

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

Byington v. North Sea Assoc., LLC

2025 NY Slip Op 07372 · No. 2023-10467 · Decided December 31, 2025

SUMMARY

The Appellate Division, Second Department reversed an order denying a nursing home's motion to dismiss claims arising from a decedent's COVID-19 infection and death. The court held that repeal of the Emergency or Disaster Treatment Protection Act was not retroactive and that the defendant established immunity under the Act. The court also concluded that the allegations of gross negligence and pre-pandemic regulatory violations were insufficiently specific or were conclusively refuted by the defendant's submissions.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Cheryl E. Chambers, J.P.; Linda Christopher, J.; Carl J. Landicino, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	December 31, 2025
DOCKET	2023-10467
DISPOSITION	reversed
PROCEDURAL POSTURE	Defendant appealed from an order denying its CPLR 3211(a) motion to dismiss a wrongful-death and related complaint.
STANDARD OF REVIEW	On a CPLR 3211(a)(7) motion, the complaint is liberally construed, its factual allegations are presumed true, and the plaintiff receives the benefit of every favorable inference; the court determines whether the facts fit within any cognizable legal theory. Under CPLR 3211(a)(1), dismissal is proper only when documentary evidence utterly refutes the allegations and conclusively establishes a defense as a matter of law.
PRECEDENTIAL VALUE	Published

PARTIES

North Sea Associates, LLC v. Grace A. Byington, as administrator of the estate of the decedent

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QUESTIONS PRESENTED

1. Whether repeal of the Emergency or Disaster Treatment Protection Act applied retroactively to eliminate the defendant's immunity for conduct occurring during the COVID-19 emergency.
2. Whether the defendant's submissions conclusively established immunity under the EDTPA.
3. Whether the complaint adequately pleaded gross negligence, reckless or intentional misconduct, and pre-pandemic negligence claims.

HOLDINGS

1. The repeal of the Emergency or Disaster Treatment Protection Act did not apply retroactively.
2. The defendant was entitled to immunity under the EDTPA because the statutory requirements for immunity were satisfied and no statutory exception applied.
3. The allegations of gross negligence, reckless or intentional misconduct were conclusory and insufficient to survive the motion to dismiss.
4. The pre-pandemic negligence allegations were either bare legal conclusions lacking factual specificity or were conclusively defeated by the defendant's submissions.

KEY QUOTATIONS

“On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the complaint is to be afforded a liberal construction, the facts alleged are presumed to be true, the plaintiff is afforded the benefit of every favorable inference, and the court is to determine only whether the facts as alleged fit within any cognizable legal theory” ([*1])

“The Supreme Court erred in determining that the repeal of the EDTPA applied retroactively” ([*2])

“The defendant's submissions, including, inter alia, the affidavit of its acting director of nursing in 2020, its various COVID-19 pandemic-related policies and protocols, the directives issued by the New York State Department of Health, and the defendant's progress notes regarding the decedent, conclusively established that the defendant was entitled to immunity as the three requirements for immunity under the EDTPA were satisfied” ([*2])

FACTUAL BACKGROUND

The decedent resided at the defendant nursing home from October 2019 until June 2020. The plaintiff alleged that the decedent contracted COVID-19 at the facility and died on June 15, 2020. The complaint asserted claims under Public Health Law § 2801-d, wrongful death, and gross negligence.

PROCEDURAL HISTORY

The plaintiff commenced an action against a nursing home alleging that the decedent contracted COVID-19 while residing there and died as a result. The Supreme Court, Suffolk County, denied the defendant's motion to dismiss. The Appellate Division reversed and granted the motion.

DISPOSITION

reversed

CASES CITED

- Martinez v. NYC Health & Hosps. Corp., 223 AD3d 731, 732
- Watts v. City of New York, 186 AD3d 1577, 1578
- Lockwood v. CBS Corp., 219 AD3d 1326, 1327
- Young v. 101 Old Mamaroneck Rd. Owners Corp., 211 AD3d 771, 774
- Godfrey v. Spano, 13 NY3d 358, 373
- Lam v. Weiss, 219 AD3d 713, 715
- Monaghan v. Roman Catholic Diocese of Rockville Ctr., 165 AD3d 650, 652
- Mera v. New York City Health & Hosps. Corp., 220 AD3d 668, 669-670
- Cordell Marble Falls, LLC v. Kelly, 191 AD3d 760, 761-762
- Damon v. Clove Lakes Healthcare & Rehabilitation Ctr., Inc., 228 AD3d 618, 618-619
- Sokol v. Leader, 74 AD3d 1180, 1181-1182
- Kluska v. Montefiore St. Luke's Cornwall, 227 AD3d 690, 691
- Ajaka v. Mount Sinai Hosp., 189 AD3d 963, 965
- Goshen v. Mutual Life Ins. Co. of N.Y., 98 NY2d 314, 326
- Gonnely v. Newburgh Operations, LLC, 236 AD3d 866, 867-868
- Ruth v. Elderwood at Amherst, 209 AD3d 1281, 1283
- Whitehead v. Pine Haven Operating LLC, 222 AD3d 104, 110-111