

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

SCOTT D. MANTEL as Administrator for the
Estate of DEBORAH BUCKO,

Plaintiff,

v.

SOUTH NASSAU COMMUNITIES HOSPITAL
d/b/a MOUNT SINAI SOUTH NASSAU,

Defendant.

COMPLAINT

Index No. 607604/2023

COMES NOW PLAINTIFF Scott D. Mantel as Administrator for the Estate of Deborah Bucko, by his undersigned attorney, for his complaint against Defendant South Nassau Communities Hospital d/b/a Mount Sinai South Nassau, and alleging as follows:

NATURE OF THE ACTION

1. Plaintiff Scott D. Mantel's wife, Deborah Bucko, died on May 16, 2021, of complications of severe COVID-19 illness, while in the custody and care of Defendant South Nassau Communities Hospital d/b/a Mount Sinai South Nassau, which repeatedly interfered with the doctor-patient relationship between Ms. Bucko and the infectious disease attending physician overseeing her treatment, specifically, by knowingly and deliberately impeding the doctor's orders to treat Ms. Bucko with the potentially life-saving medication ivermectin, thereby depriving Ms. Bucko of a substantial chance of recovery and cure.

2. Plaintiff brings this action for wrongful death, pursuant to EPTL § 5-4.1 and all other applicable laws, regulations, and rules, on behalf of

Ms. Bucko's estate and her surviving distributees, which are her husband Mr. Mantel and their two children. By this action, Plaintiff seeks fair and just compensation on behalf of himself and his and Ms. Bucko's children for the pecuniary injuries resulting from Ms. Bucko's death, including but not limited to lost financial contributions and gifts, the monetary value of lost household and family services, the monetary value of lost care and nurturing and guidance her children would have received, lost inheritance, reasonable medical and funeral expenses, and all other damages recoverable by law. Plaintiff also seeks fair and just compensation on behalf of Ms. Bucko's estate for her conscious pain and suffering as well as punitive damages to punish Defendant for its wrongful actions. Plaintiff demands trial by jury.

PARTIES

3. Plaintiff Scott D. Mantel is an adult resident of Oceanside, New York.
4. Defendant South Nassau Communities Hospital d/b/a Mount Sinai South Nassau is a domestic not-for-profit corporation that owns and operates a 455-bed hospital located at One Health Way, Oceanside, New York.
5. Defendant held itself out to the general public in and around Oceanside, New York, to be a competent and skilled medical care facility for the purpose of providing and rendering medical care and treatment.
6. At all relevant times, Mr. Mantel was married to the decedent Deborah Bucko, with whom he has two children.

7. Ms. Bucko died on May 16, 2021, while in the custody and care of Defendant.

8. On March 2, 2023, Mr. Mantel was granted limited letters of administration by the Surrogate's Court of Nassau County, empowering him to prosecute and defend any cause of action on behalf of Ms. Bucko's estate.

JURISDICTION AND VENUE

9. The amount in controversy exceeds the jurisdictional limits of all lower courts that otherwise would have jurisdiction over this action.

10. This Court has venue over this action pursuant to CPLR § 503(a) because Plaintiff resides in this county and a substantial part of the events or omissions giving rise to the claim occurred in this county.

PROCEDURAL HISTORY

11. Plaintiff commenced this action on May 11, 2023, via Summons with Notice (ECF Doc. 1).

12. On August 29, 2023, Defendant entered an appearance (ECF Doc. 2) and demanded service of the complaint (ECF Doc. 3).

ALLEGATIONS

13. In or about the last week of February 2021, Ms. Bucko started having symptoms consistent with COVID-19 illness.

14. On February 28, 2021, Ms. Bucko went to the emergency room at Mount Sinai South Nassau, where she complained of shortness of breath, body aches, fatigue, and fever.

15. That same day, Ms. Bucko was admitted to Mount Sinai South Nassau with a diagnosis of suspected COVID-19 illness.

16. Ms. Bucko received continuous in-patient medical care and treatment from Defendant from February 28, 2021, to the date of her death on May 16, 2021.

17. After being admitted to the hospital, Ms. Bucko's illness did not respond to the hospital's standard treatment protocols, including supplemental oxygen, and her condition steadily worsened.

18. On or about March 9, 2021, Ms. Bucko was transferred to the intensive care unit (ICU) and placed on a BPAP machine; she subsequently was transferred to the critical care unit (CCU).

19. With little to no improvement, on or about March 23, 2021, Ms. Bucko was placed on a ventilator.

20. At this point, the hospital's standard treatment protocols for COVID-19 had been exhausted, and Ms. Bucko remained seriously ill.

21. On or about April 1, 2021, Mr. Mantel was told by hospital doctors that Ms. Bucko had little, if any, hope for recovery.

Ivermectin: Life-Saving Medication For COVID-19 Patients

22. Unwilling to simply watch his wife die, Mr. Mantel researched possible alternative treatments, and he read several news stories about patients with severe COVID-19 illness who had been treated successfully with ivermectin.

23. Through his research, Mr. Mantel learned about the Front Line Covid-19 Critical Care Alliance ("FLCCC"), which was founded by a group of leading

critical care specialists who have developed and published guidelines for treating COVID-19, including with ivermectin.

24. Like penicillin and aspirin, ivermectin is a medication that derives from nature. It was discovered in 1973 by a Japanese biochemist (who won the Nobel Prize in 2015 for the discovery) and first approved for human use in 1987. Over the past several decades, billions of doses of ivermectin have been safely administered worldwide (primarily in developing countries) to treat a wide variety of medical conditions. Besides its well known anti-parasitic properties, ivermectin demonstrates anti-bacterial, anti-viral, and anti-cancer properties as well. It is on the World Health Organization's Model List of Essential Medicines.

25. The FLCCC considers ivermectin a core medication in the prevention and treatment of COVID-19. The FLCCC's position is supported by a robust evidence base of scientific studies, including randomized controlled trials, from around the world. Based on this evidence, and on first-hand clinical observations, the FLCCC recommends using ivermectin in all stages of COVID-19. In particular, the evidence shows that ivermectin substantially decreases mortality even in the most severely ill patients.

26. Given that Ms. Bucko was on death's doorstep, Mr. Mantel believed they should try ivermectin with her.

First Ivermectin Prescription: Blocked By Hospital

27. Mr. Mantel presented what he had learned about ivermectin to the hospital doctors. Ms. Bucko's treating infectious disease doctor, Dr. Robert Clark,

acknowledged that he was “all out of bullets,” meaning that they had tried the hospital’s standard treatment protocols and Ms. Bucko was not getting better.

28. Dr. Clark acknowledged that ivermectin was safe and potentially could help Ms. Bucko.

29. Accordingly, on April 7, 2021, Dr. Clark wrote an initial prescription for ivermectin, giving the reason as “end stage covid 19.”

30. The first prescription for ivermectin was for 27mg, which was consistent with the FLCCC’s then-published protocols, which recommended 0.3mg/kg per dose daily for 5 days.

31. Almost immediately, the April 7 ivermectin prescription was placed on hold by the hospital’s pharmacy department, on the grounds that “MSHS [Mount Sinai Health System] recommends against the use of ivermectin for covid-19,” and was “[p]ending review” from Dr. Aaron Glatt, Chair of the Department of Medicine and Chief of Infectious Diseases.

32. The April 7 ivermectin prescription was reviewed and rescinded the same day by the Hospital Stewardship Committee.

33. Upon information and belief, the Hospital Stewardship Committee is comprised of senior hospital physicians, department chiefs, and/or administrators, including but not limited to Dr. Glatt, each of whom was acting within the scope of his or her employment and on behalf of Defendant.

34. Dr. Clark told Mr. Mantel that the hospital had “blocked” the ivermectin prescription, which would not be approved by the chief medical officer [Dr. Glatt].

35. Despite appealing for help from the hospital’s patient advocate, Mr. Mantel was not able to persuade the hospital to change its position regarding the ivermectin, despite this being his wife’s last chance to live.

*The Court Orders Ivermectin Administered To Ms. Bucko,
Whose Condition Improved On The Ivermectin*

36. With the help of attorneys who were fighting these cases all across the country, Mr. Mantel went to court to obtain an emergency court order requiring the hospital to administer the ivermectin to Ms. Bucko. Nassau County Supreme Court, Index No. 604589/2021.

37. On April 20, 2021, an Order to Show Cause was signed by Hon. Randy Sue Marber ordering the hospital to “immediately enforce” Dr. Clark’s “order to administer the prescription ivermectin to their mutual patient, Deborah Bucko.” The Order was served on the hospital on April 20, 2021.

38. On April 20, 2021, Ms. Bucko was given her first dose of 21mg ivermectin, which was continued daily until April 24, 2021.

39. While she was being treated with the ivermectin and immediately afterwards, Ms. Bucko’s respiratory and cardiovascular functions showed significant improvement and she required significantly less oxygen, vasopressors, and ventilator support, which was clearly demonstrated in her medical records.

40. Furthermore, although previously deemed too unstable, Ms. Bucko now qualified for a tracheostomy, which was performed on May 1, 2021, and which was intended to help transition her to breathing on her own.

41. As a result of the ivermectin, Ms. Bucko was on her way to recovery.

42. Unfortunately, there was a 13-day delay in treating Ms. Bucko with the first ivermectin prescription, which delay diminished Ms. Bucko's chances for recovery and cure.

Second Ivermectin Prescription: Again Blocked By Hospital

43. Once the initial prescription for ivermectin ended, Ms. Bucko's improvement stalled.

44. On April 27, 2021, Mr. Mantel discussed further ivermectin treatment with Dr. Clark.

45. Dr. Clark acknowledged that Ms. Bucko had improved on the first round of ivermectin and agreed that further ivermectin could help her condition.

46. Accordingly, on April 27, 2021, Dr. Clark wrote another prescription for ivermectin, this time for 60mg daily with a stop date of May 31, 2021 (35 days). This new prescription was consistent with the updated FLCCC protocols of 0.4-0.6mg/kg per dose daily "[f]or 5 days or until recovered." This second prescription is clearly shown in Ms. Bucko's medical records.

47. Once again, the hospital blocked and rescinded the prescription.

*The Court Again Orders Ivermectin Administered To Ms. Bucko,
Whose Condition Again Improved On The Ivermectin*

48. Mr. Mantel returned to court before Justice Marber. Nassau County Supreme Court, Index No. 604589/2021.

49. On May 4, 2021, Justice Marber signed an Order to Show Cause ordering the hospital to “immediately enforce” the “second order to administer the prescription ivermectin to their mutual patient, Deborah Bucko.” The Order was served on the hospital on May 4, 2021.

50. On May 5, 2021, Ms. Bucko started being treated for a second time with ivermectin and, as with the first round of the drug, her condition started to improve. As documented in her medical records, she had improved respiratory and cardiovascular functioning, and she no longer required vasopressors.

51. Dr. Clark acknowledged to Mr. Mantel that his wife was showing renewed improvement on the ivermectin.

52. Unfortunately, there was an approximately 8-day delay in treating Ms. Bucko with the second ivermectin prescription, which delay diminished Ms. Bucko’s chances for recovery and cure.

53. Moreover, instead of treating Ms. Bucko for the full 35 days as originally prescribed, *the prescription was changed* on May 5, 2021 – after service of the Court’s Order – stopping the ivermectin after only 5 days. This changed prescription is clearly shown in Ms. Bucko’s medical records.

54. On May 8, 2021, Mr. Mantel learned from a nurse that the ivermectin was being prescribed for only 5 days and he asked Dr. Clark to continue the

medication for longer (consistent with the FLCCC protocols), but Dr. Clark said that he was not allowed to write any more prescriptions for ivermectin and that Dr. Glatt is the only person who can prescribe the medication.

55. Upon information and belief, the hospital threatened to revoke Dr. Clark's medical staff privileges or otherwise subject him to negative consequences if he continued to prescribe ivermectin to Ms. Bucko.

56. At a court hearing on May 13, 2021, relating to the previous orders to show cause, Dr. Clark testified that he prescribed two courses of ivermectin for Ms. Bucko, that there were no adverse effects to this patient from the ivermectin, and that he believed, based on his medical knowledge and experience, that ivermectin was an appropriate therapeutic intervention for this patient. He further testified that he was told that he was not allowed to order the medication without it being approved by the hospital.

Ms. Bucko's Death

57. After the second round of ivermectin was stopped on May 10, 2021, Ms. Bucko's condition rapidly deteriorated.

58. Mr. Mantel was preparing to return to court for a third time, when his wife died on May 16, 2021.

59. Notably, none of Defendant's submissions to the court in opposition to Mr. Mantel's applications for emergency court orders argued that Ms. Bucko's chances for recovery were better being treated with the hospital's standard treatment protocols (which had been unsuccessful) than with the ivermectin. On

the contrary, Dr. Glatt acknowledged in an affidavit on April 27, 2021, that “Ms. Bucko has not responded to all the appropriate measures” and “[h]er prognosis unfortunately continues to be poor.” Nevertheless, Defendant steadfastly opposed all efforts to treat Ms. Bucko with ivermectin, which would have given her a meaningful chance to recover and live. Instead, Defendant was resigned to letting Ms. Bucko die.

60. Plaintiff alleges that Defendant, through senior hospital physicians, department chiefs, and/or administrators, including but not limited to Dr. Glatt, each of whom was acting within the scope of his or her employment and on behalf of the hospital, committed medical malpractice and/or otherwise acted wrongfully and negligently, by repeatedly refusing to administer ivermectin to Ms. Bucko, who was suffering from severe COVID-19 illness that was not responding to the hospital’s standard treatment protocols, despite the ivermectin having been prescribed by her treating infectious disease doctor, despite Plaintiff obtaining two emergency court orders requiring the hospital to administer the medication, and despite clear evidence in the medical records that Ms. Bucko’s condition showed significant improvement once the ivermectin treatment was initiated.

61. Plaintiff alleges that once the ivermectin had been prescribed by Ms. Bucko’s doctor, it was a breach of accepted standards of medical care for the hospital to withhold this clearly beneficial medication from her. Defendant’s wrongful and negligent conduct deprived Ms. Bucko of a substantial chance for recovery and cure and substantially contributed to her untimely death.

COUNT ONE: WRONGFUL DEATH

62. Plaintiff repeats and incorporates the preceding paragraphs.

63. Defendant, through its agents, servants, employees, and associates was responsible for the proper, adequate, and necessary medical care and treatment of Plaintiff's decedent.

64. By reason of the foregoing, Defendant, through its agents, servants, employees, and associates, wrongfully and negligently rendered medical care and treatment to Plaintiff's decedent, which care and treatment was not in accordance with good and accepted medical practice, thereby causing and/or substantially contributing to Plaintiff's decedent's death.

65. As a direct and proximate result of Defendant's wrongful and negligent conduct, Plaintiff's decedent's next of kin, her husband and children, have suffered legally compensable pecuniary injuries and damages in an amount to be proved at trial.

COUNT TWO: SURVIVAL

66. Plaintiff repeats and incorporates the preceding paragraphs.

67. Defendant, through its agents, servants, employees, and associates was responsible for the proper, adequate, and necessary medical care and treatment of Plaintiff's decedent.

68. By reason of the foregoing, Defendant, through its agents, servants, employees, and associates, wrongfully and negligently rendered medical care and treatment to Plaintiff's decedent, which care and treatment was not in accordance

with good and accepted medical practice, thereby causing and/or substantially contributing to Plaintiff's decedent's conscious pain and suffering prior to her death.

69. As a direct and proximate result of Defendant's wrongful and negligent actions, Plaintiff's decedent's estate has suffered legally compensable injuries and damages in an amount to be proved at trial.

70. By reason of the foregoing, Defendant's conduct evinces a high degree of moral culpability and willful or wanton negligence or recklessness, such as to warrant an award of punitive damages to Plaintiff's decedent's estate to punish Defendant for its wrongful actions.

DEMAND FOR JURY TRIAL

Pursuant to Article 41 of the New York Civil Practice Law and Rules, Plaintiff hereby demands a trial by jury as to all issues triable by jury in the above-captioned civil action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court enter judgment against Defendant on Count One: Wrongful Death, in a substantial sum of money to be determined by the Court and jury at trial, and Count Two: Survival, in a substantial sum of money to be determined by the Court and jury at trial, together with interest, costs, and disbursements on each cause of action, and such other and further relief as the Court may deem just and proper.

Dated: September 15, 2023

Respectfully submitted,

/s/ Steven M. Warshawsky

By: _____

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