

Dewitt Rehabilitation & Nursing Ctr. Inc. v Bradley
2023 NY Slip Op 30465(U)
February 14, 2023
Supreme Court, New York County
Docket Number: Index No. 653833/2019
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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

Plaintiff,

- v -

CLARETHA BRADLEY, SANJI BRADLEY

Defendant.

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INDEX NO. 653833/2019

MOTION DATE 2/8/2023

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140 were read on this motion to/for SUMMARY JUDGMENT.

Defendant Sanji Bradley’s motion for summary judgment dismissing this case is granted in part and denied in part.

Background

In this action, plaintiff seeks to recover for unpaid care services it provided to defendant Claretha Bradley while she was a resident at plaintiff’s nursing center. During that time, defendant Sanji Bradley (“Movant”) held a power of attorney over Claretha’s accounts. There is no dispute that Sanji was never a guarantor for her mother’s debt to plaintiff.

Previously, this Court granted plaintiff’s motion for summary judgment against Sanji Bradley without opposition (NYSCEF Doc. No. 80) and later vacated that decision (NYSCEF Doc. No. 115). The Court also granted plaintiff’s motion for a default judgment against Claretha Bradley (“Claretha”) in August 2020 (NYSCEF Doc. No. 41) and judgment against her has been entered (NYSCEF Doc. No. 45). The claims against Sanji Bradley remain.

Defendant Sanji Bradley (“Movant” or “Sanji”) now seeks summary judgment dismissing this case. When Claretha (who has since passed away) was admitted into plaintiff’s facility, Sanji was her attorney-in-fact pursuant to a power of attorney. Sanji insists that no compensation was received for serving in this role. Sanji claims that although plaintiff was directed plaintiff to apply to the Veteran’s Administration to seek payment for the services provided to her mother, plaintiff never did. Movant acknowledges that movant helped pay Claretha’s bills and expenses out of her mother’s accounts.

Movant never signed any contract with plaintiff and claims never to have received any conveyances from Claretha during the relevant time. Movant points out that movant simply executed transactions from Claretha’s money as directed by her mother and to help care for Claretha’s minor daughter (movant’s sister).

In opposition, plaintiff emphasizes that defendant Claretha Bradley resided at plaintiff’s facility from May 1, 2015 through December 28, 2017 and generated a balance of \$85,064.10. It points out that Movant admits holding power of attorney over Claretha’s finances and has refused to pay for the accrued balance. Plaintiff directs the Court to review certain bank records which show withdrawals from Claretha’s savings account (totaling \$4,483.00) and from her checking account (for a total of \$88,349.57). Plaintiff maintains that movant has not sufficiently demonstrated by documentary evidence that these funds were exclusively used to help Claretha or Claretha’s minor daughter (Movant’s sister).

In reply, Movant reiterates that Movant cannot be personally liable simply because by having access to her Claretha’s accounts. Movant testified at the deposition that the expenses incurred on behalf of Claretha were justified and plaintiff has not raised an issue of fact.

Discussion

To be entitled to the remedy of summary judgment, the moving party “must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact from the case” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). The failure to make such a prima facie showing requires denial of the motion, regardless of the sufficiency of any opposing papers (id.). When deciding a summary judgment motion, the court views the alleged facts in the light most favorable to the non-moving party (*Sosa v 46th St. Dev. LLC*, 101 AD3d 490, 492, 955 NYS2d 589 [1st Dept 2012]).

Once a movant meets its initial burden, the burden shifts to the opponent, who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 560, 427 NYS2d 595 [1980]). The court’s task in deciding a summary judgment motion is to determine whether there are bonafide issues of fact and not to delve into or resolve issues of credibility (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 505, 942 NYS2d 13 [2012]). If the court is unsure whether a triable issue of fact exists, or can reasonably conclude that fact is arguable, the motion must be denied (*Tronlone v Lac d’Amiante Du Quebec, Ltee*, 297 AD2d 528, 528-29, 747 NYS2d 79 [1st Dept 2002], *affd* 99 NY2d 647, 760 NYS2d 96 [2003]).

Account Stated

This cause of action requires “having received and retained the invoice without objection for a reasonable time” (*Rosenberg Selsman Rosenzweig & Co., LLP v Slutsker.*, 278 AD2d 145, 145, 718 NYS2d 317 [1st Dept 2000]).

The Court severs and dismisses this cause of action as there is no dispute that the bills were sent to defendant Claretha Bradley and not to Sanji. In fact, the invoice attached to plaintiff's opposition is addressed to Claretha Bradley and does not mention Sanji whatsoever (NYSCEF Doc. No. 110). Plaintiff failed to adequately explain how Sanji could be liable under an account stated theory of recovery where Sanji was not a party to that account or contract and where no bill was addressed to her.

Conversion and Fraudulent Conveyance

The other two causes of action addressed by Movant in the moving papers are conversion and fraudulent conveyance.

“A conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession. Two key elements of conversion are (1) plaintiff's possessory right or interest in the property and (2) defendant's dominion over the property or interference with it, in derogation of plaintiff's rights” (*Colavito v New York Organ Donor Network, Inc.*, 8 NY3d 43, 49-50, 827 NYS2d 96 [2006] [citations omitted]).

“To state a claim under [DCL] §§ 273 & 274, the plaintiff must establish that the defendant (1) made a conveyance; (2) without fair consideration; (3) by a person who is insolvent or who becomes insolvent as a consequence of the transfer” (*Loreley Fin. (Jersey) No. 4 Ltd. v UBS Ltd.*, 40 Misc 3d 323, 337 [Sup Ct, NY County 2013] [citation omitted]).

The Court denies the motion to the extent that it seeks to dismiss these causes of action. The fact is that Movant does not dispute that she had complete control over Claretha's finances, that plaintiff was not paid, and that withdrawals during the relevant time period show that over \$92,000 was withdrawn (more than the amount sued for here).

Plaintiff also raised an issue of fact with respect to certain transactions. Movant admitted at the deposition that Movant purchased an item for Movant's dog (an animal which Claretha apparently loved as well) (NYSCEF Doc. No. 139 at 33-34). Movant could not recall the reasons for many cash withdrawals (*id.* at 34) and acknowledged there were not receipts for all of the items purchased from these withdrawals (*id.*). And Movant claimed that a purchase at Sephora "was probably for me" (NYSCEF Doc. No. 37).

These admissions, combined with the lack of any documentary proof from Movant, raises material issues of fact. The Court cannot, on a motion for summary judgment on this record, simply credit Movant's assertion that access to Claretha's accounts was solely for her mother's expenses. Movant admitted making at least one purchase for herself, at least one purchase for Movant's dog and could not account for other purchases made with cash. While Movant is correct to emphasize that Movant never had a contract with plaintiff, that does not mean that Movant could drain Claretha's accounts for her personal uses especially where, as here, there is no dispute that Claretha owed plaintiff money and plaintiff was never paid.

Summary

The Court recognizes Movant's position: that she was simply taking care of Claretha and Claretha's minor daughter (movant's sister). And the Court understands that this was no doubt a stressful family time and that Movant may not have realized the obligation or necessity to keep records. Unfortunately, Movant did not keep (or submit) records to show that the power of attorney used to access to Claretha's accounts was used solely for the benefit of Claretha and Claretha's minor daughter. Because there is the charge at Sephora and a charge for Movant's dog, coupled with many, many cash withdrawals for which there are no corresponding documentation, this Court cannot, as a matter of law, dismiss the claims against Movant.

A fact finder will have to decide whether Sanji was spending money on items other than for her mother or her sister while Clareththa was in plaintiff's facility accruing bills. That is, a fact finder is required to assess whether to believe Movant's version, in whole or in part.

Accordingly, it is hereby

ORDERED that defendant Sanji Bradley's motion for summary judgment is granted only to the extent that the account stated cause of action is severed and dismissed and denied with respect to the remaining claims.

2/14/2023

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE