

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

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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