

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

PRESENT: HON. SHEILA ABDUS-SALAAM  
*Justice*

PART 13

Muriel Karas

INDEX NO. 103788/07

MOTION DATE 12/10/08

MOTION SEQ. NO. 005



MOTION CAL. NO. \_\_\_\_\_

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits  
Answering Affidavits — Exhibits  
Replying Affidavits

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion by defendant John Weston Siebert, M.D. for an order pursuant to CPLR 3211(a) (5), dismissing the complaint on the ground that it is barred by the statute of limitations, and the motion by defendants Christopher Coad, M.D., Friedelind Martin, C.R.N.A., s/h/a Linda Martin CRN, and Chelsea Eye Associates, LLP s/h/a Chelsea Eye Assoc. for an order pursuant to CPLR 3211(a) (5) and CPLR 3212 dismissing the complaint are consolidated here for disposition. The motions are granted.

This action commenced on March 20, 2007 sounds in intentional tort and medical malpractice based upon cataract surgery performed on September 30, 2004. *Pro se* plaintiff's complaint also alleges that on June 30, 1998, following breast surgery at NYU, she was attacked by defendant Dr. Siebert. Regarding Dr. Siebert, his care of plaintiff ceased in January 1999. Thus, the action against

MOTION CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE COURT'S CONSIDERATION

him is time-barred. Similarly, as to the remaining defendants, the intentional tort claims are time-barred. With respect to the malpractice allegations, defendants Dr. Coad and Friedelind Martin have submitted affidavits which make a prima facie showing of entitlement to summary judgment, and plaintiff has not submitted any expert opinion to raise a triable issue of fact. Accordingly, summary judgment is warranted. The complaint against defendants NYU and Eye & Ear Infirmary has previously been dismissed by order dated December 10, 2008.

Based upon the foregoing, it is

ORDERED that the Clerk enter judgment dismissing the complaint against defendants Christopher Coad, M.D., Eye & Ear Infirmary, John Siebert, M.D., Linda Martin, CRN, Martin Friedland and Chelsea Eye Assoc.

Date: 2/25/09

SA A

J.S.C.

Check one:  FINAL DISPOSITION     NON-FINAL DISPOSITION  
 Check if appropriate:     DO NOT POST     REFERENCE

**FILED**  
 MAR - 2 2009  
 COUNTY CLERK'S OFFICE  
 NEW YORK