

**Zucker v New York Univ.**

2010 NY Slip Op 33473(U)

December 17, 2010

Sup Ct, NY County

Docket Number: 109592/09

Judge: Alice Schlesinger

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

ALICE SCHLESINGER

PART **IA** PART 16

PRESENT:

Index Number : 109592/2009

ZUCKER, ELYSE

VS.

NEW YORK UNIVERSITY

SEQUENCE NUMBER : 001

SUMMARY JUDGMENT

INDEX NO.

MOTION DATE

MOTION REQ. NO.

MOTION CAL. NO.

**FILED**

this **DEC 21 2010** to/for

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

Answering Affidavits — Exhibits

Replying Affidavits

NEW YORK COUNTY CLERK'S OFFICE PAPER NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

*by defendant*

*Dr. Chad Gehani is granted in accordance with the accompanying memorandum decision. The Clerk is ~~directed~~ directed to enter judgment in favor of Dr. Gehani dismissing all claims against him.*

Dated: DEC 17 2010

*Alice Schlesinger*  
**ALICE SCHLESINGER**

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

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

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

-----X  
ELYSE ZUCKER,

Plaintiffs,

Index No. 109592/09  
Motion Seq. No. 001

-against-

NEW YORK UNIVERSITY, NEW YORK UNIVERSITY  
COLLEGE OF DENTISTRY, DR. SATYA PABBARAJU,  
DR. HARRY MEEKER and DR. CHAD GEHANI,

**FILED**

Defendants.

DEC 21 2010

-----X  
SCHLESINGER, J.:

NEW YORK  
COUNTY CLERK'S OFFICE

This is an action that sounds in medical malpractice, wherein the plaintiff who was a regular patient of the New York University Dental Clinic brought an action against that clinic as well as one of the interns Dr. Satya Pabbaraju, an employee of the clinic Dr. Harry Meeker, and an attending dentist Dr. Chad Gehani. Dr. Gehani would come in at certain times to supervise the work of the interns. The motion before me is by Dr. Gehani. He is moving to dismiss the claims against him based on Statute of Limitation grounds. Specifically, he says that whatever treatment he was involved with occurred more than two and a half years before the commencement of this lawsuit and further that there was no continuous treatment exclusion. Therefore, he argues, the plaintiff's claim is time-barred pursuant to CPLR §214-a.

The allegations that Ms. Zucker are making center around what occurred on September 20, 2006. At that visit to the clinic, Dr. Pabbaraju allegedly improperly administered an injection to Ms. Zucker which she claims was unnecessarily deep and caused Trigeminal Neuralgia to tooth #6. The dental records from the clinic show that

Dr. Gehani was the attending dentist who supervised Dr. Pabbaraju on that day. Ms. Zucker claims that the administration of this injection was malpractice, as was the failure in the ensuing visits to recognize and properly deal with this injury.

It is important to this motion to note the following date, July 7, 2009, which is the date that the plaintiff filed her complaint and commenced this action. Pursuant to CPLR §214-a, the last date that could be referred to as being within the two and a half year limit for alleged malpractice would be January 7, 2007, or 2 years and 6 months before the action was commenced.

The alleged malpractice regarding the injection, as noted earlier, occurred on September 20, 2006. This date is certainly well before January 7, 2007. The moving defendant makes this point and says that Dr. Gehani's name does not appear in Ms. Zucker's records after that date. However, in opposition, counsel for the plaintiff points out and argues two things. In the first instance, he points out that there is another date when Dr. Gehani was the attending supervising dentist and that was July 16, 2008, or almost two years after the September 2006 event. He also urges that no discovery has occurred, specifically that neither Dr. Gehani or anyone else has been deposed. The final thing that should be noted, before a discussion of the applicable law, is that on July 16, 2008, Ms. Zucker visited the clinic because the temporary crown on tooth #5 had fallen out. Further, she complained of "sensitivity", presumably in that area.

When malpractice allegedly occurs two and a half years before the commencement of an action, the plaintiff must show that further events during the two and one-half year period before the filing of the complaint by the same defendant concerned treatment for the same condition that was the subject of the original malpractice. Visiting a doctor or a

dentist for some other or general treatment is not sufficient to toll the statute. To apply the doctrine of continuous treatment, the actions that occur during the two and one-half years again must be clearly for the same condition which was the subject of the earlier malpractice. *Nykorchuk v. Henriques*, 78 NY2d 255 (1991); *Chesrow v. Galiani*, 234 AD2d 9 (1<sup>st</sup> Dep't 1996).

Here, I am unable to find such continuous treatment. Dr. Gehani only saw Ms. Zucker one other time after the alleged malpractice on September 20, 2006. As stated above, that was almost two years later. The dental clinic's records show that for a number of visits both before and after the July 16, 2008 visit, Ms. Zucker was there complaining exclusively of problems involving tooth #5. There is no mention at all of tooth #6. I believe it would be improper for this Court to assume that the "sensitivity" that Ms. Zucker complained of on July 16, 2008, had to do with sensitivity involving tooth #6, the tooth or the condition which is the subject of the earlier malpractice. Therefore, moving counsel is correct when he argues that there was no continuous treatment for the same condition that occurred outside the two and one-half year period. This being the case, the motion by Dr. Gehani to dismiss the action against him is granted. However, since Dr. Gehani has not been deposed as a defendant and he may have relevant testimony with regard to the circumstances of the September 16, 2006 visit since he was present then, I am directing his counsel to make him available for a non-party deposition.

Accordingly, it is hereby

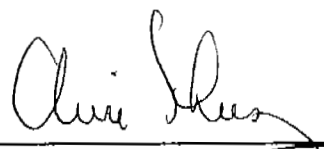
ORDERED that the motion for summary judgment by defendant Dr. Chad Gehani is granted and the Clerk shall sever and dismiss all claims against Dr. Gehani and the

balance of the action shall continue against the other defendants, with discovery including a deposition of Dr. Gehani.

This decision constitutes the order of the Court.

Dated: December 17, 2010

**DEC 17 2010**



J.S.C.

**ALICE SCHLESINGER**

**FILED**

DEC 21 2010

NEW YORK  
COUNTY CLERK'S OFFICE