

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
WALTER GREGG, as Administrator of the Estate of
MARION GREGG, deceased,

Plaintiff,

-against-

HIGHLAND CARE CENTER INC. d/b/a HIGHLAND
CARE CENTER and ST. JOHN'S EPISCOPAL
HOSPITAL,

Defendants.
-----X

Index No. 701481/2023

VERIFIED ANSWER

Defendant, ST. JOHN'S EPISCOPAL HOSPITAL, by its attorneys, BARTLETT LLP,
as and for its Answer to plaintiff's Verified Complaint, respectfully shows to this Court and
alleges upon information and belief:

**AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION
PURSUANT TO NEW YORK PUBLIC HEALTH LAW §2801-d AND §2803-c
AGAINST HIGHLAND CARE CENTER INC. d/b/a HIGHLAND CARE CENTER**

1. Denies knowledge or information sufficient to form a belief as to the truth of the
allegations contained in paragraphs "1", "2", "3", "4", "6", "7", "8", "9", "10", "11", "12", "13",
"14", "15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25" and "26", and respectfully
refers all questions of law to this Honorable Court.

2. Denies the allegations contained in paragraphs "5", "27", "28", "29", "30", "31",
"32", "33", "34" and "35".

**AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION
FOR NEGLIGENCE AGAINST DEFENDANT
HIGHLAND CARE CENTER INC. d/b/a HIGHLAND CARE CENTER**

3. In response to paragraph "36", defendant repeats each admission or denial made
herein as though fully set forth hereat.

4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained within paragraphs “37”, “38”, “39”, “40” and “41”.

5. Denies the allegations contained in paragraph “42”.

**AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION
FOR GROSS NEGLIGENCE AGAINST DEFENDANT
HIGHLAND CARE CENTER INC. d/b/a HIGHLAND CARE CENTER**

6. In response to paragraph “43”, defendant repeats each admission or denial made herein as though fully set forth hereat.

7. Denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraphs “44”, “45”, “46”, “47”, “48” and “49”.

8. Denies the allegations contained in paragraph “50”.

**AS AND FOR AN ANSWER TO THE FOURTH CAUSE OF ACTION
AGAINST DEFENDANT ST. JOHN’S EPISCOPAL HOSPITAL**

9. In response to paragraph “51”, defendant repeats each admission or denial made herein as though fully set forth hereat.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained within paragraphs “53”, “54” and “55”, except admit that one MARION GREGG was a patient at ST. JOHNS EPISCOPAL HOSPITAL from on or about November 12, 2020 and thereafter, during which time she received hospital services which were at all such times provided in accordance with good and accepted practice, and begs leave to refer to the applicable medical records as to the facts and circumstances attendant thereto, and respectfully refers all questions of law to this Honorable Court.

11. Denies the allegations contained in paragraphs “52”, “56”, “57”, “58”, “59” and “60”.

**AS AND FOR AN ANSWER TO THE FIFTH CAUSE
OF ACTION AGAINST ALL DEFENDANTS**

12. In response to paragraph “61”, defendant repeats each admission or denial made herein as though fully set forth hereat.

13. Denies the allegations contained in paragraphs “62”, “63”, “64”, “65”, “66” and “67”.

FIRST AFFIRMATIVE DEFENSE

14. That the damages of the plaintiff were caused in whole or in part by the culpable conduct of the plaintiff’s decedent which either bars the claims completely or else diminishes the damages by the proportion that such culpable conduct of the plaintiff bears to the total culpable conduct causing the damages.

SECOND AFFIRMATIVE DEFENSE

15. That if any liability is found as against this answering defendant, then said liability will constitute 50% or less of the total liability assigned to all persons liable, and as such, the liability of this answering defendant to plaintiff for non-economic loss shall be limited, and not exceed this answering defendant’s equitable share, as provided in Article 16 of the C.P.L.R.

THIRD AFFIRMATIVE DEFENSE

16. In the event plaintiff recovers a verdict or judgment against defendant, such verdict or judgment must be reduced pursuant to §4545 of the Civil Practice Laws and Rules by those amounts which have been, or will, with reasonable certainty replace or indemnify plaintiff in whole or in part for any past or future claimed economic loss, from any collateral source.

FOURTH AFFIRMATIVE DEFENSE

17. If plaintiff is entitled to recover damages for 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 said defendant, if any shall be reduced by the amount of federal, state, and local income taxes which the plaintiffs would have been obligated by law to pay.

FIFTH AFFIRMATIVE DEFENSE

18. The answering defendant is entitled to a set-off to any recovery sought in this action, in the amount of the greater of the relative share of culpability or the amounts paid, if any, by any other tortfeasor, by operation of General Obligations Law §15-108 and Civil Practice Law & Rules §4533-b, and by operation of the doctrines of settlement, payment, release, accord, and satisfaction.

SIXTH AFFIRMATIVE DEFENSE

19. The plaintiff's Complaint fails to state a cause of action for which relief might be granted.

SEVENTH AFFIRMATIVE DEFENSE

20. Plaintiff's complaint fails to join indispensable parties necessary for the just adjudication of this matter.

EIGHTH AFFIRMATIVE DEFENSE

21. The plaintiff lacks the capacity to sue.

NINTH AFFIRMATIVE DEFENSE

22. That any claims for punitive damages contained in the Complaint fail to state a claim upon which relief may be granted, violate various provisions of the Constitution of the United States and the State of New York, and violate various statutory proscriptions thereof.

23. Answering defendant alleges that it committed no act or omission that was malicious, oppressive, willful, wanton, reckless or grossly negligent and, therefore, any award of

punitive damages is barred.

24. With respect to plaintiff's demand for punitive damages, answering defendant specifically incorporates by reference all standards of limitations regarding the determination and enforceability of punitive damage awards, including but not limited to, those standards or limitation which arose in BMW of North America v. Gore, 116 U.S. 1589 (1996), Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 532 U.S. 424 (2001), and State Farm Mutual Automobile In. Co. v. Campbell, 123 S.Ct. 1513 (2003).

25. To the extent that plaintiff seeks punitive or "exemplary" damages for the conduct which alleged caused plaintiff's injuries as asserted in the complaint, such an award by this Court would violate this answering defendant's federal and state constitutional rights.

26. That the plaintiff's Complaint does not set forth a basis for punitive damages.

TENTH AFFIRMATIVE DEFENSE

27. This answering defendant pleads as an affirmative defense Public Health Law §3082, broadly defined as "immunity from any liability for healthcare facilities and professionals for treatment administered for Covid-19 during the period from the inaction of the statute to the end of treatment of the plaintiff's decedent herein, pursuant to the terms of the statute so as to provide limited liability which is applicable as set forth above, since treatment was impacted by the defendant's emergency response to Covid-19.

ELEVENTH AFFIRMATIVE DEFENSE

28. The answering defendant, and each of them, claim the immunity from liability, as to each cause of action, afforded by the Emergency or Disaster Treatment Protection Act and Article 30-D of the Public Health Law, as it existed at the time of the treatment sued upon.

WHEREFORE, this answering defendant demands judgment in its favor, together with

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