

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

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

Ho, 2025 NY Slip Op 06636 (Appellate Division of the Supreme Court of the State of New York Second Judicial Department 2025) · No. 2023-09763 · Decided November 26, 2025

SUMMARY

The Appellate Division, Second Department reversed an order dismissing an amended complaint arising from the COVID-19 death of a nursing-home resident. The court held that the defendants’ evidentiary submissions did not conclusively establish entitlement to immunity under the Emergency or Disaster Treatment Protection Act, although the Act’s repeal was not retroactive. The court also held that the amended complaint adequately alleged gross negligence and denied the defendants’ CPLR 3211(a)(7) motion.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                    |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Appellate Division of the Supreme Court of the State of New York, Second Judicial Department                                                                                                                                                                                                                       |
| WRITING FOR THE COURT | Valerie Brathwaite Nelson, J.P.; Paul Wooten, J.; Barry E. Warhit, J.; Lourdes M. Ventura, J.                                                                                                                                                                                                                      |
| JURISDICTION          | Supreme Court of the State of New York, Appellate Division, Second Judicial Department                                                                                                                                                                                                                             |
| DECIDED               | November 26, 2025                                                                                                                                                                                                                                                                                                  |
| DOCKET                | 2023-09763                                                                                                                                                                                                                                                                                                         |
| DISPOSITION           | reversed                                                                                                                                                                                                                                                                                                           |
| PROCEDURAL POSTURE    | Plaintiffs appealed from an order granting defendants' CPLR 3211(a)(7) motion to dismiss the amended complaint in an action alleging negligence and gross negligence relating to care provided at a nursing facility.                                                                                              |
| STANDARD OF REVIEW    | On a CPLR 3211(a)(7) motion, the complaint is liberally construed, its allegations are accepted as true, and the plaintiff receives the benefit of every possible favorable inference; dismissal is proper only when the defendant's submissions conclusively establish that the plaintiff has no cause of action. |

|                           |                                                                                                                                                                                 |
|---------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PRECEDENTIAL VALUE</b> | published                                                                                                                                                                       |
| <b>PARTIES</b>            | Wenny Ho, individually and as administrator of the decedent's estate, Decedent's husband v. Sapphire Center for Rehabilitation and Nursing of Central Queens, LLC, Jerry Enella |

## TOPICS

nursing home liability motions to dismiss medical malpractice negligence appellate procedure

## PRACTICE AREAS

health law nursing home liability medical malpractice civil procedure appellate procedure

## QUESTIONS PRESENTED

1. Whether the repeal of the Emergency or Disaster Treatment Protection Act applied retroactively to alleged conduct occurring while the Act was in effect.
2. Whether defendants conclusively established on a CPLR 3211(a)(7) motion that they satisfied all requirements for EDTPA immunity.
3. Whether the amended complaint adequately alleged conduct constituting gross negligence.

## HOLDINGS

1. The repeal of the EDTPA did not apply retroactively to conduct occurring while the statute was in effect.
2. Defendants' evidentiary submissions did not conclusively establish that all three statutory requirements for EDTPA immunity were satisfied, so they did not establish that plaintiffs had no causes of action.
3. The amended complaint adequately alleged conduct constituting gross negligence.

## KEY QUOTATIONS

*"When evidentiary material is considered, the criterion is whether the [plaintiff] has a cause of action, not [the plaintiff] has stated one, and, unless it has been shown that a material fact as claimed by the [plaintiff] to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, . . . dismissal should not eventuate"* (\*1)

*"the defendants' evidentiary submissions failed to establish conclusively that the three requirements for immunity under the EDTPA were met"* (\*2)

## FACTUAL BACKGROUND

The decedent resided at Sapphire Center for Rehabilitation and Nursing of Central Queens, LLC, from January 2017 until her death from COVID-19 on April 9, 2020. Her daughter, individually and as estate administrator, and her husband alleged that defendants were negligent and grossly negligent in providing or arranging her care. Defendants sought dismissal, asserting immunity under the Emergency or Disaster Treatment Protection Act and contending that the amended complaint did not adequately allege gross negligence.

## PROCEDURAL HISTORY

The decedent's daughter, individually and as administrator of the decedent's estate, and the decedent's husband commenced an action against the nursing facility and Jerry Enella. Supreme Court, Queens County, granted defendants' motion to dismiss the amended complaint based on immunity under the EDTPA and insufficiency of the gross-negligence allegations. The Appellate Division reversed and denied the motion.

## DISPOSITION

reversed

## REMAND INSTRUCTIONS

The order granting defendants' CPLR 3211(a)(7) motion is reversed, and the motion to dismiss the amended complaint is denied.

## CASES CITED

- Connolly v Long Is. Power Auth., 30 NY3d 719, 728
- Leon v Martinez, 84 NY2d 83, 87-88
- Guggenheimer v Ginzburg, 43 NY2d 268, 275
- Rovello v Orofino Realty Co., 40 NY2d 633, 636
- Lawrence v Graubard Miller, 11 NY3d 588, 595
- Mera v New York City Health & Hosps. Corp., 220 AD3d 668, 669
- Damon v Clove Lakes Healthcare & Rehabilitation Ctr., Inc., 228 AD3d 618, 619
- Hasan v Terrace Acquisitions II, LLC, 224 AD3d 475, 476-478
- Whitehead v Pine Haven Operating LLC, 222 AD3d 104, 108-109
- Ruth v Elderwood at Amherst, 209 AD3d 1281, 1284-1291
- Bennett v State Farm Fire & Cas. Co., 161 AD3d 926, 929