

**Parker Jewish Inst. for Health Care & Rehabilitation  
v Jean-Baptiste**

2024 NY Slip Op 32251(U)

July 2, 2024

Supreme Court, Queens County

Docket Number: Index No. 708122/21

Judge: Timothy J. Dufficy

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This opinion is uncorrected and not selected for official publication.

**Short Form Order**

**NEW YORK SUPREME COURT - QUEENS COUNTY**

**PRESENT: HON. TIMOTHY J. DUFFICY**  
**Justice**

**PART 35**

-----X  
**PARKER JEWISH INSTITUTE FOR HEALTH  
CARE & REHABILITATION,**

**Plaintiff,**

**Index No.: 708122/21**

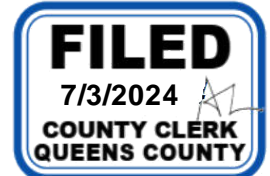
**Mot. Date: 4/23/24**

**-against-**

**Mot. Seq. 1**

**RICHARD JEAN-BAPTISTE,**

**Defendant,**



-----X  
The following papers were read on this motion by plaintiff for an order, pursuant to CPLR 3212, granting summary judgment against the defendant and awarding plaintiff judgment in the amount of \$6,041.00, plus interest from December 31, 2019; and, defendant’s cross-motion, pursuant to CPLR 3212, dismissing plaintiff’s complaint.

**PAPERS  
NUMBERED**

Notice of Motion-Affidavits-Exhibits.....	EF15-33
Notice of Cross- Motion-Affidavits-Exhibits.....	EF 35-41
Answering Affidavits-Exhibits.....	EF42-46; EF 48-50

Upon the forgoing papers, it is ordered that the plaintiff’s motion is denied; and, the defendant’s cross-motion is granted.

Plaintiff is engaged in the business of providing skilled nursing home care services, at the premises located at 271-11 76<sup>th</sup> Avenue, New Hyde Park, New York (premises). Plaintiff alleges that Helene Jean Baptiste (resident) received room, board and skilled nursing care services, at the plaintiff’s premises, from August 22, 2018 through December 2, 2019.

The record reflects that the resident, a Medicaid recipient as of June 5, 2018, died, on January 5, 2020, and that no estate has been established on behalf of the resident. Defendant is the son of the resident. On or about August 4, 2018, the defendant signed an admission agreement with the plaintiff. Plaintiff claims the defendant breached the

agreement and seeks damages, in the amount of \$6,041.00, for the care it provided to the resident.

The relevant portion of the agreement, provides, in pertinent part: “The Resident Representative is responsible to provide payment from the Resident’s income and resources to the extent he or she has access to the Resident’s income and resources without the Resident Representative incurring personal financial liability. The Resident and Resident Representative agree to provide payment from the Resident’s income and resources for any charges not covered by third party payors. Payment to Parker shall be made on a monthly basis as billed.

If the Resident has no insurance coverage or remains in Parker after his or her insurer no longer covers his or her care, the Resident or Resident Representative agrees to provide payment, from the Resident's income and resources, for all of our charges until discharge or until another source of coverage becomes available. We will promptly notify you if we become aware that an insurer has discontinued payment or coverage or your care.

NOTE: The Resident Representative is not personally responsible for the cost of care from the Resident Representative's personal assets. However, it is essential that the Resident Representative provide Parker with payment from the Resident’s assets to the extent that he or she has control over the Resident’s assets, such as by power of attorney, access to joint accounts and the like. The Resident Representative is also responsible for providing Parker and third party payors with all requested information and documentation necessary to secure payment of the Resident’s care at Parker. It is critical that all relevant documents and information regarding the Residents financial resources, citizenship or immigration status, and third party insurance coverage be furnished to Parker in a truthful, accurate, timely and complete manner.”

Plaintiff now moves for summary judgment against the defendant on its cause of action for breach of contract. Plaintiff contends, in sum and substance, that the defendant

admitted in discovery responses that he “occasionally assisted” the resident (his mother) in accessing her social security, when asked; that [he] “occasionally assisted [her] in accessing her own bank account at Citibank if she asked for my help” and that although [he] did not have an ATM or Debit card for [the resident’s] bank account he occasionally assist her in accessing her own bank account via ATM or Debit card if she asked for [his] help.”

Plaintiff further argues that the defendant was aware of his mother’s social security benefits being deposited into her Citibank account and had the ability to assist her in accessing the funds in the account, but he failed to assist in ensuring that the social security benefits were used to pay the plaintiff for the resident’s stay, care and services at plaintiff’s facility. Plaintiff contends that this constitutes breach of contract by the defendant.

In support of its motion, the plaintiff submits, *inter alia*, the agreement, the Citibank records, the defendant’s discovery responses, and an affidavit from the plaintiff’s vice president for finance stating that the plaintiff is owed \$6,041.00 for room, board and skilled nursing care services.

Defendant opposes and cross-moves for summary judgment dismissing the complaint. He submits, *inter alia*, his own affidavit, where he affirms, that:he did not have any control over his mother’s finances; he never had power of attorney over his mother at any time; they did not have any joint bank accounts; and, he was not named on any of his mother’s bank accounts.

He stated that his involvement with ATM transactions was limited to occasionally accompanying his mother to the ATM and punching in the numbers for her; and, on certain occasions, if his mother was disabled, taking his mother’s ATM card to make a specific cash withdrawal and to bring her the money. He further affirmed that he would occasionally make specific debit card purchases, in accordance with her instructions, for items such as hearing aids. He denied having an ATM or debit card for his mother’s bank account.

A movant for summary judgment must make *prima facie* showing of entitlement to summary judgment as a matter of law through the submission of sufficient evidence to demonstrate the absence of any material issues of fact, and he or she must do so by tender

of evidentiary proof in admissible form (*see Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; *Zuckerman v City of New York*, 49 NY2d 557 [1980]).

Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Alvarez, supra*, 68 NY2d at 324; *Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853 [1985]). A party moving for summary judgment cannot attempt "to remedy a fundamental deficiency in the moving papers by submitting evidentiary material with the reply" (*Agulnick v Agulnuck*, 191 AD3d 12 [2d Dept 2020], quoting *Ford v Weishaus*, 86 AD3d 421, 422 [2d Dept 2011].) Once the movant has made the *prima facie* showing, the burden shifts to the opposing party to come forward with sufficient proof in admissible form to establish the existence of triable issue of fact (*Alvarez v Prospect Hosp., supra*, 68 NY2d 320, 324.)

As a general rule, a party does not carry its burden in moving for summary judgment by pointing to gaps in its opponent's proof, but must affirmatively demonstrate the merit of its claim or defense" (*Mennerich v Esposito*, 4 AD3d 399, 400 [2d Dept 2004]; quoting *George Larkin Trucking Co. v Lisbon Tire Mart*, 185 AD2d 614, 615 [4th Dept 1992]).

A plaintiff moving for summary judgment on a cause of action asserted in a complaint generally has the burden of establishing, *prima facie*, "all of the essential elements of the cause of action" (*Nunez v Chase Manhattan Bank*, 155 AD3d 641, 643 [2d Dept 2017]), The essential elements of a cause of action to recover damages for breach of contract are "the existence of a contract, the plaintiff's performance pursuant to the contract, the defendant's breach of its contractual obligations, and damages resulting from the breach" (*Cruz v Cruz*, 213 AD3d 805, 807 [2d Dept 2023], quoting *Klein v Signature Bank, Inc.*, 204 AD3d 892, 895 [2d Dept 2022] [internal quotation marks omitted]).

Both sides agree that hat the admission agreement is subject to the Nursing Home Reform Act (NHRA). To the extent relevant here, the NHRA provides that "[w]ith respect to admissions practices, a 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 § 1396r[c][5][A][ii]; *see* 42 CFR 483.15[a][3]; *see also* 10 NYCRR 415.3[b][1]). (emphasis added) 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 § 1396r[c][5][B][ii]; see 42 CFR 483.15[a][3]; see also 10 NYCRR 415.3[b][6]). (emphasis added)

Where, as here, the parties' agreement is before the court in a breach of contract action, "its provisions establish the rights of the parties and prevail over conclusory allegations of the complaint" (*Nassau Operating Co., LLC v. DeSimone*; 206 AD3d 920, 927 [2d Dept. 2022] citing *805 Third Ave. Co. v M.W. Realty Assoc.*, 58 NY2d 447, 451 [1983]). "[T]he interpretation of an unambiguous contract is a question of law for the court" (*Ark Bryant Park Corp. v Bryant Park Restoration Corp.*, 285 AD2d 143, 150 [1<sup>st</sup> Dept. 2001]).

Here, the agreement merely required the defendant to facilitate payment from the . . . resident's available income and resources, and only to the extent that he had access to such income and resources and only if he could do so without incurring any personal financial liability" (*Nassau Operating Co., LLC v. DeSimon*; 206 AD3d 920, 926 [2d Dept 2022]; citing *Wedgewood Care Ctr., Inc. v Kravitz*, 198 AD3d 124, 133 [2d Dept. 2021]). The record before the Court reflects that the defendant did not have legal access over his mother's bank account and resources and could not have accessed them without incurring personal liability. There is no evidence that the defendant had legal access to the resident's funds, such as through a power of attorney or joint bank account (*see Morningside Acquisition I, LLC v Gandy*; 66 Misc 3d 276 [Sup. Ct. Bronx County 2019]). Therefore, the defendant has not breached the agreement.

The Court finds that the plaintiff's argument regarding misappropriation are improperly raised in rely papers. In any event, even if the argument was properly raised, it is unavailing as it is contradicted by the evidence, such as the bank statements.

Accordingly, it is

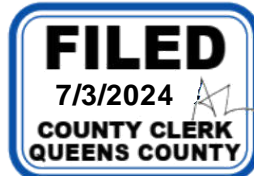
**ORDERED** that the plaintiff's motion for summary judgment is denied;  
and it is further

**ORDERED** that the defendant's cross-motion for summary judgment is granted; and it is further

**ORDERED** that the complaint is dismissed, with prejudice; and it is further

**ORDERED** that any other applications, arguments or requests for relief not specifically addressed herein have been considered by the Court and are denied.

**Dated: July 2, 2024**



A handwritten signature in black ink, appearing to read "T. Dufficy".

**TIMOTHY J. DUFFICY, J.S.C.**