

NYSCEF DOC. NO. 1  
FILE #121802-01/ann

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DATE OF FILING:  
INDEX #:

Plaintiff designates  
Richmond County  
as the place of trial

The basis of venue is:  
Defendants' Place of Business.

Defendants' Place of Business:  
140 Meisner Avenue  
Staten Island, New York 10306  
County of Richmond

SUPREME COURT STATE OF NEW YORK  
COUNTY OF RICHMOND

----- X  
ALBERT FUSCO a/k/a ALBERT J. FUSCO, Deceased, by and through MICHAEL  
FUSCO, as Administrator of the Estate of ALBERT FUSCO a/k/a ALBERT J. FUSCO,

-against- Plaintiff(s), SUMMONS

EGER LUTHERAN HOMES AND SERVICES, INC. d/b/a EGER HEALTH CARE AND  
REHABILITATION CENTER and EGER HEALTH CARE AND REHABILITATION  
CENTER,

Defendant(s).

----- X  
To the above-named defendant(s):

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within -20- days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

FINKELSTEIN & PARTNERS, LLP  
Attorneys for Plaintiff(s)  
1279 Route 300  
P. O. BOX 1111  
Newburgh, New York 12551  
1-800-634-1212



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MICHAEL ZARANSKY, ESQ.  
Of Counsel

Dated: 9/9/2021

File #121802-01/ann

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF RICHMOND

-----X  
ALBERT FUSCO a/k/a ALBERT J. FUSCO, Deceased,  
by and through MICHAEL FUSCO, as Administrator  
of the Estate of ALBERT FUSCO a/k/a ALBERT  
J. FUSCO,

Plaintiff(s),

-against-

**VERIFIED COMPLAINT**

EGER LUTHERAN HOMES AND SERVICES, INC. d/b/a  
EGER HEALTH CARE AND REHABILITATION CENTER  
and EGER HEALTH CARE AND REHABILITATION  
CENTER,

Defendants.

-----X

Plaintiff(s), MICHAEL FUSCO, as Administrator of the  
Estate of ALBERT FUSCO a/k/a ALBERT J. FUSCO, by attorneys,  
FINKELSTEIN & PARTNERS, LLP, as and against, EGER LUTHERAN HOMES  
AND SERVICES, INC. d/b/a EGER HEALTH CARE AND REHABILITATION  
CENTER and EGER HEALTH CARE AND REHABILITATION CENTER, for the  
Verified Complaint, hereby alleges the following upon  
information and belief:

**AS AND FOR A FIRST CAUSE OF ACTION PURSUANT TO NEW YORK PUBLIC  
HEALTH LAW 2801-d and 2803-c AS AGAINST EGER LUTHERAN HOMES AND  
SERVICES, INC. d/b/a EGER HEALTH CARE AND REHABILITATION CENTER  
and EGER HEALTH CARE AND REHABILITATION CENTER**

1. That the above-named deceased, ALBERT FUSCO a/k/a ALBERT J. FUSCO, was the Father and Next-of-Kin of the Administrator above-named, MICHAEL FUSCO, and on and prior to the 13<sup>th</sup> day of October, 2019, the Deceased resided in the County of Richmond, State of New York.

2. That at all times hereinafter mentioned, the Plaintiff, MICHAEL FUSCO, is a resident of the County of Richmond, State of New York.

3. That by Order of the Surrogate's Court of the County of Richmond, the Plaintiff, MICHAEL FUSCO, was appointed as Administrator of the Goods, Chattels and Credits of the Deceased, ALBERT FUSCO a/k/a ALBERT J. FUSCO, on June 29, 2021, and at all times hereinafter mentioned, duly qualified and entered upon his duties as such Administrator and is now acting in such capacity. A copy of said Letters of Administration is attached hereto.

4. That at the time of his death on October 13, 2019, ALBERT FUSCO a/k/a ALBERT J. FUSCO (hereinafter "Plaintiff's Decedent"), was then of the age of 89 years.

5. That at all times hereinafter mentioned, Defendant, EGER LUTHERAN HOMES AND SERVICES, INC. d/b/a EGER HEALTH CARE AND REHABILITATION CENTER, was and still is a domestic not-for-profit corporation organized and existing under and by virtue of the Laws of the State of New York.

6. That at all times hereinafter mentioned, Defendant, EGER HEALTH CARE AND REHABILITATION CENTER, was and still is a domestic not-for-profit corporation organized and existing under and by virtue of the Laws of the State of New York.

7. That from on or about August 29, 2019 through on or about September 13, 2019, except for hospital transfers, Plaintiff's Decedent was admitted to and was a resident of the Defendants', EGER LUTHERAN HOMES AND SERVICES, INC. d/b/a EGER HEALTH CARE AND REHABILITATION CENTER and EGER HEALTH CARE AND REHABILITATION CENTER (referred to hereinafter collectively and/or individually as "NH Defendants") facility.

8. That this action falls within one or more of the exceptions as set forth in CPLR Article 16 including, without limitation, CPLR §1602, §1602(1), §1602(2), §1602(3), §1602(4), §1603(5), §1603(6), §1603(7), §1603(8), §1603(9), §1603(10), §1603(11) and §1603(12) of the State of New York.

9. That from on or about August 29, 2019 through on or about September 13, 2019, except for hospital transfers, Plaintiff's Decedent was in the exclusive care, custody and control of the NH Defendants.

10. That at all times hereinafter mentioned, defendant, EGER LUTHERAN HOMES AND SERVICES, INC. d/b/a EGER HEALTH CARE AND REHABILITATION CENTER, was authorized to do business as a

nursing home at 140 Meisner Avenue, Staten Island, County of Richmond, State of New York.

11. That at all times hereinafter mentioned, defendant, EGER LUTHERAN HOMES AND SERVICES, INC. d/b/a EGER HEALTH CARE AND REHABILITATION CENTER, owned a nursing home facility located at 140 Meisner Avenue, Staten Island, County of Richmond, State of New York.

12. That at all times hereinafter mentioned, defendant, EGER LUTHERAN HOMES AND SERVICES, INC. d/b/a EGER HEALTH CARE AND REHABILITATION CENTER, operated a nursing home facility located at 140 Meisner Avenue, Staten Island, County of Richmond, State of New York.

13. That at all times hereinafter mentioned, defendant, EGER LUTHERAN HOMES AND SERVICES, INC. d/b/a EGER HEALTH CARE AND REHABILITATION CENTER, was the lessor of a nursing home facility located at 140 Meisner Avenue, Staten Island, County of Richmond, State of New York.

14. That at all times hereinafter mentioned, defendant, EGER LUTHERAN HOMES AND SERVICES, INC. d/b/a EGER HEALTH CARE AND REHABILITATION CENTER, was the lessee of a nursing home facility located at 140 Meisner Avenue, Staten Island, County of Richmond, State of New York.

15. That at all times hereinafter mentioned, defendant, EGER LUTHERAN HOMES AND SERVICES, INC. d/b/a EGER HEALTH CARE

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