

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 1A 3

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LUCILLE JONES, LORETTA JONES, AUDREY
JONES, RONALD JONES and SHEILA CUSLEY,
next of kin to GEORGE JONES, deceased, Index No. 8C09/05

Plaintiffs, DECISION/ORDER

-against-

Hon. LARRY S. SCHACHTER
J.S.C.

THE CITY OF NEW YORK and THE NEW YORK
CITY HEALTH AND HOSPITALS CORPORATION,

Defendants.

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Plaintiffs' motion for summary judgment on the issue of
liability is decided as follows:

Plaintiff alleges that defendants negligently disposed of the
body of decedent George Jones and then deprived plaintiffs of their
right to immediate possession of decedent's body for preservation
and burial. On November 21, 2003 decedent George Jones was found
dead in his apartment and brought to the Office of the Chief
Medical Examiner at Jacobi Hospital. Decedent's body was
identified by his brother, plaintiff Ronald Jones and sister,
plaintiff Sheila Cusley. Plaintiff Loretta Jones, another sister,
began making funeral arrangements and hired the M. Marshall Blake
Funeral Home. On December 2, 2003, Mr. Gibbs an employee of the
funeral home retained by plaintiffs attempted to remove decedent's
body from the medical examiner's office. He was advised that the
medical examiner's office no longer had the decedent's body, as it

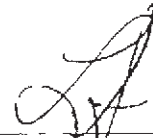
was released to another funeral home November 25, 2003 and buried in a cemetery in Pennsylvania. The body was exhumed and returned to the medical examiner on December 4, 2003. On December 6, 2003 at the request of decedent's mother, plaintiff Lucille Jones, the decedent's body was released to the correct funeral home.

Based upon the record before the court the motion for summary judgment is granted. A surviving next of kin has a right to the immediate possession of a decedent's body for preservation and burial and ...damages will be awarded against any person who unlawfully interferes with that right or improperly deals with the decedent's body Darcy v. Presbyterian Hospital, 202 N.Y.259 (1911) Nesbit v. Turner, 15 A.D.3d 552 (2nd Dept. 2005) It is undisputed that on November 25, 2003 decedent's body was released by the medical examiner to the Fazenga Brothers Funeral Home without the consent of plaintiffs, rather than the M. Marshall Blake Funeral Home when it sought decedent's body on December 2, 2003. The body was returned to the medical examiner on December 4, 2003 and then released to plaintiffs on December 6. Thus, for a period of approximately five [5] days plaintiff's right to immediate possession of decedent's body was interfered with. Counsel's speculative explanations are insufficient to defeat the requested relief, as there is no evidence in the record that the ink on decedent's body tag was rubbed off, or that there may have been difficulty in distinguishing decedent's race.

Accordingly, plaintiffs are awarded summary judgment on the issue of liability.

This constitutes the decision and order of the court.

Dated: May 23, 2008



J.S.C.