

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT**

Guzman v. Americare, Inc.

2022 NY Slip Op 05752 (App. Div. 2022) · No. Appeal No. 16418; Case No. 2022-01314; Index No. 24877/18E
· Decided October 13, 2022

SUMMARY

The Appellate Division, First Department, affirmed the denial of defendants' motion to amend their answer to add constitutional defenses challenging the definition of the certified class. The court held that the proposed defense was plainly meritless because it contravened the court's prior class-certification determination and that permitting the amendment would prejudice the plaintiff.

OPINION

PER CURIAM.

Guzman v Americare, Inc. (2022 NY Slip Op 05752) Guzman v Americare, Inc. 2022 NY Slip Op 05752 Decided on October 13, 2022 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: October 13, 2022 Before: Kapnick, J.P., Webber, González, Kennedy, JJ. Index No. 24877/18E Appeal No. 16418 Case No. 2022-01314 [*1]Laury Vasquez Guzman, Individually and on Behalf of All Other Persons Similarly Situated, Plaintiff-Respondent, vAmericare, Inc., et al., Defendants-Appellants, Does #1-10, Defendants.

Peckar & Abramson, P.C., New York (Kevin J. O'Connor of counsel), for appellants. Law Office of William Coudert Rand, New York (William C. Rand of counsel), for respondent. Order, Supreme Court, Bronx County (Leticia M. Ramirez, J.), entered on or about March 7, 2022, which denied defendants' motion for leave to amend their answer to the first amended class action complaint to include an affirmative defense asserting additional constitutional defenses, unanimously affirmed, without costs.

Defendants sought to add an affirmative defense asserting that the class, as defined, violated their due process rights. The proposed defense, however, was in clear contravention of this Court's prior determination that plaintiff was entitled to class certification (Guzman v Americare, Inc., 202 AD3d 504, 504 [1st Dept 2022], lv dismissed 38 NY3d 1156 [2022]).

Thus, the proposed defense is patently devoid of merit (see MBIA Ins. Corp. v Greystone & Co. Inc., 74 AD3d 499, 499 [1st Dept 2010]). Moreover, plaintiff would be prejudiced if defendants

were permitted to challenge the class certification again at this late stage in the litigation (see *Kocourek v Booz Allen Hamilton Inc.*, 85 AD3d 502, 505 [1st Dept 2011]).

We have considered defendants' remaining contentions and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: October 13, 2022

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