

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

DELAWARE HEALTH CORPORATION, )  
t/a HARBOR HEALTHCARE & )  
REHABILITATION CENTER, )  
)  
Plaintiff, )  
)  
) C.A. No. N13C-10-025  
v. )  
)  
KELLY M. GRIM, AND TERRY L. )  
GRIM, SR., )  
)  
Defendants. )

Submitted: August 5, 2014  
Decided: November 19, 2014

On Defendant's Motion to Dismiss

**DENIED**

**ORDER**

This 19<sup>th</sup> day of November, 2014, upon consideration of the Defendant's Motion to Dismiss and the Plaintiff's Response in Opposition, it appears to the Court that:

(1) Defendant Kelly M. Grim is the Guardian of her father, Defendant Terry L. Grim, Sr. On May 8, 2013, Defendant Kelly M. Grim, executed a Resident Admission Agreement ("Admission Agreement") for her father's

admission to Plaintiff's facility to receive residential care and rehabilitative services.<sup>1</sup> Plaintiff filed a Complaint on October 2, 2013 alleging that Defendants were indebted to Plaintiff pursuant to the Admission Agreement. On November 18, 2013, Plaintiff and Defendant Kelly M. Grim executed the Settlement Agreement and Defendant Kelly M. Grim executed a Guaranty to promptly pay all money due to Plaintiff under the Settlement Agreement.<sup>2</sup>

(2) On March 28, 2014, Plaintiff filed an Amended Complaint with the Court alleging that Defendants owe Plaintiff "\$56,252.24 through March 31, 2014, and \$300 per day thereafter; pre-judgment interest at 18% *per annum*; attorney's fees; the costs of this action; in addition to miscellaneous expenses Defendant Terry L. Grim, Sr. may incur at Harbor"<sup>3</sup> for Mr. Grim's stay and care at Plaintiff's facility. In the Amended Complaint, Plaintiff alleges five counts: Defendant Terry L. Grim, Sr. is liable for the debt incurred (Count I); fraudulent transfers were made from Defendant Terry L. Grim Sr. to Defendant Kelly M. Grim "with intent to hinder, delay or defraud creditors, and without receipt of equivalent value in exchange"<sup>4</sup> in violation of 6 *Del. C.* Chapter 13 (Count III); Defendant Kelly M. Grim is personally liable for breach of contract of the Admission Agreement (Count IV); Defendant Kelly M. Grim is personally liable for breach of contract of

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<sup>1</sup> Am. Compl. D.I. 7, Ex. A.

<sup>2</sup> *Id.*, at Ex. C.

<sup>3</sup> *Id.*, at ¶ 11.

<sup>4</sup> *Id.*, at ¶ 14.

the Guaranty of the Settlement Agreement (Count V); and a claim titled “Fiduciary Duty” (Count II) that states, in relevant part, that

Defendant Kelly M. Grim is the Guardian of Defendant Terry L. Grim, Sr...Acting as such Guardian for Defendant Terry L. Grim, Sr., Defendant Kelly M. Grim is obligated to act in the interests of Defendant Terry L. Grim, Sr., and not in her own personal interests. Rather than use the power of the Guardian for the best interests of Defendant Terry L. Grim, Sr., Defendant Kelly M. Grim has used such assets for her own purposes. Pursuant to the agreement with Plaintiff, Defendant Kelly M. Grim is obligated to pay, from Defendant Terry L. Grim, Sr.’s assets, income and benefits, such amounts to Plaintiff for the residence and care of Defendant Terry L. Grim, Sr. Plaintiff is a third-party beneficiary of such agreement. Defendant Kelly M. Grim has breached her obligation and agreement, and is indebted to Plaintiff.<sup>5</sup>

(3) On May 5, 2014, Defendants filed an Answer denying the allegations set forth in the Amended Complaint and asserted various affirmative defenses, including that the Superior Court lacked jurisdiction over the subject matter of the complaint.

(4) On May 30, 2014, Defendants moved to dismiss the Amended Complaint for lack of subject matter jurisdiction. Defendants contend that the Court lacks subject matter jurisdiction over Count II because “[a]n allegation of breach of fiduciary duty is within the Chancery Court’s exclusive jurisdiction.”<sup>6</sup> Additionally, Defendants claim that the Court of Chancery has exclusive

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<sup>5</sup> *Id.*, at ¶ 7-11.

<sup>6</sup> Def. Mot. to Dismiss, D.I. 15, ¶ 9.

jurisdiction over the remaining Counts – I, III, IV and V – because the causes of action arose “as a result of [Defendant Kelly M. Grim’s] actions as guardian for her father”<sup>7</sup> and “the Chancery Court has exclusive jurisdiction over guardianship matters.”<sup>8</sup> Defendants assert that guardianship results in the existence of a fiduciary relationship which “confers upon the court of equity jurisdiction to hear and determine all relevant controversies existing between the parties to it.”<sup>9</sup>

(5) Plaintiff opposes the Motion to Dismiss because

Rule 12(b) requires that if a motion relating to any of the enumerated defenses, including Lack of Jurisdiction over the subject matter, and Failure to State a Claim, such motion shall be made prior to a responsive pleading. Since Defendants filed an answer to the Complaint, they have waived the opportunity to file a motion seeking to dismiss the Complaint.<sup>10</sup>

Plaintiff also asserts that all of the causes of action alleged are purely legal claims. Specifically, Count I is to recover a debt owed by Defendant Terry L. Grim, Sr.<sup>11</sup> Plaintiff claims that “Count II is captioned “Fiduciary Duty,” but in essence it is the allegation that Defendant Kelly M. Grim is using the assets of her father...for her own personal gain...; it is merely the allegation the agent breached the agreement of good faith, and is liable for resultant damages.”<sup>12</sup> Plaintiff contends

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<sup>7</sup> *Id.*, at ¶ 10.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Pl. Resp., D.I. 16, ¶ 2.

<sup>11</sup> *Id.*, at ¶ 4.

<sup>12</sup> *Id.*

that Count III is for the fraudulent transfer of assets and that the Superior Court has jurisdiction to remedy defrauded creditors.<sup>13</sup> Plaintiff asserts that Count IV is for breach of contract against Defendant Kelly M. Grim as the signor and guarantor of the Admission Agreement and Count V is a legal claim to enforce the Guaranty.<sup>14</sup> Plaintiff argues that it is immaterial that Defendant Kelly M. Grim is a Guardian for purposes of determining subject matter jurisdiction because the claims being pursued are purely legal.<sup>15</sup>

(6) As a preliminary matter, Super. Ct. Civ. R. 12(h) states, in relevant part, [w]henver it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.”<sup>16</sup> Therefore, Defendants have not waived their right to challenge the Court’s subject matter jurisdiction. Additionally, the Superior Court has jurisdiction over matters in law<sup>17</sup> while the Court of Chancery has jurisdiction over equitable matters.<sup>18</sup> However, Chancery Court jurisdiction is not conferred simply by the “incantation of magic words.”<sup>19</sup> Instead, the Court assesses the “nature of the wrong alleged and the remedy available in order to determine whether a legal remedy is available

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*, at ¶ 5.

<sup>15</sup> *Id.*, at ¶ 6.

<sup>16</sup> Super. Ct. Civ. R. 12(h)(3).

<sup>17</sup> See Del Const. Art. IV, § 7; 10 *Del. C.* § 541.

<sup>18</sup> See 10 *Del. C.* §§ 341, 342.

<sup>19</sup> *McMahon v. New Castle Assocs.*, 532 A.2d 601, 603 (Del. Ch. 1987).

and fully adequate.”<sup>20</sup> “The mere fact that one of the parties is a fiduciary, trustee or guardian, will not suffice to confer jurisdiction upon the Court of Chancery” over a cause in which the claim is purely legal.<sup>21</sup>

(7) All five claims are purely legal claims for which the Plaintiff has adequate remedies at law. Although Count II is labeled “Fiduciary Duty,” the nature of the wrong alleged is that Defendant Kelly M. Grim is liable for breach of contract in her capacity as an agent of Defendant Terry L. Grim, Sr. for the amount owed to Plaintiff pursuant to the Admission Agreement. Therefore, the nature of Count II is not a claim for breach of fiduciary duty and the Court retains jurisdiction over that Count.

(8) Count I, which alleges that Defendant Terry L. Grim, Sr. is liable for debt owed pursuant to the Admission Agreement, is a legal claim. In Counts III, IV and V, Plaintiff alleges that Defendant Kelly M. Grim is personally liable for the alleged debt owed to Plaintiff. In Count III, Plaintiff seeks to avoid alleged fraudulent transfers made to Defendant Kelly M. Grim which is an appropriate cause to action to be heard in Superior Court.<sup>22</sup> In Count IV, Plaintiff seeks to recover the amount owed under the Admission Agreement executed by Defendant Kelly M. Grim on a breach of contract theory. Similarly, in Count V, Plaintiff

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<sup>20</sup> *Id.*

<sup>21</sup> *In re Markel*, 254 A.2d 236, 239 (Del. 1969).

<sup>22</sup> *See Computer Sciences Corp. v. SCI-TEK, Inc.*, 367 A.2d 658, 661 (Del. Super. 1976)(holding that a claim for fraudulent transfer can be heard in Superior Court without the creditor resorting to the Court of Chancery).

alleges that Defendant Kelly M. Grim is liable for breach of contract as the guarantor of the Settlement Agreement. Both causes of action are within the Superior Court's jurisdiction. Because all five causes of action involve both legal rights and remedies, this Court retains subject matter jurisdiction over all five counts contained in the Amended Complaint.

NOW, THEREFORE, IT IS **ORDERED** that the Defendant's Motion to Dismiss is hereby **DENIED**.

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/s/ Ferris W. Wharton, Judge