

Jenack v Goshen Operations, LLC
2025 NY Slip Op 35583(U)
April 4, 2025
Supreme Court, Orange County
Docket Number: Index No. EF008129-2018
Judge: Craig Stephen Brown
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
WILLIAM JENACK, as Administrator of the Estate
of MARY RICE and WILLIAM RAMLOW, as
Administrator of the Estate of ADELINE RAMLOW,
individually and on behalf of all others similarly
situated,

Plaintiffs,

DECISION & ORDER

- against -

Index No. EF008129-2018

GOSHEN OPERATIONS, LLC d/b/a SAPPHIRE
NURSING AND REHAB AT GOSHEN, RICHARD
PLATSCHEK, ESTHER FARKOVITS, MACHLA
ABRAMCZYK and ROBERT SCHUCK,

Defendants.
-----X

CRAIG STEPHEN BROWN, A.J.S.C.

Defendants move for an order, pursuant to CPLR sections 901, 902, and 3212:

- (1) Decertifying the class;
- (2) Granting summary judgment to defendants and dismissing plaintiffs'
complaint in its entirety;
- (3) Granting summary judgment to defendants and dismissing plaintiffs' cause of
action for violation of New York Public Health Law sections 2801-d and 2803-c;
- (4) Granting summary judgment to defendants and dismissing plaintiffs' claims
for injunctive relief;
- (5) Granting summary judgment to defendants and dismissing plaintiffs' claims
for punitive damages, attorney's fees, and costs;
- (6) Granting summary judgment to defendants and dismissing plaintiffs' claims
against the individual defendants Machla Abramczyk, Esther Farkovits,
Richard Platschek, and Robert Schuck; and

(7) Directing the Clerk of the Court to enter judgment accordingly on behalf of the defendants.

The following papers were read:

Notice of Motion - Affirmation of Caitlin A. Robin, Esq. - Accompanying Exhibits	1 - 3
Defendants' Statement of Material Facts	4
Defendants' Memorandum of Law in Support of Motion to Decertify the Class and for Summary Judgment	5
Plaintiffs' Memorandum of Law in Opposition to Motion to Decertify the Class and for Summary Judgment	6
Affirmation of John D. Sardesai-Grant, Esq. - Accompanying Exhibits	7 - 8
Defendants' Reply Memorandum of Law In Further Support of Defendants' Motion to Decertify the Class and for Summary Judgment	9

Upon the foregoing papers it is hereby ORDERED that the defendants' motion to decertify the class and for summary judgment is denied. All other requested relief is denied.

The class in the instant class action was certified by Decision and Order of this Court (Sciortino, J.) dated September 10, 2019 (*see Jenack v. Goshen Operations, LLC*, 2019 NY Slip Op 33643[U]). By Decision and Order dated November 1, 2023, the Supreme Court, Appellate Division, Second Department affirmed the September 10, 2019 Decision and Order certifying the class (*see Jenack v. Goshen Operations, LLC*, 222 AD3d 36 [2nd Dept., 2023]). The defendants now seek to decertify the class.

CPLR section 901 provides as follows: "One or more members of a class may sue or be sued as representative parties on behalf of all if:

1. the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;

2. there are questions of law or fact common to the class which predominate over any questions affecting only individual members;

3. the claims or defenses of parties are typical of the claims or defenses of the class;

4. the representative parties will fairly and adequately protect the interests of the class; and

5. a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

In addition, CPLR section 902 states that an "action may be maintained as a class action only if the court finds that the prerequisites under section 901 have been satisfied. Among the matters which the court shall consider in determining whether the action may proceed as a class action are:

1. the interest of members of the class in individually controlling the prosecution or defense of separate actions;

2. the impracticability or inefficiency of prosecuting or defending separate actions;

3. the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

4. the desirability or undesirability of concentrating the litigation of the claim in the particular forum;

5. the difficulties likely to be encountered in the management of a class action."

It is well settled that "CPLR article 9, which authorizes and sets forth the criteria to be considered in granting class action certification, is to be liberally construed" (*Dowd v. Alliance Mortg. Co.*, 74 AD3d 867, 869 [2nd Dept., 2010] quoting *Beller v. William Penn Life Ins. Co. of N.Y.*, 37 AD3d 747, 748, 830 NYS2d 759 and citing *Globe Surgical Supply v. GEICO Ins. Co.*, 59 AD3d 129, 135, 871 NYS2d 263; *Tosner v. Town of Hempstead*, 12 AD3d 589, 785 NYS2d 101). Further, "[t]he determination to grant class action certification rests in the sound discretion of the trial court" (*Dowd v. Alliance Mortg. Co.*, 74 AD3d 867, 869 [2nd Dept., 2010] quoting *Globe Surgical Supply v. GEICO Ins. Co.*, 59

AD3d at 137, 871 NYS2d 263 and citing *Small v. Lorillard Tobacco Co.*, 94 NY2d 43, 52, 698 NYS2d 615, 720 NE2d 892; *Emilio v. Robison Oil Corp.*, 63 AD3d 667, 667-668, 880 NYS2d 177).

A review of the submitted papers reveals that the plaintiffs continue to satisfy the prerequisites to a class action set forth in CPLR section 901. "Members of the class appear to number in the [hundreds]. The members share common questions of fact or law regarding the defendants' alleged [understaffing of the nursing home]. The claims of the representative[s] are typical of those of the class. The representative[s] [have] demonstrated that [they] can fairly and adequately protect the interests of the class. Finally, the class action procedure appears to be superior to other potential available methods of adjudicating the controversy" (*Emilio v. Robison Oil Corp.*, 63 AD3d 667, 668 [2nd Dept., 2009]). In addition, upon considering the factors set forth in CPLR section 902, this Court finds that allowing the action to proceed as a class action is appropriate (see *Dowd v. Alliance Mortg. Co.*, 74 AD3d 867 [2nd Dept., 2010]; *Globe Surgical Supply v. GEICO Ins. Co.*, 59 AD3d 137-138, 871 NYS2d 263; *Ackerman v. Price Waterhouse*, 252 AD2d 179, 191, 683 NYS2d 179; *Dougherty v. North Fork Bank*, 301 AD2d 491, 753 NYS2d 130; *Negrin v. Norwest Mtge.*, 263 AD2d 39, 700 NYS2d 184). Accordingly, the defendants' motion to decertify the class must be denied.

The defendants also seek summary judgment dismissing the plaintiffs' claims against them. "The court's function on a motion for summary judgment is issue finding rather than issue determination (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders, Inc. v. Ceppos*, 46 NY2d 223 [1978]). Thus, when the existence of an issue of fact is even arguable or debatable, summary judgment should be denied (*Stone v. Goodson*, 8 NY2d 8 [1960]; *Sillman v. Twentieth Century-Fox Film Corp.*, *supra*)." (*Montefiore Medical Center v. Crest Plaza LLC*, 24 Misc.3d 1201(A) [N.Y. Sup., 2009]). In the matter *sub judice*, the defendants' experts' opinions are "contradicted by the plaintiffs' ... expert, leaving a conflict of ... opinion that

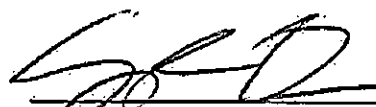
should be resolved by a finder of fact" (*Viti v. Franklin General Hospital*, 190 AD2d 790 [2nd Dept., 1993] citing *Taype v. City of New York*, 82 AD2d 648; *Kallenberg v. Beth Israel Hospital*, 45 AD2d 177, *aff'd* 37 NY2d 719). Further, pursuant to Public Health Law section 2801-d(2), "where the deprivation of any... right or benefit [of a patient in a residential health care facility] is found to have been willful or in reckless disregard of the lawful rights of the patient, punitive damages may be assessed." In the instant matter, the plaintiffs have raised a triable issue of fact as to whether the plaintiffs' rights were willfully or recklessly deprived. In addition, pursuant to Public Health Law section 2808-a(1), a "controlling person" for a residential health care facility may be held liable, jointly and severally, with the residential health care facility. The defendants have failed to establish as a matter of law that the named individual defendants are not "controlling persons" as defined in Public Health Law section 2808-a(2). Finally, the plaintiffs' claims for injunctive relief and attorneys' fees are specifically permitted under Public Health Law section 2801-d should the plaintiffs prevail. Accordingly, the defendants' motion for summary judgment must be denied with respect to all claims, including, but not limited to, those for punitive damages, those against the individual defendants, and those for attorneys' fees (*see* CPLR 3212[b]).

This matter is scheduled for jury selection on April 17, 2025 at 9:30 A.M.

The foregoing constitutes the Decision and Order of this Court.

So Ordered.

Dated: April 4, 2025
Goshen, New York



HON. CRAIG STEPHEN BROWN
Acting Supreme Court Justice

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