

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

HCR MANOR CARE,	:	NO. 1-00,827
Plaintiff	:	
	:	
vs.	:	
	:	CIVIL ACTION - LAW
CLAUDIA G. KELLOGG, Individually	:	
and on behalf of ORLIN HOVET,	:	
Decedent,	:	
Defendant	:	Motion for Summary Judgment

OPINION AND ORDER

Before the Court is Defendant's Motion for Summary Judgment. Argument on the motion was heard July 9, 2004.

In this breach of contract action,¹ Plaintiff alleges that Defendant executed an Admission Agreement as legal representative for her father, Orlin Hovet, that Mr. Hovet was admitted to Plaintiff's health care facility and incurred charges which were not paid by medical assistance or Medicare, that Defendant failed to pay those charges and that such failure constitutes a breach of the Admission Agreement. In her Motion for Summary Judgment, Defendant contends the action is prohibited by the Nursing Home Reform Act, that the contract fails for lack of consideration, and that it cannot be enforced as a contract of adhesion. The Court disagrees with all three claims.

With respect to her first contention, Defendant claims Plaintiff is seeking to impose a third party guarantee as a condition of admission in contravention to the Nursing Home Reform Act. 42 U.S.C. Section 1395i-3c(5)(A)(ii). Defendant points to evidence that the signing of the agreement was a condition of admitting any resident. Simply signing the agreement does not, however, equate to taking on personal liability for the debt of the resident. Both the testimony obtained in depositions as well as the Agreement itself indicate that the Agreement does not, nor is it intended to, personally bind the person signing for the debts of the resident. The

Agreement is clear that the person signing is signing simply as someone who “has been legally appointed guardian, conservator and/or holder of a power of attorney to act on the behalf of the patient/resident”. The person signing does not agree to personally guarantee any costs incurred but instead, to use the assets of the resident to pay costs not covered by a third party payor (such as medical assistance), to refrain from dissipating the resident’s assets to prevent them from being used to pay any such costs, and to file on the resident’s behalf any applications necessary to qualify him for third party payor programs.² Indeed, such an agreement is expressly approved by the Nursing Home Reform Act, in subsection (5)(B)(ii), which provides:

(ii) Contracts with legal representatives

Subparagraph (A)(ii) 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 U.S.C. Section 1395i-3(5)(B)(ii). The Court believes the instant Agreement is in conformance with the Act, and further, Plaintiff’s claim for breach of the Agreement is not prohibited by such as it does not seek to impose personal liability on Defendant but only to collect those monies which were or would have been available to her father.

Defendant also seeks to void the contract for lack of consideration. Inasmuch as she signed the agreement as a representative of her father, however, the consideration which is required to support the contract is that flowing from the nursing home to her father, in this case the care provided to him, rather than any consideration flowing directly to her. The Court finds no lack of consideration.

Finally, with respect to Defendant’s claim the contract is not enforceable as a contract of adhesion, Defendant argues the Admission Agreement’s terms “are unreasonably favorable to the drafter” and that “there is no meaningful choice on the part of the other party regarding

¹ A second claim, for conversion, was dismissed by the Honorable Kenneth D. Brown in an Order dated December 11, 2001.

² In fact, it is actually these conditions Plaintiff alleges were breached by Defendant and for this breach, to the extent of monies which would have been available to pay the costs incurred but for the breach, that Plaintiff seeks recovery.

acceptance of the provisions.” Defendant’s argument the terms are unreasonable, however, rests on her contention she is being held personally responsible as a third party guarantor. As noted above, such is not the case. The Court sees nothing unreasonable about the terms of the Admission Agreement. With respect to her argument she had no meaningful choice, Defendant does not deny the abundance of nursing homes in this area. She also testified her father was capable of signing the agreement himself, and thus she did have a choice to not sign the agreement if she did not want to be bound by its terms since her father could have been admitted by signing it himself. The Court finds the contract enforceable.

ORDER

And now, this day of July, 2004, for the foregoing reasons, Defendant’s Motion for Summary Judgment is hereby denied.

BY THE COURT,

Dudley N. Anderson, Judge

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