

No. 23-6568

In The Supreme Court of the United States

BOUAZZA OUAZIZ

PETITIONER,

v.

JERSEY CITY, ET AL.

RESPONDENT.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

**BRIEF IN OPPOSITION FOR RESPONDENT
CITYMD**

Catherine Popso O'Hern
Counsel of Record
SCHENCK PRICE SMITH & KING LLP
220 PARK AVENUE
FLORHAM PARK, NJ 07932
cpo@spsk.com
(973)539-1000
Attorneys for Respondent CityMD

QUESTION PRESENTED

Whether, under the two-year statute of limitations set forth in *N.J.S.A. § 2A:14-2*, the Third Circuit erred when it affirmed the District Court's December 2, 2022 Order dismissing plaintiff's amended complaint with prejudice for claims against CityMD arising out of incidents that occurred in 2016 and 2019, when plaintiff failed to provide any basis for a later accrual date or equitable tolling.

PARTIES TO THE PROCEEDING

Petitioner, BOUAZZA OUAZIZ, was the appellant in the court of appeals.

Respondents were the appellees in the court of appeals. They are: CITY OF JERSEY CITY, individually and official capacity; TAWANA MODDY, individually and her capacity as Chief of Jersey City Police Department; DETECTIVE ROBERT PEREZ; TAVARAS, Detective; POLICE OFFICER MICHAEL O'CONNELL, Individually and their official capacity as Jersey City Police Officers and detectives; MICHAEL COLOMBAS; SISTER POLICE SUPERVISOR (JANE DOES) individually and their official capacity; ALL POLICE OFFICER I-DOES; individually and their official capacity; ALL DETECTIVE DOES I-X IN JERSEY CITY POLICE DEPARTMENT Individually and their official capacity; CHRIST HOSPITAL, private entity and its workers; ; I-X DOCTORS, NURSES individually and their capacities; CITYMD JERSEY CITY; SAYED ROHANI, M.D.; ALL WORKERS DOCTORS AND NURSES IN CITYMD Jersey City; 786 REALTY LLC, private entity and its workers; ORLANDO PEGAN; JERSEY CITY AND ALL WORKER I-X; JUDGE MAUREEN B. MANTINEO; JUDGE ANDREA SULLIVAN; GOLDSTEIN LAW GROUP LLC; HILARY BREWER, individually and capacity; ARTUSA LAW FIRM PC, Private entity; ATTORNEY ARTUSA, individually and capacity; JEF HENNINGER, Esq.; CIRO A. SPINA, Attorney, individually and capacity; ATTORNEY THOMAS VIGNEAULT, individually and capacity; TOWNSEND TOMAIO & NEWMARK LLC; ATTORNEY KEVIN KU; MICKLIN LAW GROUP LLC, private entity; ATTORNEY BRAD MICKLIN; BRADLY &

COREALE LLP; ATTORNEY ROBERT COREALE; PAUL J. SICA, Esq.; NOURA ELGHAZOINI, individually and her capacity; SOUMIA EL GHAZOIANI; ROBERT RODRIGUEZ, individually and his capacity; STUHL MILLER, Ph. D.;ADA QOMPAY; LUZ FRIAIZ; SAMANTHA GALLOWAY; I-X LABCORP WORKERS individually and their capacity LABORATORY CORPORATION OF AMERICA HOLDING; LABORATORY CORPORATION OF AMERICA, Branch in Brooklyn, individually and their capacity, DBA LabCorp; DUNNE DUNNE & COHEN LLC; ATTORNEY LEONARD COHEN; LAW OFFICE OF PASQUALE MARGO; ATTORNEY MARGO PASQUALE, individually and their personal capacity; NEW JERSEY INVESTIGATION LLC; AGENT PAUL; SAMIR PORTA; SAMIR GOOS; WILLIAM OLSZEWSKI; SERGEANT DARREN SORRENTINO; DOES I-X Individually and their official capacity; CITYMD HOSPITAL, private entity and its workers; PROSECUTOR ASSISTANT JANE WEINER, Individually and official capacity; LAW OFFICE OF JEF HENNINGER; THOMAS VIGNEAULT LAW FIRM; PAUL J. SICA LAW FIRM; ALI HILALI, Individually and his capacity; PASQUALE MARAGO, Individually and their personal capacity; PAUL PORTA; DOCTOR ROHINI.

CORPORATE DISCLOSURE STATEMENT

Village Practice Management Co., LLC, dba VillageMD, is the parent corporation of respondent, CityMD, a privately held company.

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INTRODUCTION

The petition does not warrant this Court's review. The petition neither alleges a conflict between federal circuit courts applying a New Jersey statute of limitations nor alleges that the Third Circuit's decision directly conflicts with Supreme Court precedent and should be denied pursuant to Supreme Court Rule 10. In essence, the question presented in the petition is whether the Third Circuit erred when it affirmed the District Court's dismissal of the Amended Complaint as against CityMD based on the two-year statute of limitations set forth in *N.J.S.A. § 2A:14-2* rather than the seven-year statute of limitations under *N.J.S.A. 2A:14-2a*.

The petition's only argument as against CityMD is that the District Court misapplied or wrongly relied upon the two-year statute of limitations in *N.J.S.A. § 2A:14-2* and that the Third Circuit should have relied upon the seven-year statute of limitations in *N.J.S.A. § 2A:14-2a* to reverse the District Court's dismissal after *de novo* review.

Respondent respectfully submits that the Third Circuit properly affirmed dismissal of the Amended Complaint as against CityMD because (1) petitioner's allegations as against CityMD are personal injury claims; and (2) the personal injury claims arose from medical care and treatment rendered to petitioner by CityMD in 2016 and 2019.

STATEMENT OF THE CASE

1. Petitioner's claims against CityMD sound in medical negligence and arise from an incident in 2019 when petitioner sought treatment for alleged drugging and sexual assault by other defendants at CityMD in Brooklyn, New York. Amended Compl. ¶¶ 23-33, 71, 88, ECF 4.

2. The District Court properly found that CityMD was entitled to dismissal on the pleadings because petitioner's claims were time barred by the two-year statute of limitations under *N.J.S.A. 2A:14-2* and *42 U.S.C. § 1983*, and by the one-year statute of limitations for actions arising under *42 U.S.C. § 1986*. Pet. App. 15. Petitioner failed to provide any basis for a later accrual date or equitable tolling. Pet. App. 16.

3. The Third Circuit properly affirmed the District Court's Order granting judgment on the pleadings in favor of CityMD. Pet. App. 7. The Third Circuit found no error in the District Court's Rule 12(b) dismissals with prejudice or in its Rule 12(c) judgment on the pleadings. Pet. App. 4. The Third Circuit found that the District Court correctly observed the longest applicable statute of limitations period as two years and that the petitioner had failed to allege a basis for equitable tolling or a later accrual date. Pet. App. 4-5.

The Third Circuit's decision in this matter is not in conflict with another decision of a United States court of appeals or a state court of last resort. Sup. Ct. R. 10(a). The Third Circuit has neither decided an unsettled, important issue of federal

law nor decided an important federal question in a way that conflicts with this Court's relevant decisions. Sup. Ct. R. 10(c).

To the contrary, the Third Circuit properly affirmed the District Court's decision that petitioner's claims against respondent CityMD, arising from incidents that occurred in 2016 and 2019, are time barred under the two-year statute of limitations set forth in *N.J.S.A. § 2A:14-2(a)*. The Court should therefore decline to review the question presented and deny the petition.

REASONS FOR DENYING THE PETITION

I. The Petition Does Not Allege A Conflict Or A Profoundly Important Issue For This Court's Review

None of the considerations identified in Supreme Court Rule 10 are present in this case. The Third Circuit's decision is not in conflict with another decision of a United States Court of Appeals or a state court of last resort on the same important, federal matter. Sup. Ct. R. 10(a). The Third Circuit has not decided an unsettled, important issue of federal law or decided an important federal question in a way that conflicts with this Court's relevant decisions. Sup. Ct. R. 10(c). Rather, the Third Circuit's decision in this case is entirely consistent with this Court's existing jurisprudence. The petition is based solely on the erroneous claim that the Third Circuit and the District Court erred in the application of the statute of limitations. App. Br. 19-20.

Accordingly, this Court should deny the petition for these reasons as explained in further detail below.

II. The Third Circuit's Application Of The Two-Year Statute Of Limitations was Proper

There is no basis for this Court to review the Third Circuit's decision to affirm the District Court decision granting judgment on the pleadings in favor of respondent CityMD pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. Petitioner's claims against CityMD admittedly arise from incidents that occurred in 2016 and

2019, which are barred by the statute of limitations under *N.J.S.A. § 2A:14-2*. Pet. App. 3, 16.

Respondent respectfully submits as a threshold matter and, perhaps as a point of clarification, that the statute of limitations upon which respondent relies is *N.J.S.A. § 2A:14-2* subsection (a), which encompasses personal injury claims arising from wrongful conduct, a separate and distinct statute from *N.J.S.A. § 2A:14-2a*, which is the statute of limitations for actions resulting from certain sexual crimes against minors.

Petitioner filed the underlying lawsuit based upon his belief that defendants acted in concert to perpetuate and/or cover up alleged drugging, assault, and sexual assault of petitioner by petitioner's former wife, Noura Elghazani, and her boyfriend, Michael Colombas.

Petitioner did not bring a claim of sexual assault against CityMD. Rather, the Amended Complaint indicates that the alleged drugging and sexual assault of petitioner allegedly occurring on or about December 19, 2019 was the reason petitioner sought treatment at CityMD. There is no claim that any agent, servant, or employee of CityMD ever sexually assaulted petitioner. Accordingly, the Third Circuit properly affirmed that any claims against CityMD for personal injury are governed by *N.J.S.A. § 2A:14-2(a)*.

In relevant part, *N.J.S.A. § 2A:14-2* states:

Except as otherwise provided by law, every action at law for an injury to the person caused by the wrongful act, neglect or default of any person within this State shall be

commenced within two years next after the cause of any such action shall have accrued;
[N.J.S.A. § 2A:14-2(a)].

The Third Circuit found no error in the District Court's judgment on the pleadings and found that the District Court correctly observed that the longest applicable statute of limitations period applicable to petitioner's claims was two years. Pet. App. 4. Petitioner's failure to allege a basis for either equitable tolling or a later accrual date renders his claims time barred. Pet. App. 4-5.

Accordingly, the Third Circuit properly affirmed the dismissal because the petitioner was required to have brought any claims against respondent CityMD within two years of the accrual of the cause of action.

This case fails to contain any of the factors ordinarily considered compelling to warrant the extraordinary relief sought. The lower court opinions applied the plain language of the statute to the facts and found, in harmony, that petitioner's claims are time barred. Neither court below sought to set a precedent of any kind. Each followed the applicable guidelines formulated by this Court which are not the subject of disagreement among Federal Circuits. There is simply no compelling reason for the Court to grant the petition. Sup. Ct. R. 10.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: March 27, 2024

Respectfully submitted,

By: 
Catherine Popso O'Hern
Counsel of Record
SCHENCK PRICE SMITH & KING LLP
220 Park Avenue
Florham Park, NJ 07932
(973) 539-1000
cpo@spsk.com