

Larson v Shore View Rehabilitation & Nursing Ctr.

2024 NY Slip Op 35019(U)

January 25, 2024

Supreme Court, Kings County

Docket Number: Index No. 525931/22

Judge: Ellen M. Spodek

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 63 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 25th day of January 2024

P R E S E N T:

HON. ELLEN M. SPODEK, Justice

-----X
ELIZABETH LARSON, as Proposed Administrator of the Estate of DONALD LARSON, Deceased

Plaintiff,

DECISION AND ORDER

-against-

Index No. 525931/22

SHORE VIEW REHABILITATION AND NURSING CENTER, SHORE VIEW ACQUISITION I, LLC, MENORAH HOME AND HOSPITAL FOR THE AGED AND INFIRM, MENORAH CENTER FOR REHABILITATION AND NURSING CARE, THE NEW YORK COMMUNITY HOSPITAL OF BROOKLYN, INC., And NEW YORK COMMUNITY HOSPITAL,
Defendants

-----X

The following papers read herein:

No.:

Notice of Motion, Affirmations, and Exhibits Annexed _____ 1-4

Opposing Affirmations and Exhibits Annexed _____ 5-10

Affirmations in Reply _____ 11-15

Defendant MENORAH HOME AND HOSPITAL FOR THE AGED AND INFIRM and MENORAH CENTER FOR REHABILITATION AND NURSING CARE, (“Menorah”) having moved this Court for an Order pursuant to CPLR §3211(a)(3) dismissing this case on the grounds that Plaintiff lacks the capacity to commence the present action and CPLR§3211(a)(5) dismissing the case on the grounds that Plaintiff’s claim’s are barred by the applicable statute of limitations (Motion Sequence #1), and Defendant THE NEW YORK COMMUNITY HOSPITAL OF

Court for an Order pursuant to CPLR §3211(a)(3) dismissing this case on the grounds that Plaintiff lacks the capacity to commence the present action; and pursuant to the doctrine of res judicata and collateral estoppel; and CPLR§3211(a)(3) dismissing the case on the grounds that Plaintiff's claims are barred by the applicable statute of limitations (Motion Sequence #2) and Defendant SHORE VIEW ACQUISITION I, LLC d/b/a SHORE VIEW NURSING AND REHABILITATION CENTER, ("Shore View") having moved this Court for an Order pursuant to CPLR §3211(a)(3) dismissing this case on the grounds that Plaintiff lacks the capacity to commence the present action and CPLR§3211(a)(5) dismissing the case on the grounds that Plaintiff's claims are barred by the applicable statute of limitations (Motion Sequence #3); and Plaintiff having moved this Court for an Order pursuant to CPLR§1015 and 1021, substituting the Plaintiff as ELIZABETH LARSON, as Administrator of the Estate of DONALD LARSON, Deceased, and amending the caption to reflect the substitution of the Plaintiff, (Motion Sequence #4) is decided as follows:

ORDERED, that plaintiff's motion (Motion Sequence #4) is **GRANTED**, and it is further ORDERED, that Defendants' motions (Motion Sequence #1, 2 and 3) are **DENIED**.

This action involves a claim by Plaintiff against the Defendants for negligence and medical malpractice by defendants causing, among other injuries, bed sores. Plaintiff initially commenced an action on April 2, 2021 on behalf of the Estate of Donald Larson by Elizabeth Larson as "Proposed Administrator" in order to protect the rights of the Plaintiff. Donald Larson passed away on December 27, 2018. On March 7, 2022, Honorable Richard Velasquez issued an Order dismissing the matter based on capacity, and without prejudice.

On September 7, 2022, Plaintiff timely re-commenced this action pursuant to CPLR §205(a) within 6 months of entry of the March 7, 2022 Order. Plaintiff re-commenced the action as Proposed Administrator as Letters of Administration had not been issued yet. It is relevant to note, that on November 10, 2021, prior to the previous action's dismissal, a petition for Letters of

Estate of Donald Larson with Kings County Supreme Court. On July 10, 2023, Kings County Surrogate's Court issued an Order and Decree Granting Limited Letters of Administration to Elizabeth Larson for Donald Larson's Estate.

In *Robles v. Brooklyn Queens Nursing Home, Inc.*, 131 A.D.3d 1032 (2nd Dept. 2015), the Second Department held that a plaintiff is entitled to the benefit of the six-month extension saving provision of CPLR 205(a) where prior actions were dismissed for lack of capacity to sue, which is not a dismissal on the merits. As such, Plaintiff in this case had the statutory right to re-commence this action in its entirety against these same Defendants within six months of the Order of dismissal pursuant to CPLR §205(a). The very purpose of CPLR 205(a) "is designed to ameliorate the potentially 'harsh consequence of applying a limitations period where the defending party has had timely notice of the action'. *Malay v. City of Syracuse*, 25 N.Y.3d 323, 327, 12 N.Y.S.3d 1, 33 N.E.3d 1270 (2015) citing to *Matter of Goldstein v. New York State Urban Dev. Corp.*, 13 NY3d 511, 521 (2009).

Although Plaintiff re-commenced this action as a Proposed Administrator, Plaintiff filed a Petition for Letter's of Administration on November 10, 2021 and Letters of Administration were not issued until July 10, 2023. This Court is cognizant of the fact that due to the COVID-19 pandemic, the Kings County Surrogates Court has a backlog of applications and petitions for Letters of Administration. The purpose of CPLR § 205(a) is to avert unintended and capricious unfairness by providing that if the first complaint was timely but was dismissed for such curable reasons, the suit may be reinstated within six months of the dismissal. The Plaintiff in this action should not be punished for the delay that has occurred in Kings County Surrogates Court.

Defendants argue that Plaintiff's action should be dismissed as the savings provision of CPLR §205(a) can only be applied once and only if the Plaintiff has cured the capacity defect. The Second Department in *Robles* dealt with that very argument that Defendants raise here. In *Robles*, Plaintiff commenced two prior actions which were dismissed for lack of capacity to sue and then

brought a third action, which Defendant again sought to dismiss as Plaintiff still lacked the capacity to sue. The Second Department held that the Plaintiff would have been entitled to the benefit of the six month savings provision of CPLR 205(a) and would have been granted an opportunity to commence a new action, as the prior actions were dismissed for lack of capacity to sue, which is not a dismissal on the merits. Consistent with the ruling in *Robles*, Plaintiff in this case was able to file the present action before the Court as proposed administrator as Letters of Administration had not been issued yet.

This Court's decision is in keeping with CPLR 205(a)'s remedial purpose of allowing Plaintiffs to avoid the harsh consequences of the statute of limitations and have their claims determined on the merits where, as here, a prior action was commenced within the limitations period, thus putting Defendants on notice of the claims. *See Malay v. City of Syracuse*, 25 N.Y.3d 323(2015).

Defendants NYCH also move to dismiss based on collateral estoppel and res judicata grounds. Defendants motion is denied as the prior action's dismissal was not on the merits so this action is not barred by the doctrines of collateral estoppel or res judicata. *See CPLR 205(a); U.S. Bank National Association v. McLean*, 209 A.D.3d 792 (2nd Dept. 2022).

Defendants also seek to dismiss this action on the grounds that Plaintiff's claims are barred by the applicable statute of limitations. Under CPLR §205(a) applies to this action, if a timely brought action has been terminated for any reason other than one of the ... reasons specified in the statute, the Plaintiff may commence another action based on the same transactions or occurrences within six months of the dismissal of the first action, even if the second action would otherwise be subject to a Statute of Limitations defense, so long as the second action would have been timely had it been commenced when the first action was brought. *See U.S. Bank National Association v. DLJ Mortgage Capital, Inc.*, 33 N.Y.3d 72 (2019). The relevant inquiry in this action is whether the first action was timely filed for Statute of Limitations purposes. Plaintiff's prior action was timely filed due to Executive Order No. 202.8. *See Brash v. Richards*, 195 A.D.3d 582(2nd Dept.

until November 3, 2020. The decedent was a resident at Shore View through June 11, 2018 and that three years and 228 days from June 11, 2018 is February 29, 2022. Plaintiff's action is not time barred by the Statute of Limitations as the initial action was filed on April 2, 2021, well prior to the expiration of the Statute of Limitations.

Defendant NYCH also move to dismiss this action on Statute of Limitations grounds but their argument fails as well. Defendant states that the last date of treatment at their facilities is July 3, 2018, so three years would be July 3, 2021 and that Plaintiff passed away on December 27, 2018 so two years after that would be December 27, 2020. However, defendant fails to add the 228 days from the toll of Executive Order 202.8. The Statute of Limitations for plaintiff's action for wrongful death expired on August 12, 2021. Since Plaintiff's initial action was filed on April 2, 2021, Plaintiff's actions were timely filed.

Plaintiff has been issued Letter's of Administration which is the basis of Plaintiff's motion to substitute and amend the caption. Since Plaintiff Elizabeth Larson has been appointed Administrator of the Estate of Donald Larson, Plaintiff's motion to substitute pursuant to CPLR§1015 and 1021 is GRANTED and the caption is amended to reflect same. As such, the new caption of this action is:

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF KINGS

-----X

ELIZABETH LARSON, As Administrator of the Estate of DONALD LARSON, Deceased,

Plaintiff,

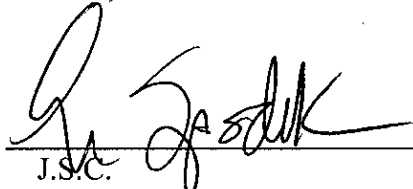
-against-

SHORE VIEW REHABILITATION AND NURSING CENTER, SHORE VIEW ACQUISITION I, LLC, MENORAH HOME AND HOSPITAL FOR THE AGED AND INFIRM, MENORAH CENTER FOR REHABILITATION AND NURSING CARE, THE NEW YORK COMMUNITY HOSPITAL OF

Defendants.

-----X

Accordingly, it is hereby
ORDERED that the Defendants motions to dismiss are DENIED; and it is further
ORDERED that the Plaintiff's motion to substitute ELIZABETH LARSON, as
Administrator of the Estate of DONALD LARSON, Deceased, and amend the caption to reflect
same is GRANTED.
This constitutes the Decision and Order of the Court.

ENTER,


J.S.C.
HON. ELLEN M. SPODEK

KINGS COUNTY CLERK
FILED
2024 JAN 29 AM 9:28
