

Wicks v Piken

2009 NY Slip Op 30699(U)

March 27, 2009

Supreme Court, New York County

Docket Number: 109199/07

Judge: Walter B. Tolub

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT **WALTER B. TOLUB**

PART 15

Index Number : 109199/2007

WICKS, RONAN M.

vs.

PIKEN, JASON W., D.C.

SEQUENCE NUMBER : 001

DISMISS ACTION

INDEX NO. _____

MOTION DATE 12.19.08

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

in this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION:

IS DECIDED

FILED
APR 01 2009

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 3/27/09

WALTER B. TOLUB J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

-----x

RONAN M. WICKS and MARTINE WICKS,

Index No. 109199/07

Plaintiffs,

Mtn Seq. 001

-against-

JASON W. PIKEN, D.C.

Defendant.

FILED
APR 01 2009
COUNTY CLERK'S OFFICE
NEW YORK

WALTER B. TOLUB, J.:

This action raises the issue of whether claims of chiropractic malpractice are subject to the two-and-one half year statute of limitations for medical malpractice claims as set forth under CPLR 214-a.

Background

In 2003, plaintiff Ronan M. Wicks ("plaintiff") sought chiropractic treatment from defendant Jason W. Piken, D.C. ("defendant"). Complaining of pain and numbness in his arms and recurring sciatic and neck pain, plaintiff was examined by defendant who then ordered an x-ray of plaintiff's cervical spine. Based upon plaintiff's physical examination and the results of the x-ray, defendant diagnosed plaintiff with muscle spasm, thoracic and cervical subluxation, carpal tunnel syndrome,

and cervical brachial syndrome (Notice of Motion, Exhibit E). Defendant then designed a course of treatment for plaintiff, which included massage, adjustments, and neromuscular reeducation (id.). Plaintiff began bi-weekly chiropractic treatments with defendant, and was treated by defendant for over one year (see Answer to Defendant's Demand for a Verified Bill of Particulars, Defendant's Exhibit C).

From what this court can ascertain from the papers, plaintiff began experiencing pain and numbness during the first week of July of 2004. On July 2nd, plaintiff was treated by defendant. On July 5, 2004, plaintiff again sought further treatment of his symptoms. Plaintiff claims that during this visit, he was treated with "chiropractic adjustments to and manipulation of his back and neck" (Complaint, ¶ 7-8). Plaintiff claims that during his treatment, defendant "departed from good and accepted practice" in chiropractic care, which was negligently performed, resulting in injuries (Complaint, ¶ 9-12). Plaintiff claims that these injuries, which are ill-defined in the complaint, resulted in "loss of function of his body" (Complaint, ¶ 13) and have, among other things, limited him from performing his job as an attorney (Complaint, ¶ 15).

This action, sounding in malpractice, was commenced on July 3, 2007. By this motion, defendant moves to dismiss plaintiff's complaint in its entirety on the grounds that the claims are

barred by the two-and-one-half year statute of limitations set forth under CPLR 214-a.

Discussion

Contrary to plaintiffs' assertions, more than two decades ago, the Court of Appeals established that the shortened statute of limitations available under CPLR 214-a is not solely limited to medical treatment provided by a physician, dentist or podiatrist, and may be successfully applied to other medical-related fields (Bleiler v. Bodnar, 65 NY2d 65 [1985]). The courts have since determined that CPLR 214-a may extend to somatic health care providers¹ including physical therapists (Wahler v. Lockport Physical Therapy, 275 AD2d 906, 907 [1st Dept 2000]; Ryan v. Korn, 57 AD3d 2507 [2nd Dept 2008]; Meiselman v. Fogel, 50 AD3d 979 [1st Dept 2008]) and as such, may potentially be applied to chiropractors (Foote v. Picinich, 118 AD2d 156 [3rd Dept 1986]).

The application of CPLR 214-a to somatic health care providers however, turns not on whether the treatment was conducted at the direction of a physician, but, whether the alleged act or omission amounts to medical treatment or bears a substantial relationship to the rendition of medical treatment by

¹ "Somatic health care" is a term first used by the Court of Appeals in Karasek v. LaJoie, 92 NY2d 171,177 [1998] to describe medical-type treatments designed to aid in rehabilitation or healing of the body that is provided by professionals other than licensed physicians.

* 5]
a licensed physician (see, Bleiler, 65 NY2d 65, 72; Wahler, 275 AD2d 906, 907; Meiselman, 50 AD3d 979; Footte v. Picinich, 118 AD2d 156, 158; Karasek v. LaJoie, 92 NY2d 171, 174-75 [1998]).

In the instant case, the papers thus far presented by the parties are devoid of the detail necessary for this court to reach any conclusion as to the nature of the alleged acts or omissions made by the defendant. For example, both plaintiffs' complaint and plaintiffs' answer to defendant's demand for a bill of particulars identifies the complained of treatment as "chiropractic adjustments to and manipulations of" plaintiff's back and neck (see, Notice of Motion, Exhibit A, Complaint ¶8; Exhibit C, Plaintiff's Answer to Defendant's Demand for a Bill of Particulars, Answer to Demand No. 2). Defendant's affidavit in support of the motion identifies the complained of treatment as "neuromuscular reeducation and adjustments" (Notice of Motion, Exhibit D). In the absence of additional information, this court is simply unable to ascertain whether the treatment provided to plaintiff should be afforded the benefit of the shorter statute of limitations. Inasmuch as there remains a question as to whether plaintiff's facts, as alleged "fit within any cognizable legal theory" upon which plaintiff may succeed (Leon v. Martinez, 84 NY2d 83, 87-88 [1994]; Campaign For Fiscal Equity, Inc. v. State of New York, 86 NY2d 307, 318 [1995]). See generally, Barr, Altman, Lipshie, and Gerstman; New York Civil Practice Before


Trial [James Publishing 2008] \$36.01 et seq.), it is

ORDERED that defendant's motion to dismiss, is, at this juncture, denied with leave to renew upon the completion and/or presentation of additional discovery.

Counsel for the parties are directed to appear for a Preliminary Conference in IA Part 15, Room 335, 60 Centre Street, New York, New York at 11:00 a.m. on May 8, 2009.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 3/27/09



HON. WALTER B. TOLUB, J.S.C.

FILED
APR 01 2009
COUNTY CLERK'S OFFICE
NEW YORK