SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

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AMANDA MORRIS,

Plaintiff,

-against-

Index № 160542/2016
Motion Seq. 001

NEW YORK CITY HEALTH AND HOSPITALS CORPORATION,

Defendant.

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GEORGE J. SILVER, J.S.C.:

In this action, defendant New York City Health and Hospitals Corporation ("defendant") moves for an order of dismissal on account of plaintiff Amanda Morris' ("plaintiff") alleged failure to file a notice of claim within the applicable statute of limitations setting forth a viable cause of action as against it. Plaintiff opposes the application, arguing that its notice of claim is sufficient insofar as it provided defendant with enough information to investigate plaintiff's underlying allegations. The court disagrees, and the motion is decided as follows:

On March 15, 2016, plaintiff filed a notice of claim on defendant alleging that on or about January 6, 2016, plaintiff was "slashed" by non-party Kari Bazemore ("Bazemore"). Plaintiff further claimed that defendant should have hospitalized Bazemore and/or negligently discharged him, which allowed him to harm plaintiff. Plaintiff does not specify when or how defendant knew or should have known that Bazemore needed to be hospitalized. Plaintiff also does not allege negligence against a specific facility operated by defendant. Plaintiff filed a summons and complaint

against defendant and former co-defendant the City of New York on December 15, 2016.[1] Defendant answered plaintiff's complaint on December 23, 2016.

Actions against a municipal entity such as defendant are governed by McKinney's Unconsolidated Laws of N.Y. § 7401(2) which, in relevant part, provides that such action may not be commenced "unless a notice of intention to commence such action and of the time when and the place where the tort occurred and the injuries or damage, were sustained [...] shall have been filed with a director or officer of the corporation within ninety days after such cause of action shall have accrued." Pursuant to General Municipal Law (GML) § 50–e, the timely filing of a notice of claim is a statutory precondition to the initiation of personal injury suits against a municipality. Thus, a party has 90 days from the date the claim arises to file a notice of claim and when a notice of claim is served beyond the required ninety-day period, without leave of court, it is deemed a nullity (*see McShane v. Town of Hempstead*, 66 AD3d 652 [2009]; *Fuschsia Sun et al. v. New York City Health and Hosps. Corp. et al.*, 13 AD3d 151, 152 [1st Dept 2004]); *Potts v. City of New York Health and Hosps. Corp.*, 270 AD2d 129, 130 [1st Dept 2000]). The failure to comply with this condition precedent is grounds for dismissal of the action (*see generally Silberstein v. County of Westchester*, 92 AD2d 867 [2d Dept 1983], *aff'd* 62 NY2d 675 [1984]).

GML §50(e)(2) requires that a written notice sworn to, by, or on behalf of the claimant set forth: (1) the name and post-office address of each claimant, and of his attorney, if any; (2) the nature of the claim; (3) the time when, the place where and the manner in which the claim arose; (4)

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[1] Former co-defendant the City of New York previously moved, unopposed, for summary judgment. By order dated March 20, 2018, this court granted the City of New York's application for summary judgment, and the clerk was directed to amend the caption, removing the City of New York from the case.

and the items of damage or injuries claimed to have been sustained so far as then practicable.

The purpose of the statutory notice of claim requirement is to provide a municipality or public corporation with an adequate opportunity to investigate and to explore the merits of the claim while the information is fresh and readily available (*Cruz v. New York City Housing Authority*, 269 A.D.2d 108 [1st Dept. 2000]; *Rosenbaum v. City of New York*, 8 NY3d 1, 11 [2006]). Indeed, "[t]he test of the sufficiency of a notice of claim is merely whether it includes information sufficient to enable the city to investigate" (*Rosenbaum*, 8 NY3d at 7, *citing to Brown v City of New York*, 95 NY2d 389 [2000] [internal quotation marks and citations omitted]). Therefore, the notice of claim must contain a sufficient description of "the place," "the time," and "the nature" of the claim (*see id.*).

Here, the notice of claim served upon defendant is deficient as a matter of law. Plaintiff alleges the date she was injured, but states that her injuries were caused by a third-party, Bazemore, who is not a defendant in this case. Plaintiff claims that defendant should have stopped Bazemore from injuring her because Bazemore should have been committed to one of defendant's facilities, but fails to provide a date for when Bazemore allegedly should have been hospitalized or was released by defendant. Plaintiff even fails to allege the specific facility among the many operated by defendant that was negligent. Moreover, on its face the nature of plaintiff's claim is unclear as the notice of claim alleges negligence, but does not specifically delineate how the claim is grounded in medical malpractice. Plaintiff's complaint therefore is not compliant with the mandates of GML §50(e), and therefore must be dismissed.

Even if plaintiff's complaint was compliant with GML §50(e), and plaintiff's allegations were presumed true and afforded the benefit of all reasonable inferences, the pleadings still would

be deficient as a matter of law, thus warranting dismissal. Indeed, plaintiff makes no specific allegations of negligence against any specific facility operated by defendant. Moreover, she makes no allegations as to a date of negligence or the type of negligence committed by defendant. Lastly, plaintiff does not allege what, if any, duty defendant owed plaintiff, as the alleged negligence here involved a non-party, Bazemore. Plaintiff's boiler plate assertion that a "special duty" existed between defendant and plaintiff does not remedy this deficiency. In New York, it is recognized that the only narrow exception to the general rule that a municipality cannot be held liable for its failure to protect the public at large from harm exists when the plaintiff can establish the existence of a special relationship, running from the municipality to the individual or protected group, thereby creating a special duty owed to the plaintiff (*Cuffy v. City of New York*, 69 NY2d 255 [1987]). Here, plaintiff has failed to establish, by any cognizable fact before the court, the existence of a special duty on the part of defendant to protect plaintiff from harm by third-parties outside hospital premises, where, as here, plaintiff cannot point to a specifically articulated plan designed by defendant for the benefit and safety of all members of the general public similarly situated, including, but not limited to, plaintiff, outside the confines of defendant's facilities.

In short, plaintiff's allegations are entirely generic, and predicated on the amorphous and unexplained axiom that somewhere, somehow defendant should have known that Bazemore would slash plaintiff and therefore must be responsible for her injuries. It is axiomatic that a complaint must be dismissed where the pleadings against a defendant are vague and the allegations are unsupported by facts (*see generally, Foley v. D'Agostino*, 21 AD2d 60 [1st Dept. 1964]; *Vanscoy v. Namic USA Corp.*, 234 A.2d 680, 681-82 [3d Dept 1996]["Under New York rules of procedure, conclusory averments of wrongdoing are insufficient to sustain a [cause of action] unless supported

by allegations of ultimate facts"). As such, plaintiff's complaint must also be dismissed for failure to state a cause of action (*see Hart v. Scott*, 8 AD3d 532 [2d Dept. 2004]).

Accordingly, it is hereby

ORDERED that defendant's motion to dismiss plaintiff's complaint pursuant to CPLR §§3211(a)(5) and (7) because plaintiff failed to comply with the provisions of GML §50(e), in that plaintiff failed to file a timely and meaningful notice of claim, and based on plaintiff's failure to set forth a viable cause of action as against defendant, is granted; and it is further

ORDERED that the clerk is directed to enter judgment in defendant's favor and mark this matter as disposed.

This constitutes the decision and order of the court.

Dated: May 7, 2018

ENTER:

George J. Silver

HON. GEORGE J. SILVER