

Home Assistance Personnel v Sackey

2020 NY Slip Op 33965(U)

December 2, 2020

Supreme Court, New York County

Docket Number: 155161/2020

Judge: Melissa A. Crane

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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. MELISSA ANNE CRANE PART IAS MOTION 15EFM

Justice

-----X

HOME ASSISTANCE PERSONNEL,

Plaintiff,

- v -

SACKEY, SETH

Defendant.

-----X

INDEX NO. 155161/2020

MOTION DATE 12/08/2020

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

CRANE, J.:

Plaintiff Home Assistance Personnel Inc. moves for an order, pursuant to CPLR 3211, granting its motion to dismiss the counterclaims of Seth Sackey (Seth), individually, and Seth Sackey, as executor of the estate (Estate) of Gladys A. Sackey (Gladys)¹, for lack of standing, failure to state a cause of action, and because the claims are time-barred. The motion is unopposed.

The complaint, containing five causes of action, alleges that plaintiff maintains a visiting home healthcare service to patients requiring such services. Gladys passed away on May 19, 2016. Seth and Lawrence Sackey were appointed as executors of the Estate.

The complaint alleges further that, at the express or implied request of Gladys and Seth, plaintiff rendered skilled home care services to Gladys from September 6, 2013 through June 20, 2016, for which a balance remains due in the amount of \$25,863.01. The complaint also alleges

¹ The summons names "Gladys A. Sackey," whereas in the complaint and the answer she is named "Gladys M. Sackey."

that, pursuant an “Enrollment Agreement,” Seth was responsible to ensure continuity of payment of outstanding charges due plaintiff for Gladys’s care.

The answer by Seth, individually and as executor of the Estate, contains three counterclaims for breach of contract, elder neglect/abuse, and intentional infliction of emotional distress.

The first counterclaim alleges that, as a visiting home healthcare service agency, plaintiff breached a duty it owed to Gladys to provide staff that were attentive to her needs. Allegedly, on numerous occasions, Seth made random visits and found staff inattentive while his mother was in distress.

The second counterclaim alleges that, by hiring staff that were constantly asleep and therefore inattentive to the distress of a sick and incapacitated adult placed in their care, plaintiff committed elder abuse and neglect.

The third counterclaim alleges that plaintiff and its agents consistently harassed and hounded Seth for payment at a very painful time in his life while he was mourning the loss of his mother, which caused him severe emotional distress and incapacitated him.

The first counterclaim is dismissed, because Seth has not controverted the assertion that he is not an attorney licensed to practice in New York, and therefore not permitted to represent the Estate in this matter (*see Matter of JPMorgan Chase Bank, N.A. (Van Patten)*, 2015 NY Slip Op 31989[U], *2 [Sur Ct, NY County 2015] [executor “could not prosecute objections pro se since her representation would implicate the interests of creditors of her husband's estate and would constitute her practicing law without a license”]).

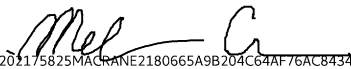
The second counterclaim for “elder neglect/abuse,” sounding in negligence (“[b]y hiring staff that were constantly asleep and therefore to the distress of a sick and incapacitated adult placed in their care, Plaintiff committed elder abuse and neglect”) is time-barred. The statute of limitations for negligence (personal injury) is three years (CPLR 214 [5]). Gladys was last provided companion services by plaintiff on or about May 18, 2016 (see Mark Becker aff, sworn to September 15, 2020), and the counterclaims were filed on August 8, 2020.

The third counterclaim, for intentional infliction of emotional distress, fails to state a cause of action. The elements of this claim are “(i) extreme and outrageous conduct, (ii) an intent to cause—or disregard of a substantial probability of causing—severe emotional distress, (iii) a causal connection between the conduct and the injury, and (iv) the resultant severe emotional distress” (*Lau v S&M Enters.*, 72 AD3d 497, 498 [1st Dept 2020]). The conclusory allegations that plaintiff and its agents “consistently harassed and hounded Mr. Sackey for payment at a very painful time in his life while he was supposed to be mourning his mother” through “phone calls and persistent emails” do not rise to the level of “extreme and outrageous conduct” with an “intent” to “cause severe emotional distress.” Conclusory assertions are “insufficient to set forth a cause of action sounding in intentional infliction of emotional distress” (*Welsh v Haven Manor Health Care Ctr.*, 15 AD3d 572, 572 [2d Dept 2005]); see *Shannon v MTA Metro-N. R.R.*, 269 AD2d 218, 219 [1st Dept 2000] [“detailed allegations that defendants intentionally and maliciously engaged in a pattern of harassment, intimidation, humiliation and abuse, causing him unjustified demotions, suspensions, lost pay and psychological and emotional harm over a period of years, were sufficient to support the cause of action for intentional infliction of emotional distress”])

Accordingly, it is

ORDERED that the motion by plaintiff Home Assistance Personnel Inc. to dismiss the counterclaims of Seth Sackey, Individually, and Seth Sackey, as Executor of the Estate of Gladys A. Sackey, is granted, and the counterclaims are hereby dismissed.

The parties are directed to attend a preliminary conference on January 27, 2020 at 2:30 via Microsoft teams.


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12/2/2020
 DATE

 MELISSA ANNE CRANE, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED
 SETTLE ORDER
 INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER
 SUBMIT ORDER
 FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: