

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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HASINA MCBRIDE, as Administrator of the Estate of :
LOUIS CRAIG, :

Index No: 502610/2024

Plaintiff, :
-against- :

ATLANTIS OPERATING LLC d/b/a THE PHOENIX :
REHABILITATION & NURSING CENTER, DR. :
ABIOLA OLAWALE FAMILUSI, M.D., and :
"JOHN/JANE DOE(S) 1-20" being a fictitious :
pseudonym(s) for medical professional(s) whose :
identities are currently unknown) :

VERIFIED ANSWER

Defendants. :
: :
: :
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COUNSEL:

Defendant, ATLANTIS OPERATING LLC d/b/a THE PHOENIX REHABILITATION &
NURSING CENTER, by its attorneys, SHEELEY LLP, as and for its Answer to plaintiffs’
Complaint states the following upon information and belief:

FIRST: Denies sufficient knowledge and information sufficient to form a belief as
to each allegation in paragraphs 1, 2, 5, 6, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 39, 40, 41,
42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68,
69, 77, 78, 79, 80, 81, 82, 83, 89, 90, 91, 112, 113, 114, 115, 116, 117, 138, 139, 140, 141, 142,
143, 144, and 145 of the Complaint.

SECOND: Denies in the form alleged the allegations in paragraphs 7, 8, 9, 10, 11, 12,
13, 14, 15, 16, 17, 30, 31, 32, 33, 34, 35, 36, 37, 38, 54, 70, 71, 72, 73, 74, 75, 76, and 111 of the
Verified Complaint except admits defendant, ATLANTIS OPERATING LLC d/b/a THE
PHOENIX REHABILITATION & NURSING CENTER, lawfully operated a facility located at

140 Saint Edwards Street, Brooklyn, New York 11201 and through certain of its employees, agents and independent contractors provided timely and appropriate care and treatment to LOUIS CRAIG on those dates and times referenced in the medical records exchanged in this matter, and further refers all questions of law and fact to this Honorable Court.

THIRD: Denies the allegations in paragraphs 3, 4, 84, 85, 86, 87, 88, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 104, 105, 106, 107, 108, 109, 110, 118, 119, 120, 121, 122, 123, 124, 125, 126, 128, 129, 130, 131, 132, 133, 134, 135, 136, 146, 148, 149, 150, 151, 152, 153, 154, 155, 156, 158, 159, 160, 162, and 163 of the Complaint.

FOURTH: As for the allegations in paragraphs 103, 111, 119, 127, 137, 147, 157, and 161 of the Complaint defendant repeats and realleges each response by defendant made previously herein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

FIFTH: That any of the injuries sustained by the plaintiff as alleged in the Verified Complaint were caused in whole or in part by the culpable conduct of the plaintiff and were not caused or contributed to by the answering defendant, which either bars the claims completely or else diminishes the damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

SIXTH: The answering defendant acted in accordance with Public Health Law 2805(d) and relies on all defenses set forth therein.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

SEVENTH: The answering defendant reserves the right to claim the limitations of liability as set forth in CPLR Article 16, for any recovery herein by the plaintiff for non-economic loss.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

EIGHTH: If plaintiff recovers a verdict or judgment for economic loss against the answering defendant, pursuant to CPLR 4545, such verdict or judgment must be reduced by those amounts which have or will replace or indemnify plaintiff in whole or in part from any collateral source of payment.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

NINTH: If the plaintiff is entitled to recover damages from loss of earnings or impairment of earning ability as against this answering defendant, by reason of the matters alleged in the complaint, liability for which is hereby denied, then pursuant to CPLR 4546 the amount of damages recoverable against this defendant, if any, shall be reduced by the amount of federal, state and local income taxes by which the plaintiff would have been obligated to pay.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

TENTH: The answering defendant reserves the right to claim the benefits and limitations of liability pursuant to General Obligations Law 15-108

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

ELEVENTH: The causes of action set forth in plaintiff's Verified Complaint are barred inasmuch as suit was not instituted within the applicable Statute(s) of Limitations, and as such, the Verified Complaint must be dismissed.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

TWELFTH: The plaintiff has failed to acquire jurisdiction over the answering defendant, and as such, the Verified Complaint must be dismissed.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

THIRTEENTH: The complaint fails to assert a cause of action upon which relief can be granted, and as such, the Verified Complaint must be dismissed.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

FOURTEENTH: That the plaintiffs fail to assert or allege facts in his/her complaint or “Wherefore” clause sufficient to entitle plaintiffs to seek punitive damages against the answering defendant. That the imposition of punitive damages against defendant would violate the constitutions of the State of New York and The United States.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

FIFTEENTH: The causes of action pleaded herein are invalid as this answering defendant exercised all care reasonably necessary to prevent and limit the deprivation and injury to the patient for which liability is asserted herein.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

SIXTEENTH: That plaintiff’s right to recover damages, if any, is barred in whole or in part pursuant to the Patient Protections and Affordable Care Act, 26 U.S.C. Section 5000a.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

SEVENTEENTH: This action is barred pursuant to the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against Covid-19, 42 U.S.C.A., 85 Fed. Reg. 15198, amended by 85 Fed. Reg. 21012.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

EIGHTEENTH: This action is barred pursuant to the Immunity provisions implemented by New York State Law as a result of the Covid-19 crisis.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

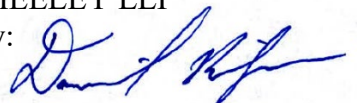
NINETEENTH: This action is barred pursuant to the New York Emergency Disaster Treatment Protection Act, Article 30-A, New York Public Health Law §3080-3082.

WHEREFORE, ATLANTIS OPERATING LLC d/b/a THE PHOENIX REHABILITATION & NURSING CENTER, demands judgment dismissing the Verified Complaint, together with costs and disbursement of the within action.

Dated: New York, New York
April 5, 2024

SHEELEY LLP

By:



DANIEL RIFKIN, ESQ.

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