

**Hakimian v Grace Plaza Nursing & Rehabilitation  
Ctr.**

2016 NY Slip Op 33136(U)

May 31, 2016

Supreme Court, Nassau County

Docket Number: 604248/15

Judge: Denise L. Sher

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**SHORT FORM ORDER**

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER  
Acting Supreme Court Justice

SHANIN HAKIMIAN, as Proposed Administrator of the  
Estate of GHAFAR HAKIMIAN, deceased,

Plaintiff,

- against -

GRACE PLAZA NURSING AND REHABILITATION  
CENTER, PINEGROVE MANOR II INC, WOODMERE  
REHAB & HEALTH CARE CENTER INC,  
WOODMERE REHAB & HEALTH CARE CTR INC,  
NORTH SHORE UNIVERSITY HOSPITAL and  
FRANKLIN HOSPITAL,

Defendants.

TRIAL/IAS PART 37  
NASSAU COUNTY

Index No.: 604248/15  
Motion Seq. Nos.: 01, 03  
Motion Dates: 11/12/15  
11/12/15

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**The following papers have been read on these motions:**

	Papers Numbered
Notice of Motion (Seq. No. 01), Affirmation and Exhibits	1
Notice of Motion (Seq. No. 03), Affirmation and Exhibits	2

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Defendant Pinegrove Manor II, LLC d/b/a Grace Plaza Nursing and Rehabilitation Center s/h/a Grace Plaza Nursing and Rehabilitation Center and Pinegrove Manor II Inc and defendant Woodmere Rehabilitation and Health Care Center Inc. d/b/a Woodmere Rehabilitation and Health Care Center s/h/a Woodmere Rehab & Health Care Center Inc and Woodmere Rehab & Health Care Ctr Inc (hereinafter "defendant Pinegrove" and "defendant Woodmere") move (Seq. No. 01), pursuant to CPLR § 3211(a)(3), for an order dismissing the Verified Complaint on the

grounds that plaintiff lacks the legal capacity to commence this action. No opposition was submitted to the motion.

Defendants North Shore University Hospital and Franklin Hospital (hereinafter collectively “defendants Hospital”) cross-move (Seq. No. 03), pursuant to CPLR § 3211(a)(3), for an order dismissing plaintiff’s action on the grounds that the party asserting the cause of action does not have the necessary legal capacity to sue. No opposition was submitted to the motion.

Counsel for defendant Pinegrove and defendant Woodmere submits that, “[p]laintiff commenced this lawsuit by the filing of a Summons and Complaint on or about June 30, 2015 .... Plaintiff asserts causes of action for violations of Public Health Law §§2801-d and 2803-c, Negligence, Gross Negligence and Wrongful Death as against Pinegrove and Woodmere Rehabilitation .... According to the case caption, this action was commenced on behalf of the Estate of Ghaffar Hakimian, deceased by Shanin Hakimian in his purported capacity as ‘Proposed Administrator’ of the decedent’s Estate.... It is asserted in the Complaint that Shanin Hakimian *is in the process of being appointed* Administrator of the Estate of Ghaffar Hakimian in the Surrogate’s Court, Nassau County (emphasis added) .... Since Plaintiff has not been duly appointed by the Surrogate’s Court as the administrator or executor of the decedent’s Estate, as reflected in the case caption and the allegations in the Complaint, he lacks standing to commence and maintain this lawsuit.” See Defendant Pinegrove and Defendant Woodmere’s Affirmation in Support Exhibit A.

Counsel for defendant Pinegrove and defendant Woodmere adds that “[t]he Summons and Complaint reveal that Plaintiff commenced this action without first being designated as the legal representative of the Estate of the decedent, Ghaffar Hakimian, and as such, is not a proper party to bring the instant action. No Estate has been set up and no Letters of Administration or

Letters Testamentary have been issued. Accordingly, any action that Plaintiff's counsel took on behalf of the Estate of Ghaffar Hakimian is null and void inasmuch as Shanin Hakimian lacks any authority to act. Therefore, the instant action must be dismissed pursuant to CPLR §3211(a)(3).... A plaintiff who fails to take the necessary step of securing appointment as the estate representative prior to commencement of the lawsuit lacks the capacity to bring and maintain that lawsuit.... **EPTL 5-4.1 requires an appointment of a proper estate representative prior to the commencement of an action on behalf of the decedent.**

Accordingly, designation of a proper estate representative is a condition precedent to bringing a lawsuit on behalf of the decedent's estate.... New York law clearly establishes that the appointment of a legal representative **prior** to the commencement of an action on behalf of an estate is a **mandatory condition precedent.**"

As previously indicated, no opposition was submitted to the motion (Seq. No. 01).

In support of the cross-motion (Seq. No. 03), counsel for defendants Hospital submits, "[t]he Summons and Verified Complaint identifies SHANIN HAKIMIAN, as Proposed Administrator of the Estate of GHAFFAR HAKIMIAN, deceased. There is no indication in the Summons or Complaint, nor was any proof offered by plaintiff's counsel to reflect SHANIN HAKIMIAN was the actual Administrator of the Estate of GHAFFAR HAKIMIAN at the time this suit was commenced on June 30, 2015. Nowhere within plaintiff's Summons and/or Verified Complaint is there any proof of SHANIN HAKIMIAN, actually being named as the administrator of the estate or of her ever receiving Letters of Administration, which would make her a duly appointed personal representative of the estate of the decedent. Accordingly, any action that plaintiff's counsel took on behalf of the Estate of Ghaffar Hakimian is null and void inasmuch as Shanin Hakimian lacks any authority to act. For this reason, the plaintiff does not have the necessary legal capacity to commence this action. Therefore, the instant action must be

dismissed pursuant to CPLR §3211(a)(3).”

As previously indicated, no opposition was submitted to the cross-motion (Seq. No. 03).

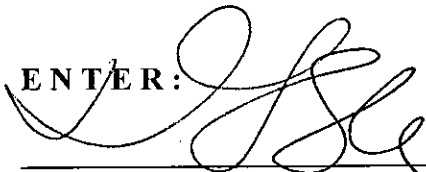
CPLR § 3211(a)(3) states that, “[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that:... 3. the party asserting the cause of action has no legal capacity to sue.”

In the instant matter, it is evident that plaintiff commenced the matter prior to being appointed as administrator of the Estate of Ghaffar Hakimian. Consequently, plaintiff as “Proposed Administrator” lacked the capacity to sue.

Therefore, based upon the above, defendant Pinegrove and defendant Woodmere’s motion (Seq. No. 01), pursuant to CPLR § 3211(a)(3), for an order dismissing the Verified Complaint on the grounds that plaintiff lacks the legal capacity to commence this action is hereby **GRANTED**.

Defendants Hospital’s cross-motion (Seq. No. 03), pursuant to CPLR § 3211(a)(3), for an order dismissing plaintiff’s action on the grounds that the party asserting the cause of action does not have the necessary legal capacity to sue is also hereby **GRANTED**.

This constitutes the Decision and Order of this Court.

ENTER:   
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DENISE L. SHER, A.J.S.C.  
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Dated: Mineola, New York  
May 31, 2016

**ENTERED**  
JUN 02 2016  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE