

Plaintiffs Lauron and Laurie Torsiello (“Plaintiffs”) do not contest that New Jersey’s two-year personal injury limitations period applies and that their Complaint was not filed within that period. Instead, Plaintiffs argue that the statute of limitations should be tolled because Defendants “were evasive in allowing the Plaintiffs to pursue” a previously filed and identical lawsuit in New Jersey state court. (Opp. Br. at 6.) In this regard, Plaintiffs rely exclusively on Galligan v. Westfield Centre Serv., Inc., 412 A.2d 122 (N.J. 1980), a case in which the New Jersey Supreme Court concluded that where a complaint is timely filed in federal court but is subsequently dismissed for lack of subject matter jurisdiction, the statute of limitations is “tolled by the filing of a complaint in federal court which lacked subject matter jurisdiction.” Jaworowski v. Ciasulli, 490 F.3d 331, 334 (3d Cir. 2007) (quoting Galligan, 412 A.2d at 123). This holding parallels 28 U.S.C. § 1367(d), which tolls the statute of limitations for any state law claim while that claim is pending in federal court and for an additional thirty days should the federal court decline to exercise supplemental subject matter jurisdiction over it.

The situation in this case, however, is not comparable. There is no suggestion that Plaintiffs’ prior state court filing was in a court without subject matter jurisdiction; rather, Plaintiffs’ own submission reveals that the Superior Court of New Jersey dismissed Plaintiffs’ previously filed lawsuit for failure to prosecute. (See Opp. Br. at 3.) Indeed, while the plaintiff in Galligan refiled in state court during the pendency of the federal action, see 412 A.2d at 123, Plaintiffs here only filed the instant Complaint after their request to vacate the state court dismissal was denied. There is nothing about the current case that implicates equitable considerations whatsoever, and it appears instead to be a last ditch effort aimed at avoiding the

limitations to apply. Warriner v. Stanton, 475 F.3d 497, 499-500 (3d Cir. 2007). Both parties, however, apply New Jersey law here, and the Court will not wade into murky choice of law waters *sua sponte*.

effects of Plaintiffs' failure to pursue their claims in state court. Consequently, the Court must reject Plaintiffs' equitable tolling argument and dismiss the Complaint as untimely.

An appropriate Order will be filed herewith.

s/ Stanley R. Chesler
STANLEY R. CHESLER
United States District Judge

Dated: April 14th, 2014