

<b>Henriquez v Caselnova</b>
2017 NY Slip Op 33097(U)
September 12, 2017
Supreme Court, Queens County
Docket Number: 710016/14
Judge: Peter J. O'Donoghue
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NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, PETER J. O'DONOGHUE IAS PART MD  
Justice

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Nicole Henriquez, as Administratrix of  
the Goods, Chattels and Credits which  
were of Verna Henriquez, Deceased,

Index No.: 710016/14

Plaintiff(s)

Motion Date: 07/19/17

-against-

Motion Seq. No.: 7

Ralph C. Caselnova, M.D., et. al.,

Defendants.  
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The following papers numbered as set forth below read on this motion by defendants Ernest J. Camponovo, M.D. and Candescant Health, Inc. s/h/a Radisphere National Radiology Group, Inc. and Candescant Health, Inc. for an Order dismissing the wrongful death cause of action pursuant to CPLR 3211(a)(5) as plaintiff failed to commence the action as to the moving defendants prior to the expiration of the statute of limitations for wrongful death.

PAPERS  
NUMBERED

Notice of Motion-Affidavits-Exhibits .....	90-91
Answering Papers-Affidavits-Exhibits.....	92-97
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Upon the foregoing papers it is ordered that this motion by defendants Ernest J. Camponovo, M.D. and Candescant Health, Inc. s/h/a Radisphere National Radiology Group, Inc. and Candescant Health, Inc. for an Order dismissing the wrongful death cause of action pursuant to CPLR 3211(a)(5) as plaintiff failed to commence the action as to the moving defendants prior to the expiration of the statute of limitations for wrongful death is denied. While defendants established that the within action for wrongful death was commenced after the expiration of

the two year statute of limitations, plaintiff established the elements necessary for the application of the relation-back doctrine which renders the wrongful death action timely (see Schiavone v Victory Memorial Hospital, 292 AD2d 365 [2d Dept. 2002]). First, the claims against the moving defendants and all other defendants in the timely-filed first action arose from the same occurrence, the emergency department presentation and in-patient admission to South Nassau Communities Hospital from February 17-18, 2013 and the failure to diagnose a dissecting aortic aneurysm. Second, the moving defendants are "united in interest" with South Nassau Communities Hospital because the Hospital is vicariously liable for their actions as independent contractors who treated the plaintiff/decedent through the emergency department (see Schiavone, id.; Mduba v Benedictine Hospital, 52 AD2d 450 [3<sup>rd</sup> Dept. 1976]). Third, moving defendants could not have reasonably concluded that plaintiff had no intent to sue them during the limitations period (see Roseman v Baranowski, 120 AD3d 482 [2d dept. 2014]). Moving defendants made notations in the decedent's medical records by interpreting the chest x-ray and signing the radiology report. Furthermore, plaintiff placed moving defendants on notice of the claim to be made against them by alleging in the original complaint negligence by "failing to properly and timely interpret and act upon the results of laboratory and diagnostic tests performed." Moving defendants performed a diagnostic test in the form of a chest x-ray. (See Roseman, id.)

Dated: September 12, 2017

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 Hon. Peter J. O'Donoghue, J.S.C.

FILED  
 SEP 28 2017  
 COUNTY CLERK  
 QUEENS COUNTY