Medford Multicare Ctr. v Matzal
2018 NY Slip Op 30917(U)
April 13, 2018
Supreme Court, Suffolk County
Docket Number: 14-24065
Judge: Peter H. Mayer
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[* 1]

SHORT FORM ORDER

INDEX No. 14-24065
CAL. No. 16-01682OT

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 17 - SUFFOLK COUNTY

COPY

PRESENT:

Hon. PETER H. MAYER
Justice of the Supreme Court

MOTION DATE 7-19-17
MOTION DATE 1-16-18
ADJ. DATE 9-1-17
ADJ. DATE 1-26-18
Mot. Seq. # 004 - MotD
005 - MD

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MEDFORD MULTICARE CENTER,

Plaintiff,

- against -

BRIDGET MATZAL and JENNIFER ANNE COFFEY-McCANN, Individually and as Trustee of the Irrevocable Trust of BRIDGET MATZAL,

Defendants.

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Upon the reading and filing of the following papers in this matter: (1) Notice of Motion/Order to Show Cause by the defendants, dated December 18, 2017, and supporting papers (including Memorandum of Law dated ___); (2) Notice of Cross Motion by the , dated , supporting papers; (3) Affirmation in Opposition by the plaintiff, dated January 15, 2018, and supporting papers; (4) Reply Affirmation by the , dated , and supporting papers; (5) Other ___ (~~and after hearing counsels' oral arguments in support of and opposed to the motion~~); and now

UPON DUE DELIBERATION AND CONSIDERATION BY THE COURT of the foregoing papers, the motion is decided as follows: it is

ORDERED that the motion (seq 004) by plaintiff Medford Multicare Center and the motion (seq 005) by defendants Bridget Matzal and Jennifer Coffey-McCann are consolidated for purposes of this determination; and it is further

ORDERED that the motion by defendant Bridget Matzal and Jennifer Coffey-McCann for an order extending the time to oppose plaintiff's motion is denied; and it is further

ORDERED that the unopposed motion by plaintiff Medford Multicare Center for summary judgment in its favor is granted in part and denied in part.

This is an action to recover from defendants payment for outstanding charges for the cost of nursing home services and room and board to defendant Bridget Matzal, the mother of defendant Jennifer Coffey-McCann, at plaintiff Medford Multicare Center's nursing home in Medford, New York for the period of May 6, 2014 to November 16, 2014. At the time of the admission of defendant Matzal, defendant Coffey-McCann served as Matzal's attorney-in-fact and as the trustee of the Irrevocable Trust of Bridget Matzal ("the trust"). Plaintiff alleges that it is owed $61,020.76.[1] By its complaint, plaintiff alleges two causes of action against defendant Matzal for services rendered and unjust enrichment. Plaintiff alleges three causes of action against defendant Coffey-McCann for fraudulent transfer of funds, wrongful transfer of assets, and constructive fraud. Upon review of the record, it appears the basis of the complaint against Coffey-McCann is that she, as her mother's attorney-in-fact since 2010 and trustee of the trust since 2011, failed to ensure payment to plaintiff for the cost of her mother's care despite having legal access to her mothers's financial resources.

By Order to Show Cause granted December 11, 2017 by the Honorable Robert F. Quinlan, defendants Bridget Matzal and Jennifer Coffey-McCann moved to stay this Court's determination of plaintiff's summary judgment motion and to extend their time to oppose plaintiff's motion.

CPLR 2004 provides that "[e]xcept where otherwise expressly prescribed by law, the court may extend the time fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the expiration of the time fixed." In exercising its discretion, the court may consider the length of the delay, the reason or excuse for the delay, any prejudice to the party opposing the motion, and whether the moving party was in default before seeking the extension (*see* ***Calderone v Molloy Coll.***, 153 AD3d 491, 59 NYS3d 473 [2d Dept 2017]; ***T. Mina Supply, Inc., v Clemente Bros. Contr. Corp.***, 139 AD3d 1038, 30 NYS3d 839 [2d Dept 2016]).

Defendants failed to establish good cause for an extension of their time to submit opposition papers to plaintiff's motion for summary judgment. Defendants did not demonstrate that the delay in opposing plaintiff's motion was brief and unintentional, non-prejudicial to plaintiff, or that they have meritorious defenses to plaintiff's motion (*see* ***Adotey v British Airways, PLC***, 145 AD3d 748, 44 NYS3d 82 [2d Dept 2016]; *cf.* ***Calderone v Molloy Coll.***, *supra*). Therefore, defendants Bridget Matzal and Jennifer Coffey-McCann's motion to extend their time to oppose plaintiff's motion is denied.

By order dated May 1, 2017, this Court denied plaintiff's motion for summary judgment in its favor, without prejudice and with leave to resubmit proper papers, finding that plaintiff failed to establish

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[1]The Summons and Complaint alleges the balance due and owing is $61,437.34, but internal billing adjustments were subsequently made that decreased the balance to $61,020.76.

compliance with the Part Rules. That portion of the defendant's motion for summary judgment was denied, in effect, with leave to renew such that the subject motion does not violate the general proscription against making successive summary judgment motions in the same action (*see* ***Fernandez v Elemam***, 25 AD3d 752, 809 NYS2d 513 [2d Dept 2006]). Therefore, the Court considers the instant motion as one for leave to renew that portion of plaintiff's prior motion for summary judgment in its favor awarding it a judgment in the amount of $61,020.76, plus interest.

Plaintiff now moves for an order granting summary judgment on its complaint based upon services rendered and unjust enrichment against defendant Matzal. Additionally, plaintiff maintains that it is entitled to summary judgment against defendant Coffey-McCann, individually and as trustee of the Irrevocable Trust of Bridget Matzal, on its claims for violations of Debtor Creditor Law ("DCL") §§ 273, 275, and 276, and for constructive fraud. Plaintiff submits, in support of the motion, a copy of the underlying motion; copies of the pleadings; a preliminary conference order; discovery responses; the note of issue; the order of this Court, dated May January 24, 2017, with notice of its entry; the order of this Court, dated May 1, 2017; the affidavit of Michael Leahy; an invoice; a Department of Social Services Medicaid decision; Internet printouts of Medicaid information; a copy of the Bridget Matzal Irrevocable Trust; a copy of the durable power of attorney of Bridget Matzal; and Morgan Stanley account statements. Defendants have not submitted any papers in opposition.

The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law by tendering evidence in admissible form sufficient to eliminate any material issues of fact from the case (*see* ***Alvarez v Prospect Hosp.***, 68 NY2d 320, 508 NYS2d 923 [1986]; ***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 487 NYS2d 316 [1985]). The movant has the initial burden of proving entitlement to summary judgment (***Winegrad v New York Univ. Med. Ctr.***, *supra*). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (***Winegrad v New York Univ. Med. Ctr.***, *supra*). Once such proof has been offered, the burden then shifts to the opposing party who must proffer evidence in admissible form and must show facts sufficient to require a trial of any issue of fact to defeat the motion for summary judgment (CPLR 3212 [b]; ***Alvarez v Prospect Hosp.***, *supra*; ***Zuckerman v City of New York***, 49 NY2d 557, 427 NYS2d 595 [1980]).

To prevail on a claim of unjust enrichment, a party must show that "(1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered" (*see* ***Georgia Malone & Co., Inc. v Rieder***, 19 NY3d 511, 950 NYS2d 333 [2012]; ***Swartz v Swartz***, 145 AD3d 818, 44 NYS3d 452 [2d Dept 2016]; ***Alan B. Greenfield, M.D., P.C. v Long Beach Imaging Holdings, LLC***, 114 AD3d 888, 981 NYS2d 135 [2d Dept 2014]; ***Goel v Ramachandran***, 111 AD3d 783, 975 NYS2d 428 [2d Dept 2013]; ***AHA Sales, Inc. v Creative Bath Prods. Inc.***, 58 AD3d 6, 867 NYS2d 169 [2d Dept 2008]; ***Old Republic Natl. Title Ins. Co. v Luft***, 52 AD3d 491, 859 NYS2d 261 [2d Dept 2008]; ***Citibank N.A. v Walker***, 12 AD3d 480, 787 NYS2d 48 [2d Dept 2004]).

Plaintiff established a prima facie case of entitlement to summary judgment on the issue of unjust enrichment as to defendant Matzal (*see* ***Georgia Malone & Co., Inc. v Rieder***, *supra*; ***Swartz v Swartz***, *supra*). In his affidavit, Michael Leahy, the controller of Medford Multicare Center, states that Matzal was

a resident at plaintiff's facility from May 6, 2014 through November 16, 2014. The skilled nursing care services rendered and room and board were charged to Matzal's account and not covered by Medicaid due to the Department of Social Service's finding of uncompensated transfers and the imposition of a penalty period. Although Matzal became a Medicaid recipient effective as of January 1, 2014, the Department of Social Services imposed a 11.26-month period of ineligibility ending in December 2014 after it determined that $136,360.34 in assets ($150,910.34 in total transferred assets minus the resource deficit of $14,550.00) were transferred without compensation. Therefore, plaintiff's motion for summary judgment as to the cause of action against Matzal for unjust enrichment is granted.

While a nursing facility may not require a third-party guarantee of payment to the facility as a condition to admission or a continued stay in the facility, it may, as here, require an individual who has legal access to a resident's income or resources to provide payment from such income or resources, without incurring personal liability (*see* 42 USC § 1396r [c] [5] [A] [ii], [B] [ii]; 42 CFR § 483.15 [a] [3]; 10 NYCRR § 415.3 [b] [1], [6]; *see also* ***Prospect Park Nursing Home, Inc. v Goutier***, 12 Misc 3d 1192[A], 824 NYS2d 770 [Civ Ct, Kings County 2006]). Coffey-McCann was neither a present or future debtor in her individual capacity at the time of the conveyances of funds and there is no evidence that she signed an admission agreement (*cf.* ***Sunshine Care Corp. v Warrick***, 100 AD3d 981, 957 NYS2d 122 [2d Dept 2012]). Therefore, plaintiff's request for summary judgment on those claims against defendant Coffey-McCann in her individual capacity alleging that the conveyances were fraudulent under Debtor and Creditor Law §§ 273, 275, and 276 are denied. Coffey-McCann's liability is limited to providing payment from Matzal's financial resources to the extent she had legal access to those resources.

DCL § 273 states that "[e]very conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without fair consideration." A person is insolvent when "the present fair salable value of his [or her] assets is less than the amount that will be required to pay his [or her] probable liability on his [or her] existing debts as they become absolute and matured" (DCL § 271 [1]; *see* ***Matter of Steele***, 85 AD3d 1375, 925 NYS2d 250 [3d Dept 2011]; ***Grace Plaza of Great Neck, Inc. v Heitzler***, 2 AD3d 780, 770 NYS2d 421 [2d Dept 2003]).

In February and March 2011, Coffey-McCann withdrew $8,000 and $14,000 in cash, respectively, from Matzal's JP Morgan Chase account. In March 2011, Coffey-McCann also transferred $100,000 from Matzal's JP Morgan Chase account to the trust. In June 2011, $21,092.43 was transferred from Matzal's E-Trade account to the trust. However, there is no evidence that defendant Matzal had outstanding debts to plaintiff when these transfers were made in 2011. Therefore, plaintiff failed to demonstrate that the transfers were fraudulent within the meaning of DCL § 273 (*see* ***Grace Plaza of Great Neck, Inc. v Heitzler***, 2 AD3d 780, 770 NYS2d 421 [2d Dept 2003]; *see also* ***Standard Chartered Bank v Kittay***, 215 AD2d 645, 628 NYS2d 307 [2d Dept 2005]; ***Bay Park Center for Nursing and Rehabilitation, LLC v Plummer***, 2016 NY Slip Op 32449 (U) [Sup Ct, Bronx County]; ***Hillside Manor Rehabilitation & Extended Care Ctr., LLC v Dallu***, 33 Misc3d 28, 2011 NY Slip Op 21287 [App Term, 2d Dept]; *cf.* ***Matter of Shelly v Doe***, 249 AD2d 756, 671 NYS2d 803 [3d Dept 1998]).

DCL § 275 states that "[e]very conveyance made and every obligation incurred without fair consideration when the person making the conveyance or entering into the obligation intends or believes that he will incur debts beyond his ability to pay as they mature, is fraudulent as to both present and future creditors." A conveyance made by a person who has a good indication of oncoming insolvency is deemed to be fraudulent as to both present and future creditors (*see* ***Grace Plaza of Great Neck, Inc. v Heitzler***, *supra*). Under the DCL, a heavier burden is placed on the defendant to demonstrate fair consideration was given when the transaction involves family members and was made without any tangible consideration (*see* ***Wall Street Assoc. v Brodsky***, 257 AD2d 526, 684 NYS2d 244 [1st Dept 1999]). In this case, plaintiff failed to demonstrate that Coffey-McCann had a "good indication" that the 2011 conveyances would render Matzal insolvent and that she would later incur debts beyond her ability to pay (*see* ***Case v Fargnoli***, 182 Misc 2d 996, 702 NYS2d 764 [Sup Ct, Tompkins County 1999]).

DCL § 276 provides that "[e]very conveyance made and every obligation incurred with actual intent . . . to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors." Creditors "may rely upon circumstantial factors deemed 'badges of fraud' to establish an inference of fraudulent intent" (***Grace Plaza of Great Neck, Inc. v Heitzler***, *supra*, at 782; *see also* ***Wall St. Assoc. v Brodsky***, *supra*). Such circumstantial factors include "a close relationship between the parties to the alleged fraudulent transaction; a questionable transfer not in the usual course of business; inadequacy of the consideration; the transferor's knowledge of the creditor's claim and the inability to pay it; and retention of control of the property by the transferor after the conveyance." In this case, plaintiff failed to demonstrate that Coffey-McCann did not retain enough assets to cover the cost of the penalty period when the conveyances were made in 2011 (*cf.* ***Grace Plaza of Great Neck, Inc. v Heitzler***, *supra*).

Finally, to recover damages for constructive fraud, the following must be established: "(1) a representation was made, (2) the representation dealt with a material fact, (3) the representation was false, (4) the representation was made with the intent to make the other party rely upon it, (5) the other party relied on the representation without knowledge of its falsity, (6) injury resulted, and (7) the parties are in a fiduciary or confidential relationship" (*see* ***Del Vecchio v Nassau County***, 118 AD2d 615, 618, 499 NYS2d 765 [2d Dept 1986]). In this case, there is no evidence of a fiduciary or confidential relationship between plaintiff and Coffey-McCann or any representation made by Coffey-McCann (*see* ***Levin v Kitsis***, 82 AD3d 1051, 920 NYS2d 131 [2d Dept 2011]). Accordingly, the motion by plaintiff Medford Multicare Center for summary judgment in its favor and an award in the amount of $61,020.76 is granted in part and denied in part.

Dated: April 13, 2018

PETER H. MAYER, J.S.C.