

<b>Maerov v Long Is. Airline, LLC</b>
2021 NY Slip Op 32689(U)
December 16, 2021
Supreme Court, New York County
Docket Number: Index No. 153044/2020
Judge: David Benjamin Cohen
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. DAVID B. COHEN PART 58**

*Justice*

-----X

**INDEX NO. 153044/2020**

LANCE MAEROV, Individually and as Administrator of the Estate of William Maerov, deceased, and

**MOTION SEQ. NO. 006**

CHARLOTTE MAEROV, Individually and as Administratrix of the Estate of Bonnie B. Krupinski, deceased,

Plaintiffs,

- v -

**DECISION + ORDER ON MOTION**

LONG ISLAND AIRLINE, LLC, EAST HAMPTON AIRLINES, LLC, and ROBERT WHITE, as Administrator and Executor of the Estate of Bernard Krupinski, deceased,

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 006) 65, 66, 67, 68, 69, 70, 71, 72, 73, 79, 80

were read on this motion to/for DISMISSAL.

In this wrongful death action, Long Island Airline, LLC (“the Airline”) and Robert White (“White”) (collectively “the Movants”) move, pursuant to CPLR 3211(a)(7), for an order (1) dismissing the wrongful death claim asserted on behalf of plaintiff Charlotte Maerov because she does not qualify as a legal “distributee” under New York’s Wrongful Death Statute, Estates Powers and Trusts Law (“EPTL”) §§4-1.1, 5-4.1, *et seq.* and (2) dismissing the causes of action alleging punitive damages in Plaintiffs’ separate Complaints as legally insufficient. Plaintiffs oppose in part. After a review of the relevant case law and statutes, as well as the motion papers, the motion is decided as follows.

## I. Factual and Procedural Background

On June 2, 2018, an aircraft, owned and operated by defendants Robert White, East Hampton Airlines, LLC, and the Airline, crashed, resulting in the deaths of Bernard Krupinski (“Mr. Krupinski”) and his wife Bonnie B. Krupinski (Ms. Krupinski) (collectively “the Krupinskis”), and their grandson, William Maerov. It is undisputed that, at the time of her death, Ms. Krupinski was survived by her daughter, Laura Krupinski, and her granddaughter, Charlotte Maerov (“Ms. Maerov”). Ms. Maerov, the granddaughter of the Krupinskis, is the Administratrix of the Estate of Ms. Krupinski and commenced this action on behalf of herself individually, as well as in a representative capacity.

## II. The Parties’ Contentions

The Movants argue that (1) this Court must dismiss the wrongful death action asserted by Ms. Maerov in her individual capacity because she is not a “distributee” under the EPTL §§4-1.1, 5-4.1, *et seq.* and that (2) a punitive damage claim does not constitute a cause of action under New York law.

Plaintiffs oppose in part, asserting that this Court must not dismiss the entire wrongful death claim brought by Ms. Maerov in her representative capacity and/or the separate counts for punitive damages. Alternatively, Plaintiffs seek to amend the Complaint to replead the averments of fact in the punitive damages count as part of the first pleaded cause of action (Doc 79, FN 3).

In further support of their motion, the Movants argue, in part, that EPTL § 11-3.2 bars White, as representative of Mr. Krupinski’s Estate, from being sued for punitive damages.

## III. Legal Conclusions

CPLR 3211(a)(7) provides that “[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that the pleading fails to state a cause

of action.” On a motion to dismiss under CPLR 3211(a), the pleadings are afforded a liberal construction and the facts as alleged in the complaint are accepted as true. Moreover, the plaintiff is to be accorded the benefit of every possible inference (*Hsu v Liu & Shields LLP*, 127 AD3d 522, 523 [1st Dept 2015] [internal citations omitted]).

EPTL § 5-4.4[a][1] provides, in relevant part, that:

(a) The damages, as prescribed by 5-4.3, whether recovered in an action or by settlement without an action, are exclusively for the benefit of the decedent's distributees and, when collected, shall be distributed to the persons entitled thereto under 4-1.1 and 5-4.5, except that where the decedent is survived by a parent or parents and a spouse and no issue, the parent or parents will be deemed to be distributees for purposes of this section.

(EPTL § 5-4.4[a][1]).

“A cause of action to recover damages for wrongful death is a property right belonging solely to the distributees of the decedent and vests in them at the decedent's death” (*DeLuca v Gallo*, 287 AD2d 222, 225 [2d Dept 2001]). “An individual's status as distributee is determined as of the date of the decedent's death” (*DeLuca*, 287 AD2d at 225). Here, it is undisputed that, at the time of Ms. Krupinski’s death, her daughter was the only statutory “distributee” (*see* EPTL §§ 1-2.5, 4-1.1). Therefore, while Ms. Maerov, as the Administratrix of Ms. Kuperstein’s Estate, is entitled to pursue claims on behalf of the deceased’s distributees, she is not entitled to pursue wrongful death damages for herself, and therefore the wrongful death claims she asserts on her own behalf are dismissed.

“[A] demand for punitive damages may not constitute a separate cause of action for pleading purposes” (*Kantrowitz v Allstate Indem. Co.*, 48 AD3d 753, 754 [2d Dept 2008]).

Ms. Maerov’s second cause of action for punitive damages against the Airline (Doc 68) as well as Mr. Maerov’s second cause of action seeking punitive damages against the Airline (Doc 72) are dismissed as independent causes of action. Further, “[i]t is well settled that the damages

recoverable in a wrongful death action are limited by the [EPTL] to fair and just compensation for the ‘pecuniary injuries’ suffered by the survivors of a decedent for whose benefit an action is commenced. . . . These compensable damages include the loss of support, services, voluntary assistance, the prospect of inheritance, and the medical and funeral expenses (*DeLuca*, 287 AD2d at 223, citing EPTL § 5–4.3; *see also Rosenfeld v Isaacs*, 79 AD2d 630 [2d Dept 1980]). Plaintiffs’ application to amend their complaints to assert additional claims, to which punitive damages may be attached, is denied since Plaintiffs fail to make a motion to amend the complaint and/or attach the proposed amended pleading (*see* CPLR 3025 [b]).

EPTL § 11.3.2(a)(1) provides:

No cause of action for injury to person or property is lost because of the death of the person liable for the injury. For any injury, an action may be brought or continued against the personal representative of the decedent, *but punitive damages shall not be awarded nor penalties adjudged in any such action brought to recover damages for personal injury.*

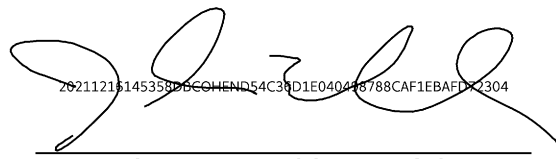
(EPTL § 11-3.2 [a][1] [emphasis added]. The branch of Ms. Maerov’s complaint seeking punitive damages against White is dismissed because EPTL § 11-3.2(a)(1) does not permit recovery of punitive damages from a decedent’s estate (*Doe v Indyke*, 468 F Supp 3d 625, 630 [SDNY 2020], citing EPTL § 11-3.2[a][1]). Last, Mr. Maerov’s punitive damages claim asserted against White is dismissed as withdrawn (Doc 79 at 2).

Accordingly, it is hereby:

ORDERED that the motion to dismiss by defendants Long Island Airline, LLC and Robert White, as Administrator and Executor of the Estate of Bernard Krupinski, is granted to the extent that the second cause of action of the complaint by Charlotte Maerov, and the second and fourth causes of action of the complaint by Lance Maerov are dismissed, and the wrongful death claim asserted on behalf of plaintiff Charlotte Maerov in her individual capacity is dismissed, and the branch of Charlotte Maerov’s complaint seeking punitive damages against Robert White, as

Administrator and Executor of the Estate of Bernard Krupinski, is dismissed; and the motion is otherwise denied; and it is further,

ORDERED that counsel are directed to appear for a status conference via Microsoft Teams on June 13, 2022 at 2:30 PM (see Doc 64, the PCO).



2021121614535806COHEN054C35D1E04048788CAF1EBAFD12304

12/16/2021  
DATE

HON. DAVID B. COHEN, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
			<input type="checkbox"/>	DENIED	<input type="checkbox"/>
				OTHER	
				REFERENCE	