

Dewitt Nursing & Rehabilitation Ctr., Inc. v Halpin

2023 NY Slip Op 32261(U)

July 7, 2023

Supreme Court, New York County

Docket Number: Index No. 159504/2020

Judge: Verna L. Saunders

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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. VERNA L. SAUNDERS, JSC

PART 36

Justice

-----X

INDEX NO. 159504/2020

DEWITT NURSING AND REHABILITATION CENTER, INC.,
d/b/a UPPER EAST SIDE REHABILITATION AND NURSING
CENTER,

MOTION SEQ. NO. 001

Plaintiff,

- v -

**DECISION + ORDER ON
MOTION**

CATHERINE HALPIN, Individually and CATHERINE HALPIN,
as Executor of the Estate of Anthony Basta, Deceased,
Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60

were read on this motion to/for

SUMMARY JUDGMENT

In the complaint¹ in this action, plaintiff alleges that, during the period of June 21, 2017 through September 15, 2017, it provided room, board and skilled nursing services for Anthony Basta (“Basta” or “decedent”), now deceased.² It now seeks to recover \$19,445.02 for the care and services rendered to decedent, for which it alleges his estate is liable.

Plaintiff now moves, pursuant to CPLR 3212, for an order entering judgment in favor of it and against defendant Catherin Halpin, as Executor of the Estate of Anthony Basta,³ in the amount of \$19,445.02. It also seeks to discontinue the action, pursuant to CPLR 3217, against Catherine Halpin, individually, without prejudice (NYSCEF Doc. No. 24, *notice of motion*). In support of its motion, plaintiff submits, *inter alia*, the affidavit of Albert Schweigert, the accounts receivables supervisor and authorized representative of plaintiff, who affirms that Basta resided at Dewitt from June 21, 2017, until September 15, 2017, and that he received the services referenced in the complaint. He submits, *inter alia*, a final bill on Basta’s account reflecting a balance due and owing in the amount of \$19,445.02, relating to services rendered at the facility (NYSCEF Doc. No. 32, *invoice*).

Defendants oppose the motion and cross-move, pursuant to, *inter alia*, CPLR 3211(a)(1), (2), and (7), for an order dismissing the complaint and/or the amended complaint; pursuant to CPLR 3126, striking the complaint or precluding plaintiff from supporting its claims or opposing defendants’ defenses for failure to comply with discovery; and an order declaring this action/motion to be frivolous and imposing sanctions.

¹ Plaintiff filed a supplemental summons and amended complaint, which were rejected by the Clerk’s office (NYSCEF Doc. Nos. 14-15). Plaintiff was instructed to seek a court order directing the desired changes. However, no application to amend the pleadings was filed.

² Basta passed away on September 25, 2017.

³ Basta named Halpin as Executor in his last Will and Testament (NYSCEF Doc. No. 40, *Last Will and Testament*).

Defendants argue that plaintiff's motion for summary judgment must be denied because issues of fact remain. Specifically, they argue that the complaint is based upon alleged services provided to Basta, not services to defendants. Therefore, defendants argue that they are not parties to any contract — express or implied — with plaintiff. Defendants further assert that documentary evidence in the form of a letter dated December 8, 2020, from plaintiff to Basta, confirms that, although it is alleged decedent owes plaintiff money for services provided, defendants owe plaintiff no money for any services rendered. According to defendants, dismissal of this action is also warranted because plaintiff fails to assert the jurisdictional minimum for Supreme Court. Moreover, insofar as plaintiff has failed to respond to discovery demands duly served, defendants insist this court should exercise its discretion, pursuant to CPLR 3126(3), and dismiss the complaint, or, in the alternative, order preclusion. Defendants further contend that, since plaintiff has failed to allege facts demonstrating that defendants received services from plaintiff, this action and plaintiff's motion are frivolous, warranting sanctions (NYSCEF Doc. No. 39, *English affirmation*).

In opposition to the cross-motion and in reply, plaintiff contends that its motion seeks dismissal of the complaint against Halpin, individually, as it was a clerical error. However, it nevertheless maintains that “[t]he causes of action for services rendered and unjust enrichment are properly asserted against the [d]efendant in her capacity as the Executor of the Estate of the Resident.” (NYSCEF Doc. No. 57 ¶ 6, *reply affirmation*). To this point, plaintiff argues that the executor stands in place of the resident by virtue of her appointment as executor of decedent's estate. Thus, plaintiff maintains that defendants have failed to raise an issue of fact sufficient to defeat its motion for summary judgment and have failed to satisfy their burden of demonstrating entitlement to dismissal under CPLR 3211. Addressing the argument regarding the striking of the complaint or preclusion, plaintiff argues that defense counsel conveniently omits that, during this period of discovery, the parties were in communication, discussing both settlement and discontinuance of the action as against Halpin, individually. It further argues that no discovery order was entered in this action. (NYSCEF Doc. No. 57, *affirmation in opposition*).

Although defendants submit a sur-reply, defendants are not entitled to a sur-reply as of right and, thus, the submission will not be considered.

In a motion for summary judgment, the movant bears the initial burden of presenting affirmative evidence of its *prima facie* entitlement to summary judgment, producing sufficient evidence to demonstrate the absence of any material issue of fact. (See *Sandoval v Leake & Watts Servs., Inc.*, 192 AD3d 91, 101 [1st Dept 2020]; *Reif v Nagy*, 175 AD3d 107, 124-125 [1st Dept 2019]; *Cole v Homes for the Homeless Inst., Inc.*, 93 AD3d 593, 594 [1st Dept 2012].) “Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution.” (*Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003].)

Turning first to that branch of the motion seeking dismissal of defendant Catherine Halpin, individually, said relief is granted, without opposition. Therefore, all claims asserted as against Halpin, in her individual capacity, are hereby dismissed.

Addressing plaintiff's motion for summary judgment, "[t]he elements of a claim for unjust enrichment are that plaintiff conferred a benefit upon the defendant, and the defendant obtained such benefit without adequately compensating plaintiff." (See *Matter of Alpert v M.R. Beal & Co.*, 162 AD3d 491 [1st Dept 2018], citing *Nakamura v Fujii*, 253 AD2d 387, 390 [1st Dept 1998].) Here, plaintiff submits the affidavit of Albert Schweigert, the accounts receivables supervisor and authorized representative of plaintiff, who affirms that plaintiff rendered services to Basta in 2017, amounting to \$19,445.02, for which it is due compensation. This court notes that defendants do not dispute in opposition to the motion that Basta received said services. However, the invoice that plaintiff proffers lack sufficient detail regarding the services provided to Basta to confirm the amount owed. For instance, the invoice reflects a charge of \$201.16 on August 31, 2017, labeled "Physical, Occupational and Speech Charges." Another charge categorized as "Physical, Occupational and Speech Charges" from September 1, 2017, to September 15, 2017, is reflected in the amount of \$272.36. Thus, insofar as this court cannot ascertain on this record, the full extent of the services provided and charged, the motion for summary judgment on plaintiff's claims is denied at this juncture, with leave to renew at the end of discovery.

Defendants' cross-motion is denied. The arguments raised by defendants in opposition to the motion and in support of their cross-motion rely predominantly on the assertion that plaintiff cannot commence an action against defendants for services rendered to decedent. To the extent the argument relates to Halpin, in her individual capacity, that argument is moot given the discontinuance granted herein. The argument is wholly without merit as to the executor. "[U]nder New York law, [a]n estate is not a legal entity and any action for or against the estate must be by or against the executor or administrator in his or her representative capacity." (See *Dubois v Beaury*, 2020 WL 7024393, 2020 US Dist LEXIS 222641, *2 [NDNY 2020, No. 1:20-CV-86 (FJS/CFH)] [internal quotation marks and citations omitted]; see *Wilmington Trust v Estate of McClendon*, 287 F Supp3d 353, 373-374 [SDNY 2018].) Furthermore, in New York, "an executor stands in the shoes of the decedent." (*Adams v McDaniel*, 2009 NY Slip Op 31273[U], **18 [Sup Ct, NY County 2009]; *Estate of Styne*, NYLJ, Apr 4, 1996 at 6, col 1 [Sur Ct, NY County 1996] [finding that the executor, who stood in the shoes of his decedent, was bound by decedent's agreement to arbitrate a dispute arising under a contract].) Therefore, it follows that claims against Basta for failure to pay for services while under plaintiff's care may be properly alleged as against Halpin, as executor, who stands in the shoes of decedent. Thus, this court denies defendants' cross-motion seeking dismissal of the complaint and sanctions.

This court also rejects that branch of defendants' motion seeking dismissal of the complaint for failure to comply with discovery. No discovery order has been issued in this case, and defendants have failed to otherwise establish that the drastic relief of striking the pleadings/preclusion is warranted here (see *Cherokee Owners Corp. v DNA Contr., LLC*, 74 AD3d 411, 411 [1st Dept 2010].) Finally, the court also denies that branch of the motion seeking dismissal of this action on the ground that plaintiff seeks less than the jurisdictional amount.

All other arguments have been considered and are either without merit or need not be addressed given the findings above. Accordingly, it is hereby

ORDERED that that branch of plaintiff's motion seeking to discontinue its claims as against defendant Catherine Halpin, Individually, is granted; and it is further

ORDERED that that branch of plaintiff's motion seeking summary judgment against defendants is denied, with leave to renew at the close of discovery; and it is further

ORDERED that defendants' cross-motion is denied; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for plaintiff shall serve a copy of this decision and order, with notice of entry, upon defendants; and it is further

ORDERED that the remaining parties in this action shall appear for a remote conference on September 27, 2023, details which shall be provided no later than September 25, 2023.

July 7, 2023



HON. VERNA L. SAUNDERS, JSC

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: