

<b>Debs-Galland v Carrel</b>
2014 NY Slip Op 30187(U)
January 16, 2014
Sup Ct, New York County
Docket Number: 114657-2007
Judge: Milton A. Tingling
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1/24/14  
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# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: Milton A. Tingling  
Justice

PART 44

Claude Debs Galland  
-v-  
Carroll & Morton

INDEX NO. 114657/07

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 11

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

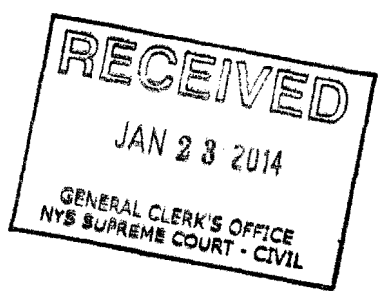
Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is decided in accordance with  
attached memorandum of decision

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



Dated: 1/16/14

Mar, J.S.C.

- 1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

S/D

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

PRESENT: Honorable Milton A. Tingling  
Justice

Part 44

-----X  
Claude Debs-Galland and Violaine Galland,

Index Number: 114657-2007

Plaintiffs,

-against-

DECISION

Adina Carrel, D. M. D., Adina Carrel DMD,  
P. C., Rakhi Morton, D. M. D., Rakhi Morton,  
DMD, P.C., Marc Liechtung, D. M. D., Marc  
Mordecai Liechtung, DMD, P. C., Manhattan  
Dental Arts, P. C. and Manhattan Dental Arts,

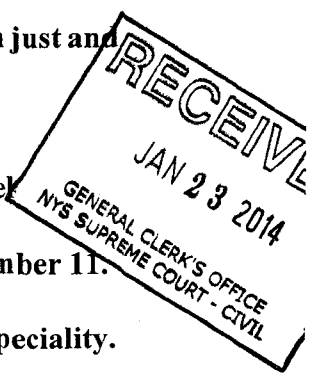
Defendants.

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Defendants Rakhi Morton, DMD and Rakhi Morton DMD, P.C. (Defendants) move for an order pursuant to CPLR 3212: 1) dismissing any claims sounding in negligence and/or lack of informed consent as to dental treatment of tooth number 7 and number 11 by Defendants prior to May 1, 2005 as being barred by the applicable Statue of Limitations; 2) for an order pursuant to CPLR 3212 granting summary judgment on the issue of liability in favor of "Defendants"; 3) severing the dismissed action from the continuing action as against other defendants; 4) for such other and further relief as this Court shall deem just and proper.

On September 28, 2004, Plaintiff presented to a Dr. Carrel DMD. Dr. Carrel suggested a crown lengthening procedure be performed on teeth number 7 and number 11. She referred the plaintiff to Defendant Morton, a licensed dentist with a periodontic speciality.

After an examination, Defendant Morton performed the crown lengthening procedure on teeth number 7 and number 11 the same day. She was satisfied with the treatment and



progress was good. There were no notes indicating complications. Afterwards, Defendant Dr. Carrel placed a new post and core into both teeth number 7 and number 11.

More preparation for a new crown and bridgework was done by Dr. Carrel on October 26, 2004. More work was done by Dr. Carrel on March 14, 2005, May 4, 2005 and September 21, 2005.

Plaintiff's next visit occurred on January 19, 2007 when he again saw Dr. Carrel regarding teeth number 9 and number 11. He again saw Dr. Carrel on June 5, 2007.

Plaintiff next saw Dr. Morton on September 7, 2007. An oral examination was performed and recommended scaling, root planing and placement of Arestin in the area of tooth number 7.

Defendant Morton performed the procedure on Plaintiff on September 11, 2007. Dr. Morton noted toleration of the procedure and no complication. Plaintiff saw Dr. Morton on September 21, 2007 with discomfort on the ridge of tooth number 7. Defendant Morton recommended a gingivectomy. Plaintiff agreed to the procedure. On September 22, 2007, Plaintiff refused to have the procedure. Dr. Morton prescribed Amoxicillin 250 mg. to be taken three times a day for seven days. Dr. Morton's prognosis on tooth number 7 was poor and discussed it with Dr. Carrel who recommended extraction. None of these procedures were performed and September 21 and 22 were the last visits by Plaintiff to Defendant Morton.

On October 24, 2007, Plaintiff saw Dr. Carrel. Plaintiff returned to Dr. Carrel on October 25, 2007 with an abscess in the area of tooth number 7. Dr. Carrel informed Plaintiff tooth number 7 would have to be extracted. Plaintiff requested antibiotics and was

prescribed Penicillin. This was the end of care and treatment rendered to Plaintiff at Manhattan Dental Arts.

The Statute of Limitations for causes of action sounding in dental malpractice is two years and six months from the claimed act, omissions or failure, or the last treatment where a continuous treatment for the same injury, illness or condition gave rise to the particular act, CPLR sect 214-a. "Continuous Treatment", does not include examinations performed at the request of a patient for the sole purpose of ascertaining the state of the patient's condition.

It is not contested that Plaintiff first received treatment from Dr. Morton, relevant to this action on September 28, 2004. Their next interaction occurred on September 7, 2007 in what the dentist described as an emergency treatment. This was more than two years and six months from the alleged treatment sued upon and therefore subject to the sanctions of CPLR sect 214-a.

Plaintiff's attempt to survive dismissal of this case against movant based upon the doctrine of continuous treatment also must fall. Plaintiff's action centers on treatment rendered on tooth number 7 and tooth number 11 prior to May 1, 2005.

No evidence was presented that tooth number 11 was ever treated by Defendant Morton after September 28, 2004.

As to tooth number 7, it is undisputed that "Morton" performed a crown lengthening on that tooth on September 28, 2004.

The next treatment by "Morton" did not occur until nearly three years later on September 7, 2007. The treatment there was described as an emergency and cannot be deemed to be controlled by the continuous treatment doctrine. See Gruppe v Jankunas, 230 A.D.2d 826 and Pietromarnaco v Schwartzman, 259 A.D.2d 474, 475.

Since no treatment on tooth number 11 was had for over two and one half years and therefore is barred by CPLR sect 214(a).

As to tooth number 7, there was no continuous treatment as the relationship after September 28, 2004 consisted of separate dental procedures not related to the complaints of plaintiff. Therefore, causes of action against this defendant as to tooth number 7 are time barred by CPLR sect 214(a).

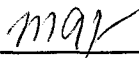
The expert affidavits submitted in support of Plaintiff's opposition are conclusory, and do not address the specific treatments or correspond to same. The affidavits of both suffer the same fatal defect in that the dental and x ray records are not attached. Nor are they attached to plaintiff's affidavit. See Brown v Bauman 42 A.D.3d 390, 392 (1<sup>st</sup> Dept. 2007).

Plaintiff's conclusory allegations and opposition did not establish a position sufficient to defeat the motion by defendant herein in this dental malpractice case.

The motion for summary judgment in favor of Dr. Morton and Rakhi Morton, DMD, P.C. dismissing the case against them is hereby granted.

Settle order on notice.

Date: January 16, 2014

  
\_\_\_\_\_  
J. S. C.  
Judge Milton A. Tingling