,

Plaintiff has experienced, and continues to experience, difficulty reading and performing his work-related duties.

31. On July 18, 2000, a Punctual Plug was inserted into Plaintiff's right eye, but this procedure failed to provide Plaintiff any relief from his symptoms. Additionally, Plaintiff received reading rehabilitation software on July 20, 2000.

32. On or about June 15, 2000 and July 13, 2000, Plaintiff was examined by Dr. John A. Seedor, who examined Plaintiff's eyes and noted central corneal flap striae, nuclear cataracts, a pupil diameter of 7 mm in dim lighting, and enough tear film irregularity to require punctual plugs. He also noted that corneal modeling analysis revealed irregular contours in the central line of sight of both corneas, causing irregular variability of the refractive power of the central corneal.

33. As a result of the injuries caused by Defendants, Plaintiff was and continues to be unable to perform his job duties.

34. On or about November 8, 2000, a visual skills profile was performed. This profile determined that Plaintiff performed near vision tasks poorly due to the presence of untreated or recently created weakness of convergence strength and stamina.

35. This condition rendered Plaintiff unable and incapable of reading for any more than short periods of time.

36. The profile further revealed manifest exophoria of 12 prism diopters at near vision tasks.

37. As a direct result of his inability to perform the requisite duties of his employment, Plaintiff's employment was terminated on April 12, 2001.

AS AND FOR A CAUSE OF ACTION
FOR NEGLIGENCE AND MEDICAL MALPRACTICE

38. Plaintiff repeats each and every statement alleged in paragraphs "1" through "37" as if fully restated herein.

39. At all times relevant hereto the Defendants were acting individually and/or through their agents, servants, employees, work persons, residents, interns, nursing staff, and attending physicians, within the scope of their authority for and on the business of said Defendants and under their direct control and right to control and at all times relevant hereto had actual and/or constructive knowledge of the treatment that Plaintiff received by them individually or by others under their direct control and supervision.

40. Drs. Schlussel, Fox and Tullo were at all times relevant hereto, and with respect to the treatment of Plaintiff herein, held out by the Center as, and were in fact, its agents, implied agents, ostensible agents, servants, workmen, and/or employees of the Center and were acting within the scope of their authority and employment and with the actual and

constructive knowledge and acquiescence of the Center. Furthermore, Plaintiff, acting in good faith, had reason to believe and did actually believe and rely on his belief that Defendants were providing medical services to him on their own behalves and/or as agents of and on behalf of the Center and that the Center was jointly and severally responsible for, and would be bound by, the acts and omissions of Drs. Schluskel, Fox and Tullo.

41. Drs. Schluskel, Fox and Tullo, respectively, directly and/or through their agents, servants and employees, accepted the responsibility of providing appropriate and adequate medical care to the Plaintiff in accordance with prevailing standards of medical practice and in accordance with community, state and national standards and codes, including, but not limited to, those rules and regulations promulgated by the State of New York.

42. At all times relevant hereto, the Center directly and/or through contractual agreements with Drs. Schluskel, Fox and Tullo, undertook responsibility, through its respective bylaws, rules and regulations and other rules and regulations imposed by statute or otherwise, to assure that only competent practitioners be allowed to evaluate patients, perform surgery and/or engage in the practice of medicine and eye treatment.

43. On August 11, 1999, Dr. Schlussek failed accurately to evaluate Plaintiff as a candidate for Lasik eye surgery.

44. The Defendants, each individually and collectively, failed accurately to measure Plaintiffs pupils.

45. The Defendants, each individually and collectively, failed to record and evaluate evidence of exo-deviation.

46. The Defendants, each individually and collectively, failed to review Plaintiffs medical history to determine whether he was a proper candidate for Lasik eye surgery.

47. The Defendants, each individually and collectively, negligently referred Plaintiff for Lasik eye surgery, as his medical history clearly precluded Plaintiff from this type of surgery.

48. Dr. Fox and the Center negligently failed to perform a complete examination which would have disclosed Plaintiffs vision and other ophthalmic abnormalities.

49. The Defendants, each individually and collectively, negligently failed properly to evaluate Plaintiff post-surgically to identify the horizontal striae.

50. Drs. Fox and Tullo and the Center negligently failed properly to evaluate Plaintiff post-operatively.

51. The Center negligently failed to establish and enforce in place procedures generally accepted in the medical community

that would have detected the factors that made the Lasik eye surgery inappropriate.

52. The Defendants, each individually and collectively, deviated from the accepted standards for medical and ophthalmic care and treatment prevailing in the community in which they maintain their respective practices as a result of which, Plaintiff sustained severe, serious and permanent injuries.

53. As a direct result of the foregoing, the Plaintiff was rendered sick, sore, lame and disabled; he requires further medical care and attention and, upon information and belief, was seriously and severely injured and damaged, sustained severe nervous shock and mental pain and anguish, great physical pain, discomfort, and emotional upset; is unable to perform his customary and usual daily activities; sustained personal injuries of a permanent and protracted nature; and, upon information and belief, will continue to experience same in the future; and has been otherwise damaged.

54. Some of the foregoing injuries are permanent in nature and duration. As a direct result of Defendants negligence, Plaintiff suffers constant and permanent pain, inconvenience and other effects of such injuries.

55. The Plaintiff has incurred and in the future necessarily will incur further hospital and/or medical expenses in an effort to be cured of said injuries, and the Plaintiff

will be unable to pursue his usual duties with the same degree of efficiency as prior to this accident; all to his great damage.

56. As a direct result of the negligence of all of the Defendants, Plaintiff was terminated from his position and cannot secure an appropriate alternate position as an attorney.

AS AND FOR A SECOND CAUSE OF ACTION
FOR LACK OF INFORMED CONSENT

57. plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs "1" through "56" as if fully restated herein.

58. The defendants, their agents, servants and/or employees were negligent and careless in failing to obtain informed consent, in that a reasonably prudent person in the patient's position would not have accepted the diagnosis and, thereafter, undergone the treatment rendered, if he or she had been fully informed. Lack of informed consent is a proximate cause of the injury or condition for which recovery is sought.

59. As a result of the foregoing, infant plaintiff sustained damage and injury, was disabled, suffered physical injuries, pain, and mental anguish, was compelled to seek medical care and attention, and incurred expenses thereof.

WHEREFORE, the Plaintiff, Lawrence Reif, demands judgment against the Defendants, jointly and/or severally, in an amount to be determined at trial but in no event less than ten million dollars (\$10,000,000) in compensatory damages and twenty million dollars (\$20,000,000) in punitive damages, plus the costs, disbursements and attorney fees incurred by the Plaintiff, and all other relief deemed by this Court to be just and appropriate.

Dated: New York, New York
June 24, 2002

ATTORNEY'S VERIFICATION

The undersigned, an attorney admitted to practice in the courts of New York State, affirms under the penalty of perjury:

1) Your affirmant is a member of the firm of the attorneys of record for PLAINTIFF (s) in the within action; your affirmant has read the foregoing AMENDED COMPLAINT knows the contents thereof; the same is true to your affirmant's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters your affirmant believes it to be true.

2) This verification is made by your affirmant and not by plaintiff because plaintiff does not reside in the county where your affirmant's office is located and/or is presently out of town.

3) The grounds of your affirmant's belief as to all matters not stated upon your affirmant's own knowledge are as follows: investigation, correspondence and conferences.

Dated: New York, New York
June 24, 2002

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
LAWRENCE H. REIF

Plaintiff(s),

-against-

DR. ALAN SCHLUSSEL, DR. MARTIN L. FOX,
DR. WILLIAM TULLO AND THE LASER
CENTERS, INC.

Defendant(s).
-----X

CERTIFICATE OF MERIT

(MEDICAL OR DENTAL MALPRACTICE ACTION)

an attorney admitted to practice in the
State of New York and affiliated with the firm of

affirms the truth of the following under penalties of
perjury:

(CHECK THE APPLICABLE BOX):

1. X I have reviewed the facts of the case and have consulted with at least one physician or dentist who is licensed to practice in this State or any other State and who I reasonably believe is knowledgeable in the relevant issues involving this particular action, and I have concluded on the basis of such review and consultation that there is a reasonable basis for the commencement of this action;
2. I was unable to obtain the consultation required by CPLR 3012(a)(1) because a limitation of time established by Article 2 of said law would bar the action and that the certificate required could not reasonably be obtained before such time expired.
- 3a. I was unable to obtain the consultation by CPLR 3012(a)(1) because three separate good faith attempts were made with three separate physicians or dentists to obtain

such consultation, and none of those contacted would agree to such consultation.

3b. _____ I intend to rely solely on the doctrine of "res ipsa loquitur," and for that reason, no consultation is required.

3c. _____ A request has been made for the records of the plaintiff's medical or dental treatment by the defendants, and such records have not been produced. As such, we are not required to serve a Certificate of Merit until ninety days after such records have been produced.

Duly Affirmed the

24th day of June, 2002