

Matter of Greenland v County of Westchester
2024 NY Slip Op 35069(U)
October 8, 2024
Supreme Court, Westchester County
Docket Number: Index No. 50645/2023
Judge: Thomas Quiñones
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To commence the statutory time for 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
COUNTY OF WESTCHESTER – I.A.S. PART

PRESENT: HON. THOMAS QUIÑONES, J.S.C.

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In the Matter of the Application of
RONALD C. GREENLAND,

Plaintiff(s)/Petitioner(s).

-against-

THE COUNTY OF WESTCHESTER;
THE WESTCHESTER CORRECTIONAL FACILITY;
RAUL ULLO, MEDICAL DIRECTOR AT
WESTCHESTER CORRECTIONAL;
CORRECT CARE SOLUTIONS (CCS);
YASSER MIR, MEDICAL DIRECTOR;
RELY RADIOLOGY GROUP AT
WESTCHESTER CORRECTIONAL,

Defendant(s)/Respondent(s).

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The following papers filed to the New York State Court Electronic Filing System (NYSCEF) as NYSCEF Doc. 12-16, 23-30, 36-38 were read and considered on the following pending motions:

- (i) Motion Seq. No. 2 filed by RONALD C. GREENLAND (“GREENLAND”) for “an Order granting summary judgment pursuant to CPLR §§ 305 and 3215, and for such further and other relief as the Court deems just and proper; and
- (ii) Cross-Motion Seq. No. 3 filed by the COUNTY DEFENDANTS¹ for an Order dismissing this action pursuant to CPLR §§ 3211(a)(5) and (a)(8) as time-barred, untimely filed, lack of service of process, and collateral estoppel from relitigating issued previously adjudicated in the Prior Action filed under case index #227/2018.

GREENLAND, a self-represented litigant, filed the instant complaint alleging, inter alia, negligence, including without limitation “negligent failure of the Westchester County Correctional Facility (WCC) and Correct Care Solutions (CCS) and Staffs failure to Investigate, Discover, and find the proper resolutions to Plaintiff’s Medical needs, failure to provide adequate Medical care resulting negligence and the delays in presenting Plaintiff for Screening, Unreasonable delay before

¹ The “County Defendants” refer to Defendants/Respondents Westchester County Attorney, Attorney for Defendant County of Westchester and the Westchester County Correctional Facility.

providing comprehensive MRI evaluation diagnosis and treatment proximately caused Plaintiff injuries to deteriorate progressively which induced and implied deliberate indifference and negligence” as well as allegations that such defendants “knew the risk of serious harm existed and intentionally disregarded that risk [and] Defendants intentionally interfered with Plaintiff’s necessary required Medical care and needs...which gave Plaintiff a disability status and limited Plaintiff activity to daily access to Gym, Library, Employment, Housing, Medical restriction, and necessary daily accommodation.” (Complaint ¶3). The following motions are properly before this Court for determination.

GREENLAND’s Motion Seq. No. 2:

GREENLAND filed the instant motion for “an Order granting summary judgment pursuant to CPLR §§ 305 and 3215, and for such further and other relief as the Court deems just and proper.” (NYSCEF Doc. 11, Notice of Motion). GREENLAND contends that “[p]ursuant to C.P.L.R. § 305 and 3215, Motion for entry of a Default Judgment, herein, Respondent(s) failure to Answer constitute such Judgment, based upon Respondent(s) failure to respond to each and every allegation contained in Motion. A Summons and Complaint has been served within the Ninety Days of the alleged occurrences as required by Law.” (NYSCEF Doc. 13, Greenland Affirmation ¶6). GREENLAND further contends that “because Respondent(s) has had ample Staff, Time, and Knowledge of the Law, its failure to submit an Answer more than 240 Days after the Service of the Petition was served shows that its failure to plead was/is intentional and that they have no intention on having the matters resolved on the merits” (*id.* at ¶10), thus entitling GREENLAND to compensatory damages.

THE COUNTY DEFENDANTS’ Motion Seq. No. 3:

THE COUNTY DEFENDANTS filed a cross-motion for a court order pursuant to CPLR §§ 3211(a)(5) and (a)(8), dismissing the complaint as against all defendants. First, counsel contends that Plaintiff’s action is time-barred, since the complaint was not timely filed with the Court as it was not served within one year and ninety (190) days of the happening of the alleged occurrence(s). Counsel further contends that service of the complaint was not properly executed upon all defendants. Lastly, counsel argues that, pursuant to the doctrine of collateral estoppel, plaintiff is also estopped from re-litigating this issue raised in a prior action under case index #227/2018 (hereinafter, the “Prior Action”). Insofar as the Prior Action was dismissed, Plaintiff is collaterally estopped from relitigating these same issues in the present action.

THE COUNTY DEFENDANTS also opposed GREENLAND’s motion for summary judgment for the aforementioned reasons. In that regard, counsel argues that “because the plaintiff untimely and failed to serve the summons and complaint upon all of the defendants, summary judgment must be denied, as plaintiff cannot demonstrate his entitlement to judgment as a matter of law.” (NYSCEF Doc. 29 page 7).

Decision:

As a preliminary matter, THE COUNTY DEFENDANTS concede that GREENLAND timely filed a Notice of Claim which indicated the claim accrual date as November 25, 2016.² However, GREENLAND failed to timely file a summons and complaint within one year and ninety (90) days of the claim's accrual date in accordance with General Municipal Law § 50-i(1)(c) which, in pertinent part, states that “the action or special proceeding shall be commenced within one year and ninety days after the happening of the event upon which the claim is based.” (General Municipal Law §50-i[1][c]). The record reflects that the summons and complaint was untimely served upon the COUNTY DEFENDANTS on August 14, 2023, approximately seven years after the claim accrued, and such complaint lacked the case index number and date of filing with the clerk of the court required by CPLR §305.³

The record further reflects that the Plaintiff made a second attempt to commence an action by purportedly filing a summons and complaint under this present case index #50645/2023 on October 31, 2023. There is no affidavit of service filed of record to demonstrate that Plaintiff effectuated service of process of such complaint upon the COUNTY DEFENDANTS, or any other named defendants for that matter. The only affidavit of service was filed by Plaintiff on October 31, 2023 bearing the date of July 21, 2017 referencing service upon Westchester County Court and the County Attorney, however same does not specifically attest to service of the summons and complaint.⁴ In short, the record is devoid of any affidavit(s) of service attesting to timely service of a complaint, with an identifying case index number and the documents served, and filed on the docket within 120 days of alleged service of the complaint as required by CPLR §306-b upon any of the named defendants. Therefore, this action shall be dismissed as time barred. Moreover, as pointed out by the COUNTY DEFENDANTS, there was a Prior Action previously filed under case index #227/2018 related to the same claims and parties which was dismissed on December 28, 2021 [Hon. Samuel Walker, J.S.C.]. Accordingly, pursuant to the doctrine of collateral estoppel, plaintiff is also estopped from re-litigating the same issue and occurrence that was previously adjudicated in that Prior Action.

All other arguments raised on the motion and evidence submitted by the parties in connection thereto have been considered by this Court, notwithstanding the specific absence of reference thereto.

Based on the foregoing, it is hereby

ORDERED that, Defendants’ Cross-Motion Seq. No. 3 is GRANTED, and this matter is HEREBY DISMISSED against all named defendants for the reasons herein stated. It is further

² See, NYSCEF Doc. 29, County Defendants’ Memorandum of Law, page 7-8 of 13; see also, NYSCEF Doc. 25, Defendant’s Cross-Motion Exhibit A (Notice of Claim).

³ NYSCEF Doc. 27, Defendant’s Cross-Motion Exhibit C (Complaint).

⁴ NYSCEF Doc. 5, Affidavit of Service.

ORDERED that, Plaintiff's Motion Seq. No. 1 is consequently DENIED. It is further

ORDERED that, any other requested relief that is not specifically granted herein is denied.

ORDERED that, the County Defendants are directed to serve a copy of this Decision and Order with notice of entry, and file an affidavit of service evidencing same, within twenty (20) days hereof.

The foregoing constitutes the Decision and Order of this Court.

Dated: October 8, 2024
 White Plains, New York

ENTER:



HON. THOMAS QUIÑONES, J.S.C.

TO: *Filed to NYSCEF*