

**Commissioner of the Dept. of Social Servs. of the
City of N.Y. v New York-Presbyt. Hosp.**

2016 NY Slip Op 31677(U)

September 7, 2016

Supreme Court, New York County

Docket Number: 450714/14

Judge: Charles E. Ramos

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This opinion is uncorrected and not selected for official publication.

[* 1]
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

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Commissioner of the Department of Social
Services of the City of New York,

Plaintiff,

Index No. 450714/14

- against -

New York-Presbyterian Hospital, Chi
Young Lee and BNY Mellon, N.A., as
Co-Trustees of the Merrick Lee
Supplemental Needs Irrevocable
Trust, Chi Young Lee and BNY
Mellon, N.A., as Co-Administrators
of the Estate of Merrick Lee, and Chi
Young Lee, individually,

Defendants.
-----x

Hon. C. E. Ramos, J.S.C.:

Defendant New York-Presbyterian Hospital (NYPH) moves to
dismiss the claims against it pursuant to CPLR 3211 (1) (5), (7).

Plaintiff Commissioner of the Department of Social Services
of the City of New York (Department) cross-moves to dismiss all
of NYPH's affirmative defenses and granting summary judgment in
its favor.

Background

The Department is responsible for the administration of the
Medical Assistance Program (Medicaid) within New York City, in
accordance with the Federal Social Security Act and the Social
Services Law of New York State. Originally, the Department
commenced this action against NYPH, Chi Young Lee and BNY Mellon,
N.A. (BNY) to recover the amount of Medicaid provided to Merrick

Lee, Chi Young's son. Merrick Lee received public assistance and care in the form of Medicaid from his birth until his death (Gil Aff.).

Prior to his death, on November 8, 2003, Merrick was hospitalized at NYPH and suffered personal injuries as a result of the alleged negligence and medical malpractice of NYPH.

Chi Young Lee commenced a malpractice action, on behalf of his son, against NYPH and other defendants in Supreme Court in 2004 for the personal injuries suffered by Merrick (malpractice action). The malpractice action was originally assigned to Justice Abdus-Salam and subsequently, to Justice Schlesinger. In 2008, Chi Young Lee agreed to settle the malpractice action against NYPH for \$6 million pursuant to a settlement agreement in 2008 (settlement agreement). Pursuant to the settlement agreement, NYPH paid Merrick \$6 million. In paragraph IV of the Settlement Agreement, Lee and NYPH specifically agreed that,

"If and when Medicaid asserts a lien or claim for return of any monies paid by Medicaid for the care and treatment rendered to Merrick Lee during his hospitalization ... [NYPH] "will assume full responsibility for any monies which are ultimately found to be due to Medicaid in connection with the aforementioned hospitalization."

The Court in the malpractice action issued an infant's compromise order dated June 26, 2008, which approved the creation of the Merrick Lee Supplemental Needs Irrevocable Trust (SNT), with BNY and Chi named as trustees in order to hold the settlement funds for Merrick's benefit.

In March 2010, Merrick died. Two months after Merrick's death, Chi Young Lee and BNY moved by order to show cause in the malpractice action with a verified petition to settle the final accounts. The Department acknowledges that it was properly served with the order to show cause, and did not submit papers in response, although it did submit a letter advising that it retained a Medicaid lien against NYPH in the amount of \$7,133.

On July 1, 2010, Justice Schlesinger approved the final accounting; the trustees were dismissed and a payment approved of \$7,133 from the Trust to the Department to satisfy the Medicaid lien (SNT order).

In November 2010, NYPH billed Medicaid the sum of \$12,381,669 for the entire seven year period of Merrick's hospitalization. The Department maintains that NYPH's bill to Medicaid was in spite of and contrary to the plain terms of the settlement agreement. Nonetheless, after receiving NYPH's bill for Merrick's hospitalization, the Department did not appeal the SNT order or seek its vacatur. Rather, in January 2012, Medicaid made a payment to NYPH of \$4,828,939, in addition to a second payment of \$354,080 (Gil Aff., ¶ 16).

In this action, the Department alleges that NYPH unjustly benefitted at Medicaid's expense by receiving the payments totaling \$5,182,939, to which NYPH was not entitled for Merrick's hospitalization. The Department also alleges that pursuant to

the settlement agreement, NYPH assumed full responsibility for any Medicaid lien or claim pertaining to Merrick's hospitalization from November 8, 2003 to his discharge upon his death, and the Department is a third-party beneficiary of that obligation.

In November 2014, this Court granted BNY's and Chi Young Lee's motion to dismiss the claims against them, on the ground that the doctrine of res judicata barred the claims because the Department had been given notice and an opportunity to be heard before the SNT order was issued with respect to any claim for Medicaid reimbursement (NYSCEF Doc No 63).

In March 2015, this Court denied the Department's motion to reargue that decision (NYSCEF Doc N 141). Shortly thereafter, the Department moved to vacate and/or modify the SNT order pursuant to CPLR 5015, four years after it was issued, before Justice Schlesinger, in an attempt to recover the \$5,182,939 Medicaid payment to NYPH that it concedes was "mistakenly" paid.

On July 2, 2015, Justice Schlesinger denied the motion, reasoning that in 2010 and prior to the issuance of the SNT order, the Department "had before it...all the evidence it needed to act, yet it simply failed to proceed in a diligent manner to investigate the issues and takes steps to pursue or preserve any rights it had" (7/2/15 Decision, at 7).

Discussion

The Department is seeking to recover the entire amount in Medicaid services provided on behalf of Merrick during his hospitalization premised largely on the hold harmless agreement set forth in the settlement agreement. The Department alleges that, pursuant to Social Services Law § 366, Merrick assigned to the Department any benefits which were available to him individually from NYPH or any other third party for care or other medical benefits provided by Medicaid.

In opposition, NYPH contends that the Department was undeniably on notice that Merrick had died, and therefore knew that a final bill for medical expenses incurred during his hospitalization would be forthcoming. Thus, the Department had ample opportunity to determine the status and amount of any such billing prior to entry of the SNT order in July 2010 and should have taken the appropriate action before the Court in the malpractice action at that time. This Court agrees.

Under the doctrine of *res judicata*, once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy (*Josey v Goord*, 9 NY3d 386 [2007]). Moreover, "if the party against whom *res judicata* is invoked had a full and fair opportunity to litigate the claim in a prior proceeding based on the same transaction, but did not raise it therein, he will be barred from

raising it in a subsequent action (*Schwartzreich v E.O.C. Carting Co.*, 246 AD2d 439 [1st Dept 1998]).

Here, the Department's claims against NYPH for Medicaid reimbursements, albeit based upon different theories of recovery, plainly arise out of the identical right to a Medicaid lien asserted in the malpractice action, and should have been interposed in that action. Even crediting the Department's assertion that it could not have known it would be billed by the NYPH prior to the hospital's submission of claims in November 2010, its proper course of action would have been to seek vacatur of the SNT order from Justice Schlesinger at that time, rather than waiting nearly four years to institute a separate action before a different justice. In light of Justice Schlesinger's denial of the Department's motion to vacate and/or modify the SNT order, it is undeniable that all of the Department's alleged claims for reimbursement have been brought to a conclusion, and the Department is precluded from pursuing a cause of action against the Department based upon a different legal theory or remedy.

Accordingly, it is

ORDERED that defendant New York-Presbyterian Hospital's motion to dismiss the complaint is granted in its entirety; and it further

ORDERED that plaintiff Commissioner of the Department of

Social Services of the City of New York's cross-motion for summary judgement is denied in its entirety; and it is further

ORDERED that the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk fo the Court, and the Clerk is directed to enter judgment accordingly.

Dated: September 7, 2016

ENTER:

A handwritten signature in black ink, appearing to read 'Charles E. Ramos', is written over a horizontal line.

J.S.C.

CHARLES E. RAMOS