

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

696.1

CA 08-02508

PRESENT: SCUDDER, P.J., HURLBUTT, PERADOTTO, GREEN, AND GORSKI, JJ.

CARMEN BRITT AND CARMEN BRITT, AS EXECUTOR
OF THE ESTATE OF LULA BAITY, DECEASED,
PLAINTIFFS-APPELLANTS,

V

MEMORANDUM AND ORDER

BUFFALO MUNICIPAL HOUSING AUTHORITY, ELAINE
GARBE, SUPERVISOR, BUFFALO MUNICIPAL HOUSING
AUTHORITY, BISILOLA F. JACKSON, ADMINISTRATOR
OF THE ESTATE OF JERELENE ELIZABETH GIWA,
GRACE MANOR HEALTH CARE FACILITY, INC.,
DAVID J. GENTNER, MARY STEPHAN, KATHY RANDALL,
TIFFANY MATTHEWS, PHILLIP J. RADOS, M.D.,
DEFENDANTS-RESPONDENTS,
ET AL., DEFENDANTS.

GLENN E. MURRAY, BUFFALO, FOR PLAINTIFFS-APPELLANTS.

COLUCCI & GALLAHER, P.C., BUFFALO (JOHN J. MARCHESE OF COUNSEL), FOR
DEFENDANTS-RESPONDENTS BUFFALO MUNICIPAL HOUSING AUTHORITY, ELAINE
GARBE, SUPERVISOR, BUFFALO MUNICIPAL HOUSING AUTHORITY, AND BISILOLA
F. JACKSON, ADMINISTRATOR OF THE ESTATE OF JERELENE ELIZABETH GIWA.

FELDMAN, KIEFFER & HERMAN, LLP, BUFFALO (ADAM C. FERRANDINO OF
COUNSEL), FOR DEFENDANTS-RESPONDENTS GRACE MANOR HEALTH CARE FACILITY,
INC., DAVID J. GENTNER, MARY STEPHAN, KATHY RANDALL, AND TIFFANY
MATTHEWS.

Appeal from an order of the Supreme Court, Erie County (Diane Y.
Devlin, J.), entered April 11, 2008. The order, inter alia, granted a
stay of the action pending resolution of a related federal action.

It is hereby ORDERED that the order so appealed from is
unanimously affirmed without costs.

Memorandum: Supreme Court providently exercised its discretion
in granting the alternative relief sought by defendants in their
respective CPLR 3211 (a) (4) motions, i.e., to stay the action pending
the outcome of a related federal action (*see* CPLR 2201; *see generally*
Asher v Abbott Labs., 307 AD2d 211). A stay may be warranted based on
"due consideration of issues of comity, orderly procedure, and
judicial economy" where there is substantial identity of the issues,
relief sought, and parties in the state and federal actions (*id.* at
211; *see Finger Lakes Racing Assn. v New York Racing Assn.*, 28 AD3d

1208, 1209), and that is the case here. Plaintiffs' contention that the case should be assigned to a different justice based on the court's alleged bias is raised for the first time on appeal and thus is not preserved for our review (see *William Kaufman Org. v Graham & James*, 269 AD2d 171, 174; *Ciesinski v Town of Aurora*, 202 AD2d 984, 985). In any event, that contention is without merit (see generally *William Kaufman Org.*, 269 AD2d at 174).

Entered: June 5, 2009

Patricia L. Morgan
Clerk of the Court