

**Grafstein v Teachers' Retirement Sys. of the City of  
N.Y.**

2021 NY Slip Op 32412(U)

November 22, 2021

Supreme Court, New York County

Docket Number: 162235/2019

Judge: David Benjamin Cohen

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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. DAVID B. COHEN **PART** **58**

*Justice*

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HELEN GRAFSTEIN, LILA SIMON,

Plaintiff,

- v -

TEACHERS' RETIREMENT SYSTEM OF THE CITY OF  
NEW YORK, ROBERTA MEDRESS,

Defendant.

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**INDEX NO.** 162235/2019

**MOTION DATE** 10/28/2021

**MOTION SEQ. NO.** 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 37, 38, 39, 40, 44, 45, 46, 47, 48, 49, 50, 52, 53, 54

were read on this motion to/for

DISMISSAL

In this action for fraud and undue influence, defendant Roberta Medress (“Medress”) moves, pre-Answer, pursuant to CPLR 3211(a)(7), to dismiss the complaint filed by plaintiffs Helen Grafstein and Lila Simos. Plaintiffs oppose the motion. After consideration of the parties’ contentions and a review of the relevant statutes and case law, the motion is decided as follows.

**I. Factual and Procedural Background**

Stanley Kuperstein (“Kuperstein”) had a pension account which was maintained and controlled by the Teachers Retirement System of the City of New York (“the account”), with a payable on-death benefit in the amount of \$140,000. At the time of Kuperstein’s death on May 29, 2015, Medress was the named beneficiary on the account. According to Medress, she and Kuperstein first met in the 1980’s at I.S. 281 in Brooklyn, where they were both teachers, and developed a caring and supportive friendship.

In the complaint, plaintiffs, who were Kuperstein's cousins, alleged that they were the beneficiaries originally designated on the account and that in "2014 ... [Medress] represented herself as [Kuperstein] and changed the beneficiary designation on [the account] by accessing the account online[]" without Kuperstein's knowledge, while he was in a vulnerable state due to various illnesses which greatly affected his decision-making abilities (Doc 1).

## II. The Parties' Contentions

In support of her motion, Medress argues that : (1) plaintiffs do not allege that they believed any false representation to be true, did not act justifiably in reliance upon a false representation, and were not deceived; (2) plaintiffs have failed to state facts which would show that the beneficiary designation could only be the product of undue influence since Kuperstein was of sound mind in 2014 when the beneficiary was changed on the account (Doc 38); and (3) they have no standing to bring this case.

In opposition, plaintiffs argue that, in 2014, "[Medress] exerted undue influence on [Kuperstein], orchestrating the transfer of assets, the execution of a purported will and the re-designation of the [account]" (Doc 46 ¶ 8). They also contend that Medress was responsible for Kuperstein's day-to-day bills and submit as exhibits Kuperstein's bills sent to Medress' alleged address for payment (Doc 49).

In reply, Medress argues that plaintiffs "have absolutely no standing to bring this case ... because annulling the designation by [Kuperstein] of [Medress] as beneficiary on his retirement plan would have the effect of leaving the retirement plan without a beneficiary and the funds would therefore revert to the estate, in which case the public administrator would be the only proper party to bring the claims asserted by [plaintiffs] [and that] plaintiffs have neither denied nor even addressed this issue in their opposition papers" (Doc 52 ¶ 5).

### III. Legal Conclusions

In determining the legal sufficiency of a claim pursuant to 3211(a)(7), the facts alleged in the complaint will be assumed to be true, given all favorable inferences, and only then considered to see whether they fit “within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). The plaintiff may submit affidavits and evidentiary material on a CPLR 3211 (a)(7) motion “to remedy defects in the complaint” (*Kenneth R. v Roman Catholic Diocese of Brooklyn*, 229 AD2d 159, 162 [2d Dept 1997] [internal quotations marks and citations omitted]; *see also Warberg Opportunistic Trading Fund, LP. v GeoResources, Inc.*, 112 AD3d 78, 84 [1st Dept 2013]).

#### A. Standing

Medress’s argument that plaintiffs do not have standing to sue is without merit since a pension account does not pass under a will or in intestacy, but rather by beneficiary designation and, therefore, a finding that a change of designation of a beneficiary has been unduly influenced or fraudulent may renew the original designation of beneficiary (*see EPTL 13-3.2[a]*; *In the Matter of the Kosmo Family Tr.*, 2021 NY Slip Op 50745(U) [Sur Ct, Albany County, July 27, 2021]). Here, plaintiffs sufficiently allege that they were the beneficiaries who were originally designated by Kuperstein on the pension account.

#### B. Fraud

Where a cause of action or defense is based upon fraud, “the circumstances constituting the wrong shall be stated in detail” (CPLR 3016[b]). “The elements of a cause of action for fraud require a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages” (*Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559 [2009]; *see also Mandarin Trading Ltd. v Wildenstein*, 16 NY3d

173, 178 [2011]). Plaintiff may not establish the reliance element of a fraud claim under New York law by showing that a third party relied on defendant's false statements resulting in injury to plaintiff (*Pasternack v Lab. Corp. of Am. Holdings*, 27 NY3d 817 [2016]; see also 14 N.Y.Prac., New York Law of Torts § 1:73). Since Plaintiffs do not allege that they relied on Medress's alleged misrepresentation, but rather only allege that, a third party, the Teachers' Retirement System of the City of New York, relied on the alleged misrepresentation, they fail to state a cause of action sounding in fraud.

### **C. Undue Influence**

When pleading conduct involving undue influence, the complaint must set forth in detail the circumstances constituting the wrong (CPLR 3016[b]). The requirements of CPLR 3016(b) “may be met when the facts are sufficient to permit a reasonable inference of the alleged conduct” (*Ramirez v Donado Law Firm, P.C.*, 169 AD3d 940, 942 [2d Dept 2019] [internal quotations omitted]). Here, the cause of action is pleaded with sufficient detail to satisfy CPLR 3016(b) since Plaintiffs allege that Medress, who had a position of trust with Kuperstein insofar as he granted her power of attorney and she assisted him with his finances, represented herself as Kuperstein and accessed the online pension account and named herself as the beneficiary while Kuperstein was in a vulnerable and fragile state, suffering from various illnesses, and, further, that during 2014, she orchestrated the transfer of assets, the execution of a purported will and the re-designation of the pension account. Although Plaintiffs may face significant challenges in substantiating their allegation of undue influence, whether “a plaintiff can ultimately establish its allegation is not part of the calculus in determining a motion to dismiss” (*EBC I, Inc. v. Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]).

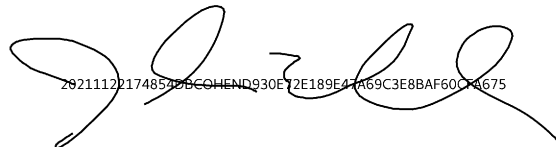
The parties' remaining arguments are unpersuasive or need not be addressed in light of the above analysis.

Accordingly, it is hereby:

ORDERED that the motion to dismiss by defendant Roberta Medress is granted to the extent the fraud cause of action of the complaint is dismissed, and the motion is otherwise denied; and it is further

ORDERED that defendant is directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel are directed to appear for a preliminary conference via Microsoft TEAMS on January 4, 2022 at 11:30 AM. A link to the conference will be sent.



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DAVID B. COHEN, J.S.C.

11/22/2021  
DATE

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