

Newman v Mount Sinai Hosp.
2019 NY Slip Op 32594(U)
September 3, 2019
Supreme Court, New York County
Docket Number: 805013/2019
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

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AJA NEWMAN,

Plaintiff,

- against -

THE MOUNT SINAI HOSPITAL,
MOUNT SINAI HEALTH SYSTEM, INC.,
MICHAEL NEMBHARD, LCSW,
ANGELA DIAZ, MD, MIRIAM MARTINEZ, PhD,
ERICA RUBINSTEIN, LCSW, JOHN/JANE
DOE #1, and JOHN/JANE DOE #2,

Defendants.
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Index No.
805013/2019

**DECISION and
ORDER**

Mot. Seq. #1

HON. EILEEN A. RAKOWER, J.S.C.

Plaintiff Aja Newman (“Plaintiff”) filed a Complaint alleging that Defendants were negligent, careless and reckless in failing to investigate a prior allegation of sexual assault against Dr. David Newman (“Dr. Newman”), which placed Plaintiff and all patients of The Mount Sinai Hospital in danger. Plaintiff claims that The Mount Sinai Hospital and Mount Sinai Health System, Inc. (“MSHS”) (collectively, “Mount Sinai”) are vicariously liable for the negligent hiring and supervision of Defendants Angela Diaz, M.D. (“Diaz”), and Michael Nembhard, LCSW (“Nembhard”).

Defendants Mount Sinai, Nembhard, Diaz, Miriam Martinez, PhD (“Martinez”), and Erica Rubinstein, LCSW (“Rubinstein”) (collectively, “Defendants”) have filed a motion to dismiss Plaintiff’s Complaint pursuant to CPLR § 214(5), and CPLR § 3211(a)(4), (5), and (7), for Plaintiff’s failure to comply with the applicable statute of limitations, failure to state a claim upon which relief may be granted, and because there is another action pending between the same parties for the same causes of action. Defendants also seek sanctions from Plaintiff pursuant to CPLR§ 8303-a and 22 NYCRR 130-1 for filing a frivolous Complaint. Plaintiff opposes the motion.

Defendants argue that the entire action should be dismissed because the alleged negligence occurred in 2015, which makes the case barred by the three year applicable statute of limitations governing personal injury actions. CPLR § 214(5). Defendants argue that since the Complaint was filed on January 11, 2019, the action is therefore untimely. An action regarding recovery of damages for personal injury must be commenced within three years in the state of New York. CPLR § 214(5). “[A]s a general proposition, a tort cause of action cannot accrue until an injury is sustained.” *Kronos, Inc. v. AVX Corp.*, 81 N.Y.2d 90, 94 (1993). Here, Plaintiff’s causes of action sound in tort, and did not accrue until Plaintiff was assaulted and injured on January 12, 2016. The action was commenced on January 11, 2019, within three years of the injury, and is therefore timely.

Defendants further argue that Plaintiff’s action should be dismissed for failure to state a claim. The standard for dismissal under CPLR § 3211(a)(7) “is whether the pleading states a cause of action, not whether the proponent of the pleading has a cause of action.” *Sokol v. Leader*, 74 A.D.3d 1180, 1180-1181 (2d Dept 2010). See *Guggenheimer v Ginzburg*, 43 N.Y.2d 268, 275 (1977); *Foley v D’Agostino*, 21 A.D.2d 60, 64-65 (1964). Furthermore, the Court must “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” *Nonnon v. City of N.Y.*, 9 N.Y.3d 825, 827 (2007); quoting *Leon v Martinez*, 84 N.Y.2d 83, 87-88 (1994). Here, the four corners of the Complaint state a cause of action against Defendants for failure to take proper action after being notified of allegations of sexual abuse made against Dr. Newman which allowed Dr. Newman to continue to treat and harm patients including Plaintiff.

The proper relief is not dismissal of this action but rather consolidation with the other pending action that was brought by Plaintiff against many of the same Defendants and which arises out of the same incident.

Wherefore, it is hereby

ORDERED that Defendants’ motion to dismiss is denied; and it is further

ORDERED that the action bearing the index number 805013/2019 commenced in the State and County of New York and the action bearing the index number 151392/2016 also brought in the State and County of New York are consolidated under index number 151392/2016, and the consolidated action shall bear the following caption:

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AJA NEWMAN,

Plaintiff,

Index No.
151392/2016

- against -

THE MOUNT SINAI MEDICAL CENTER, INC.,
THE MOUNT SINAI HOSPITAL, MOUNT SINAI
HEALTH SYSTEM, DAVID NEWMAN, MD;
ANDREW LAPSLEY, PA; ANDY S. JAGODA, MD;
XIAO HAN, M.D., LEILANI HARAYO, R.N.,
JUNE RANOLA WALKER, RN; GABRIEL
ABREU, RN; SELENA N. HUNTER, RN;
TREMAINE REID, RN; and JOHN-DANE
Doe 1-10, all in their official and individual capacities;
MOUNT SINAI HEALTH SYSTEM, INC.,
MICHAEL NEMBHARD, LCSW,
ANGELA DIAZ, MD, MIRIAM MARTINEZ, PhD,
ERICA RUBINSTEIN, LSCW, JOHN/JANE
DOE #1, and JOHN/JANE DOE #2,

Defendants.

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And it is further

ORDERED that the pleadings in the actions hereby consolidated shall stand as the pleadings in the consolidated action; and it is further

ORDERED that Plaintiff's attorney is directed to serve a copy of this order with notice of entry on the County Clerk (Room 141B), who shall consolidate the papers in the actions hereby consolidated and shall mark his records to reflect the consolidation, and it is further

ORDERED that Plaintiff's attorney is directed to serve a copy of this order with notice of entry shall also be served upon the Clerk of the Trial Support Office (Room 158), who is hereby directed to mark the court's records to reflect the consolidation; and it is further

ORDERED that all parties in the consolidated action shall appear for a compliance conference on September 24, 2019 at 9:30 AM in Part 6, 71 Thomas Street, Courtroom 205.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: SEPTEMBER 3, 2019



Eileen A. Rakower, J.S.C.