

**Johnson v Harlem Ctr. for Nursing & Rehabilitation,
LLC**

2026 NY Slip Op 31271(U)

March 27, 2026

Supreme Court, New York County

Docket Number: Index No. 805359/2024

Judge: John J. Kelley

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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. JOHN J. KELLEY PART 56M

Justice

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HOSEA JOHNSON, as Administrator of the Estate of
RUBY JOHNSON, and HOSEA JOHNSON, Individually,

Plaintiff,

INDEX NO. 805359/2024

MOTION DATE 02/10/2026

MOTION SEQ. NO. 001

- v -

HARLEM CENTER FOR NURSING AND
REHABILITATION, LLC, doing business as HARLEM
CENTER FOR NURSING AND REHABILITATION, and
MOUNT SINAI MORNINGSIDE,

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20
were read on this motion to/for CONSOLIDATE/JOIN FOR TRIAL.

In this action to recover damages for medical malpractice, common-law negligence, and
wrongful death, and pursuant to Public Health Law § 2801-d for purported violations of statutes
and regulations governing nursing homes, the plaintiff moves pursuant to CPLR 602 to fully
consolidate this action into an action entitled *Johnson v New York City Health & Hosps/Harlem
Hosp. Ctr., et ano.*, pending in the Supreme Court, New York County, under Index No.
805378/2023 (Action No. 1), and pursuant to CPLR 3025(b) for leave to amend the caption of
the consolidated action accordingly. No party opposes the motion. The motion is granted, the
instant action is fully consolidated for all purposes into Action No. 1 under Index No.
805378/2023, only one note of issue shall be required to place the consolidated action on the
trial calendar, and the caption is amended accordingly.

On August 29, 2023, the plaintiff commenced Action No. 1 against NYC Health &
Hospitals/Harlem Hospital Center and New York City Health & Hospitals Corp. (together the
NYC HHC defendants) alleging that, between June 2022 and August 2022, their medical
personnel committed malpractice, thereby injuring his decedent and causing her death. On

October 11, 2024, the plaintiff filed a request for judicial intervention (RJI) in Action No. 1. On December 11, 2024, the plaintiff commenced the instant action, making virtually identical allegations of malpractice, common-law negligence, and wrongful death against the defendants Harlem Center for Nursing and Rehabilitation, LLC, doing business as Harlem Center for Nursing and Rehabilitation, and Mount Sinai Morningside, and also added causes of action to recover pursuant to Public Health Law § 2801-d with respect to treatment rendered to his decedent from July 2022 to September 2022, which overlapped with the treatment rendered to the decedent by the NYC HHC defendants, and involved similar or identical underlying events.

“Consolidation is generally favored in the interest of judicial economy and ease of decision-making where cases present common questions of law and fact, ‘unless the party opposing the motion demonstrates that a consolidation will prejudice a substantial right’” (*Raboy v McCrory Corp.*, 210 AD2d 145 [1st Dept 1994], quoting *Amtorg Trading Corp. v Broadway & 56th St. Assoc.*, 191 AD2d 212, 213 [1st Dept 1993]). This action and Action No. 1 both arise from the same continuum of care rendered to the plaintiff’s decedent by three facilities over an essentially overlapping and continuous period of time, and present common questions of law and fact (see CPLR 602; *DeSilva v Plot Realty, LLC*, 85 AD3d 422 [1st Dept 2011]; *Kern v Shandell, Blitz, Blitz & Bookson*, 58 AD3d 487 [1st Dept 2009]). There is no indication that consolidation will prejudice a substantial right of any party (see *Amcan Holdings, Inc. v Torys LLP*, 32 AD3d 337 [1st Dept 2006]) and, by failing to oppose the motion, the defendants in the instant action essentially concede that consolidation will not prejudice a substantial right of any party (see *Amcan Holdings, Inc. v Torys LLP*, 32 AD3d 337 [1st Dept 2006]; *Gadelov v Shure*, 274 AD2d 375 [2d Dept 2000]). Moreover, the two actions that are the subject of this motion are essentially at the same phase of discovery.

As a general rule, a later-commenced action should be consolidated into an earlier-commenced action (see *DLJ Mtge. Capital, Inc. v Kontogiannis*, 110 AD3d 522, 523 [1st Dept 2013]; *Ali v Effron*, 106 AD3d 560, 560 [1st Dept 2013]; see generally *See City Trade & Indus.*,

Ltd. v New Cent. Jute Mills Co., 25 NY2d 49, 58 [1969]). Since the plaintiff commenced Action No. 1 prior to the instant action, and the RJI in that action was filed before an RJI was filed in the instant action, the consolidated action should proceed under the index number assigned to Action No. 1.

Accordingly, it is,

ORDERED that plaintiff's motion is granted, the instant action, entitled *Johnson v Harlem Ctr. For Nursing & Rehabilitation, et ano.*, pending in the Supreme Court, New York County, Part 56, under Index No. 805359/2024, is fully consolidated into the action entitled *Johnson v NYC Health & Hosps./Harlem Hosp. Ctr., et ano.*, pending in the Supreme Court, New York County, IAS Part 65, under Index No. 805378/2023, for all purposes; and it is further,

ORDERED that the consolidated action shall proceed under New York County Index No. 805378/2023; and it is further,

ORDERED that, after the completion of discovery in the consolidated action, the plaintiff shall be obligated to file only one note of issue in connection with the consolidated action under Index No. 805378/2023; and it is further,

ORDERED that the caption of the consolidated action shall read as follows:

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**HOSEA JOHNSON, as Administrator of the Estate of
RUBY JOHNSON, and HOSEA JOHNSON, Individually,**

Plaintiff,

V

Index No. 805378/2023

**NYC HEALTH & HOSPITALS/HARLEM HOSPITAL CENTER,
NEW YORK CITY HEALTH & HOSPITALS CORP., HARLEM
CENTER FOR NURSING AND REHABILITATION, LLC, doing
business as HARLEM CENTER FOR NURSING AND
REHABILITATION, and MOUNT SINAI MORNINGSIDE,**

Defendants.

-----X;

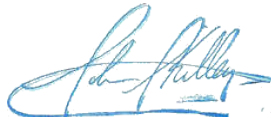
and it is further,

ORDERED that, within 15 days of the entry of this order, the plaintiff shall serve a copy of this decision and order upon both 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, to comply with those procedures, that defendant shall (1) upload the decision and order to the NYSCEF system under document title "SERVICE ON SUPREME COURT CLERK (GENL CLERK) W/COPY OF ORDER" **AND** (2) separately file and upload the notice required by CPLR 8019(c) in a completed Form EF-22, along with a copy of the decision and order, with notice of entry, under document title "NOTICE TO COUNTY CLERK CPLR 8019(C)"; and it is further,

ORDERED that, upon the plaintiff's compliance, the Trial Support Office, the New York County Clerk's Office, and all applicable court support offices shall amend their records accordingly.

This constitutes the Decision and Order of the court.

3/27/2026
DATE


JOHN J. KELLEY, 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
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE