

<p>Mejia v Laffer</p>
<p>2013 NY Slip Op 30524(U)</p>
<p>March 6, 2013</p>
<p>Supreme Court, Suffolk County</p>
<p>Docket Number: 10778/2012</p>
<p>Judge: William B. Rebolini</p>
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Short Form Order

SUPREME COURT - STATE OF NEW YORK

I.A.S. PART 7 - SUFFOLK COUNTY

PRESENT:

WILLIAM B. REBOLINI
Justice

Antonia Mejia, as Administratrix of the
Estate of Jennifer Mejia, deceased and
Antonia Mejia, individually,

Plaintiff,

-against-

David Laffer, Melinda Brady, Suffolk County
Police Department, Stan Xuhui Li, Eric Jacobson,
Eric Jacobson, M.D., P.C., Mark C. Kaufman and
Family Medical Practice of Bay Shore, P.C.,

Defendants.

Index No.: 10778/2012Attorneys/Parties [See Rider Annexed]Motion Sequence No.: 003; MOT.DMotion Date: 9/17/12Submitted: 12/12/12Motion Sequence No.: 004; XMOT.DMotion Date: 9/17/12Submitted: 12/12/12Motion Sequence No.: 005; XMOT.DMotion Date: 10/24/12Submitted: 12/12/12

Upon the following papers numbered 1 to 31 read upon this motion and cross motion for an order dismissing the complaint and the cross-motion for leave to amend: Notice of Motion and supporting papers, 1 - 4; Notice of Cross Motion and supporting papers, 5 - 11; 12 - 20; Answering Affidavits and supporting papers, 21 - 22; 23 - 24; 25 - 26; Replying Affidavits and supporting papers, 27 - 28; 29 - 31; it is

ORDERED that the motion (#003) by defendant Stan X. Li, M.D., sued in this action as Stan Xuhui Li, M.D., (Dr. Li), for an order dismissing the verified complaint is granted only to the extent that plaintiff's claims for recovery in medical malpractice are dismissed, and such motion is otherwise denied; and it is further

ORDERED that the cross-motion (#004) by defendant, Family Medical Care of Bay Shore, P.C., sued in this action as Family Medical Practice of Bay Shore, P.C. (Family Medical), for an order dismissing the complaint and all cross-claims against it is denied; and it is further



ORDERED that the separate cross-motion (#005) by plaintiff, Antonia Mejia, as the Administratrix of the Estate of Jennifer Mejia, deceased, and Antonia Mejia, individually, is granted to the extent it seeks an order granting leave to file and serve an amended complaint to add a cause of action for recovery under General Obligations Law §11-103; and it is further

ORDERED that such cross-motion by plaintiff is also granted to the extent it seeks an order awarding a default judgment against defendants David Laffer and Melinda Brady, and any further proceedings for the assessment of damages and entry of judgment against said defendants are deferred until such time as the claims against the non-defaulting defendants are disposed of, whether by trial or other means, and in all other respects the cross-motion by plaintiff is denied.

This action arises out of the horrific murders which occurred on June 19, 2011, when David Laffer shot and killed four people while robbing the Haven Drugs pharmacy in Medford, New York. Defendant Melinda Brady was an accomplice with Laffer in the crimes. One of the victims was plaintiffs' decedent Jennifer Mejia, who was working in the pharmacy. Laffer was arrested, charged and ultimately convicted on his plea of guilty to robbery and murder in the first degree. He is currently serving four consecutive life sentences. Defendant Melinda Brady was also arrested, charged and convicted in connection with the incident. Plaintiff commenced this action to recover damages for the alleged conscious pain and suffering and wrongful death of decedent Mejia.

Recovery is sought against movant Dr. Li upon allegations that he prescribed to defendants Laffer and Brady an excessive number of pain medications known to be addictive without determining whether they were receiving similar prescriptions from other sources. It is also alleged that the doctor "knew or should have known that persons addicted to prescription pain medications are prone to commit crimes in an effort to obtain drugs." In addition, plaintiff claims that the cross-movant Family Medical is vicariously liable for the alleged actions of its employee, Mark Kaufman, in prescribing an excessive number of addictive pain medications.

On a motion to dismiss the complaint for failure to state a cause of action, the court must determine whether, accepting as true the factual averments of the complaint and granting plaintiffs every favorable inference which may be drawn from the pleading, plaintiffs can succeed upon any reasonable view of the facts stated (*Bartlett v Konner*, 228 AD2d 532, 644 NYS2d 550 [2d Dept 1996]). In considering a case in which the facts "clearly elicit a visceral response, and '[t]he human desire that there should be some recovery for this tragedy is understandable'" (*Eiseman v State of New York*, 70 NY2d 175, 185, 511 NE2d 1128, 518 NYS2d 608 [1987])" it has been recognized that emotion can not govern the determination of legal liability (see *Fox v Marshall*, 88 AD3d 131, 135, 928 NYS2d 317 [2d Dept 2011]).

A duty of reasonable care owed by a tortfeasor to a plaintiff is elemental to any recovery in negligence (*Fox v Marshall*, *supra* at 88 AD3d 135, citing *Pulka v Edelman*, 40 NY2d 781, 358 NE2d 1019, 390 NYS2d 393 [1976]). The question of whether a defendant owes a duty of care to another person is a question of law for the court (*Citera v County of Suffolk*, 95 AD3d 1255, 1258, 945 NYS2d 375 [2d Dept 2012]). While generally there is no duty to control the conduct of third

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persons to prevent them from causing injury to others, the Court of Appeals has recognized that there is a duty to control the conduct of others where there is a special relationship, such as a relationship between defendant and a third person whose actions expose plaintiff to harm such as would require the defendant to attempt to control the third person's conduct, or a relationship between the defendant and plaintiff requiring defendant to protect the plaintiff from the conduct of others (*Citera v County of Suffolk*, *supra* at 95 AD3d 1259, citing *Purdy v Public Administrator of County of Westchester*, 72 NY2d 1, 526 NE2d 4, 530 NYS2d 513). Applying these principles, the Appellate Division, Second Department, has found that an outpatient psychiatric treatment facility did not have the authority or ability to exercise control over a patient's conduct so as to give rise to a duty to protect the decedent (see *Citera v County of Suffolk*, *supra*, 95 AD3d 1255), but a residential substance abuse and mental health facility which gave a patient a pass to leave the facility may owe a duty in negligence to protect the public where it had knowledge that the patient could be a danger to himself and others (see *Fox v Marshall*, 88 AD3d 131, 928 NYS2d 317 [2d Dept 2011]).

The Courts of this state have been wary of expanding the obligation of duty but have determined that the issue must be resolved on a case-by-case basis. “[J]udicial resistance to the expansion of duty grows out of practical concerns both about potentially limitless liability and about the unfairness of imposing liability for the acts of another. A duty may arise, however, where there is a relationship either between defendant and a third-person tortfeasor that encompasses defendant's actual control of the third person's actions or between defendant and plaintiff that requires defendant to protect plaintiff from the conduct of others” (*Zane v Corbett*, 82 AD3d 1603, 1611, 919 NYS2d 625 [4th Dept 2011], quoting *Hamilton v Beretta U.S.A. Corp.*, 96 NY2d at 233, 750 NE2d 1055, 727 NYS2d 7 [2001]).

Applying the foregoing principles, in numerous cases the courts have held that a medical provider did not have a duty to the general public to control the conduct of a patient and was not liable for failure to intervene to protect others (see, e.g., *Purdy v Public Administrator of the County of Westchester*, 72 NY1, 526 NE2d 4, 530 NYS2d 513 [1988]). Here, the allegations against defendant doctors Li, Jacobson and Kaufman include claims that each affirmatively contributed to the addiction of Laffer and Brady which allegedly motivated their murderous activities. Put another way, and viewing the allegations of the complaint and the proposed amended complaint in a light most favorable to plaintiff, it appears that plaintiff claims that the doctors created a risk of harm to the general public by providing the means through which Laffer and Brady became addicted and dependent upon prescription medications, and that the doctors knew or should have known that there was a risk that Laffer and Brady would engage in criminal conduct in a desperate need to feed their addictions. Thus, in this case, the duty to the community at large does not arise through an obligation to control the actions of Laffer and Brady. Rather, the duty may arise through an obligation to refrain from over-prescribing addictive drugs in an irresponsible and potentially criminal manner. It may be found that the medical providers breached the duty to the general public and, more particularly, to the plaintiff's decedent, through the irresponsible dispensing of controlled substances to addicts and the reckless disregard for the consequences of that addiction (see *Williams v Beemiller, Inc.*, ___ AD3d ___, 952 NYS2d 333 [4th Dept 2012]).

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The license to write prescriptions carries with it important responsibilities. Here, plaintiff claims that each of the doctors, including movant Dr. Li, negligently prescribed controlled substances to Laffer and Brady without taking necessary precautions. The claims in this case are distinguishable from those cases in which a medical provider is alleged to have failed to perceive a risk of danger and failed to exercise control to prevent harm to others. Instead, plaintiff in this case contends that Dr. Li helped to create the danger by feeding Laffer and Brady's addictions. The distinction is significant. In the opinion of this Court, under certain factual circumstances there exists a duty to the general public not to supply prescriptions to maintain an addict or habitual user of controlled substances. A medical provider may owe a duty to protect the public from the actions of a drug addict and he may be found to have breached that duty if he creates or maintains the addiction through his own egregious conduct. At this stage of the proceedings, plaintiff should be afforded the opportunity to proceed against Dr. Li to explore through appropriate discovery proceedings the level of his alleged involvement, if any, in Laffer and Brady's addictions and whether Dr. Li knew or had reason to know that Laffer and Brady presented a risk of harm to themselves or others. Accordingly, the motion for dismissal of the complaint against Dr. Li is denied.

Plaintiff also claims that the defendant Mark Kaufman, and agent and employee of defendant Family Medical, negligently prescribed addictive medications to defendants Laffer and Brady. It is further alleged that Dr. Kaufman was acting on behalf of Family Medical, and that Family Medical may be held vicariously liable for Dr. Kaufman's acts. The doctrine of *respondeat superior* renders a master vicariously liable for a tort committed by his servant while acting within the scope of his employment (*Riviello v Waldron*, 47 NY2d 297, 302, 391 NE2d 1278, 418 NYS2d 300 [1979]). In view of this Court's determination that a medical provider owes a duty to responsibly prescribe addictive medications and that he may, under certain factual situations, be held liable for injuries that occur as a result of a breach of that duty, dismissal of plaintiff's claims and cross-claims against Family Medical is not warranted.

The claims asserted by the plaintiff for recovery in medical malpractice, however, must fail. The absence of a doctor/patient relationship between plaintiff's decedent and defendants precludes a cause of action based on medical malpractice (see *Fox v Marshall*, 88 AD3d 131, 135, 928 NYS2d 317 [2d Dept 2011]). Nor can plaintiff's causes of action be sustained if, as plaintiff urges, they were viewed as claims for recovery for negligent entrustment. Accordingly, plaintiff's claims for recovery in medical malpractice against defendants Li and Family Medical Practice of Bay Shore, P.C., are dismissed.

In considering whether the plaintiff can succeed on a claim to recover under General Obligations Law § 11-103, this Court must accept the allegations in the complaint as true and accord the plaintiff the benefit of every possible favorable inference (see *McHenry v Lawrence*, 66 AD3d 650, 886 NYS2d 492 [2d Dept 2009]). It is alleged in the complaint that the defendants negligently prescribed drugs to addicts Laffer and Brady, and that Laffer and Brady committed their crimes while they were addicted to the drugs. It is also claimed that the allegedly excessive prescribing of drugs as well as Laffer's and Brady's addictions were direct causes of their criminal behavior. Such

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allegations, when viewed in the light most favorable to plaintiff, are sufficient to state a claim for recovery under General Obligations Law §11-103. In contrast, while Public Health Law §3350 prohibits the prescribing, administering or dispensing of controlled substances to addicts or habitual users thereof, it does not create a private right to recovery in the event such prohibition is violated. Accordingly, plaintiff may not maintain a cause of action for recovery under Public Health Law §3350.

Dated: *March 6, 2013*

William B. Rebolini
HON. WILLIAM B. REBOLINI, J.S.C.

FINAL DISPOSITION NON-FINAL DISPOSITION

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