

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

HCR MANOR CARE,	: No. 01-00827
Plaintiff	:
	:
vs.	: CIVIL ACTION - LAW
	:
CLAUDIA G. KELLOGG,	:
Individually and on Behalf of	: Defendant's Preliminary
ORLIN HOVET,	: Objections to Plaintiff's
Defendant	: Second Amended Complaint

ORDER

AND NOW, this 11th day of December 2001, after consideration of the arguments of counsel and review of the briefs submitted by the parties, it is ORDERED and DIRECTED as follows:

1. The Court DENIES the defendant's Preliminary Objections to Count I, Breach of Contract on the basis that such claim is precluded by the Nursing Home Reform Act, 42 U.S.C.A. Section 1395i(3)(c)(5)(A)(ii), which states a health care provider may not require a third party guarantee of payments to a facility as a condition of admission.

There appear to be factual issues about the alleged contract, including whether the defendant signed as a condition of admission of the decedent. The Court can better address this issue after factual development of this case. While the Court is somewhat dubious of the plaintiff's contractual claim since it appears the defendant signed the contract because the defendant's father who was to be a patient at Manor Care was incompetent, a better exposition of the facts is needed before the Court can rule on Count I as a matter of law.

Likewise, the Court DENIES the defendant's Preliminary Objections to Count I on the issue of agency for a disclosed principal. Once again, this issue can be better addressed by further development of the underlying facts of this case.

3. The Court GRANTS the defendant's Preliminary Objections to Count II, Conversion. The monies in question were admittedly not the funds belonging to the plaintiff, but rather, were funds in a joint bank account the decedent had with his daughter, defendant Claudia A. Kellogg. However, the plaintiff may raise this theory as part of Count I, Breach of Contract by alleging that the defendant violated condition 4 of the Contract through dissipation of Mr. Hovet's assets in his joint account maintained with the defendant.

4. The Court GRANTS the defendant's Preliminary Objection as to the plaintiff's action against Claudia G. Kellogg "on behalf of Orlin Hovet decedent." To the extent the plaintiff is seeking to file an action against Mr. Hovet's estate, they must raise an estate and sue the estate. Claudia G. Kellogg cannot be sued on behalf of the estate since she does not represent the estate.

If the plaintiff decides to sue the estate, they may seek to consolidate this case with the suit against the estate.

The defendant shall file her answer to the Complaint within twenty (20) days of receipt of this Order.

By The Court,

Kenneth D. Brown, J.

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