

<b>St. Yves v University Hosp. of Brooklyn</b>
2022 NY Slip Op 31152(U)
April 8, 2022
Supreme Court, Kings County
Docket Number: Index No. 509493/2021
Judge: Bernard J. Graham
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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YOUSELINE ST. YVES, as Administrator of the Estate  
of Deceased, KIMBERLY FRANCOIS and  
MILIA FRANCOIS,

Index No.: 509493/2021

Plaintiff(s),

**DECISION/ORDER**

-against-

UNIVERSITY HOSPITAL OF BROOKLYN,  
NYC HEALTH AND HOSPITALS CORP.,  
DT. VICKY LAM, DR IAN DESOUZA,  
DR. JOHN DELURY, and JOHN and JANE DOES 1-100,

Hon. Bernard J. Graham  
Supreme Court Justice

Defendant.

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**Recitation, as required by CPLR 2219(a), of the papers considered on the review of this motion:** by defendant to dismiss plaintiff's complaint, pursuant to CPLR § 3211(a)(2) and (a)(8) and cross-motion by plaintiff to permit the late filing of a Notice of Claim.

<b>Papers</b>	<b>Numbered</b>
Notice of Motion and Affidavits Annexed.....	1-2
Order to Show cause and Affidavits Annexed.....	
Answering Affidavits & Cross-motion.....	3-4, 5,
Replying Affidavits.....	6
Exhibits.....	
Other: ..... (memo).....	7

**Upon the foregoing cited papers, the Decision/Order on this motion is as follows:**

Defendant, SUNY Downstate Medical Center s/h/a University Hospital of Brooklyn ("SUNY Downstate"), has moved (seq. 1), pursuant to CPLR § 3211(a)(2) and (a)(8), for an Order dismissing the plaintiff's complaint upon the grounds that this Court lacks both subject matter jurisdiction well as personal jurisdiction over said defendant.

Counsel for the plaintiff, Youseline St. Yves, as Administrator of the Estate of Kimberly Francois (deceased), opposes the relief sought in the motion by defendant, SUNY Downstate, and has cross-moved (seq .2) to permit the "late filing of malpractice claim" as against said defendant.

There was no submission on behalf of New York City Health and Hospitals Corporation s/h/a NYC Health and Hospital Corp. ("Kings County Hospital") to either of these motions.

Background:

On or about April 22, 2021, counsel for plaintiff filed a summons and verified complaint with the Clerk's office of Kings County in the within action. Thereafter, service of the summons and complaint was allegedly effectuated upon the defendants in the ensuing week. In said complaint, the plaintiff alleged medical malpractice, wrongful death and seeks monetary damages from the defendants, one of which is a hospital operated by the State of New York, a hospital operated by the City of New York City, as well as medical professionals and personnel who are employees and/or agents of said defendants. The plaintiff alleges that the defendants deviated from good and accepted medical practices and standards, and caused and permitted the decedent to suffer severe and significant physical injuries, pain, anguish and distress from the time of decedent's initial treatment on April 4<sup>th</sup> through his death on April 25, 2019.

A Notice of Claim form, as to defendant SUNY Downstate, was served upon the Court of Claims on April 20, 2021. In addition, copies of the Notice of Claim were served on April 25, 2021 by certified mail upon the office of the New York State Attorney General, NYC Corporation Counsel, NYC Health and Hospital Corp (see NYSCEF Doc. #4).

Co-defendant Kings County Hospital, by its Office of Legal Affairs, served and filed its Verified Answer dated May 10, 2021, which answer included a Demand for Bill of Particulars, Discovery, Notice of Deposition, etc. (See NYSCEF Doc. 12).

A Request for Judicial Intervention (RJI) was filed with the Kings County Clerk on May 20, 2021.

Defendant, SUNY Downstate, has filed this pre-answer motion prior to the expiration of the time to answer the Summons and Verified complaint.

Facts:

Kimberly Francois (“decedent”), who was a soccer player on the National Soccer Team of Haiti, and allegedly residing with relatives in New York and employed here, was experiencing a severe headache. On April 4, 2019, he sought medical assistance at SUNY Downstate, where he was advised to take Tylenol and sent home. The following day, when he was allegedly experiencing the same symptoms, he returned to SUNY Downstate, where he was told to once again continue to take Tylenol and was released from the facility. On April 9<sup>th</sup> and April 10<sup>th</sup> the decedent, who was still allegedly suffering from headaches, sought medical assistance at the Kings County Hospital Emergency Department. At that hospital he underwent a test for HIV as well as a chest x-ray. The decedent was treated and released each day from said facility with discharge instructions. (See NYSCEF Doc. 38).

On April 25<sup>th</sup>, after allegedly lying down following lunch, the decedent passed away. The death certificate of decedent indicates that he died of Meningitis, a bacterial infection.

Parties' Contentions:

Here, the Court is presented with the issue as to whether this Court has subject matter jurisdiction over plaintiff's medical malpractice claim against defendant SUNY Downstate.

In support of defendant SUNY Downstate's motion, counsel argues that plaintiff's complaint should be dismissed because the Supreme Court does not have jurisdiction over a State entity. Counsel maintains that SUNY Downstate is a corporate agency created within the State's Department of Education and as such, the State is the real party. Further, SUNY Downstate asserts that the Court of Claims has exclusive jurisdiction to determine this matter, and plaintiff's complaint against this defendant must be dismissed.

Plaintiff, by her attorneys, opposes the relief sought in defendant's motion, asserting that this action should remain in Supreme Court in the interest of judicial economy, as SUNY Downstate is not the only defendant in this case, and due to the tragedy that resulted, a dismissal of the action would be unjust and not warranted.

Discussion:

It is well settled that the State University of New York is an integral part of the government of the State and when it is sued the State is the real party. State Univ. of NY v Syracuse Univ., 285 AD 59 [3d Dept 1954]; Education Law §352. Where the State of New York is the real party in interest, exclusive jurisdiction is vested in the Court of Claims. Graham v Stillman, 100 AD2d 893 [2d Dept 1984]; Court of Claims Act, §9. SUNY Downstate is part of the State University of New York, which is a corporate agency created within the State's Department of Education, and as such, any claims against SUNY Downstate must be brought in the Court of Claims.

In response to plaintiff's request for additional time within which to file the Notice of Claim, pursuant to Court of Claims Act, §10(6), this Court does not have jurisdiction over this claim and cannot grant such a request. Even if this Court could consider plaintiff's request, plaintiff has failed to comply with Court of Claims Act, §10(3).

The Court of Claims Act provides that "[a] claim to recover damages for personal injuries shall be filed and served upon the Attorney General within 90 days after the claim accrued, unless within 90 days, the claimant serves upon the Attorney General a written notice of intention to file a claim, in which event the claim shall be filed and served upon the Attorney General within two years after the accrual of such claim."

Criscuola v State, 188 AD3d 645, 645 [2d Dept 2020]; *see* Court of Claims Act, §10(3).

"A failure to comply with the requirements set forth in sections 10(3) and 11(b)<sup>1</sup> of the

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<sup>1</sup> Court of Claims Act §11(b) requires a claim to "specify the time and place where such claim arose, the nature of same, the items of damage or injuries claimed to have been sustained and, except in an action to recover damages

Court of Claims Act is a jurisdictional defect compelling the dismissal of the claim.”

Criscuola v State, 188 AD3d 645, 646 [2d Dept 2020]; *see* Hargrove v. State of New York, 138 A.D.3d at 777–778 [2d Dept 2016]; Welch v. State of New York, 286 A.D.2d 496, 497–498 [2d Dept 2001].

Here, plaintiff filed a Notice of Claim in April of 2021, which is two (2) years after the accrual of the medical malpractice claim, and beyond the ninety (90) day statutory period. Plaintiff has not provided evidence that a written notice of intention was served upon the Attorney General within ninety (90) days of the accrual of the medical malpractice claim. While the Court of Claims Act does give the courts discretion to permit the filing of a late Notice of Claim before the applicable statute of limitations<sup>2</sup> expires, the plaintiff must have complied with §10(3) by filing a letter of intention that includes the requirements set forth in §11(b).

Accordingly, defendant SUNY Downstate’s motion to dismiss plaintiff’s complaint as against them is granted, as this Court does not have jurisdiction over the medical malpractice claim against said defendant, and plaintiff’s cross-motion is denied.

Conclusion:

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for personal injury, medical, dental, or podiatric malpractice or wrongful death, the total sum claimed.” Court of Claims Act, §11(b).

<sup>2</sup> Here, the claim is governed by CPLR §214-a, which provides that an action for medical malpractice must be commenced within two years and six months of the act, omission, or failure complained of.

The defendants have met their burden for establishing that this Court lacks jurisdiction over the action as against SUNY Downstate.

Accordingly, the motions by defendant SUNY Downstate for dismissal of plaintiff's complaint as against SUNY Downstate, pursuant to CPLR §3211(a)(2), is granted, and all claims against SUNY Downstate are dismissed.

The caption shall be amended to read as follows:

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YOUSÉLINE ST. YVES, as Administrator of the Estate  
of Deceased, KIMBERLY FRANCOIS and  
MILIA FRANCOIS,

Index No.: 509493/2021

Plaintiff(s),

-against-

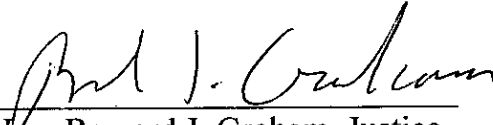
NYC HEALTH AND HOSPITALS CORP.,  
DT. VICKY LAM, DR IAN DESOUZA,  
DR. JOHN DELURY, and JOHN and JANE DOES 1-100,

Defendant.  
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This shall constitute the decision and order of this Court.

Dated: April 8, 2022  
Brooklyn, NY

ENTER

  
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Hon. Bernard J. Graham, Justice  
Supreme Court, Kings County  
**HON. BERNARD J. GRAHAM**