

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

Lee v. Sapphire Center for Rehabilitation and Nursing of Central Queens, LLC, et al.

Lee v. Sapphire Ctr. for Rehabilitation & Nursing of Cent. Queens, LLC, 2025 NY Slip Op 06610 (2d Dep't 2025) · No. 2023-07901 · Decided November 26, 2025

SUMMARY

The Appellate Division, Second Department reversed an order dismissing Berna Lee's complaint against a nursing facility and related defendants arising from her mother's COVID-19 illness and death. The court held that the defendants' submissions did not conclusively establish entitlement to immunity under the Emergency or Disaster Treatment Protection Act and that the complaint adequately alleged gross negligence.

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 Department
DECIDED	November 26, 2025
DOCKET	2023-07901
DISPOSITION	reversed
PROCEDURAL POSTURE	The plaintiff appealed from an order granting the defendants' CPLR 3211(a) motion to dismiss an action alleging negligence, gross negligence, and related claims arising from a nursing-home resident's COVID-19 illness and death.
STANDARD OF REVIEW	On a CPLR 3211(a)(7) motion, the complaint is afforded a liberal construction, its allegations are accepted as true, and the plaintiff receives the benefit of every favorable inference; dismissal is proper only when the submissions conclusively establish that the plaintiff has no cause of action.
PRECEDENTIAL VALUE	published

PARTIES

Berna Lee, individually and as administrator of her mother's estate v. Sapphire Center for Rehabilitation and Nursing of Central Queens, LLC, Jerry Enella, et al.

TOPICS

nursing home liability

medical malpractice

motions to dismiss

statutory interpretation

PRACTICE AREAS

health law

nursing home liability

medical malpractice

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether repeal of the Emergency or Disaster Treatment Protection Act applied retroactively to conduct occurring while the Act was in effect.
2. Whether the defendants' evidentiary submissions conclusively established that all requirements for EDTPA immunity were satisfied.
3. Whether the complaint adequately alleged conduct constituting gross negligence, for which EDTPA immunity would not apply.
4. Whether the complaint should have been dismissed under CPLR 3211(a).

HOLDINGS

1. The repeal of the Emergency or Disaster Treatment Protection Act did not apply retroactively to the defendants' alleged conduct.
2. The defendants were not entitled to dismissal because their evidentiary submissions failed to establish conclusively that all three statutory requirements for EDTPA immunity were met.
3. The complaint adequately alleged conduct constituting gross negligence.
4. The complaint should not have been dismissed because the defendants did not conclusively establish that the plaintiff had no cause of action, and the allegations supported cognizable negligence and gross-negligence theories.

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” (*1)*

*“However, 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 and, therefore, failed to establish that the plaintiff has no causes of action against them” (*2)*

FACTUAL BACKGROUND

The decedent resided at Sapphire Center for Rehabilitation and Nursing of Central Queens, LLC, from January 2018 until April 2020, when she was transferred to a hospital. She tested positive for COVID-19 and died two months later. Her daughter, individually and as administrator of the decedent's estate, alleged that negligence and gross negligence in the decedent's care contributed to the harm.

PROCEDURAL HISTORY

The plaintiff commenced an action after her mother, a resident of Sapphire, contracted COVID-19 and died. The Supreme Court, Queens County, granted the defendants' motion to dismiss, concluding that the defendants were immune under the Emergency or Disaster Treatment Protection Act and that the complaint did not adequately allege gross negligence. The Appellate Division reversed and denied the motion.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The order granting the defendants' motion to dismiss is reversed, with costs, and the defendants' CPLR 3211(a) motion 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

OPINION

PER CURIAM.

Lee v Sapphire Ctr. for Rehabilitation & Nursing of Cent. Queens, LLC (2025 NY Slip Op 06610) Lee v Sapphire Ctr. for Rehabilitation & Nursing of Cent. Queens, LLC 2025 NY Slip Op 06610 Decided on November 26, 2025 Appellate Division, Second 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 on November 26, 2025 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department VALERIE BRATHWAITE NELSON, J.P. PAUL WOOTEN BARRY E. WARHIT LOURDES M. VENTURA, JJ. 2023-07901 (Index No. 709914/22) [*1]Berna Lee, etc., appellant, v Sapphire Center for Rehabilitation and Nursing of Central Queens, LLC, et al., respondents. Gough Law Firm, LLP (Horn Appellate Group, Brooklyn, NY [Scott T. Horn and Lauren E. Bryant], of counsel), for appellant.

Caitlin Robin & Associates, PLLC, New York, NY (Caitlin A. Robin and Mark A. Laughlin of counsel), for respondents Sapphire Center for Rehabilitation and Nursing of Central Queens, LLC, and Jerry Enella. DECISION & ORDER In an action, inter alia, to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Queens County (Peter O'Donoghue, J.), entered May 16, 2023.

The order granted the defendants' motion pursuant to CPLR 3211(a) to dismiss the complaint. ORDERED that the order is reversed, on the law, with costs, and the defendants' motion pursuant to CPLR 3211(a) to dismiss the complaint is denied.

The plaintiff's mother (hereinafter the decedent) was a resident at the defendant Sapphire Center for Rehabilitation and Nursing of Central Queens, LLC (hereinafter Sapphire), from January 2018 until April 2020, when she was transferred to a hospital.

The decedent tested positive for COVID-19 and died two months later from the disease. The plaintiff, individually and as administrator of her mother's estate, commenced this action, inter alia, to recover damages for personal injuries, alleging negligence and gross negligence, among other things, relating to the decedent's care at Sapphire.

The defendants moved pursuant to CPLR 3211(a) to dismiss the complaint on the grounds, inter alia, that they were immune from liability under the Emergency or Disaster Treatment Protection Act (EDTPA) (Public Health Law former art 30-D, §§ 3080-3082, repealed by L 2021, ch 96, § 1) and that the complaint failed to set forth any facts that would establish gross negligence.

In the order appealed from, the Supreme Court granted the motion, finding that the defendants were protected from liability by the EDTPA and that the allegations in the complaint did not rise to the level of gross negligence.

The plaintiff appeals. We reverse. 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 (see Connolly v Long Is.

Power Auth., 30 NY3d 719, 728; Leon v Martinez, 84 NY2d 83, 87-88). "When evidentiary material is considered, the criterion is whether the [plaintiff] has a cause of action, not whether [the plaintiff] has stated one, and, unless it has been shown that a material fact as claimed [*2]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" (Guggenheimer v Ginzburg, 43 NY2d 268, 275; see Leon v Martinez, 84 NY2d at 88).

Submissions by the defendant on a motion pursuant to CPLR 3211(a)(7) "will seldom if ever warrant [dismissal] unless [they] establish conclusively that plaintiff has no cause of action" (Rovello v Orofino Realty Co., 40 NY2d 633, 636; see Lawrence v Graubard Miller, 11 NY3d 588, 595). At the outset of the COVID-19 pandemic, the New York State Legislature enacted the EDTPA in order "to promote the public health, safety and welfare of all citizens by broadly protecting the health care facilities and health care professionals in this state from liability that may result from treatment of individuals with COVID-19 under conditions resulting from circumstances associated with the public health emergency" (Public Health Law former § 3080; see Mera v New York City Health & Hosps.

Corp., 220 AD3d 668, 669). The relevant provisions of the EDTPA that were in effect at the time of the defendants' treatment of the decedent provided health care facilities and health care professionals with immunity from civil liability "for any harm or damages alleged to have been sustained as a result of an act or omission in the course of arranging for or providing health care services, if: (a) the health care facility or health care professional [was] arranging for or providing health care services pursuant to a COVID-19 emergency rule or otherwise in accordance with applicable law; (b) the act or omission occur[ed] in the course of arranging for or providing health care services and the treatment of the individual [was] impacted by the health care facility's or health care professional's decisions or activities in response to or as a result of the COVID-19 outbreak and in support of the state's directives; and (c) the health care facility or health care professional [was] arranging for or providing health care services in good faith" (Public Health Law former § 3082[1]).

The EDTPA further provided, in relevant part, that the immunity would not apply "if the harm or damages were caused by an act or omission constituting... gross negligence [or] reckless misconduct,... provided, however, that acts, omissions or decisions resulting from a resource or staffing shortage shall not be considered to be... gross negligence [or] reckless misconduct" (id. former § 3082[2]).

The EDTPA was repealed on April 6, 2021 (see L 2021, ch 96, § 1). Contrary to the plaintiff's contention, the Supreme Court properly determined that the repeal of the EDTPA did not apply retroactively (see 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).

However, 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 and, therefore, failed to establish that the plaintiff has no causes of action against them (see Public Health Law former § 3082[1]; Damon v Clove Lakes Healthcare & Rehabilitation Ctr., Inc., 228 AD3d at 619).

Furthermore, accepting the allegations in the complaint as true and according the plaintiff the benefit of every possible favorable inference, the complaint adequately set forth conduct constituting gross negligence (see generally Bennett v State Farm Fire & Cas. Co., 161 AD3d 926, 929).

Accordingly, the Supreme Court should have denied the defendants' motion pursuant to CPLR 3211(a) to dismiss the complaint. BRATHWAITE NELSON, J.P., WOOTEN, WARHIT and VENTURA, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court