

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

D32485  
O/kmb

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

Argued - September 22, 2011

DANIEL D. ANGIOLILLO, J.P.  
THOMAS A. DICKERSON  
CHERYL E. CHAMBERS  
PLUMMER E. LOTT, JJ.

2009-11147

DECISION & ORDER

Dawn Rumola, etc., appellant, v Maimonides  
Medical Center, respondent.

(Index No. 13270/08)

John A. Corring, New City, N.Y., for appellant.

Wilson Elser Moskowitz Edelman & Dicker, LLP, New York, N.Y. (Richard E.  
Lerner and Judy C. Selmecci of counsel), for respondent.

In an action, inter alia, to recover damages for wrongful death, the plaintiff appeals from an order of the Supreme Court, Kings County (Dabiri, J.), dated November 21, 2008, which granted that branch of the defendant's motion which was pursuant to CPLR 3211(a)(5) to dismiss the complaint as barred by the statute of limitations.

ORDERED that the order is affirmed, with costs.

In 1998, Anna Rumola, as administratrix of the estate of Thomas Sharp, commenced an action against the defendant. On November 16, 1999, Anna Rumola died. In 2007 the Supreme Court granted the defendant's motion pursuant to CPLR 1021 to dismiss the action "with prejudice" due to the failure of the persons interested in the decedent's estate to move for a substitution within a reasonable time. Dawn Rumola, as "Proposed Administrator of the Estate of Thomas Sharp," subsequently commenced this action based on the same transactions and occurrences as those in the prior action.

The Supreme Court properly granted that branch of the defendant's motion which was pursuant to CPLR 3211(a)(5) to dismiss the complaint as barred by the statute of limitations. Under

October 11, 2011

Page 1.

RUMOLA v MAIMONIDES MEDICAL CENTER

the circumstances of this case, the dismissal of the prior action was for “neglect to prosecute,” rendering the exception to the statute of limitations in CPLR 205(a) unavailable to the plaintiff (*see Andrea v Arnone, Hedin, Casker, Kennedy & Drake, Architects & Landscape Architects, P.C. [Habiterra Assoc.]*, 5 NY3d 514, 520; *Flans v Federal Ins. Co.*, 43 NY2d 881, 882; *Bauer v Mars Assoc.*, 35 AD3d 333, 334; *cf. Freedman v New York Hosp. Med. Ctr. of Queens*, 9 AD3d 415).

In light of our determination, we need not reach the defendant’s remaining contention.

ANGIOLILLO, J.P., DICKERSON, CHAMBERS and LOTT, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court