

Willoughby Rehabilitation v Maldonado

2023 NY Slip Op 31796(U)

May 18, 2023

Supreme Court, Kings County

Docket Number: Index No. 513811/2021

Judge: Karen B. Rothenberg

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 35

WILLOUGHBY REHABILITATION and HEALTH
CARE CENTER LLC d/b/a SPRING CREEK
REHABILITATION & NURSING CARE CENTER,

Plaintiff,

-against-

Index No. 513811/21
DECISION & ORDER

ALMA MALDONADO,

Defendant.

Recitation, as required by CPLR §2219 [a], of the papers considered in Plaintiff’s
motion for a default judgment and defendant’s cross-motion to dismiss.

Papers	Numbered
Notice of Motion and Affidavit.....	20-32
Answering Affidavits.....	35-40, 53-54, 55-56
Replying Affidavits.....	
Notice of Cross-Motion and Affidavit.....	41-47

Upon the foregoing cited papers, the Decision/Order on these motions is as follows:

In this action for breach of contract, plaintiff moves [seq. no. 2] for an order pursuant to CPLR § 3215 for the entry of a default judgment against defendant for her failure to appear or answer the complaint. Defendant opposes the motion and cross-moves [seq. no. 3] to dismiss the action.

The plaintiff, a nursing facility, brings this action against the defendant to recover a balance of \$8,352.00 incurred for the room, board, and skilled nursing services provided to the defendant’s decedent who resided at the nursing home from August 29, 2019 through April 13, 2020. In an affidavit submitted in support of the motion, plaintiff’s biller, Ben Blum, states that the decedent was a Medicaid recipient as of August 29, 2019, and that pursuant to his approved Medicaid Budget (attached to the moving papers as “Exhibit D”) and Social Services Law 18 NYCRR 360-4.9, the decedent’s Net Available Monthly Income (NAMI) was required to be remitted to plaintiff as a contribution towards his care. Plaintiff alleges that the defendant, to whom the decedent had granted a power of attorney (attached to the moving papers as “Exhibit

C”) and who had signed the decedent’s nursing home admissions agreement (attached to the moving papers as “Exhibit B”), is responsible for the unpaid bill because she breached the agreement by failing to use the decedent’s available income/funds to make payment.

Plaintiff commenced this action against defendant by the filing of a Summons and Complaint on June 9, 2021. Having been unable to effectuate service within 120 days of filing, plaintiff filed a motion to extend the time to make service pursuant to CPLR § 306-b and CPLR § 2004, on October 7, 2021. While the motion was still pending, plaintiff served defendant at her home address, 735 Lincoln Avenue, Apt. 4R, Brooklyn, on November 6, 2021, pursuant to CPLR §308(4). Plaintiff filed proof of service on November 12, 2021. Thereafter, on February 7, 2022, plaintiff’s unopposed motion to extend the time to serve was granted, and the court’s order provided plaintiff 60 days from entry of the order to effectuate and file proof of service. Plaintiff, having made service on defendant on November 6, 2021, did not re-serve defendant with a copy of the summons and complaint. Defendant never appeared in this matter or served an answer to the complaint.

Plaintiff, therefore, demonstrates its entitlement to the entry of a default judgment by having submitted proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defendant’s default in answering or appearing (*see Matone v Sycamore Realty Corp.*, 50 AD3d 978 [2d Dept 2008]). In order to avoid the entry of a default judgment, defendant is required to demonstrate a reasonable excuse for the default and a meritorious defense to the action (*id.*). Defendant, however, fails to satisfy either requirement.

First, contrary to defendant’s argument, as plaintiff accomplished service on November 6, 2021, it was not required to re-serve defendant with the summons and complaint pursuant to the court’s order dated February 7, 2022. The February 7, 2022 order granted plaintiff an additional 60 days to effectuate and file proof of service of the summons and complaint, and plaintiff did so before the expiration of that additional 60-day period. It is of no moment that the order was issued subsequent to the plaintiff’s service on defendant as the application for the extension was ultimately granted. As such, defendant’s claim that there was no default because service was never completed is without merit. Defendant, therefore, fails to provide a reasonable excuse for her default in answering or appearing in this matter.

Moreover, even assuming defendant presented a reasonable excuse for the default, she fails to demonstrate a meritorious defense to the plaintiff’s breach of contract claim. It is established that defendant executed an agreement with plaintiff in which she agreed to utilize her access to decedent’s assets – by virtue of her power of attorney – to pay for his care, and that she further agreed to be held personally liable for damages to plaintiff for any breach of that obligation. It is also demonstrated that defendant then breached the

agreement by failing to apply available assets to pay decedent's nursing home bill. Defendant, therefore, may be held liable for the costs of the decedent's care for breaching the terms of the agreement "by impeding the nursing home from collecting its fees from the decedent's funds or resources over which she exercised control" (*see Sunshine Care Corp. v Warrick*, 100 AD3d 981 [2d Dept 2012]).

Despite defendant's contention, the admissions agreement did not violate The Nursing Home Reform Act. As relevant here, the act provides that "[w]ith respect to admissions practices, a skilled nursing facility must ... not require a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility" (42 USC § 1395i-3[c][5] [A] [ii]). However, that prohibition "shall not be construed as preventing a facility from requiring an individual, who has legal access to a resident's income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident's income or resources for such care" (42 USC § 1395i-3[c][5][B] [ii]). Here, the admissions agreement did render the defendant a "third party guarantee of payment" (*see Nassau Operating Co., LLC v DeSimone*, 206 AD3d 920 [2d Dept 2022]). The admission agreement merely required the defendant to utilize the decedent's funds to pay for the decedent's care at the plaintiff's facility to the extent that the defendant had access to such funds (*Wedgewood Care Ctr., Inc. v. Kravitz*, 198 AD3d 124, 133 [2d Dept 2021]).

Furthermore, contrary to defendant's assertions, the plaintiff's submissions demonstrate that the defendant had access to the decedent's funds to pay for his care at the plaintiff's facility. Specifically, the plaintiff submitted proof that the defendant was given a durable power of attorney prior to the decedent's admission date, which afforded her legal access to, and control of, among other things, the decedent's banking, insurance, governmental and retirement benefits. Plaintiff also submits the admissions agreement, which plaintiff admits she signed, wherein, as indicated above, she agreed to pay the cost of care provided by the plaintiff from the decedent's funds beyond that which was covered by Medicare (*Sunshine Care* at 982). In her affidavit, defendant does not contest that she had access to the decedent's funds and that those funds were not used to pay the decedent's bill. And, although defendant claims otherwise, the personal liability provision in the agreement applies even if she signed the agreement as the decedent's resident representative rather than as his spouse/sponsor.


Finally, the decedent's estate is not a necessary party to this action. The plaintiff's cause of action is asserted solely against the defendant and does not seek any damages from the decedent or his estate, and "the pleadings did not allege that the deceased resident or her estate was in any way liable for the independent contractual duties that were allegedly breached by the defendant" (*Wedgewood* at 135).

Accordingly, the plaintiff's motion for leave to enter a default judgment is granted in favor of the plaintiff and against the defendant in the principal sum of \$8,352, plus costs and disbursements. The defendant's cross-motion to dismiss is denied.

This constitutes the Order and Decision of the court.

Dated: May 18, 2023

ENTER,



Hon. Karen B. Rothenberg, J. S. C.