

**Fructuoso v Tartell**

2021 NY Slip Op 33114(U)

November 17, 2021

Supreme Court, Queens County

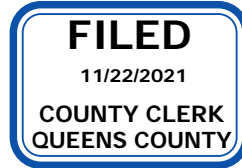
Docket Number: Index No. 710856/2016

Judge: Joseph J. Esposito

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This opinion is uncorrected and not selected for official publication.

At a Trial Term Part 17 of the Supreme Court of the State of New York held in and for the County of Queens, located at 88-11 Sutphin Blvd, Jamaica, New York 11435 on November 18, 2021



PRESENT:

HON. Joseph J. Esposito

J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X **Index#: 710856/2016**  
MARCO FRUCTUOSO, Administrator of the Estate of  
CARMEN MARTE, Deceased, and MARCO FRUCTUOSO,  
Individually,

Plaintiffs,

ORDER

-against-

JAY D. TARTELL, MARJORIE M. STEIN, ASTORIA  
MEDICAL GROUP, P.C., ADVANCED  
RADIOLOGICAL IMAGING ASSOCIATES, P.C.,  
ADVANCED RADIOLOGICAL IMAGING- ASTORIA, P.C.,  
and ADVANCED RADIOLOGICAL PET IMAGING, P.C.,

Seq No 8  
Cal No 6

Defendants

-----X

An action having been commenced for the causes of action of conscious pain and suffering and wrongful death by MARCO FRUCTUOSO, as Administrator of the Estate of CARMEN MARTE, deceased, and MARCO FRUCTUOSO, individually, against the defendants, JAY D. TARTELL, MARJORIE M. STEIN, ASTORIA MEDICAL GROUP, P.C., ADVANCED RADIOLOGICAL IMAGING ASSOCIATES, P.C., ADVANCED RADIOLOGICAL IMAGING- ASTORIA, P.C., and ADVANCED RADIOLOGICAL PET IMAGING, P.C.,

AND, the parties having agreed that the causes of action asserted by the Plaintiff, CARMEN MARTE, by her Administrator, MARCO FRUCTUOSO, and MARCO FRUCTUOSO individually against Defendants JAY D. TARTELL, MARJORIE M. STEIN, ADVANCED RADIOLOGICAL IMAGING ASSOCIATES, P.C., ADVANCED RADIOLOGICAL IMAGING- ASTORIA, P.C., and ADVANCED RADIOLOGICAL PET IMAGING, P.C. is to be settled for a \$1,000,000 for which in lieu of payment MARJORIE M. STEIN and/or her insurer, shall provide a confession of judgment in the amount of ONE MILLION DOLLARS (\$1,000,000.00) to be applied to the Fairway Liquidating Trust for payment; That Radnet on behalf of MARJORIE M. STEIN, will pay ONE HUNDRED FIFTY THOUSAND DOLLARS and 00/100 (\$150,000.00) towards the settlement for the claims of Defendant MARJORIE M. STEIN; That ADVANCED RADIOLOGICAL IMAGING ASSOCIATES, P.C., ADVANCED RADIOLOGICAL IMAGING- ASTORIA, P.C., and ADVANCED RADIOLOGICAL PET IMAGING, P.C., collectively, and/or their insurer, shall pay FIVE HUNDRED THOUSAND DOLLARS and 00/100 (\$500,000.00); That the cause of action against Defendant JAY D. TARTELL, is discontinued with prejudice in the State Supreme Court action subject to MARCO FRUCTUOSO as Administrator of the estate of CARMEN MARTE, right to apply to the liquidating trust for claims as against Defendant JAY D. TARTELL;

And, upon the affidavit of MARCO FRUCTUOSO, duly verified on the 11<sup>th</sup> of October 2021 and upon the affirmation of Nicole M. LaGrega, Esq., duly verified on October 7, 2021, for leave to compromise the causes of action for personal injuries and wrongful death of the decedent CARMEN MARTE;

And, upon the Court having rendered a decision granting the motion to approve the

compromise and settlement of the above entitled cause of action for decedent's conscious pain and suffering and wrongful death,

NOW, on the motion of Nicole M. LaGrega on behalf of CARMEN MARTE, by her Administrator, MARCO FRUCTUOSO, and MARCO FRUCTUOSO individually, pursuant to Estates Powers and Trust Law 5-4.6, it is hereby

ORDERED that the settlement provided herein is deemed adequate and in the best interests of the Estate; and it is further

ORDERED That CARMEN MARTE, by her Administrator, MARCO FRUCTUOSO, and MARCO FRUCTUOSO, individually, be and is hereby authorized and empowered to settle and discontinue the claims and causes of action of conscious pain and suffering and wrongful death against the defendants JAY D. TARTELL, MARJORIE M. STEIN, ADVANCED RADIOLOGICAL IMAGING ASSOCIATES, P.C., ADVANCED RADIOLOGICAL IMAGING- ASTORIA, P.C., and ADVANCED RADIOLOGICAL PET IMAGING, P.C.; and it is further

ORDERED That CARMEN MARTE, by her Administrator, MARCO FRUCTUOSO, and MARCO FRUCTUOSO, individually, be and is hereby authorized and permitted to execute and deliver a general release to, MARJORIE M. STEIN, JAY D. TARTELL, ADVANCED RADIOLOGICAL IMAGING ASSOCIATES, P.C., ADVANCED RADIOLOGICAL IMAGING- ASTORIA, P.C., and ADVANCED RADIOLOGICAL PET IMAGING, P.C., together with any and all papers necessary to effectuate the settlement herein; and it is further

ORDERED That MARJORIE M. STEIN and/or her insurer, shall provide a confession of judgment in the amount of ONE MILLION DOLLARS (\$1,000,000.00) to be

applied to the Fairway Liquidating Trust for payment; and it is further

ORDERED That ADVANCED RADIOLOGICAL IMAGING ASSOCIATES, P.C., ADVANCED RADIOLOGICAL IMAGING- ASTORIA, P.C., and ADVANCED RADIOLOGICAL PET IMAGING, P.C., collectively and/or its insurer, shall pay FIVE HUNDRED THOUSAND DOLLARS and 00/100 (\$500,000.00) within the time frames set forth in CPLR § 5003-a by check payable to MARCO FRUCTUOSO as Administrator of the estate of CARMEN MARTE, and MARCO FRUCTUOSO, individually and SILBERSTEIN, AWAD & MIKLOS, PC, as attorneys; and it is further

ORDERED That Radnet and/or its insurer, shall pay ONE HUNDRED FIFTY THOUSAND DOLLARS and 00/100 (\$150,000.00) within the time frames set forth in CPLR § 5003-a on behalf of MARJORIE M. STEIN, by check payable to CARMEN MARTE, by her Administrator, MARCO FRUCTUOSO, and MARCO FRUCTUOSO, individually, and SILBERSTEIN, AWAD & MIKLOS, PC, as attorneys; and it is further

ORDERED That that the cause of action against Defendant JAY D. TARTELL, is discontinued with prejudice in the instant State Supreme Court action subject to MARCO FRUCTUOSO as Administrator of the estate of CARMEN MARTE, right to apply to the liquidating trust for claims as against Defendant JAY D. TARTELL; and it is further

ORDERED That the entirety of the settlement is being paid for the pain and suffering of the decedent, CARMEN MARTE, and for the wrongful death damages of the distributees of the estate; and it is further

ORDERED That none of the money compensation in the settlement of this matter is being paid for past medical expenses or costs; and it is further

ORDERED That SILBERSTEIN, AWAD & MIKLOS, P.C. shall pay the sum of ONE HUNDRED SIXTY-THREE THOUSAND AND SIX HUNDRED EIGHTY AND 84/100 DOLLARS (\$163,680.84) or the final lien amount it is compromised to, if any, for reimbursement of the Medicaid lien; and it is further

ORDERED That SILBERSTEIN, AWAD & MIKLOS, P.C. shall pay the sum of TWO HUNDRED SEVENTY THREE AND 27/100 DOLLARS (\$273.27) or the final lien amount it is compromised to, if any, for reimbursement of the Medicare lien; and it is further

ORDERED That the Attorneys for Plaintiff, Silberstein, Awad & Miklos, P.C., shall hold the Medicaid and Medicare lien amounts in escrow pending final resolution of said liens; and it is further

ORDERED That upon submission to this Court of proof of filing of a petition for allocation and distribution in the Surrogate's Court on behalf of the decedent's estate, Plaintiff's attorneys may draw a check in the total sum of ONE HUNDRED SIXTY-SEVEN THOUSAND AND FIVE HUNDRED AND 0/100 DOLLARS (\$167,500.00), as and for their attorneys fees and reimbursement of disbursements in the amount of \$8,686.41; and it is further

ORDERED That upon submission to this Court of proof of filing of a petition for allocation and distribution in the Surrogate's Court on behalf of the decedent's estate that Plaintiff's attorney may draw a check as and for their attorneys fees which will be calculated pursuant to New York Judiciary Law §474 as and for the settlement monies received from the Fairway Liquidating Trust as and for the claims against Defendants

MARJORIE M. STEIN and JAY D. TARTELL; and it is further

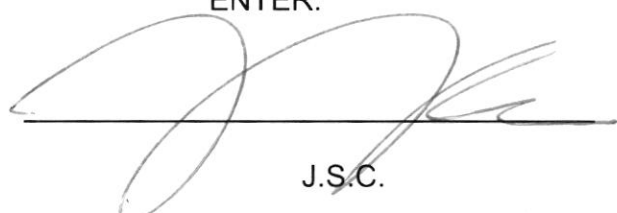
ORDERED That the balance of settlement monies in the sum of \$309,859.48, and any net settlement monies from the Fairway Liquidating Trust shall be held in said interest bearing escrow account pending further order from the Surrogate's Court in regard to the allocation and distribution of said funds; and it is further

ORDERED That the monies saved from compromising the Medicaid and Medicare liens, if any, shall be held in said interest bearing escrow account pending further order from the Surrogate's Court in regard to the allocation and distribution of said funds; and it is further

ORDERED That SILBERSTEIN, AWAD & MIKLOS, P.C. shall continue to serve as attorneys for the estate until the entry of a final decree in the Surrogate's Court; and it is further

ORDERED That the filing of a bond is hereby dispensed with.

ENTER:



J.S.C.

**HON. JOSEPH J. ESPOSITO**

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