

**Denaro v ACS (Admin. for Children's Servs.)**

2016 NY Slip Op 30458(U)

February 19, 2016

Supreme Court, New York County

Docket Number: 100324/2015

Judge: Lucy Billings

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This opinion is uncorrected and not selected for official publication.

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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: LUCY BILLINGS  
J.S.C. Justice

PART 46

STEPHANIE DENARO

INDEX NO. 100324/2015

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

-v-  
ACS (ADMINISTRATION FOR CHILDREN'S SERVICES), NYPD,  
LOWER EAST SIDE FAMILY UNION, and BETH ISRAEL

MOTION SEQ. NO. 002

The following papers, numbered 1 to 3, were read on this motion to/for DISMISS CLAIMS

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). <u>1</u>
Answering Affidavits — Exhibits _____	No(s). <u>2</u>
Replying Affidavits _____	No(s). <u>3</u>

Upon the foregoing papers, it is ordered ~~that this motion is~~ and adjudged that

*The court grants defendant Beth Israel's motion to dismiss the complaint against Beth Israel pursuant to the accompanying decision. C.P.L.R. § 3211(a)(7).*

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

FILED

MAR 22 2016

COUNTY CLERK'S OFFICE  
NEW YORK

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Dated: 2/19/16

Lucy Billings, J.S.C.  
LUCY BILLINGS  
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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 46

-----x

STEPHANIE DENARO,

Index No. 100324/2015

Plaintiff

- against -

DECISION AND ORDER

ACS (ADMINISTRATION FOR CHILDREN'S  
SERVICES), NYPD, LOWER EAST SIDE  
FAMILY UNION, and BETH ISRAEL,

Defendants

-----x

LUCY BILLINGS, J.S.C.:

**FILED**

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I. BACKGROUND

Plaintiff commenced this action February 26, 2015, for personal injuries sustained November 27, 2013, when defendant New York City Administration for Children's Services (ACS) employees and defendant New York City Police Department officers removed her children from her home at 72 Baruch Avenue, Apartment 1E, in New York County. Her sole allegation implicating the other two defendants is that on November 27, 2013, a social worker from defendant Beth Israel Medical Center threatened to notify ACS if plaintiff did not allow an employee from defendant Lower East Side Family Union to enter her home to conduct a home assessment.

ACS and the Police Department move to dismiss the complaint against them based on its failure to plead a claim against them and the expiration of the applicable statute of limitations. C.P.L.R. § 3211(a)(5) and (7). Defendant Beth Israel separately moves to dismiss the complaint against this defendant based on

the failure to plead a claim against Beth Israel. C.P.L.R. § 3211(a)(7).

## II. CLAIMS AGAINST THE CITY DEFENDANTS

New York General Municipal Law § 50-i(1)(c) requires that a claim against the City of New York or its employees be commenced within one year and 90 days after the claim accrued. Campbell v. City of New York, 4 N.Y.3d 200, 203 (2005); Baez v. New York City Health & Hosps. Corp., 80 N.Y.2d 571, 576 (1992); Kiernan v. Thompson, 73 N.Y.2d 840, 842 (1988); Wollins v. New York City Bd. of Educ., 8 A.D.3d 30, 31 (1st Dep't 2004). Applied to plaintiff's claim that accrued November 27, 2013, this limitations period expired February 25, 2015, one day before plaintiff commenced this action.

Plaintiff's opposition to the City defendants' motion alleges the malicious prosecution of a Family Court proceeding in which ACS obtained a temporary order of protection against the father of her children December 2, 2013, which ACS used as the basis for removing the children rather than their father from their home. That proceeding finally terminated in plaintiff's favor March 18, 2015. If plaintiff's claim accrued on either of those dates, her action would be timely, Bumbury v. City of New York, 62 A.D.3d 621 (1st Dep't 2009); Palmer v. State of New York, 57 A.D.3d 364 (1st Dep't 2008); Stampf v. Metropolitan Transp. Auth., 57 A.D.3d 222, 223 (1st Dep't 2008); Nunez v. City of New York, 307 N.Y.2d 218, 219 (1st Dep't 2003), but her complaint and notice of claim, a condition precedent to her

action, N.Y. Gen. Mun. Law § 50-e(1); Yan Ping Xu v. New York City Dept. of Health, 77 A.D.3d 40, 48 (1st Dep't 2010); Barnaman v. New York City Health & Hosps. Corp., 90 A.D.3d 588, 588 (2d Dep't 2011); Cropsey v. County of Orleans Indus. Dev. Agency, 66 A.D.3d 1361, 1362 (4th Dep't 2009); McShane v. Town of Hempstead, 66 A.D.2d 652 (2d Dep't 2009), focus only on the removal November 27, 2013. Therefore the statute of limitations bars this action against the two City defendants, ACS and the Police Department. C.P.L.R. § 3211(a)(5); N.Y. Gen. Mun. Law § 50-i(1)(c).

### III. CLAIM AGAINST BETH ISRAEL

The complaint's single allegation implicating defendant Beth Israel indicates only that its social worker threatened to notify ACS regarding plaintiff's behavior and not that any Beth Israel employee actually did notify ACS or otherwise prompted it to enter plaintiff's home and remove her children. As alleged in the complaint, the threatened action was conditioned on plaintiff's refusal to allow another service provider, from defendant Lower East Side Family Union, to assess plaintiff's home. Plaintiff's opposition to Beth Israel's motion in fact admits that plaintiff "agreed to work with the Lower East Side Family Union." Aff. in Opp'n ¶ 14 (May 4, 2015). Her opposition also alleges that the removal of her children was due to a report of child abuse by Beth Israel or Lower East Side Family Union, but again her complaint includes no such allegation.

IV. CONCLUSION

Consequently, the court grants the motion by defendants ACS and Police Department to dismiss the complaint against them based on the expiration of the limitations period from the removal of plaintiff's children November 27, 2013, of which plaintiff complains. C.P.L.R. § 3211(a)(5); N.Y. Gen. Mun. Law § 50-i(1)(c). The court also grants defendant Beth Israel's motion to dismiss the complaint against Beth Israel based on the complaint's failure to plead a causal connection between any action or omission by a Beth Israel employee and the removal of plaintiff's children November 27, 2013. C.P.L.R. § 3211(a)(7). The dismissal of plaintiff's claim against Beth Israel is without prejudice to a future action against Beth Israel or another non-municipal defendant, pleading a false report to ACS or other viable legal claim within the applicable statute of limitations.

DATED: February 19, 2016




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LUCY BILLINGS, J.S.C.

**FILED**

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