

Echeverria v New York City Health & Hosps. Corp.
2022 NY Slip Op 31119(U)
April 7, 2022
Supreme Court, New York County
Docket Number: Index No. 151099/2018
Judge: Erika M. Edwards
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ERIKA EDWARDS

PART 10M

Justice

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DOMONIQUE ECHEVERRIA,

Plaintiff,

INDEX NO. 151099/2018

MOTION DATE 10/13/2021

MOTION SEQ. NO. 002

- v -

NEW YORK CITY HEALTH & HOSPITALS
CORPORATION,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59

were read on this motion to/for DISMISS.

Upon the foregoing documents and oral argument held on April 7, 2022, the court grants Defendant New York City Health & Hospitals Corporation’s (“HHC”) motion to dismiss Plaintiff Domonique Echeverria’s (“Plaintiff”) complaint and finds that it is barred by the expiration of the statute of limitations.

Plaintiff filed this medical malpractice action for injuries she suffered when a wheelchair collapsed on December 30, 2015 while a patient at Bellevue Hospital Center. Plaintiff has an extensive psychiatric history and she was being treated for injuries she sustained after attempting to commit suicide by jumping in front of a train.

On March 3, 2017, which was 27 days prior to the expiration of the one-year-and-90-day statute of limitations, Plaintiff filed a special proceeding by order to show cause for leave to serve a late notice of claim on Defendant HHC and the City of New York, which is no longer in this case. The proceeding was resolved on August 1, 2017 by a so-ordered Stipulation granting

Plaintiff 30 days to serve a notice of claim. Although Plaintiff served the notice of claim prior to this deadline, she failed to file her complaint until February 5, 2018.

Defendant HHC now moves to dismiss Plaintiff's complaint pursuant to CPLR 3211(a)(5) under motion sequence 002 and argues that the complaint is barred by the statute of limitations. HHC further argues that since the action accrued on December 30, 2015, Plaintiff would have had to file the complaint within one-year-and-90 days, or by March 30, 2017. Since Plaintiff filed the order to show cause in the special proceeding on March 3, 2017, which was 27 days prior to the expiration of the statute of limitations, at most, the period was tolled an additional 27 days while the special proceeding was pending. HHC further argues that the statutory period began to run again on August 1, 2017 when the special proceeding was resolved and the stay was lifted. Therefore, Plaintiff had an additional 27 days to file her complaint, or until August 28, 2017, which she failed to do.

Additionally, Defendant HHC relies on an expert affirmation and argues in substance that although Plaintiff had a long history of psychiatric treatment, her medical and psychiatric records, deposition testimony and other evidence fail to support Plaintiff's claim that Plaintiff suffered from insanity at the time the cause of action accrued and Plaintiff failed to provide a report from a doctor attesting to Plaintiff's condition at the relevant time period to support her insanity claim.

Plaintiff opposes HHC's motion and argues in substance that the complaint was timely filed because the statute of limitations was tolled during two periods. Plaintiff argues that it was tolled for 126 days while the special proceeding was pending beginning on March 29, 2017, when the order to show cause was served, until August 1, 2017, when the court decided it, pursuant to CPLR 204(a). Plaintiff also argues that the statute of limitations was tolled for

approximately ten months from June 2016 to April 26, 2017 due to Plaintiff's insanity when she left to see a healer and train to become a Shaman, pursuant to CPLR 208. During this period, Plaintiff argues in substance that Plaintiff was unable to be reached, she was unable to function in normal society and she was unable to participate in assisting with this action. Plaintiff primarily relied on Plaintiff's psychiatric and medical records to demonstrate that her psychological, emotional and physical challenges were debilitating and prevented her from protecting her legal rights in this action. As such, Plaintiff contends that she suffered from the disability of insanity, the statute was tolled for approximately ten months and her complaint was timely filed.

On a motion to dismiss a cause of action pursuant to CPLR 3211(a)(5) because it is time barred by the applicable statute of limitations, a defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired and the court must take all allegations in the complaint as true and resolve all inferences in favor of the plaintiff (*Benn v Benn*, 82 AD3d 548, 548 [1st Dept 2011] [internal quotation and citation omitted]). Then, the burden shifts to the plaintiff to establish that the statute of limitations should have been tolled or that the defendant should have been estopped from asserting a statute of limitations defense (*see Putter v North Shore Univ. Hosp.*, 7 NY3d 548, 552-553 [2006]; *Zumpano v Quinn*, 6 NY3d 666, 673 [2006]).

In a medical malpractice case, the statute of limitations generally begins to run when a cause of action accrues, which is the date of the original alleged negligent "act, omission or failure complained of or last treatment where there is continuous treatment for the same illness, injury or condition which gave rise to the said act, omission or failure . . ." (CPLR 214-a; *see Wally G. v New York City Health & Hosps. Corp.*, 27 NY3d 672, 674 [2016]). The statute of

limitations in this matter expires one-year-and-90 days after the happening of the event upon which the claim is based, which may be different than the date that the claim actually accrued (*see* General Municipal Law § 50-e[5]; *Pierson v City of New York*, 56 NY2d 950, 954 [1982]; *Bloomington, Inc. v New York City Tr. Auth.*, 13 NY3d 61, 65 [2009]).

Pursuant to CPLR 204(a), when “the commencement of an action has been stayed by a court or by statutory prohibition, the duration of the stay is not a part of the time within which the action must be commenced (CPLR 204[a]). However, courts have held that when a plaintiff files an application for leave to file a late notice of claim, such stay only extends the time for which to file a complaint for the amount of time between the date that the application was filed and the date when the statute of limitations would have expired and such time is added from the date the court enters the order deciding the issue (*see Pichardo v New York City Dept. of Educ.*, 99 AD3d 606, 606-607 [1st Dept 2012]; *Bayne v City of New York*, 137 AD3d 428, 429 [1st Dept 2016]).

In *Bayne*, although the court did not decide whether the statute of limitations was tolled during the pendency of the plaintiff’s petition, it assumed that it was, and determined that it began running anew when the court granted the plaintiff’s motion for leave to serve a late notice of claim (*Bayne*, 137 AD3d at 428-429). However, the court only extended the period for the number of days from the date that the stay began, which was when the proceeding was filed, until the date when the stay was lifted, which was when the court decided the issue (*id.* at 429).

Courts have found that even when the court grants an extension of time for a plaintiff to serve a late notice of claim, such extension does not extend the time for which a plaintiff must file a complaint beyond the applicable statute of limitations (*see Ahnor v City of New York*, 101 AD3d 581, 582 [1st Dept 2012]; *Doddy v City of New York*, 45 AD3d 431, 432 [1st Dept 2007]).

As is applicable to this case, pursuant to CPLR 208(a), if a person is under a disability because of insanity at the time the cause of action accrues, then the time for which to file a complaint is extended by the period of the disability, but no more than ten years after the cause of action accrues (CPLR 208[a]).

Here, the court grants Defendant HHC's motion to dismiss Plaintiff's complaint and finds that Plaintiff's complaint is time-barred by the expiration of the statute of limitations. The court finds that HHC met its initial burden of demonstrating that Plaintiff filed her complaint after the expiration of the one-year-and-90-day statute of limitations. The court agrees with HHC and determines that Plaintiff's time was tolled for 27 days while the special proceeding by order to show cause for leave to serve a late notice of claim was pending.

Even after resolving all inferences in favor of Plaintiff, the court finds that Plaintiff failed to meet her burden of demonstrating through admissible evidence that the statute of limitations was tolled for any additional time because of Plaintiff's alleged insanity disability at the time the cause of action accrued. The court credits the opinions provided in HHC's expert affidavit and finds that, although Plaintiff suffered from an extensive history of psychiatric treatment and serious medical conditions, she failed to demonstrate that she suffered from the disability of insanity at the relevant period based upon her testimony, medical and psychiatric records, other evidence and because she left the area to seek treatment from a healer and to become a Sharman. Even though Plaintiff failed to contact her attorney, doctors and others during this period, such actions may be considered outside of mainstream societal norms, but they do not necessarily rise to the level of Plaintiff suffering from the disability of insanity which prevented her from protecting her legal rights in this action and caused her to be unable to function in normal society.

Based upon the evidence presented, the court finds that Plaintiff failed to demonstrate such disability and failed to demonstrate that the statute of limitations was tolled for more than 27 days. Therefore, Plaintiff was required to file her complaint by August 28, 2017. Since Plaintiff failed to file it until February 5, 2018, this action is time-barred and must be dismissed.

The court has considered all additional arguments not expressly discussed herein and denies all additional requests for relief not expressly granted herein.

As such, it is hereby

ORDERED that the court grants Defendant New York City Health & Hospitals Corporation’s motion to dismiss Plaintiff Domonique Echeverria’s complaint and the court dismisses the complaint against Defendant New York City Health & Hospitals Corporation without costs to any party; and it is further

ORDERED that the court directs the Clerk of the Court to enter judgment accordingly.

This constitutes the decision and order of the court.


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4/7/2022
DATE

ERIKA EDWARDS, J.S.C.

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