

<b>County of Monroe v Estate of Patterson</b>
2019 NY Slip Op 33296(U)
October 24, 2019
Supreme Court, Monroe County
Docket Number: E2019005713
Judge: Debra A. Martin
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Supreme Court  
State of New York

County of Monroe

County of Monroe

Plaintiff,

AMENDED  
DECISION AND ORDER

v.

Index No. E2019005713

Estate of Janet Patterson, and  
Barbara Robinson

Defendants,

APPEARANCES:

Appearing on behalf of plaintiff:

Appearing on behalf of defendant Robinson:

UNDERBERG & KESSLER, LLP  
300 Bausch & Lomb Place  
Rochester, New York 14604  
By: David Tang, Esq

LEGAL ASSISTANCE OF WESTERN  
NEW YORK, INC.  
One West Main Street, Fourth Floor  
Rochester, New York 14614  
By: Adrianna Anderson, Esq.

Papers submitted and reviewed:

1. Summons and verified complaint filed with the Monroe County Clerk on June 20, 2019, with exhibits A-C;
2. Defendant Robinson's notice of motion to dismiss filed with the Monroe County Clerk on August 30, 2019;
3. Affidavit of Barbara Robinson sworn to on August 21, 2019;
4. Attorney Affirmation of Adrianna Anderson, Esq., affirmed August 30, 2019 with an exhibit;
5. Defendant's memorandum of law dated August 30, 2019;
6. Attorney affirmation of David M. Tang, Esq. in opposition, affirmed on October 9, 2019;
7. Plaintiff's memorandum of law in opposition dated October 9, 2019

This collection action, which arose from a nursing home debt, was commenced by the County of Monroe against the Estate of Janet Patterson and Barbara Robinson,

a 78-year-old unrelated friend who assisted Ms. Patterson and was her power of attorney. Ms. Patterson was discharged from Highland Hospital to Monroe Community Hospital on February 23, 2018, where she resided and received services until her death on May 1, 2018. Plaintiff alleged that it sent bills to Ms. Patterson and her Estate but was not paid the \$21,000 for services rendered. The complaint stated three causes of action against Ms. Patterson's estate<sup>1</sup> sounding in services rendered, account stated, and unjust enrichment. The complaint also stated three causes of action against Ms. Robinson for breach of contract, fraudulent conveyance of assets and income, and fraudulent conveyance pursuant to Article 10 of the Debtor and Creditor Law.

In response, defendant Robinson moved pre-answer to dismiss the complaint for failure to state a cause of action against her pursuant to CPLR 3211 (a) (1), (7), and (10) and CPLR 3016 (b), upon the following grounds: (1) she could not have breached the contract because she did not receive any bill from plaintiff before Ms. Patterson died and while the power of attorney was in effect; (2) the contract expressly limited Ms. Robinson's responsibility to her authority to act as agent and plaintiff's bill was not received until after her agency ceased; (3) the second cause of action failed to allege the required details per CPLR 3016 (b); (4) the allegations lacked any details and merely stated the barest of conclusory allegations; and (5) the Court cannot proceed in the absence of the estate of decedent, a necessary party. The Court agrees with defendant Robinson's arguments.

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<sup>1</sup> No estate has been established on behalf of the decedent and, therefore, it is not a party to this proceeding.

Critical to plaintiff's case against Ms. Robinson is proving that she failed to use Ms. Patterson's assets to pay the plaintiff's bill and that Ms. Robinson fraudulently depleted the assets. The complaint alleges that bills were sent:

"on various dates within the period from on or about February 23, 2018, through the present, statements of account have been sent by the Plaintiff to Decedent directly and through Defendant Patterson showing the amounts due as of those dates."

(complaint ¶ 10). There is no allegation that defendant Robinson was sent any bills, and the only document referenced in the complaint and attached to it was an April 29, 2019 invoice (nearly one year after Ms. Patterson's death), there is no allegation that defendant Robinson was presented with a bill *while she was an agent and had control over any of her principle's assets*. Therefore, the cause of action for Ms. Robinson's breach of contract in "failing to use [Ms. Patterson's] income and assets to pay Plaintiff for the outstanding balance" is wholly without foundation. (complaint ¶ 25).

Additionally, there is no allegation in the complaint nor argument presented in opposition to the motion that Ms. Robinson failed to assist plaintiff in applying for public benefits or that Medicaid/Medicare was denied. Furthermore, there is no allegation that Ms. Robinson failed to notify Social Security of the assignment of benefits.

Second, plaintiff argued that its claim based on Article 10 of the Debtor and Creditor Law (DCL), specifically §§ 273, 274<sup>2</sup> and 276, does not require the same

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<sup>2</sup> §.274 pertains to "persons in business" and the depletion of business capitol, which is not applicable to this case.

specificity in pleading as CPLR 3016 (b), citing *Bd. of Mgrs of E. Riv. Tower Condominium v Empire Holdings Group, LLC* (175 AD3d 1377 [2d Dept 2019]). However, some factual basis is required to support its claim. As articulated by the federal court in reviewing a motion to dismiss:

"Constructive fraudulent conveyance claims under DCL § 273, because they do not require the intent to defraud as an element, are not held to the heightened pleading requirements of Fed.R.Civ.P. 9(b) but still cannot survive a motion to dismiss on conclusory allegations alone. *Waite*, 2010 WL 4456955, at \*\*6–7 (finding plaintiff's allegations like 'transfers were made without fair consideration' are conclusory allegations that cannot withstand a motion to dismiss)."

(*Paradigm BioDevices, Inc. v Viscogliosi Bros., LLC*, 842 F Supp 2d 661, 667 [SDNY 2012].) Since DCL 273 pertains to every conveyance made without "fair consideration" that renders a person "insolvent", plaintiff must allege some facts to support its claims. The conclusory statements in the complaint that simply track the statute does not meet the bare minimum requirements of notice pleading.

"What will constitute adequate pleadings in a given case will depend upon the nature of the cause pleaded and the circumstances of the parties. However, a complaint is not acceptable if it is drawn as though it had been copied verbatim from a standard form book. The purpose of a pleading is to focus the court's and the adverse party's attention on the material facts of the case and to present the issues to be decided at trial."

(*Greschler v Greschler*, 71 AD2d 322, 325 [2d Dept 1979], *mod*, 51 NY2d 368 [1980]; CPLR 3013.) The Court acknowledges that plaintiff may not know if or when assets were conveyed or anything about the existence of estate assets, but a lawsuit cannot be instituted simply as a discovery tool.

Regarding plaintiff's claim based on DCL § 276, courts require pleading with the same specificity required for allegation of fraud under CPLR 3016 (b) (see *Swartz v Swartz*, 145 AD3d 818, 826 [2d Dept 2016]; *Gaetano Dev. Corp. v Lee*, 121 AD3d 838, 840 [2d Dept 2014]; *Ray v Ray*, 108 AD3d 449, 451 [1st Dept 2013]). The conclusory allegations with respect to this cause of action are clearly insufficient.

Accordingly, it is hereby

ORDERED that defendant Robinson's motion to dismiss is granted and the complaint is dismissed, without prejudice.

DATED: October 24, 2019



Honorable Debra A. Martin,  
Acting Justice of the Supreme Court