DISTRICT OF COLUMBIA
COURT OF APPEALS

ROGER TOVAR, **Appellant/Cross-Appellee,** **v.** **REGAN ZAMBRI LONG, PLLC, *et al*.,** **Appellees/Cross-Appellants.**	**APPEAL NO.: 23-CV-165**

ON APPEAL FROM NO. 2022-CA-002053-M IN THE DISTRICT OF COLUMBIA SUPERIOR COURT, CIVIL DIVISION THE HONORABLE EBONY M. SCOTT

REPLY BRIEF OF APPELLEES/CROSS-APPELLANTS PATRICK M. REGAN, PAUL J. CORNONI AND REGAN ZAMBRI LONG, PLLC,

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I. PRELIMINARY STATEMENT

Tovar's fractious Reply Brief fails to demonstrate how administrative tasks performed after trial, appeal, and settlement require the application of the continuous representation rule beyond the date the Praecipe of Satisfaction of Judgment was filed. Tovar erroneously contends that RZL did not seek summary judgment on statute of limitations grounds. RZL filed a Motion to Dismiss and/or for Summary Judgment, which argued under the Motion to Dismiss that Tovar's legal malpractice claim is barred by the statute of limitations. (**Appx. 40-42**). RZL further argued that dismissal was further justified when considering this argument under summary judgment. (**Appx. 46**). Tovar also ignores that his Opposition to RZL's Motion referenced extraneous documents in response to the statute of limitations argument, effectively converting the argument into one for summary judgment. (**Appx. 902-03**). Nevertheless, Tovar fails to show that a question of material fact exists regarding when RZL's representation in the matter at hand ended so as to preclude this Court from finding that his claim is barred by the statute of limitations.

Moreover, Tovar does not attempt to articulate how any end-date of the statute of limitations for this malpractice suit falls within the parameters for emergency tolling. The plain language of the Superior Court's Covid Tolling Orders make clear that only claims that would expire during the tolling period are tolled. None of the expiration dates proposed for Tovar's claim are between March 18, 2020 and March

31, 2021, such that emergency tolling does not apply. Accordingly, the Superior Court's Order denying RZL's statute of limitations argument should be reversed and Tovar's Complaint dismissed with prejudice.

II. ARGUMENT

A. The Statute of Limitations for Tovar's Malpractice Suit Accrued, at the Latest, on May 7, 2019

The continuous representation rule is "an exception to the discovery rule" that tolls the statute of limitations for a legal malpractice cause of action "until the attorney ceases to represent the client in the specific matter at hand." *R.D.H. Communications, Ltd. v. Winston*, 700 A.2d 766, 768, 775 (D.C. 1997). However, "subsequent general representation of the plaintiffs regarding matters unrelated to [the initial transaction] does not warrant the application of the doctrine." *De May v. Moore & Bruce, LLP*, 584 F.Supp.2d 170, 181 (D.D.C. 2008) (quoting *Dignelli v. Berman*, 293 A.D.2d 565, 741 N.Y.S.2d 66, 68 (2002)). The continuous representation rule does not apply to an attorney's "minimal participation in a client's ongoing affairs." *Encyclopaedia Britannica, Inc. v. Dickstein Shapiro, LLP*, Civ No. 10–cv–0454, 2012 WL 8466139 (JDB), at *15 (D.D.C. Feb. 2, 2012); *Rocha v. Brown & Gould, LLP*, 101 F. Supp. 3d 52, 69 (D.D.C. 2015) ("The Court declines to apply the continuous representation rule in a way that would punish attorneys for providing such minimal assistance to protect their client's rights after the initial matter concludes."), *aff'd*, 15-7053, 2016 WL 11761481 (D.C. Cir. Mar. 30, 2016).

Here, the scope of RZL's representation was to "represent [Tovar] in the litigation or settlement of [his] claim . . . arising out of [the April 26, 2012, motor vehicle accident]." (**Appx. 924**). RZL both litigated the auto tort case and settled it on appeal. Tovar's claim, and the specific matter at issue, concluded when Tovar signed the Settlement Agreement on April 25, 2019. (**Appx. 131**). On May 7, 2019, a Praecipe of Satisfaction of Judgment was filed with the court indicating that the case was "settled, paid, and fully satisfied". (**Appx. 115, 353-54**). Accordingly, RZL's representation of Tovar in the "specific matter at hand" ceased, at the latest on May 7, 2019. All that remained were ministerial tasks related to resolving various liens and bills. The exhibits Tovar attached to his Opposition below and cited in his Reply Brief do not depict negotiations with lienholders or any other legal work. (*see* Tovar's Reply Brief at 20) (citing **Appx**. **1100 n.3, 1104-09**). Under these facts, the continuous representation rule does not extend Tovar's accrual date beyond May 7, 2019. At the latest, all elements of the discovery rule were present on that date. (**Appx. 115, 353-54, 1183**).

Tovar knew that future medical bills were not presented, and a lifecare planner did not testify at trial by no later than the last day of trial – June 26, 2018. (**Appx. 112-14; 130; 268 ¶ 23**). Tovar agreed to settle on April 25, 2019, and released all claims against defendants for past, present and future medicals, or other damages that he could claim. (**Appx. 131-32**). On May 7, 2019, a Praecipe of Satisfaction of

Judgment was filed with the court indicating that the case was "settled, paid, and fully satisfied". (**Appx. 115, 353-54**). Moreover, Tovar conceded in the Superior Court that May 7, 2019, is the earliest accrual date for his malpractice suit. (**Appx. 1244:6-1246:19**). Likewise, the Superior Court ruled that May 7, 2019, "represents the last date upon which [Tovar] should have been on notice of the existence of a legally cognizable claim." (**Appx. 1183**). Accordingly, RZL's representation "in the specific matter at hand" concluded no later than May 7, 2019, and Tovar had three years to file his legal malpractice claim.

The only "question" Tovar purports exists is whether the remedial tasks performed by RZL post-May 7, 2019, – *i.e.*, resolving medical liens, etc. – constitute representation in the matter at hand, so as to apply the continuous representation rule. As set forth above, District of Columbia courts decline to extend the continuous representation rule to these ministerial tasks. Accordingly, summary judgment is appropriate as Tovar's May 9, 2022, Complaint is barred by the statute of limitations.

B. The Judicial Emergency Orders did not Toll the Statute of Limitations in this Case

In calculating the three-year period following May 7, 2019, Tovar simply adds three to the year and thus concludes that the statute of limitations period ended on Saturday, May 7, 2022. (Tovar Reply at 20). This calculation and conclusion are erroneous. Superior Court Rule 6 provides that when a period of time is stated in days or a longer unit, "count every day". Super. Ct. R. 6(a)(1)(B). Three years is

equal to 1,095 days. (**Appx**. **1181**). Excluding the day of the triggering event, 1,095 days from May 7, 2019, is **Friday**, May 6, 2022. Accordingly, Tovar's May 9, 2022, filing was late and his claim is time-barred.

RZL's cross-appeal argues that the Superior Court incorrectly applied the COVID Tolling Orders to this case. Tovar's Reply Brief does not address this argument aside from a footnote reference to *Berg v. Hickson*, another Superior Court order that also errs in its application of the COVID Tolling Orders. (Tovar Reply Brief at 19 n.13). However, *Berg's* reading of the emergency tolling provision conflicts with the plain language of the Emergency Orders, which contemplated tolling only for actions that would have expired during the emergency period. *Berg v. Hickson*, D.C. Superior Court, 2021-CA-001977-V at 3-4 (Aug. 19, 2021)

The January 21, 2021 Addendum to the General Order Concerning Civil Cases provides the clearest statement of the scope of cases for which the judicial emergency tolled the statute of limitations. (**Addendum** hereto at 11). In that Addendum, the Presiding Judge of the Civil Division explained that the tolling provisions of the emergency orders were limited to cases where the applicable statute of limitations deadlines would run during the judicial emergency. (***Id***.) In pertinent part, the Addendum states, "[i]f an event before the start of the [March 18, 2020] tolling period triggered a deadline that falls within the tolling period, the number of days remaining before the original deadline on March 18 are added to the end of the

tolling period." (***Id***. at 12). The plain language of the Addendum is unequivocal: The tolling provision applies only for cases where the statute of limitations deadline would take place during the emergency period. Effectively, only cases where the statute of limitations would actually expire between March 18, 2020 and March 31, 2021 are provided tolling relief.

The interpretation that Tovar proposes and the Superior Court applied departs from the framework established in the Emergency Orders. Indeed, this narrow reading of the Emergency Orders would stand for the proposition that actions that accrued after March 18, 2020, would also be tolled during the pendency of the emergency. This conflicts with the plain language of the January 21, 2021 Addendum, which only contemplated tolling for actions that accrued before March 18, 2020 and expired before March 30, 2021. *See Richards v. Hilliard*, D.C. Superior Court, 2023-CAB-1452, at 5 (May 9, 2023) ("the court reads the emergency orders as admitting only one meaning—that the tolling applies only in cases in which the statute of limitations otherwise would have expired during the period of emergency.") (**Addendum** hereto at 19).

None of the expiration dates considered by the Superior Court fall "within" the period of emergency described by the Emergency Orders. Accordingly, the Superior Court erred in applying emergency tolling to Tovar's claim and in finding

that Tovar's Complaint, filed May 9, 2022, was timely. Tovar's legal malpractice suit is barred by the statute of limitations and must be dismissed on that basis.

III. CONCLUSION

Alternative to the grounds for affirming the Superior' Court's dismissal of Tovar's Complaint, with prejudice, this Court should reverse the Superior Court's denial of RZL's Motion on statute of limitations grounds and dismiss, with prejudice, Tovar's claim as barred by the statute of limitations.

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CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that on December 18, 2023, I filed the Reply Brief of Appellees with the Clerk of the District of Columbia Court of Appeals and served the Reply Brief of Appellees on this same date via the D.C. Court of Appeals e-filing system.

/s/ Paul J. Maloney
Paul J. Maloney

D.C. Ct. App. R. 28 ADDENDUM

District of Columbia Superior Court Rules of Civil Procedure Rule 6

Rule 6. Computing and Extending Time; Time for Motion Papers

(a) **Computing Time**.

(1) *Period Stated in Days or a Longer Unit*. When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or a legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period Stated in Hours*. When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the Clerk's Office*. Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) *"Last Day" Defined*. Unless a different time is set by a statute or court order, the last day ends:

(A) for electronic filing, at midnight in the court's time zone; and

(B) for filing by other means, when the clerk's office is scheduled to close.

(5) *"Next Day" Defined*. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) "*Legal Holiday" Defined*. "Legal holiday" means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, District of Columbia Emancipation Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day; and

(B) any day declared a holiday by the President or Congress, or observed as a holiday by the court.

(C) [Omitted].

(b) **Extending Time**.

(1) *In General*. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if the request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) *Exceptions*. A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

(c) **Time for Serving Affidavits**. Any affidavit supporting a motion or opposition must be served with the motion or opposition unless the court orders otherwise.

(d) **Additional Time After Certain Kinds of Service**. When a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), 3 days are added after the period would otherwise expire under Rule 6(a).

ADDENDUM TO THE GENERAL ORDER CONCERNING CIVIL CASES
Amended January 21, 2021

In a series of orders, the Chief Judge of the Superior Court of the District of Columbia suspended, tolled, and extended certain deadlines during the period of the current emergency. On January 13, 2021, the Chief Judge issued the most recent order. *See* http://www.dccourts.gov/sites/default/files/matters-docs/General%20Order%20pdf/Amended- Order-1-13-21_FINAL.PDF.

The primary changes in the January 13 order from the prior order by the Chief Judge issued on November 5, 2020 involve the termination of tolling of deadlines for (1) service of process and (2) responsive pleadings.

The January 14 order provides with respect to the tolling of deadlines in civil cases:

> Unless otherwise ordered by the Court, all deadlines and time limits in statutes (including statute of limitations), court rules, and standing and other orders issued by the Court that would otherwise expire during the period of emergency are suspended, tolled and extended during the period of emergency, with the following exceptions: (1) deadlines applicable to parties represented by counsel in pending cases; (2) discovery-related deadlines applicable to all parties, including parties not represented by counsel; (3) effective January 29, 2021, deadlines for service of process applicable to all parties, including parties not represented by counsel; (4) deadlines for responsive pleadings applicable to all parties, including parties not represented by counsel; (5) motions-related deadlines applicable to all parties, including parties not represented by counsel; and (6) deadlines in orders issued after March 18, 2020. Notwithstanding any other provision of this order, the time limits concerning the validity and issuance of writs of restitution in Rules 16(a)(4) and 16(c) of the Superior Court Rules of Procedure for the Landlord and Tenant Branch that would otherwise expire during the period of emergency are suspended, tolled and extended during the period of emergency.

The judicial emergency. The emergency referred to in the January 13 order is the emergency originally declared by the Joint Committee on Judicial Administration for the District of Columbia Courts on March 18, 2020. *See* https://www.dccourts.gov/sites/default/files/divisionspdfs/committee%20on%20admissions%20p df/Joint-Committee-on-Judicial-Administration-for-the-District-of-

Columbia-Courts-March-18- 2020-Order.pdf. Pursuant to authority granted by the Joint Committee, the Chief Judge extended the judicial emergency through at least March 31, 2021. More specifically, the January 13 order provides that suspension, tolling, and extension will continue to the extent specified in the order until at least March 31, 2021.

Scope. With the exceptions specified in the January 13 order, the deadlines suspended, tolled, and extended under the January 13 order include, but are not limited to, (1) statutes of limitations, (2) rule-based deadlines such as time limits for events leading to a pretrial conference, and (3) case-specific orders issued before March 18, 2020 such as scheduling orders and briefing orders.

The new deadline will be determined by the date on which the period of tolling ends. If no exception in the January 13 order or in the Chief Judge's prior orders applies, the date on which the period of tolling ends is currently March 31, 2021 under the January 13 order; if one of these exceptions applies, the date is earlier. The new deadline depends in part on whether the event that triggers the deadline occurred before or after March 18, when the tolling period began under the chief judge's initial order. If an event before the start of the tolling period triggered a deadline that falls within the tolling period, the number of days remaining before the original deadline on March 18 are added to the end of the tolling period.

If the extended deadline that would apply under the January 13 order as a result of the tolling is appropriate in the circumstances of a particular case, a party should *not* file a motion seeking to extend the deadline. If a party wants a deadline different from the deadline that would apply under the January 13 order, the party must file a motion to shorten or extend this deadline.

The January 13 order does not preclude any party from taking an action even though the deadline for the action is suspended, tolled, and extended because of the current judicial emergency.

Exceptions. The January 13 order makes six exceptions to the general principle of suspension, tolling, and extension of deadlines. The third and fourth exceptions are new in the January 13 order.

Represented parties. The first exception concerns deadlines established by statute, rule, or order applicable to parties represented by counsel in pending cases. If a party represented by counsel needs additional time to complete a task due to

pandemic-related reasons, the party must file a motion (after attempting to obtain other parties' consent).

This exception for any party represented by counsel applies regardless of whether or not other parties in the cases are represented by counsel. If a party represented by counsel wants an unrepresented party to comply with a deadline not covered by another exception, the party must file a motion if the unrepresented party is not willing to comply voluntarily.

This exception, and the second exception for discovery-related deadlines, do not affect the requirement in Rules 16(h)(1) and 37(a)(1)(A) that parties meet for a reasonable period of time to resolve a discovery dispute before anyone can file a discovery-related motion, or the requirement in Rule 16(c)(1) that lawyers and unrepresented parties meet "in person" before a pretrial conference. During the public health emergency, one or all parties may have good reasons not to meet in person, and conferring by telephone or videoconference may be a reasonable alternative in the circumstances. Judges have discretion to waive or modify the "in person" meeting requirements in Rules 16(c)(1), 37(a)(1)(A), and 26(h)(1). This discretion exists even if the parties do not ask for advance approval to attempt to resolve an issue without an in-person meeting, and the parties instead inform the court in a motion or joint pretrial statement that they conferred without an in-person meeting for specified pandemic-related reasons. Parties can expect judges to rule on discovery motions and conduct pretrial conferences, if the parties have not met but one or both parties had a reasonable basis related to the pandemic not to meet in person and the parties conferred, or offered to confer, through reasonable alternative methods.

This exception applies only to pending cases. Accordingly, statutes of limitations remain suspended, tolled, and extended, even if the potential plaintiff is represented by counsel.

Discovery deadlines. The second exception, which was initially adopted in the Chief Judge's August 13 order, concerns discovery-related deadlines applicable to all parties, including parties not represented by counsel, and unlike the fourth exception, it applies to deadlines in orders issued before March 18. For parties represented by counsel, this second exception duplicates the first exception, which also applies to discovery-related deadlines. If any party needs additional time to complete a discovery-related task, the party must file a motion (after attempting to obtain other parties' consent).

The following examples are illustrative for any case subject to a scheduling order issued before March 18; they also apply under the first exception to parties represented by counsel. If a party was served with interrogatories 14 days before March 18, 16 of the 30 days provided by Rule 33(b)(2) to respond to interrogatories remained when the discovery deadline was suspended, tolled, and extended by the March 18 order, so the party had 16 days from August 13 to serve its response. If a party was served with interrogatories after March 18 and before August 13, the party had 30 days from August 13 to respond. If the party was served with interrogatories after August 13, the party had 30 days from the date of service to respond.

Unrepresented litigants may not be aware that the suspension, tolling, and extension of discovery-related deadlines ended on August 13. Rule 37(a) requires that before a party files a motion, the party, whether represented or unrepresented by counsel, must try to resolve any dispute about when the other party will provide discovery, and Rule 37(a) provides that the court may order the party from whom discovery is requested to provide the discovery. The court will consider all relevant factors in deciding whether to order an unrepresented party to provide discovery and what deadline is reasonable for discovery.

Service of process. The third exception, which was added by the January 13 order, concerns deadlines for service of process. The prior suspension, tolling, and extension of these deadlines now ends on January 29, 2021. The delayed effective date gives parties more time to make arrangements for service after a long period of tolling.

These deadlines were previously suspended, tolled, and extended (unless otherwise ordered by the court on a case-by-case basis) because public health concerns may make service difficult. The exclusion of service-related deadlines did not prevent a plaintiff from attempting service during the period of the judicial emergency, and the court's experience was that many, if not most, plaintiffs made arrangements for service. Service can be effected consistent with current public health guidelines. Accordingly, this suspension, tolling, and extension will end on January 29, 2021.

This termination of suspension, tolling, and extension has the following effect. For example, in a case where Rule 4(m)(1)(A) gives a plaintiff 60 days to serve, the 60-day period would begin on January 29, 2021 if the case was filed during the period when this deadline was suspended, tolled, and extended (that is, if it was filed on or after March 18, 2020 and before January 29, 2021). If the case

was filed, for example, 30 days before the tolling period began on March 18, the new deadline would be 30 days after January 29, 2021.

Responsive pleadings. The fourth exception, which was added by the January 13 order, concerns deadlines for responsive pleadings. The suspension, tolling, and extension of these deadlines ended on January 13, 2021, unless it ended earlier because another exception applied. For example, if a defendant has 21 days under Rule 12(a)(1)(A) to serve an answer after service of the complaint, and the defendants was served while this deadline was suspended, tolled, and extended (that is, between March 18, 2020 and January 13, 2021), the defendant has 21 days from January 13 to file the answer. If the defendant was served seven days before the tolling period began on March 18, 2020, the defendant has 14 days after January 13, 2021 to file its answer.

Motions deadlines. The fifth exception involves motions-related deadlines applicable to all parties. Orders by the Chief Judge ended the suspension, tolling, and extension of motions- related deadlines applicable to parties represented by counsel, and the November 5 order ended the suspension, tolling, and extension of these motions-related deadlines to parties not represented by counsel.

If a represented or unrepresented party does not file a motion by the applicable deadline, the party may not thereafter file the motion until the party satisfies the requirements in Rule 6(b) concerning extensions of time. If a represented or unrepresented party does not timely file a response to a motion, the court may treat the motion as conceded under Rule 12-I(e).

This exception does not affect the requirement in Rule 12-I(a) that a party attempt to get the other parties' consent before filing a motion.

Post-March 18 Orders. The sixth exception makes explicit that there is no suspension, tolling, or extension of any deadline in any order issued after March 18, 2020. This exception applies even if the post-March 18 order does not explicitly state that the judge was exercising the authority under one of the Chief Judge's orders to make case-specific exceptions to the general principle of suspension, tolling, and extension. This exception applies to any order containing a schedule, even if the order is not denominated as a "scheduling order." If a party wants any deadline in a post-March 18 order suspended, tolled, or extended, the party must file a motion (after attempting to obtain other parties' consent).

This exception for post-March 18 orders includes any discovery-related

deadline, such as a deadline for the close of discovery. Even if the post-March 18 order does not explicitly require the parties to respond to a discovery request by a date specified in the order, any discovery- related deadline necessarily obligates parties to respond to any discovery request in sufficient time to comply with the deadline. Otherwise, discovery-related deadlines in the order, such as a deadline for completion of discovery, would effectively be rendered meaningless.

If a party cannot comply with a deadline in a post-March 18 order, the party must file (after attempting to obtain the other parties' consent) a motion to extend any such deadline.

Conversely, as discussed above, deadlines in any order issued before March 18 are suspended, tolled, and extended unless the court ordered otherwise in an order issued on or after March 18 or unless an exception in the January 13 order applies.

Writs of restitution. Like the November 5 order, the January 13 order provides, "Notwithstanding any other provision of this order, the time limits concerning the validity and issuance of writs of restitution in Rules 16(a)(4) and 16(c) of the Superior Court Rules of Procedure for the Landlord and Tenant Branch that would otherwise expire during the period of emergency are suspended, tolled and extended during the period of emergency."

Under Rule 16(a)(4), a writ of restitution is valid for a period of 75 days, and this 75-day period is suspended, tolled, and extended during the period of the judicial emergency. For example, if a writ was issued 25 days before the judicial emergency began on March 18, it will remain valid for 50 days after the judicial emergency ends, which will be on March 31, 2021 unless it is further extended.

Under Rule 16(c), either a writ of restitution must be issued within 90 days after entering a judgment or default or after vacating a stay of execution, or the plaintiff may file a request for issuance of the writ. This 90-day period for issuance of writs is suspended, tolled, and extended during the period of the judicial emergency. For example, if a judgment was entered 30 days before the judicial emergency began on March 18, the court may issue a writ within 60 days after the judicial emergency ends, and the plaintiff need not request issuance of a writ unless the court does not issue the writ during that 60-day period.

Notice of evictions. Like the November 5 order, the he January 13 order contains the following provision concerning notice of evictions:

> Because (1) the Court has inherent authority to ensure that judgments for possession and writs of restitution are executed in a fair and orderly way, (2) the fair and orderly execution of writs of restitution requires landlords to provide reasonable notice of the rescheduled date when an eviction was postponed for a substantial period due to a public health emergency and not for a short period due to temperature or precipitation, and (3) it would not impose an unreasonable or undue burden on landlords to provide notice of the rescheduled date consistent with the terms of D.C. Code § 42-3505.01a, any landlord shall, when an eviction that had been scheduled on or after March 16, 2020 is rescheduled after the statutory stay on evictions ends, send a notice that complies with the requirements of D.C. Code § 42-3505.01a at least 21 days before the date on which the eviction is rescheduled

This provision affects landlords and tenants in cases where a landlord provided the notice required by D.C. Code § 42-3505.01a at least 21 days before an eviction that was scheduled on or after March 16, 2020 and that was postponed due to the public health emergency. This provision requires landlords in these cases to provide a second notice that complies with § 42- 3505.01a if the landlord reschedules the eviction after the period of the public health emergency ends.

Section 42-3505.01a requires landlords to deliver notice of scheduled evictions on a specified timetable and in a specified manner. More specifically, § 42-3505.01a(b)(2)(F) requires that the notice delivered by a landlord informing tenants of the scheduled date of an eviction shall state that it is the final notice from the housing provider before the time of eviction, even if the eviction date is postponed by the court or marshals. When § 42-3505.01a was adopted, D.C. Code § 42-3505.01(k) provided for postponement of evictions only due to temperature or precipitation. However, in March 2020, the COVID-19 Response Emergency Amendment Act of 2020 amended § 42-3505.01(k) to prohibit evictions during the period of time for which the Mayor has declared a public health emergency. Although § 42-3505.01a does not require a landlord to provide a second notice if an eviction is postponed for a relatively brief period due to weather-related factors, it does not preclude the court from requiring a second notice if an eviction is postponed for a lengthy and indefinite period due a public health emergency. The court has inherent authority to manage its docket to achieve the fair and orderly disposition of cases and to issue orders insuring that judgments for possession and writs of restitution are carried out in a fair and orderly way consonant with justice, and no statute or rule limits the authority of the court to issue orders concerning the

fair and orderly execution of writs of restitution.

For a prolonged pandemic-related postponement, a second notice that provides at least 21 days' notice before the rescheduled date of the eviction gives the tenant a reasonable opportunity to move out or to exercise any legal rights that the tenant may have, and it enables the court to address any legal issue in a fair and orderly way. Moreover, the requirement of a second notice does not impose an unreasonable or undue burden on landlords, and it benefits landlords when the second notice results in the tenant moving out before the rescheduled date of the eviction. Accordingly, the court exercised its inherent authority over the execution of its judgments and writs to require a second notice in these limited circumstances.

Debt collection cases. The General Order Regarding Debt Collection Cases issued on May 7, 2020 specifically addresses deadlines in administratively-designated collection cases that are filed or pending during the period of the public health emergency declared by the Mayor and for 60 days after its conclusion. *See* https://www.dccourts.gov/sites/default/files/matters-docs/General%20Order%20pdf/Collection-Case-General-Order.pdf. This order provides that, unless otherwise ordered by the Court, all deadlines and time limits in statutes, court rules, and standing and other orders, including statutes of limitation and service of process deadlines, that would otherwise expire during this period are tolled during this period. The General Order implements statutory restrictions on debt collection activities until 60 days after the end of the public health emergency declared by the Mayor; the Mayor has extended the public health emergency to at least December 30, 2020.

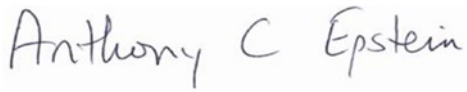
The cases on the calendar commonly referred to as the debt collection calendar includes cases that are subject to statutory restrictions on debt collection activities and cases that are not subject to these restrictions. The Civil Division is not scheduling hearings in any case on the debt collection calendar unless a party files a motion explaining why the statutory restrictions do not apply. The Civil Division is scheduling hearings in cases involving insurance subrogation, which are not subject to these statutory restrictions.

Mortgage foreclosure cases. The General Order Regarding Residential Mortgage Foreclosure Cases issued on July 2, 2020 addresses the administration of mortgage foreclosure cases during the period of the public health emergency declared by the Mayor and for 60 days after its conclusion. *See* https://www.dccourts.gov/sites/default/files/matters-

docs/General%20Order%20pdf/General-Order-for-Foreclosure-Cases-7-2-20.pdf.

Duration. This Addendum to the General Order shall remain in effect unless and until it is modified or rescinded as circumstances change.

Issued on January 21, 2021 by order of the Presiding Judge of the Civil Division.



Anthony C. Epstein
Presiding Judge, Civil Division

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

YANIQUE RICHARDS, **Plaintiff**	)	**Case No. 2023-CAB-1452**
v.	)	**Judge Neal E. Kravitz**
JAMES HILLIARD, **Defendant**	)	

ORDER GRANTING DEFENDANT'S RULE 12(b)(6) MOTION TO DISMISS

The defendant has filed a motion to dismiss the complaint for failure to state a claim on which relief can be granted. *See* Super. Ct. Civ. R. 12(b)(6). The defendant contends that the negligence claim alleged in Count I is barred by the applicable three-year statute of limitations and that the claim of res ipsa loquitor alleged in Count II fails because the complaint identifies the specific cause of the plaintiff's injury. The plaintiff has filed an opposition to the motion, and the defendant has filed a reply.

The court has carefully considered the parties' arguments and the entire record of the case. For the following reasons, the court concludes that the defendant's motion must be granted.

Legal Standard

A complaint is subject to dismissal under Rule 12(b)(6) for failure to state a claim on which relief can be granted if it does not satisfy the requirement, set forth in Rule 8(a)(2), that it contain "a short and plain statement of the claim showing that the pleader is entitled to relief." *See Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543–44 (D.C. 2011). The notice pleading rules do "not require detailed factual allegations," *id*. (internal quotation marks omitted)

(quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)), and all factual allegations in a complaint challenged under Rule 12(b)(6) must be presumed true and liberally construed in the plaintiff's favor, *Grayson v. AT&T Corp.*, 15 A.3d 219, 228–29 (D.C. 2011) (en banc). Nevertheless, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face," and the plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Potomac Dev. Corp.*, 28 A.3d at 544 (internal quotation marks omitted) (quoting *Iqbal*, 556 U.S. at 678). Although a plaintiff can survive a Rule 12(b)(6) motion even if "recovery is very remote and unlikely," *Grayson*, 15 A.3d at 229 (internal quotation marks omitted), the "factual allegations must be enough to raise a right to relief above the speculative level," *OneWest Bank, FSB v. Marshall*, 18 A.3d 715, 721 (D.C. 2011) (internal quotation marks and brackets omitted). Conclusory allegations "are not entitled to the assumption of truth," and while "legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Potomac Dev.t Corp.*, 28 A.3d at 544 (citing *Iqbal*, 556 U.S. at 664).

Discussion

The plaintiff filed the complaint on March 9, 2023, alleging, in Count I, that the defendant negligently threw a traffic cone onto her head from the bed of a truck on May 18, 2019. It is uncontested that the applicable limitations period for a personal injury claim alleging negligence is three years, *see* D.C. Code § 12-301(8), and that the plaintiff filed her complaint more than three years—three years, nine months, and twenty days, to be exact—after the incident from which it arose. The plaintiff's claim is therefore time-barred unless the statute of limitations period was somehow tolled for at least nine months and twenty days before it expired.

The parties dispute whether tolling provisions in a series of emergency COVID-19 orders issued by the Chief Judge in 2020 and 2021 tolled the running of the statute of limitations on the plaintiff's claim. The defendant contends that the emergency orders did not toll the statute of limitations in this case because on January 21, 2021, Judge Epstein, then the Presiding Judge of the Civil Division, wrote in an addendum to the General Order that the tolling prescribed by the orders applies to "a deadline that falls within the tolling period," *see* Addendum to the General Order Concerning Civil Cases (amended Jan. 21, 2021), and because the limitations period here was not set to expire within the March 18, 2020 – March 30, 2021 tolling period set by the Chief Judge's orders. The plaintiff argues in response that other Superior Court judges have interpreted the Chief Judge's emergency orders as tolling *all* statute of limitation periods from March 18, 2020 until March 30, 2021—not only those that otherwise would have expired during the 378-day tolling period. *See, e.g.*, *Berg v. Hickson*, No. 2021-CA-1977-V (D.C. Super. Ct. Aug. 19, 2021) (Matini, J.); *Crown v. Gronigen*, 2022-CA-121-B (D.C. Super. Ct. Jan. 11, 2022) (Edelman, J.).

Judge Epstein's addendum to the General Order does not control whether the statute of limitations was tolled in this case. Rather, it is the Chief Judge's emergency orders themselves that govern the question, since D.C. Code § 11-947(a)(2)(A) specifies that it is the Chief Judge who "may enter such order or orders . . . to delay, toll, or otherwise grant relief from the time deadlines imposed by otherwise applicable laws or rules."

The court thus turns to the language of the Chief Judge's emergency orders, since the first step in construing a statute—or, in this instance, a set of emergency court orders—is "to see if the language is plain and admits of no more than one meaning." *Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 753 (D.C. 1983) (en banc).

The language involving the tolling of the statute of limitations in the period of emergency first appeared in the Chief Judge's first amended emergency order, issued on March 19, 2020.[1] The Chief Judge ordered:

> Unless otherwise ordered by the court, all deadlines and time limits in statutes, court rules, and standing and other orders issued by the court that would otherwise expire before May 15, 2020 *including statutes of limitations*, are suspended, tolled, and extended during the period of the current emergency.

Superior Court of the District of Columbia Order at 2 (amended Mar. 19, 2020) (emphasis added). The next amended emergency order, issued on May 14, 2020, changed the placement of the emphasized phrase in tolling the statute of limitations in civil cases in the period of emergency:

> Unless otherwise ordered by the court, all deadlines and time limits in statutes (*including statute[s] of limitations*), court rules, and standing and other orders issued by the court that would otherwise expire during the period of emergency are suspended, tolled and extended during the period of emergency . . . .

Id. at 2 (amended May 14, 2020) (emphasis added). The quoted language for civil cases from the May 14, 2020 order then remained unchanged throughout the remainder of several subsequent versions of the emergency orders, until the Chief Judge ended the tolling for civil cases in an order issued on March 30, 2021.[2] *See id.* at 3 (amended June 19, 2020); *id.* at 3 (Aug. 13, 2020); *id.* at 3 (amended Nov. 5, 2020); *id.* at 3 (amended Jan. 13, 2021); *id.* at 3 (amended Mar. 30, 2021).

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[1] The Chief Judge's initial emergency order, issued on March 18, 2020, did not set out the specifics of the tolling of deadlines but instead generally addressed the Chief Judge's authority over the policies and practices of the Superior Court in a period of emergency and specified that the period of emergency began with the issuance of the order. Order Regarding Operation of the DC Courts During the Coronavirus Emergency (Mar. 18, 2020).

[2] The March 30, 2021 order is not listed on the "Superior Court COVID Orders" page of the DC Courts website but can be found at: https://www.dccourts.gov/sites/default/files/matters-docs/General%20Order%20pdf/Amended-Order-3_30_21_Final.pdf.

The language of the tolling provisions in the emergency orders plainly indicates that the Chief Judge intended to toll the statute of limitations periods only in cases in which the statute of limitations otherwise would have expired during the period of emergency—*i.e.*, between March 18, 2020 and March 30, 2021. *See Peoples Drug Stores, Inc.*, 470 A.2d at 753 ("The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that [they have] used." (internal quotation marks omitted)). In all of the orders, the phrase "that would otherwise expire during the period of emergency" can reasonably be understood only as modifying the entire list of items in the sentence, including statutes of limitations. The court accordingly reads the emergency orders as tolling the statute of limitations periods only in cases in which the limitations periods would otherwise expire between March 18, 2020 and March 30, 2021.

As noted, other Superior Court judges have reached the contrary conclusion, in part by suggesting that a narrow interpretation of the Chief Judge's emergency orders would lead to an unjust result for the unfortunate hypothetical litigant whose claim was set to expire a day after March 30, 2021, the last day of tolling, and whose claim would therefore expire before a claim that arose a year earlier but was tolled for 378 days under the emergency orders. *See Berg v. Hickson*, No. 2021-CA-1977-V at 3–4 (D.C. Super. Ct. Aug. 19, 2021) (Matini, J.); *see also Crown v. Gronigen*, 2022-CA-121-B at 4 (D.C. Super. Ct. Jan. 11, 2022) (Edelman, J.).

The court respectfully disagrees with the other judges. First, as stated, the court reads the emergency orders as admitting only one meaning—that the tolling applies only in cases in which the statute of limitations otherwise would have expired during the period of emergency. Second, the court may not ignore or countermand a clearly-stated policy decision set forth in a set of binding orders of the Chief Judge any more than it is authorized to ignore or countermand the

clear intent of a statute simply because it believes the order or statute is ill-advised or might lead to inequitable results in some circumstances.

Finally, and importantly, the court perceives nothing irrational about the Chief Judge's determination that statutes of limitations should be tolled only if they otherwise would have expired during the period of emergency. The prevailing view of scientists, public health officials, and court and other government leaders in the early months of the pandemic was that people should stay home as much as possible and not interact with others in person unless necessary to some urgent matter. It was thus entirely reasonable, in the court's view, for the Chief Judge to determine that putative plaintiffs and their lawyers should not be forced to meet and investigate their claims during the heart of the pandemic but that those activities would be safe once the judicial emergency was lifted. Indeed, courts in several other jurisdictions similarly determined that statutes of limitations should be tolled only in cases in which the statutory limitations periods otherwise would have expired during the emergency. *See, e.g.*, Supreme Court of the State of Delaware, Administrative Order No.6 at 4 (May 14, 2020) ("Statutes of limitations and statutes of repose that would otherwise expire during the [emergency] period . . . are extended . . . . Deadlines, statutes of limitations, and statutes of repose that are not set to expire [within the emergency period] are not extended or tolled by this order."); Supreme Court of New Hampshire, Renewed and Amended Order at 4 (Mar. 27, 2020) ("Deadlines, statutes of limitations, and statutes of repose that are not set to expire between April 7, 2020, and May 3, 2020 and/or the last day of a Declared State of Emergency are not extended or tolled by this order.").

The court thus concludes that the three-year statute of limitations applicable to the plaintiff's negligence claim was not tolled by the Chief Judge's emergency orders and that the

limitations period therefore expired on May 18, 2022, three years after the claim arose on May 18, 2019. The plaintiff's complaint, filed on March 9, 2023, was thus untimely and is barred as a matter of law by the statute of limitations.

In addition to the expiration of the statute of limitations period, another reason necessitates dismissal of the res ipsa loquitur claim alleged in Count II: res ipsa loquitur is a means of establishing negligence rather than an independent cause of action. *See Powers v. Coates*, 203 A.2d 425, 428 (D.C. 1964) ("The doctrine [of res ipsa loquitur] is a procedural rule of evidence and is not a rule of pleading."); *see also Bunn v. Urb. Shelters & Health Care Sys.*, 672 A.2d 1056, 1060 (D.C. 1996) ("*Res ipsa loquitur* has been described as a procedural rule of evidence . . . . The doctrine is used to establish the defendant's duty of care and the breach of that duty.") (internal quotation marks and citations omitted); *Dawson v. Nat'l Bank & Trust Co.*, 335 A.2d 259, 262 (D.C. 1975) (finding negligence under the doctrine of *res ipsa loquitur*).

Accordingly, it is this 9th day of May 2023

ORDERED that the motion is **granted**. The complaint is **dismissed with prejudice** for failure to state a claim on which relief can be granted. The initial scheduling conference set for June 9, 2023 at 9:30 a.m. is **vacated**. The case is **closed**.

Neal E. Kravitz, Associate Judge
(Signed in Chambers)

Copies to:

Colin Neal, Esq.
Michael C. Robinett, Esq.

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.

/s/ Paul J. Maloney
Signature

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Email Address

23-CV-165
Case Number(s)

December 18, 2023
Date