

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

D33071
W/prt

_____AD3d_____

Argued - October 28, 2011

WILLIAM F. MASTRO, J.P.
CHERYL E. CHAMBERS
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2010-11252

DECISION & ORDER

Kenneth Hull, etc., respondent, v Smithtown Center
for Rehabilitation & Nursing Care, et al., appellants.

(Index No. 36867/08)

Murphy & Higgins, LLP, New Rochelle, N.Y. (Dan Schiavetta, Jr., of counsel), for appellants Smithtown Center for Rehabilitation & Nursing Care and Smithtown Health Care Management, LLC.

Montfort, Healy, McGuire & Salley, Garden City, N.Y. (Donald S. Neumann, Jr., and Michael K. Chin of counsel), for appellants Jacqueline Morgan and St. Charles Hospital and Rehabilitation Center.

Persing & O'Leary, LLP, Latham, N.Y. (Daniel J. Persing of counsel), for respondent.

In an action, inter alia, to recover damages for personal injuries, the defendants Smithtown Center for Rehabilitation & Nursing Care and Smithtown Healthcare Management, LLC, appeal, as limited by their brief, from so much of an order of the Supreme Court, Suffolk County (Sweeney, J.), entered September 14, 2010, as denied their motion for summary judgment dismissing the complaint insofar as asserted against them as time-barred, and the defendants Jacqueline Morgan and St. Charles Hospital and Rehabilitation Center separately appeal, as limited by their brief, from so much of the same order as denied that branch of their separate motion which was for summary judgment dismissing the complaint insofar as asserted against them as time-barred.

ORDERED that the order is affirmed, with one bill of costs.

November 29, 2011

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The defendants failed to establish their prima facie entitlement to judgment as a matter of law in connection with their contention that the complaint sounds in medical malpractice rather than simple negligence and, thus, that the action was untimely pursuant to CPLR 214-a. Accordingly, the Supreme Court properly denied the motion of the defendants Smithtown Center for Rehabilitation & Nursing Care and Smithtown Healthcare Management, LLC (hereinafter together Smithtown), and that branch of the separate motion of the defendants Jacqueline Morgan and St. Charles Hospital and Rehabilitation Center which were for summary judgment, regardless of the sufficiency of the opposing papers (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320, 324).

Smithtown's remaining contention is without merit.

MASTRO, J.P., CHAMBERS, SGROI and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court