

**Sutton-Vincent v NYC Health & Hosps./Harlem
Hosp. Ctr.**

2023 NY Slip Op 32229(U)

June 29, 2023

Supreme Court, New York County

Docket Number: Index No. 805263/2022

Judge: Erika M. Edwards

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ERIKA M. EDWARDS PART 10M

Justice

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DEBORAH SUTTON-VINCENT as Proposed Administratrix
of the Estate of SYLVIA SUTTON and DEBORAH SUTTON-
VINCENT, Individually,

Plaintiff,

INDEX NO. 805263/2022

MOTION DATE 11/09/2022,
12/15/2022

MOTION SEQ. NO. 001 002

- v -

NYC HEALTH & HOSPITALS/HARLEM HOSPITAL
CENTER, NEW YORK CITY HEALTH & HOSPITALS
CORP., MOUNT SINAI HOSPITAL, JEWISH HOME
LIFECARE, MANHATTAN d/b/a THE NEW JEWISH HOME,
MANHATTAN, VISITING NURSE SERVICE OF NEW
YORK, VNS CHOICE, VISITING NURSE SERVICE OF
NEW YORK HOMECARE, VISITING NURSE SERVICE OF
NEW YORK HOMECARE II, PARTNERS IN CARE and
VNSNY CHHA,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 13, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 72

were read on this motion to/for DISMISS.

Upon the foregoing documents and oral argument held before the court on March 30, 2023,

- 1) the court grants in part Defendants VNS Choice’s, New Partners, Inc.’s, d/b/a Partners in Care’s, and Visiting Nurse Service of New York Homecare II’s, d/b/a Visiting Nurse Service of New York Homecare’s (collectively “Homecare Defendants”) motion to dismiss Plaintiff Deborah Sutton-Vincent as Proposed Administratrix of the Estate of Sylvia Sutton’s (“Deceased”) and Deborah Sutton-

- Vincent Individually's (collectively "Plaintiff") Verified Complaint, filed under motion sequence 001, to the extent set forth herein;
- 2) The court grants in part Defendant The Mount Sinai Hospital's s/h/a Mount Sinai Hospital's ("Mt. Sinai") motion to dismiss Plaintiff's Verified Complaint, filed under motion sequence 002, to the extent set forth herein; and
 - 3) The court grants in part Defendant New York City Health and Hospitals Corporation's s/h/a NYC Health & Hospitals/Harlem Hospital Center's and New York City Health & Hospitals Corp.'s ("NYCHHC") cross-motion to dismiss Plaintiff's Verified Complaint, filed under motion sequence 001, to the extent that the court dismisses with prejudice Plaintiff's cause of action for pain and suffering against NYCHHC for failing to timely commence the action within the applicable Statute of Limitations and as to the remaining allegations, to the extent set forth herein.

Plaintiff filed this action involving alleged medical malpractice, negligence, violations of New York Public Health Law §§ 2801-D and 2803-C and wrongful death. At the time that the Verified Complaint was filed, Plaintiff Deborah Sutton Vincent was designated as the Proposed Administratrix and there had been no representative appointed to represent the Deceased Plaintiff's Estate.

Now, the Homecare Defendants, Mr. Sinai and NYCHHC all move to dismiss Plaintiff's Verified Complaint with prejudice and to strike Plaintiff's Verified Complaint on the grounds that Plaintiff lacks capacity to sue and that there exists no cause of action for wrongful death for Plaintiff's failure to appoint a representative of the Deceased Plaintiff's Estate, pursuant to CPLR 3211(a)(3) and (a)(7), respectfully.

Defendant NYCHHC also moves to dismiss Plaintiff's cause of action for pain and suffering against NYCHHC for failure to state a cause of action for failing to timely commence the action within the applicable Statute of Limitations set forth in General Municipal Law ("GML") § 50-i(1) and New York Unconsolidated Laws § 7401(2).

Plaintiff opposes the motions and argues that dismissal is not warranted. Plaintiff further argues in substance that the Deceased passed away on September 12, 2021, during the height of the Covid-19 pandemic and Plaintiff filed a Petition for Letters of Administration with the New York County Surrogate's Court on May 19, 2022. Plaintiff explained Plaintiff's counsel's attempts to request the status of the citation, the causes for delays, the need to file supplemental documents and efforts to request that the matter to be processed as expeditiously as possible. The Letters of Administration were not issued until March 14, 2023, and mailed until March 22, 2023, which was after the motions were fully submitted and just one week prior to oral arguments on the motions and cross-motion.

Plaintiff further argues in substance that the Deceased's treatment giving rise to this action occurred from in or about December 2017 and continuing through various periods to in or about June 2021. Since the Deceased passed away on September 12, 2021, the Statute of Limitations on the wrongful death cause of action did not run until on or about August 11, 2022, which was the date that Plaintiff filed the Summons and Verified Complaint. Plaintiff further argues that the delay in receiving the Letters of Administration was caused by the Surrogate's Court's delay due to backlog caused by the Covid-19 pandemic and was through no fault of Plaintiff. At the time that Plaintiff's opposition papers were filed, Plaintiff indicated that the Letters of Administration were expected in January 2022, but they were not issued and mailed

until March 2022. During the oral argument on March 30, 2023, Plaintiff advised the court that the Letters of Administration were issued on March 14, 2023, and mailed on March 22, 2023.

As to the Homecare Defendants and Mt. Sinai and the causes of action asserted against NYCHHC, except for Plaintiff's allegations of pain and suffering asserted against NYCHHC which are addressed below, the court grants in part the motions and cross-motion and the court dismisses Plaintiff's Verified Complaint without prejudice with leave to restore the action within six (6) months of the date of entry of this decision and order and with notice to all parties, by providing an affidavit of merit by a qualified physician or physicians (see CPLR 205[a]).

As the movants correctly argue, Plaintiff lacked the legal capacity to commence the action and the cause of action for wrongful death does not exist without the appointment of a legal representative for the Deceased's Estate. Therefore, the court grants dismissal of Plaintiff's Verified Complaint without prejudice, except as to Plaintiff's allegations of pain and suffering asserted against NYCHHC.

However, as to NYCHHC's argument regarding dismissal of Plaintiff's pain and suffering allegations against it due to the expiration of the Statute of Limitations, the court grants dismissal of the action and finds that it was initially filed one day after the expiration of the applicable one year and ninety day-Statute of Limitations. As such, since the action was not timely commenced, Plaintiff's new action regarding these allegations would also be deemed untimely and is prohibited.

Here, as Defendant NYCHHC correctly noted, Plaintiff served a Notice of Claim on August 2, 2021, and served an Amended Notice of Claim on May 11, 2022, indicating that the Deceased had passed away on September 12, 2021. Both the Notice of Claim and Amended Notice of Claim alleged that the Deceased's treatment giving rise to her injuries pertaining to

NYCHHC occurred from April 20, 2021 to May 12, 2021. Plaintiff's Verified Complaint alleges that the relevant treatment occurred from approximately April 24, 2021 through on or about May 12, 2021. A GML § 50-h hearing was held on May 13, 2022 and the Verified Complaint was filed on August 11, 2022.

Defendant NYCHHC correctly noted that the one year and ninety day-Statute of Limitations expired on August 10, 2022, one day prior to the filing of Plaintiff's Verified Complaint, because Plaintiff alleges that the treatment at issue took place from April 24, 2021 until May 12, 2021, when the Deceased was discharged from Harlem Hospital. Plaintiff failed to oppose this portion of Plaintiff's motion. Therefore, the court dismisses with prejudice Plaintiff's allegations of pain and suffering as against NYCHHC.

The court has considered all additional arguments raised by the parties, but not specifically addressed herein and the court denies all additional requests for relief not expressly granted herein.

As such, it is hereby

ORDERED that as to motion sequence 001 and 002, the court grants in part Defendants VNS Choice's, New Partners, Inc.'s, d/b/a Partners in Care's, and Visiting Nurse Service of New York Homecare II's, d/b/a Visiting Nurse Service of New York Homecare's and Defendant The Mount Sinai Hospital's s/h/a Mount Sinai Hospital's motions to dismiss Plaintiff Deborah Sutton-Vincent as Proposed Administratrix of the Estate of Sylvia Sutton's and Deborah Sutton-Vincent Individually's Verified Complaint, to the extent that the court dismisses Plaintiff's Verified Complaint without prejudice with leave to restore the action within six (6) months of the date of entry of this decision and order and with notice to all parties, by providing an affidavit of merit by a qualified physician or physicians; and it is further

ORDERED that as to the cross-motion filed under motion sequence 001, the court grants in part Defendant New York City Health and Hospitals Corporation’s s/h/a NYC Health & Hospitals/Harlem Hospital Center’s and New York City Health & Hospitals Corp.’s cross-motion to dismiss Plaintiff’s Verified Complaint to the extent that the court dismisses with prejudice Plaintiff’s cause of action for pain and suffering asserted against Defendant New York City Health and Hospitals Corporation s/h/a NYC Health & Hospitals/Harlem Hospital Center and New York City Health & Hospitals Corp. and the court dismisses Plaintiff’s remaining allegations set forth in Plaintiff’s Verified Complaint without prejudice with leave to restore the action within six (6) months of the date of entry of this decision and order and with notice to all parties, by providing an affidavit of merit by a qualified physician or physicians; and it is further

ORDERED that should Plaintiff fail to move to restore the action within the six month period, then Defendants may move for judgment dismissing the action with prejudice.

This constitutes the decision and order of the court.


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<u>6/29/2023</u> DATE					<u>ERIKA M. EDWARDS, J.S.C.</u>			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION			
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER			
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>		REFERENCE