

Winslow v New York-Presbyt./Weill-Cornell Med. Ctr.
2021 NY Slip Op 31007(U)
March 31, 2021
Supreme Court, New York County
Docket Number: 100348/2020
Judge: Eileen A. Rakower
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**SUPREME COURT OF THE STATE OF NEW YORK, NEW YORK COUNTY
PRESENT: Hon. EILEEN A. RAKOWER PART 6**

Justice

JONATHAN PATRICK WINSLOW,

Plaintiff,

- against-

INDEX NO. 100348/2020

MOTION DATE

MOTION SEQ. NO.

MOTION CAL. NO. 1, 2

**NEW YORK-PRESBYTERIAN/WEILL-CORNELL
MEDICAL CENTER, SHEYLA REYES, DR DAVID,
BRDA, MD, DR. BENJAMIN BRINTON, MD, DR
THOMAS HENRY FINCH, MD, DR DAVID HANKINS,
MD, DR DARLENE MARY MITERA, MD, NEW
YORK-PRESBYTERIAN/PAYNE WHITNEY
PSYCHIATRIC CLINIC, DR KATHERINE
GOETTSCHKE, MD, DR DAPHNE LOUBRIEL, MD
PATRICIA MURPHY, BARBARA WINSLOW,**

Defendants.

The following papers, numbered 1 to _____ were read on this motion for/to

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ..
Answer — Affidavits — Exhibits
Replying Affidavits

Under Motion Sequence 1, Defendants The New York And Presbyterian Hospital, s/h/a New York-Presbyterian/Weill-Cornell Medical Center, also s/h/a New York-Presbyterian Payne Whitney Psychiatric Clinic; Sheyla Reyes, R.N., s/h/a Sheyla Reyes; David Brda, M.D., s/h/a Dr. David Brda, MD; Benjamin Brinton, M.D., s/h/a Dr. Benjamin Brinton, M.D.; Thomas Finch, M.D., s/h/a Dr. Thomas Henry Finch, M.D.; David Hankins, M.D., s/h/a Dr. David Hankins, M.D.; Darlene Mitera, M.D., s/h/a Dr. Darlene Mitera, M.D.; Katherine Goettsche, M.D., s/h/a Dr. Katherine Goettsche, M.D.; Daphne Loubriel, M.D., s/h/a Dr. Daphne Loubriel, M.D.; and Patricia Murphy, MSW, s/h/a Patricia Murphy (collectively, “Defendants”) move for an Order pursuant to CPLR §§3211(a)(5) and 215(3), dismissing Plaintiff Jonathan Patrick Winslow’s (“Plaintiff”) cause of action for false imprisonment with prejudice as it is barred by the applicable statute of limitations.

Plaintiff cross-moves for an Order:

(A) Preserving the right of the plaintiff to maintain a cause of action, and the facts thereof regarding several defendant's course of conduct (those represented by Martin, Clearwater & Bell, LLP), which arguably constitute false containment by doctors and hospital, as constituting not an action or claim for false imprisonment, but for such course of conduct to constitute an instance of medical malpractice, which is not time-barred, thus preserving the right of plaintiff to pursue claims for damages for said conduct; and

(B) To protect plaintiff and his privileged medical information deemed to not be necessarily pertinent to the action from excessive discovery demands that appear to be overbroad, made by the defendants, with respect to privileged medical records and information of the plaintiff's (sic.) that are not directly and necessarily relevant to the cause of actions, and to deem all medical authorizations heretofore offered and submitted by the plaintiff, to the attorney(s) of the defendants, given in good faith, to be in full satisfaction of the reasonable discovery demands or burden, thus upholding the protected, privileged status of non-relevant medical records and information of the plaintiff's (sic.).

Under Motion Sequence 2, Defendant Barbara Winslow ("Barbara Winslow") moves for an Order pursuant to CPLR § 3211(a)(5) dismissing the Action against Barbara Winslow for violating the Statute of Limitations. Plaintiff opposes.

Factual Background

On March 4, 2020, Plaintiff, *pro se*, filed a Summons and Complaint against Defendants. The case alleges medical malpractice arising out Plaintiff's admission to Payne Whitney Psychiatric Clinic in September 2017 with the diagnoses of psychosis, hypochondriasis, anxiety and/or bipolar disorder. Plaintiff alleges that Defendants misdiagnosed him with psychiatric disorders and further alleges that he was held in a psychiatric unit against his will for 9 days.

Plaintiff served the Summons and Complaint on Defendants NYPH, Sheyla Reyes, R.N., David Hankins, M.D. Daphne Loubriel, M.D., and Patricia Murphy, MSW on March 11, 2020. Issue was joined for and on behalf of NYPH, Sheyla Reyes, RN, David Hankins, M.D., Daphne Loubriel, M.D., and Patricia Murphy, MSW with service of Verified Answers on March 26, 2020. In their Answers, the Defendants asserted the Affirmative Defense of the statute of limitations. Issue was thereafter joined for and on behalf of defendants David Brda, M.D., Darlene Mitera, M.D., Thomas Henry Finch, M.D., Benjamin Britton, M.D., and Katherine Goettsche, M.D. on May 26, 2020. The Answers contained the affirmative defense for Statute of Limitations. On April 6, 2020, Plaintiff served a Bill of Particulars as to all Defendants. The Bills of Particulars assert a cause of action for false imprisonment claiming plaintiff was improperly confined to a psychiatric ward against his will for 9 days from September 12, 2017 to September 21, 2017.

Motions to Dismiss

Statute of Limitations

“On a motion to dismiss a cause of action pursuant to CPLR § 3211(a)(5) as barred by the statute of limitations, a defendant must establish, prima facie, that the time within which to sue has expired.” *Flintlock Constr. Services, LLC v. Rubin, Fiorella & Friedman, LLP*, 188 AD3d 530, 531 [1st Dept 2020]. “Once that showing has been made, the burden shifts to the plaintiff to raise a question of fact as to whether the statute of limitations has been tolled, an exception to the limitations period is applicable, or the plaintiff actually commenced the action within the applicable limitations period.” *Id.* (citation omitted).

CPLR § 215(3) establishes a one year statute of limitations for “an action to recover damages for assault, battery, false imprisonment, malicious prosecution, libel, slander, false words causing special damages, or a violation of the right of privacy under section fifty-one of the civil rights law.” For claims of false imprisonment, “[s]uch causes of action accrue upon the individual’s ‘release[] from confinement.’” *Coleman v. Worster*, 140 AD3d 1002, 1004 [2d Dept 2016] (citations omitted).

Plaintiff alleges that Defendants rendered care to Plaintiff from September 12, 2017 until September 21, 2017, at which time Plaintiff was discharged from Payne Whitney Psychiatric Clinic.

The statute of limitations for false imprisonment began to run on September 21, 2017 and expired on September 21, 2018. Which was one year after Plaintiff's "release[] from confinement." *Coleman. Worster*, 140 AD3d at 1004; *see also* CPLR § 215(3). Furthermore, the alleged slander/defamation by Barbara Winslow occurred between September 12, 2017 and September 21, 2017, therefore the latest that the statute limitation expired was September 21, 2018. Plaintiff filed the Summons and Complaint on March 3, 2020, over two years and five months after the date he was discharged from Payne Whitney Psychiatric Clinic. Therefore, Plaintiff's cause of action for false imprisonment and all claims as against Barbara Winslow are time barred.

Failure to State a Claim

Plaintiff, in opposition, states that defamation "is not the only cause of action present and discernable within the complaint." Plaintiff states that "[t]he nature of injury suffered by or incurred by plaintiff, as a result of the actions of all defendants taken together, is, essentially, personal injury, which may include, but may not be limited to, emotional distress, which may or may not be to the degree necessitating potential future psychiatric treatment and economic expenses." Plaintiff further states "that, regardless of any decision on the cause of action for Defamation, that a Cause of Action for what is essentially fraud is nevertheless retained and upheld as present."

Barbara Winslow argues that "Plaintiff has raised the possibility that various other causes of action exist within the four corners of his Complaint. However, all of them can rightly be dismissed as procedurally improper and dismissible as failing to state a cause of action, normally invoked under CPLR § 3211(a)(7)." Barbara Winslow states that although she "did not raise CPLR § 3211(a)(7) in her in (sic.) initial moving papers, she requests that this Court do so under her prior request to grant 'such other and further relief as this Court deems just and proper.'"

CPLR § 3211(a)(7) provides that, "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that: ... the pleading fails to state a cause of action." "As an initial matter, it is important to note that the scope of a court's inquiry on a motion to dismiss under CPLR 3211(a)(7) is very narrowly circumscribed." *People ex rel. Spitzer v. Sturm, Ruger & Co., Inc.*, 309 AD2d 91, 108 [1st Dept 2003]. "The court must 'accept the facts alleged as true and determine simply whether the facts alleged fit within any

cognizable legal theory.” *Id.* (internal citation omitted). “The complaint must be construed ‘liberally’ (CPLR 3026), and the court must accept as true not only ‘the complaint’s material allegations’ but also ‘whatever can be reasonably inferred therefrom’ in favor of the pleader. *Id.* “In ruling on a motion to dismiss, the court is not authorized to assess the merits of the complaint or any of its factual allegations, but only to determine if, assuming the truth of the facts alleged, the complaint states the elements of a legally cognizable cause of action.” *Id.*

“In order to maintain a cause of action for fraud, a plaintiff must allege a representation of a material existing fact, falsity, scienter, justifiable reliance and damages.” *Callas v. Eisenberg*, 192 AD2d 349, 350 [1st Dept 1993]. “Allegations of fraud should be dismissed as insufficient where the claim is unsupported by specific and detailed allegations of fact in the pleadings.” *Id.*

Here, accepting all allegations of Plaintiff’s Complaint as true and affording him the benefit of every possible favorable inference, Plaintiff has failed to state a claim for fraud. Plaintiff did not provide “specific and detailed allegations” to allege fraud. *See Callas*, 192 AD2d at 350. Plaintiff alleges that Defendants relied on the “false information.” Thus, Plaintiff failed to plead a cause of action for fraud.

An action for intentional infliction of emotional distress carries a one-year statute of limitations. *Offor v. Mercy Med. Ctr.*, 171 A.D.3d 502, 503 [1st Dept 2019]. “A cause of action for negligent infliction of emotional distress, which no longer requires physical injury as a necessary element, generally must be premised upon the breach of a duty owed to plaintiff which either unreasonably endangers the plaintiff’s physical safety, or causes the plaintiff to fear for his or her own safety.” *Sheila C. v. Povich*, 11 A.D.3d 120, 130 [1st Dept 2004].

Plaintiff alleges a personal injury of “emotional distress” in his opposition papers. Intentional infliction of emotional distress is time-barred by the one-year statute of limitations. *Offor*, 171 A.D.3d at 503. Plaintiff has failed to plead negligent infliction of emotional distress. Plaintiff does not assert that Barbara did something that endangered Plaintiff’s physical safety or caused Plaintiff to fear for his safety. Therefore, Plaintiff failed to plead a cause of action for emotional distress.

Protective Order

“A trial court is vested with broad discretion in its supervision of disclosure.” *MSCI Inc. v. Jacob*, 120 AD3d 1072, 1075 [1st Dept 2014].) “There shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by: a party.” CPLR 3101 [a] [1]. The words “material and necessary” . . . must be interpreted to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity.” *Allen v. Crowell-Collier Pub. Co.*, 21 NY2d 403, 406 [1968]. “The test is one of usefulness and reason.” *Id.* at 407. “However, discovery demands for ‘any and all’ information may be overbroad and inappropriate.” *Kantor v. Kaye*, NYS2d 42, 43 [1st Dept 1985].

CPLR § 3103(a) provides that a protective order may be warranted in order “to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.”

Defendants are seeking unrestricted HIPAA-compliant authorizations for NYU Hospital, Bellevue, Montefiore Medical Center, internist Oliver Pacifico, M.D, family practice physician, Halyin Hua, M.D., and Plaintiff’s collateral source providers (including Empire, BC Healthplus and Amerigroup Medicaid).

Plaintiff failed to state any reasonable basis for refusing to provide the outstanding medical authorizations. The outstanding authorizations are relevant to evaluating this case in light of Plaintiff’s known medical history and allegations in the Bills of Particulars. Plaintiff’s conclusory assertion that the demanded discovery is “irrelevant” does not meet the burden to show that the discovery is not discoverable, and thus must be disclosed. Plaintiff shall provide HIPAA-compliant authorizations for NYU Hospital, Bellevue, Montefiore Medical Center, internist Oliver Pacifico, M.D, family practice physician, Halyin Hua, M.D., and Plaintiff’s collateral source providers (including Empire, BC Healthplus and Amerigroup Medicaid) for the five years prior to September 12, 2017 to the present within 30 days of this Order.

Wherefore, it is hereby

ORDERED that Defendants’ motion (Motion Sequence 1) to dismiss the cause of action for false imprisonment is granted; and it is further

ORDERED that Plaintiff's cross-motion is denied, and Plaintiff shall provide HIPAA-compliant authorizations for NYU Hospital, Bellevue, Montefiore Medical Center, internist Oliver Pacifico, M.D, family practice physician, Halyin Hua, M.D., and Plaintiff's collateral source providers (including Empire, BC Healthplus and Amerigroup Medicaid) for the five years prior to September 12, 2017 to the present; and it is further

ORDERED that Defendant Barbara Winslow's motion (Motion Sequence 2) to dismiss the cause of action for defamation is granted and no other viable causes of action exist as against Defendant Barbara Winslow and the Clerk is directed to enter judgment severing and dismissing the action as against Barbara Winslow; and it is further

ORDERED the caption shall be amended to read:

-----X
JONATHAN PATRICK WINSLOW,

Plaintiff,

-against-

NEW YORK-PRESBYTERIAN/WEILL-CORNELL
MEDICAL CENTER, SHEYLA REYES, DR DAVID,
BRDA, MD, DR. BENJAMIN BRINTON, MD, DR
THOMAS HENRY FINCH, MD, DR DAVID HANKINS,
MD, DR DARLENE MARY MITERA, MD, NEW
YORK-PRESBYTERIAN/PAYNE WHITNEY
PSYCHIATRIC CLINIC, DR KATHERINE
GOETTSCHKE, MD, DR DAPHNE LOUBRIEL, MD
and PATRICIA MURPHY,

Defendants.

-----X

ORDERED that Defendant Barbara Winslow's counsel shall serve a notice of this Order on the Clerk's Office who is directed to amend the caption accordingly; and it is further

ORDERED that the parties are to appear for a preliminary conference via Teams on June 24, 2021 at 10:00am.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: March 31, 2021

ENTER: 
_____ J.S.C.

HON. EILEEN A. RAKOWER

Check one: **FINAL DISPOSITION**

X NON-FINAL DISPOSITION