

**IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA**

TIANNA SMITH,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	CIVIL ACTION
	:	
WINDELL C. DAVIS-BOUTTE,M.D.,	:	NO.: 17A66164
AESTHETIC & LASER BOUTIQUE, INC.,	:	
BOUTTE CONTOUR SURGERY &	:	
DERMATOLOGY, PC, PREMIERE	:	
DERMATOLOGY & SURGERY, LLC, ABC	:	
CORPORATION 1-3, AND JOHN DOE 1-3,	:	
	:	
Defendants.	:	

FIRST AMENDED COMPLAINT FOR DAMAGES

COMES NOW TIANNA SMITH, Plaintiff in the above-captioned action, and hereby files this First Amended Complaint as follows:

INTRODUCTION

1.

This is a medical malpractice action arising from severe injuries and damages sustained by Plaintiff Tianna Smith beginning on or about August 4, 2016. Said injuries were the direct result of the simple and professional negligence of Defendants.

PARTIES, JURISDICTION AND VENUE

2.

Plaintiff is a resident of the State of Georgia and submits to the jurisdiction of this Court.

3.

Defendant Windell C. Davis-Boutte, M.D. (“Defendant Davis-Boutte”) is a resident and citizen of DeKalb County, Georgia and is a dermatologist licensed to practice medicine in the State of Georgia.

4.

Service may be perfected on Defendant Davis-Boutte by serving her at her residence located at 2165 Spencers Way, Stone Mountain, Georgia, DeKalb County, Georgia 30087.

5.

Defendant Davis-Boutte is subject to the jurisdiction of this Court.

6.

Venue is proper in this Court as to Defendant Davis-Boutte.

7.

Defendant Aesthetic & Laser Boutique, Inc. (“Defendant ALB”) is a Georgia Corporation authorized to transact business in Georgia, and it may be served through its registered agent, Windell C. Davis-Boutte, M.D. at its principal place of business located at 4650 Stone Mountain Highway, Lilburn, Gwinnett County, Georgia 30047.

8.

Defendant ALB is subject to the jurisdiction of this Court.

9.

Venue is proper in this Court as to Defendant ALB.

10.

Defendant Boutte Contour Surgery & Dermatology, P.C., (“Defendant Boutte Contour”) is a Georgia Corporation authorized to transact business in Georgia. Its principal place of business is P.O. Box 934, Tucker, DeKalb County, Georgia 30085. It may be served through its registered agent, Adejia Boutte, at 4650 Stone Mountain Highway, Lilburn, Gwinnett County, Georgia 30047.

11.

Defendant Boutte Contour is subject to the jurisdiction of this Court.

12.

Venue is proper in this Court as to Defendant Boutte Contour.

13.

Defendant Premiere Dermatology & Surgery, LLC (“Defendant Premiere Dermatology”) is a Georgia Corporation authorized to transact business in Georgia, and it may be served by serving its registered agent, Windell C. Davis-Boutte, M.D., at 4650 Stone Mountain Highway, Lilburn, Gwinnett County, Georgia 30047.

14.

Defendant Premiere Dermatology is subject to the jurisdiction of this Court.

15.

Venue is proper in this Court as to Defendant Premiere Dermatology.

16.

Defendants ABC Corporation 1-3 are entities that may have liability in this case.

17.

The identities of Defendants ABC Corporation 1-3 are unknown to Plaintiff but are known to Defendants.

18.

Defendants ABC Corporation 1-3 are subject to the jurisdiction of this Court.

19.

Venue is proper in this Court as to Defendants ABC Corporation 1-3.

20.

Defendants John Doe 1-3 are individuals that may have liability in this case.

21.

The identities of Defendants John Doe 1-3 are unknown to Plaintiff but are known to Defendants.

22.

Defendants John Doe 1-3 are subject to the jurisdiction of this Court.

23.

Venue is proper in this Court as to Defendants John Doe 1-3.

24.

Defendants Davis-Boutte and John Doe 1-3 are agents and/or employees of ALB, Boutte Contour, Premiere Dermatology, and/or ABC Corporation 1-3 (hereinafter “the Corporate Defendants”).

AGENCY AND RESPONDEAT SUPERIOR

25.

Plaintiff hereby incorporates, adopts and re-alleges the above-referenced paragraphs of this Complaint as if fully set forth herein.

26.

At all times material to this action, Defendant Davis-Boutte provided medical care and treatment to Plaintiff, acting within the course and scope of her agency or employment with the Corporate Defendants.

27.

At all times material to this action, the staff members who cared for Plaintiff, including Defendants Davis-Boutte and John Doe 1-3, were agents and/or employees of the Corporate Defendants, the principals.

28.

The acts and omissions of the Defendants' agents and/or employees are imputed to the Corporate Defendants as a matter of law.

FACTS

29.

Plaintiff hereby incorporates, adopts and re-alleges the above-referenced paragraphs of this Complaint as if fully set forth herein.

30.

Plaintiff was a patient of Defendant Davis-Boutte's on August 4, 2016. As such, a physician-patient relationship existed between them.

31.

At all relevant times, Plaintiff was a business invitee of the Corporate Defendants.

32.

August 4, 2016, Plaintiff was to undergo a liposuction procedure called "Smartlipo" ("the subject surgery").

33.

Prior to the procedure scheduled for August 4, 2016, Plaintiff met with Defendants' employee Regina Williams, identified to Plaintiff as a Surgical Coordinator, for the purposes of surgical planning. Tianna Smith informed Regina Williams of her 2014 tummy tuck surgery and related complications including necrosis, infection and necessary debridement.

34.

At no point prior to the August 4, 2016 surgical procedure did any defendant, including Defendant Davis-Boutte, or her "surgical assistant" Luis Remy, meet with Plaintiff to discuss any aspect of her prior history.

35.

At no time prior to the August 4, 2016 subject surgery was Plaintiff ever told that her prior history could complicate the subject surgery.

36.

At no point prior to the August 4, 2016 surgical procedure did Defendant Davis-Boutte, or her “surgical assistant” Luis Remy, met with Plaintiff to discuss any aspect of her surgical procedure.

37.

On August 4, 2016, Plaintiff presented to Defendants location and Defendants purportedly performed a “Smartlipo” procedure on her. She was released from Defendants care following the procedure that same day.

38.

In the days following the subject surgery, Plaintiff contacted the Defendants’ staff and Defendant Davis-Boutte on numerous occasions regarding post-operative difficulties including, but not limited to, excessive post-operative drainage at the surgical site, swelling and nausea.

39.

The office staff responded by instructing Plaintiff to maintain compression, be patient, loosen her binder, drink water, take vitamins and antibiotics.

40.

On August 7, 2016 after numerous phone calls from Plaintiff, Defendants’ staff instructed Plaintiff to come in to the office the following day to be seen.

41.

Plaintiff did not wait until the following day to see Defendant Davis-Boutte. Instead, after “passing-out” at home, on August 8, 2016 Plaintiff’s husband took her to Emory Saint Joseph Hospital (“St. Joseph”) for evaluation.

42.

Upon arrival to St. Joseph, Plaintiff was immediately admitted.

43.

Plaintiff’s post-operative care reflects that as a result of the Defendants’ negligence, she was diagnosed as having third degree burns, neuralgia and neuritis and severe dysesthesia from the liposuction procedure.

COUNT I – NEGLIGENCE OF ALL DEFENDANTS

44.

Plaintiff hereby incorporates, adopts and re-alleges the above-referenced paragraphs of this Complaint as if fully set forth herein.

45.

At all times material to this action, all Defendants, including their employees and agents, had a duty to exercise that degree of care, skill and diligence required of reasonably careful professionals under the same conditions and like circumstances.

46.

By failing to operate, monitor or manipulate the liposuction equipment in an appropriate manner, Defendants failed to exercise that degree of care, skill and diligence required of reasonably careful professionals under the same conditions and like circumstances.

47.

Defendants failed to appropriately monitor Plaintiff post-operatively on August 4, 2016 prior to releasing her from their care following the surgical procedure.

48.

Defendants failures to exercise that degree of care skill and diligence required of reasonably careful institutions and professionals under the same conditions and like circumstances, including that listed above, was a direct and proximate cause of the damages sustained by Plaintiff.

49.

As a result, these Defendants are liable to Plaintiff.

50.

Plaintiff previously attached the Affidavit of Dr. Mia Terese Cowan, M.D. as Exhibit "A" to the Original Complaint.

51.

This Affidavit specified at least one negligent act or omission on the part of Defendants, and the factual basis for such negligent act or omission that caused injury to Plaintiff.

52.

This Affidavit is not inclusive of each act, error, or omission that has been committed by these Defendants, and Plaintiff reserves the right to contend and prove additional acts, errors, and omissions on the part of Defendants that reflects a departure from the requisite standard of care required by law.

WHEREFORE, Plaintiff demands judgment against these Defendants, jointly and severally, on Count I in an amount in excess of Ten Thousand Dollars (\$10,000.00), plus all costs of this action.

COUNT II – NEGLIGENCE OF ALL DEFENDANTS

53.

Plaintiff hereby incorporates, adopts and re-alleges the above-referenced paragraphs of this Complaint as if fully set forth herein.

54.

By failing to properly triage Plaintiff's post-operative calls Defendants' agents failed to exercise that degree of care, skill and diligence required of reasonably careful professionals under the same conditions and like circumstances.

55.

These agents' failures to exercise that degree of care, skill and diligence required of reasonably careful professionals under the same conditions and like circumstances, including those listed above, was a direct and proximate cause of the damages sustained by Plaintiff.

56.

These above described acts and omissions of Defendants' agents also constituted ordinary or simple negligence.

57.

As a result, these Defendants are liable to Plaintiff.

58.

Plaintiff previously attached the Affidavit of Dr. Mia Terese Cowan, M.D. as Exhibit "A" to the Original Complaint.

59.

This Affidavit specified at least one negligent act or omission on the part of Defendants' agents, including John Doe 1-3, and the factual basis for such negligent act or omission that caused injury to Plaintiff Tianna Smith.

60.

This Affidavit is not inclusive of each act, error, or omission that has been committed by these Defendants, and Plaintiff reserves the right to contend and prove additional acts, errors, and omissions on the part of Defendants that reflects a departure from the requisite standard of care required by law.

WHEREFORE, Plaintiff demands judgment against these Defendants, jointly and severally, Count II in an amount in excess of Ten Thousand Dollars (\$10,000.00), plus all costs of this action.

COUNT III – IMPUTED LIABILITY

61.

Plaintiff hereby incorporates, adopts and re-alleges the above-referenced paragraphs of this Complaint as if fully set forth herein.

62.

All of Plaintiff's injuries and damages were the direct result of the acts and omissions of the agents, servants and/or employees of the Defendants, conducted within the course and scope of each individual's employment with Defendants.

63.

Defendants are therefore vicariously liable for their individual employee and agent's acts and omissions, and for each individual officer, director, employee, agent and servant's negligent acts and omissions, and the resultant injuries and damages pursuant to the doctrine of *respondeat superior*.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, on Count III in an amount in excess of Ten Thousand Dollars (\$10,000.00), plus all costs of this action.

COUNT IV – NEGLIGENT HIRING, TRAINING AND SUPERVISION

64.

Plaintiff hereby incorporates, adopts and re-alleges the above-referenced paragraphs of this Complaint as if fully set forth herein.

65.

Defendants also failed to exercise reasonable care by failing to:

- (a) establish and implement policies and procedures designed to provide appropriate care, treatment and services to patients like Tianna Smith;
- (b) operate and provide services to patients like Tianna Smith in compliance with acceptable standards and principles that apply to institutions providing said services;
- (c) maintain adequate professional and non-professional staff to provide services to patients like Tianna Smith;
- (d) hire qualified and competent professional and non-professional staff to care for patients like Tianna Smith; and,
- (e) properly train and supervise the professional and non-professional staff that was responsible for the provision of care, treatment and services to patients like Tianna Smith.

66.

All of Plaintiff's injuries and damages were the direct result of the above stated acts and omissions of the agents, servants and/or employees of the Defendants, conducted within the course and scope of each individual's employment with Defendants.

WHEREFORE, Plaintiff demands judgment against these Defendants, jointly and severally, on Count IV in an amount in excess of Ten Thousand Dollars (\$10,000.00), plus all costs of this action.

COUNT V – PUNITIVE DAMAGES

67.

Plaintiff hereby incorporates, adopts and re-alleges the above-referenced paragraphs of this Complaint as if fully set forth herein.

68.

The above-stated facts and acts and omissions of Defendants show a pattern and practice of delivering substandard care to numerous patients like Tianna Smith.

69.

The continuous and systemic delivery of substandard care demonstrates intentional misconduct, willful and wantonness misconduct, oppression, malice, and a conscious indifference to the consequences, including the safety and health of patients like Tianna Smith.

70.

As a result, pursuant to O.C.G.A. § 51-12-5.1, Defendants are liable for punitive damages to Plaintiff and should be awarded to Plaintiff and against Defendants to punish Defendants and deter Defendants from repeated misconduct, as described in this Complaint.

**COUNT VI – VIOLATION OF PLAINTIFF’S
RIGHT OF INFORMED CONSENT**

71.

Plaintiff incorporates the above paragraphs as if fully set forth herein fully verbatim.

72.

Defendant Davis-Boutte is a physician licensed in the State of Georgia. Defendant Davis-Boutte is subject to the laws, rules and regulations regarding the provision of informed consent to patients prior to administering certain medical care as set forth in O.C.G.A § 31-9-6.1.

73.

The procedure performed on Plaintiff by Defendant Davis-Boutte on August 4, 2016, required the provision of proper informed consent.

74.

The procedure performed on Plaintiff by Defendant Davis-Boutte on August 4, 2016, was performed under the Georgia Composite Medical Board Office Based Anesthesia and Surgery Guidelines.

75.

Defendant Davis-Boutte failed to comply with the rules and regulations regarding informed consent and violated O.C.G.A. §31-9-6.1 and Ga. Comp. R. & Regs. R. 360-14-.01 et. seq. in her failure to properly disclose certain information to Plaintiff and thus gives rise to a medical malpractice case pursuant to O.C.G.A. §31-9-6.1 (6)(2)(d).

76.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, on Count VI in an amount in excess of Ten Thousand Dollars (\$10,000.00), plus all costs of this action.

COUNT VII – BATTERY

77.

Plaintiff hereby incorporates, adopts and re-alleges the above-referenced paragraphs of this Complaint as if fully set forth herein

78.

By performing conventional liposuction instead of Smartlipo, Defendants performed an unauthorized surgery on Plaintiff.

79.

Plaintiff never consented to conventional liposuction and as such, this surgery constituted an unwanted touching.

80.

As a result of this unauthorized touching and unauthorized surgery, Plaintiff suffered severe injuries and incurred damages.

81.

This unauthorized touching amounted to common law battery, as well as a violation of O.C.G.A. 51-1-13.

82.

All of Plaintiff's injuries and damages were the direct result of the above stated acts and omissions of the agents, servants and/or employees of the Defendants, conducted within the course and scope of each individual's employment with Defendants.

WHEREFORE, Plaintiff demands judgment against these Defendants, jointly and severally, on Count VII in an amount in excess of Ten Thousand Dollars (\$10,000.00), plus all costs of this action.

COUNT VIII – VIOLATION OF RIGHT OF INFORMED CONSENT

83.

Plaintiff hereby incorporates, adopts and re-alleges the above-referenced paragraphs of this Complaint as if fully set forth herein.

84.

Defendant Dr. Davis-Boutte is a physician licensed by the State of Georgia.

85.

The tumescent anesthesia administered to Plaintiff constituted major regional anesthesia.

86.

As such, the above procedures performed on Plaintiff required the provision of proper informed consent pursuant to O.C.G.A. § 31-9-6.1 and Ga. Comp. R & Regs. R. 360-14-.01.

87.

By failing to disclose certain information to Plaintiff Tianna Smith and thereby failing to obtain proper informed consent, Defendant Davis-Boutte violated O.C.G.A. § 31-9-6.1 and Ga. Comp. R & Regs. R. 360-14-.01.

88.

All of Plaintiff's injuries and damages were the direct result of the above-stated acts and omissions of the agents, servants and/or employees of the Defendants, conducted within the course and scope of each individual's employment with Defendants.

WHEREFORE, Plaintiff demands judgment against these Defendants, jointly and severally, on Count VIII in an amount in excess of Ten Thousand Dollars (\$10,000.00), plus all costs of this action.

COUNT IX – FRAUD

89.

Plaintiff hereby incorporates, adopts and re-alleges the above-referenced paragraphs of this Complaint as if fully set forth herein.

90.

Defendants falsely represented to Plaintiff that Defendant Davis-Boutte was a plastic surgeon.

91.

Defendants falsely represented to Plaintiff that Laura Lee Brown was a nurse.

92.

Defendants falsely represented to Plaintiff that Defendant Davis-Boutte would be performing her liposuction procedure.

93.

Plaintiff relied upon Defendants' above representations.

94.

Plaintiff was justified in relying upon Defendants' above representations.

95.

As a result of this justifiable reliance, Plaintiff was damaged.

96.

All of Plaintiff's injuries and damages were the direct result of the above-stated acts and omissions of the agents, servants and/or employees of the Defendants, conducted within the course and scope of each individual's employment with Defendants.

WHEREFORE, Plaintiff demands judgment against these Defendants, jointly and severally, on Count IX in an amount in excess of Ten Thousand Dollars (\$10,000.00), plus all costs of this action.

DAMAGES

97.

Plaintiff hereby incorporates, adopts and re-alleges the above-referenced paragraphs of this Complaint as if fully set forth herein.

98.

Plaintiff has been physically injured and has experienced physical and emotional pain and suffering as a direct and proximate result of Defendants' negligence.

99.

Plaintiff will in the future continue to suffer physical injuries and will continue to experience physical and emotional pain and suffering as a direct and proximate result of Defendants' negligence.

100.

Plaintiff will continue to need medical treatment in the future as a direct and proximate result of Defendants' negligence.

101.

Plaintiff has incurred medical expenses as a direct and proximate result of Defendants' negligence.

102.

Plaintiff is entitled to an award of general damages from Defendants.

103.

Plaintiff is entitled to an award of special damages from Defendants.

104.

Plaintiff is entitled to punitive damages pursuant to O.C.G.A. § 51-12-5.1.

105.

At all times and in all matters mentioned above, Defendants have acted with stubborn litigiousness, and have caused Plaintiff unnecessary trouble and expense thereby entitling

Plaintiff to recover reasonable attorney fees and other expenses of litigation pursuant to O.C.G.A. § 13-6-11.

WHEREFORE, Plaintiff prays that a judgment be entered in her favor granting them the following relief:

- a. That Summons issue requiring the above-named Defendants to answer each allegation of this Complaint within the time provided by law;
- b. That Plaintiff obtain a judgment against the above-named Defendants in such amount to compensate Plaintiff for Plaintiff's past, present and future injuries and damages resulting from subject incident and Plaintiff's general and special damages;
- c. That Plaintiff recover from Defendants an amount in excess of Ten Thousand Dollars (\$10,000.00);
- d. That all costs be cast against the above-named Defendants;
- e. That Plaintiff have a trial by jury on all claims and issues in this action, and
- f. For such other relief as this Court deems just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

This 17th day of April, 2018.

1841 Montreal Road, Suite 103
Tucker, Georgia 30084
(770) 493-1197 Telephone
(770) 493-1198 Facsimile

STATE COURT OF
DEKALB COUNTY, GA.
4/17/2018 5:08 PM
E-FILED
BY: Jewel Hendrix

HORNSBY LAW GROUP

/s/ Chloe Dallaire

Chloe Dallaire

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Atlanta, Georgia 30309

Tel: 404-577-1505

Fax: 404-577-1565

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

This is to certify that I have this day served the defendant the foregoing matter with a copy of *First Amended Complaint* by e-filing for delivery to:

Frederick N. Gleaton, *Esq.*
Laura M. Strong, *Esq.*
Owen, Gleaton, Egan, Jones & Sweeney LLP
1180 Peachtree Street NE
Suite 3000
Atlanta, GA 30309
Attorneys for Defendants

This 17th day of April, 2018.

HORNSBY LAW GROUP

/s/ Chloe Dallaire
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