

Figueroa v Regeis Care Ctr.
2013 NY Slip Op 34257(U)
April 5, 2013
Supreme Court, Bronx County
Docket Number: Index No. 21204/2011E
Judge: Stanley B. Green
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THE COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

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CARMEN FIGUEROA, AS ADMINISTRATRIX
FOR THE ESTATE OF INES ARCE,

INDEX №.21204/2011E

Plaintiff(s),
-against-

REGEIS CARE CENTER AND REGEIS CARE
CENTER, LLC.,

Present:
HON.STANLEY GREEN
J.S.C.

Defendant(s).

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HON. STANLEY GREEN, J.S.C.

Upon the foregoing papers this motion by defendants to stay the enforcement and execution of the plaintiff's judgment is granted.

This case was settled for \$375,000. The attorneys signed a stipulation of settlement on October 4, 2012. Plaintiff signed a General Release on October 20, 2012.

The general release provides, in pertinent part, that the release is given "in consideration of Three Hundred and Seventy Five Thousand Dollars and no cents (375,000) to be paid in lawful money of the United States of America by Lewis & Clark LTC Risk Retention Group, Inc., on behalf of REGEIS CARE CENTER and REGEIS CARE CENTER, LLC...."

On November 12, 2012, plaintiff moved for approval of the settlement pursuant to EPTL §5-4.6. The motion was granted by Order dated December 6, 2012, which directed that RCC and RCC, LLC pay all sums under the order of compromise. On December 13, 2012, plaintiff served all necessary closing papers on defendants attorney and requested payment in 21 days pursuant to CPLR 5003-a.

Lewis & Clark is the insurer for the defendants'. On December 21, 2012, a receiver was

appointed for Lewis & Clark by Order of the District Court for Clark County, Nevada, which provides;

... pursuant to NRS 696B.270 and 696B.340, all persons are hereby immediately restrained from the commencement or prosecution fo any actions by or on behalf of the Insurer or against the Insurer. Further, all persons are hereby restrained from obtaining any preferences, judgments, attachments, or other liens as to any property of the Insurer or making any levy against the Insurer or against its assets or any part thereof, until further order of the Court.

On February 28, 2013, the Nevada Court placed Lewis & Clark into liquidation, directed the Receiver to discontinue the defense of all suits in which Lewis & Clark or their insureds are parties and established a procedure by which claimants such as the plaintiff herein can file a claim in the liquidation proceeding.

Defendants asserts that the plaintiff cannot execute judgment based on the stipulation of settlement and general release herein because of the orders of the Nevada Court, which, of course, must be given full faith and credit, and the language of the general release, which provides that Lewis & Clark will pay the money on behalf of the defendants.

Plaintiff contends that because the Nevada Court only stayed actions or judgments against Lewis & Clark, but not its insureds and that, because this court's compromise order directs the defendants to make the payments, not Lewis & Clark, the plaintiff may enter judgment against the defendants and execute that judgment against the defendants, without recourse to the assets of Lewis & Clark. Plaintiff also points to the following language in the Liability Policy issued by Lewis & Clark to the defendants:

“Notice: This Policy is issued by the Lewis & Clark LTC Risk Retention Group, Inc. Your Risk Retention Group may not be subject to all the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for the Lewis & Clark LTC Risk Retention Group, Inc. Therefore, these funds will not pay your claims or protect your assets if the Lewis & Clark LTC Risk Retention Group, the insurer, becomes insolvent and is unable to make payments as promised.”

The Orders of Nevada Court stay prosecution of any claims, including enforcement of judgements, against Lewis & Clark, but they do not stay prosecution or enforcement of any claims against the insureds of Lewis & Clark, and defendants have offered no law that would preclude enforcement of the settlement herein.

The motion by plaintiff to approve the settlement pursuant to EPTL§5-4.6 was served on counsel for defendants, who did not submit opposition to the motion. Thus, defendants consented to the resulting Order, which as requested by the motion, directed payment by the defendants.

Also, while defendants’ counsel asserts that defendants themselves did not settle the case and had no control over the decision to settle, there is no affidavit from the defendants themselves that they were not consulted or did not consent to the settlement. Defendants’ counsel had apparent authority to settle the case and, in fact, does not say that the defendants were not consulted prior to settlement or did not consent to the settlement.

Thus, the settlement of the case is binding on the parties. However, the plaintiff may not enter judgment against the defendants based on their failure to pay within twenty-one days of submission of the papers because the general release executed by the plaintiff expressly contemplated payment by Lewis & Clark, not by the defendants themselves. Therefore, plaintiff must execute a general release providing for payment by the defendants and serve all settlement

documents on the defendants themselves, with copies to their attorneys. If payment is not made within the statutory time, plaintiff may enter judgment against the defendants pursuant to CPLR §5003-a.

This constitutes the decision and order of the Court.

Dated: April 5, 2013

A handwritten signature in blue ink, appearing to read 'Stanley Green', is written over a horizontal line.

STANLEY GREEN, J.S.C.