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| <b>Estate of Yeagley v L&amp;A Operations LLC</b>                                                                                                                                                                              |
| 2025 NY Slip Op 35497(U)                                                                                                                                                                                                       |
| January 9, 2025                                                                                                                                                                                                                |
| Supreme Court, Westchester County                                                                                                                                                                                              |
| Docket Number: Index No. 57590/2024                                                                                                                                                                                            |
| Judge: David S. Zuckerman                                                                                                                                                                                                      |
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| This opinion is uncorrected and not selected for official publication.                                                                                                                                                         |

**DISPO Motion Seq # 1 & 2**

To commence the 30 day statutory time  
period for appeals as of right  
(CPLR 5513[a]), you are advised to  
serve a copy of this order, with notice  
of entry, upon all parties

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X

THE ESTATE OF EDWARD YEAGLEY a/k/a CLAIR  
EDWARD YEAGLEY, by his Proposed  
Administrator, DAVID W YEAGLEY,

**DECISION/ORDER**

Plaintiff,

Index No:  
57590/2024

-against -

L&A OPERATIONS LLC; ADIRA AT RIVERSIDE  
REHABILITATION AND NURSING; ABC CORPORATION;  
ABC PARTNERSHIP (These names being fictitious  
As their true identities are presently  
Unknown),

Defendants.

-----X

ZUCKERMAN, J.

The papers denominated Numbers 1 through 28 in NYSCEF were considered in connection with these two motions. In Motion Sequence Number 1, Defendants move, pursuant to CPLR 3211(a)(3), for an Order dismissing the Complaint for Plaintiff's lack of capacity. In Motion Sequence Number 2, Plaintiff cross-moves for an Order "[s]taying the case until such time as the Orange County Surrogate's Court issues Letters of Administration to plaintiff" (Notice of Motion, p. 1). Each party opposes the other's motion.

**FACTS**

The Complaint contains seven causes of action: relief pursuant to NY Public Health Law §§2801-d and 2803-c, negligence, negligence per se, conscious pain and suffering, wrongful death, gross negligence, and nursing home malpractice and professional negligence. In essence, Plaintiff alleges that decedent Edward Yeagley a/k/a Clair Edward Yeagley was a patient at Defendant Adira at Riverside Rehabilitation and Nursing. Plaintiff further alleges, *inter alia*, that Adira at Riverside Rehabilitation and Nursing's negligence caused decedent's conscious pain, suffering and death.

**CONTENTIONS OF THE PARTIES**

Defendants move for dismissal "on the grounds that Plaintiff DAVID W. YEAGLEY lacks the legal capacity to commence the present action" (Attorney Affirmation, p. 1). More specifically, Defendants argue that, since a proposed administrator lacks capacity to sue, the Complaint must be dismissed.

Plaintiff responds that "[t]here is no practical reason to dismiss the present case. Defendants were placed on notice of Plaintiff's claims within the statute of limitations so they would

not be prejudiced by a stay of the proceedings. Furthermore, by this Court staying the case until Plaintiff obtains Letters of Limited Administration, this Court ensures that Plaintiff does not have his claim extinguished" (Affirmation in Opposition, p. 4).

In Reply, Defendants reassert the same arguments. They add that Plaintiff has not obtained Letters of Administration.

### DISCUSSION

Pursuant to CPLR §3211(a)(3),

[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that the party asserting the cause of action has not legal capacity to sue.

Generally, the party seeking dismissal pursuant to CPLR §3211 "bears the ultimate burden of proof on this issue" (*College v Brady*, 84 AD3d 1322, 1322-23 [2d Dept 2011] [personal jurisdiction]; *Gravel v Cicola*, 297 AD2d 620 [2d Dept 2002] [statute of limitations]; *Keegan v Moriarty-Morris*, 153 AD3d 683, 684 [2d Dept 2017] [movant has "prima facie" burden to establish lack of capacity to sue]).

A "personal representative" is "a person who has received letters to administer the estate of a decedent" (EPTL § 1-2.13; *Mingone v State*, 100 AD2d 897 [2d Dept 1984] ["personal representative who has received letters of administration of the estate of a decedent is the only party who is authorized to bring a ... wrongful death action"]). 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 (see *Carrick v Central General Hospital*, 51 NY2d 242 [1980]). In *Carrick*, the Court emphasized that the existence of a qualified administrator is not only an essential element to the statutory right to recover for a wrongful death, but also is a condition precedent to bringing such a claim (see *Mingone v State*, *supra* [affirming dismissal of wrongful death action where a plaintiff received letters of administration after serving a summons on defendants but before serving a complaint because 'the action was not commenced by the personal representative']; *In re Seventh Judicial Dist. Asbestos Litigation*, 4 Misc3d 457 [Sup Ct Monroe County 2004])). Thus, a 'proposed administrator' lacks the capacity to bring a wrongful death action (see *Carrick*, 51 NY2d at 247)" (*Butler v Kings Cnty. Hosp. Ctr.*, 30 Misc 3d 1229(A) [Sup Ct Kings County 2011]; see also *Brandon v Columbian Mut. Life Ins. Co.*, 264

AD2d 436 [2d Dept 1999][in action to recover proceeds of a life insurance policy, "plaintiff lacks standing to sue on behalf of the decedent's estate since she has not received letters of administration"].

Consequently, David W. Yeagley, as proposed administrator, lacked authority to commence this action. Put another way, Plaintiff lacked "legal capacity to sue" (CPLR 3211 (a) (3)). Therefore, Plaintiff's motion to dismiss must be granted. Moreover, since Plaintiff lacked capacity to commence the action, the cross-motion for a stay of same must be denied.

The remaining contentions, if any, do not compel a different result. Any additional relief requested by any party not expressly considered herein is denied.

Accordingly, based upon the foregoing, it is hereby

**ORDERED**, that the Complaint is dismissed.

The foregoing constitutes the Opinion, Decision & Order of the Court.

Dated: White Plains, New York  
January 9, 2025

A handwritten signature in black ink, appearing to read 'David S. Zuckerman', written over a horizontal line.

HON. DAVID S. ZUCKERMAN, J.S.C.

To: All parties via NYSCEF