

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

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RALPH PRESS, as Administrator of the  
Estate of PHYLLIS PRESS, Deceased,

Plaintiff,

-against-

LILA G. HOLLIN, as Executrix of the  
Estate of SIDNEY HOLLIN, M.D.,  
Deceased,

Defendant.  
-----x

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SUPREME COURT  
REPLY AFFIRMATION

Index No.

Refer to:  
Justice Lockman

Return Date:  
April 5, 1991

KATHLEEN M. BECK, an attorney duly admitted to practice law in the Courts in the State of New York and associated with MARTIN, CLEARWATER & BELL, attorneys of record for the defendant LILA G. HOLLIN, Executrix of the Estate of SIDNEY HOLLIN, M.D., affirms the following to be true under penalty of perjury:

1. I am fully familiar with the facts and circumstances of this matter by virtue of a review of the file maintained in affirmant's office.

2. This Affirmation is submitted in further support of defendant HOLLIN'S motion to dismiss the Complaint in this action, based upon the expiration of the Statute of Limitations, CPLR Section 3211(a)(5). It is respectfully requested that this Court consider the instant application as one for summary judgment pursuant to CPLR Section 3212, inasmuch as the Answer has been served in this matter.

3. Plaintiff does not dispute the fact that the last date on which DR. HOLLIN treated MRS. PRESS was June 10, 1981 which was two (2) years and ten (10) months prior to the date of MRS. PRESS' death. Plaintiff's action is barred by the expiration of the statute of limitations, unless plaintiff can establish that there was an extension of time through continuous treatment.

4. Plaintiff has not demonstrated any facts legally sufficient to support the application of the continuous treatment doctrine to this action. Notably absent from plaintiff's Affirmation in Opposition, is any case citation upon which plaintiff bases his theory that the alleged conversation between DR. HOLLIN and one of MRS. PRESS' treating physicians would extend the statute of limitations pursuant to the continuous treatment doctrine.

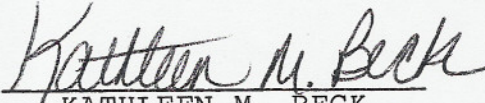
5. As demonstrated in defendant's Memorandum of Law accompanying the Notice of Motion, plaintiff has not met the burden of showing that there was a continuous course of treatment in the nature of a regularly scheduled appointment, agreed upon by both patient and physician, explicitly anticipated by both patient and physician. See, Richardson v. Ostenreich, 64 N.Y.2d 896, 487 N.Y.S.2d 731 (1985).



6. As demonstrated by MR. PRESS' testimony, (Exhibit "H"), there was no effort made by the decedent to continue the relationship with DR. HOLLIN after June 10, 1981. Consequently, there was no continuous treatment by DR. HOLLIN and as of the date of MRS. PRESS' death, a medical malpractice action was untimely and therefore, the wrongful death action must be dismissed.

WHEREFORE, it is respectfully requested that this Court issue an Order dismissing the Complaint, with prejudice and grant such other relief as to this Court seems just and proper.

Dated: New York, New York  
April 3, 1991

  
KATHLEEN M. BECK