

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

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CA 10-02237

PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND GREEN, JJ.

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SEAN HIRT, PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

PAUL MANCUSO, DEFENDANT-RESPONDENT,  
ET AL., DEFENDANTS.

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GUSTAVE J. DETRAGLIA, JR., UTICA, FOR PLAINTIFF-APPELLANT.

EDWARD Z. MENKIN, SYRACUSE, FOR DEFENDANT-RESPONDENT.

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Appeal from an order and judgment (one paper) of the Supreme Court, Oneida County (Samuel D. Hester, J.), entered August 17, 2010. The order and judgment granted the motion of defendants Paul Mancuso and Michael Durso for summary judgment and dismissed the complaint.

It is hereby ORDERED that the order and judgment so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff commenced this action seeking damages for injuries he sustained when he was allegedly assaulted by defendants Michael Durso and Joseph Mazza at the direction of defendant Paul Mancuso. Supreme Court properly granted defendants' motion seeking summary judgment dismissing the complaint. Defendants met their initial burden by establishing that the action, commenced more than one year after the alleged assault, is time-barred (see CPLR 215 [3]), and plaintiff failed to raise a triable issue of fact whether the limitations period was extended by virtue of CPLR 215 (8) (a), based on the commencement of a federal criminal action against Mancuso. The record establishes that the criminal action against Mancuso was not "commenced with respect to the event or occurrence from which [plaintiff's] claim . . . arises" (*id.*; see generally *Christodoulou v Terdeman*, 262 AD2d 595, 596). In any event, two of the three defendants, i.e., Durso and Mazza, are not "the same defendant" against whom the criminal action was commenced (CPLR 215 [8] [a]; see *Villanueva v Comparetto*, 180 AD2d 627, 629; see also *Jordan v Britton*, 128 AD2d 315, 320).

Entered: March 25, 2011

Patricia L. Morgan  
Clerk of the Court