

Elliott v Amsterdam Nursing Home
2026 NY Slip Op 30534(U)
February 11, 2026
Supreme Court, New York County
Docket Number: Index No. 161637/2023
Judge: Phaedra F. Perry-Bond
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

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LILLIE ELLIOTT, Deceased, by and through BEVERLY ELLIS, as Proposed Administrator of the Estate of LILLIE ELLIOTT,

Plaintiff,

INDEX NO. 161637/2023

MOTION DATE 06/09/2025, 06/12/2025

MOTION SEQ. NO. 001 002

- v -

AMSTERDAM NURSING HOME, AMSTERDAM NURSING HOME CORPORATION (1992), AMSTERDAM NURSING HOME CORPORATION (1992) D/B/A AMSTERDAM NURSING HOME, MARY MANNING WALSH HOME, ARCHCARE AT MARY-MANNING WALSH NURSING HOME AND REHABILITATION CENTER, THE MARY MANNING WALSH NURSING HOME COMPANY, INC., THE MARY MANNING WALSH NURSING HOME COMPANY, INC. D/B/A MARY MANNING WALSH HOME, THE MARY MANNING WALSH NURSING HOME COMPANY, INC. D/B/A ARCHCARE AT MARY-MANNING WALSH NURSING HOME AND REHABILITATION CENTER, CATHOLIC HEALTH CARE SYSTEM, CATHOLIC HEALTH CARE SYSTEM D/B/A MARY MANNING WALSH HOME, CATHOLIC HEALTH CARE SYSTEM D/B/A ARCHCARE AT MARY-MANNING WALSH NURSING HOME AND REHABILITATION CENTER, ARCHCARE COMMUNITY SERVICES, INC. D/B/A ARCHCARE, THE CONTINUING CARE COMMUNITY OF THE ARCHDIOCESE OF NEW YORK

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 23, 24, 25, 26, 27, 28, 29, 32, 33, 36

were read on this motion to/for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 34, 35

were read on this motion to/for DISMISSAL

Upon the foregoing documents, motion sequences 001 and 002, which seek to dismiss Plaintiff's Complaint pursuant to CPLR 3211(a)(3), are consolidated for disposition and decided as follows.

In motion sequence 001, Defendants AMSTERDAM NURSING CORPORATION (1992) s/h/a AMSTERDAM NURSING HOME, AMSTERDAM NURSING HOME CORPORATION (1992), AMSTERDAM NURSING HOME CORPORATION (1992) (“collectively “Amsterdam Defendants”) move to dismiss based on Plaintiff’s lack of legal capacity and/or standing.

In motion sequence 002, Defendants MARY MANNING WALSH NURSING HOME COMPANY, INC. and CATHOLIC HEALTHCARE SYSTEM d/b/a ARCHCARE, and ARCHCARE COMMUNITY SERVICES, INC. s/h/a MARY MANNING WALSH HOME, ARCHCARE AT MARY-MANNING WALSH NURSING HOME AND REHABILITATION ARCIERO & BURGESS, P.C. CENTER, THE MARY MANNING WALSH NURSING HOME COMPANY, INC. d/b/a MARY MANNING WALSH HOME, THE MARY MANNING WALSH NURSING HOME COMPANY, INC. d/b/a ARCHCARE AT MARY-MANNING WALSH NURSING HOME AND REHABILITATION CENTER, CATHOLIC HEALTH CARE SYSTEM, CATHOLIC HEALTH CARE SYSTEM d/b/a MARY MANNING WALSH HOME, CATHOLIC HEALTH CARE SYSTEM d/b/a ARCHCARE AT MARY-MANNING WALSH NURSING HOME AND REHABILITATION CENTER, and ARCHCARE COMMUNITY SERVICES, INC. d/b/a ARCHCARE, THE CONTINUING CARE COMMUNITY OF THE ARCHDIOCESE OF NEW YORK (collectively the “Mary Manning Defendants”) also move to dismiss based on Plaintiff’s lack of legal capacity and/or standing.

Plaintiff concedes that she is not the appointed administrator of the decedent, Lillie Elliott’s estate. Plaintiff instead argues the defenses upon which the motion are premised have been waived, and asks this Court to stay the action to allow her to obtain letters of administration. Defendants oppose staying the action and request dismissal without prejudice.

The issue here is that one group of defendants preserved the affirmative defense of lack of capacity while another group did not. By failing to include lack of capacity or standing to sue as an affirmative defense or in a pre-answer motion to dismiss, that defense is waived pursuant to CPLR 3211(e) (*see Perine Intern. Inc. v Bedford Clothiers, Inc.*, 143 AD3d 491 [1st Dept 2016]). The Mary Manning Defendants asserted lack of capacity as an affirmative defense (NYSCEF Doc. 18), but the Amsterdam Defendants did not (*see* NYSCEF Doc. 15). The Amsterdam Defendants failure to include lack of capacity or standing as an affirmative defense or to raise it on a pre-answer motion to dismiss requires denying the Amsterdam Defendants' motion to dismiss (*see also Complete Management, Inc. v Rubenstein*, 74 AD3d 722 [2d Dept 2010]; *Spatz v Bajramoski*, 214 AD2d 436, 437 [1st Dept 1995]). As to the Mary Manning Defendants, were this Court to grant the motion, any dismissal would be without prejudice, and pursuant to CPLR 205(a), Plaintiff would be granted a further six-month savings period to remedy the defect in her capacity to sue by obtaining letters of administration.

Because the case survives against the Amsterdam Defendants, and because even if the Court granted the Mary Manning Defendants' motion, dismissal would be without prejudice with leave to replead within six months, the Court finds the most equitable resolution that also accounts for judicial economy is to stay the case for six months.¹ If after those six months Plaintiff has still not obtained letters of administration and fails to show any reasonable excuse for the delay, the Mary Manning Defendants may renew their motion to dismiss.

¹ If the Court were to grant the Mary Manning Defendants' motion, the likely result would be a further motion by the Plaintiff to restore the action against them once she obtains letters of administration, or the commencement of a subsequent action against the Mary Manning Defendants followed by a motion to consolidate. In other words, the end result would be the same as simply staying the matter, but the Court and the Clerk's office would be further burdened with substantially more court filings.

Accordingly, it is hereby,

ORDERED that the Amsterdam Defendants' motion to dismiss based on lack of capacity and/or standing is denied; and it is further

ORDERED that the Mary Manning Defendants' motion to dismiss is denied, without prejudice, and with leave to renew within six months if Plaintiff still has not obtained the requisite letters of administration; and it is further

ORDERED that this matter shall be marked stayed for six months to afford Plaintiff the opportunity to obtain the requisite letters of administration; and it is further

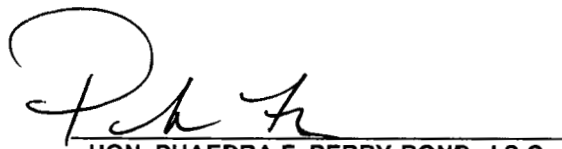
ORDERED that any party may make an application by order to show cause to vacate or to modify this stay upon the expiration of six months from the date of this Decision and Order or upon Plaintiff obtaining letters of administration, whichever is earlier; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

2/11/26

DATE



HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE