

|                                                                                                                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Dewitt Rehabilitation &amp; Nursing Ctr. Inc. v Bradley</b>                                                                                                                                                                 |
| 2022 NY Slip Op 32641(U)                                                                                                                                                                                                       |
| August 3, 2022                                                                                                                                                                                                                 |
| Supreme Court, New York County                                                                                                                                                                                                 |
| Docket Number: Index No. 653833/2019                                                                                                                                                                                           |
| Judge: Arlene Bluth                                                                                                                                                                                                            |
| Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service. |
| This opinion is uncorrected and not selected for official publication.                                                                                                                                                         |

# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. ARLENE BLUTH PART 14

*Justice*

-----X

DEWITT REHABILITATION AND NURSING CENTER INC.  
D/B/A UPPER EAST SIDE REHABILITATION AND  
NURSING CENTER,

Plaintiff,

- V -

CLARETHA BRADLEY, SANJI BRADLEY

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 004) 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114

were read on this motion to/for

VACATE - JUDGMENT

The motion by defendant Sanji Bradley to vacate the judgment entered against her is granted.

## Background

In this action, plaintiff seeks recovery for care services it provided to defendant Claretha Bradley while she was a resident at plaintiff's nursing center.

Previously, this Court granted plaintiff's motion for summary judgment against Sanji Bradley without opposition on April 6, 2022 (NYSCEF Doc. No. 80). The Court had also granted plaintiff's motion for a default judgment against Claretha Bradley in August 2020 (NYSCEF Doc. No. 41).

Sanji Bradley ("Movant") seeks to vacate the Court's decision awarding summary judgment against her (and the judgment plaintiff subsequently entered against her). She claims that she was initially representing herself in this matter (she now has an attorney) and that she

failed to oppose the motion because her mother's health (her mother is the co-defendant) declined in March 2022 and her mother eventually passed away on April 4, 2022.

She explains that she was her mother's attorney-in-fact and that she did not receive any money from her mother. Movant acknowledges that she helped pay her mother's bills and expenses out of her mother's income but she did not make transactions for her own benefit, except for two purchases. One was a purchase at a pet store for the family dog for \$19.74 and the other was at Sephora, a transaction which Movant admits was for her. She insists she has maintained her own bank account from which she pays her own expenses.

In opposition, plaintiff claims that Movant did not submit any evidence that her mother's health was declining during the time Movant was supposed to file opposition to the summary judgment motion. It argues that Movant did not reach out to plaintiff at any time between September 24, 2021 and the filing of the instant motion. Plaintiff argues that Movant did not state a reasonable excuse for her default.

Plaintiff also insist that Movant did not state a meritorious defense and that she is liable under the Debtor and Creditor Law. It argues that she accessed her mother's account for her own usage and that there was no adequate consideration for the purchases she made with her mother's money.

## **Discussion**

"As to vacating the default, a party seeking to vacate a default judgment must demonstrate both a reasonable excuse for the default and a meritorious defense" (*Aetna Life Ins. Co. v UTA of KJ Inc.*, 203 AD3d 401, 401, 160 NYS3d 590(Mem) [1st Dept 2022]).

The Court grants the motion. Movant established a reasonable excuse for her default based on her affidavit detailing her mother's declining health and the death certificate she included (NYSCEF Doc. No. 91) demonstrating that her mother passed away just a few days after Movant's opposition to the summary judgment was due.

Movant also established a meritorious defense through her affidavit. Plaintiff seeks to recover unpaid expenses incurred by the co-defendant's stay at plaintiff's facility. Movant points out that she never signed an agreement with plaintiff. She also insists that she never received any transfers of funds from her mother and that there was no fraudulent intent. As Movant contends, her two purchases (which totaled about \$120) did not render her mother insolvent and so she should not be held liable under a fraudulent conveyance theory.

Movant also points out that she never had any right to access her mother's Net Available Monthly Income ("NAMI") and she never agreed to be her mother's designated representative or ensure that plaintiff receive this money. Movant raised a meritorious defense by disputing the amount of the alleged debt; she insists that plaintiff failed to mitigate its damages by not seeking payment directly from the Veteran's Administration and the Social Security Administration despite Movant's requests to do so. Movant also explains that she thought the stay in plaintiff's facility would be temporary and so she miscalculated the NAMI.

Simply put, Movant raised numerous issues that compel the Court to vacate the judgment and the Court's decision granting summary judgment against her without opposition. Movant should have the opportunity to contest these issues on the merits.

Accordingly, it is hereby

ORDERED that the motion by Sanji Bradley to vacate the judgment against ONLY this defendant is granted, any restraints or garnishments issued in connection with the judgment against her are lifted, and this case shall be restored to the active calendar; and it is further

ORDERED that plaintiff shall file a note of issue on or before August 31, 2022; and it is further

ORDERED that, within 7 days from entry of this order, Movant shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh));] and it is further

ORDERED that upon receipt of the foregoing, the Clerk of the General Clerk's Office shall immediately restore the case to the active calendar.

|                       |                                     |                            |                                 |                                                                                       |                       |                          |           |
|-----------------------|-------------------------------------|----------------------------|---------------------------------|---------------------------------------------------------------------------------------|-----------------------|--------------------------|-----------|
| <u>8/3/2022</u>       |                                     |                            |                                 |  |                       |                          |           |
| <b>DATE</b>           |                                     |                            |                                 | <b>ARLENE BLUTH, J.S.C.</b>                                                           |                       |                          |           |
| CHECK ONE:            | <input type="checkbox"/>            | CASE DISPOSED              |                                 | <input checked="" type="checkbox"/>                                                   | NON-FINAL DISPOSITION |                          |           |
|                       | <input checked="" type="checkbox"/> | GRANTED                    | <input type="checkbox"/> DENIED | <input type="checkbox"/>                                                              | GRANTED IN PART       | <input type="checkbox"/> | OTHER     |
| APPLICATION:          | <input type="checkbox"/>            | SETTLE ORDER               |                                 | <input type="checkbox"/>                                                              | SUBMIT ORDER          |                          |           |
| CHECK IF APPROPRIATE: | <input type="checkbox"/>            | INCLUDES TRANSFER/REASSIGN |                                 | <input type="checkbox"/>                                                              | FIDUCIARY APPOINTMENT | <input type="checkbox"/> | REFERENCE |