

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

D31492  
W/hu

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - May 11, 2011

REINALDO E. RIVERA, J.P.  
DANIEL D. ANGIOLILLO  
RANDALL T. ENG  
CHERYL E. CHAMBERS  
SANDRA L. SGROI, JJ.

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2010-04771  
2010-04772

DECISION & ORDER

James Williams, appellant, v New York City Health  
and Hospitals Corporation, respondent.

(Index No. 22897/09)

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James Williams, New York, N.Y., appellant pro se.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Stephen J. McGrath  
and Susan B. Eisner of counsel), for respondent.

In an action, inter alia, to recover damages for dental malpractice and lack of informed consent, the plaintiff appeals (1), as limited by his brief, from so much of an order of the Supreme Court, Kings County (Jackson, J.), dated March 2, 2010, as granted the defendant's motion pursuant to CPLR 3211(a)(5) to dismiss the complaint as time-barred, and (2) from a judgment of the same court dated April 7, 2010, which, upon the order, is in favor of the defendant and against him dismissing the complaint.

ORDERED that the appeal from the order is dismissed; and it is further,

ORDERED that the judgment is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the defendant.

The appeal from the intermediate order must be dismissed because the right of direct

appeal therefrom terminated with the entry of judgment in the action (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the order are brought up for review and have been considered on the appeal from the judgment (*see CPLR 5501[a][1]*).

The defendant met its threshold burden of demonstrating, *prima facie*, that the complaint was time-barred (*see McKinney's Uncons Laws of NY* § 7401[2]; *Matter of Daniel J. v New York City Health & Hosps. Corp.*, 77 NY2d 630, 634; *McDermott v Torre*, 56 NY2d 399, 405; *Simcuski v Saeli*, 44 NY2d 442, 452-453; *Giannetto v Knee*, 82 AD3d 1043; *Cherise v Braff*, 50 AD3d 724, 726; *cf. General Municipal Law* § 50-i[1]). In opposition, the plaintiff failed to raise a question of fact as to whether the statute of limitations was tolled or was otherwise inapplicable, or whether he actually commenced the action within the applicable limitations period (*see Rakusin v Miano*, \_\_\_AD3d \_\_\_, 2011 NY Slip Op 04225 [2d Dept 2011]; *cf. Krichmar v Scher*, 82 AD3d 1164, 1165).

The plaintiff's remaining contentions are without merit.

Accordingly, the Supreme Court properly granted the defendant's motion pursuant to CPLR 3211(a)(5) to dismiss the complaint as time-barred.

RIVERA, J.P., ANGIOLILLO, ENG, CHAMBERS and SGROI, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court