

**United Guardianship Servs. v New York City Hous.
Auth.**

2019 NY Slip Op 32238(U)

July 26, 2019

Supreme Court, New York County

Docket Number: 157028/2016

Judge: Kathryn E. Freed

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

Justice

-----X

INDEX NO. 157028/2016

UNITED GUARDIANSHIP SERVICES AS GUARDIAN OF CLIFTON WILLIAMS,

MOTION SEQ. NO. 002

Plaintiff,

- v -

DECISION AND ORDER ON MOTION

NEW YORK CITY HOUSING AUTHORITY,

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 28, 29, 30, 31, 32, 33, 34, 37, 38, 39, 40, 41, 43

were read on this motion to DISMISS

Upon the foregoing documents, it is ordered that the motion is denied.

In this personal injury action, defendant New York City Housing Authority ("NYCHA") moves, pursuant to CPLR 3211(a)(5) and 3212, for summary judgment dismissing the complaint of plaintiff United Guardianship Services ("UGS"). UGS opposes the motion. After oral argument, and after a review of the parties' papers and the relevant statutes and caselaw, it is ordered that the motion is denied.

This action stems from an accident that occurred on the evening of February 2, 2015. (See Docs. 27 at 1; 32 at 3.) Plaintiff Clifton Williams ("Williams") fell on the stairwell between the sixth and seventh floors of a NYCHA-owned building located on East 105th Street in Manhattan. (Doc. 27 at 1-2.) He suffered serious head injuries as a result of the fall and was in a coma for several weeks. (Doc. 37 at 1.)

Pursuant to an order dated March 24, 2015 (Mayersohn, J.) (Sup Ct, Queens County), Williams' sister, Clare Williams ("Clare"), was named temporary guardian over her brother. (Doc. 39.) On April 20, 2015, Maris Gordon ("Gordon") was appointed as the temporary guardian and was given authority to "file a Notice of Claim on [Williams'] behalf" (Doc. 40 at 1.) Gordon filed a notice of claim on April 23, 2015. (Doc. 28.) On March 29, 2016, UGS was appointed as the permanent guardian for plaintiff. (Doc. 29.) In the March 29 order, this Court (Mayersohn, J.) concluded that Williams has an "inability to provide for his personal care and property management and is unable to adequately understand and appreciate the nature and consequences of such inability." (*Id.* at 8.)

UGS then commenced an action styled *Jason Epstein as Guardian of Clifton Williams v New York City Housing Authority*, Supreme Court, New York County Index Number 156725/2016, on August 11, 2016 by filing a summons and complaint. (Doc. 30.) That complaint named Jason Epstein ("Epstein"), who was the director of UGS (Doc. 37 at 2-3), as Williams' guardian (Doc. 30 at 3). However, that action was subsequently discontinued without prejudice on August 22, 2016 upon discovery that Epstein had left UGS. (Doc. 31.) UGS commenced the instant action, naming itself as Williams' guardian, on August 22, 2016. (Doc. 32.)

NYCHA now moves to dismiss the complaint on the ground that this action is barred by the statute of limitations. (Doc. 26.) Because plaintiff's accident occurred on February 2, 2015, NYCHA argues that his guardians had until May 3, 2016, to file a complaint. (Doc. 27 at 3-4.) Since the first complaint was filed in August of 2016, NYCHA therefore argues that this action is untimely. (*Id.*)

This Court finds that the motion must be denied. A court may dismiss an action pursuant to CPLR 3211(a)(5) if it falls outside the statute of limitations. Pursuant to CPLR 217-a and

General Municipal Law § 50-i, actions against a public authority must be commenced within one year and ninety days from the incident giving rise to the claim. (*See* CPLR 217-a; GML § 50-i.) However, CPLR 208 provides for a toll of the limitations period where the person entitled to commence the action is under a disability. (*See* CPLR 208.) The statute further provides that, where the applicable statute of limitations is less than three years—such as in the instant action—“the time shall be extended by the period of disability” (*id.*), *i.e.*, the entire period of disability is a tolling period. “[O]f course a person that is comatose . . . is considered a disabled person entitled to this tolling provision.” (*Graves v Brookdale Univ. Hosp. & Med. Ctr.*, 60 Misc3d 1217[A] at *1 [Sup Ct, Bronx County 2018]; *see also Stewart v Tetenbaum*, 206 AD2d 418, 419 [2d Dept 1994] (finding limitations period tolled during plaintiff’s comatose condition).) As the parties have not otherwise indicated that Williams is no longer disabled, this Court finds that the toll remains in effect.

Even if the toll had been lifted once a guardian was appointed, (*see Stewart*, 206 AD2d at 419 (plaintiff’s disability “ceased once her husband was appointed her guardian ad litem”); *see also Graves*, 60 Misc3d 1217[A] at *1 (plaintiff’s entitlement to a tolling ended once a guardian was appointed))¹, plaintiff’s action is still within the limitations period. UGS was made permanent guardian over Williams on March 29, 2016². (Doc. 29.) Therefore, even if CPLR 208’s tolling

¹ This Court notes that there seems to be a split among the Appellate Divisions regarding whether the appointment of a guardian terminates the tolling provision. (*See Giannicos v Bellevue Hosp. Med. Ctr.*, 42 AD3d 379, 380 [1st Dept 2007] (“The toll did not terminate on the appointment of a guardian.”); *Mederos v New York City Health & Hosps. Corp.*, 154 AD3d 597, 597 [1st Dept 2017] (“[T]he CPLR 208 toll did not terminate upon the appointment of the article 81 guardian.”).)

² This Court further notes that, while Clare Williams was made temporary guardian over her brother, the order of the Court (Mayersohn, J.) appointing her as temporary guardian specifically stripped her of the right to sue on behalf of Williams or to file a notice of claim. (*See* Doc. 39 at 7 (language in the order giving the guardian the right to sue was physically marked out).) Moreover, the order of this Court (Mayersohn, J.) that appointed Maris Gordon as temporary guardian also limited her powers to, *inter alia*, filing a notice of claim on Williams’ behalf. (*See* Doc. 40 at 1–2 (specifying that Gordon was appointed as temporary guardian for limited purposes, which included filing a notice of claim but naming a right to file suit on Williams’ behalf).) Thus, UGS was the first appointed guardian with the right to file suit for Williams. (Doc. 29 at 14 (specifically conferring on UGS the legal capacity to sue for Williams).)

provision ended at that point, this action is timely because it was commenced in August of 2016.

(Doc. 32.)

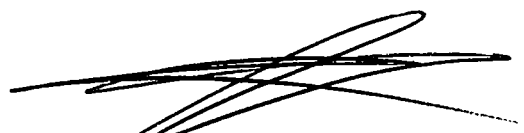
In accordance with the foregoing, it is hereby:

ORDERED that the motion to dismiss by defendant New York City Housing Authority is denied; and it is further

ORDERED that defendant Scottsdale Insurance Company is to serve a copy of this order, with notice of entry, on all parties within thirty days hereof; and it is further

ORDERED that this constitutes the decision and order of this Court.

7/26/2019
DATE


KATHRYN E. FREED, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	