

**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK  
COUNTY OF NASSAU - PART 17**

**Present: HON. WILLIAM R. LaMARCA  
Justice**

*SCAN*

**JOHN TOSNER, Individually and as  
ADMINISTRATOR OF THE ESTATE OF  
EILEEN TOSNER, Deceased,**

**Motion Sequence # 007, # 8  
Submitted May 23, 2008  
XXX**

**Plaintiff,**

**-against-**

**INDEX NO: 3283/04**

**NASSAU COUNTY, NASSAU HEALTH CARE  
CORPORATION d/b/a NASSAU UNIVERSITY  
MEDICAL CENTER, NASSAU COUNTY  
DEPARTMENT OF MENTAL HEALTH and  
PETER J. TROY,**

**Defendants.**

**The following papers were read on these motions:**

**COUNTY Notice of Motion (#007).....1  
HEALTH CARE Notice of Motion (#8).....2**

Defendants, NASSAU COUNTY and the NASSAU COUNTY DEPARTMENT OF MENTAL HEALTH (hereinafter referred to collectively as the "COUNTY"), move for an order, pursuant to CPLR §603, severing plaintiff's wrongful death action from defendant, PETER J. TROY's cross-claims against all defendants for medical malpractice, unlawful imprisonment, federal constitutional violations, and libel and slander, and for an order, pursuant to CPLR §3211(a)(5) and CPLR §3212, dismissing the cross-claims and granting

summary judgment to all defendants on the grounds that defendant TROY has failed to state a cause of action, failed to serve a notice of claim, and failed to commence the cross-claims within the applicable statute of limitations. In a companion motion, defendant, NASSAU HEALTH CARE CORPORATION d/b/a NASSAU UNIVERSITY MEDICAL CENTER (NUMC) (hereinafter referred to as "NASSAU HEALTH CARE"), moves for the same relief. An Affidavit of Service reflects that the COUNTY's motion was duly served on all parties, on April 16, 2008, and that NASSAU HEALTH CARE's motion was duly served on all parties, on May 2, 2008, but no papers are submitted in opposition to the motions, which are determined as follows:

Defendant TROY is serving two (2) consecutive life sentences, without the possibility of parole, for the murder of Reverend Lawrence M. Penzes, a priest officiating at Mass in Our Lady of Peace Catholic Church in Lynbrook, New York, and EILEEN TOSNER, a 72 year old parishioner attending Mass. On March 12, 2002, TROY entered the Church with a semi-automatic rifle concealed under his trench coat and fired multiple shots which struck Reverend Penzes and Mrs. TOSNER who died from the gunshot wounds they sustained. The main action, which seeks damages for the wrongful death of EILEEN TOSNER, was commenced on March 9, 2004 and the complaint alleges, *inter alia*, that TROY, an individual with a long history of mental illness who had been diagnosed as a paranoid schizophrenic, was improperly released from the care of a NASSAU HEALTH CARE facility when he represented a clear and present danger to himself and others. By Verified Answer, dated July 14, 2004, TROY cross-claimed against all co-defendants and alleged malpractice, unlawful imprisonment, civil rights violations and libel, slander and defamation of character. In essence, it is TROY's position that he was misdiagnosed as

a paranoid schizophrenic instead of an individual with "complete mental competency", that the diagnosis was not corrected and that he was held against his will for extended periods of time and deprived of numerous constitutional rights.

Counsel for the COUNTY states that, on or about February 27, 2008, an oral agreement was reached between counsel for the plaintiff and counsel for the COUNTY and NASSAU HEALTH CARE, settling the plaintiff's action for wrongful death in its entirety. Defendant TROY did not participate in the settlement. Under the terms of the settlement, the plaintiff agreed to voluntarily discontinue, with prejudice, all claims against all parties including TROY. The order of the Court allowing the compromise was issued on July 10, 2008. Moving counsel assert that severing the wrongful death action from the cross-claims is appropriate in that the main action has now been settled. Moreover, the cross-claims deal with distinct and separate issues sounding in malpractice, unlawful imprisonment, civil rights violations, libel, slander, and defamation of character, that appear to arise from TROY's involuntary admission to the NUMC, on April 24, 2001, his diagnosis as a paranoid schizophrenic, and his Court ordered release, on May 2, 2001, after a Mental Hygiene Law §9.27 hearing. Counsel for the COUNTY and NASSAU HEALTH CARE urge that, in addition to severance, dismissal of the cross-claims is appropriate because they are barred by the statute of limitations and because TROY has never served a Notice of Claim and has, therefore, never satisfied the condition precedent to bringing an action against the municipality or public benefit corporation pursuant to General Municipal Law §50. Additionally, the COUNTY states that it did not own, operate, manage or control the NUMC at the time of TROY's admittance and cannot be held vicariously liable for the actions of NASSAU HEALTH CARE. It is the COUNTY's position that TROY has not stated a cause

of action with respect to alleged civil rights violations, which is also barred by a three (3) year statute of limitations.

After a careful reading of the submissions herein, and there being no opposition, it is the judgment of the Court that the COUNTY and NASSAU HEALTH CARE are entitled to the requested relief. It is therefore

**ORDERED**, that the motions by defendants, the COUNTY and NASSAU HEALTH CARE, for an order severing the cross-claims of defendant, TROY, from plaintiff's wrongful death action is granted, without opposition and, upon severance, the motions for summary judgment dismissing the cross-claims as to all defendants is granted on the grounds that defendant TROY has failed to state a cause of action, failed to serve a notice of claim, and failed to commence the cross-claims within the applicable statute of limitations.

All further requested relief not specifically granted is denied.

This constitutes the decision and order of the Court, and concludes all proceedings under Index Number 03283/04.

Dated: July 28, 2008

  
WILLIAM R. LAMM, J.P.C.

**ENTERED**

JUL 31 2008

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**

TO: Kreindler & Kreindler, LLP  
Attorneys for Plaintiff  
100 Park Avenue, 18<sup>th</sup> Floor  
New York, NY 10017

Lorna B. Goodman, Esq.  
County Attorney  
Attorney for Defendants Nassau County and Nassau County Department of Mental Health  
One West Street  
Mineola, NY 11501

Fumuso, Kelly, DeVerna, Snyder, Swart & Farrell, LLP  
Attorneys for Defendant Nassau University Medical Center  
110 Marcus Boulevard  
Hauppauge, NY 11788

Peter J. Troy  
Defendant Pro Se  
#03-A4105  
Clinton Correctional Center  
1074 Cook Street - PO Box 2001  
Dannemora, NY 12929

tosner-county, #7, #8/cplr