

Lieder v Isabella Geriatric Ctr., Inc.
2026 NY Slip Op 30582(U)
February 17, 2026
Supreme Court, New York County
Docket Number: Index No. 154254/2022
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

INDEX NO. 154254/2022
MOTION DATE 11/13/2023
MOTION SEQ. NO. 001
TIMOTHY LIEDER as Administrator of the Estate of JOANNE C. LEIDER, deceased
Plaintiff,

- v -

ISABELLA GERIATRIC CENTER, INC.,
Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58

were read on this motion to/for DISMISS

Upon the foregoing documents, Defendant Isabella Geriatric Center, Inc.'s ("Isabella Geriatric Center" or "Defendant") motion to dismiss Plaintiff Timothy Lieder ("Plaintiff") as administrator of the estate of Joanne C. Leider's ("Decedent") Amended Complaint is granted.

I. Background

On September 12, 2019, Decedent was admitted to Isabella Geriatric Center. Decedent remained in Defendant's care during the Covid-19 pandemic. During the pandemic, Defendant put in place isolation and social distancing procedures, and continuously monitored Decedent's health. Decedent was tested for Covid-19 and was diagnosed Covid-19 positive on May 9, 2020. Decedent was isolated in accordance with Covid-19 protocols and was continuously monitored and treated by Defendant's physicians and nurses. Decedent's condition continued to decline, and she was placed in hospice where her son, Plaintiff, was permitted compassionate care visits. A second Covid-19 test on May 18, 2020 yielded another positive result, and Decedent unfortunately passed away on May 20, 2020.

Plaintiff brings this lawsuit alleging Defendant failed to adequately isolate residents with Covid-19, failed to test residents and staff, and failed to properly care for Decedent. Defendant moves to dismiss pursuant to the New York Emergency or Disaster Treatment Protection Act (“EDTPA”), Public Health Law Art. 30-D, Public Health Law §§ 3080-3082, Executive Order 202.10, and 42 U.S.C. §§ 247d-gd and 247d-6e (also known as the Federal Public Readiness and Emergency Preparedness (“PREP”) Act).

The EDTPA provides qualified immunity with respect to claims related to the prevention of Covid-19 and treatment of individuals with Covid-19 during the declared state of emergency, with the only exception to liability being for gross negligence or reckless conduct. Executive Order 202.10 mirrors the EDTPA’s language. The PREP Act likewise provides immunity under state and federal law for any claims that relate to a defendant’s covered countermeasures¹ to diagnose, treat, prevent, or mitigate the spread of Covid-19. Plaintiff argues immunity does not apply because the EDTPA was repealed and the repeal was allegedly intended to be retroactive, and that even if the repeal was not retroactive, that Plaintiff has alleged grossly negligent and reckless misconduct that falls outside the scope of immunity bestowed by EDTPA.

II. Discussion

Defendant’s motion is granted. As held by the First Department and the Court of Appeals, a trial court may consider documentary evidence on a CPLR 3211(a)(7) to attack the sufficiency of a pleading if the evidence conclusively establishes that Plaintiff has no cause of action (*Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128 [1st Dept 2014] citing *Rovello v Orofino Realty Co., Inc.*, 40 NY2d 633, 636 [1976]).

¹ Covered countermeasures include the administration of personal protective equipment, Covid-19 tests, thermometers, pulse oximeters, etc.

When documentary evidence is submitted by a defendant on a CPLR 3211(a)(7) motion, the standard morphs from whether the plaintiff has stated a cause of action to whether it has one (*Basis Yield Alpha Fund (Master)*, *supra* [internal citations omitted]). As held by the Hon. Dianne T. Renwick, in considering documentary evidence on a CPLR 3211(a)(7) motion, “the key should be whether the evidence adduced conclusively negates an element of the cause of action” (*Basis Yield Alpha Fund (Master)*, *supra* at 134 n. 4). Moreover, conclusory allegations or claims consisting of bare legal conclusions with no factual specificity are insufficient to survive a motion to dismiss (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]; *Barnes v Hodge*, 118 AD3d 633, 633-634 [1st Dept 2014]). A motion to dismiss for failure to state a claim will be granted if the factual allegations do not allow for an enforceable right of recovery (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

The First Department has put to rest the issue of whether the EDTPA’s repeal had a retroactive effect and has concluded the repeal was not retroactive (*Hasan v Terrace Acquisitions II, LLC*, 224 AD3d 475, 477-478 [1st Dept 2024]). EDTPA applies as Defendant was providing Decedent health care services and was doing so in good faith. Moreover, Defendant established that its treatment of Decedent was impacted by Covid-19 by submitting the affidavit of Binu Thomas, a Registered Nurse employed by Defendant who personally treated the Decedent during Covid-19 and noted the impacts the pandemic had on Decedent’s treatment (NYSCEF Doc. 20). The impact is further documented in letters sent by Defendant to Decedent’s family regarding Covid-19 (NYSCEF Doc. 23), Defendant’s Covid-19 policies (NYSCEF Doc. 22), and 485 pages of Decedent’s certified medical records (NYSCEF Doc. 21).

These submissions are sufficient to establish impact under the EDTPA (*see Madouri v Montefiore Medical Center*, --- A.D.3d ---, --- N.Y.S.3d ---, 2026 N.Y. Slip Op. 00617 at *1 [1st

Dept 2026] [“In a case where the plaintiff has died from Covid-19, it is usually self-evidence that plaintiff’s treatment was ‘impacted by [defendant’s] decisions or activities in response to or as a result of the COVID-19 outbreak”]; *see also Silva-Rios v New York Presbyterian Columbia Medical Center*, --- A.D.3d ----, --- N.Y.S.3d ----, 2026 N.Y. Slip Op. 00481at *1 [1st Dept 2026]; *Costiera v MMR Care Corp.*, 244 AD3d 1180, 1182 [2d Dept 2025]).

Therefore, the Amended Complaint survives only if the allegations of gross negligence, to the extent they are not pled in conclusory fashion, are not definitively contradicted by the evidence submitted by Defendants. To adequately allege gross negligence, there must be factual allegations showing willful or reckless conduct which “smacks of intentional wrongdoing” (*Mera v New York City Health and Hosps. Corp.*, 220 AD3d 668, 670 [2d Dept 2023]; *see also Abacus Federal Sav. Bank v ADT Sec. Services, Inc.*, 77 AD3d 431 [1st Dept 2010]).

However, the medical records, policies, and affidavit of Binu Thomas establish that Decedent’s death was not caused by gross negligence or recklessness (*See Hasan v Terrace Acquisitions II, LLC*, 224 AD3d 475, 478-479 [1st Dept 2024]). The records and the affidavit establish that Decedent was frequently treated and monitored with her vital signs and symptoms recorded daily, Decedent was provided IV treatment due to her poor food and liquid intake, that isolation and testing measures were in place, that Decedent was tested multiple times for Covid-19 upon suspicion she might be symptomatic, and that visitation was suspended to prevent the spread of Covid-19. This evidence definitively contradicts any conclusory allegations of gross negligence and recklessness, which are insufficient to withstand a motion to dismiss (*see also Lara v S&J Operational, LLC*, 237 AD3d 1186, 1188-1189 [2d Dept 2025]; *Whitehead v Pine Haven Operating LLC*, 222 AD3d 104, 110-111 [3d Dept 2023]). Likewise, Plaintiff’s reference to certain citations from the Department of Health are insufficient to support a gross negligence claim where

the policies and records (*Hasan, supra* at 479; *see also Mas v Isabella Geriatric Center, Inc., 2025 NY Slip Op 32369[U]* at *4 [Sup. Ct., New York County 2025] [Kelly, J.]). Because the wrongful death claim requires underlying liability for the decedent’s death and all underlying claims have been dismissed, the the wrongful death claim is also dismissed (*see Golden v EcoHealth Alliance, Inc., 241 AD3d 1198, 1200 [1st Dept 2025]*).

While the Court sympathizes with Plaintiff and others who lost loved ones in the early days of the Covid-19 pandemic, it is not for this Court to second guess policy decisions enacted by the legislature, and this Court is bound to apply binding precedent to the facts at hand. Therefore, the motion to dismiss is granted and the Amended Complaint is hereby dismissed. Because the Court dismisses the Amended Complaint pursuant to Defendant’s qualified immunity bestowed by the EDTPA, the Court does not reach Defendant’s other proffered grounds for dismissal.

Accordingly, it is hereby,

ORDERED that Defendant’s motion to dismiss is granted and the Amended Complaint is dismissed; and it is further

ORDERED that within ten days of entry, counsel for Defendant 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.

2/17/26
DATE


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

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
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"/> REFERENCE