

State of New York

Court of Appeals

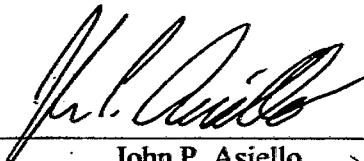
*Decided and Entered on the
fifteenth day of September, 2020*

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

Mo. No. 2020-416
Dervanna H.A. Troy-McKoy,
Appellant,
v.
Mount Sinai Beth Israel,
Respondent.

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.



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.

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

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

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 X
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(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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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

PRESENT:

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 tofor REARGUE

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____

|| No(s). _____

Answering Affidavits — Exhibits _____

|| No(s). _____

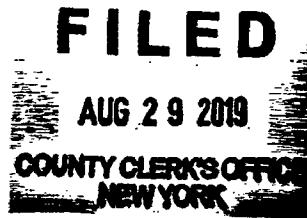
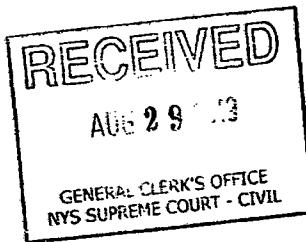
Replying Affidavits _____

|| No(s). _____

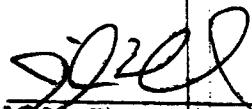
Upon the foregoing papers, it is ordered that this motion is FOR LEAVE TO REARGUE IS

DENIED.

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



Dated: 8-21-2019


J.S.C.
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 C 21

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

PRESENT: _____

PART 58

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

INDEX NO. _____

vs
MOUNT SINAI BETH ISRAEL
Sequence Number: 002
DEFAULT JUDGMENT

MOTION DATE _____

MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____

(Note): _____

Answering Affidavits — Exhibits _____

(Note): _____

Replying Affidavits _____

(Note): _____

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


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 D X2 22

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTYHON. DAVID B. COHEN
J.S.C.

PRESENT: _____

PART *57*Index Number: 100835/2018
TROY-MCKOY, DERVANNA H.A.

INDEX NO. _____

vs
MOUNT SINAI BETH ISRAEL

MOTION DATE _____

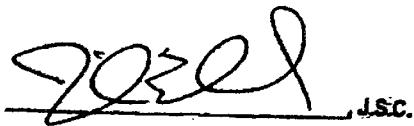
Sequence Number: 001
DISMISS ACTION/INCONVENIENT FORUM

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(b)(5) & (a)(7) as
brought by the State of Ontario 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

J.S.C.

HON. DAVID B. COHEN

 NON-FINAL DISPOSITION

1. CHECK ONE: CASE DISPOSED
 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

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