

**Amsterdam Nursing Home Corp. (1992) v Lynch**

2019 NY Slip Op 31596(U)

May 31, 2019

Supreme Court, New York County

Docket Number: 154028/2018

Judge: Margaret A. Chan

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. MARGARET A. CHAN** PART IAS MOTION 33EFM

*Justice*

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INDEX NO. 154028/2018

AMSTERDAM NURSING HOME CORPORATION (1992),

MOTION DATE 03/14/2019

Plaintiff,

MOTION SEQ. NO. 002

- v -

DENISE LYNCH, SEAN LYNCH

**DECISION AND ORDER**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion to/for JUDGMENT - DEFAULT

In this action for outstanding nursing home fees, plaintiff, Amsterdam Nursing Home Corp. (1992), moves for an Order pursuant to CPLR 3215, seeking entry of default judgment against co-defendants Denise Lynch and Sean Lynch. Plaintiff alleges claims for services rendered and unjust enrichment against defendant Denise Lynch. Plaintiff also alleges a claim for fraud violation under the New York State Debtor Creditor Laws §§ 273, 275, 276 (DCL) against defendant Sean Lynch.

The summons and verified complaint in this action were filed with this Court on August 30, 2018 (NYSCEF #1). The summons and complaint were served upon defendant Sean Lynch on May 29, 2018, in person and a mailed copy was sent to his home on May 30, 2018 (NYSCEF #2, process server affidavit). Defendant Denise Lynch was served, in person, the summons and complaint on May 30, 2018, and a copy was mailed to her nursing home residence on June 1, 2018 (NYSCEF #4, process server affidavit).

Both defendants failed to respond to the summons and complaint. The plaintiff's counsel sent letters of notice to both defendants on August 20, 2018, pursuant to CPLR 3215(g) (NYSCEF ##34; 35). More than thirty days have lapsed since service and neither defendant has responded or appeared in this action. Thus, both defendants have defaulted.

This case arises out of defendant Denise Lynch's alleged failure to pay nursing care costs of \$213,909.02. Mark Pancirer (Pancirer), the Senior Vice President and Chief Financial Officer for plaintiff, submitted an affidavit in support of default judgment (NYSCEF #27, Mark Pancirer affidavit, ¶1). According to Pancirer, defendant Denise Lynch has been a resident at plaintiff's nursing home,

located at 1060 Amsterdam Avenue New York, NY 10015, beginning in November of 2013 through the date of the complaint (*id.*, ¶ 3). Plaintiff alleges that after a year of living in the nursing facility, defendant Denise Lynch transferred her assets, including her pension income, without fair consideration, to her son and co-defendant Sean Lynch, leaving her insolvent (NYSCEF #26, plaintiff's attorney affirmation, ¶¶ 30-35; NYSCEF #27, ¶¶ 12-16). Pancirer further states that beginning in August 2015, defendant Denise Lynch failed to pay her balance for room, board, and skilled nursing care services provided by plaintiff accruing to \$213,909.02 by January 14, 2019 (NYSCEF #27, ¶ 3; NYSCEF #29, Amsterdam Invoice).<sup>1</sup> After defendant Denise Lynch conveyed her assets, plaintiff sent defendant Sean Lynch an invoice indicating the remaining balance (NYSCEF #29).

Plaintiff claims that defendant Denise Lynch was unjustly enriched by receiving the services provided by the nursing home including room, board and skilled nursing care for which plaintiff was not fully paid (NYSCEF #26, ¶ 23). The elements of a claim for unjust enrichment are that the plaintiff has conferred a benefit upon the defendant, and that defendant obtained such benefit and did not adequately compensate plaintiff for the benefit (*see Alpert v M.R. Beal 7 Co.*, 162 AD3d 491 [1st Dept 2018]). Unjust enrichment can pertain to unpaid medical services (*see State Farm Mut. Auto. Ins. Co. v Mallela*, 4 NY3d 313, 320 [2015]; *see also 64 B Venture v American Realty Co.*, 179 AD2d 374, 376 [1st Dept 1992]). As such, plaintiff has sufficiently shown the elements for a claim of unjust enrichment.

Plaintiff alleges that defendant Sean Lynch should be liable for the outstanding balance under the DCL §§ 273, 275, 276 (NYSCEF #26, ¶ 54). Under DCL §273, "a conveyance made that renders the conveyor insolvent is fraudulent as to creditors regardless of his actual intent, if the conveyance was made without fair consideration" (*CIT Grp./Commercial Servs., Inc. v 160-09 Jamaica Ave. Ltd. P'ship*, 25 AD3d 301, 302 [1st Dept 2006]). Under DCL § 275, conveyances that are made without fair consideration when the person making the conveyance will likely incur debt is fraudulent as to both present and future creditors. Further, under DCL § 276, conveyances made with actual intent to hinder, delay or defraud either present or future creditors is fraudulent as to both present and future creditors.

Here, plaintiff contends that defendant Denise Lynch is presumptively insolvent because the conveyances were made without fair consideration, thus DCL § 273 applies (NYSCEF #26, ¶ 41). Defendant Sean Lynch was the direct beneficiary of said conveyances (*id.*, ¶ 33).

Plaintiff argues that the conveyances to defendant Sean Lynch are fraudulent under DCL §273 because defendant Denise Lynch's income was improperly transferred and spent (NYSCEF #26, ¶¶ 34-38). Specifically, the New York State Medical Assistance Program Nursing Home Eligibility Division (NHED)

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<sup>1</sup> In the summons and complaint, plaintiff originally stated services rendered at a value of \$232,44.02 (NYSCEF #1, ¶ 7).

determined that defendant Denise Lynch's Net Available Monthly Income, comprised of her Social Security benefits and her pension income, equaling \$6,428.87, were to be paid directly to the nursing home on a monthly basis (NYSCEF #30 at 6). Plaintiff substantiated this allegation with documentation of numerous checks from defendant Denise Lynch's bank account, intended to be used to pay for her nursing care expenses, were instead written out directly to defendant Sean Lynch (NYSCEF #26, ¶ 33; NYSCEF #40, TD Bank checks).

Pursuant to the constructive trust provision of DCL § 275, conveyances made with good indication of future insolvency is seen as fraudulent as to both present and future creditors. Indicators of defendant Denise Lynch's insolvency are her bank statements with negative balances (NYSCEF #39). Plaintiff alleges that although these claims did not exist at the time of the conveyance, the conveyance is still fraudulent under DCL § 275 (NYSCEF #26, ¶ 48).

Plaintiff alleges that defendant Sean Lynch had fraudulent intent because he is defendant Denise Lynch's son, creating this level of close relationship, as well as the inadequacy of consideration and the checks written in his name amount to actual intent to defraud under DCL § 276 (NYSCEF #25, ¶ 52).

Plaintiff's allegations sufficiently make out claims under DCL §§ 275 and 276. The conveyances from mother to son without consideration gives rise to an inference of intent to defraud (*Wall St. Assoc. v Brodsky*, 257 AD2d 526, 529 [1st Dept 1999]). As such, defendant Sean Lynch can be held liable for the outstanding balance under DCL §§ 273, 275, 276.

Plaintiff seeks damages in the amount of \$213,909.02 plus interest from February 1, 2018, the day Pancirer signed and notarized his affidavit, as well as costs and disbursements of this action (NYSCEF #26 at 12). Because the sum the plaintiff has requested is certain, the Court does not require an inquest nor assessment to calculate the damages and the application for default judgment may be submitted directly to the court clerk (CPLR 3215 [b]).

Accordingly, it is hereby

ORDERED that plaintiff's motion is granted and plaintiff is entitled to a default judgment pursuant to CPLR 3215 against defendants, Denise Lynch and Sean Lynch, in the amount of \$213,909.02 plus statutory interest at the rate of 9% accruing from February 1, 2018 until entry of judgment, plus costs and disbursements; it is further

ORDERED, that the Clerk of the Court is directed to enter judgment as written; and it is further

ORDERED, that a copy of this decision and order with notice of entry is to be served on all parties within 20 days of entry of this order. This constitutes the decision and order of the court.

5/31/2019  
DATE

  
MARGARET A. CHAN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE