Osika v Absolut Ctr. for Nursing & Rehabilitation at Aurora Park LLC
2018 NY Slip Op 33945(U)
December 13, 2018
Supreme Court, Erie County
Docket Number: 810312/2017
Judge: Emilio Colaiacovo
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.

STATE OF NEW YORK
SUPREME COURT: ERIE COUNTY

DANYELLE OSIKA as Administratix of the Estate of CYNTHIA LAURIA,

Plaintiff,

-vs-

Decision & Order

Index #: 810312/2017

ABSOLUT CENTER FOR NURSING & REHABILITATION AT AURORA PARK, LLC, ABSOLUT FACILITIES MANAGEMENT, LLC, and ISRAEL SHERMAN

Defendants.

COLLEEN P. FAHEY, ESQ.
Attorney for the Plaintiff

OLIVIA DEBELLIS, ESQ.
Attorney for Defendants

Colaiacovo, J.

On August 15, 2014, Cynthia Laurie was admitted to the Absolut Center for Nursing and Rehabilitation at Aurora Park (hereinafter "Absolut"). On August 21, 2014, Ms. Laurie was transferred to Buffalo General Hospital in critical condition and remained there until September 8, 2014 when she returned to Absolut. It was during Ms. Laurie's re-admission to Absolut that her daughter, Danyelle Osika, signed the admission paperwork, which included an "Arbitration Agreement" (hereinafter "Agreement") that is the subject of the matter before the Court.

Defendants have moved to compel arbitration based on the Agreement that was signed by Plaintiff, Danyelle Osika, who was listed as the "responsible party" for Cynthia Lauria. The Defendants have also moved to dismiss the action against Absolut and to stay the matter in Supreme Court as it pertains to Absolut, so the matter can be arbitrated.

Plaintiffs oppose Defendants' Motion to Compel arbitration and have cross-moved for a default judgment for failure of all Defendants to serve Answers. Also, Plaintiffs seek to stay the arbitration pending further discovery. They also request a a hearing as to the validity and enforceability of the purported Agreement.

After oral argument in July 2018, the Court requested additional submissions from counsel regarding the validity of the arbitration agreement. Counsel has provided supplemental memoranda and the Court's decision is as follows.

DECISION

As Counsel for the Defendants noted in her May 10, 2018 Affirmation, the "sole threshold question before this Court is whether a valid agreement to arbitrate exists . . ." DeBellis Affirmation dated May 10, 2018 at par. 33. Based on the record, it is the opinion of the Court that a valid agreement does not exist.

The Plaintiff has continuously asserted that Ms. Lauria was "under the influence of narcotic medication . . . [and] not mentally capable of consenting to an arbitration agreement." Fahey Affidavit at par. 22. Ms. Lauria was receiving "Norco", a narcotic pain medication, "4 times a day each and every day from

September 8, 2014 through, and including, September 15, 2014, when the purported arbitration agreement was allegedly signed." Fahey Affidavit at par. 8. This is why Ms. Osika allegedly acted for her on September 15, 2014 when signing admission papers to the Absolut Center for Nursing and Rehabilitation. Not only did Ms. Osika sign the "Financial Arrangements and Arbitration Agreement" portion of the admission documents, but at page 32 of the admission documents it is noted that Ms. Lauria was unable to sign the "Consent for Care and Treatment" because she was "too weak." Fahey Affidavit, Ex. F. Furthermore, according to an examination of Ms. Lauria conducted on September 9, 2014, she was unable to follow a simple three-step command, write a sentence, or copy a geometric design. See Fahey Affidavit, Ex. F.

"A person is incompetent to authorize a transaction only if the person's mind was 'so affected as to render him [or her] wholly and absolutely incompetent to comprehend and understand the nature of the transaction (citations omitted).'" In re Mildred M.J., 43 A.D.3d 1391,1392 (4th Dep't. 2007). There "is no presumption that a person suffering from [an affliction] is wholly incompetent. 'Rather, it must be demonstrated that, because of the affliction, the individual was incompetent at the time of the challenged transaction' (citation omitted)." Id. In the instant case, the Defendants do not take issue with Ms. Laurie's mental capacity, but instead focus their arguments on public policy favoring arbitration and on Ms. Osika's ability to act on Ms. Lauria's behalf. Notwithstanding, the Court finds that the Plaintiff has shown that Ms. Lauria was indeed incapable of acting on her own behalf on September 15, 2014 and will proceed with its analysis on that basis.

As Ms. Lauria's diminished mental capacity has not been contested, the Court must determine if Ms. Osika could act for her on September 15, 2014. At different times, the Defendants refer to Ms. Osika as Ms. Lauria's "Responsible Party" or "Health Care Agent." The Defendants use these terms interchangeably. When Ms. Osika signed the subject Arbitration Agreement, she signed as the "responsible party" for Ms. Lauria, but it is not clear to the Court if she was formally authorized to act on Ms. Lauria's behalf regarding health care decisions. "Subject to any express limitations in [a] health care proxy, an agent shall have the authority to make any and all health care decisions on the principal's behalf that the principal could make." McKinney's Public Health Law § 2982. However, a health care proxy does not empower someone to make financial or contractual decisions on behalf of the infirm. Further, it is generally understood that a Health Care Proxy should not be equated with that of a Power of Attorney. It should be noted that there is nothing in the record to indicate whether a formal health care proxy document was executed authorizing Ms. Osika to make health care decisions for Ms. Lauria. Other than the paperwork Ms. Osika signed, no documentation has been presented by either Plaintiff or Defendants to convince this Court that Ms. Osika was Ms. Lauria's duly authorized health care agent on September 15, 2014, much less her legal representative.

What is very clear to the Court, regardless of how the Defendants attempt to describe her, is that Ms. Lauria "did not have a Power of Attorney at the time that the 'agreement' was signed . . ." Fahey Affidavit at par. 9. "The Power of Attorney, naming Ms. Osika as Cynthia Laurie's agent, was not signed until October 21, 2014.

Thus, at the time of the signing, Danyelle Osika lacked the requisite authority to waive her mother's constitutional right." Fahey Affidavit dated September, 2018 at par. 21. Based on the facts before the Court, it is apparent to the Court that Ms. Lauria was unable to sign the arbitration agreement and that Ms. Osika did not have the legal authority to bind Ms. Lauria to the terms of the arbitration agreement when she signed it on September 15, 2014.

The Defendants further argue that "the arbitration agreement is enforceable, even without a signature on behalf of ABSOLUT." DeBellis Affirmation dated Sept. 10, 2018 at par. 5. The Defendants now take this position as serious questions have been raised regarding the legitimacy of Ms. Laura Gunner's signature on the arbitration agreement. Ms. Gunner's title, according to the arbitration agreement is listed as "Concierge/Admissions." See Fahey Affidavit, Ex. H. However, her signature is initialed by someone with the initials "JB". See Fahey Affidavit, Ex. H. Ms. Gunner is no longer employed by Absolut; she has not submitted to a deposition in this matter; and she has not submitted a sworn statement regarding the role she played on September 15, 2014. Although the Court doubts the legitimacy of the Laura Gunner signature that appears on the arbitration agreement, and whether Ms. Gunner was even present when Ms. Osika signed the agreement, the Court need not play detective to determine whether Gunner played any role in the execution of the arbitration agreement. The facts remain that Ms. Lauria could not act on her own behalf and that Ms. Osika did not possess the legal authority to waive her mother's rights at the time the "agreement" was executed.

Based on the foregoing, the Court determines that a valid agreement to arbitrate does not exist and Defendants' Motion to compel arbitration and to dismiss the complaint is hereby DENIED.

Although the Court finds that a valid arbitration agreement does not exist, the Court also finds that the Defendants are not in default. As Defendants correctly note, "CPLR 320(a) provides that a defendant may appear in an action in one of three ways: (1) by serving an answer, (2) by serving a notice of appearance, or (3) ***making a motion which has the effect of extending the time to answer.***" USF & G. v. Maggiore, 299 A.D.2d 341, 342 (2d Dep't. 2002) (emphasis added). Despite the fact that Defendants' Motion to Compel arbitration was denied, the motion was timely and, as such, the Defendants' time to answer was extended.

Therefore, based on the foregoing, Plaintiff's cross-motion for a default judgment against the Defendants is hereby DENIED.

Dated: December 13, 2018
Buffalo, New York

Hon. Emilio Colaiacovo, J.S.C.