

**Cheeks v Riverside Premier Rehabilitation & Healing
Ctr.**

2026 NY Slip Op 30067(U)

January 9, 2026

Supreme Court, New York County

Docket Number: Index No. 805285/2024

Judge: Kathy J. King

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. KATHY J. KING PART 06

Justice

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INDEX NO. 805285/2024

JOHN CHEEKS as Proposed Executor of the Estate of
LEROY HOLMES,

MOTION DATE 02/07/2025,
02/26/2025

Plaintiff,

MOTION SEQ. NO. 001 002

- v -

THE RIVERSIDE PREMIER REHABILITATION &
HEALING CENTER, AMSTERDAM NURSING
HOME CORPORATION, and MOUNT SINAI
MORNINGSIDE

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 21,
22, 23, 24, 26, 27, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 002) 14, 15, 16, 17, 25,
28, 29, 30, 31, 32, 33

were read on this motion to/for DISMISS

Upon the foregoing documents and oral arguments having been heard, the Defendant, ST.
LUKE'S HOSPITAL s/h/a MOUNT SINAI MORNINGSIDE, move for an Order (mtn seq 001):

- 1) Pursuant to CPLR 3211(a)(3) and EPTL 5-4.1, dismissing the action on the grounds that
Plaintiff, JOHN CHEEKS ("Plaintiff"), as Proposed Executor of the Estate of LEROY
HOLMES ("Decedent"), does not have the requisite legal capacity and/or standing to
commence and/or maintain the instant action; and
2) directing the Clerk of the Court to enter judgment in its favor.

Similarly, Defendant AMSTERDAM NURSING HOME CORPORATION ("ANHC"),
move for an Order (mtn seq 002):

- 1) Pursuant to CPLR 3211 (a)(3), dismissing the Complaint as plaintiff is a mere proposed executor and lacks capacity to act in any fashion in this action; or, in the alternative,
- 2) Pursuant to CPLR 3211(a)(5), dismissing the Complaint as the statute of limitations has expired; and
- 3) Directing the Clerk of the Court to enter judgment accordingly.

Plaintiff opposed both motions, which have been consolidated for purposes of disposition. Further, and by way of notice of cross-motion filed on January 2nd, 2026, Plaintiff cross-move for an Order, pursuant to CPLR 3025(b), to file and serve a Supplemental Summons and Amended Verified Complaint amending the caption herein to name Plaintiff, JOHN CHEEKS as the Preliminary Executor of the Estate of LEROY HOLMES.¹

BACKGROUND

This action was commenced on October 10, 2024, by the filing of a Summons and Complaint by Plaintiff, JOHN CHEEKS, in his capacity as the 'Proposed Executor' of the Estate of LEROY HOLMES.

The Complaint asserts causes of action for medical malpractice, lack of informed consent, and vicarious liability against the Defendants for the period of December 23, 2021, through April 14, 2022. At the time the action was commenced, Plaintiff had not yet been appointed as the Executor of the Decedent's Estate. On March 12, 2025, a Petition for Letters Testamentary and an Application for Temporary Letters on behalf of Plaintiff were filed in the Surrogate's Court of New York County. On December 23, 2025, the Surrogate's Court granted Preliminary Letters Testamentary to the Plaintiff.

¹ As a threshold matter, while Plaintiff's cross-motion is untimely pursuant to CPLR 2214 and 2215, the Court, in the interest of judicial economy and in the exercise of its discretion, considers the application on its merits.

Defendant ST. LUKE'S HOSPITAL s/h/a MOUNT SINAI MORNINGSIDE, and ANHC now move to dismiss the Complaint. As of the date of this filing, issue has not been joined.

Plaintiff opposes the motion and cross-moves under CPLR 3025(b) to amend the caption and pleadings to reflect the appointment of JOHN CHEEKS as Preliminary Executor of the Estate of LEROY HOLMES.

DISCUSSION

I. MOTION TO DISMISS PURSUANT TO CPLR 3211(a)(3)

In support of his affirmation and in reply, the moving Defendants argue that Plaintiff does not have the authority or requisite capacity to act in, or maintain, this action, and, therefore, pursuant to CPLR 3211(a)(3), Plaintiff lacks the capacity to bring the instant action. Defendants argue that under EPTL 5-4.1, only a personal representative may maintain an action to recover damages for a wrongful act on behalf of a decedent, and that Plaintiff is not a proper personal representative as he has not received letters to administer the estate of a decedent as required pursuant to EPTL 1-2.13. Defendants further argue that Plaintiff lacked the requisite legal capacity to commence this action and could not maintain a cause of action on behalf of the Decedent because he did not petition the Surrogate's Court for Letters Testamentary and Temporary Letters at the time he commenced this action on behalf of the Decedent, but only after the commencement of the instant action.

Plaintiff opposes the motion and cross-moves on the grounds that the Decedent died testate, specifically naming Plaintiff as Executor. Contrary to Defendants' assertions, Plaintiff secured his authority, filing for both Letters Testamentary and Temporary Letters in New York County Surrogate's Court on March 12, 2025. This process culminated in the Surrogate's Court granting Plaintiff Preliminary Letters Testamentary on December 23, 2025, thereby formalizing his capacity to maintain this action.

The Court finds Plaintiff's original lack of capacity and/or standing is cured by the Surrogate's Court of New York County's grant of Preliminary Letters Testamentary (*Carrick v Cent. Gen. Hosp.*, 51 NY2d 242 [1980]; *Bernardez v New York*, 100 AD2d 798 [1st Dept 1984]).

Accordingly, the moving Defendants' motions to dismiss pursuant to CPLR 3211(a)(3) and the EPTL 5-4.1 is denied.

II. MOTION TO DISMISS PURSUANT TO CPLR 3211(a)(5)

In support of its motion to dismiss, pursuant to CPLR 3211(a)(5), Defendant ANHC contends that Plaintiff's claims are barred by the statute of limitations. ANHC submits evidence, including discharge records, establishing that the Decedent was admitted to its facility on March 8, 2022, and discharged on March 16, 2022, to Mount Sinai Morningside, with no further treatment rendered thereafter. ANHC argues that the two-year and six-month limitations period set forth in CPLR 214-a began to run upon the Decedent's discharge on March 16, 2022, and expired on September 16, 2024—nearly one month before the filing of the Summons and Complaint on October 10, 2024. ANHC further asserts that the continuous treatment doctrine is inapplicable because there was no expectation of further care at its facility and no legal nexus between ANHC and the subsequent treating hospital.

In opposition, Plaintiff contends that the action is timely by operation of the continuous treatment doctrine, arguing that the Decedent's subsequent treatment at Mount Sinai Morningside from March 16, 2022, until his death on April 14, 2022, constituted an extension of the care initiated by ANHC. Plaintiff asserts that because the Decedent was treated for the same underlying conditions at both facilities, the limitations period should be tolled until the date of death. By Plaintiff's calculation, the commencement of the action on October 10, 2024, would fall within the statutory period if measured from the April 14, 2022, date of death, rather than the date of discharge from ANHC's facility.

The Court disagrees and finds that Plaintiff failed to meet the burden of establishing a toll under the continuous treatment doctrine, as there is no showing of a “relevant continuing relation” or agency between ANHC and Mount Sinai Morningside (*Pierre-Louis v Hwa*, 182 AD2d 55 [2d Dept 1992]). The continuous treatment doctrine toll does not extend to treatment provided by an independent, third-party facility where the entities do not share staff or a joint agreement for care (*Walker v New York City Health & Hosps. Corp.*, 36 AD3d 509 [1st Dept 2007]). Because neither the physician nor the patient explicitly anticipated further treatment by ANHC at the time of transfer, the physician-patient relationship between ANHC Decedent terminated upon discharge on March 16, 2022, for statute of limitations purposes (*Hillary v Gerstein*, 178 AD3d 674 [2d Dept 2019]).

Accordingly, Defendant ANHC’s motion to dismiss is granted.

Based on the foregoing, it is hereby

ORDERED that the motion of the Defendant ST. LUKE’S HOSPITAL s/h/a MOUNT SINAI MORNINGSSIDE is denied (motion sequence 001); and it is further

ORDERED that Plaintiff’s cross-motion to file and serve a Supplemental Summons and Amended Verified Complaint amending the caption herein to name Plaintiff, JOHN CHEEKS as the Preliminary Executor of the Estate of LEROY HOLME is granted (motion sequence 001 and 002); and it is further

ORDERED, that the Plaintiff is to file the Supplemental Summons and Verified Amended Complaint within twenty (20) days of the date of this Order; and it is further

ORDERED, that the Supplemental Summons and Verified Amended Complaint shall be deemed served upon the Defendants THE RIVERSIDE PREMIER REHABILITATION & HEALING CENTER, and MOUNTSINAI MORNINGSSIDE, by the Plaintiff E-Filing the same on the electronic court filing system (“NYSCEF”);

ORDERED that the motion of Defendant AMSTERDAM NURSING HOME CORPORATION is granted to the extent of dismissing the Complaint as against it pursuant to CPLR 3211(a)(5), and otherwise denied in all other respects; and it is further

ORDERED and ADJUDGED that Plaintiff's Complaint is dismissed as against Defendant AMSTERDAM NURSING HOME CORPORATION; and it is further

ORDERED that the caption shall be as follows:

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

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JOHN CHEEKS, AS PRELIMINARY
EXECUTOR OF THE ESTATE OF
LEROY HOLMES,

Plaintiff,

Index No. 805285/2024

-against-

THE RIVERSIDE PREMIER
REHABILITATION & HEALING CENTER,
and MOUNTSINAI MORNINGSIDE,

Defendants,

-----X

ORDERED that Defendant AMSTERDAM NURSING HOME CORPORATION shall serve a copy of this order upon Plaintiff with notice of entry within twenty (20) days of entry of this order; and it is further

ORDERED that within twenty (20) days of the date of this Order, Defendant AMSTERDAM NURSING HOME CORPORATION shall serve a copy of this Order upon the County Clerk and the Clerk of the General Clerk's Office, which shall be effectuated in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases, accessible at the "E-Filing" page on the court's website; and it is further

ORDERED that the Clerk is directed to enter judgment in accordance with this Order; and it is further

ORDERED that all remaining parties are directed to appear for an in-person preliminary conference on April 9th, 2026, at 10am, in courtroom 351, 60 Centre Street, New York. NY 10007.

This constitutes the Decision and Order of the Court.

1/9/2026
DATE

Kathy King
KATHY KING, J.S.C.

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