

**Commissioner of the Dept. of Social Servs. of the
City of N.Y. v New York-Presbyterian Hosp.**

2019 NY Slip Op 32280(U)

July 29, 2019

Supreme Court, New York County

Docket Number: 450714/2014

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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INDEX NO. 450714/2014

COMMISSIONER OF THE DEPARTMENT OF SOCIAL SERVICES OF THE CITY OF NEW YORK,

MOTION DATE 07/30/2019

Plaintiff,

MOTION SEQ. NO. 004

- v -

NEWYORK-PRESBYTERIAN HOSPITAL, CHI YOUNG LEE, BNY MELLON, N.A., CHI YOUNG LEE, BNY MELLON, N.A., CHI YOUNG LEE

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 215, 216

were read on this motion to/for JUDGMENT - MONEY.

The Commissioner of the Department of Social Services (**DSS**) moves for an order entering judgment against New York-Presbyterian Hospital (**NYPH**) in accordance with the order of remittitur of the Appellate Division, First Department entered July 26, 2018. NYPH cross moves for an order voiding and reopening the final accounting for the Supplemental Needs Trust (hereafter defined) and mandating a hearing to determine the proper allocation of payments due and the proper termination of the SNT, or in the alternative, for an order staying execution of DSS’s proposed judgment pursuant to CPLR § 5519, among other relief. For the reasons set forth below, DSS’s motion is granted and NYPH’s cross motion is denied.

Defendant Chi Young Lee’s infant son, Merrick Lee, is alleged to have suffered a tortious injury on or about November 25, 2003, seventeen days after he was admitted to NYPH for treatment of

a congenital condition. Chi Young Lee commenced a malpractice action against NYPH in 2004 in his capacity as Merrick Lee's guardian and on his own behalf. The parties settled the malpractice action pursuant to a Settlement Agreement, dated April 28, 2008, which provides, in relevant part:

NYPH agrees and stipulates that, if and when Medicaid asserts a lien or claim for return of any monies paid by Medicaid for care and treatment rendered to Merrick Lee during his hospitalization that commenced on or about November 8, 2003, NYPH will assume full responsibility for any monies which are ultimately found to be due to Medicaid in connection with the aforementioned hospitalization (NYSCEF Doc. No. 155, ¶ 4).

The parties also entered into a Hold Harmless Agreement, dated April 25, 2008, pursuant to which Chi Young Lee agreed that he would "hold [NYPH] harmless from any and all claims or liens of any nature whatsoever," except for "the potential lien or claim of Medicaid referenced above" (NYSCEF Doc. No. 156).

Pursuant to the Settlement Agreement, NYPH made a payment of \$6 million to fund a Supplemental Needs Trust (the **SNT**) for Merrick Lee's future use and care post-discharge. As a result of the alleged tortious injury, however, Merrick Lee remained hospitalized until his death in March 2010, without ever being discharged. Following Merrick Lee's death, the court approved plans for winding up the **SNT**. On November 17, 2010, NYPH submitted a bill to the New York State Department of Health (**DOH**) for reimbursement of its costs incurred in caring for Merrick Lee during his hospitalization. In 2012, **DOH** made a payment to NYPH \$4,887,243.99. **DSS**, after learning of the payment by **DOH**, commenced this action seeking reimbursement of funds from defendants Chi Young Lee and Bank Mellon, N.A., co-trustees and co-administrators of Merrick Lee's estate, and NYPH.

By order entered September 8, 2016, New York State Supreme Court Justice Charles E. Ramos dismissed the complaint against NYPH on the ground of *res judicata* and denied DSS's cross motion for summary judgment on its causes of action against NYPH, holding that DSS should have raised its claims against NYPH for reimbursement during the proceedings to wind up the SNT. DSS appealed.

The Appellate Division, First Department held that the Settlement Agreement may be enforced against NYPH by DSS (the Medicaid administrator in New York City) as an intended third-party beneficiary of the Settlement Agreement, and that DSS's claim against NYPH is not barred by the doctrine of *res judicata* (*Commissioner of the Dept. of Social Servs. of the City of N.Y. v New York-Presbyt. Hosp.*, 164 AD3d 93, 97-102 [1st Dept 2018], *lv denied* 33 NY3d 901 [2019]).

As the Appellate Division explained: “[l]ogically, the order approving the final accounting of the trust—the basis for NYPH’s assertion of the defense of *res judicata*—could not preclude DSS from asserting a claim that had not yet come into being at the time the order was entered” (*id.*, at 97).

The Court of Appeals denied NYPH’s motion for leave to appeal by order entered April 2, 2019 (*Commissioner of the Dept. of Social Servs. of the City of N.Y. v New York-Presbyt. Hosp.*, 33 NY3d 901 [2019]).

DSS now moves for an order directing the clerk to enter judgment in accordance with the order of remittitur of the Appellate Division.

In short, DSS is entitled to the entry of judgment in accordance with the Appellate Division's order of remittitur. The amount of damages sought under the breach of contract cause of action is \$4,887,243.99, which is the amount that NYPH billed and received from DOH. Significantly, NYPH never contested this amount prior to the instant motion. Moreover, the Settlement Agreement is clear and unambiguous on its face. It does not carve out certain estate payments as opposed to tort-related payments, as NYPH contends. Rather, as the Appellate Division held it creates an absolute, unqualified obligation for NYPH to reimburse DSS for any amounts paid by Medicaid for Merrick Lee's care and treatment during his hospitalization:

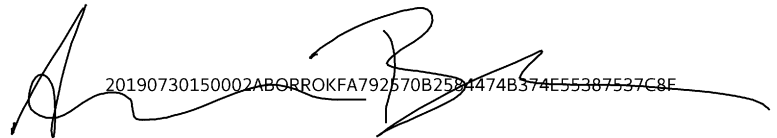
what essentially occurred in this case, as evidenced by the plain terms of the settlement agreement, is that NYPH agreed to act as a surety for any liability that [Chi Young Lee] might conceivably have to reimburse Medicaid (*id.*, at 100).

In other words, the intention of the parties was "to allow DSS to enforce the 'full responsibility' for Medicaid reimbursement that NYPH expressly assumed" (*id.*). Therefore, DSS's motion is granted.

Accordingly, it is

ORDERED that the plaintiff Commissioner of the Department of Social Services of the City of New York motion is granted and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant in the amount of \$4,887,243.99, together with interest at the rate of 9% per annum from April 3, 2014, together with costs and disbursements to be taxed by the

Clerk upon submission of an appropriate bill of costs, and the plaintiff shall have execution thereof.


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7/29/2019
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE