

Corselli v Westchester Park, LLC
2021 NY Slip Op 34336(U)
March 25, 2021
Supreme Court, Westchester County
Docket Number: Index No. 61694/2019
Judge: Janet C. Malone
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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

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GAYLE CORSELLI as Administrator of the Estate

of PEARL JACKSON, deceased,

Index No. 61694/2019
Motion Sequence. Nos.
004, 005, 006

Plaintiff,

-against-

DECISION AND ORDER

WESTCHESTER PARK, LLC, WESTCHESTER
PARK LLC /d/b/a SANS SOUCI REHABILITATION
AND NURSING CENTER, SANS SOUCI
REHABILITATION AND NURSING CENTER, and
ST. JOSEPH'S MEDICAL CENTER

Defendants.

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MALONE, J.

Upon the documents filed at NYSCEF Document Numbers 58-62, 82, and 86, defendant SANS SOUCI REHABILITATION & NURSING CENTER moves (Motion Sequence No. 004) to dismiss claims against it sounding in negligence and in Public Health Law 2801-d, as far as those claims relate to treatment rendered to decedent Pearl Jackson prior to August 6, 2016.

Upon the documents filed at NYSCEF Document Numbers 63-74, 84, and 85, defendant St. JOSEPH'S MEDICAL CENTER (St. Joseph's) moves (Motion Sequence No. 005) for summary judgment on the wrongful death claim and moves to dismiss all claims against it pursuant to CPLR section 3211(a)(5).

Upon the documents filed at NYSCEF Document Numbers 78-81, 83, and 87-88, defendants WESTCHESTER PARK, LLC, WESTCHESTER PARK, LLC d/b/a SANS SOUCI REHABILITATION AND NURSING CENTER, SANS SOUCI REHABILITATION AND NURSING CENTER move (Motion Sequence No. 006) to dismiss all claims as far as they seek punitive damages and the gross negligence claim, in its entirety.

As to the motions to dismiss (Motion Sequence Nos. 004 and 006), the following facts are taken from the Amended Verified Complaint (NYSCEF Doc. No. 003) and are assumed to be true.

Defendants Westchester Park LLC, Westchester Park, LLC d/b/a Sans Souci Rehabilitation and Nursing Center and Sans Souci Rehabilitation and Nursing Center (together, the Owners) ran, inspected, and controlled a residential healthcare facility in Yonkers (the Facility). On or about February 27, 2007, Pearl Jackson was admitted to the Facility, where she was resident until her death on August 24, 2017, and was under the care of the Owners. While Ms. Jackson was a resident at the Facility, she developed bedsores and other injuries which resulted in her suffering, medical expenses, and in her death. Petitioner claims these injuries were caused by Owners' negligence and violations of New York Public Health Law. As a result, plaintiff, the administrator of Ms. Jackson's estate, brought this suit, asserting four claims:

- Claim 1- against Owners pursuant to New York Public Health Law (PHL) §§ 2801-d, 2803-c;
- Claim 2- against Owners for negligence, the failure to provide reasonable care, and failure to properly hire, train, and supervise employees;
- Claim 3- against Owners for gross negligence; and
- Claim 4- against St. Joseph's for wrongful death.

Motion Sequence Number 004

Defendant Sans Souci Rehabilitation and Nursing Center (Sans Souci) moves to dismiss the first three claims as far as they relate to the treatment of Ms. Jackson prior to August 6, 2016, since a three-year statute of limitations applies, and plaintiff filed this suit on August 6, 2019. Plaintiff argues the motion is premature because discovery has not been completed and the motion should fail because the doctrine of continuous treatment applies to toll the statute of limitations since Ms. Jackson was admitted to the Facility continuously from February 27, 2007, through August 24, 2017 (McAllister Aff in Motion Sequence No. 004 [004 Opp], NYSCEF Doc. No. 82, ¶¶ 3, 7-8). San Souci replies that the continuous treatment doctrine only tolls the statute of limitations for malpractice claims, not the negligence or statutory claims brought here (Dunning Aff in Motion Sequence No. 004 [004 Reply] NYSCEF Doc. No. 86, ¶ 5, citing CPLR § 214-a, *Hatzfeld v State*, 104 AD3d 1165, 1166 [4th Dept 2013]).

“On a motion to dismiss a cause of action pursuant to CPLR 3211(a)(5) on the ground that it is barred by the statute of limitations, a defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired. In considering the motion, a court must take the allegations in the complaint as true and resolve all inferences in favor of the plaintiff” (*Island ADC, Inc. v Baldassano Architectural Group, P.C.* 49 AD3d 815, 816 [2008] [citations omitted]). Plaintiff does not dispute that the statute of limitations on the claims at issue is three years. As far as plaintiff contends the statute of limitations has been tolled pursuant to CPLR section 214-a (004 Opp, ¶ 9, NYSCEF Doc. No. 82), Sans Souci is correct. That statute applies to actions for medical malpractice, not negligence (*see* CPLR § 214-a). Accordingly, the continuous treatment doctrine does not toll the statute of limitations on these claims and the motion is granted. These claims shall be dismissed as far as they relate to the treatment of Ms. Jackson prior to August 6, 2016. Only claims related to conduct on or after August 6, 2016, shall survive.

Motion Sequence Number 005

In this motion, brought as a cross-motion to Motion Sequence Number 004, St. Joseph’s moves for summary judgment dismissing the wrongful death claim, the only claim asserted against it, on the ground that the claim is untimely pursuant to the statute of limitations set by Estates Powers & Trust Law section 5-4.1, which states:

“The personal representative, duly appointed in this state or any other jurisdiction, of a decedent who is survived by distributees may maintain an action to recover damages for a wrongful act, neglect or default which caused the decedent's death against a person who would have been liable to the decedent by reason of such wrongful conduct if death had not ensued. Such an action must be commenced within two years after the decedent's death.”

Plaintiff does not oppose the dismissal of St. Joseph’s from this action, and requests that the caption of this case be amended to omit St. Joseph’s (McAllister Aff, Motion Sequence No. 005, NYSCEF Doc. No. 84). Accordingly, the motion for summary judgment is granted and the wrongful death claim is hereby dismissed.

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Motion Sequence Number 006

In Motion Sequence Number 006, Owners move together to dismiss all claims as far as they seek punitive damages, and the entire gross negligence claim. The motion is made pursuant to CPLR section 3211(a)(7), for failure to state a claim for which relief can be granted. Public Health Law section 2801-d only allows for punitive damages “where the deprivation of any such right or benefit is found to have been willful or in reckless disregard of the lawful rights of the patient,” and Owners contend the Amended Verified Complaint fails to allege any facts which would support a finding of willfulness or recklessness (Dunning Aff. in Support, Motion Sequence No. 006 [006 Memo], NYSCEF Doc. No. 79, at 4-7). Nor has plaintiff alleged facts to support a common law right to punitive damages (*id.*). Owners also argue the third cause of action, for gross negligence, similarly should be dismissed for failure to allege “conduct that constitutes willful or wanton negligence or recklessness” (*id.* at 8, citing *Mancuso v Rubin*, 52 AD3d 580 [2nd Dept. 2008]).

In opposition, plaintiff argues Owners have failed to make a prima facie case for summary judgment and that such a motion is premature, as discovery has yet to be completed, and contends the motion is also flawed because Owners have not provided an expert affidavit (McAllister Affirmation, Motion Sequence. No. 006 [006 Opp], NYSCEF Doc. No. 83, ¶¶ 3-4). Plaintiff argues it has pled sufficiently to provide notice to defendants of its claims, and the details of the care received by the decedent are known only to the defendants and have not yet been produced in discovery (*id.* at ¶¶ 24-25).

Owners point out this is a motion to dismiss pursuant to CPLR 3211(a)(7), not a motion for summary judgment, and argue the facts alleged do not rise to the level of “willful” conduct or “reckless disregard” which is required to claim punitive damages under the statute (Dunning Aff, Motion Sequence. No. 006 [006 Reply], NYSCEF Doc. No. 87, ¶¶ 3-5). Nor does plaintiff “allege facts that show an aggravated character distinguished from the failure to exercise ordinary care” required to support a claim of gross negligence (*id.*, ¶ 8). Owners also ask the court to strike the words “punitive”, “careless”, “reckless”, and “willful” from the Verified Amended Complaint (*id.* ¶ 9).

This is a motion to dismiss pursuant to CPLR section 3211, not a motion for summary judgment. On a motion to dismiss a plaintiff's claim pursuant to CPLR § 3211 (a) (7) for failure to state a cause of action, the court is not called upon to determine the truth of the allegations (*see, Campaign for Fiscal Equity v State*, 86 NY2d 307, 317 [1995]; *219 Broadway Corp. v Alexander's, Inc.*, 46 NY2d 506, 509 [1979]). Rather, the court is required to "afford the pleadings a liberal construction, take the allegations of the complaint as true and provide plaintiff the benefit of every possible inference [citation omitted]. Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss" (*EBC I v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]). The court's role is limited to determining whether the pleading states a cause of action, not whether there is evidentiary support to establish a meritorious cause of action (*see Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]; *Sokol v Leader*, 74 AD3d 1180 [2d Dept 2010]).

Owners are correct that allegations of willfulness, reckless disregard, and the aggravated character of the defendants' actions needed to support claims for gross negligence and punitive damages are vague and conclusory, which is insufficient to survive a motion to dismiss. (*see Washington Ave. Assoc., Inc. v Euclid Equip., Inc.*, 229 AD2d 486, 487 [2d Dept 1996] ["Although on a motion to dismiss a complaint pursuant to CPLR 3211(a)(7) the narrow question presented for review is not whether the plaintiff should ultimately prevail in this litigation, but whether the complaint states cognizable causes of action, the allegations in the complaint cannot be vague and conclusory"] [internal quotation omitted]). Plaintiff does not allege anything Owners did or failed to do which supports the claim. As far as plaintiff points to the decedent's bedsores, New York State regulations require nursing homes to "ensure that: (1) a resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable despite every reasonable effort to prevent them; and (2) a resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing" (10 NYCRR 415.12). Plaintiff asserts the decedent did develop bedsores but does not allege any facts to support the conclusory assertions that the Owners' conduct was reckless or willful. Plaintiff asks the court "to infer that plaintiff decedent's fatal bedsores would not have developed and subsequently deteriorated so drastically as to cause her death without the reckless disregard for her rights, and/or defendants' willful or wanton negligence or recklessness" (006 Opp, ¶ 32, NYSCEF Doc. No. 83). However, plaintiff

cites no statute or case which supports such an inference and this Court declines the invitation. Accordingly, Motion Sequence Number 006 is granted as far as the claim for gross negligence and the portion of the claim seeking punitive damages are dismissed without prejudice. Owners' request to strike certain words from the complaint is denied. Therefore, it is hereby

ORDERED that Motion Sequence Number 004 is hereby GRANTED, and claims sounding in negligence and pursuant to Public Health Law 2801-d are hereby dismissed, as far as they relate to treatment rendered prior to August 6, 2016; and it is further

ORDERED that Motion Sequence Number 005 is hereby GRANTED, and the wrongful death claim (Claim number 4) is hereby dismissed and St. Joseph's is hereby dismissed from this action; and it is further

ORDERED that the caption be amended to reflect the removal of St. Joseph's as a defendant in the above captioned action and that all future papers filed with the court bear the amended caption, which shall read as follows:

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GAYE CORSELLI, as Administrator of the Estate of
PEARL JACKSON, deceased,

Plaintiff,

- v -

WESTCHESTER PARK, LLC, WESTCHESTER
PARK, LLC d/b/a SANS SOUCI REHABILITATION
AND NURSING CENTER, and SANS SOUCI
REHABILITATION AND NURSING CENTER,

Defendants.

-----X

and it is further

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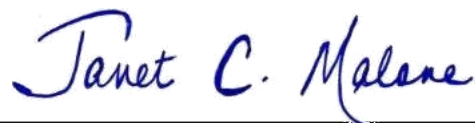
ORDERED that Motion Sequence Number 006 is hereby GRANTED IN PART, and the claim for gross negligence and the portion of the claim seeking punitive damages are dismissed without prejudice. As far as Owners seek to have certain words struck from the complaint, the motion is DENIED.

This case shall be referred back to the Compliance Part, which shall set a future conference date.

This constitutes the Order of the Court.

Dated: March 25, 2021
White Plains, New York

ENTER:



HON. JANET C. MALONE, J.S.C.