

Cady v Springbrook NY, Inc.
2014 NY Slip Op 33878(U)
October 6, 2014
Supreme Court, Dutchess County
Docket Number: 1758/12
Judge: Peter M. Forman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X
KATHY CADY, AS PARENT AND GUARDIAN OF
ANDREW MINET,

Plaintiffs,

DECISION AND
ORDER

-against-

Index No. 1758/12

SPRINGBROOK NY, INC., f/k/a UPSTATE HOME
FOR CHILDREN AND ADULTS, INC.,

Defendants.

-----X

FORMAN, J., Acting Supreme Court Justice

The Court read and considered the following documents upon
this motion:

	<u>PAPERS NUMBERED</u>
NOTICE OF MOTION.....	1
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Defendant Springbrook is a residential facility serving children with disabilities. Plaintiff Andrew Minet was a resident of that facility from January of 2000 through April of 2008. Plaintiff Kathy Cady is Mr. Minet's mother and legal guardian.

Plaintiffs commenced this action on February 8, 2013. The Verified Complaint alleges that Mr. Minet was a resident of Springbrook from January 2000 through March 2008. The Verified Complaint also alleges that Springbrook provided residential services and supervision to Mr. Minet between January 2007 and March of 2008. Paragraph 7 of the Verified Complaint alleges that, from the period of January 2007 to April 2008:

the oversight, supervision and control of the Plaintiff was rendered in an improper, negligent and careless manner in that, *inter alia*, Defendant Springbrook... failed to appropriately supervise and employ the skill, care and diligence commonly and ordinarily possessed by and required of residential facility, including for this particular resident, resulting in the Plaintiff ingesting multiple foreign objects, including multiple pine needles.

Paragraph 8 of the Verified Complaint also alleges that Springbrook "was otherwise careless and negligent by failing to employ reasonable and proper steps, procedures, and practices for the health, welfare, and safety of Plaintiff, Andrew Minet, and to avoid injury to him."

Mr. Minet turned eighteen years old on April 1, 2009. The Surrogate's Court of Dutchess County appointed Ms. Cady as Mr. Minet's legal guardian on October 22, 2009. Plaintiffs commenced this action on March 30, 2012. Therefore, whether measured from the date that Mr. Minet ceased to be an infant, or from the date that Ms. Cady was appointed as his legal guardian, this action was timely commenced for purposes of the negligent supervision claim alleged in the Verified Complaint [CPLR §208; CPLR §214].

On or about July 29, 2013, Plaintiffs served Defendant with a Bill of Particulars amplifying the Verified Complaint's allegations regarding the ingestion of foreign objects, including pine needles. The Bill of Particulars also expanded the negligent supervision claim to include the period between November 2000 and April 2008, and added allegations of:

- intimidation by other residents, including coerced physical and sexual activities;
- physical and psychological abuse causing multiple severe bruises;
- physical and psychological abuse resulting in staff members intimidating and threatening Mr. Minet;
- failure to properly administer medication;
- causing Mr. Minet to undergo an unauthorized, non-emergent medical procedure without informed consent;
- administration of an unauthorized influenza vaccination; and
- failure to implement Mr. Minet's Individualized Education Plan.

At a September 13, 2013 court conference, Springbrook objected to the Bill of Particulars on the grounds that it alleged injuries outside the scope of the Verified Complaint. Springbrook also objected to the Bill of Particulars on the grounds that the expanded claims were time-barred. During that conference, Plaintiffs were granted leave to file and serve an

[* 4]

Amended Complaint asserting the claims and injuries alleged in the Bill of Particulars, subject to any statute of limitations defense that Springbrook may possess.

On or about October 9, 2013, Plaintiffs served the Amended Complaint. Springbrook's answer to the Amended Complaint included a statute of limitations affirmative defense. Springbrook now moves for summary judgment dismissing the Amended Complaint on the grounds that the claims asserted therein are barred by the statute of limitations.

DISCUSSION

It is undisputed that the Verified Complaint was filed less than three years after the statute of limitations began to run. It is also undisputed that the Amended Complaint was filed more than three years after the statute of limitations began to run, whether measured from the date that Mr. Minet turned 18 years old or from the date that Ms. Cady was appointed as his legal guardian. Therefore, the claims asserted in the Amended Complaint will be time-barred unless they are deemed to relate back to the date that the Verified Complaint was filed pursuant to CPLR §203(f).¹

¹ "A claim asserted in an amended pleading is deemed to have been interposed at the time the claims in the original pleading were interposed, unless the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading." [CPLR §203(f)].

Although the Verified Complaint alleges that Mr. Minet was a resident of Springbrook from January 2000 to April 2008, it only alleges that Springbrook provided negligent supervision during the period between January 2007 and March of 2008. The Verified Complaint also only expressly links that negligent supervision to Mr. Minet's alleged ingestion of multiple foreign objects, including pine needles.

When the allegations contained in the original complaint do not give notice of the transactions or occurrences alleged in the amended complaint, those new allegations will not be deemed to relate back to the date the original complaint was filed for statute of limitations purposes. [Hellman v. Hoenig & Co., Inc., 244 A.D.2d 529 (2d Dept. 1997)]. See also Ceneus v. Beechmont Bus Service, 272 A.D.2d 499 (2d Dept. 2000) (relation back to the original date of filing is not available where "the facts alleged in the original complaint failed to give notice of the facts necessary to support the amended pleading"); Clark v. Foley, 240 A.D.2d 458 (2d Dept. 1997)].

The allegation in the Verified Complaint that Springbrook negligently allowed Mr. Minet to ingest multiple foreign objects in 2007 and 2008 did not provide Springbrook with notice of the wholly unrelated transactions and occurrences alleged in the Amended Complaint. Likewise, the catch-all allegation in the Verified Complaint that Springbrook "was otherwise careless and negligent by failing to employ reasonable and proper steps,

procedures, and practices for the health, welfare, and safety of Plaintiff" did not provide Springbrook with fair notice of the transactions and occurrences alleged in the Amended Complaint. Therefore, these claims must be dismissed because they are not saved by the relation back exception of CPLR §203(f). [see Infurna v. City of New York, 270 A.D.2d 24 (1st Dept. 2000) (allegation in amended complaint that nursing home employees attacked plaintiff did not relate back to allegation in original complaint that plaintiff was injured when he fell out of bed due to nursing home's negligent maintenance or use of guard rails)]. Based on the foregoing, it is hereby

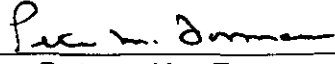
ORDERED, that Defendant's motion to dismiss the Amended Complaint is denied as to the claim arising out of Plaintiff's alleged ingestion of foreign objects; and it is further

ORDERED, that Defendant's motion to dismiss the Amended Complaint is granted as to all other claims asserted therein; and it is further

ORDERED, that counsel for all parties shall appear for a conference on November 12, 2014 at 10:30 a.m.

The foregoing constitutes the Decision and Order of this Court.

Dated: October 6, 2014
 Poughkeepsie, New York



 Hon. Peter M. Forman
 Acting Supreme Court Justice