

Commissioner of the Dept. of Social Servs. of the City of N.Y. v New York Presbyt. Hosp.

Supreme Court of New York, New York County

March 27, 2015, Decided

450714/14

Reporter

47 Misc. 3d 1204(A) *; 2015 N.Y. Misc. LEXIS 927 **; 2015 NY Slip Op 50428(U) ***; 15 N.Y.S.3d 711

[*1]** Commissioner of the Department of Social Services of the City of New York, Plaintiff, against New York Presbyterian Hospital, CHI YOUNG LEE and BNY MELLON, N.A., as Co-Trustees of the MERRICK LEE SUPPLEMENTAL NEEDS IRREVOCABLE TRUST, CHI YOUNG LEE and BNY MELLON, N.A., as Co-Administrators of the ESTATE OF MERRICK LEE, and CHI YOUNG LEE, individually, Defendants.

Notice: THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

PUBLISHED IN TABLE FORMAT IN THE NEW YORK SUPPLEMENT.

Subsequent History: Related proceeding at, Motion denied by [Lee v. Osorio, 2015 N.Y. Misc. LEXIS 4073 \(N.Y. Sup. Ct., July 2, 2015\)](#)

Motion granted by, Summary judgment denied by, Dismissed by, Judgment entered by [Commissioner of the Dept. of Social Servs. of the City of N.Y. v. New York-Presbyt. Hosp., 2016 N.Y. Misc. LEXIS 3206 \(N.Y. Sup. Ct., Sept. 7, 2016\)](#)

Core Terms

cause of action, issues, motion to dismiss

Headnotes/Summary

Headnotes

[*1204A] Judgments--Res Judicata--Issues raised in

action by Department of Social Services seeking reimbursement for Medicaid expenses should have been raised in parallel final trust accounting proceeding.

Counsel: **[**1]** For PLAINTIFF: Richard Dreyfuss, Esq., Allison Gill, Esq., NYC Human Resources Administration, Department of Social Services, New York, NY.

For DEFENDANTS: Stuart S. Perry, P.C., Attorney of New York Presbyterian, New York, NY; Andrew Kimler, Esq., EJ Thorsen, Esq., Attorneys for Chi Young Lee, Lake Success, NY; Tyler Kandel, Esq., Mordecai Geisler, Esq., Attorneys for BNY Mellon, New York, NY.

Judges: Charles E. Ramos, J., J.S.C.

Opinion by: Charles E. Ramos

Opinion

Charles E. Ramos, J.

In motion sequence 002, the plaintiff Commissioner of the Department of Social Services of the City of New York (DSS) moves pursuant to [CPLR 2221](#) to reargue this Court's prior decision, dated November 6, 2014 (the Decision). In the Decision, this Court granted the defendant BNY Mellon, N.A.'s (BNY) motion to dismiss, and defendant Chi Young Lee's (Chi) cross-motion to dismiss DSS's complaint in its entirety pursuant to [CPLR 3211\(a\)\(5\)](#)(the Decision).

Background

This action arises out of a medical malpractice action

before Hon. Alice Schlesinger, index number 116651/2004 (the Main Action). The Main Action arises out of the hospitalization of Chi's son, Merrick Lee (Merrick), on November 8, 2003 and his subsequent death on March 20, 2010, while admitted for medical **[**2]** care at New York Presbyterian Hospital (NYPH).

Apparently, numerous errors were made in the medical treatment of Merrick that resulted in Chi commencing the Main Action. NYPH and Chi eventually settled the Main Action memorializing the terms in a settlement agreement, dated April 28, 2008, and a hold harmless agreement, dated April 25, 2008, (the Settlement Documents) which provided that NYPH would indemnify Chi against any Medicaid payments that were sought in connection with Merrick's hospitalization.

Following the execution of the Settlement Documents, the court in the Main Action issued an Infant's Compromise Order, dated June 26, 2008, that approved the creation of the Merrick Lee Supplemental Needs Irrevocable Trust (the Trust) with BNY and Chi as co-trustees. BNY and Chi were also co-administrators of the Estate of Merrick Lee (the Estate).

On May 14, 2010, less than two months after Merrick's death, BNY and Chi, as co-trustees, moved by order to show cause with a verified petition to settle their final accounts (the Final Trust Accounting Proceeding) on notice to DSS. DSS does not contest service of the order to show cause and verified petition.

DSS failed to submit any opposition **[**3]** in a timely manner, but did eventually represent by letter that the accurate and current amount of the lien for Merrick was \$7,133.

On July 1, 2010, Justice Schlesinger issued an order approving the final accounting for BNY and Chi, as co-trustees, and approved the payment of \$7,133 from the Trust to satisfy the lien (the Final Trust Order).

Subsequently, DSS commenced this action before this Court seeking judgment against BNY, Chi, and NYPH for Medicaid expenses **[**2]** related to the hospitalization and treatment of Merrick. BNY and Chi subsequently moved to dismiss the second through fifth causes of action in DSS's complaint. NYPH did not seek dismissal.

On November 7, 2014, this Court issued its Decision, which granted BNY's and Chi's motions to dismiss on the basis that the causes of action against them were

barred by res judicata because those causes of action should have been asserted in the Final Trust Accounting Proceeding before Justice Schlesinger.

Now, DSS moves to reargue BNY and Chi's motions to dismiss alleging that this Court overlooked certain facts or misapprehended controlling law in rendering the Decision and seeks the reinstatement of its second through fifth causes of action **[**4]** against BNY and Chi.

Discussion

DSS argues that the second through fifth causes of action cannot be barred by res judicata because those issues were never litigated in the Main Action.

The second cause of action alleges that BNY and Chi breached their fiduciary obligations as co-trustees for failing to accurately reimburse Medicaid from the assets of the Trust.

The third cause of action for fraud alleges that BNY and Chi, as co-administrators of the Estate, intended to defraud DSS, as creditor of the Trust by disbursing the remaining assets of the Trust to the Estate.

The fourth cause of action seeks to recover the unreimbursed Medicaid expenses from the Estate pursuant to [Social Services Law § 369\(2\)\(b\)\(i\)\(A\)](#).

The fifth cause of action alleges that NYPH and Chi breached the Settlement Agreements, which inured to the benefit of DSS, by failing to properly reimburse Medicaid for the costs related to the treatment and hospitalization of Merrick.

While DSS is correct that these issues were not addressed in the Main Action, it fails to acknowledge that it was DSS that failed to raise these issues and that the effect of res judicata "applies not only to claims actually litigated but also to claims that could have been raised in the **[**5]** prior litigation" ([In re Hunter, 4 NY3d 260, 269, 827 N.E.2d 269, 794 N.Y.S.2d 286 \[2005\]](#)). In addition "[t]hese principles apply with equal force to judicially settled accounting decrees" (*id.*).

The present causes of action are clearly intertwined with the Trust and the Final Trust Accounting Proceeding. Under New York's "transactional analysis approach in deciding res judicata issues...once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred,

even if based upon different theories or if seeking a different remedy" ([O'Brien v City of Syracuse, 54 NY2d 353, 357, 429 N.E.2d 1158, 445 N.Y.S.2d 687 \[1981\]](#)).

Furthermore, it appears that the failure to raise these issues in the Final Trust Accounting Proceeding was the result of mistake or negligence on the part of DSS, but not because DSS was not provided notice. The record provides ample evidence that notice was given to DSS on multiple occasions during the Final Trust Accounting Proceeding and upon the entry of the Final Trust Order.

DSS fails to establish that this Court overlooked or misapprehended any law or fact in rendering the decision that would compel the granting of its motion to reargue ([William P. Pahl Equip. Corp. v Kassis, 182 AD2d 22, 27, 588 N.Y.S.2d 8 \[1992\]](#)). Therefore, the motion to reargue the motion to dismiss by BNY and the cross-motion to dismiss by Chi is denied.

Lastly, this **[**6]** Court has been informed that DSS has moved to vacate the Final Trust Order and has raised some these issues before Justice Schlesinger. Therefore, the further determination of these issues by this Court would contradict the principles of judicial economy and possibly result in conflicting rulings.

Accordingly, it is

ORDERED that the plaintiff Commissioner of the Department of Social Services of the City of New York's motion for reargument is denied, and it is further

ORDERED that the remaining portions of this action are held in abeyance pending a determination of the Commissioner of the Department of Social Services of the City of New York's motion to vacate before Justice Schlesinger.

Dated: March 27, 2015