

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

Index No. 02115608

SCOTT SILSTAT,

Plaintiff

Plaintiff designates
New York County as the
place of venue is
Plaintiff's Residence

MARK G. SPEAKER, M.D., PH.D, and ILLINOIS
EYE CENTERS, INC.

SUMMONS

Defendant(s)

To the above named Defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the state of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
July 12, 2002

FILED

JUL 12 2002

NEW YORK
COUNTY CLERK'S OFFICE

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

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Index No.

SCOTT SHILSTAT

Plaintiff,

VERIFIED COMPLAINT

Against

MARK G. SPEAKER, M.D., PH.D, and TLC LASER
EYE CENTERS, INC.

Defendants
-----X

Plaintiff, Scott Shilstat, by his attorney,

complaining of the Defendants, Mark

G. Speaker, M.D., PH.D and TLC Laser Eye Centers, Inc. respectfully
alleges, upon information and belief, as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times hereinafter mentioned, the plaintiff
Scott Shilstat is an individual who lawfully resides at
2. Upon information and belief, at all relevant times
hereinafter mentioned, the defendant Mark G. Speaker, M.D. PH.D was and
is a physician duly licensed to practice medicine in the State of New
York and TLC Laser Eye Center, Inc. was a Canadian corporation
operating in New York State under New York's Long Arm Statute.
3. Upon information and belief, at all relevant times
hereinafter mentioned, the defendant's, Mark G. Speaker, M.D. PH.D
maintained an office for the practice of medicine at 115 East 67th

Street, 10th Floor, New York, NY 10022 and TLC Laser Eye Center Inc. maintained an office for the practice of medicine at N^o 10022 115 East 57th Street, 10th Floor, New York, NY 10022 and 181 Bay Street Suite 150 Toronto, ON M5J 2T3.

4. Upon information and belief, at all relevant times hereinafter mentioned, defendants held themselves out to be skilled in the field of ophthalmology, including, but not limited to, diagnosis, surgery, treatment, and after-care management.

5. At all times hereinafter mentioned, the plaintiff was a patient of defendant's and under their care, supervision, and control with respect to his medical condition commencing in and around January 1999.

6. On January 14, 1999, the plaintiff was admitted to the TLC Laser Eye Center, Inc. offices for the laser eye procedure under the medical diagnosis, care and treatment of the defendant's, TLC Laser Eye Center, Inc. and Mark G. Speaker, M.D., PH.D.

7. That said surgical procedures, upon information and belief, were performed based upon the defendant's preoperative diagnosis of nearsightedness and astigmatism in both eyes.

8. The Plaintiff had follow-up treatments with the defendant's, TLC Laser Eye Center, Inc. and Mark G. Speaker, M.D., PH.D. from January 14, 1999 through present.

9. That the plaintiff remained under the continuous diagnosis, care and treatment of the defendants TLC Laser Eye Center, Inc. and Mark G. Speaker, M.D., PH.D., through the present, and as a result of the foregoing medical diagnosis, care and treatment, including, but not limited to, the diagnosis, surgeries, discharge, aftercare management and follow-up medical treatment, the plaintiff was caused to sustain severe injuries and complications, including but not

limited to: loss of vision, itchiness, redness and severe dryness of both eyes, and star burst affect.

10. Said occurrence was due to the carelessness and negligence and/or departed from good medical practice of the defendant's, TLC Laser Eye Center, Inc. and Mark G. Speaker, M.D., PH.D., in that said medical services were performed in a careless and unskilled manner and/or that defendants failed to reasonably perform said necessary medical services constituting professional negligence and/or departed from good medical practice resulting in serious and permanent injuries to the plaintiff.

11. That the defendant's negligence and/or departed from good medical practice performance of those medical services, included but was not limited to, an examination of plaintiff which was inadequate, insufficient, and below the accepted standard of care imposed upon the defendant with regard to the proper treatment and care of the plaintiff.

12. Further, that said surgical procedure and follow-up performed upon plaintiff by defendant was inappropriate, contraindicated, unnecessary, and the result of a misdiagnosis by the defendant.

13. Further, those defendants, TLC Laser Eye Center, Inc. and Mark G. Speaker, M.D., PH.D. failed to perform standard and necessary follow-up care.

14. Those defendants, TLC Laser Eye Center, Inc. and Mark G. Speaker, M.D., PH.D. had unskilled and unsupervised non-physicians perform all post surgery treatment and follow-up care of the plaintiff all to his detriment.

15. That as a proximate result of the professional negligence and/or departed from good medical practice

defendants, the plaintiff, Scott Shiletat, has been seriously, painfully and grievously injured in a necessary and vital part of his body with destruction and impairment of a part of his anatomy which is essential for normal functioning, rendering him sick, sore and disabled; plaintiff was required to obtain necessary further surgical, medical and nursing aid, attention and treatment; plaintiff has suffered physical pain and great mental anguish; plaintiff has suffered a loss and impairment of a body system or function and psychological injuries with sequelae therefore; plaintiff was incapacitated from performing his usual duties; plaintiff has suffered a loss of enjoyment and quality of life, and substantial medical expenses plaintiff's ability to perform ordinary and routine duties has been impaired; plaintiff has lost considerable amount of time from work and the future ability to earn a living and plaintiff's injuries are permanent and lasting, either in their nature or their effects.

16. That all of the above occurred through no fault or lack of care on the part of the plaintiff herein.

17. That because of the foregoing, the plaintiff, Scott Shiletat sustained and suffered serious and severe injuries and complications as a result of the defendant's negligence and/or departed from good medical practice, all to his damage in a sum, which exceeds the monetary jurisdictional limits of all courts of inferior jurisdiction of the state.

AS AND FOR A SECOND CAUSE OF ACTION:

18. Plaintiff repeats and realleges each and every allegation contained within paragraphs "1" through "17" with the same force and effect as if set forth herein.

19. As a result of the failure to properly diagnose and treat plaintiff's ophthalmological condition by way of the accepted medical procedure and in performing such treatment in such a negligent and/or departed from good medical practice and careless manner, the plaintiff Scott Shilstat was caused to sustain severe and permanent injuries.

20. That the defendants were negligent and/or departed from good medical practice as set forth below:

- a. In that they failed to take care in their efforts to test, treat and cure plaintiff;
- b. In that they carelessly and recklessly failed to provide reasonable and proper medical care and skill, and further failed to provide subsequent medical care and skill, and further failed to provide medical aftercare and treatment that was accepted and proper in such circumstances; which failure and neglect thereafter caused plaintiff to become severely and permanently injured;
- c. In that the defendants failed to exercise the knowledge, skill and diligence which as a physician he should have possessed and exercised on plaintiff's behalf;
- d. In that defendants failed to use and employ all referral procedures medically accepted under the circumstances and failed/refused to properly consult with other health care providers;
- e. In that defendants failed to perform the necessary tests and procedure in the accepted manner appropriate to the true condition of the plaintiff;

f. That the defendants, in fact, negligence and/or departed from good medical practice, misdiagnosed the plaintiff's true condition and then performed an operation upon the person of the plaintiff and engaged in a course of treatment which was contraindicated.

g. In that defendants, who held themselves out as having skills of a specialist in ophthalmological care and treatment, failed to perform the skills required of him by accepted medical practice during and following the treatment of plaintiff's condition and in all of these respects failed to use due, reasonable and proper skill and care.

21. That by reason of the negligence of defendant Scott Shilstat sustained and suffered serious and severe injuries and complications as a result of the defendant's malpractice; all to his damage in a sum which exceeds the monetary jurisdictional limits of all courts of inferior jurisdiction of the state.

AS AND FOR A THIRD CAUSE OF ACTION

22. Plaintiff repeats and realleges each and every allegation contained within paragraphs "1" through "11" with the same force and effect as if stated herein.

23. Defendants failed to inform the plaintiff of the risks, hazards and alternatives connected with the procedures utilized in connection within ophthalmological surgical procedure involved herein and the possible sequelae therefrom, so that an informed consent could be given.

24. Reasonably prudent persons in the plaintiff's position would not have consented to the procedures utilized in connection with the ophthalmological surgery involved herein and/or the post-operative course of care and treatment for the complications which arose herefrom, if they had been fully informed of the risks, hazards and alternatives connected with said procedures and such aftercare treatment.

25. The failure to adequately and fully inform the plaintiff of the risks, hazards and alternatives of the procedures and aftercare treatment utilized in connection with the ophthalmological surgical procedures performed by defendant and its sequelae is a proximate cause of the injuries sustained by the plaintiff.

26. As a consequence of the foregoing, there was no informed consent to the surgical procedures and aftercare treatment plan utilized by the defendant in connection with the diagnosis, testing examination, surgery, treatment plan and the complications, which arose therefrom.

27. That by reason of the foregoing, the plaintiff, Scott Shilstat sustained and suffered serious and severe injuries and complications as a result of the defendant's malpractice, all to his damage in a sum, which exceeds the monetary jurisdictional limits of all courts of inferior jurisdiction of the state.

WHEREFORE,

A) Count 1: Plaintiff demands judgment against the defendant in such a sum as a jury would find fair, adequate and just, but in an amount not less than five million dollars (\$5,000,000.00).