

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

Cacace v Grandell Rehabilitation & Nursing Ctr., Inc.

Cacace v. Grandell Rehabilitation & Nursing Ctr., Inc., 2026 NY Slip Op 01759 (N.Y. Ct. App. 2026) · No. 2022-07501; 2023-04679 · Decided March 25, 2026

SUMMARY

The Appellate Division, Second Department held that the defendant nursing facility was not shown to have PREP Act immunity because the submissions did not establish that the decedent’s injuries arose from use of an approved countermeasure. It also held that the EDTPA repeal was not retroactive and that the defendant established EDTPA immunity for negligence claims based on conduct occurring on or after March 7, 2020. The court further directed dismissal of the gross-negligence causes of action and dismissed the appeal from the superseded amended order.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Cheryl E. Chambers, J.; Lillian Wan, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	March 25, 2026
DOCKET	2022-07501; 2023-04679
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed from an amended order denying its CPLR 3211(a) motion to dismiss and from a subsequent order that, upon reargument and renewal, adhered to that determination.
STANDARD OF REVIEW	On a CPLR 3211(a)(7) motion, the complaint receives a liberal construction, its factual allegations are presumed true, and the court determines whether the alleged facts fit within any cognizable legal theory. When evidentiary material is considered without converting the motion to one for summary judgment, the issue is whether the plaintiff has a cause of action; dismissal is warranted only when a material fact alleged by the plaintiff is not a fact at all and no significant dispute exists.

PRECEDENTIAL VALUE	Published and precedential New York Appellate Division decision
PARTIES	Grandell Rehabilitation and Nursing Center, Inc. v. Michael Cacace, as administrator of the estate of the decedent

TOPICS

nursing home liability negligence motions to dismiss statutory interpretation appellate procedure

PRACTICE AREAS

health law torts civil procedure appellate procedure statutory interpretation

QUESTIONS PRESENTED

1. Whether the complaint adequately alleged causes of action for gross negligence.
2. Whether the defendant established immunity from the plaintiff's claims under the federal Public Readiness and Emergency Preparedness Act.
3. Whether the defendant established immunity under New York's Emergency or Disaster Treatment Protection Act for alleged negligence occurring on or after March 7, 2020.
4. Whether repeal of the Emergency or Disaster Treatment Protection Act was retroactive.

HOLDINGS

1. The gross-negligence causes of action must be dismissed because the complaint's factual allegations were insufficient to support a claim for gross negligence.
2. The defendant did not establish immunity under the PREP Act because its submissions failed to show that the decedent's injuries arose from the use of an approved covered countermeasure.
3. The defendant established immunity under the EDTPA for the negligence claims based on conduct occurring on or after March 7, 2020, and those claims must be dismissed.

KEY QUOTATIONS

“Since the complaint's factual allegations were insufficient to support a claim of gross negligence, the Supreme Court, in effect, upon renewal and reargument, should have granted that branch of the defendant's motion which was to dismiss the causes of action alleging gross negligence” ([*2])

“Contrary to the plaintiff's contention, the repeal of the EDTPA was not retroactive” ([*2])

FACTUAL BACKGROUND

The decedent resided at Grandell Rehabilitation and Nursing Center from March 3, 2020, until April 7, 2020, when he died. The plaintiff alleged that the decedent contracted COVID-19 and that the defendant negligently failed to prepare and implement adequate infection-control procedures both before and after March 7, 2020. The defendant sought dismissal based on immunity under the federal PREP Act and New York's Emergency or Disaster Treatment Protection Act, as well as dismissal of the gross-negligence claims.

PROCEDURAL HISTORY

The plaintiff commenced a negligence action alleging that the decedent contracted COVID-19 while residing at the defendant nursing facility and later died. The Supreme Court, Nassau County, denied the defendant's motion to dismiss. Upon the defendant's motion for reargument and renewal, the Supreme Court adhered to its prior determination. The Appellate Division dismissed the appeal from the superseded amended order, modified the later order to dismiss the gross-negligence claims and negligence claims based on conduct occurring on or after March 7, 2020, and affirmed as modified.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Supreme Court's order was modified to vacate the portion adhering to denial of dismissal and to grant the branches of the defendant's CPLR 3211(a) motion seeking dismissal of the gross-negligence causes of action and the negligence causes of action based on conduct occurring on or after March 7, 2020. The order was affirmed as modified.

CASES CITED

- Gorbатов v. Tsirelman, 155 AD3d 836, 837
- Gunggenheimer v. Ginzburg, 43 NY2d 268, 275
- Estate of Pierro v. Carmel Richmond Healthcare & Rehabilitation Ctr., 241 AD3d 645
- Kluska v. Montefiore St. Luke's Cornwall, 227 AD3d 690, 691-692
- Sweatman v. Hurlbut, 237 AD3d 1598, 1601
- Sapienza v. Tromba, 241 AD3d 722
- Lara v. S & J Operational, LLC, 237 AD3d 1186, 1188
- Gonnely v. Newburgh Operations, LLC, 236 AD3d 866, 868
- Damon v. Clove Lakes Healthcare & Rehabilitation Ctr., Inc., 228 AD3d 618, 619
- Hyman v. Richmond Uni. Med. Ctr., 239 AD3d 617, 618

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