

<b>Saratoga County v Stack</b>
2012 NY Slip Op 33917(U)
September 19, 2012
Supreme Court, Saratoga County
Docket Number: 20111363
Judge: Thomas D. Nolan, Jr.
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STATE OF NEW YORK

SUPREME COURT

COUNTY OF SARATOGA

SARATOGA COUNTY,

Plaintiff,

-against-

**DECISION AND ORDER**

**RJI No. 45-1-2011-1492**

**Index No. 20111363**

WILLIAM S. STACK, J. MARIE STACK a/k/a JULIE STACK  
and DONALD H. STACK,

Defendants.

**PRESENT: HON. THOMAS D. NOLAN, JR.**  
**Supreme Court Justice**

**APPEARANCES: STEPHEN M. DORSEY**  
Saratoga County Attorney  
(Robert D. Wilcox, Esq., Assistant County Attorney,  
of Counsel)  
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In November 2009, an elderly married couple William S. Stack (hereafter "Husband", "Father" or "Mr. Stack") and J. Marie Stack (hereafter "Wife", "Mother" or "Mrs. Stack") required nursing home care and applied for admission to Maplewood Manor, a facility owned and operated by Saratoga County. As part of the admission process, one of the couple's children, Donald H. Stack (hereafter "Son" or "Donald") signed a document entitled "Saratoga County Maplewood Manor Financial Agreement" (the Agreement) on behalf of both of his parents in

which he agreed to serve as his parents "Financial Agent". Then, in December 2009, Mr. Stack and Mrs. Stack executed powers of attorney in favor of Donald. The Agreement, as now relevant, provides that the "Financial Agent" would make on behalf of his parents' "timely application for Medicaid" prior to depletion of the parents' financial assets and "to obtain and provide the Medicaid agency with any and all information necessary to ensure annual recertification of Medicaid eligibility". The agreement further provides that "[t]he Financial Agent personally agrees to pay damages which result from denial of Medicaid eligibility caused by the Financial Agent's failure to cooperate in providing timely information required for Medicaid eligibility and annual recertification"; and that "if the Financial Agent causes the resident to be denied Medicaid or Medicare coverage...for noncooperation in providing information to the Department of Social Services...the Financial Agent agrees he/she is personally liable for resulting loss or damage to [Saratoga County]".

In December 2009, Donald, as financial agent and attorney-in-fact for his mother, filed a Medicaid application on her behalf with the Saratoga County Department of Social Services (DSS). In February 2009, DSS requested that Donald submit certain enumerated additional financial information about his mother's income and assets. Donald did not comply. DSS then denied Mrs. Stack's Medicaid application. Donald did not appeal that determination or otherwise request reconsideration. In September 2010, Saratoga County demanded payment from Donald of his Mother's then outstanding \$41,434.92 bill.<sup>1</sup> In April 2011, Donald reapplied for Medicaid on behalf of his Mother. This application was approved by DSS retroactive to

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<sup>1</sup>The letter also demanded payment of \$3,689.00 for care rendered by the County to Mr. Stack who by then had recovered and had left the nursing home.

January 2011.

In April 2011, Saratoga County commenced this action against Mr. Stack, Mrs. Stack, and Donald.<sup>2</sup> The complaint contains 12 causes of action - two each against Mr. Stack, Mrs. Stack, and Donald seeking recovery of the \$3,689.00 balance claimed due for nursing home care provided to Mr. Stack<sup>3</sup> and three each against Mr. Stack and Donald seeking recovery of the balance claimed due, \$83,817.52 for nursing home care provided to Mrs. Stack. Issue has been joined and discovery demands have been served by plaintiff, but defendants have not answered them.

The six viable causes of action (numbers seven through twelve) seek recovery against Mr. Stack based upon account stated, the doctrine of necessities, and implied contract/quantum meruit and against Donald for breach of the financial agreement, account stated, and implied contract/quantum meruit.

Two motions are pending. Plaintiff moves to compel defendants' compliance with its outstanding discovery demands. Defendants cross-move for summary judgment dismissing causes of action seven through twelve.

First, the summary judgment motion. In its opposing papers, plaintiff expressly concedes that the account stated cause of action brought against defendant William Stack is untenable, and

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<sup>2</sup>Mrs. Stack died on July 11, 2011 while a resident of the nursing home, survived by her Husband and Donald [and other children]. No estate proceeding has been initiated. Saratoga County concedes that filing a claim to recover for the value of the nursing care provided to Mrs. Stack against her Estate would be fruitless as she had no assets when she died.

<sup>3</sup>Following commencement, the County's claim arising from Mr. Stack's outstanding bill was paid. Thus, the complaint's first, second, third, fourth, fifth, and sixth causes of action are moot, a fact which plaintiff concedes.

it does not submit arguments supporting the viability of the quantum meruit/implied contract causes of action alleged against both Mr. Stack and Donald. Accordingly, the defendants' cross motion is granted, in part, and the complaint's seventh, eighth, and twelfth causes of action are dismissed, with prejudice and without costs.

Left for determination is the viability of the necessities claim asserted against defendant Mr. Stack (ninth cause of action) and the breach of contract (tenth cause of action) and account stated (eleventh cause of action) against Donald.

As on all summary judgment motions, the court's initial role is issue identification, not issue resolution, Speller v Sears, Roebuck & Co., 100 NY2d 38, 44 (2003) or stated differently, the court's role is not to try issues of fact but to determine whether there are such issues to be tried. Sommer v Federal Signal Corp., 79 NY2d 540, 554 (1992). The movant, of course, must establish by competent and admissible evidence a prima facie entitlement to judgment. Vega v Restani Constr. Corp., 18 NY3d 494 (2012). Then, if it does, the nonmovant, to avoid dismissal, must demonstrate the existence of material triable issues of fact by "affirmative proof to demonstrate that the matters are real and capable of being established upon a trial". Nelson v Lundy, 298 AD2d 689, 690 (3<sup>rd</sup> Dept 2002). Evidence, not speculation or supposition, is needed to demonstrate a triable issue. Vogel v Gilbo, 276 AD2d 977, 979 (3<sup>rd</sup> Dept 2000). The facts must be viewed in the light most favorable to the party opposing summary judgment, here the County. Cahill v Triborough Bridge & Tunnel Auth., 4 NY3d 35, 37 (2004); Czarnecki v Welch, 13 AD3d 952 (3<sup>rd</sup> Dept 2004).

First, the plaintiff's necessities claim against Mr. Stack is a common law remedy that a creditor may pursue once it is shown that collection cannot be effected against the spouse here,

Mrs. Stack, who received the services. see generally 46 NY Jur 2d, Domestic Relations § 954. In such a case, the spouse of the recipient, here Mr. Stack, may be liable for the reasonable or fair value of the necessaries provided her medical expense. Lourdes Mem. Hosp. v Frey, 152 AD2d 73, 75-76 (3<sup>rd</sup> Dept 1989). To be successful, plaintiff must prove that when it furnished nursing services to Mrs. Stack, it relied “on the credit of [her] husband” and, if so, that Mr. Stack presently possesses the financial resources and ability to pay for his deceased’s wife care. see Medical Business Associates, Inc. v Steiner, 183 AD2d 86, 97-98 (2<sup>nd</sup> Dept 1992). Here, there has been no pretrial discovery concerning Mr. Stack’s financial resources. The plaintiff’s claim has, at least, facial viability.

Defendants’ cross motion for an order dismissing the complaint’s ninth cause of action is denied, without costs.

Next considered is the viability of the tenth cause of action alleged against Donald. Clearly, the contract he signed does not make him a guarantor of his late mother’s legal obligation. Yet, the contract does impose obligations on Donald as “Financial Agent” to apply for and pursue available third-party payment options that may have been available to his Mother. The opposing affidavit of the County’s nursing home accountant demonstrates prima facie that Donald may not have fulfilled that contractual obligation concerning his mother’s first Medicaid application which if granted would have resulted in the County being paid by Medicaid for her care retroactive to November 2009. In addition, there is also a triable issue whether Donald applied available resources of his mother to pay for her care as he agreed to do. see Troy Nursing Home and Rehabilitation Center, LLC v Naylor, 93 AD3d 1353 (3<sup>rd</sup> Dept 2012).

Defendants’ cross motion for judgment to dismiss the complaint’s tenth cause of action is

denied, without costs.

Lastly, the account stated cause of action against Donald lacks merit since the nursing services which form the basis of the outstanding account were not provided to him, and the act of mailing of account statements to a non-responsible third party does not establish that person's personal liability for payment of the account. Gurney Becker & Bourne, Inc. v Benderson Dev. Co., 47 NY2d 995 (1979).

Defendants' cross motion for an order dismissing the complaint's tenth cause of action is granted, without costs.

Now, the County's discovery motion. Defendants concede that the assets and income of Mr. Stack are germane to resolution of the necessities cause of action and thus plaintiff's discovery demands requiring, inter alia, the production of his financial records must be answered. In the court's view, a confidentiality agreement is not necessary and will not be ordered absent the consent of the parties.

The personal financial records of Donald do not appear presently material or relevant to the County's remaining claim against him. Donald never agreed to guarantee payment of his Mother's obligation; rather, he agreed to use his best efforts to secure third-party benefits before her assets were depleted. In addition, there is presently no evidence that this defendant misappropriated any of his mother's assets. The fact that he may have made small interim payments from his own checking account on his mother's account does not, standing alone, establish any misappropriation. Rather, he may simply have made a personal, voluntary payment on his mother's behalf.


Plaintiff's motion to compel discovery is granted, in part, and denied, in part, without

costs. Defendants' motion for a protective order is granted, in part, and denied, in part. Defendants shall comply with plaintiff's discovery demands directed to Mr. Stack within thirty (30) days of entry of the order herein.

This constitutes the decision and order of the court. The original decision and order is forwarded to counsel for defendants. All original motion papers are delivered to the Supreme Court Clerk/County Clerk for filing. Counsel for defendants is not relieved from the applicable provisions of CPLR 2220 relating to filing, entry and notice of entry of the decision and order.

So Ordered.

DATED: September 19, 2012  
Saratoga Springs, New York

  
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HON. THOMAS D. NOLAN, JR.  
Supreme Court Justice

**Entered**  
Kathleen A. Marchione  
  
Saratoga County Clerk

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