

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMIE A. NAUGHRIGHT,

Plaintiff,

10 Civ. 8451

-against-

OPINION

STEPHEN M. ROBBINS, WOODSON MERRELL,
M.D., and JOHN DOES 1-25,

Defendants.

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A P P E A R A N C E S :

Attorneys for Plaintiff

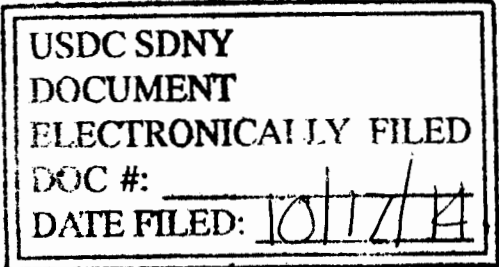
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Sweet, D.J.

Defendant Woodson Merrell, M.D. ("Merrell") moves, pursuant to Fed. R. Civ. P. 12(b)(6) ("Rule 12(b)(6)") to dismiss plaintiff Jaime A. Naughtright's ("Naughtright" or "Plaintiff") Second Amended Complaint filed on May 29, 2014. Based upon the conclusions set forth below, the motion to dismiss the complaint as it relates to Merrell is granted.

Prior Proceedings

Naughtright filed an initial complaint against Donna Karan Weiss ("Karan"), Urban Zen LLC ("Urban Zen"), Stephen M. Robbins ("Robbins") and John Does 1-25 on November 8, 2010, which was dismissed November 18, 2011. Plaintiff filed a first amended complaint ("FAC") on December 9, 2011. On March 8, 2012, the FAC's negligent misrepresentation claim against Karan and Urban Zen was dismissed, the motion to dismiss the negligence claim Robbins was denied, the fraud claim against Robbins was dismissed in part, and the motion to dismiss the medical malpractice battery and failure to obtain consent claims against Robbins were denied. Naughtright's subsequent motion for joinder of Merrell as a defendant was granted on October 22, 2013. On May 29, 2014,

Naughtright filed a second amended complaint ("SAC"). On August 12, 2014, Merrell filed a motion to dismiss the SAC as it relates to him for failure to state a claim pursuant to Rule 12(b)(6). The instant motion was heard and marked fully submitted on September 17, 2014.

Facts

The allegations of the SAC are assumed to be true and are summarized herein only to the extent necessary to dispose of Merrell's motion to dismiss.¹

Karan established a health clinic through Urban Zen, in connection with which Merrell was an "independent contractor, employee, supervisor, and/or shareholder." (SAC ¶¶ 12-13.) Merrell also held himself "out to be and acted in the role of medical director of the clinic." (SAC ¶ 14.)

On November 6-8, 2009, Urban Zen hosted a "Healing Weekend" to promote itself and invited Robbins to treat

¹ A more complete detailing of the facts alleged by Naughtright can be found in the Court's November 18, 2011 opinion granting the motion to dismiss the initial complaint, as well as in the March 8 Opinion, which granted in part and denied in part the motion to dismiss the FAC. See Naughtright v. Weiss, 826 F. Supp. 2d 676 (S.D.N.Y. 2011); Naughtright v. Weiss, 857 F. Supp. 2d 462 (S.D.N.Y. 2012).

patients.” (SAC ¶ 16.) At the beginning of the event, Merrell gave a presentation where he “promoted Robbins and touted his qualifications.” (SAC ¶¶ 18-20.) Unbeknownst to Naughtright, Robbins was not a licensed physician at the time. (SAC ¶ 40.) Merrell, however, had “actual knowledge of Robbins’ lack of qualification and poor performance as a practitioner,” since Robbins had previously treated and injured Merrell. (SAC ¶¶ 22-24.) Merrell failed to revoke Robbins’ privileges, warn Naughtright, or otherwise intervene to stop Robbins’ treatment. (SAC ¶¶ 25, 28.)

Naughtright knew and trusted Merrell, as Merrell previously provided her with medical care and was an accredited physician at Beth Israel, a reputable hospital. (SAC ¶¶ 26-27.) Naughtright allowed Robbins to treat her partly because Merrell did not warn her against doing so. (SAC ¶ 28.) Naughtright suffered various injuries as a result of Robbins’ treatment.

Plaintiff asserts three counts against Merrell: Failure to Investigate; Failure to Select Only Qualified Practitioners; and Negligent Retention. (SAC ¶¶ 54-83.) All of the causes of action are also characterized as “Negligent Credentialing.” (SAC ¶¶ 54-83.)

The Applicable Standard

On a motion to dismiss pursuant to Rule 12(b)(6), all factual allegations in the complaint are accepted as true, and all inferences are drawn in favor of the pleader. Mills v. Polar Molecular Corp., 12 F.3d 1170, 1174 (2d Cir. 1993). However, "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal quotation marks omitted). A complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 663 (2009) (quoting Twombly, 550 U.S. at 570).

A claim is facially plausible when "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 663 (quoting Twombly, 550 U.S. at 556). In other words, the factual allegations must "possess enough heft to show that the pleader is entitled to

relief.” Twombly, 550 U.S. at 557 (internal quotation marks omitted).

Additionally, while “a plaintiff may plead facts alleged upon information and belief ‘where the belief is based on factual information that makes the inference of culpability plausible,’ such allegations must be ‘accompanied by a statement of the facts upon which the belief is founded.’” Munoz-Nagel v. Guess, Inc., No. 12-1312, 2013 WL 1809772, *3 (S.D.N.Y. Apr. 30, 2013) (quoting Arista Records, LLC v. Doe 3, 604 F.3d 110, 120 (2d Cir. 2010)) and Prince v. Madison Square Garden, 427 F. Supp. 2d 372, 384 (S.D.N.Y. 2006); see also Williams v. Calderoni, No. 11-3020, 2012 WL 691832, *7 (S.D.N.Y. Mar. 1, 2012). The pleadings, however, “must contain something more than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action.” Twombly, 550 U.S. at 555 (quoting 5 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1216 (3d ed. 2004)).

Discussion

A. Plaintiff’s Claims Against Merrell are Time-Barred

In cases brought under diversity jurisdiction, federal courts apply state law for statute of limitations purposes. Cantor Fitzgerald Inc. v. Lutnick, 313 F.3d 704, 710 (2d Cir. 2002). As the claims against Merrell are made to recover damages for personal injuries occurring in New York State, they must be brought within three years of accrual of the injuries. N.Y. C.P.L.R. § 214.

Naughtright was injured on November 8, 2009. (SAC ¶¶ 48-53.) Naughtright moved to join Merrell on December 26, 2012 and first made claims against him by filing the operative SAC and a summons on May 29, 2014. Citing Rule 15(c) of the Federal Rules of Civil Procedure, Plaintiff contends that her claims against Merrell are not time barred because they relate back to the timely claims pleaded against Karan, Urban Zen, and Robbins in her initial complaint and in the FAC. (Pl.'s Opp'n at 3.) In other words, Naughtright contends that Rule 15(c) allows allegations she made against Merrell in her May 29, 2014 SAC to be treated as if made in her in her earlier timely pleadings.

Rule 15(c) reads, in relevant part:

(1) When an Amendment Relates Back. An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out--or attempted to be set out--in the original pleading; or

(C) the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:

(i) received such notice of the action that it will not be prejudiced in defending on the merits; and

(ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

Fed. R. Civ. Pro. 15(c)(1).

“Under Rule 15, the central inquiry is whether adequate notice of the matters raised in the amended pleading has been given to the opposing party within the statute of limitations by the general fact situation alleged in the original pleading.” Slayton v. Am. Exp. Co., 460 F.3d 215, 228 (2d Cir. 2006), as amended (Oct. 3, 2006) (internal citations and quotations omitted).

There are two ways in which Naughtright's claims against Merrell may be deemed to relate back to her earlier

complaint.² First, relation back is appropriate if the relevant New York State statute of limitations provisions allow for it. Fed. R. Civ. Pro. 15(c)(1)(A). Second, claims against Merrell can be deemed to relate back to the timely claims against the prior defendants if: (1) these claims arise out of the same transaction or occurrence as the earlier timely claims; (2) Merrell received notice of the action within 120 days of service of the earlier timely complaint; and (3) Merrell knew or should have known, within 120 days of service of the earlier timely complaint, that the action would have been brought against him, but for a mistake concerning his identity. See Fed. R. Civ. Pro. 15(c)(1)(C) (read in conjunction with Fed. R. Civ. Pro. 15(c)(1)(B) and Fed. R. Civ. Pro. 4(m) (imposing the 120 day limit)).

1. Applicable New York Law Does Not Authorize Relation Back

As codified in C.P.L.R. 203(b), “[w]here the claim against the new party would otherwise be barred by the applicable statute of limitations, the claim may nonetheless be asserted upon demonstrating that: (1) both claims arose out of the same

² Neither parties’ briefs address the first state-law basis for relation back under Rule 15(c)(1)(A). However, a full relation back analysis must consider whether there is an adequate state-law basis for relation back under Rule 15(c)(1)(A) as well as under Rule 15(c)(1)(C).

conduct, transaction, or occurrence, (2) the new party is united in interest with the original defendant[s], and by reason of that relationship can be charged with such notice of the institution of the action that the new party will not be prejudiced in maintaining its defense on the merits by the delayed, otherwise stale, commencement, and (3) the new party knew or should have known that, but for a mistake by the plaintiff as to the identity of the proper parties, the action would have been brought against that party as well." Pansini Stone Setting, Inc. v. Crow & Sutton Associates, Inc., 46 A.D.3d 784, 786, 850 N.Y.S.2d 133, 135 (N.Y. App. Div. 2007); Stevens v. Winthrop S. Nassau Univ. Health Sys., Inc., 89 A.D.3d 835, 836, 932 N.Y.S.2d 514, 516 (N.Y. App. Div. 2011).

Naughtright's claims against Merrell do not satisfy any of C.P.L.R. 203(b)'s three elements. As to the first element, the appropriate inquiry is whether the later-in-time claim and the earlier timely claim share a common set set of operative facts, such that a later-added defendant would have sufficient notice of his potential liability at the time the original timely complaint was filed. Pendleton v. City of New York, 44 A.D.3d 733, 736, 843 N.Y.S.2d 648, 652 (N.Y. App. Div. 2007) ("Where the allegations of the original complaint gave the defendants notice

of the facts and occurrences giving rise to the new cause of action, the new cause of action may be asserted However, where the original allegations did not provide the defendants notice of the need to defend against the allegations of the amended complaint, the doctrine is unavailable.”) In this case, neither Naughtright’s initial complaint nor the FAC contain any factual allegations pertaining to Merrell. The earlier complaint did not provide Merrell with notice that Naughtright would later allege that Merrell had a duty to warn her regarding Robbins, that Merrell had a duty to supervise Robbins, or that Merrell had a duty to ensure Robbins was adequately credentialed. Rather, the SAC introduced a novel set of facts necessary to substantiate Naughtright’s claims against Merrell for negligent credentialing and retention of Robbins. (See, e.g., SAC ¶¶ 13-15, 18-28, 54-83 (claiming for the first time that Merrell occupied a supervisory position at Urban Zen, and had a duty to ensure Robbins was properly credentialed, to terminate Robbins based on his lack of credentials, and to warn Naughtright regarding Robbins’s deficiencies).)

As to the second element, a party is united in interest with another party where one is vicariously liable for the acts of the other. See Beck v. Consolidated Rail Corp., 2005, 394 F.

Supp. 2d 632, 640 (S.D.N.Y. 2005); Mongardi v. BJ's Wholesale Club, Inc., 45 A.D.3d 1149, 1150, 846 N.Y.S.2d 441, 443 (N.Y. App. Div. 2007); L & L Plumbing & Heating v. DePalo, 253 A.D.2d 517, 518, 677 N.Y.S.2d 153, 155 (N.Y. App. Div. 1998).

"Underlying the doctrine of vicarious liability . . . is the notion of control." Kavanaugh by Gonzales v. Nussbaum, 71 N.Y.2d 535, 546, 523 N.E.2d 284, 287-88 (N.Y. 1988). A hospital can be vicariously liable for the acts of its employee-physician, and a supervising physician can be liable for the acts of the colleague he is supervising. Turcsik v. Guthrie Clinic, Ltd., 12 A.D.3d 883, 886, 784 N.Y.S.2d 721, 723 (N.Y. App. Div. 2004).

Conversely, a hospital is not vicariously liable for the malpractice of an independent physician with staff privileges, as the two defendants owe the plaintiff distinctly different duties, and they do not stand or fall together. See Raschel v. Rish, 69 N.Y.2d 694, 697, 504 N.E.2d 389, 391 (1986) ("For a hospital to be vicariously liable for the negligence of a physician, ordinarily an employment relationship, rather than mere affiliation, is required.") (internal citations omitted). A physician similarly cannot be held vicariously liable for the torts of its hospital. Anderson v. Montefiore Med. Ctr., 41 A.D.3d 105, 108, 837 N.Y.S.2d 98, 100 (N.Y. App. Div. 2007).

Naughtright's claims against Merrell do not satisfy this second element. The SAC does not allege that Merrell exercised control over Karan or Urban Zen sufficient to render him vicariously liable for their acts. Naughtright instead alleges that Merrell was "an independent contractor, employee, supervisor, and/or shareholder in Urban Zen"; that he served as medical director of Urban Zen's clinic; and that he "held himself out as medical director and/or credentialing body of Urban Zen." (SAC ¶¶ 13-14, 54.) Naughtright also alleges that Merrell breached his "duty to perform a diligent inquiry into [Robbins'] credentials to ensure that only qualified and competent professional are admitted to the hospital's medical staff." (SAC ¶¶ 55-56.) Finally, Naughtright claimed that Merrell knew or should have known that Robbins' qualifications were inadequate and his treatments were medically unsound, but nevertheless promoted Robbins to Naughtright. (SAC ¶¶ 17, 19, 20, 22-28.) These pleadings do not establish the level of control that would support holding Merrell vicariously liable for Karan's or Urban Zen's acts. Rather, the allegations at best give rise to an inference of the type of loose affiliation that the New York Court of Appeals has repeatedly rejected as a basis for vicarious liability. See Raschel, 69 N.Y.2d at 697 (N.Y. 1986); see also Hill v. St. Clare's Hosp., 67 N.Y.2d 72, 79, 490 N.E.2d 823, 827

(N.Y. 1986) ("that a physician is a shareholder, officer or employee of a professional service corporation does not make him vicariously liable for the malpractice of another doctor who is an officer, director and employee of the corporation.")

Finally, nothing in Naughtright's complaint can be fairly read to satisfy the third relation-back prong under New York law. Plaintiff's counsel contends that she omitted Merrell because she was proceeding pro se and that, only with the benefit of counsel, did she realize Merrell should be joined as a defendant. (Pl.'s Opp'n 7.)

First, as a factual matter, Naughtright's initial complaint was filed by counsel, not pro se. Second, Naughtright's strategic misstep is not the sort of mistake to which the third prong refers - rather, a valid mistake refers to the plaintiff's inability to identify the correct defendant within the limitations period. Buran, 87 N.Y.2d at 181, 661 N.E.2d at 983 (N.Y. 1995). Conversely, "when a plaintiff intentionally decides not to assert a claim against a party known to be potentially liable, there has been no mistake and the plaintiff should not be given a second opportunity to assert that claim after the limitations period has expired." Id. The SAC unequivocally

reveals Naughtright's knowledge as to Merrell's identity and purported culpability at the time of her injuries and, therefore, at the time of her filing of the FAC and her initial complaint. (See SAC ¶¶ 18-22 (alleging that Merrell made a presentation supporting Robbins in the days preceding the treatment that led to Naughtright's injuries); SAC ¶ 27 (alleging that Naughtright was Merrell's patient).)

As such, Naughtright's claims against Merrell cannot be deemed to relate back to her earlier timely claims under New York law.

2. The Claims Against Merrell Do Not Satisfy Rule 15(c)(1)(C)'s Requirements

The relation back inquiry under federal law is slightly different compared to the New York doctrine, but the outcome is the same. Relation back is appropriate under Rule 15(c)(1)(C) if Naughtright can show that: (1) the claims against Merrell arise out of the same transaction or occurrence as the earlier timely claims; (2) Merrell received notice of the action within 120 days of service of the earlier timely complaint; and (3) Merrell knew or should have known, within 120 days of service of the earlier timely complaint, that the action would have been brought against

him, but for a mistake concerning his identity. See Fed. R. Civ. Pro. 15(c)(1)(C) (read in conjunction with Fed. R. Civ. Pro. 15(c)(1)(B) and Fed. R. Civ. Pro. 4(m) (imposing the 120 day limit)).

With respect to the first prong, “[f]or a newly added action to relate back, the basic claim must have arisen out of the conduct set forth in the original pleading. . . . Where the amended complaint does not allege a new claim but renders prior allegations more definite and precise, relation back occurs.” Slayton, 460 F.3d at 228. As discussed above, the conduct giving rise to Naughtright’s claims against Merrell – his alleged failure to properly evaluate Robbins, his decisions to hire and retain Robbins, and his failure to warn Naughtright – was not mentioned in the FAC or the initial complaint. Indeed, Naughtright previously only mentioned Merrell as one of the “reputable physicians” with which Urban Zen fostered an affiliation. (FAC ¶ 11.) Moreover, Naughtright’s claims against Merrell do more than render her previous claims initially pleaded against Karan, Urban Zen or Robbins more precise. As explained above, Naughtright’s claims against Merrell require a distinct set of new factual allegations that were not pleaded in the FAC and initial complaint.

Naughtright has also failed to demonstrate that Merrell had notice of her claims within 120 days of the filing of the earlier complaints. Nothing in the pleadings implies that Merrell knew or should have known, based upon Naughtright's earlier complaint, that he would be sued. Similarly, Plaintiff's memorandum of law in opposition to the instant motion relies on conjecture alone on this point. Plaintiff contends that Merrell's close relationship with Karan "gave him notice of the action" and points to Merrell's decision to stop treating Naughtright following her dismissal by Karan as an indication that Merrell had notice of her intention to sue. (Pl.'s Opp'n 3.) She further contends that the "lawsuit was widely known among the general public" and points to newspaper articles discussing her allegations against Karan, Urban Zen and Robbins in support of her assertion. (Pl.'s Opp'n 3.) Even assuming Merrell was apprised of Naughtright's claims within 120 days of the filing of an earlier complaint, he would not have notice of the novel claims against him until the filing of the SAC, well beyond the 120 day limit as set out under the relevant provisions of Rule 15 and Rule 4. See Young-Flynn v. Kelly, 234 F.R.D. 70, 75 (S.D.N.Y. 2006) (finding insufficient notice where novel claims against a new defendant were introduced for the first time in a

second amended complaint, after the expiration of the applicable statute of limitations).

Finally, Naughtright's claims fail to meet the requirements of the third prong under Rule 15(c)(1)(C). A party that "harbor[s] a misunderstanding about [the prospective defendant's] status or role in the events giving rise to the claim at issue, and . . . mistakenly choose[s] to sue a different defendant based on that misimpression" can be said to have made a mistake within the meaning of this prong. Krupski v. Costa Crociere S. p. A., 560 U.S. 538, 549, 130 S. Ct. 2485, 2494, 177 L. Ed. 2d 48 (2010). However, "a deliberate choice to sue one party instead of another while fully understanding the factual and legal differences between the two parties is the antithesis of making a mistake concerning the proper party's identity." Id. Ultimately, "relation back . . . depends on what the party to be added knew or should have known, not on the amending party's knowledge." Id. at 541.

Naughtright's actions constitute a deliberate choice rather than a misunderstanding under Krupski. Merrell could not have reviewed the prior complaint and concluded, as Plaintiff argues now, that Merrell was "the more appropriate defendant."

(Pl.'s Opp'n 7.) Unlike the claims that related back in Krupski, the claims against Merrell require additional factual allegations in order to be substantiated, including that Merrell was purportedly: a "medical director" at Urban Zen; responsible for evaluating, hiring and retaining Robbins; aware that Robbins lacked proper medical credentials and provided "poor treatment"; and, duty-bound to warn Naughtright regarding Robbins' treatments by virtue of having himself treated Naughtright in the past. (SAC ¶¶ 13-14, 19-20, 22-27, 54-83). Since Naughtright's previous pleadings did not contain these allegations, Merrell was not afforded notice of Naughtright's claims within the statute of limitations period.

Therefore, Naughtright's claims do not relate back under either Rule 15(c)(1)(A) or Rule 15(c)(1)(C) and are consequently time-barred.

B. Plaintiff's Claims Against Merrell Are Inadequately Plead

As an initial matter, it is unclear what cause of action Plaintiff is pressing against Merrell. In her brief on this issue, Plaintiff relies exclusively on what are styled as "negligent credentialing" claims, where a patient-plaintiff sues

a hospital for its negligence in hiring or furnishing medical personnel whose treatment caused the plaintiff injuries. (Pl.'s Opp'n at 7-8.) citing Bleiler v. Bodnar, 65 N.Y.2d 65, 489 N.Y.S.2d 885 (N.Y. 1985) (claim against a hospital); Bryant v. Presbyterian Hosp., 304 N.Y. 538, 541-542 (N.Y. 1953) (same); Lewis v. Columbus Hosp., 1 A.D.2d 444, 151 N.Y.S.2d 391 (N.Y. App. Div. 1956) (same); Hamburger v. Cornell Univ., 240 N.Y. 328, 148 N.E. 539 (N.Y. 1925) (same). In none of the cases cited by Plaintiff has a court allowed a suit against a physician for negligently credentialing a fellow doctor. Cf. Ortiz v. Jaber, 44 A.D.3d 632, 633, 843 N.Y.S.2d 384, 385 (N.Y. App. Div. 2007) citing N.Y. Pub. Health Law § 2805-j (McKinney) (indicating that hospitals have statutorily imposed obligations to review physician credentials, which can serve as the basis for a negligent credentialing claim).

Even assuming that Plaintiff is pressing a claim of negligent hiring, supervision or retention, she has failed to meet the elements of such a claim. In New York, "a claim for negligent hiring, supervision or retention, in addition to the standard elements of negligence, requires a plaintiff [to] show: (1) that the tortfeasor and the defendant were in an employee-employer relationship; (2) that the employer knew or should have

known of the employee's propensity for the conduct which caused the injury prior to the injury's occurrence; and, (3) that the tort was committed on the employer's premises or with the employer's chattels." Biggs v. City of New York, No. 08 Civ. 8123, 2010 WL 4628360, at *9 (S.D.N.Y. Nov. 16, 2010) (internal quotations omitted) quoting Ehrens v. Lutheran Church, 385 F.3d 232, 235 (2d Cir. 2004).

Plaintiff has not pleaded that Merrell was Robbins' employer. At best, Naughtright's allegation that Urban Zen "invited Robbins to treat patients" in November 2009 establishes that Urban Zen, not Merrell, was Robbins' employer. (SAC ¶ 16.) Contrary to Plaintiff's contention, an employer-employee relationship is required for this type of claim to move forward, as a review of recent cases discussing this claim demonstrates. See e.g. Dilworth v. Goldberg, 10 Civ. 2224, 2011 WL 3501869 (S.D.N.Y. July 28, 2011) report and recommendation adopted, 10 Civ. 2224, 2011 WL 4526555 (S.D.N.Y. Sept. 30, 2011) (employer-employee relationship existed); Haight v. NYU Langone Med. Ctr., Inc., 13 Civ. 04993 LGS, 2014 WL 2933190 (S.D.N.Y. June 27, 2014) (same); Biggs, 2010 WL 4628360 (same); Bowen v. Patrick, 11 Civ. 4799, 2012 WL 3743409 (S.D.N.Y. Aug. 29, 2012) report and recommendation adopted, 11 Civ. 4799, 2012 WL 4320537 (S.D.N.Y.

Sept. 20, 2012) (same); Doe v. Montefiore Med. Ctr., 12 Civ. 686 CM, 2013 WL 624688 (S.D.N.Y. Feb. 19, 2013) (same); Doe v. Guthrie Clinic, Ltd., 11-CV-6089, 2012 WL 531026 (W.D.N.Y. Feb. 17, 2012) aff'd in part, 519 F. App'x 719 (2d Cir. 2013) and aff'd, 740 F.3d 864 (2d Cir. 2014) (same).

Moreover, Plaintiff has not adequately alleged that Robbins' conduct occurred on premises belonging to Merrell or with his chattel. To the contrary, the SAC clearly alleges that Robbins's treatment occurred at Karan's apartment. (SAC ¶¶ 29, 38, 49-52.)³ As such, Plaintiff fails to the third element of the claim.

Thus, Naughtright's pleadings fail to make out the necessary elements of her claims against Merrell, and therefore fail under Rule 12(b)(6).

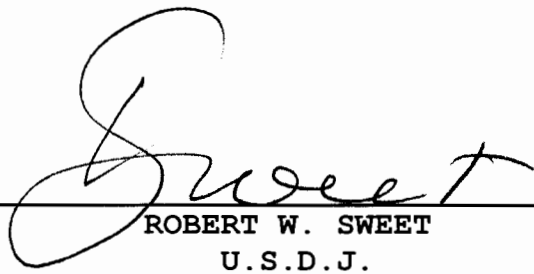
³ Plaintiff refers to Karan's apartment as "employer[']s premises, albeit at a special location" but can offer no legal authority to substantiate that assertion. (Pl.'s Opp'n 9.) Plaintiff's counsel cites only Ehrens, explaining that the tort in that case took place off the employer's premises. (Pl.'s Opp'n 9 fn. 4.) However, the court in Ehrens ruled against the plaintiff, holding that he "cannot satisfy the third element of a negligent supervision cause of action—the requirement that the tort must have been committed on the employer's premises or with the employer's chattels." Ehrens, 385 F.3d at 236 (2d Cir. 2004).

Conclusion

As Plaintiff's claims are both substantively inadequate and time-barred, the claims against Merrell are dismissed with prejudice and the entry of final judgment is granted. Robbins' invitation at oral argument for the Court to invalidate the entire SAC is declined - only the claims against Merrell are dismissed with prejudice and the rest of the allegations and claims in the SAC constitute the operative complaint.

It is so ordered.

New York, NY
October 16, 2014



ROBERT W. SWEET
U.S.D.J.