

Superior Court of New Jersey

CHAMBERS OF
JAMES DEN UYL, J.S.C.

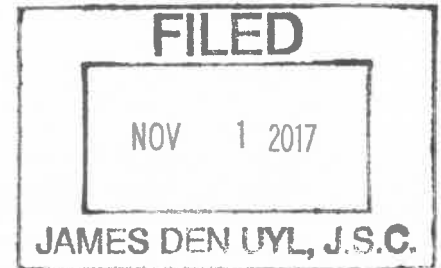


OCEAN COUNTY COURT HOUSE
P.O. BOX 2191
TOMS RIVER, N.J. 08754-2191

November 1, 2017

Jon-Henry Barr, Esq.
21 Brant Avenue
Clark, NJ 07066

Richard J. Kozel, Esq.
1200 Route 46 West, Suite 130
Clifton, NJ 07013



Re: Hampton Ridge Healthcare & Rehabilitation Center v. Estate of Idella Wright
Docket No. OCN-L-2335-16

Dear Counsel:

Defendant Charles Douglas moves for attorney fees and costs pursuant to N.J.S.A. 30:13-4.2 and N.J.S.A. 30:13-8a. The motion is opposed. The decision follows.

Plaintiff Hampton Ridge Healthcare & Rehabilitation Center filed a complaint for an unpaid nursing home bill for the late former resident Idella Wright. The plaintiff is a nursing home as defined by N.J.S.A. 30:13-2(c). Idella Wright executed and delivered a Power of Attorney to her nephew, Defendant Charles Douglas, on July 23, 2014, giving him access to and control over her income, assets and property. On behalf of Idella Wright, defendant Charles Douglas executed an Admission Agreement with the plaintiff on July 28, 2014 thereby becoming the responsible party for Idella Wright. From approximately September 20, 2014 through November 22, 2014, Idella Wright was a private pay (non-Medicaid funded) patient at the plaintiff's facility, incurring uncompensated charges of \$18,322.00. As Power of Attorney for Idella Wright, Charles Douglas directed all of her Social Security payments to go directly to the

plaintiff during the time of her stay at the plaintiff's facility to compensate the plaintiff for her care. Idella Wright died on July 13, 2016.

On August 26, 2016, Plaintiff filed a lawsuit against both Idella Wright and Charles Douglas in their individual capacities. Plaintiff asserted in the complaint that Defendants breached the terms of the Admission Agreement and their promises and representations by failing to properly and timely apply for Medicaid benefits, failing to cooperate with the Ocean County Board of Social Services, failing to properly spend down, and failing to pay plaintiff's final bill in the sum of \$18,322.00. Plaintiff asserted that pursuant to paragraph 4 of the additional conditions for private pay patients of the Admission Agreement for any bill unpaid for thirty (30) days, plaintiff is entitled to collect interest at the rate of twelve percent (12%) per annum adding the additional sum of \$4,858.82 through September 1, 2016. Pursuant to the terms of the Admission Agreement, for any account placed for collection, plaintiff is entitled to collect its reasonable counsel fees of twenty five percent (25%) of the unpaid principal balance adding the sum of \$4,580.50. Plaintiff was owed a total of \$26,761.32.

Defendant Charles Douglas filed an answer and counterclaim on October 14, 2016. Defendant Charles Douglas moved for summary judgment under N.J.S.A. 30:13-3.1a(2) which provides that a nursing home shall not, with respect to an applicant for admission or a resident of the facility require a third party guarantee of payment to the facility as a condition of admission or expedited admission to, or continued residence in, that facility; except that when an individual has legal access to a resident's income or resources available to pay for facility care pursuant to a durable power of attorney, order of guardianship or other valid document, the facility may require the individual to sign a contract to provide payment to the facility from the resident's income or resources without incurring personal financial liability. In addition, the

admission agreement signed by Mr. Douglas stated that “the obligation of the Responsible Party is a primary obligation and not one of guaranty of payment or other performance.”

The Court granted summary judgment to Defendant on August 4, 2017 dismissing Plaintiff’s complaint with prejudice further permitting Defendant to file a motion for counsel fees and costs pursuant to N.J.S.A. 30:13-4.

N.J.S.A. 30:13-4.2 provides that a person shall have a cause of action against the nursing home for any violation of the act. A plaintiff who prevails in an action shall be entitled to recover reasonable attorney's fees and costs of the action.

Pursuant to N.J.S.A. 30:13-8 any person or resident whose rights as defined herein are violated shall have a cause of action against any person committing such violation. Any plaintiff who prevails in any such action shall be entitled to recover reasonable attorney's fees and costs of the action.

Defendant’s counsel, Jon-Henry Barr, Esq., submitted a certification in support of his fee application. He was admitted to the bar 1996 and has an office in Clark. His hourly rate is \$300. He lists sixty itemized time entries between September 22, 2016 and August 11, 2017 for 31.90 hours times his hourly rate of \$300 totaling \$9,570.00. Costs total \$350.

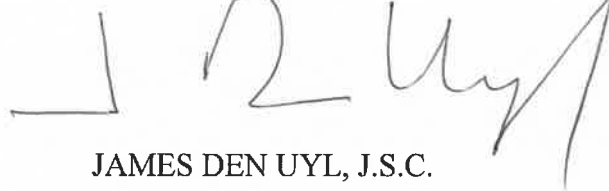
Plaintiff opposes the application and asserts that Defendant did not allege a violation of the Nursing Home act as a separate defense or count in the counterclaim. Plaintiff further asserts that they suffered harm and they did not intentionally mislead or otherwise violate applicable statutes. If fees are granted, they should be limited in light of the equities.

Plaintiff filed this lawsuit seeking a personal judgment against Charles Douglas in the face of N.J.S.A. 30:13-3.1a(2) which provides that a nursing home shall not, with respect to an applicant for admission or a resident of the facility require a third party guarantee of payment to

the facility as a condition of admission or expedited admission to, or continued residence in, that facility; except that when an individual has legal access to a resident's income or resources available to pay for facility care pursuant to a durable power of attorney, order of guardianship or other valid document, the facility may require the individual to sign a contract to provide payment to the facility from the resident's income or resources without incurring personal financial liability. The claim defendant was forced to defend was brought in contravention of this clear and unambiguous statutory language that insulates third parties from "personal financial liability."

The fees hourly rate and itemized bill submitted are fair and reasonable in scope and amount. Motion granted.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Den Uyl", written over a horizontal line.

JAMES DEN UYL, J.S.C.

ORDER ENCLOSED