

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

971

CA 12-00173

PRESENT: SCUDDER, P.J., FAHEY, SCONIERS, AND VALENTINO, JJ.

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CARMEN BRITT AND CARMEN BRITT, AS EXECUTOR OF  
THE ESTATE OF LULA BAITY, DECEASED,  
PLAINTIFF-APPELLANT,

V

ORDER

BUFFALO MUNICIPAL HOUSING AUTHORITY, ELAINE  
GARBE, BISILOLA F. JACKSON, AS ADMINISTRATOR OF  
THE ESTATE OF JERELENE ELIZABETH GIWA, DECEASED,  
GRACE MANOR HEALTH CARE FACILITY, INC., DAVID J.  
GENTNER, MARY STEPHAN, KATHY RANDALL, TIFFANY  
MATTHEWS AND PHILLIP J. RADOS, M.D.,  
DEFENDANTS-RESPONDENTS.  
(APPEAL NO. 1.)

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LAW OFFICE OF FRANK S. FALZONE, BUFFALO (RONALD P. HART OF COUNSEL),  
FOR PLAINTIFF-APPELLANT.

COLUCCI & GALLAHER, P.C., BUFFALO (JOHN J. MARCHESE OF COUNSEL), FOR  
DEFENDANTS-RESPONDENTS BUFFALO MUNICIPAL HOUSING AUTHORITY, ELAINE  
GARBE, AND BISILOLA F. JACKSON, AS ADMINISTRATOR OF THE ESTATE OF  
JERELENE ELIZABETH GIWA, DECEASED.

ROACH, BROWN, MCCARTHY & GRUBER, P.C., BUFFALO (ELIZABETH G. ADYMY OF  
COUNSEL), FOR DEFENDANT-RESPONDENT PHILLIP J. RADOS, M.D.

FELDMAN KIEFFER, LLP, BUFFALO (ADAM C. FERRANDINO OF COUNSEL), FOR  
DEFENDANTS-RESPONDENTS GRACE MANOR HEALTH CARE FACILITY, INC., DAVID  
J. GENTNER, MARY STEPHAN, KATHY RANDALL AND TIFFANY MATTHEWS.

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Appeal from an order of the Supreme Court, Erie County (Diane Y. Devlin, J.), entered December 8, 2011. The order, among other things, granted the cross motions of defendants to amend their answers to assert affirmative defenses of res judicata and collateral estoppel.

It is hereby ORDERED that said appeal is unanimously dismissed without costs (see *Hughes v Nussbaumer, Clarke & Velzy*, 140 AD2d 988, 988; *Chase Manhattan Bank, N.A. v Roberts & Roberts*, 63 AD2d 566, 567; see also CPLR 5501 [a] [1]).

Entered: September 27, 2013

Frances E. Cafarell  
Clerk of the Court