

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

Haji-Georgi v. Wishner

Haji-Georgi, 2026 NY Slip Op 00767 (Supreme Court of the State of New York Appellate Division Second
Judicial Department 2026) · No. 2025-02950 · Decided February 11, 2026

OPINION

Haji-Georgi v. Wishner 2026 NY Slip Op 00767

PER CURIAM.

Haji-Georgi v Wishner (2026 NY Slip Op 00767) Haji-Georgi v Wishner 2026 NY Slip Op
00767 Decided on February 11, 2026 Appellate Division, Second Department Published by New
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and subject to revision before publication in the Official Reports. Decided on February 11, 2026

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Second Judicial Department MARK C. DILLON, J.P.

CHERYL E. CHAMBERS

LILLIAN WAN

LAURENCE L. LOVE, JJ. 2025-02950

(Index No. 608634/23) [*1]Demetra Haji-Georgi, et al., respondents, v Steven G. Wishner, et al.,
defendants, NYU Langone Huntington Medical Group, et al., appellants. Garfunkel Wild, P.C.,
Great Neck, NY (Andrew L. Zwerling and Joshua M. Zarcone of counsel), for appellants.
Gruenberg Kelly Della (Horn Appellate Group, Brooklyn, NY [Scott T. Horn and Nicholas S.
Bruno], of counsel), for respondents. DECISION & ORDER In an action to recover damages
for personal injuries, etc., the defendants NYU Langone Huntington Medical Group and NYU
Langone Health System appeal from an order of the Supreme Court, Suffolk County (Deanna D.
Panico, J.), dated January 14, 2025. The order, insofar as appealed from, denied that branch of
those defendants' motion which was pursuant to CPLR 3211(a) to dismiss the complaint insofar as
asserted against them. ORDERED that the order is reversed insofar as appealed from, on the law,
with costs, and that branch of the motion of the defendants NYU Langone Huntington Medical
Group and NYU Langone Health System which was pursuant to CPLR 3211(a) to dismiss the
complaint insofar as asserted against them is granted. In 2023, the plaintiff Demetra Haji-Georgi
(hereinafter the injured plaintiff), and her husband suing derivatively, commenced this action
against the defendants Steven G. Wishner and Huntington Medical Group, P.C. (hereinafter
HMG), and the defendants NYU Langone Huntington Medical Group and NYU Langone Health
System (hereinafter together the NYU defendants), inter alia, to recover damages for personal
injuries pursuant to the Adult Survivors Act (CPLR 214-j) based upon allegations that Wishner
forcibly touched and sexually abused the injured plaintiff during a medical examination that

Wishner performed on the injured plaintiff in 2005 (hereinafter the 2005 examination). The plaintiffs alleged that at the time of the 2005 examination, Wishner was employed by HMG and that the NYU defendants were vicariously liable for Wishner's misconduct because sometime after the 2005 examination, the NYU defendants acquired, merged with, or otherwise became the successor to HMG. The NYU defendants moved, among other things, pursuant to CPLR 3211(a) to dismiss the complaint insofar as asserted against them. In an order dated January 14, 2025, the Supreme Court, inter alia, denied that branch of the motion. The NYU defendants appeal. A motion pursuant to CPLR 3211(a)(1) to dismiss a complaint on the ground that the [*2]action is barred by documentary evidence may only be granted where the documentary evidence utterly refutes the factual allegations in the complaint, thereby conclusively establishing a defense as a matter of law (see *Goshen v Mutual Life Ins. Co. of N.Y.* , 98 NY2d 314, 326 ; *IPA Asset Mgt., LLC v Schuman* , 239 AD3d 619). To qualify as documentary evidence, the evidence must be unambiguous, authentic, and undeniable, such as judicial records and documents reflecting out-of-court transactions, including mortgage agreements, deeds, contracts, and any other papers, the contents of which essentially are undeniable (see *Yan Ping Xu v Van Zwienen* , 212 AD3d 872, 874 ; *Phillips v Taco Bell Corp.* , 152 AD3d 806, 807). Here, the NYU defendants' documentary evidence utterly refuted the plaintiffs' allegations as to the NYU defendants' successor liability, thereby warranting dismissal of the complaint insofar as asserted against them pursuant to CPLR 3211(a)(1). In general, a corporation that acquires the assets of another is not liable for the torts of its predecessor (see *Schumacher v Richards Shear Co.* , 59 NY2d 239, 244-245). However, "[a] corporation may be held liable for the torts of its predecessor if (1) it expressly or impliedly assumed the predecessor's tort liability, (2) there was a consolidation or merger of seller and purchaser, (3) the purchasing corporation was a mere continuation of the selling corporation, or (4) the transaction is entered into fraudulently to escape such obligations" (*id.* at 245). The NYU defendants' documentary evidence demonstrated, among other things, that (1) the NYU defendants did not expressly or impliedly assume HMG's tort liability, (2) HMG and the NYU defendants did not formally consolidate into a new entity, and (3) HMG was not extinguished but rather survived the transaction (see *Barth v Wishner* , ___ AD3d ___, 2025 NY Slip Op 07269). To the extent the complaint may be viewed as pleading a de facto merger of HMG and the NYU defendants (see *Menche v CDx Diagnostics, Inc.* , 199 AD3d 678, 680-681 ; *Bonanni v Horizons Invs. Corp.* , 179 AD3d 995, 999), the NYU defendants' documentary evidence refuted any such allegation (see *Barth v Wishner* , ___ AD3d ___, 2025 NY Slip Op 07269 ; *Aguilar v Wishner* , ___ AD3d ___, 2025 NY Slip Op 07266 ; *Steffens v Wishner* , ___ AD3d ___, 2025 NY Slip Op 07328 ; see also *Oorah, Inc. v Covista Communications, Inc.* , 139 AD3d 444, 445). Accordingly, the Supreme Court should have granted that branch of the NYU defendants' motion which was pursuant to CPLR 3211(a) to dismiss the complaint insofar as asserted against them. DILLON, J.P., CHAMBERS, WAN and LOVE, JJ., concur. ENTER: Darrell M. Joseph Clerk of the Court

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