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**SECTION:** LEGAL\_BRIEFS; Vol. 231; Pg. 17

**LENGTH:** 178 words

**HEADLINE:** Gabbay v. Mandel

Deceptive Practices, False Advertising Claims Stated in **Lasik** Eye Surgery Malpractice Action;  
Consumer Protection

CASE-INFO: Supreme Court IA Part 40D

**BODY:**

Justice Carey

PLAINTIFF ASSERTED violations of General Business Law §§[349 and 350 in his medical malpractice action alleging defendant physician's negligent performance of **Lasik** eye surgery. The doctor sought dismissal of plaintiff's GBL §§[349 and 350 claims for his failure to state a cause of action or, alternatively, his failure to comply with pleading requirements of Civil Practice Law and Rules §§[3013 and 3016[b]. The court denied dismissal, finding that plaintiff's affidavit averring to his hearing of radio advertisements and seeing of newspaper and magazine advertisements regarding defendant's **Lasik** surgery stated claims under §§[349 and 350. It ordered a second supplemental bill of particulars, specifying where and when plaintiff heard and saw the advertisements. Noting the silence of plaintiff's affidavit and supplemental bill of particulars on the issue, the court found that defendant may not have had sufficient notice, for purposes of CPLR §[3016[b], as to when plaintiff heard or saw the advertisements.

**LOAD-DATE:** March 16, 2004

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