

**Bayview Manor LLC v United Cerebral Palsy of
Nassau County Inc.**

2008 NY Slip Op 30850(U)

March 17, 2008

Supreme Court, Nassau County

Docket Number: 7974-05/

Judge: Stephen A. Bucaria

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

BAYVIEW MANOR LLC,

Plaintiff,

TRIAL/IAS, PART 4
NASSAU COUNTY

INDEX No. 017974/05

MOTION DATE: Jan. 16, 2008
Motion Sequence # 003, 004

-against-

UNITED CEREBRAL PALSY OF NASSAU
COUNTY INC. and UCP -BAYVIEW NURSING
HOME,

Defendants.

The following papers read on this motion:

- Notice of Motion..... X
- Cross-Motion..... X
- Memorandum of Law..... XX
- Reply Memorandum of Law..... X

This motion, by plaintiff, for an order pursuant to CPLR Rule 3124 compelling defendants to comply with and respond to Bayview's Second Notice for Discovery and Inspection, dated October 8, 2007, and for such other and further relief as the Court deems just and proper; and a cross-motion, by defendants, for an order pursuant to CPLR §3103 for a Protective Order, are **both** determined as hereinafter set forth.

Bayview Manor LLC (“Plaintiff” or “Bayview”) entered into a sales agreement on February 5, 2002 with the defendant, UCP – Bayview Nursing Home (“Defendant” or “UCP”). Bayview completed the purchase of a skilled nursing facility previously owned and operated by the defendant on April 15, 2003. Bayview claims that, after the purchase of the nursing facility, UCP systematically solicited nursing home residents to persuade them to move to facilities owned or operated by the defendants. UCP takes the position that any residents who left Bayview did so because of the quality of care provided by the plaintiff rather than as a result of the defendant’s improper solicitation.

Procedurally, discovery commenced on this matter and both the plaintiff and the defendant sent out disclosure demands. UCP was first to serve and asked the plaintiff for production of all “documents concerning complaints, regulatory violations, lawsuits, incident reports, internal investigations, governmental investigations and surveys” concerning Bayview. Bayview refused to respond to those demands on the grounds of relevance. UCP agreed to limit the request to “documents concerning complaints, regulatory violations, lawsuits, incident reports, internal investigations, governmental investigations and surveys concerning care or treatment of the residents or the care provided by the staff of Bayview” from 2003 through 2007. The plaintiff produced documents that responded to these modified demands.

Bayview then requested that UCP produce all documents “concerning complaints, regulatory violations, lawsuits, incident reports, internal investigations, government investigations and surveys” from 1998 through 2003 concerning the care or treatment of the residents or the care provided by the staff of UCP. The defendant objected to Bayview’s request on the grounds of relevance and materiality. The plaintiff sought a resolution of this issue and compel disclosure, to no avail. Pursuant to the Commercial Part Rules, a pre-motion conference was held, which did not result in a resolution, and this motion ensued.

PLAINTIFF’S CONTENTIONS

The plaintiff seeks a permanent injunction restraining and enjoining the defendants from soliciting the plaintiff’s nursing home residents to move to a facility that is owned, controlled, or operated by the defendants or any of their affiliates. Second, Bayview asserts that the defendant has a duty to refrain from soliciting residents, and it was breached when the defendants attempted to persuade the nursing home residents to move to a facility under the control of UCP. Finally, the plaintiff claims that the defendant is in breach of the Asset Purchase Agreement because the defendant failed to operate and

BAYVIEW MANOR LLC

Index no. 017974/05

conduct business of the nursing facility in the ordinary course consistent with past practice. Counsel for the plaintiff argues that the information sought is highly relevant to the issue of quality of care obligation that is central to the allegation of patients leaving the facility.

The defendant raises a number of affirmative defenses in this action that include (1) the plaintiff's claims are barred, in whole or part, by the doctrine of prior material breach, (2) an obligation not to solicit Bayview residents is void against the public policy of New York, (3) good faith dealings with people with developmental disabilities accords no liability attached to the defendant, and several others.

Counsel for defendant argues that any documents relating to patient care made more than five years prior to the closing are irrelevant, and as such, are palpably improper. Counsel also asserts that the defendants' demands for documents, post-closing, are relevant to the issue raised by the defendants in the answer. Counsel contends that plaintiff's demands are also objectionable on statutory confidential grounds inasmuch as the plaintiff has raised that privilege in response to the defendants' demands.

DECISION

Pursuant to CPLR 3101(a), "full disclosure of all matter material and necessary in the prosecution or defense of an action" is required. The phrase "material and necessary" should be "interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason"

(Allen v Crowell-Collier Pub. Co., 21 NY2d 403, 406; see Andon v302-304 Mott St. Assoc., 94 NY2d 740, 746)".

BAYVIEW MANOR LLC**Index no. 017974/05**

The defendants cite a number of cases which show discovery requests are denied because they are “overly broad or sought irrelevant information”. Bayview has requested documents which show the care or treatment of the residents or the care provided by the staff of UCP from 1998 until 2003. This request was made to further the plaintiff’s contention that the facility has been losing residents because of the poor quality of care that was provided by UCP during those years. UCP has sought documents that date from 2003 through 2007 and claim that they are “entitled to documents regarding Bayview Manor’s care after the Closing Date in order to establish one of their defenses – that residents of the facility volunteered to transfer to facilities owned and operated by Defendants due to substandard care provided by Bayview Manor, and not as a result of solicitation.” (The Defendants’ Memorandum of Law at p. 2).

In essence, both parties have raised the issue that the quality of care was substandard during the time frame that the opposing party was operating the facility. For either party to rebut this claim against them or further this defense, both parties will need the proper documentation and information and therefore, must be compelled to produce. In light of the UCP claim that the residents voluntarily left because of the substandard conditions on the part of the plaintiff, Bayview is entitled to rebut this defense. To do so, Bayview must show that the conditions were either the same or worse when the defendant was operating the facility as compared to when the plaintiff operated the facility. Whether the quality of care was different or exactly the same during the applicable time period bears directly on the defenses and claims of this action. This disclosure request cannot be seen as a request that is overly broad or seeks irrelevant information.

The defendants also claim that certain disclosure requests are to be denied because the plaintiff’s demands seek confidential information which is shielded from discovery. The defendants point to two requests, one that asks for incident reports and the other that seeks internal investigations, which “concern the Nursing Home from 2003, 2004, 2005, 2006 and 2007 concerning residents or staff of the Nursing Home.” (Document request number 17 and 18 of Defendants’ Second Combined Demand). This request was originally made by the defendants and denied by the plaintiffs on the grounds of confidentiality under the Education and Public Health Law. The plaintiff has sought the exact same documents to be produced by UCP that Bayview asserts is barred from disclosure. The confidentiality that applies to the plaintiff under Public Health Law §

BAYVIEW MANOR LLC

Index no. 017974/05

2805-m (“...any incident reporting requirements imposed upon diagnostic and treatment centers pursuant to the provisions of this chapter shall be kept confidential...”), Education Law § 6527 (“...the proceedings nor the records relating to performance of a medical or a quality assurance review function or participation in a medical and dental malpractice prevention program nor any report required by the department of health...shall be subject to disclosure...”) and 42 U.S.C. § 1395(i)-3(b)(1)(B) (“A State or the Secretary may not require disclosure of the records of such committee...”) cannot be exclusive to one party and unreachable to another. The confidentiality that attaches to the plaintiff’s documentation must also apply to the defendant’s as well.

“The supervision of discovery, and the setting of reasonable terms and conditions for disclosure, are within the sound discretion of the Supreme Court. The Supreme Court’s discretion is broad because it is familiar with the action before it, and its exercise should not be disturbed on appeal unless it was improvidently exercised. (Provident Life and Cas. Ins. Co. v Brittenham, 284 AD2d 518, 727 NYS2d 142, 2nd Dept., 2001)”.

(Ito v Dryvit Systems Inc., 5 AD3d 735, 773 NYS2d 599, 2nd Dept., 2004).

The defendant has not established an entitlement to a protective order from all disclosure requests. With respect to document requests numbered 7, 8, 9 and 10 of plaintiffs’ Second Notice for Discovery and Inspection, the Court **grants** a protective order for the reasons stated hereinabove. The plaintiff’s request to compel disclosure in all other respects of this particular motion is **granted**.

Dated MAR 17 2008

ENTERED

Stephen A. Bucaria
J.S.C.

MAR 19 2008

NASSAU COUNTY
COUNTY CLERK’S OFFICE