

<b>Pallonetti v Maimonides Med. Ctr.</b>
2020 NY Slip Op 33389(U)
October 15, 2020
Supreme Court, Kings County
Docket Number: 501002/15
Judge: Ellen M. Spodek
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At an IAS Term, MMESP, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 15th day of October 2020

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

CAROL ANN PALLONETTI, as ADMINISTRATOR of the ESTATE OF DOROTHY EARLEY and CAROL ANN PALLONETTI, individually

*Plaintiff,*

**-against-**

Index No. 501002/15  
**DECISION/ORDER**  
Hon. Ellen M. Spodek

MAIMONIDES MEDICAL CENTER

*Defendant*

<b>Papers</b>	<b>Numbered</b>
Notice of Motion/Cross Motions and Affidavits.....	___ 1-3 ___
Order to Show Cause and Affidavits Annexed.....	_____
Answering Affidavits .....	_____
Replying Affidavits .....	_____
Exhibits .....	_____
Memorandum of Law in Support of Motion.....	_____

Upon the foregoing papers, plaintiff CAROL ANN PALLONETTI, as ADMINISTRATOR of the ESTATE OF DOROTHY EARLEY and CAROL ANN PALLONETTI, individually, moves for an order pursuant to CPLR 5003-a to enter judgment against the defendant MAIMONIDES MEDICAL CENTER for one hundred fifty thousand dollars (\$150,000), together with costs, disbursements and lawful interest.

Defendant cross moved for 1) an order pursuant to 22 NYCRR 130-1.1 and CPLR 8303-a granting the defendant attorney's fees, sanctions and costs for filing a frivolous motion and 2) for an order denying the plaintiff's motion. Plaintiff then cross moved for an order pursuant to 22 NYCRR 130-1.1 for sanctions against defendant for making a frivolous cross motion and for an order for the same relief as requested in plaintiff's motion.

On September 26, 2018, at a settlement conference with this Court and the defendant's insurance carrier, the case settled for one hundred fifty thousand dollars (\$150,000). Following the settlement conference, Mitchell Green, Esq., of counsel to plaintiff's attorney, and defendant's attorney Amelia R. Choyne, Esq. discussed the insurance carrier's requirements for the settlement, including the specific closing papers that were required. Defendant's attorney also requested that she be able to review the Compromise Order prior to it being submitted to the court. There were no objections.

The terms of the settlement were set forth in a letter by defendant's attorney to plaintiff's attorney Edward W. Armstrong, Esq. dated October 3, 2018. The letter contained five items which defendant's insurance carrier required for the settlement, with the documents being prepared by defendant's attorney: 1) a Stipulation of Discontinuance with prejudice as to the defendant; 2) a Settlement Agreement and General Release, pursuant to the carrier's template, which contained confidentiality requirements; 3) a Stipulation of Waiver of CPLR 5003-a to the extent that the settlement funds will be tendered within 60 days of receipt of all properly executed documents; 4) a Hold Harmless Stipulation; and 5) a W-9 form from plaintiff's counsel's firm. Defendant never received an objection to the letter, either in writing or verbally.

Defendant followed up the October 3, 2018 letter with five more letters dated January 14, 2019, March 8, 2019, April 22, 2019, June 19, 2019 and September 16, 2019, reiterating their request to review the draft of the Compromise Order before it was submitted to the court and also seeking a letter from Medicaid regarding the final lien amount. Defendant's attorney stated that they would prepare the settlement papers once they received the required documents. Defendant's attorney followed up the letters with phone calls to the plaintiff's attorney, who stated that he was in the process of obtaining the lien letters and he would contact defendant's attorney once the letters were received and the compromise order was drafted.

Plaintiff's attorney filed a petition, dated April 12, 2019 in the Surrogates Court, seeking a death compromise and distribution of the settlement. On August 25, 2019, the Surrogate issued a Decree. On September 11, 2019, plaintiff's attorney sent to defendant's attorney a letter containing the Surrogate's Decree, a Stipulation of Discontinuance, and the lien letters from CMS Medicare and NYC Department of Social Services.

Defendant's attorney responded by letter dated September 17, 2019, stating that the documents were not complete pursuant to the letter dated October 3, 2018, which laid out the required documents. Defendant's attorney stated that due to the deficiencies in the documents, the time pursuant to CPLR 5003-a had not started to run and would not begin to run until they determined whether the documents they had received were sufficient. In October 2019, defendant's attorney followed up with plaintiff's attorney via phone, explaining the issues with the documents, the need for them to be reviewed and

what documents were missing. On December 10, 2019, plaintiff's attorney called defendant's attorney to say that the plaintiff wanted her money and that she would be seeking a judgment. Defendant's attorney advised that as the documents were never executed, the time for payment had not started and therefore motion practice was not necessary.

On December 12, 2019, plaintiff filed the motion to enter judgment for the amount of the settlement.

On December 30, 2019, defendant's attorney sent a letter to plaintiff's attorney stating that the documents that were sent in September 2019 were not legally sufficient nor were they the documents that were agreed upon previously. Defendant's attorney stated that they would accept the Surrogate's decree, but that they needed the documents listed in the October 3, 2018 letter, as required by the insurance carrier, in order for the plaintiff to receive payment.

The Court finds that the settlement agreement was not complied with by plaintiff, and therefore the settlement is vacated. On the date of the settlement conference, plaintiff's attorney was advised of the required documents that the defendant's carrier needed in order to process the settlement. No objection was made regarding these documents prior to leaving the settlement conference or even while the attorneys were still in the courthouse, and they could have discussed any objections with the Court. The items requested are to be provided in all cases. The Court is familiar with the requirement as it is a requirement of all defendant carriers. The Court has never seen a case where a plaintiff has not signed the hold harmless document. Plaintiff's refusal to sign such a

document leads the Court to believe that the plaintiff is aware of outstanding liens.

The settlement agreement was then laid out in writing in a letter dated October 3, 2018. No objections were ever received by the defendant or the Court regarding the documents. Plaintiff's attorney instead strung the defendant's attorney along, while all the while preparing his papers to be filed in Surrogate's Court without complying with the settlement terms. The Court finds this to be disingenuous. And for plaintiff to then file a motion to enforce a judgment, knowing that they had not complied with the terms of the settlement agreement, and failing to include the letter containing the settlement terms in the motion, it is even more dishonest.

Plaintiff for the first time raises her objections to the settlement documents in her cross motion for sanctions. Plaintiff submits an affidavit, dated January 21, 2020, stating her objections to signing the Hold Harmless Agreement. Plaintiff calls the settlement documents "meaningless" documents. They are not meaningless. They are required insurance company documents. The failure by plaintiff to comply with the terms of the settlement, including failing to allow the defendant's attorney to review the compromise order prior to being submitted to the court, means there is no settlement to enforce. The Court is vacating the settlement in this matter. Plaintiff's motion to enforce a judgment is denied.

Pursuant to 22 NYCRR 130-1.1(a) "the court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court, except where prohibited by law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct

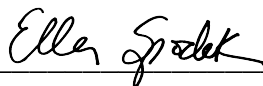
as defined in this Part.” The Court finds that the conduct in this case was frivolous on the part of the plaintiff. To make a motion to enforce a judgment, knowing that the terms of the settlement had not been complied with, and failing to properly object to the terms of the settlement prior to making a motion, were frivolous. The Court is awarding attorney’s fees and costs to the defendant.

Plaintiff’s cross motion for sanctions is denied. Defendant’s conduct in this matter is not sanctionable, especially in light of the plaintiff’s frivolous motion.

The parties are ordered to appear for a virtual conference on December 17, 2020 at 10:00 am.

This constitutes the decision and order of the Court.

ENTER,

  
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JSC

