

Thomas v BronxCare Health Sys.
2025 NY Slip Op 35397(U)
February 11, 2025
Supreme Court, Bronx County
Docket Number: Index No. 804676/2024E
Judge: Alicia Gerez
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NEW YORK SUPREME COURT – COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 19A

-----X
GEORGE THOMAS, Deceased, by and through, TERRI THOMAS, as Proposed Administrator of the Estate of GEORGE THOMAS,

Index №. 804676/2024E

Hon. ALICIA GEREZ,
Acting Justice of the Supreme Court

Plaintiff,

- against -

BRONXCARE HEALTH SYSTEM d/b/a
BRONXCARE HOSPITAL CENTER d/b/a BRONX-
LEBANON HOSPITAL CENTER, et al.

Defendant.

-----X

The following papers numbered ___ to ___ were read on these motions (Seq. No. 003, 004, 005, & 006) for ___ noticed on ___ and duly submitted as Nos. ___ on the Motion Calendar of ___

Table with 2 columns: Sequence No., NYSCEF Doc. Nos.
Rows: Notice of Motion – Exhibits and Affidavits Annexed, Cross Motion – Exhibits and Affidavits Annexed, Answering Affidavit and Exhibits, Memorandum of Law, Reply Affidavit

THE ABOVE MOTIONS ARE CONSOLIDATED FOR DISPOSITION AND DECIDED IN ACCORDANCE WITH THE ANNEXED MEMORANDUM DECISION.

Dated: 2/11/25

Hon. Alicia Gerez
ALICIA GEREZ, A.J.S.C.

- 1. CHECK ONE.....
2. MOTION IS.....
3. CHECK IF APPROPRIATE.....
CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
GRANTED DENIED GRANTED IN PART OTHER
SETTLE ORDER SUBMIT ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
GEORGE THOMAS, Deceased, by and through,
TERRI THOMAS, as Proposed Administrator of the
Estate of GEORGE THOMAS,

DECISION and ORDER
Index No. 804676/2024E

Plaintiff,

- against -

**BRONXCARE HEALTH SYSTEM d/b/a
BRONXCARE HOSPITAL CENTER d/b/a BRONX-
LEBANON HOSPITAL CENTER, FOUR
SEASONS NURSING AND REHABILITATION
CENTER, FSNR SNF, LLC d/b/a FOUR SEASONS
NURSING AND REHABILITATION CENTER,
MAIMONIDES MEDICAL CENTER, CONCORD
NURSING HOME, INC. d/b/a CONCORD
NURSING AND REHABILITATION CENTER
d/b/a CONCORD NURSING HOME, FLUSHING
HOSPITAL MEDICAL CENTER, NEW
FRANKLIN REHABILITATION & HEALTH
CARE FACILITY, LLC d/b/a NEW FRANKLIN
REHABILITATION & NURSING and FRANKLIN
CENTER FOR REHABILITATION & NURSING
d/b/a FRANKLIN CENTER FOR
REHABILITATION & HEALTH CARE FACILITY,
LLC,**

Defendants.

-----X

HON. ALICIA GEREZ

Upon the foregoing papers defendant CONCORD NURSING HOME, INC. s/h/a CONCORD NURSING HOME, INC. d/b/a CONCORD NURSING AND REHABILITATION CENTER D/B/A CONCORD NURSING HOME moves (003) to dismiss this action pursuant to CPLR 3211(a)(3) citing the proposed administrator’s lack of capacity to sue. Separately, defendant NEW FRANKLIN REHABILITATION & HEALTH CARE FACILITY, LLC, d/b/a NEW FRANKLIN REHABILITATION & NURSING and FRANKLIN CENTER FOR REHABILITATION & NURSING d/b/a FRANKLIN CENTER FOR REHABILITATION & HEALTH CARE FACILITY,

LLC. (004); defendant BRONXCARE HEALTH SYSTEM (005); and defendant, MAIMONIDES MEDICAL CENTER (006) seek the same relief. Motion sequences 003, 004, 005, and 006 are hereby consolidated for disposition and after review of the papers, together with the opposition submitted thereto; review of the Court file; and upon due deliberation, the motions are decided as follows.

Defendants seek dismissal of the complaint in its entirety based on plaintiff's lack of capacity to sue. Defendants' motions are made on the grounds that the named plaintiff, Terri Thomas, lacks the authority to act, as they are the "Proposed Administrator," and have not yet been appointed as the legal representative of the Estate of the decedent, George Thomas by the Surrogate's Court.

CPLR §3211(a)(3) provides that a party may move for judgment dismissing one or more causes of action asserted against it on the ground that the party asserting the cause of action does not have the legal capacity to sue. In this action, plaintiff does not have Letters of Administration. That such authority may be conferred in the immediate future does not change the fact that this action was commenced in the absence of such authority. "It is well established that the existence of a qualified administrator is essential to the maintenance of the action and that the statutory right to recover for wrongful death does not even arise until an administrator has been named through the issuance of letters of administration" (*Carrick v. Central Gen. Hosp.*, 51 N.Y.2d 242 [1980][citations omitted]).

In the absence of existing letters of administration, plaintiff lacks capacity to commence this action (*see Rodriguez v. River Valley Care Ctr., Inc.*, 175 AD3d 432 [1st Dept, 2019].) Plaintiff is not without resort to CPLR 205(a) following dismissal (*see e.g. Carmenate v. City of New York*, 59 AD3d 162 [1st Dept. 2009]).

Accordingly, it is

ORDERED that the motions are GRANTED, and it is further

ORDERED that the complaint is dismissed without prejudice to re-commence upon the appointment of a valid Estate representative in accordance with CPLR 205(a), and it is further

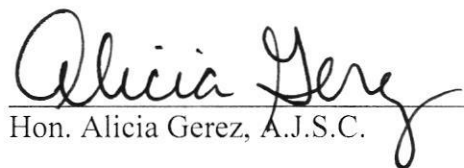
ORDERED that the Clerk is directed to enter judgment dismissing this action in its entirety as against all defendants.

This is the Decision and Order of the Court.

ENTER

Dated: _____

2/11/25


Hon. Alicia Gerez, A.J.S.C.