Wayne Health Care DeMay Living Ctr. v Estate of Gaudio
2016 NY Slip Op 31571(U)
August 16, 2016
Supreme Court, Wayne County
Docket Number: 69124/2014
Judge: John B. Nesbitt

STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

WAYNE HEALTH CARE DEMAY LIVING CENTER,

Plaintiff

-vs- ***Index No. 69124***

ESTATE OF TONI GAUDIO and RALPH GAUDIO,

9014

Defendants.

APPEARANCES: UNDERBERG & KESSLER, ESQ.
(Jillian K. Farrar, Esq., of counsel)
Attorneys for the Plaintiff

PHILIPPONE LAW OFFICES
(James V. Philippone, Esq., of counsel)
Attorneys for Defendant, Ralph Gaudio

MEMORANDUM - DECISION

John B. Nesbitt, J.

Plaintiff, Wayne Health Care DeMay Living Center (herein the "DeMay Center") moves for summary judgment against the defendants upon its complaint seeking a money judgment for services provided to Toni Gaudio, now deceased. The Estate of Toni Gaudio, a defendant in this action, does not oppose the motion; therefore, the motion is granted with respect to that defendant. The co-defendant is the deceased's husband, Ralph Gaudio. Plaintiff seeks recovery against the husband based upon both express and quasi-contract theories.

The relevant facts are uncomplicated and largely undisputed. Mr. Gaudio, now 69 years old, married the deceased, Toni Gaudio, in 1991, and resided with her in the City of Rochester until her health required that she receive in-patient care. In January of 2007, Mrs. Gaudio suffered a debilitating heart attack and was admitted to Rochester General Hospital, where she remained a patient for several months. The hospital then recommended that she be transferred to a residential

facility geared to her present condition and the type of care she would need in the future. One of the options presented by the hospital was the DeMay Center in the Village of Newark, Wayne County.[1] Mr. Gaudio originally admitted his wife to the DeMay Center on July 19, 2007. She was discharged to the former Park Ridge nursing facility on September 10, 2007, but readmitted to the DeMay Center on October 23, 2007. From that date until her death on July 9, 2009, almost one year and nine months later, Mrs. Gaudio received nursing home and health care services at the DeMay Center, which provided her with necessary food, shelter, medical treatment, and custodial care. The DeMay Center brings this action for the unpaid amounts due for these services now totaling $125,725.20 with interest.

In conjunction with the admissions to the DeMay Center, Mr. Gaudio signed certain agreements, four in total. With regard to each of his wife's two admissions to DeMay, Mr. Gaudio signed what is called a Signatory Agreement and a Resident Admission Agreement. DeMay claims that "Ralph Gaudio is not personally liable to DeMay under the Resident Admission Agreements, but is liable to Plaintiff pursuant to the Signatory Agreements and the doctrine of necessaries" (Plaintiff's Memorandum of Law in response to Defendants' Surreply in Opposition to Plaintiff's Motion for Summary Judgment at p.2). The first five paragraphs of the two Signatory Agreements signed by Mr. Gaudio are identical.[2]

> 1. Signator shall assist the Resident in fulfilling his or her responsibilities under the resident admission agreement.
> 2. Signator shall cooperate with DeMay in obtaining payment from the Resident's funds for all of Resident's charges.
> 3. Signator agrees that Resident's assets, income, Medicare and insurance benefits and other resources will be used to timely pay all of Resident's charges.
> 4. Signator shall make payment to the facility of all charges, fees and expenses, payments for physician visits and all properly authorized additional charges and rate increases from the Resident's assets, income, Medicare and insurance benefits and other resources.

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[1] The DeMay Center provides long-term care to individuals with complex and chronic health conditions.

[2] The first Signatory Agreement was signed by Mr. Gaudio on September 21, 2007, and the second on October 28, 2007.

> 5. If Resident becomes eligible in the future for Medicaid benefits, Signator shall promptly and timely initiate and complete an application for Medicaid benefits. DeMay shall assist Signator in completing the Medicaid application process.

Either at the outset of her admission or not long thereafter, the cost of Mrs. Gaudio's residency at the DeMay Center was paid through the Medicaid program. At some point, that ceased because the Monroe County Department of Social Services, the agency responsible for determining eligibility, did not receive certain information requested from and within the knowledge of Mr. Gaudio, i.e. specifics about his military pension. It was Mr. Gaudio's continuing contractual responsibility to complete the application for Medicaid benefits and maintain a completed application at times of recertification. The Court recognizes Mr. Gaudio's claim that he relied upon counsel for this purpose and that communications directed to him from DeMay and the County were not received by him because of problems with the US Mail and use of an incorrect phone number. Yet, Mr. Gaudio did not take any action on his own to contact either DeMay or the County to inquire whether the application on behalf of his wife was complete so to enable a favorable determination. In the end, it was his responsibility to ensure that the requisite information was in the possession of the County, not his lawyer's or DeMay's. By failing in this responsibility, Mr. Gaudio breached section 5 of the Signatory Agreement, and is liable for the claimed amount - $125,725.50 - due the DeMay Center. Accordingly, the Court grants the plaintiff's motion for summary judgment upon the cause of action alleging breach of contract.

The Court further grants summary judgment to plaintiff upon its cause of action based upon the doctrine of necessaries. This doctrine derives from the ancient common law principle that a husband has the duty and obligation to support his wife and children "in conformity with his means..." *(Medical Business Associates, Inc. v. Steiner*, 183 A.D.3d 86, 91 [3rd Dep't 1992]).[3] In New York, *Garlock v. Garlock* (279 N.Y. 337 [1939]) represents the principle's modern provenance. That case involved local industrialist, Olin J. Garlock, founder of Garlock Packing Company in the Wayne County community of Palmyra, whose many peculiarities provided story fodder for his

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[3] "The necessaries doctrine is not a self-sufficient rule of law; rather it arises from a husband broader common-law duty to support his wife" (*see*, Note, *The Unnecessary Doctrine of Necessaries*, 82 Mich. L. Rev. 1767, 1770 [1984]).

physician and good friend, Dr. C.C. Nesbitt, grandfather of the undersigned. O.J., as he was known to his friends, entered into an agreement with his wife, Pauline, agreeing to pay her $15,000 annually for her lifetime. This agreement was made "[w]ithout any thought or idea of separation" and at a time when "the parties were most happily married" (*id.* at 339) After a few years, and dissipation of marital bliss, O. J. stopped paying Pauline and she sued him for breach of contract. Special Term ruled as a matter of law for O.J. dismissing Pauline's action. A divided Fourth Department reversed, finding the contract enforceable (*Garlock v. Garlock*, 255 App. Div. 88 [4th Dep't 1938]. The Court of Appeals reversed the Appellate Division, holding the contract void as contrary to public policy. Said the Court:

> "By reason of the marriage relation there is imposed on the husband the duty to support and maintain his wife in conformity with his condition and station in life. Marriage is frequently referred to as a contract entered into by the parties, but it is more than a contract; it is a relationship established according to law, with certain duties and responsibilities arising out of it which the law itself imposes. The marriage establishes a status which it is the policy of the State to maintain. Out of this relationship, and not by reason of any terms of the marriage contract, the duty rests upon the husband to support his wife and his family, not merely to keep them from the poor house, but to support them in accordance with his station and position in life ...The duty of the husband ... as matter of policy and as an obligation imposed by law, cannot be contracted away. ... Section 51 of the Domestic Relations Law enacts that a husband cannot contract to alter or dissolve the marriage or to relieve the husband from his liability to support his wife.
> . . . This contract is void for the reason that it violates this provision which continues what has always been the policy of the law regarding marriage and its incidents. If this be a valid contract it must work both ways; both parties must be bound by it. In this instance the parties, apparently living in affluence, have made ample provision for the support of the wife; but suppose we turn it about, and the husband was trying to enforce such a contract, where the amount provided for the wife was trivial in comparison with his income. Out of the goodness of her heart and in reliance upon his good nature she may have signed such a contract of her own free will, and yet no court would hold her bound by it, especially if she became in need through sickness or other misfortune" (*id.* at 340-341)

Now, of course, in this case, we are not dealing with an action by the late Mrs. Gaudio against her husband seeking financial support either to keep her out of the county "poor house" or for a standard of living commensurate with his "station and position in life." The strong public policy enunciated in *Garlock*, however, animates and informs the derivative common law doctrine of

necessaries, upon which the DeMay Center relies in addition to its breach of contract claim. Under this doctrine, a spouse is liable to third parties who supply certain goods or services to the other spouse (see generally, 46 N.Y. Jur.2d, Domestic Relations §§954 [2007, as supplemented]). Such liability is based upon a theory of quasi-contract - an obligation implied in law - rather than implied in fact.[4] However anachronistic may be some aspects of the doctrine's origins, most courts continue to recognize and apply the doctrine. In *North Carolina Baptist Hospitals, Inc. v. Harris* (354 S.E.2d 471, 474 [N.C. 1987]), the North Carolina Supreme Court noted that "[t]he doctrine has historically served several beneficial functions. Among these are "the encouragement of health-care providers and facilities to provide needed medical attention to married persons and the recognition that the marriage involves shared wealth, expenses, rights and duties" (*id.* at 474, quoted in *Medical Business Associates v. Steiner*, 183 A.D.3d 86, 94 [2nd Dep't 1992]). Although not reaching the issue whether to continue the common-law rule, the Court of Appeals in *Litchman v Grossbard* (73 N.Y.2d 792 [1988]) noted that two of its Judges would have reached the issue, with Judge Hancock opining that the doctrine "reflect[s] the modern view of the marriage as an economic partnership" and encourages the extension of credit to non-working or non-monied spouses (id. at 795). Judge Hancock's view was adopted by the Appellate Division, Third Department in *Our Lady of Lourdes Mem. Hosp. v. Frey* (152 A.D.2d 73 [3rd Dep't 1989], and followed by the Second Department in *Medical Business Associates v. Steiner*, supra at 96 ("We are persuaded that retaining the common-law rule and applying it in a gender neutral fashion would encourage the extension of credit to dependent spouses who, in an individual capacity, might lack the ability to purchase necessities or to obtain adequate medical care."). The necessaries doctrine, therefore, exists today as a rule of law consistent with modern public policy and the view of marriage as economic partnership, and just not some ancient relic of the common-law continued by weight of judicial inertia, awaiting certain abrogation.

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[4] The doctrine of necessaries "deals with the liability of a spouse in quasi-contract to a third party for necessaries furnished to the other spouse. ... To be distinguished from the implied in law obligation [informing the doctrine of necessaries] is the situation in which one spouse had permitted the other spouse to act for him of her in dealing with tradespeople. From such conduct a contract to pay for the goods may be implied, but it would be immaterial in an action on such an implied in fact contract whether the items were necessaries, *Wanamaker v.Weaver*, 176 N.Y. 75, 68 N.E. 135 (1903)." 2B NY PJI 4:4, at 155 (2016)

That said, however, liability under the necessaries doctrine "has never been automatic or unrestricted" (*Professional Orthopedic & Sports v. Pittore*, 36 Misc.3d 1219(A), at 3 [Poughkeepsie City Court 2012]; *Ellenville Regional Hosp. v. Mendez*, 21 Misc.3d 1131(A), at 1 [Poughkeepsie City Court 2008] [both cases citing *Medical Business Assoc. v. Stein*, 183 A.D.2d 86, 96 [2nd Dep't 1992]).

> "Under the traditional doctrine, a creditor seeking to recover from a husband necessaries furnished to a wife has the burden of proving that the necessaries were furnished on the credit of the husband, although a presumption on that point does exist. In addition, the doctrine also holds a husband legally responsible for medical expenses of his wife only insofar as they are commensurate with his means" (citations omitted) (*Our Lady of Lourdes Mem. Hosp. v. Frey* (152 A.D.2d 73, 75 [3rd Dep't 1989]); see also *Medical Business Assoc. v. Stein*, 183 A.D.2d 86, 97-98 [2nd Dep't 1992]).

In both *Frey* and *Stein*, the courts found an issue of fact whether the medical providers relied upon the credit of one spouse in extending services to the other, and if so, an issue of fact whether the spouse whose credit was relied upon had the ability or means to satisfy the debt.

In this case, the DeMay Center argues that there are no issues of fact whether it relied upon Mr. Gaudio's credit in extending services to his wife, and, if so, whether he has the means to satisfy the concomitant obligation. In its view, the record amply establishes those facts as a matter of law, warranting this Court granting its motion for summary judgment. Such a motion requires a court to determine whether a cause of action or defense requires a trial before it can be sustained or rejected (CPLR §3212[b]). A trial is required where there are disputed issues of fact to be resolved before a cause of action or defense can be determined meritorious or not (Siegel, New York Practice §278, AT 438 [3rd ed. 1999]). If the facts necessary to sustain or reject a cause of action or defense are not in dispute, a court must rule thereon as a matter of law, granting summary judgment on the merits (id. At 439). If such facts are in dispute, summary judgment must be denied, and the action submitted to plenary trial. Of course, in deciding these issues, judges are reminded that summary judgment is a "drastic remedy and should not be granted where there is any doubt as to the existence of triable issues" (*Dal Construction Corp. v. of New York*, 108 A.D.2d 892, 894 [2nd Dep't 1985]).

Upon review of the record in this motion, which is extensive, the Court agrees with plaintiff DeMay Center that it is entitled to summary judgment upon its cause of action seeking recovery upon

the necessaries doctrine. Accordingly, the Court grants judgment to plaintiff against defendant Ralph Gaudio for the demanded sums based upon the causes of action alleging contract breach and the necessaries doctrine.

Counsel for the plaintiff shall submit a proposed Order and Judgment upon notice to defendants' counsel.

Dated: August 16, 2016
Lyons, New York

JOHN B. NESBITT
Acting Supreme Court Justice