

# ***State of New York***

## ***Court of Appeals***

***Decided and Entered on the  
fifteenth day of September, 2020***

**Present**, Hon. Janet DiFiore, *Chief Judge, presiding.*

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Mo. No. 2020-416  
Dervanna H.A. Troy-McKoy,  
Appellant,

v.

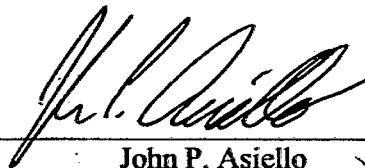
Mount Sinai Beth Israel,  
Respondent.

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Appellant having moved for leave to appeal to the Court of Appeals in the above  
cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion is denied.



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John P. Asiello  
Clerk of the Court

Appendix A

Friedman, J.P., Kapnick, Webber, Oing, JJ.

11439-

Index 100835/18

11439A Dervanna H.A. Troy-McKoy,  
Plaintiff-Appellant,

-against-

Mount Sinai Beth Israel,  
Defendant-Respondent.

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Dervanna H.A. Troy-McKoy, appellant pro se.

Rubin, Fiorella, Friedman & Mercante LLP, New York (Rebecca Rose of counsel), for respondent.

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Orders, Supreme Court, New York County (David B. Cohen, J.), entered March 14, 2019, which granted defendant's motion to dismiss the complaint as barred by the statute of limitations and for failure to state a cause of action and denied plaintiff's motion for a default judgment, unanimously affirmed, without costs.

Plaintiff seeks to recover damages for the destruction of his medical records in a January 31, 2015 fire at a storage facility owned by a nonparty contractor. He alleges that defendant and the FBI conspired to destroy his records so that he could not sue the FBI for allegedly poisoning him at a Manhattan gym in 2011. Plaintiff allegedly became aware of the destruction on April 21, 2017, when defendant advised him that it was unable to produce the medical records because of a fire.

This action, commenced June 22, 2018, is barred by the three-year limitations period for destruction of property claims

Appendix B ~~18~~  
18

(see CPLR 214[4]). Plaintiff's claim accrued on the date of the fire, not on the date of discovery of the damage (*Verizon-New York, Inc. v Reckson Assoc. Realty Corp.*, 19 AD3d 291, 291 [1st Dept 2005]; see *Kronos, Inc. v AVX Corp.*, 81 NY2d 90, 94 [1993]). The service of a notice of claim upon defendant in July 2017, without the commencement of an action, is of no moment.

The civil conspiracy claim fails because there is no such independent cause of action in New York, and the untimely property damage claim cannot be the predicate for a civil conspiracy claim (*Thome v Alexander & Louisa Calder Found.*, 70 AD3d 88, 110 [1st Dept 2009], *lv denied* 15 NY3d 703 [2010]).

Plaintiff's motion for a default judgment was correctly denied because he failed to demonstrate that defendant or its authorized agent was served with process (see CPLR 311[a][1]; 318; 3215[f]). Plaintiff effected service upon a law firm that represented defendant in connection with the unfiled notice of claim. We note that the motion to dismiss, filed before plaintiff's motion, extended defendant's time to answer (see CPLR 320[a]; 3211[f]).

We have considered plaintiff's remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: APRIL 30, 2020



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CLERK

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8/29/19  
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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. DAVID B. COHEN  
J.S.C.  
Justice

PART 58

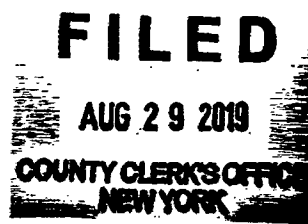
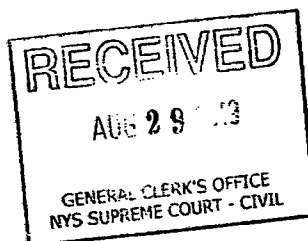
Index Number : 100835/2018  
TROY-MCKOY, DERVANNA H.A.  
vs  
MOUNT SINAI BETH ISRAEL  
Sequence Number : 003  
REARGUMENT/RECONSIDERATION

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for REARGUE  
Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ No(s) \_\_\_\_\_  
Answering Affidavits — Exhibits \_\_\_\_\_ No(s) \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_ No(s) \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is FOR LEAVE TO REARGUE IS  
DENIED.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):



Dated: 8-21-2019

[Signature] J.S.C.  
**HON. DAVID B. COHEN**

1. CHECK ONE: ..... ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION  
2. CHECK AS APPROPRIATE: ..... MOTION IS: ☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER  
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER  
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

Appendix C 21

# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

**PRESENT: HON. DAVID B. COHEN**  
**J.S.C.**

**PART 58**

Index Number : 100835/2018  
TROY-MCKOY, DERVANNA H.A.

vs  
MOUNT SINAI BETH ISRAEL  
Sequence Number : 002  
DEFAULT JUDGMENT

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ [No(s): \_\_\_\_\_]

Answering Affidavits — Exhibits \_\_\_\_\_ [No(s): \_\_\_\_\_]

Replying Affidavits \_\_\_\_\_ [No(s): \_\_\_\_\_]

Upon the foregoing papers, it is ordered that this motion is *FOR THE REASONS STATED ON THE RECORD*  
*ORDERED that plaintiff's motion for a default judgment is denied as*  
*service of process was not properly served upon the defendant.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

Dated: 3-13-2019

  
**HON. DAVID B. COHEN**  
J.S.C.

1. CHECK ONE: \_\_\_\_\_ ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: \_\_\_\_\_ MOTION IS: ☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: \_\_\_\_\_ ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

*Appendix D X2 22*

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**HON. DAVID B. COHEN  
J.S.C.**

PRESENT: \_\_\_\_\_

PART 57

Index Number: 100835/2018  
TROY-MCKOY, DERVANNA H.A.  
vs  
MOUNT SINAI BETH ISRAEL  
Sequence Number: 001  
DISMISS ACTION/INCONVENIENT FORUM

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion tofor \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ No(s) \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ No(s) \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ No(s) \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is *FOR THE REASONS STATED ON THE RECORD*

*ORDERED that defendant's motion to dismiss is granted and  
the action is dismissed pursuant to CPLR 3211(a)(5) & (a)(7) as  
being by the statute of limitations and as failing to state a cause of  
action.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

Dated: 3-13-2017

*[Signature]* J.S.C.  
**HON. DAVID B. COHEN**

1. CHECK ONE: \_\_\_\_\_ ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: \_\_\_\_\_ MOTION IS: ☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: \_\_\_\_\_ ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

*23* *[Signature]*

**Additional material  
from this filing is  
available in the  
Clerk's Office.**