

Santoro v Poughkeepsie Crossings, LLC
2018 NY Slip Op 33651(U)
May 7, 2018
Supreme Court, Dutchess County
Docket Number: 2016-52070
Judge: James V. Brands
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SUPREME COURT- STATE OF NEW YORK
DUTCHESS COUNTY

Present:

Hon. JAMES V. BRANDS

Justice.

SUPREME COURT: DUTCHESS COUNTY

SANDRA SANTORO, as Executrix of the Estate of
INEZ J. SALVATORE, Deceased,

Plaintiff,

-against-

POUGHKEEPSIE CROSSINGS, LLC,
Defendants.

DECISION AND ORDER
Index No: 2016-52070
Motion Seq. No. 2

POUGHKEEPSIE CROSSINGS, LLC,
Third-Party Plaintiff,

-against-

SANDRA SANTORO,
Third-Party Defendant.

_____ X

The following papers were read and considered on Poughkeepsie Crossings, LLC's motion to disqualify Goldstein and Goldstein, LLP ("G&G") from representing Sandra Santoro in both actions.

NYSCEF DOC. No. 31-52, 56, 60-64

Background Facts

This is a wrongful death action commenced by Sandra Santoro, as executrix of the Estate of decedent Inez J. Salvatore. Inez Salvatore suffered a fall while residing in the home of Sandra Santoro following her release from hospitalization, after which Inez Salvatore was re-admitted to the hospital for a fractured hip which required surgery. Salvatore suffered septic shock caused by a bacteria infection and died in the hospital shortly thereafter.

Sandra Santoro commenced this wrongful death action in her capacity as executrix of the Estate of decedent Inez J. Salvatore. She alleges that the defendant, as owner of a residential healthcare facility known as The Pines at Poughkeepsie Center for Nursing and Rehabilitation, failed to provide adequate care and treatment of Salvatore during all times when she was under their care and control from March 17, 2015 through May 9, 2015. (See Defendant's Motion Exhibit C).

Defendant then commenced a third-party action against Sandra Santoro. It alleges that Santoro failed to follow defendant's discharge instructions related to Salvatore. It is their claim that Inez Salvatore was discharged from their facility with specific instructions to provide her 24-hour care 7-days a week. Counsel cites Santoro's deposition testimony wherein she stated that she provided a nurse to come to her home three times a week during morning hours only. It is based on the foregoing that the defendant claims that Santoro was negligent in failing to comply with the discharge instructions which consequently resulted in Salvatore suffering further injury while unsupervised and residing at Santoro's home, thus causing her to suffer a fractured hip requiring hip surgery after which she suffered septic shock causing a bacterial infection and her ultimate death.

Defendant filed a motion to disqualify G&G from representing Sandra Santoro in her capacity as the executrix of the estate in the primary action and representing Sandra Santoro in her individual capacity in the third-party action. It is defendant's contention that there is a "unwaivable conflict of interest" posed by G&G's "simultaneous representation of conflicting interests in the same proceeding". Counsel contends that G&G cannot represent both Sandra Santoro in her capacity as fiduciary of the estate of the decedent Inez Salvatore in the underlying wrongful death action, and at the same time, Sandra Santoro individually in the third-party action, as the interests of Ms. Santoro in the third-party action are directly adverse to those of Salvatore's estate in the wrongful death action. (*See* Gornitsky Affirmation ¶23).

G&G opposed the motion. Pursuant to the court directive in the Decision and Order dated December 5, 2017, G&G made further submissions for consideration. It is G&G's position that there is no conflict in the interests between Sandra Santoro as the executrix of her mother's estate and Sandra Santoro in her individual capacity since Santoro is the only child and sole beneficiary of her mother's estate. Counsel submits the decedent's will and probate-related documents in support of that contention.

Decision

The Rules of Professional Conduct provide that "a lawyer shall not represent a client if a reasonable lawyer were conclude that either: (1) the representation will involved the lawyer in representing different interests; or (2) there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property, or other personal interests." (22 NYCRR 1200.0 at Rule 1.7[a][1],[2]).

Notwithstanding, the rule further provides an exception where: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing." (*Citing* 22 NYCRR 1200.0 at Rule 1.7[b][1]-[4]).

In applying the foregoing principles established by the Rules of Professional Conduct with respect to conflict of interest posed by legal representation, it appears to this court that the facts do not give rise to any conflicting interests of the parties currently represented by G&G.

G&G established that Sandra Santoro, the daughter of the decedent, is the sole beneficiary of her mother's estate and thus Santoro is the sole party with a financial interest in the underlying wrongful death action commenced against the nursing home. Santoro's interests as it relates to the third-party action filed by the nursing home as against her are not directly adverse to those claims which Santoro asserts in her capacity as the executrix of her mother's estate. In fact, Santoro's interest and arguments to be proffered in the third-party action filed against her in her individual capacity are substantially similar to the interests and arguments proffered by Ms. Santoro in her capacity as the executrix of her decedent mother's estate— that is, that the nursing home was negligent in the care of her mother which caused her mother's untimely death. Accordingly, G&G's representation of Santoro in both actions does not involve representation of "differing interests" so as to pose a conflict of interest as defined by Rule 1.7[a][1]. Notwithstanding, such representation falls within the permitted exception set forth in Rule 1.7[b] since G&G can provide competent counsel to Santoro in both actions, such representation is not prohibited by law, such representation does not involve competing claims by Santoro in her capacity as an Executrix and in her individual capacity defending a claim against the same nursing home. (*See id.* at Rule 1.7[b][1]-[4]).

Accordingly, it is hereby

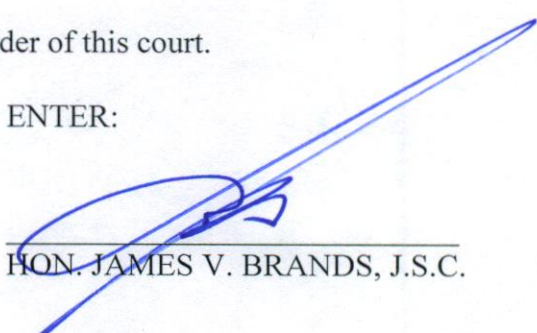
ORDERED that Poughkeepsie Crossings, LLC's motion to disqualify G&G is denied. It is further

ORDERED that counsel are directed to appear on a status conference on **June 5, 2018 at 9:15 a.m.**

The foregoing constitutes the decision and order of this court.

Dated: May 7, 2018
Poughkeepsie, New York

ENTER:



HON. JAMES V. BRANDS, J.S.C.

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Pursuant to CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of entry, the appeal must be taken within thirty days thereof.

When submitting motion papers to Judge Brands' Chambers, please do not submit any copies. Submit only the original papers.