

**Matter of Centeno v County of Suffolk**

2013 NY Slip Op 30638(U)

March 27, 2013

Sup Ct, Suffolk County

Docket Number: 0014038/2012

Judge: John J.J. Jones Jr

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

G  
**COPY**

INDEX NO.: 0014038/2012  
SUBMIT DATE: 1/23/2013  
MTN. SEQ.#: 002

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 10 SUFFOLK COUNTY

Present:

**HON. JOHN J.J. JONES, JR.**  
**Justice**

MOTION DATE: 12/10/2012  
MOTION NO.: MOT D

-----X  
In the Matter of the Claim of Public Administrator of  
Suffolk County as Administrator of the Estate of LUZ  
CENTENO a/k/a LUZ PILAR CENTENO-VACA,

Petitioner/Claimant,

-against-

COUNTY OF SUFFOLK and BRENTWOOD  
FAMILY HEALTH CENTER,

Respondents.  
-----X

**DINKES & SCHWITZER, ESQS.**  
**By: Dennis A. Breitner, Esq.**  
Attorneys for Petitioner/Claimant  
112 Madison Avenue  
New York, NY 10016

**DENNIS M. COHEN**  
**Suffolk County Attorney**  
Attorneys for Respondents  
H. Lee Dennison Building  
100 Veterans Memorial Highway  
P.O. Box 6100  
Hauppauge, NY 11788-0099

Upon the following papers numbered 1 to 45 read on this application for an order granting leave to renew and reargue the order of the Court dated September 12, 2012 denying the plaintiff's motion for leave to file a late notice of claim; Notice of Motion/Order to Show Cause and supporting papers 1-20; Notice of Cross Motion and supporting papers \_\_\_\_; Answering Affidavits and supporting papers 21-40; Replying Affidavits and supporting papers 41-45; Other \_\_\_\_; it is

**ORDERED** that the motion by the plaintiff, Public Administrator of Suffolk County as Administrator of the estate of Luz Centeno a/k/a Luz Pilar Centeno-Vaca ["the plaintiff"], for an order granting leave to reargue the order of this Court dated September 12, 2012, is denied; and it is further

**ORDERED** that the motion for leave to renew the order of the Court dated September 12, 2012 is granted; and it is further

**ORDERED** that upon renewal, the court adheres to its original decision dated September 12, 2012, denying the plaintiff leave to serve a late notice of claim.

This is an action sounding in negligence and medical malpractice. The moving papers relate the following factual allegations.

Plaintiff's decedent, Luz Centeno a/k/a Luz Pilar Centeno-Vaca ["the decedent"], was allegedly in good health on November 26, 2010, when she delivered her seventh child at Southside Hospital ["Southside"]. The decedent was scheduled for her first post partum visit at the defendant Brentwood Family Health Center ["Brentwood"], on January 7, 2011. Brentwood is a health facility owned and operated by the defendant County of Suffolk ["the County"].

Plaintiff alleges that between January 7, 2011, through January 14, 2011, Brentwood failed to properly diagnose and treat the decedent or failed to refer her for proper treatment to appropriate health care providers. Records supplied for the first time on the motion to renew and reargue demonstrated that on the decedent's first visit to Brentwood on January 7, 2011, Brentwood referred the decedent to the Emergency Department at Southside whereupon the decedent was admitted.

A Hepatitis panel conducted during the Southside admission came back negative for Hepatitis A, B, and C. However, the decedent had abnormal CT scans and other diagnostic tests that allegedly should have put Southside and Brentwood on notice that the decedent had a condition other than hepatitis that was causing her symptoms. Brentwood's hematological work-up also acknowledged abnormal blood studies with no definitive cause. The decedent remained at Southside through January 10, 2011, whereupon she was released and apparently referred back to Brentwood.

The decedent returned to Brentwood on January 13, 2011, with negative findings for hepatitis but continued to be dehydrated, jaundiced and iterus. The decedent was told to go to the nearest emergency room if the condition worsened and to follow up in 1 week. The decedent returned to Brentwood on January 14, 2011, and at that time it was documented that the decedent had hepatitis and was referred to a gastroenterologist who would see the decedent later that same day. Notes from Brentwood dated January 14, 2011, indicate that at 5:50 PM the decedent's gastroenterologist appointment was changed to the following week since no one at the gastroenterologist's office spoke Spanish. The decedent was again told that if her condition worsened to go to the emergency room. That was the decedent's last office visit to Brentwood.

The following day the decedent was admitted to Stony Brook University Hospital Medical Center where she remained for two weeks. No definitive diagnosis was made. On February 10, 2011, the decedent was admitted to Good Samaritan Hospital. An exploratory laparotomy revealed a small perforation of the small bowel. The decedent underwent a small bowel resection. On February 18, 2011, the decedent was admitted to Mount Sinai Hospital for a liver transplant at which time the decedent was diagnosed with T-Cell Lymphoma/Leukemia. Although chemotherapy was initiated, the decedent died on March 6, 2011.

The last day of treatment of the decedent by Brentwood was January 14, 2011. The petitioner retained counsel on May 4, 2011. For the purposes of the motion, the parties assume, and the Court accepts, that the last possible day for the plaintiff to have served a timely notice of claim on the County was ninety days from the date of death or June 4, 2011 (*see Brennan v. City of New York*, 59 N.Y.2d 791, 451 N.E.2d 478, 464 N.Y.S.2d 731 [1983]). The period of limitation to commence an action against the County expired one year and ninety days from the decedent's death, or June 4, 2012.

In support of the original motion for leave to serve and file a late notice of claim against Brentwood and the County, the Public Administrator submitted an undated affidavit notarized on May 4, 2012, attesting that "upon information and belief" counsel for plaintiff attempted to have a suitable individual appointed as Administrator but the Surrogate's Court disqualified that individual. As the decedent had no spouse, the Public Administrator was ultimately appointed as administrator of the decedent's estate and a decree granting temporary letters of administration was signed on May 1, 2012. Letters of Administration were issued on May 2, 2012, and the plaintiff moved for leave to serve a late notice of claim on May 4, 2012. No further details were provided on the original motion as to why it took one year to have an administrator appointed to enable the plaintiff to seek leave to file a late notice of claim.

The motion for leave to serve a late notice of claim was denied by order of this Court dated September 12, 2012. The order was served with written notice of its entry on October 9, 2012. The plaintiff's motion to renew and reargue the September 12, 2012 order was made on November 13, 2012.

The motion to renew and reargue contained Brentwood's medical chart and the decedent's autopsy report which the plaintiff did not receive until after the initial application for leave to file a late notice was submitted. The autopsy report listed the decedent's cause of death as sepsis following a perforated small intestine in the setting of T-Cell Lymphoma/ Leukemia (NK).

The affidavit of Dr. Michael Golding dated November 13, 2012, in support of renewal and reargument states that Brentwood departed from accepted medical practice, inter alia, in failing to diagnose and treat the decedent's T-Cell Lymphoma/Leukemia (NK) depriving her of an opportunity for remission and cure. Brentwood's failures were allegedly a substantial factor in causing the decedent's injuries and death. Dr. Golding's opinion is based on his review of not only Brentwood's records, but the records of Southside, Good Samaritan Hospital, Stony Brook University Hospital, Mount Sinai Hospital and the patient's autopsy report.

According to Dr. Golding, had Brentwood made an early diagnosis of the decedent's underlying medical condition of T-Cell Lymphoma/Leukemia (NK), earlier treatment would have been started, and hence, the better the likelihood of remission or cure. Dr. Golding opines that the failure to render appropriate treatment resulted in the small bowel perforation due to the underlying disease process, weakening the decedent's immune process and allowing sepsis to occur.

Regarding so much of the plaintiff's motion that seeks reargument of the order of the court dated September 12, 2012, the motion is denied (*see CPLR* 2221[d]). Even if this Court were to grant reargument, however, it would adhere to its prior determination in all respects, as the Court has determined that there was no misinterpretation of the facts or relevant law in reaching the prior decision denying leave to serve a late notice of claim.

Regarding so much of the plaintiff's motion that seeks a renewal of the order dated September 12, 2012, the motion is granted and, upon renewal, the court adheres to its original decision denying the plaintiff leave to file and serve a late notice of claim.

In exercising its discretion in determining whether or not to grant leave to serve a late notice of claim, the court must consider various factors, including whether (1) the claimant is an infant, (2) the claimant has demonstrated a reasonable excuse for failing to serve a timely notice of claim, (3) the public corporation acquired actual knowledge of the facts constituting the claim within 90 days of its accrual or a reasonable time thereafter, and (4) the delay would substantially prejudice the public corporation in defending on the merits (*see* General Municipal Law § 50–e [5] )” (*Matter of Kaur v. New York City Health & Hosps. Corp.*, 82 A.D.3d 891, 891–892, 918 N.Y.S.2d 545). However, “the presence or absence of any one factor is not determinative” (*id.* at 892, 918 N.Y.S.2d 545).

“Actual knowledge of the essential facts is an important factor in determining whether to grant an extension, and should be accorded great weight” (*Matter of Kaur v. New York City Health & Hosps. Corp.*, 82 A.D.3d at 892, 918 N.Y.S.2d 545). “[W]hat satisfies the statute is not knowledge of the wrong, but notice of the claim (*see Williams v. Nassau County Med. Ctr.*, 6 N.Y.3d 531, 537, 814 N.Y.S.2d 580, 847 N.E.2d 1154). The municipality must have notice or knowledge of the specific claim and not general knowledge that a wrong has been committed” (*Matter of Cotten v. County of Nassau*, 307 A.D.2d 965, 967, 763 N.Y.S.2d 474 [internal quotation marks omitted] ).

Brentwood’s care of the decedent was limited to the period between January 7, 2011 and January 14, 2011. On three of those days the decedent was hospitalized at Southside. Contrary to the plaintiff’s contention, the defendant County and Brentwood did not acquire actual knowledge of facts constituting the claim against it within the requisite 90–day period, or a reasonable time thereafter, by virtue of Brentwood’s possession of limited portions of the decedent’s hospital records relating to her treatment at other hospitals in the two months before the decedent’s death on March 6, 2011 (*see Williams v. Nassau County Med. Ctr.*, 6 N.Y.3d 531, 537, 814 N.Y.S.2d 580, 847 N.E.2d 1154; *Matter of Gonzalez v. City of New York*, 60 A.D.3d at 1059–1060, 876 N.Y.S.2d 139).

“Merely having or creating hospital records, without more, does not establish actual knowledge of a potential injury where the records do not evince that the medical staff, by its acts or omissions, inflicted any injury” on the claimant (*Hernandez v. County of Suffolk*, 90 A.D.3d 1049, 1050, 934 N.Y.S.2d 863 [2d Dept. 2011], *citing Williams v. Nassau County Med. Ctr.*, 6 N.Y.3d at 537, 814 N.Y.S.2d 580, 847 N.E.2d 1154; *see Contreras v. KBM Realty Corp.*, 66 A.D.3d at 630, 887 N.Y.S.2d 172; *Matter of Ali v. New York City Health & Hosps. Corp.*, 61 A.D.3d 860, 861, 877 N.Y.S.2d 221; *Rowe v. Nassau Health Care Corp.*, 57 A.D.3d at 963, 871 N.Y.S.2d 330; *Arias v. New York City Health & Hosps. Corp.* [Kings County Hosp. Ctr.], 50 A.D.3d 830, 833, 855 N.Y.S.2d 265).

Dr. Golding’s affidavit to the effect that Brentwood departed from acceptable standards of medical care in failing to diagnose the decedent’s condition between January 7, 2011 and January 14, 2011, is not tantamount to proof that Brentwood had notice of a potential claim against it by virtue of the information contained in Brentwood’s medical records. (*Ramos-Elizares v. Westchester County Healthcare Corp.*, 94 A.D.3d 1130, 1131, 942 N.Y.S.2d 794 [2d Dept. 2012]).

In addition, Dr. Golding came to his conclusion that a potential claim existed against Brentwood only after a review of all the medical records from Southside Hospital, Good Samaritan Hospital, Stony Brook University Hospital, Mount Sinai Hospital and the patients’ autopsy report. Dr. Golding’s affidavit

does not establish that Brentwood's chart, even if it contained some references to or pages from other treating medical providers, put the County on notice of a potential claim of malpractice within the statutory ninety day period or a reasonable time thereafter. *Hernandez, supra*.

Finally, the burden is on the petitioner to demonstrate the lack of substantial prejudice to the defendant if the late service of a notice of claim were allowed (*Whittaker v. New York City Board of Educ.*, 71 A.D.3d 776, 896 N.Y.S.2d 171 [2d Dept 2010]; *Felice v Eastport South Manor Central School District*, 50 A.D.3d 138, 851 N.Y.S.2d 218 [2d Dept 2008]).

The plaintiff has failed to sustain his burden by rebutting the County's assertions that the delay substantially prejudiced its ability to investigate and defend against the claim (see *Buchanan v. Beacon City School Dist.*, 79 A.D.3d 961, 962, 915 N.Y.S.2d 101 [2d Dept 2010]; *Matter of Guminiak v. City of Mount Vernon Indus. Dev. Agency*, 68 A.D.3d 1111, 1112, 891 N.Y.S.2d 469 [2d Dept 2009]; *Matter of Wright v. City of New York*, 66 A.D.3d 1037, 1038-1039, 888 N.Y.S.2d 125 [2d Dept 2009]).

DATED: 27 March 2013

  
HON. JOHN J. JONES, JR.  
J.S.C.

CHECK ONE:  FINAL DISPOSITION

NON-FINAL DISPOSITION