

Santoro v Poughkeepsie Crossings, LLC

2019 NY Slip Op 33765(U)

December 5, 2017

Supreme Court, Dutchess County

Docket Number: 2016-52070

Judge: James V. Brands

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT- STATE OF NEW YORK
DUTCHESS COUNTY

Present:

Hon. JAMES V. BRANDS

Justice.

SUPREME COURT: DUTCHESS COUNTY

SANDRA SANTORO, as Executrix of the Estate of
INEZ J. SALVATORE, Deceased,
Plaintiff,

-against-

POUGHKEEPSIE CROSSINGS, LLC,
Defendant.

POUGHKEEPSIE CROSSINGS, LLC,
Third-Party Plaintiff,

-against-

SANDRA SANTORO,
Third-Party Defendant.

_____x

DECISION AND ORDER
ON TWO MOTIONS
Index No: 2016-52070

Motion Seq. No. 2, 3

The following papers were read and considered on Poughkeepsie Crossings, LLC's motion to disqualify Goldstein and Goldstein, LLP ("G&G") from representing Sandra Santoro in both actions. Also considered were papers submitted in connection with Santoro's cross-motion for dismissal of the third-party action.

NYSCEF DOC. No. 31-52

Background Facts

This is a wrongful death action commenced by Sandra Santoro, as executrix of the Estate of decedent Inez J. Salvatore. The action arose from an incident whereby Inez Salvatore suffered a fall while residing in the home of Sandra Santoro following her release from hospitalization, after which Inez Salvatore was further hospitalized for a fractured hip which required surgery. Inez Salvatore suffered septic shock caused by a bacteria infection and died in the hospital shortly thereafter.

Sandra Santoro, in her capacity as the executrix of the estate, commenced this wrongful death action. In essence, it is alleged that the defendant, as owner of a residential healthcare facility known as the Pines at Poughkeepsie Center for nursing and rehabilitation, failed to provide adequate care and treatment of the decedent during all times when she was under their care spanning from March 17, 2015 through May 9, 2015. (See Defendant's Motion Exhibit C).

In turn, Defendant commenced a third-party action against Sandra Santoro in her individual capacity. In pertinent part, it is alleged that Santoro failed to follow defendant's discharge instructions related to the care of the decedent. It is their claim that Inez Salvatore was discharged from their facility with specific instructions to provide her 24-hour care 7-days per week. Counsel cites Santoro's deposition testimony wherein she stated that she provided a nurse to come to her home only 3-times per week during morning hours. It is based on the foregoing that the defendant claims that Santoro was negligent in failing to comply with the discharge instructions which consequently resulted in Inez Salvatore suffering further injury while residing at Santoro's home which ultimately caused her death.

Motion Seq. No. 2

Defendant filed a motion to disqualify G&G from representing Sandra Salvatore in her capacity as the executrix of the estate in the primary action and representing Sandra Salvatore in her individual capacity in the third-party action. Counsel claims that there is an inherent conflict of interest based upon the allegations of the pleadings. Defense counsel claims that based on the foregoing pleadings, it is apparent that the interests of Santoro as a defendant in the third-party action are "directly adverse" to those interests of the decedent's estate in the wrongful death action as asserted by Santoro in her capacity as the executrix of the estate. (See Gornitsky Affirmation ¶23).

Motion Seq. No. 3

Santoro filed a cross-motion to dismiss the third-party action based upon the failure to state a cause of action against Santoro (*citing* CPLR 3211[a][7]). Counsel contends that an adult child cannot be liable to their parent for failure to provide adequate supervision as there is "no judicially recognized legal duty" imposed by an adult family member caring for their parent. Counsel also refutes defendant's motion to disqualify G&G. In that regard, counsel argues there is no inherent conflict posed by G&G representing Santoro in both the underlying action and the third-party action.

Decision

This court, having reviewed the motion record before it and upon due deliberation thereof, finds that dismissal of the third-party action filed by Poughkeepsie Crossings, LLC as against Sandra Santoro is not warranted at this juncture. The record raises issues of fact as to whether Santoro assumed the duty of care for her mother upon her mother's discharge from the Pines in accordance with all discharge instructions as directed by the Pines, and if so whether Santoro was negligent in her post-discharge care, and whether any such negligence caused or contributed to the death of Inez Salvatore.

As it relates to defendant's motion to disqualify G&G, the motion record does not resolve all factual issues for this court to render determination on papers only. Accordingly, the court recognizes that this matter is scheduled for a conference within on December 6, 2017 at which time counsel shall be prepared to provide the court with additional information on the record related to

the estate, namely whether Sandra Santoro is the only heir and beneficiary of the estate and, if so how G&G's representation of the sole heir and sole beneficiary of the estate and G&G representation of Santoro in a related third-party action would pose a conflict of interest.

Based on the foregoing, it is hereby

ORDERED that Santoro's cross-motion for dismissal of the third-party complaint is denied. It is further

ORDERED that counsel are directed to appear at the previously-scheduled conference on January 12, 2018 at 9:15 a.m. at which time counsel shall be prepared to provide this court with additional information with respect to the heirs and/or beneficiaries of the estate of the decedent for this court to render determination as to whether G&G's continued representation of Santoro in both her capacity as the executrix of the estate and in her individual capacity in the third-party action poses any conflict of interest. It is further

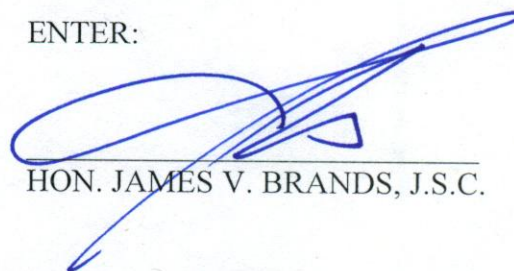
ORDERED that in light of the foregoing, the conference scheduled for December 6, 2017 is cancelled.

Any relief not specifically granted herein is denied.

The foregoing constitutes the decision and order of this court.

Dated: December 5, 2017
Poughkeepsie, New York

ENTER:



HON. JAMES V. BRANDS, J.S.C.

Paul J. Goldstein, Esq.
Goldstein & Goldstein, LLP
Attorney for Plaintiff/Third-Party Defendant
1 Civic Center Plaza, Suite 541
Poughkeepsie, NY 12601

Joshua I. Gornitsky, Esq.
Simon Lesser, PC
Attorney for Defendant/Third-Party Plaintiff
355 Lexington Avenue, 10th Floor
New York, NY 10017

Pursuant to CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of entry, the appeal must be taken within thirty days thereof.

When submitting motion papers to Judge Brands' Chambers, please do not submit any copies. Submit only the original papers.