

Reynolds v Brooklyn Prime Inc.
2026 NY Slip Op 31301(U)
March 17, 2026
Supreme Court, Kings County
Docket Number: Index No. 531054/2024
Judge: Richard J. Montelione
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At IAS Part 99 of the Supreme Court
of the State of New York, held in and
for the County of Kings, at the
Courthouse located at 360 Adams
Street, Brooklyn, NY 11201, on the
17th day of March 2026.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 99

**DECISION
and
ORDER**

-----X
NIA JASMINE REYNOLDS,

Plaintiffs,

-against-

Index No.: 531054/2024
Mot. Seq. No.: 1

BROOKLYN PRIME INC. d/b/a Brooklyn Prime Bar and
Restaurant; LESLEY CADOGAN, as Owner, Brooklyn Prime Bar
and Restaurant; TERRI ANN WILLIAMSON, as Manager,
Brooklyn Prime Bar and Restaurant; and ROHAN L. SHAW,

Defendants.
-----X

After oral argument, the following papers were read on this motion pursuant to CPLR 2219(a):

<u>Papers</u>	NYSCEF DOC. #
Defendant Rohan L. Shaw’s Notice of Motion to Dismiss Pursuant to CPLR 3211 (a)(5)/ Affirmation in Support affirmed by Francis J. Scahill, Esq. on November 25, 2024/Exhibits A-C/Proof of Service.....	6-7, 9-10
Plaintiff’s Memorandum of Law in Opposition/Exhibit 1.....	12-13

MONTELIONE, RICHARD J., J.

Plaintiff Nia Jasmine Reynolds commenced the instant action upon filing the summons
and complaint on November 17, 2024, alleging personal injuries arising out of a serious motor
vehicle accident occurring on December 8, 2019, at approximately 4:00 a.m. Plaintiff alleges
three causes of action: (1) violation of the New York Dram Shop Act under General Obligations
Law § 11-101 against Defendants Brooklyn Prime Inc. d/b/a Brooklyn Prime Bar and Restaurant
(Brooklyn Prime), Lesley Cadogan (Cadogan), and Terri Ann Williamson (Williamson)
(NYSCEF Doc # 1, pp. 30-31, ¶¶ 146-152); (2) negligence per se against Defendant Rohan L.

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Shaw (Shaw) (NYSCEF Doc # 1, pp. 31-32, ¶¶ 153-162); and (3) common law negligence against Shaw (NYSCEF Doc # 1, pp. 32-33, ¶¶ 163-169).

Defendant Shaw moves by pre-answer motion to dismiss, pursuant to CPLR 3211(a)(5), for dismissal of the complaint on the ground that plaintiff failed to commence this action within the applicable statute of limitations. No other defendants have answered the complaint.

Background

Plaintiff Nia Jasmine Reynolds alleges that on December 8, 2019, at approximately 4:00 a.m., she along with her friend Ms. Dixon, were passengers in a 2016 Mazda sedan operated by their friend Mr. Vidale. (NYSCEF Doc # 1, ¶¶ 33–35). Plaintiff further alleges that as Mr. Vidale drove northbound on East 55th Street in Brooklyn towards the intersection with Foster Avenue, Vidale rolled through the stop sign and attempted to turn left onto westbound Foster Avenue (NYSCEF Doc # 1, ¶¶ 36–38.) At that moment, plaintiff alleges that Defendant Shaw, operating a 2019 Nissan sedan in an intoxicated condition and traveling in excess of seventy miles per hour, allegedly struck the driver’s side of Mr. Vidale’s vehicle. (NYSCEF Doc # 1, ¶¶ 39–41). As a result of this accident, plaintiff alleges that she has sustained a “serious injury” within the meaning of Insurance Law § 5102(d). (NYSCEF Doc # 1, ¶¶ 58–60). Plaintiff further alleges that Defendant Shaw became intoxicated while he was at Defendant Brooklyn Prime Inc. d/b/a Brooklyn Prime Bar and Restaurant, a Caribbean restaurant with full-service bar located at 4315 Farragut Road, Brooklyn 11203, for more than three (3) hours before the motor vehicle accident. (NYSCEF Doc #1, ¶¶ 76). Plaintiff further alleges that Defendant Cadogan is the general manager of Brooklyn Prime, and Defendant Williamson is Cadogan’s manager. *Id.*

Plaintiff filed an initial federal complaint on November 3, 2021, against defendants herein, The City of New York, and various New York City Police officers. (NYSCEF Doc. #9). Thereafter, plaintiff filed an amended complaint on December 6, 2021, and a Second Amended Complaint in federal court on June 8, 2023, after which The City of New York and various police officer defendants moved to dismiss. On August 8, 2024, the Honorable Ann M. Donnelly granted the motion to dismiss and declined to exercise supplemental jurisdiction over the remaining state claims, permitting refiling in state court. (NYSCEF Doc # 1, ¶ 13). Plaintiff sought a certificate of default against Brooklyn Prime, Cadogan, and Williamson for failure to plead or defend, and the clerk entered default against Brooklyn Prime and Cadogan only on November 29, 2023. (NYSCEF Doc. #4).

Discussion

Defendant Shaw’s position is that the complaint should be dismissed under CPLR 3211(a)(5) because the three-year statute of limitations for negligence claims expired and plaintiff’s November 17, 2024, complaint was not filed within the time allowed, even accounting for federal tolling under 28 U.S.C. § 1367(d). Shaw maintains that 28 U.S.C. § 1367(d) merely pauses the state-law limitations period while the federal action is pending and for 30 days thereafter and that plaintiff had, at most, thirty-five days from the August 9, 2024 entry of judgment to commence a new action, a deadline she missed by approximately two months.

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Shaw further argues that CPLR 205(a) does not save plaintiff's claims because the statute does not apply to the dismissal of claims in federal court under § 1367, and because any tolling afforded by the federal proceeding was already exhausted by the time plaintiff commenced the state action. He further asserts that permitting plaintiff to rely on CPLR 205(a) in addition to 28 U.S.C. § 1367(d) would improperly extend the statute of limitations beyond what the Legislature intended and would undermine the certainty and repose that limitations statutes are designed to provide.

Plaintiff counters that her claims are timely because 28 U.S.C. § 1367(d) and CPLR 205(a) work together to preserve state-law claims that were timely when originally filed in federal court and later dismissed for non-meritorious reasons. Plaintiff argues that 28 U.S.C. § 1367(d) suspends, rather than merely provides a grace period for, the running of the state statute of limitations while the federal action is pending and for 30 days after dismissal. Plaintiff asserts that, because she commenced her federal action well within the three-year limitations period and litigated it through the August 8, 2024 dismissal, the limitations clock was tolled during that time, and that she then had both the 30-day period under 28 U.S.C. § 1367(d) and an additional six months under CPLR 205(a) to recommence her state claims.

Legal Analysis

Under CPLR 3211(a)(5), a defendant may move to dismiss on the ground that “the cause of action may not be maintained because of ... statute of limitations,” but dismissal is inappropriate if applicable tolling provisions or saving statutes render the claims timely. CPLR 205(a) permits the commencement of a new action within six months after termination of the prior action, provided that the earlier action was timely, that the new action is based on the same transaction or occurrence, and that the termination was not due to voluntary discontinuance, neglect to prosecute, a lack of personal jurisdiction, or a final judgment on the merits. New York courts have long recognized that CPLR 205(a) provides a litigant whose timely action has been terminated for reasons other than those specified in the statute “a second opportunity to the claimant who has failed the first time around because of some error” not related to the merits of the case. *See George v Mt. Sinai Hospital*, 47 NY2d 170, 178-179 [1979].

New York appellate courts have applied CPLR 205(a) to actions previously brought in other forums, including federal court, and have held that procedural or jurisdictional dismissals fall within the statute's protective ambit. In *Sokoloff v Schor*, 176 AD3d 120 [2d Dept. 2019], the Second Department held that CPLR 205(a) allowed the plaintiff to refile within six months after a prior dismissal for lack of capacity to sue, characterizing that dismissal as procedural rather than on the merits. In *Norex Petroleum Ltd. v Blavatnik*, 23 NY3d 665 [2014], the Court of Appeals reaffirmed that CPLR 205(a) is to be construed liberally to accomplish its remedial purpose, allowing plaintiffs to recommence actions within six months of procedural dismissals even when the underlying limitations period would otherwise have expired.

Here, the record reflects that plaintiff's federal action was timely when filed on November 3, 2021, well within three years of the December 8, 2019, accident, and that the federal court later dismissed the federal claims and declined to exercise supplemental jurisdiction over the state claims pursuant to 28 U.S.C. § 1367(c). The termination of the state claims on that

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basis was not a final judgment on the merits but rather a jurisdictional decision by the federal court to refrain from adjudicating the state-law causes of action. Such a non-merits termination is precisely the type of procedural disposition that CPLR 205(a) is designed to address. Plaintiff's commencement of the present action on November 17, 2024, falls within six months of the August 8, 2024, dismissal and thus satisfies the temporal requirement of CPLR 205(a).

The Court further concludes that the operation of 28 U.S.C. § 1367(d), as interpreted by the United States Supreme Court in *Artis v District of Columbia*, 138 S Ct 594 [2018], does not displace or limit the protections afforded by CPLR 205(a) but instead operates in tandem with New York's saving statute. *Artis* holds that § 1367(d) suspends the running of the state statute of limitations for supplemental state-law claims while they are pending in federal court and for 30 days after they are dismissed. Nothing in *Artis* or § 1367(d) suggests that Congress intended to preempt state saving statutes or to preclude states from affording additional time to recommence actions dismissed for jurisdictional reasons. To the contrary, § 1367(d) expressly recognizes that tolling may extend "unless State law provides for a longer tolling period," thereby preserving the operation of state provisions such as CPLR 205(a).

Defendant Shaw's argument that plaintiff was limited to a brief thirty-five-day window following the federal dismissal is unpersuasive. The better reading, consistent with the remedial purposes of CPLR 205(a) and the plain language of § 1367(d), is that plaintiff's timely federal filing, the non-merits termination of her state claims, and her recommencement of the action within six months collectively render her negligence claims timely in this Court.

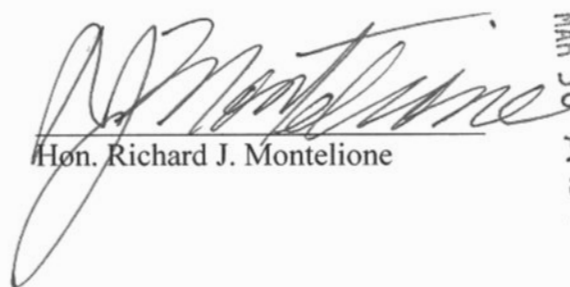
Accordingly, the Court holds that plaintiff's claims against defendant Shaw are timely under the combined operation of 28 U.S.C. § 1367(d) and CPLR 205(a). Defendant Shaw's motion, which seeks dismissal of the complaint as barred by the statute of limitations, is denied.

For the foregoing reasons, it is hereby

ORDERED, that Motion Seq. #1, by defendant Rohan L. Shaw, for dismissal of the complaint pursuant to CPLR 3211(a)(5) on statute of limitations grounds, is DENIED, and the action shall proceed on the merits of plaintiff's negligence and negligence per se claims; and it is further

ORDERED, that all other requests for relief herein are denied.

This constitutes the decision and order of the Court.


Hon. Richard J. Montelione
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