

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. GEOFFREY J. O'CONNELL

Justice

TRIAL/IAS, PART 6
NASSAU COUNTY

ROBERT MACKIN,

Plaintiff(s),

INDEX No. 14118/03

-against-

MOTION DATE: 5/5/04

BARRY N. CHASE, D.D.S. and ROBERT
BABAK GHALILI, D.D.S.,

Defendant(s).

MOTION SEQ. No. 1-MG

The following papers read on this motion:
Notice of Motion/Affirmation/Exhibits
Affirmation in Opposition/Exhibits
Reply

Defendant BABAK GHALILI, DDS seeks an Order pursuant to CPLR § 3211(a)(5) dismissing the claims alleged against him in the Complaint arguing that such claims are barred by the applicable Statute of Limitations. Plaintiff opposes.

This action was commenced with the filing of the Summons and Complaint with the County Clerk of Nassau County on September 16, 2003. In the Complaint plaintiff alleges that he sought the services of the defendants and was treated by them from September 4, 1996 through August 21, 2003. Defendant GHALILI contends that plaintiff only actually alleges a single cause of action against the defendant GHALILI.

GHALILI contends that he treated the plaintiff in 1998 and 1999, with his last treatment in December 1999. Thus he argues that the claims as against him are time barred.

Plaintiff opposes contending that he was treated by both dentists in CHASE's office for restoration of all of his upper teeth, which included an implant by defendant GHALILI and subsequent treatment,

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including the cementation of a permanent bridge and abutments by CHASE which concluded in August, 2001. He argues that this treatment should invoke the continuous treatment doctrine.

The plaintiff does not contest that he was not personally treated by defendant GHALILI after December, 1999.

Pursuant to CPLR § 214-a the applicable Statute of Limitations for a dental malpractice claim is two years and six months. Thus, defendant alleges that all allegations of malpractice committed prior to are barred. The burden is on the plaintiff to establish that the Statute of Limitations should be measured from the last date of treatment. *Chesrow v. Galiani, DDS*, 234 AD2d 650 (1st Dept. 1996); *Robertson v. Bozza and Karafoil*, 242 AD2d 613 (2nd Dept. 1997).

Plaintiff opposes summary judgment contending that the malpractice was committed in the course of treatment to plaintiff by both defendants.

Plaintiff alleges that the malpractice was committed during the course of the continuous treatment for dental implant and bridge and therefore the relevant Statute of Limitations begins running on the last treatment session by both defendants. CPLR § 214(a). *Gordon v. Magun*, 83 NY2d 881 (1994). He argues that any and all of her appointments through August 2001 were part of continuing effort to treat plaintiff's condition. *Cox v. Kingsboro Medical Group*, 88 NY 904 (1996).

Defendant argues that the treatment performed on the plaintiff's mouth by GHALILI were completed by December 1999 and treatment rendered solely by CHASE thereafter are different, and cannot serve to invoke the continuous treatment doctrine, *Kasten v. Blaustein*, 214 AD2d 539 (2nd Dept. 1995).

Based on the proof presented, plaintiff has failed to demonstrate that the alleged malpractice by GHALILI was committed during a continuous course of treatment. Therefore the Statute of Limitations was not tolled. Defendant GHALILI's motion is Granted.

It is, SO ORDERED.

Dated:

May 11, 2004


HON. GEOFFREY J. O'CONNELL, J.S.C.

ENTERED

MAY 14 2004

NASSAU COUNTY
COUNTY CLERK'S OFFICE