

Benedetti v Erie County Med. Ctr. Corp.

2014 NY Slip Op 33795(U)

January 14, 2014

Supreme Court, Erie County

Docket Number: 801793/2013

Judge: Christopher J. Burns

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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

KATHLEEN BENEDETTI, Individually and as
Administrator of the Estate of ERIC SMITH, deceased,

Plaintiff

vs.

Index No. 801793/2013

ERIE COUNTY MEDICAL CENTER CORPORATION,

Defendant

Appearances:

Hogan Willig, PLLC
By: Katherine V. Markel, Esq.
Attorneys for Plaintiff

Ricotta & Visco
By: Frank C. Callocchia, Esq.
Attorneys for Defendant Erie County Medical Center

MEMORANDUM DECISION

BURNS, CHRISTOPHER J., J.S.C.

Before the Court is defendant Erie County Medical Center Corporation's ("ECMC") motion to dismiss the action against them on the grounds that the action has not been timely commenced. Plaintiff opposes the motion.

Plaintiff Kathleen Benedetti alleges in this action that ECMC committed medical malpractice and/or negligence in the treatment provided to decedent, Eric Smith, at ECMC from April 30, 2011 to May 1, 2011. It is undisputed that, as a public benefit corporation and pursuant to Public Authorities Law, any lawsuit filed against ECMC is subject to the notice of claim provisions of the General Municipal Law. In this case, plaintiff petitioned for leave to serve a late notice of claim under Index No. 2012/2249 and later, on July 18, 2012, plaintiff commenced an action sounding in medical malpractice/negligence and wrongful death under Index No. 2012/2344. On August 2, 2012, the petition for leave to serve a late notice of claim was heard and granted by the Honorable John M. Curran, J.S.C. and on August 28, 2012, Justice Curran granted an Order allowing service of a late notice of claim against ECMC and Samuel Cloud, M.D. *nunc pro tunc*. That Order, together with the notice of claim, was served on ECMC on September 5, 2012. Subsequently, a motion was made by ECMC to dismiss the case under Index No. 2012/2344. Justice Curran granted that motion in a written decision dated June 7, 2013. In his decision Justice Curran states, "On this record, it is undisputed that plaintiff failed to comply with several conditions precedent to the commencement of this action. As a result, ECMC's motion to dismiss the complaint for failure to state a cause of action is granted without prejudice and subject to the terms of CPLR § 205 (a)". Subsequently, on September 10, 2013, the instant action was commenced.

As counsel note, the issue before the Court concerns the application of CPLR § 205 (a). CPLR § 205 (a) permits an otherwise untimely action to be considered timely when that action is based upon the same transaction or occurrence or series of transactions or occurrences of a prior timely action and the new action was re-filed within six-months of the prior action's dismissal. As such, the statute can serve to extend a statute of limitations. However, the Court of Appeals has determined that CPLR § 205(a) is not applicable to extend a "condition precedent" to suit (see *Yonkers Contracting Company, Inc. v Port Authority Trans-Hudson, Corp.*, 93 Ny2d 375, 378). Here, contrary to the defendant's contention, the one year and ninety day period for commencement of an action against ECMC pursuant to Public Authorities Law § 3641 is not a condition precedent to suit but is akin to a statute of limitations. Although there is no direct authority interpreting this section of the Public Authorities Law, the Court finds it analogous to the decisions and holdings surrounding General Municipal Law § 50- i where the legislative intent was to centralize and make uniform provisions relating to the commencement of actions against municipal corporations (see *Smith v Rensselaer County*, 52 AD2d 384; *La Fave v Town of Franklin*, 20 AD2d 738). As such, the provisions of CPLR § 205(a) are applicable and the defendant's motion to dismiss is denied.

Plaintiff's counsel is directed to submit an Order within ten (10) days of the granting of this decision and after circulation to opposing counsel.

Christopher J. Burns, J.S.C.
Hon. Christopher J. Burns, J.S.C.

Dated : Buffalo, New York
January 14, 2014

GRANTED

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BY *Bob Adamski*
ROBERT ADAMSKI
COURT CLERK