

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

Gaviria v. Sapphire Ctr. for Rehabilitation & Nursing of Cent.
Queens, LLC

Gaviria, 2025 N.Y. Slip Op. 06603 (Supreme Court of the State of New York Appellate Division Second Judicial Department 2025) · No. 2023-09764 · Decided November 26, 2025

SUMMARY

The Appellate Division, Second Department, reversed an order dismissing the plaintiff's amended complaint under CPLR 3211(a)(7) in an action arising from the COVID-19 death of a nursing-home resident. The court held that the defendants had not conclusively established entitlement to immunity under the Emergency or Disaster Treatment Protection Act and that the amended complaint adequately alleged gross negligence.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Valerie Brathwaite Nelson, J.P.; Paul Wooten, J.; Barry E. Warhit, J.; Lourdes M. Ventura, J.
JURISDICTION	New York Supreme Court, Appellate Division, Second Department
DECIDED	November 26, 2025
DOCKET	2023-09764
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiff appealed from an order of the Supreme Court, Queens County, granting defendants' CPLR 3211(a)(7) motion to dismiss the amended complaint in an action alleging negligence and gross negligence arising from care provided to a nursing-home resident who died from COVID-19.
STANDARD OF REVIEW	On a CPLR 3211(a)(7) motion, the complaint receives a liberal construction, its allegations are accepted as true, and the plaintiff receives the benefit of every favorable inference; the court determines whether the alleged facts fit within any cognizable legal theory. Dismissal based on evidentiary submissions is warranted only when

	those submissions conclusively establish that the plaintiff has no cause of action.
PRECEDENTIAL VALUE	published
PARTIES	John Gaviria, individually and as administrator of his mother's estate v. Sapphire Center for Rehabilitation and Nursing of Central Queens, LLC, Jerry Enella, et al.

TOPICS

[motions to dismiss](#)
[nursing home liability](#)
[health law](#)
[negligence](#)
[appellate procedure](#)

PRACTICE AREAS

[civil procedure](#)
[health law](#)
[nursing home liability](#)
[negligence](#)
[appellate procedure](#)

QUESTIONS PRESENTED

1. Whether repeal of the Emergency or Disaster Treatment Protection Act applied retroactively to conduct occurring before the repeal.
2. Whether defendants' evidentiary submissions conclusively established all requirements for immunity under the EDTPA on a CPLR 3211(a)(7) motion.
3. Whether the amended complaint adequately alleged conduct constituting gross negligence notwithstanding the EDTPA's immunity provisions.

HOLDINGS

1. The repeal of the EDTPA did not apply retroactively to the defendants' treatment of the decedent.
2. Defendants' evidentiary submissions did not conclusively establish that all three EDTPA immunity requirements were satisfied, and therefore did not establish that plaintiff had no cause of action.
3. The amended complaint adequately alleged conduct constituting gross negligence.

KEY QUOTATIONS

“Generally, on a motion to dismiss a complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the complaint is afforded a liberal construction, the allegations are accepted as true, the plaintiff is accorded the benefit of every possible favorable inference, and the court determines whether the facts as alleged fit within any cognizable legal theory” (at 728)

“the defendants' evidentiary submissions failed to establish conclusively that the three requirements for immunity under the EDTPA were met with respect to the alleged care of the decedent” (at 619)

FACTUAL BACKGROUND

The decedent resided at Sapphire Center for Rehabilitation and Nursing of Central Queens, LLC, from July 2017 until her death from COVID-19 on April 6, 2020. Gaviria, individually and as administrator of her estate, alleged

negligence and gross negligence concerning the decedent's care at the facility. Defendants relied on the Emergency or Disaster Treatment Protection Act to assert immunity and challenged the sufficiency of the gross-negligence allegations.

PROCEDURAL HISTORY

Gaviria commenced the action individually and as administrator of his mother's estate. Defendants moved to dismiss the amended complaint under CPLR 3211(a)(7), asserting immunity under the Emergency or Disaster Treatment Protection Act and arguing that the complaint failed to allege gross negligence. The Supreme Court granted the motion. The Appellate Division reversed and denied the motion.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The order of the Supreme Court, Queens County, was reversed, with costs, and defendants' CPLR 3211(a)(7) motion to dismiss the amended complaint was denied.

CASES CITED

- Connolly v. Long Is. Power Auth., 30 N.Y.3d 719, 728
- Leon v. Martinez, 84 N.Y.2d 83, 87-88
- Guggenheimer v. Ginzburg, 43 N.Y.2d 268, 275
- Rovello v. Orofino Realty Co., 40 N.Y.2d 633, 636
- Lawrence v. Graubard Miller, 11 N.Y.3d 588, 595
- Mera v. New York City Health & Hosps. Corp., 220 A.D.3d 668, 669
- Damon v. Clove Lakes Healthcare & Rehabilitation Ctr., Inc., 228 A.D.3d 618, 619
- Hasan v. Terrace Acquisitions II, LLC, 224 A.D.3d 475, 476-478
- Whitehead v. Pine Haven Operating LLC, 222 A.D.3d 104, 108-109
- Ruth v. Elderwood at Amherst, 209 A.D.3d 1281, 1284-1291
- Bennett v. State Farm Fire & Cas. Co., 161 A.D.3d 926, 929