

**Wedgewood Care Ctr., Inc. v Kravitz**

2017 NY Slip Op 33326(U)

November 9, 2017

Supreme Court, Nassau County

Docket Number: 5545/14

Judge: Antonio I. Brandveen

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This opinion is uncorrected and not selected for official publication.



SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

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

WEDGEWOOD CARE CENTER, INC., d/b/a  
HIGHFIELD GARDENS CARE CENTER OF  
GREAT NECK,

Plaintiff,

- against -

ERIC KRAVITZ,

Defendant.

TRIAL / IAS PART 31  
NASSAU COUNTY

Index No. 5545/14

Motion Sequence No. 002, 003

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits .....	<u>1, 2</u>
Answering Affidavits .....	<u>3, 4</u>
Replying Affidavits .....	<u>5, 6</u>
Briefs: Plaintiff's / Petitioner's .....	<u>          </u>
Defendant's / Respondent's .....	<u>7</u>

The plaintiff, Wedgewood Care Center, Inc., d/b/a Highfield Gardens Care Center of Great Neck moves (Sequence 002) pursuant to CPLR 3212 for an order granting summary judgment against the defendant, Eric Kravitz. The plaintiff also moves for an order awarding it a money judgment in the amount of \$49,061.11 plus interest from November 14, 2011, together with costs and disbursements associated with this action. The plaintiff contends there are no material factual issues to be decided in this matter as a matter of law.

The defendant moves (Sequence 003) pursuant to CPLR 3212 for an order granting summary judgment against the plaintiff, and dismissing the complaint. The defendant asserts there are no material factual issues to be decided in this matter as a matter of law. The defense contends it serves the public interest to see that nursing facilities obtain payments for their services. The defense maintains the payments should

not come at the expense of placing relatives of the infirm in fear of losing their own personal savings under circumstances where they have no legal duty or contractual obligation to guarantee the payment for the healthcare costs of their parents. The defense maintains the complaint fails to state a cause of action. The defense avers the defendant lacked insufficient [sic] access and control over the resident's funds to be held liable under the admission agreement for the resident's cost of care. The defense asseverates the plaintiff failed to provide documentation and information required in support of the Medicaid application it filed on behalf of the defendant's mother, and it is irrelevant whether the defendant cooperated in providing the mother's resident and bank account information.

The underlying breach of contract action arose from room, board and skilled care services provided by the plaintiff to Beatrice Kravitz, the mother of Eric Kravitz during November 14, 2011 through November 30, 2012. The plaintiff claims there is an outstanding balance in the amount of \$49,061.11 as demonstrated by the deposition testimony dated October 20, 2015, and the affidavit dated May 9, 2017, by Bruce Peckman, the chief operating officer of the plaintiff's nursing facility. The plaintiff asserts Eric Kravitz signed an admission agreement dated November 14, 2011, which made the defendant, the designated representative of the facility resident, Beatrice Kravitz, personally liable to the plaintiff for the outstanding balance in the amount of \$49,061.11. The defendant testified, at a deposition on December 8, 2015, and Nicholet Bower, a fiscal manager of the plaintiff testified, at a deposition on March 8, 2016.

The defendant opposes the plaintiff's motion. The defense contends the defendant preempted the plaintiff by the earlier filing of a pending motion for summary judgment dismissing the complaint. The defense also maintains the plaintiff's motion is deficient, and reiterates the assertions from the defense motion, including no proof that the defendant possessed legal access, control or knowledge of Beatrice Kravitz's assets. The defense asserts Eric Kravitz crossed out and initialed the words "power of attorney" and "access to joint accounts and the like" on the admission agreement. The defense claims the defendant was not a guarantor of the performance or payments due under the admission agreement. The defendant alleges he told the plaintiff's representatives that he did not have access to Beatrice Kravitz's life partner. The defendant avers Medicaid did not pay the plaintiff for Beatrice Kravitz's entire residency because Beatrice Kravitz had too much money to qualify for Medicaid until there was a spend-down of \$88,000.00.

The plaintiff replies to the defendant's opposition. The plaintiff asserts it timely served and filed its motion on May 12, 2016, and the defendant filed the defense motion on May 16, 2017. The plaintiff contends the plaintiff's motion takes chronological priority over the defense, and if decided in the plaintiff's favor would render the defense

motion moot. The plaintiff avers the Eric Kravitz, testified at the deposition, that he sold off shares of Beatrice Kravitz's Consolidated Edison stocks to which Eric Kravitz had access as a joint account holder. The plaintiff provides a check, as an exhibit, addressed to Eric Kravitz representing proceeds from the sale of Beatrice Kravitz's stocks. The plaintiff points out that the Surrogate's Court of the State of New York, County of Kings appointed Eric Kravitz to act as the voluntary administrator of Beatrice Kravitz's estate, and to administer it pursuant to the Surrogate's Court Procedure Act Article 13. The plaintiff provides an affidavit dated January 17, 2013, signed by Eric Kravitz in relation to the settlement of the Estate of Beatrice Kravitz, who died intestate on January 7, 2013. The plaintiff notes Eric Kravitz accessed \$4,000.00 on deposit with HSBC Bank in Beatrice Kravitz's name, and the affidavit dated January 17, 2013, signed by Eric Kravitz evinces that transaction.

The plaintiff opposes the defense motion. The plaintiff asserts the defense motion is procedurally defective, and relies upon non-controlling case law together with an affidavit by Eric Kravitz filled with falsehoods. The plaintiff contends the defendant has not met the burden on the motion for summary judgment.

The defendant replies to the plaintiff's opposition. The defendant asserts the plaintiff failed to produce proof in admissible form sufficient to require a trial of material questions of fact on which Wedgewood Care Center, Inc. rests its claim or demonstrated an acceptable excuse for its failure to meet the requirement of tender in admissible form. The defense reiterates the defendant's lack of legal access, control or knowledge of Beatrice Kravitz's assets and lack of a power of attorney, license or authorized access of Beatrice Kravitz's income, assets and property, if lawfully owned by Beatrice Kravitz. The defense avers the single witness' affidavit and letters are inadmissible as hearsay without a legal exception. The defense maintains, contrary to the plaintiff's assertions, the alleged procedural irregularity is neither jurisdictional nor prejudicial, and is being cured by the filing of the defense reply.

The plaintiff provides evidence showing that on May 8, 2012, the Human Resources Administration, Department of Social Services of the City of New York notified Beatrice Kravitz, in care of Wedgewood Care Center, Inc., d/b/a Highfield Gardens Care Center of Great Neck, in writing, that Beatrice Kravitz was denied benefits under the Medicaid Assistance Program. The Human Resources Administration informed Beatrice Kravitz that the Home Application was denied because of the failure to provide required information/documentation to establish eligibility for the Medicaid Assistance Program, including a New York Community account, HBSC Bank account, Consolidated Edison stocks, and checking account statements. The Human Resources Administration also sent a copy of the notice to the plaintiff.

The plaintiff provides evidence showing that on January 25, 2013, the Human Resources Administration notified Beatrice Kravitz, in care of Wedgewood Care Center, Inc., d/b/a Highfield Gardens Care Center of Great Neck, in writing, that Beatrice Kravitz was eligible for benefits under the Medicaid Assistance Program covered care and services effective July 1, 2012, covering July 1, 2012 to June 30, 2013. The Human Resources Administration indicated coverage would be for medical bills in excess of Beatrice Kravitz's monthly NAMI (net available monthly income) of her budget for the residential health care facility.

The Court determines the plaintiff establishes a prima facie entitlement to summary judgment as a matter of law on the breach of the contract between the parties. The plaintiff provides evidence in admissible form, including deposition testimony, the admission agreement signed by the defendant, affidavit information, information and documentation concerning Beatrice Kravitz's income, assets and property, transfers by the defendant of Beatrice Kravitz's income, assets and property, the appointment of the defendant as the voluntary administrator of Beatrice Kravitz's estate, and to administer it pursuant to the Surrogate's Court Procedure Act Article 13. The admission agreement required, *inter alia*, that Eric Kravitz provide the plaintiff with all relevant information and documentation regarding all potential third-party payers, and that Eric Kravitz timely apply and meet the requirements of third-party payers, including Medicaid. The admission agreement also provided that the defendant could be held personally liable if any acts or omissions on his part caused or contributed to the nonpayment of the plaintiff's fees. The admission agreement explicitly stated that the execution of the agreement did not constitute a third-party guarantee of payment, which is prohibited by law (*see* 42 USC § 1396r [c][5][A][ii]) (*Wedgewood Care Ctr., Inc. v Sassouni*, 68 AD3d 979, 980 [2d Dept. 2009]). The plaintiff also established, as a matter of law, that Eric Kravitz breached his obligations under the admission agreement by failing to provide requested information and documentation concerning the finances of

In opposition, the defendant fails to raise a triable issue of fact regarding the breach of the contract between the parties.

ORDERED, ADJUDGED and DECREED that the plaintiff's motion (Sequence 002) is GRANTED awarding summary judgment to the plaintiff against the defendant, Eric Kravitz, and it is also,

ORDERED, ADJUDGED and DECREED that the defendant's motion (Sequence 003) is DENIED to award the defendant summary judgment against the plaintiff, and to dismiss the complaint.

This decision will constitute the decision and order of the Court. All applications not specifically addressed are denied.

So ordered.

Dated: **November 9, 2017**

ENTER:



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J. S. C.

ENTERED

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NASSAU COUNTY  
COUNTY CLERK'S OFFICE

FINAL DISPOSITION