

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

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Argued - November 20, 2006

THOMAS A. ADAMS, J.P.  
DAVID S. RITTER  
STEVEN W. FISHER  
JOSEPH COVELLO, JJ.

2006-04393

DECISION & ORDER

Maria Urena, appellant, v New York City Health  
and Hospitals Corp., respondent.

(Index No. 25687/04)

Leavitt, Kerson & Duane, New York, N.Y. (Paul E. Kerson and John F. Duane of  
counsel), for appellant.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Kristin M. Helmers,  
Julie Steiner, and Scott Shorr of counsel), for respondent.

In an action to recover damages for medical malpractice, the plaintiff appeals from an  
order of the Supreme Court, Queens County (Elliot, J.), dated April 12, 2006, which denied her  
motion, inter alia, for leave to serve a late notice of claim and supplemental summons and amended  
complaint, and granted the defendant's cross motion pursuant to CPLR 3211(a)(7) to dismiss the  
complaint for failure to serve a timely notice of claim pursuant to General Municipal Law § 50-e.

ORDERED that the order is affirmed, with costs.

Service of a notice of claim within 90 days after accrual of the claim is a condition  
precedent to commencing an action against the New York City Health and Hospitals Corporation  
(hereinafter the NYCHHC) (*see* McKinney's Unconsolidated Laws of NY § 7401[2]; General  
Municipal Law § 50-e[1][a]; *Scantlebury v New York City Health & Hosps. Corp.*, 4 NY3d 606, 609;  
*Maxwell v City of New York*, 29 AD3d 540, 541). Here, no notice of claim was ever served upon the  
defendant. Further, since that branch of the plaintiff's motion which was for leave to serve a late  
notice of claim was made more than one year and 90 days after the accrual date of the claim, the

December 5, 2006

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Supreme Court did not have the authority to grant that branch of the motion, and the defendant's cross motion to dismiss the complaint was properly granted (*see* General Municipal Law §§ 50-e[5], 50-I; *Pierson v City of New York*, 56 NY2d 950, 955; *Maxwell v City of New York*, *supra*; *Palagashvili v City of New York*, 26 AD3d 481; *Small v New York City Tr. Auth.*, 14 AD3d 690, 691; *Santiago v City of New York*, 294 AD2d 483).

The plaintiff's contention that the defendant should have been equitably estopped from asserting the statute of limitations as a bar to her application for leave to serve a late notice of claim is without merit. There was no proof of any fraudulent concealment by the defendant (*see Maxwell v City of New York*, *supra*). Moreover, the plaintiff has shown no reliance on any purported fraud or deception by the defendant that would give rise to an estoppel (*see Matter of Economon v New York City Health & Hosps. Corp.*, 38 NY2d 662; *Wade v New York City Health & Hospitals Corp.*, 16 AD3d 677).

The plaintiff's remaining contentions are without merit.

ADAMS, J.P., RITTER, FISHER and COVELLO, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court