Gayle v Regeis Care Ctr., LLC
2020 NY Slip Op 35632(U)
January 16, 2020
Supreme Court, Bronx County
Docket Number: Index No. 28615/17E
Judge: Robert T. Johnson
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 12
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JEAN GAYLE, as Administratrix of the Estate of CLARENCE GAYLE, deceased,
Plaintiff,

- against-

REGEIS CARE CENTER, LLC, REGEIS CARE CENTER, LLC d/b/a REGEIS CARE CENTER, REGEIS CARE CENTER, JEWISH HOME LIFECARE, MANHATTAN, JEWISH HOME LIFECARE, MANHATTAN d/b/a THE NEW JEWISH HOME, MANHATTAN, JEWISH HOME LIFECARE, HARRY AND JEANETTE WEINBERG CAMPUS, BRONX, JEWISH HOME LIFECARE, HARRY AND JEANETTE WEINBERG CAMPUS, BRONX d/b/a THE NEW JEWISH HOME, HARRY AND JEANETTE WEINBERG CAMPUS, THE NEW JEWISH HOME, HARRY AND JEANETTE WEINBERG CAMPUS and MONTEFIORE MEDICAL CENTER,
Defendants.
--X

Decision and Order
Index No. 28615/17E

The following papers, numbered 1, 2, 3 were considered on the motion:

PAPERS	**NUMBERED**
Notice of Motion, Affidavits, and Exhibits Annexed	**1**
Opposition, Affidavit and Exhibits Annexed	**2**

Upon the foregoing papers, this motion is decided as follows:

In an action for medical malpractice and wrongful death, defendant Jewish Home Lifecare, Manhattan[1] ("JHL") moves pursuant to a JHL nursing home admissions agreement to compel arbitration and stay this action until resolution thereof, or to alternatively transfer the action to Westchester County. Plaintiff Jean Gayle[2], as administratrix of the estate of decedent Clarence Gayle, opposes JHL's motion, arguing that the relevant provisions of the admissions agreement are not enforceable and that the motion itself should be invalidated by plaintiff's separate motion for default judgment.

[1] Listed in the caption under a number of related names: "Jewish Home Lifecare, Manhattan d/b/a The New Jewish Home, Manhattan, Jewish Home Lifecare, Harry and Jeanette Weinberg Campus, Bronx, Jewish Home Lifecare, Harry and Jeanette Weinberg Campus, Bronx d/b/a The New Jewish Home, Harry and Jeanette Weinberg Campus"
[2] The Court was unable to ascertain the nature of Jean Gayle's relationship to the decedent from plaintiff's papers.

The agreement with JHL was signed upon decedent Clarence Gayle's admission by his daughter, Denise Gayle. According to his initial evaluation by nursing staff, Clarence Gayle was unable to express himself or understand others at the time of his admission, and suffered from numerous physical and cognitive deficits. Following this evaluation, the assessment of Clarence Gayle's primary physician, and alleged discussions between Denise Gayle and her mother, Denise Gayle signed a number of documents on her father's behalf, including various Medical Orders for Life Sustaining Treatment ("MOLST") forms, in which she is listed as Clarence Gayle's designated decision-maker and surrogate under the Public Health Law. (JHL's Exhibits C and D). Denise Gayle then signed Clarence Gayle's admission agreement as "responsible party" for the resident (JHL's Exhibit E). Page 8 of the agreement references the optional arbitration agreement, attached as the agreement's exhibit A, and designates Westchester County as the forum for any related disputes. (¶ 11 and 12). Denise Gayle further accepted the annexed arbitration agreement and signed it on Clarence Gayle's behalf. In opposition, plaintiff argues that the arbitration agreement is "fatally flawed"—averring that it is only authenticated by an attorney without personal knowledge, and that the signing agent, Denise Gayle, lacked authority and demonstrated intent to bind the decedent and his estate. In support of this, they assert that signatory Denise Gayle was not her father's power of attorney, and that the arbitration agreement was not medical in nature and did not specifically name the decedent. Plaintiff's further argument that their subsequently filed default judgment motion, not yet fully submitted at the time JHL's instant motion was filed, was then "pending" and grounds for this motion's dismissal is without merit.[3] Both parties present arguments about the alternative relief sought by JHL regarding the venue provision and selected forum, which the Court need not reach.

Nursing home admission agreements are different from typical contracts in that they primarily serve healthcare and treatment purposes. Although admission agreements may cover topics beyond the realm of healthcare—like finance or litigation— an incoming resident's representative family member can validly agree to the whole contract as one relating to medical treatment and care. (*E.g. Ellman v. S&L Birchwood, LLC*, 2010 WL 4219684 [Sup Ct NY Cty 2010], *citing Hendrickson v. Birchwood Nursing Home Partnership*, 26 AD3d 187 [1st Dept 2006] ['While the Agreement…is largely financial in nature, it also covers elements of the patient's care

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[3] Caselaw further suggests that moving to stay an action and compel arbitration before filing answer may not render a defendant in default. (*E.g. Ramos v. Uber Technologies*, 60 Misc3d 422 [Sup Ct Kings Cty 2018]; *compare Stark v. Molod Spitz DeSantis & Stark*, 9 NY3d 39 [2007], *De Sapio v. Kohlmeyer*, 35 NY2d 402 [1974]).

and treatment…Plaintiff cannot reasonably argue that the Agreement is not binding on the estate.']. In some such circumstances, the representative signatory is not empowered by an additional power of attorney or healthcare proxy, but is acting as surrogate for a family member who lacks decision-making capacity, pursuant to NY Public Health Law § 2994-d (1). Admission agreements signed by a representative family member also are not presumed invalid in cases brought on behalf of a decedent's estate. (*See Puleo v. Shore View Center,* 132 AD3d 651 [2d Dept 2015]). Enforceability of provisions in an admission agreement signed under such circumstances extends to arbitration clauses. (*E.g. Friedman v. Hebrew Home for Aged at Riverdale,* 131 AD3d 421 [1st Dept 2015] [arbitration agreement signed by plaintiff on his mother's behalf upon admission to the facility was enforceable]; *see also Ayzenberg v. Bronx House Emanuel Campus*, 93 AD3d 607 [1st Dept 2012]). There is thus no merit to plaintiff's suggestion that arbitration clauses in nursing home admission agreements are per se unenforceable, writing (at 6) that some types of claims preempted and prohibited outright by the Federal Arbitration Act ("FAA"). (*Compare id.*)

The agreement in question was validly signed by Clarence Gayle's daughter upon Clarence Gayle's admission to defendant JHL's facility, given the evidence from his intake evaluation, nurse and treating physician, and family members that Clarence Gayle lacked decision-making capacity at the time. His daughter Denise Gayle was therefore authorized by NY Public Health Law § 2994-d (1) (c) to act as surrogate decision-maker and agree to the nursing home admissions agreement in its entirety. The Court is unaware of any authority, such as exists in motions for default judgment and summary judgment, that supports plaintiff's assertion that an agreement presented by an attorney with no personal knowledge should not be enforced. The agreement, including its optional and subscribed agreement to arbitrate, is enforceable. Accordingly, it is hereby

ORDERED, that defendant's motion to compel arbitration is hereby granted; and it is further

ORDERED, that the matter is hereby stayed for arbitration.

This constitutes the decision and order of this court.

Dated: January 16, 2020 **Robert T. Johnson, J.S.C.**