

BORJA v. TRUST TERRITORY

SANTOS BORJA and PAULINE B. BORJA, Plaintiffs-Appellants

v.

**TRUST TERRITORY OF THE PACIFIC ISLANDS,
Defendant-Appellee**

Civil Appeal No. 374

Appellate Division of the High Court

Palau District

January 19, 1984

Appeal from granting of summary judgment for defendant, on statute of limitations ground, in medical malpractice action. The Appellate Division of the High Court, Hefner, Associate Justice, held that there was no basis for tolling the two-year statute of limitations, where plaintiff had told the physi-

cian right after the allegedly negligent surgery that "I sue you because you make the wrong operation", and therefore judgment for defendant was affirmed.

1. Limitation of Actions—Medical Malpractice

Where a medical malpractice cause of action arose more than two years prior to the filing of the complaint, the action was barred by the statute of limitations. (6 TTC § 303)

2. Limitation of Actions—Discovery Rule

Exception to two-year statute of limitations for medical malpractice is where the plaintiff can show that the accrual of the cause of action was delayed to a later date because he did not discover or could not have reasonably discovered the claim he had for malpractice. (6 TTC § 303)

3. Limitation of Actions—Discovery Rule

There was no basis to toll the two-year statute of limitations for medical malpractice, where plaintiff experienced physical difficulties after the allegedly negligent surgery, and told the attending physician that "I sue you because you make the wrong operation".

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Before MUNSON, *Chief Justice*, MIYAMOTO, *Associate
Justice*, and HEFNER¹, *Associate Justice*

HEFNER, *Associate Justice*

BACKGROUND

The plaintiff and his wife filed this medical malpractice action against the Trust Territory Government and a Doctor Meddins. The latter was dismissed out of the suit some time ago and only the Government remains as a defendant.

¹ Chief Judge, Commonwealth Trial Court, Commonwealth of the Northern Mariana Islands, designated as Temporary Associate Justice by Secretary of Interior.

The complaint is in several counts but for the purpose of resolving this appeal it can be simply stated. The plaintiff alleges that the Government was negligent in providing health services to the plaintiff who has suffered from the mistreatment. The plaintiff asks for monetary damages against the Government.

The Government answered the complaint and raised the affirmative defense of the statute of limitations, 6 TTC § 303.

After discovery was completed, including the deposition of the plaintiff, the Government moved for summary judgment on the statute of limitations ground and the trial court granted the motion. The plaintiff filed a timely appeal.

DISCUSSION

The appellants concede that the two-year statute of limitations (6 TTC § 303) applies. The complaint alleges that the treatment given to the plaintiff, which gives rise to his claim, occurred in January of 1978. The complaint was filed about two and a half years later.

[1, 2] The statute of limitations commences to run when a cause of action accrues and if the complaint, on its face, shows that a medical malpractice cause of action arose more than two years prior to the filing of the complaint, the action is barred. *Butirang v. Uchel*, 3 T.T.R. 382 (Tr. Div. 1970). The exception is where the plaintiff can show that the accrual of the cause of action was delayed to a later date because he did not discover or could not have reasonably discovered the claim he had for malpractice. *Camire v. United States*, 535 F.2d 749 (1976); *Casias v. United States*, 532 F.2d 1339 (1976); 61 Am. Jur. 2d Physicians & Surgeons § 321.

[3] In this case, it is clear that the plaintiff knew of the negligence of the defendant no later than February of

1978. His deposition relates the physical difficulties he experienced almost immediately after his surgery, and he told the attending physician that "now I'm going to look my lawyer and I sue you because you make the wrong operation." This deposition was placed before the trial judge at the hearing on defendant's motion for summary judgment. There was no counter affidavit filed to form any basis for the tolling of the statute. The trial judge was correct in granting the motion.

It might be added that on appeal, the plaintiff has raised additional issues such as waiver, estoppel, and the fiduciary relationship of the Trust Territory Government to the plaintiff. These issues were not properly raised at the trial level nor were they properly preserved on appeal, and this court declines to consider them.

Accordingly, the decision of the trial court is affirmed.