

Pinegrove Manor v Sheperd

2009 NY Slip Op 30656(U)

March 13, 2009

Supreme Court, Nassau County

Docket Number: 2945/06

Judge: Antonio I. Brandveen

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

PINEGROVE MANOR d/b/a GRACE PLAZA
NURSING and REHABILITATION CENTER,
INC.,

Plaintiff,

- against -

CATHERINE M.. SHEPERD,

Defendant.

SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU

GLENGARIFF HEALTH CARE CENTER
INC.,

Plaintiff,

- against -

CATHERINE M. SHEPERD,

Defendant.

TRIAL / IAS PART 31
NASSAU COUNTY

Action No. 1

Index No. 2945/06

Motion Sequence No. 001

Action No. 2

Index No. 13752/06

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits	<u>1, 2</u>
Answering Affidavits	<u>3</u>
Replying Affidavits	<u>4</u>
Briefs: Plaintiff's / Petitioner's	<u> </u>
Defendant's / Respondent's	<u>5</u>

The defendant moves for summary judgment pursuant to CPLR 3212 on the grounds the plaintiff failed to join a necessary party, and the plaintiff failed to state a

cause of action. The plaintiff opposes this motion. This Court has carefully reviewed and considered all of the papers submitted with respect to this motion. The underlying action is for breach of contract, account stated, and fraudulent transaction.

The defense attorney states, in a supporting affirmation dated July 15, 2008, the plaintiff seeks a judgment for \$26,049.00 against the defendant for the alleged debts of Susan Hugue, a nonparty. The defense attorney states the plaintiff is barred by state law and the subject agreement from seeking to hold a designated representative personally liable for the alleged debts of a nursing facility resident. The defense attorney states the subject agreement was between the plaintiff facility and the resident, and the defendant only signed the subject agreement because the nursing home resident had muscular degeneration and was legally blind. The defense attorney asserts the Attorney General of the State of New York reached an agreement with 15 nursing homes across the State eliminating so-called "third-party agreements" that impose obligations on families as a condition of admission. The defense attorney avers the plaintiff admitted an account stated does not exist in this action. The defense attorney points out the defendant never had any transactions between herself and the plaintiff, so there is no contractual obligation to pay from her personal funds for any services rendered by the plaintiff to Hugue. The defense attorney maintains the defendant never paid nor offered to pay any portion of the plaintiff's invoice amount. The defense attorney notes the plaintiff's claim of fraudulent conveyance was not in existence at the time of alleged fraudulent transfer

because the alleged transfer between Hugue and the defendant occurred on or about October 30, 2003, more than 21 months before the alleged debt was incurred, and the plaintiff fails to satisfy the requirements necessary under the Debtor and Creditor Law §§ 273, 275, 276.

The defendant acknowledges, in a supporting affidavit dated June 13, 2008, signing documents for Hugue because of Hugue physical condition, but signed only as a designated representative. The defendant states: "I not only objected (on behalf of Resident Susan Hugue) to the invoice(s) received from plaintiff, but I also never had any transactions between myself and the plaintiff. The invoices in question were sent to Susan Hugue for services allegedly rendered to Susan Hugue." The defendant insists, on information and belief, there was no contractual obligation between her and the plaintiff to pay for any services listed on the invoice rendered to Hugue.

The plaintiff's attorney states, in an opposing affirmation dated October 3, 2008, the defense motion must be denied because adequate grounds for dismissal have not been presented about joinder, and there are cognizable claims by the plaintiff. The plaintiff's attorney states the defense motion is fatally defective since the defendant failed to annex a complete copy of the underlying pleadings. The plaintiff's attorney asserts the defense claim of the failure to join a necessary party incorrectly premised on the lack of joinder of Hugue or Hugue's estate, rather the claims against the defendant arise from the Debtor and Creditor Law. The plaintiff's attorney avers a fraudulent transfer to the defendant of

the net proceeds from the sale of Hugue's real property on October 30, 2003, and the breach of contract concerning the plaintiff's admission agreement. The plaintiff's attorney contends the defendant benefitted as the recipient of certain of Hugue's assets consisting primarily of the net proceeds of that sale, to wit 25 The Oaks, Roslyn Estates, New York, the subject premises, which were used by the defendant to purchase on October 31, 2003, her current residence, to wit 50 Locust Avenue, Glen Head, New York, among other things. In support of those assertions, the plaintiff's attorney points to closing statements for both properties, bank statements, and the defendant's deposition on November 16, 2007. The plaintiff's attorney opines money was transferred to the defendant from the sale of Hugue's real property for the defendant's benefit without consideration, and rendered Hugue and Hugue's estate insolvent, and unable to pay Hugue's present and future creditors, including but not limited to the plaintiff. The plaintiff's attorney states the defendant fails to mention no estate was created for Hugue because at the time of Hugue's death, she had no interest in any assets which would require probate and administration by the Surrogate's Court because the conveyance rendered Hugue's estate insolvent, and there are no other interested parties who ought to be joined here. The plaintiff's attorney asserts the plaintiff has a separate and distinct basis of liability against the defendant arising from a breach of contract claim because the defendant voluntarily signed the plaintiff's admission agreement as a responsible person for her aunt, Susan Hugue, and undertook various duties and obligations for Hugue. The

plaintiff's attorney points to the provision of the agreement where the defendant agreed to pay damages to the facility for breach of her personal obligation as set forth in it. The plaintiff's attorney notes it is well settled that pleadings should be construed liberally as long as the complaint provides sufficient notice, that is the plaintiff has asserted sufficient claims for breach of contract, violations of the Debtor and Creditor Law, and an account stated against the defendant. The plaintiff's attorney maintains triable issues of fact exist which preclude summary judgment.

The defense attorney reiterates, in a reply affirmation dated November 17, 2008, the defendant's contentions. The defense attorney maintains Hugue sold the subject premises occupied by herself, the defendant, and the defendant's daughter, and the plaintiff was not a creditor nor had any claim. The defense attorney states the funds from the sale of that residence were used to purchase 50 Locust Avenue, Glen Head, New York, which became the residence for Hugue, the defendant, and the defendant's daughter, and any remaining funds were placed in a house account of the defendant with Hugue having a power of attorney for this account. The defense attorney claims funds from the sale of the residence were used for home improvements to make the first floor bedroom and living area for Hugue, who was then 94 years of age. The defense attorney states Hugue was taken to the St. Francis Hospital in March 2005 at the age of 96, and was then sent to the plaintiff's nursing home and rehabilitation facility and admitted on July 28, 2005, and later died at another nursing home and rehabilitation facility on

November 17, 2005.

Under CPLR 3212(b), a motion for summary judgment “shall show that there is no defense to the cause of action or that the cause of action or defense has no merit. The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.” “The motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact.” Summary judgment is a drastic remedy that is awarded only when it is clear that no triable issue of fact exists (*Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 325; *Andre v. Pomeroy*, 35 N.Y.2d 361). Summary judgment is the procedural equivalent of a trial (*Museums at Stony Brook v. Village of Patchogue Fire Dept.*, 146 A.D. 2d 572). Thus the burden falls upon the moving party to demonstrate that, on the facts, it is entitled to judgment as a matter of law (*see, Whelen v. G.T.E. Sylvania Inc.*, 182 A.D. 2d 446). The court’s role is issue finding rather than issue determination (*see, e.g., Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395; *Gervasio v. Di Napoli*, 134 A.D.2d 235, 236; *Assing v. United Rubber Supply Co.*, 126 A.D.2d 590). Nevertheless, “the court must evaluate whether the alleged factual issues presented are genuine or unsubstantiated” (*Gervasio v. Di Napoli, supra*, 134 A.D.2d at 236, quoting from *Assing v. United Rubber Supply Co., supra; see, Columbus Trust Co. v. Campolo*, 110 A.D.2d 616, *aff’d* 66 N.Y.2d 701). If the issue claimed to exist is not genuine, and, therefore, there is nothing to be resolved at the trial,

the case should be summarily decided (*see, Andre v. Pomeroy*, 35 N.Y.2d at 364; *Assing v. United Rubber Supply Co., supra*). This Court is constrained, as a matter of law, finds there is an issue of fact, and with respect to the grounds raised in the motion, the defendant has not met the burdens required by law.

Accordingly, the motion is denied in all respects.

So ordered.

Dated: **March 13, 2009**

ENTER:

ENTERED

MAR 19 2009

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**

A handwritten signature in black ink, appearing to be 'J.S.C.', written over a horizontal line.

J. S. C.

FINAL DISPOSITION

NON FINAL DISPOSITION xxx