

**Parker Jewish Inst. for Health Care & Rehabilitation
v Kaur**

2020 NY Slip Op 33650(U)

September 21, 2020

Supreme Court, Queens County

Docket Number: 706273/20

Judge: Robert I. Caloras

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This opinion is uncorrected and not selected for official publication.

**Short Form Order
NEW YORK SUPREME COURT - QUEENS COUNTY
PRESENT: HON. ROBERT I. CALORAS PART 36**

FILED

**9/24/2020
12:14 PM**

Justice

**COUNTY CLERK
QUEENS COUNTY**

-----X

**PARKER JEWISH INSITUTE FOR HEALTH
CARE & REHABILITATION,**

**Index No. 706273/20
Seq. No. 1**

Plaintiff,

-against-

**DARSHAN KAUR and HARJINDER SINGH,
Defendants.**

-----X

The following papers numbered E4-E20 read on this motion by defendant Harjinder Singh for an order pursuant to CPLR 3211(a)(1) and (a)(7) dismissing Plaintiff's Complaint.

	PAPERS
	<u>NUMBERED</u>
Notice of Motion-Affirmation-Exhibits-RJI.....	E4-E10
Affirmation in Opposition-Affidavit-Exhibits.....	E11-E18
Reply Affirmation.....	E19-E20

Upon the foregoing papers, it is ordered that defendant Harjinder Singh's (hereinafter "Singh")'s motion is determined as follows:

In the Third cause of action in the Complaint, Plaintiff alleges on April 1, 2019 defendant Harjinder Singh (hereinafter "Singh") signed an Admission Agreement (hereinafter "Agreement") for her mother, defendant Darshan Kaur (hereinafter "Kaur"), to be admitted to Plaintiff's facility for nursing home care. Plaintiff further alleges that by signing the Agreement, Singh "held herself out as the party capable of, and responsible for ensuring that the RESIDENT [Ms. Kaur] had a payment source for her nursing home". Plaintiff also alleged "[p]ursuant to the Agreement, [Mrs. Singh] undertook the obligation to remit payment from the RESIDENT'S [Kaur] funds and/or secure payment from third party payors to meet the RESIDENT'S [Kaur] obligations to the Plaintiff". Based upon Singh's alleged default and breach of the Agreement, Plaintiff seeks damages in the amount of \$108,753.20.

Defendant Singh now moves to dismiss the Complaint pursuant to CPLR 3211(a)(1) and (7). Singh has submitted the Summons and Verified Complaint, and the Agreement. Singh argues the Complaint does not allege a breach of contract by Kaur, non-payment by Kaur (other than a statement that "there remains due and owing"), or a demand for payment was made by Plaintiff to either Defendant which was rejected or ignored. Even if Plaintiff alleged these allegations, Singh argues Plaintiff failed to allege she obligated herself to pay from her own personal funds any amount of money on behalf of her Mother. As such, Singh argues Plaintiff failed to allege she is breached an agreement or is in default. Consequently, Singh argues the Complaint fails to state a cause of action against her and should be dismissed pursuant to CPLR 3211(a)(7).

In the alternative, Singh argues the Complaint should be dismissed pursuant to CPLR 3211(a)(1). Singh notes Plaintiff failed to annex a copy of the Agreement it relies upon, to the

Complaint. However, Singh has submitted a copy of the Agreement. Paragraph II provides in pertinent part:

The Resident and/or the Resident Representative hereby represents that the Resident has the resources, insurance coverage or is eligible for government benefits (including Medicare and/or Medicaid) to cover the cost of care at Parker” . . . Furthermore, the Resident and the Resident Representative agree to take all necessary steps to ensure that Parker receives payment from these and other available sources. This includes making a complete disclosure to Parker of all Resident income (including Social Security, pension and other periodic receipts), assets, insurance coverage and any other resources available to the Resident to pay for the cost of care. The Resident and/or Resident Representative agree to comply with all policies and procedures of Parker.

Singh cites Paragraph V of the Agreement which provides, in pertinent part, the following:

V. FINANCIAL ARRANGEMENTS
Obligation of Resident and Resident Representative

You will pay us on a private pay basis, with private insurance, or by means of a third party government payor, such as Medicare or Medicaid. The Resident's obligation to guarantee payment is personal and limited to the extent of his or her finances. Only where consistent with applicable laws will payment be required from his or her spouse's income and resources as well. The Resident's Representative is responsible to provide payment from the Resident's income and resources to the extent he or she has access to the Resident's income and resources without the Resident Representative incurring personal financial liability. The Resident and Resident Representative agree to provide payment from the Resident's income and resources for any charges not covered by third party payors. Payment to Parker shall be made on a monthly basis as billed.

If the Resident has no insurance coverage or remains in Parker after his or her insurer no longer covers his or her care, the Resident or Resident Representative agrees to provide payment, from the Resident's income and resources, for all of our charges until discharge or until another source of coverage becomes available. We will promptly notify you if we become aware that an Insurer has discontinued payment or coverage or your care.

NOTE: The Resident Representative is not personally responsible for the cost of care from the Resident Representative's personal assets.

However, it is essential that the Resident Representative provide Parker with payment from the Resident's assets to the extent that he or she has control over the Resident's assets, such as by power of attorney, access to joint accounts and the like. The Resident Representative is also responsible for providing Parker and third party payors with all requested information and documentation necessary to secure payment of the Resident's care at Parker. It is critical that all relevant documents and information regarding the Resident's financial resources, citizenship or immigration status, and third party insurance coverage be furnished to Parker in a truthful, accurate, timely and complete manner.

Based upon the terms of this Agreement, Singh argues she did not ensure, guarantee, or become responsible for payment, nor did it obligate her to make payment from her own funds for her Mother's care at Plaintiff's facility. As such, Singh argues the Complaint should be dismissed pursuant to CPLR 3211(a)(1).

In opposition, Plaintiff has submitted, among other things, an affidavit from Kathleen Darmstadt, an invoice for the billing period from December 3, 2018 to June 30, 2019; and a notice of acceptance of Medicaid insurance for Kaur. In her affidavit, Ms. Darmstadt stated she employed as Plaintiff's Vice President for Finance. Ms. Darmstadt claimed this matter arises out of the damages which flowed from a breach of contract with Singh related to the room, board and nursing care services provided to Kaur by Plaintiff for the period from November 27, 2018 through July 9, 2020. Ms. Darmstadt stated a copy of the Agreement signed by Singh on or about April 1, 2019 is attached as Exhibit "A". Ms. Darmstadt claimed Singh breached this agreement by failing to act in accordance with the contractual obligations set forth therein relating to securing a continuity of payment for care either by private funds or timely filing a Medicaid application and ensuring all Medicaid eligibility requirements have been met. As a result of Singh's actions or inactions in breach of the Agreement, Plaintiff has sustained damages in the amount of \$108,753.20.

Plaintiff argues it has asserted a claim for a breach contract. Plaintiff asserts the Complaint alleged Singh signed the Agreement on April 1, 2019, and it "provided and continues to provide room, board and skilled nursing care services". Plaintiff also alleged in the Complaint Singh breached her duties under the Agreement, and as a result of Singh's breach, Plaintiff sustained damages in the amount of \$108,753.20. As such, Plaintiff argues Singh's request to dismiss the Complaint pursuant to CPLR 3211(a)(7) should be denied, because it stated a cause of action for breach of contract.

Plaintiff also argues Singh's request to dismiss pursuant to CPLR 3211(a)(1) should be denied. Plaintiff acknowledges pursuant to the Nursing Home Reform Act (hereinafter "NHRA"), which affects all nursing homes that participate in Medicare and Medicaid programs, in both the Medicaid and Medicare provisions, a third-party guarantee that solely obligates Singh to pay for her Mother's (the Resident) care from her own assets is improper pursuant to 42 U.S.C. 1395i-3(c)(5)(A)(ii), which provides in pertinent part: "With respect to admissions

practices, a skilled nursing facility must...not require a third party guarantee or payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility". However, Plaintiff argues the Agreement does not require this, but rather obligates Singh to "take all necessary steps" to (a) utilize her legal access to the Resident's assets to pay for the Resident's care from the Resident's own assets or (b) timely submit an application for Medical insurance coverage (i.e. Medicaid) with all eligibility requirements being met. Plaintiff argues Singh's breach of any of these obligations creates her personal liability in accordance with both the Agreement and in compliance with the Federal NHRA.

When determining a motion to dismiss a complaint or counterclaim pursuant to CPLR 3211 (a) (7) for failure to state a cause of action, the Court must afford the pleading a liberal construction, accept as true all facts as alleged in the pleading, accord the pleader the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory (Baker, Sanders, Barshay, Grossman, Fass, Muhlstock & Neuworth, LLC v Comprehensive Mental Assessment & Med. Care, P.C., 110 AD3d 1022[2d Dept. 2013]). "In assessing a motion under CPLR 3211 (a) (7) . . . a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint" (Leon v Martinez, 84 NY2d 83, 88 [1994]). "The test of the sufficiency of a pleading is 'whether it gives sufficient notice of the transaction, occurrences, or series of transactions or occurrences intended to be proved and whether the requisite elements of any cause of action known to our law can be discerned from its averments' " (V. Groppa Pools, Inc. v Massello, 106 AD3d 722, 723 [2d Dept. 2013] [internal quotation marks omitted], quoting Pace v Perk, 81 AD2d 444, 449 [2d Dept. 1981]).

Here, the Court finds the Complaint, as supplemented by Ms. Darmstadt's affidavit, alleged the existence of the Agreement, Plaintiff's performance under the Agreement, Singh's breach of that Agreement, and it sustained damages as a result of Singh's breach (Hampshire Props. v BTA Bldg. & Developing, Inc., 122 AD3d 573 [2d Dept. 2014]). Consequently, the Court finds Plaintiff sufficiently alleged a cause of action for breach of contract as against Singh. Accordingly, the branch of Singh's motion seeking to dismiss pursuant to CPLR 3211(a)(7) is denied.

The Court also denies the branch of the motion seeking to dismiss pursuant to CPLR 3211(a)(1). "To succeed on a motion to dismiss based upon documentary evidence pursuant to CPLR 3211 (a) (1), the documentary evidence must utterly refute the plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (Gould v Decolator, 121 AD3d 845, 847 [2d Dept. 2014]). "In order for evidence to qualify as 'documentary,' it must be unambiguous, authentic, and undeniable" (Granada Condominium III Assn. v Palomino, 78 AD3d 996, 996-997 [2d Dept. 2010]; see Fontanetta v John Doe 1, 73 AD3d 78, 84-86 [2d Dept. 2010]).

Pursuant to the NHRA, "[w]ith respect to admissions practices, a skilled nursing facility must . . . not require a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility" (Sunshine Care Corp. v Warrick, 100 AD3d 981 [2d Dept. 2012], citing 42 USC § 1395i-3 [c] [5] [A] [ii]). "However, with

respect to contracts with legal representatives, '[s]ubparagraph (A) (ii) shall not be construed as preventing a facility from requiring an individual, who has legal access to a resident's income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident's income or resources for such care" (*id.*, citing 42 USC § 1395i-3 [c] [5] [B] [ii])' ”.

Here, the Agreement did not require Singh to guarantee payment for Kaur’s care as a condition of Kaur’s admission to, or Kaur’s continued stay at Plaintiff’s facility. Rather, the Agreement provided Singh could be personally liable for the cost of Kaur’s care if it was shown she breached the terms of the Agreement by failing to "take all necessary steps" to utilize her legal access to Kaur’s assets to pay for Kaur’s care from Kaur’s own assets, or timely submit an application for Medical insurance coverage (i.e. Medicaid) with all eligibility requirements being met. Accordingly, the branch of Singh’s motion seeking to dismiss pursuant to CPLR 3211(a)(1) is denied.

Based upon the foregoing, the motion is denied in its entirety.

DATED: September 21, 2020



ROBERT I. CALORAS, J.S.C.

FILED

**9/24/2020
12:14 PM**

**COUNTY CLERK
QUEENS COUNTY**