

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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LYNETTE BELL,

Plaintiff,

Index No.:

vs.

DR. DMITRY GERBER, SOUTHERN
WESTCHESTER OB/GYN ASSOCIATES,
ST. JOHN'S RIVERSIDE HOSPITAL, JOHN
DOES 1-15,

SUMMONS

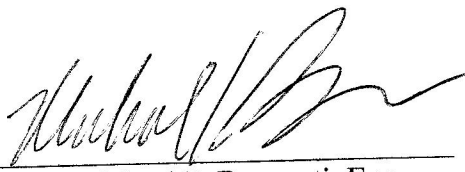
Plaintiff resides in Yonkers,
New York

Defendants.

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To the above named defendants:

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff's counsel a verified answer to the verified complaint in this action within twenty days after the service of this summons, exclusive of the day of service, or within thirty days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
October 24, 2012



Michael P. Benenati, Esq.
Law Office of Michael Benenati, P.C.
Attorneys for Plaintiff
450 Seventh Avenue, Suite 2205
New York, New York 10123
(212) 239-1614

NOTICE: The Nature of this Action is medical malpractice and negligence.

RELIEF SOUGHT: The relief sought is monetary damages in an amount which exceeds the jurisdictional limit of all lower courts.

To: St. John's Riverside Hospital
967 North Broadway
Yonkers, New York 10701

Dr. Dmitry Gerber
1022 North Broadway
Yonkers, New York 10701

Southern Westchester OB/GYN Associates, LLP
1022 North Broadway
Yonkers, New York 10701

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
LYNETTE BELL,

Plaintiff,

Index No.:

VERIFIED COMPLAINT

vs.

DR. DMITRY GERBER, SOUTHERN
WESTCHESTER OB/GYN ASSOCIATES, LLP,
ST. JOHN'S RIVERSIDE HOSPITAL, JOHN
DOES 1-15,

Defendants.
-----X

Plaintiff, Lynette Bell ("Plaintiff"), by and through her counsel, Law Office of Michael Benenati, P.C., as and for a Verified Complaint against Defendants alleges that at all times hereinafter mentioned:

1. Plaintiff resides at 27 Ludlow Street, Apt. 3F, Yonkers, County of Westchester County, State of New York.
2. At all times material herein, Plaintiff was a patient of each of the Defendants.
3. At all times material herein, Defendant, Dr. Dmitry Gerber was and is licensed to practice medicine in the State of New York.
9. At all times material hereto, Defendant, Dr. Dmitry Gerber, confined his medical practice to the specialty of Obstetrics and Gynecology.
10. At all times material hereto, Defendant, Dr. Dmitry Gerber, held himself out to Plaintiff as being a physician who was competent and qualified in the field of Obstetric and Gynecology, and performing a hysteroscopy, dilation and curettage and performing an endometrial ablation using a hydrothermal ablation device.

11. Upon information and belief, Defendant Southern Westchester OB/GYN Associates, LLP, is and was a Limited Liability Partnership, with a principal place of business located at 1022 North Broadway, Yonkers, Westchester County, State of New York.

12. Upon information and belief, Defendant Southern Westchester OB/GYN Associates, LLP, held itself out to the general public in Yonkers, New York, and its environs, to be a competent and skilled medical care facility for patients for the purpose of providing and rendering medical care and treatment.

13. Upon information and belief, Defendant Dmitry Gerber was and is a partner of Southern Westchester OB/GYN Associates, LLP.

14. Upon information and belief, Defendant Dr. Dmitry Gerber was and is a limited partner of Southern Westchester OB/GYN Associates, LLP.

15. Upon information and belief, Defendant Dr. Dmitry Gerber was an is an employee of Southern Westchester OB/GYN Associates, LLP.

16. Upon information and belief, Defendant, St. John's Riverside Hospital, is and was a not for profit corporation with a principal place of business located at 967 North Broadway, Yonkers, New York, Westchester County, State of New York.

17. Upon information and belief, Defendant, St. John's Riverside Hospital, held itself out to the general public in Yonkers, New York, and its environs, to be a competent and skilled medical care facility for patients for the purpose of providing and rendering medical care and treatment.

18. One or more of the exceptions set forth in CPLR Section Sixteen Hundred Two applies to this action or claim for damages.

19. Plaintiff received medical care and treatment, surgical procedures and examinations from Defendant, Dr. Dmitry Gerber, on or about April 4, 2012, and received medical care and treatment, surgical procedures and preparations, and examinations, up to and including upon information and belief January 2010 through June 2012.

20. Plaintiff received nursing care, treatment, examinations, emergency room care, and surgical procedures and or operations at the defendant, Souther Westchester OB/GYN Associates, LLP's facilities, through its physicians, agents, servants, employees, associates and subcontractors from upon information and belief January 2010 through June 2012.

21. Plaintiff received hospital and nursing care, treatment, examinations, emergency room care, and surgical procedures and or operations at Defendant, St. John's Riverside Hospital facility, through its physicians, agents, servants, employees, associates and subcontractors from April 3, 2012 through July 26, 2012.

AS AND FOR A FIRST CAUSE OF ACTION

22. Plaintiff repeats and realleges those allegations of the complaint marked and designated herein as paragraphs "1" through "21" with the same force and effect as if herein set forth at length.

23. On April 4, 2012, all Defendants, individually and/or jointly and severally, through their agents, servants, employees, associates and/or subcontractors carelessly and negligently rendered medical care and treatment to the Plaintiff, including but not limited to negligently performing an hysteroscopy, negligently failing to inspect the equipment used in the hysteroscopy procedure, causing and allowing a 2nd degree burn on the area of Plaintiff's right thigh, resulting in significant disfigurement and permanent scarring.

24. On April 4, 2012, all Defendants, individually and/or jointly and severally, through their agents, servants, employees, associates and/or subcontractors were careless and negligent in departing from accepted medical practices in the care, treatment and in services rendered to Plaintiff, in treating Plaintiff in a manner that was contrary to the standards of accepted medical practices; that Defendants committed malpractice in that they failed to follow the medical standards adhered to by the medical community; Defendants failed to follow conformed and accepted medical procedures; Defendants failed to meet all medical standards to protect patients who are undergoing a hysteroscopy from being burned; Defendants failed to properly use the hysteroscope; Defendants failed to inspect the hysteroscope used in the hysteroscopy causing Plaintiff to sustain a 2nd degree burn; and otherwise being careless and negligent by failing, neglecting and omitting to take, use and employ reasonable and proper steps and procedures and practices for the health, safety and welfare of Plaintiff, thereby causing and contributing to the injuries sustained by Plaintiff.

25. Solely by the reason of the foregoing, Plaintiff suffered personal injuries to her right thigh with additional surgery and complications and was compelled to submit to medical and hospital care and attention in an attempt to be cured of said injuries. Such personal injuries were caused without any fault of Plaintiff.

26. By reason of the above, Plaintiff was caused to sustain severe and irreparable personal injury and damages, and conscious pain and suffering.

27. By reason of the foregoing, Plaintiff has been damaged in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

AS AND FOR A SECOND CAUSE OF ACTION

28. Plaintiff repeats and realleges those allegations of the complaint marked and designated herein as “1” through “27”, with the same force and effect as if herein set forth at length.

29. At all times material herein, upon information and belief, Defendant, St. John’s Riverside Hospital, employed doctors, nurses, physical therapists, technicians and other medical staff personnel in the operation of its hospital to provide medical care.

30. At all time material herein, upon information and belief, Defendant, St. John’s Riverside Hospital, owned, operated, and controlled the management and administration of its medical facility.

31. At all time material herein, upon information and belief, Defendant, St. John’s Riverside Hospital, hired, trained, supervised, controlled and directed its employees, agents and/or servants, including its doctors, nurses, physical therapists, technicians and other medical staff personnel and specifically, Defendant Dr. Dimitry Gerber and Southern Westchester OB/GYN Associates, LLP.

32. At all time material herein, upon information and belief, Defendant, St. John’s Riverside Hospital, represented that its hospital and agents, servants, employees, associates and/or subcontractors thereat were adequate, competent, experienced, trained and skillful, as might be required.

33. At all time material herein, upon information and belief, Defendant, St. John’s Riverside Hospital, agreed and undertook to faithfully, skillfully, professionally, diligently and carefully, and in accordance with the approved and accepted standards of common practices

prevailing in hospitals in its locality, to correctly diagnose, treat, and care for the condition that Plaintiff was suffering from while at its hospital.

34. Defendants, individually, or by their agents, servants, employees, associates and/or subcontractors, failed and neglected to properly perform a hysteroscopy, failed and neglected to inspect the equipment used in the hysteroscopy; and caused and allowed Plaintiff to sustain a 2nd degree burn to her right thigh resulting in serious and permanent injuries.

35. Defendants, individually or jointly and severally by agents, servants, employees, associates and/or subcontractors failed to adhere to the written policies and procedures and/or protocols with respect to properly performing a hysteroscopy.

36. All of the foregoing was occasioned and caused by the carelessness, negligence, unprofessionalism, unskillfulness, unfaithfulness, negligent training and/or hiring, negligent inspection or testing of equipment, and negligent supervision of all Defendants, individually or jointly and severally, through their agents, servants, employees, associates and/or subcontractors without any negligence on the part of Plaintiff contributing thereto.

37. Solely by the reason of the foregoing, Plaintiff suffered personal injuries to her right thigh with additional surgery and complications and was compelled to submit to medical and hospital care and attention in an attempt to be cured of said injuries.

38. By reason of the above, Plaintiff was caused to sustain severe and irreparable personal injury and damages, and conscious pain and suffering.

39. By reason of the foregoing, Plaintiff has been damaged in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

AS AND FOR A THIRD CAUSE OF ACTION

40. Plaintiff repeats and realleges those allegations of the complaint marked and designated herein as "1" through "39" with the same force and effect as if herein set forth at length.

42. That at no time during the aforesaid care and treatment rendered by Defendants was Plaintiff ever advised, either orally or in writing, of the possible risks and dangers, nor the possibility of permanent damage occurring to her body, with regard to the care being rendered or withheld, nor was Plaintiff ever advised that she might suffer severe personal damages; specifically, a burn to a part of her body not associated with the procedure she was undergoing at the time, and had Defendants or their agents, servants, employees, associates or subcontractors informed or advised Plaintiff of the possible risks and dangers involved, Plaintiff would not have been lulled into a false sense of security and would not have consented to the treatment rendered or withheld, or the advice given, which resulted in her sustaining a 2nd degree burn to her right thigh and the damages incurred by Plaintiff herein.


43. That reasonably prudent persons in Plaintiff's position would not have chosen to have the treatment rendered or withheld, or accepted the advice given, if she had been fully informed, and such lack of informed consent was a proximate cause of the injuries and damages for which recovery is sought.

44. By reason of the foregoing, Plaintiff has been damaged in a sum of money having a present value that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction of this matter.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- a. On the First Cause of Action, in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter;
- b. On the Second Cause of Action, in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter;
- c. On the Third Cause of Action, in a sum of money having a present value which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter;
- d. Together with the costs and disbursements of this action; and
- e. Such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
October 24, 2012



Michael P. Benenati, Esq.
Law Office of Michael Benenati, P.C.
Attorneys for Plaintiff
450 Seventh Avenue, Suite 2205
New York, New York 10123
(212) 239-1614

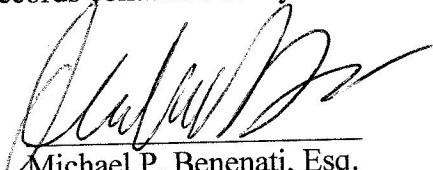
VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Michael P. Benenati, states the following under penalty of perjury:

I am counsel to Plaintiff in the within action; that I have read the foregoing complaint and know the contents thereof; that the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This verification is made by me instead of Paintiff because she is not within the county where I maintain my office.

As to those matters alleged upon information and belief, the source of my information and the grounds for my belief are investigative materials and records contained in my file.


Michael P. Benenati, Esq.

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Michael P. Benenati, states the following under penalty of perjury:

I am counsel to Plaintiff in the within action; that I have read the foregoing complaint and know the contents thereof; that the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This verification is made by me instead of Paintiff because she is not within the county where I maintain my office.

As to those matters alleged upon information and belief, the source of my information and the grounds for my belief are investigative materials and records contained in my file.

Michael P. Benenati, Esq.