

Arroyo v 7-Eleven, Inc.

2025 NY Slip Op 33790(U)

October 6, 2025

Supreme Court, New York County

Docket Number: Index No. 160848/2024

Judge: Leslie A. Stroth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

-----X

SHANAY ARROYO,

Plaintiff,

- v -

7-ELEVEN, INC., JOHN DOE

Defendant.

-----X

INDEX NO. 160848/2024

MOTION DATE 01/23/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 15, 16, 17

were read on this motion to/for DISMISS

FACTUAL BACKGROUND

This action arises out of an incident that allegedly occurred on January 2, 2023, at approximately 12:30 a.m. at a 7-Eleven store located at 1642 Lexington Avenue, New York, New York

Plaintiff, Shanay Arroyo, contends that while she was a patron in the store, she was verbally harassed, assaulted, and battered by Defendant "John Doe," an employee of 7-Eleven, Inc., using a broomstick, a shovel, a taser, a mop, and by being splashed with hot liquid.

On November 19, 2024, Plaintiff commenced this action by filing a Summons and Verified Complaint asserting four causes of action: (1) assault; (2) battery; (3) negligent hiring, retention, supervision, and/or direction against 7-Eleven; and (4) emotional distress.

Defendant 7-Eleven answered and thereafter moved to dismiss the first, second, and fourth causes of action pursuant to CPLR 3211(a)(5) as barred by the one-year statute of limitations for intentional torts under CPLR 215, and also under CPLR 3211(a)(7) for failure to state a claim

Plaintiff opposes, arguing that CPLR 215(8) tolled the limitations period because of an alleged related criminal proceeding. Defendant replied that Plaintiff produced no evidence of any such criminal proceeding, nor any allegation or documentation establishing its commencement or termination.

LEGAL STANDARD

On a CPLR 3211 (a)(5) motion to dismiss, “a defendant bears the initial burden of establishing, prima facie, that the time in which to sue has expired. In considering the motion, a court must take the 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 marks and citation omitted). Upon such a showing, “the burden shift[s] to the plaintiff to raise a question of fact as to whether the statute of limitations was tolled or was otherwise inapplicable, or whether it actually commenced the action or interposed the subject cause of action within the applicable limitations period.” (*Bailey v Peerstate Equity Fund, L.P.*, 126 AD3d 738, 740 (2d Dept 2015) (internal citations omitted)). “[P]laintiff’s submissions in response to the motion must be given their most favorable intendment.” (*Benn*, 82 AD3d at 548 (internal quotation marks and citation omitted)).

Pursuant to CPLR 3211 (a)(7), a party may move to dismiss a claim on the ground that the pleading fails to state a cause of action. Upon such a motion, the Court must accept the facts alleged as true and determine simply whether plaintiff’s facts fit within any cognizable legal theory. (*See CPLR 3026; Morone v Morone*, 50 NY2d 481 (1980)). The complaint shall be liberally construed, and the allegations are given the benefit of every possible favorable inference. (*See Leon v Martinez*, 84 NY2d 83, 87 (1994)).

DISCUSSION

CPLR 215(3) provides a one-year statute of limitations period for intentional torts such as assault, battery, and intentional infliction of emotional distress. CPLR 215(8) tolls this period where “a criminal action against the same defendant has been commenced with respect to the event or occurrence from which a claim governed by this section arises,” in which case the plaintiff has one year from the termination of the criminal action to commence the civil action.

Plaintiff’s claims for assault, battery, and emotional distress each sound in intentional tort. As such, they are subject to the one-year statute of limitations set forth in CPLR 215(3). The underlying incident occurred on January 2, 2023. Plaintiff did not commence this action until November 19, 2024, approximately one year and eleven months after the alleged conduct occurred.

Defendant has therefore met its initial burden of showing that the statute of limitations expired before this action was filed. Plaintiff invokes CPLR 215(8), contending that the statute of limitations was tolled by a related criminal proceeding. However, Plaintiff has not alleged in her Verified Complaint that any criminal action was commenced, nor has she offered evidence identifying any such proceeding, its defendant, its commencement, or its termination.

It is well settled that a party asserting tolling under CPLR 215(8) bears the burden of producing sufficient evidence to establish its applicability, as such is Plaintiff’s burden to prove that the statute of limitations is tolled as Defendant’s have made their prima facie case. (*see Mandour v Rafalsky*, 238 AD3d 637, 637 [1st Dept 2025]). Plaintiff’s opposition papers provide no such evidence, relying solely on the argument that Defendant failed to prove the absence of a criminal proceeding. This misstates the allocation of the burden. In the absence of factual

allegations or evidentiary proof of a related criminal prosecution, Plaintiff cannot invoke CPLR 215(8).

As the court finds Plaintiff's actions are time-barred pursuant to CPLR 3211(a)(5) it need not render a separate determination as to the viability of Plaintiff's claims pursuant to CPLR 3211(a)(7).

Accordingly, the Court finds that Plaintiff's first cause of action (assault), second cause of action (battery), and fourth cause of action (emotional distress) are time-barred and must be dismissed with prejudice. The court has considered the remaining arguments of the parties and finds such unavailing.

Accordingly; it is hereby

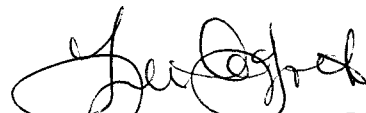
ORDERED that Defendant 7-Eleven, Inc.'s motion to dismiss Plaintiff's first, second and third causes of action is granted; and it is further

ORDERED that Plaintiff's first cause of action for assault, second cause of action for battery, and fourth cause of action for emotional distress are dismissed with prejudice as time-barred; and it is further

ORDERED that Plaintiff's third cause of action for negligent hiring, retention, supervision, and/or direction remains.

The foregoing constitutes the decision and order of the court.

10/6/2025
DATE


HON. LESLIE A. STROTH
J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<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