

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

D22752
W/kmg

_____AD3d_____

Argued - March 10, 2009

ROBERT A. SPOLZINO, J.P.
STEVEN W. FISHER
HOWARD MILLER
RUTH C. BALKIN, JJ.

2007-10428

DECISION & ORDER

Olga Szczesniak, etc., appellant,
v Henryk Cioczek, etc., et al., respondents.

(Index No. 15776/04)

The Pagan Law Firm, P.C., New York, N.Y. (Tania M. Pagan and Candice A. Pleiss of counsel), for appellant.

Peltz & Walker, New York, N.Y. (Bhalinder L. Rikhye of counsel), for respondent Henryk Ciozek.

Aaronson, Rappaport, Feinstein & Deutsch, LLP, New York, N.Y. (Steven C. Mandell of counsel), for respondents Naftoli Neuberger and Naftoli Neuberger, M.D., P.C.

In an action to recover damages for medical malpractice, etc., the plaintiffs appeal from a judgment of the Supreme Court, Kings County (Jackson, J.), entered October 12, 2007, which, upon an order of the same court dated August 6, 2007, granting the motion of the defendant Henryk Ciozek for summary judgment dismissing the complaint insofar as asserted against him and the separate motion of the defendants Naftoli Neuberger and Naftoli Neuberger, M.D., P.C., for summary judgment dismissing the complaint insofar as asserted against them, is in favor of the defendants and against him dismissing the complaint with prejudice.

ORDERED that the judgment is affirmed, with one bill of costs payable by the plaintiff to the defendants appearing separately and filing separate briefs.

April 7, 2009

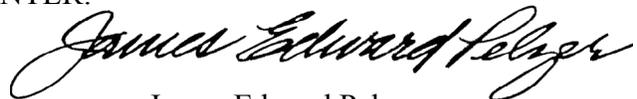
Page 1.

SZCZESNIAK v CIOCZEK

A cause of action to recover damages for medical malpractice accrues on the date of the alleged act, omission, or failure complained of, and is subject to a 2½-year statute of limitations (see CPLR 214-a; *Young v New York City Health & Hosps. Corp.*, 91 NY2d 291, 295-296; *Nykorchuck v Henriques*, 78 NY2d 255, 258-259). Here, the defendants established their prima facie entitlement to judgment as a matter of law by demonstrating that the plaintiff's medical malpractice claims were time-barred (see CPLR 214-a). In opposition, the plaintiff failed to raise a triable issue of fact with respect to any defendant (see *Anderson v Central Brooklyn Med. Group*, 56 AD3d 500, 501). In particular, the plaintiff failed to demonstrate that the continuous treatment doctrine is applicable. Under that doctrine, when there has been "continuous treatment for the same illness, injury or condition which gave rise to the said act, omission or failure" (CPLR 214-a), the limitations period runs from the date of the "last treatment" (*id.*; see *Nykorchuck v Henriques*, 78 NY2d 255, 259; *Gomez v Katz*, _____ AD3d _____, 2009 NY Slip Op 01082, *2 [2d Dept 2009]; *Roca v Perel*, 51 AD3d 757, 760). Any continuous course of treatment that the defendant physician Naftoti Neuberger and his professional corporation rendered to the decedent was not related to the condition which gave rise to the action. Consequently, the isolated act of alleged malpractice committed by Neuberger in connection with his alleged failure to order a test that might have disclosed the decedent's cancer was beyond the statute of limitations (see *Young v New York City Health & Hosps. Corp.*, 91 NY2d at 296-297; *Nykorchuck v Henriques*, 78 NY2d at 259; *DiGiario v Agrawal*, 41 AD3d 764, 766). The course of treatment rendered to the decedent by the defendant physician Henryk Cioczek ended by October 9, 2001, more than 2½ years before the plaintiff commenced this action.

SPOLZINO, J.P., FISHER, MILLER and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court