

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:12-CV-00192-DSC**

TAMATHA DICKERSON,)
)
 Plaintiff,)
)
 v.)
)
 DIMA S.L., et. al.,)
)
 Defendants.)

ORDER

THIS MATTER is before the Court on Defendants’ “Motion to Dismiss” (document #33), the parties’ “Joint Motion to Stay All Proceedings Pending Transfer Decision by the Judicial Panel on Multidistrict Litigation” (document #36), and the parties’ associated briefs and exhibits. See documents ## 33-1 and 34-37.

Defendants contend that all of Plaintiff’s claims are barred by the three-year statute of limitations in N.C. Gen. Stat. §1-52(16). Plaintiff does not allege that she suffered injury on a specific date, but rather sometime after the device was implanted. Since the Amended Complaint does not specify the date on which Plaintiff suffered injury, the statute cannot be found to have run based upon any time alleged in the Amended Complaint. IR Const. Products Co., Inc. v. D.R. Allen & Son, Inc., 737 F. Supp. 895, 896 (W.D.N.C. 1990). For these and the other reasons stated in Plaintiff’s brief, Defendant’s Motion to Dismiss based on the statute of limitations is denied.

Defendant also moves to dismiss Plaintiff's fraudulent misrepresentation and negligent misrepresentation claims. Plaintiff has not addressed those claims in her brief. See document #34. Accordingly, Defendant's Motion to Dismiss is granted as to those claims.

NOW THEREFORE IT IS ORDERED:


1. Defendant's "Motion to Dismiss" (document #33) is **GRANTED IN PART** and **DENIED IN PART**, that is, **GRANTED** as to Plaintiff's fraudulent misrepresentation and negligent misrepresentation claims and **DENIED** in all other respects.

2. The parties' "Joint Motion to Stay All Proceedings Pending Transfer Decision by the Judicial Panel on Multidistrict Litigation" (document #36) is **GRANTED** and this matter is **STAYED** pending the decision of the Judicial Panel on Multidistrict Litigation.

3. The Clerk is directed to send copies of this Order to counsel for the parties.

SO ORDERED.

Signed: November 20, 2013



David S. Cayer
United States Magistrate Judge

