

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. JOSEPH A. DE MARO

Justice

----- TRIAL/IAS, PART 9  
NASSAU COUNTY

KAREN KLINKOWITZ, as the Proposed Administratrix  
of the Estate of NATTIE KLINKOWITZ and  
KAREN KLINKOWITZ, Individually,

Plaintiffs,

MOTION DATE:  
February 27, 2002  
INDEX No. 18865/99

-against-

SEQUENCE No. 2

STAFF BUILDERS HOME HEALTH CARE,

Defendant.

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The following papers read on this motion:

- Notice of Motion and Supporting Papers
- Affirmation in Opposition
- Reply Affirmation

Motion by defendant for an order pursuant to CPLR 3212(b) for summary judgment dismissing the complaint is granted.

Plaintiff, Karen Klinkowitz, retained the services of defendant, Staff Builders Home Health Care (Staff Builders) to provide home care assistance to the decedent, Nettie Klinkowitz. The decedent was a seventy-eight year old woman who had a medical history of hypertension, congestive heart failure, transient ischemic attack, mental dementia and breast cancer. Staff Builders

assigned a New York State certified Personal Care Aide (PCA) to provide decedent with assistance ambulating, preparing meals, doing her personal laundry and light housekeeping chores, during the hours of 10:00 a.m. until 5:00 p.m..

On July 22, 1997 while in care of Mireille Degand a New York State Certified Personal Care Aid and an employee of defendant, plaintiff's decedent fell and struck her head. Subsequent to the fall Degand administered aid to decedent and waited for plaintiff to arrive home.

At that time plaintiff took her mother to Hempstead General Hospital where she was treated and released. On July 23, 1997, the Hospital asked that plaintiff's mother return as a CAT scan taken on the 22nd showed evidence of intercranial bleeding. Nettie Klinkowitz went back to Hempstead General Hospital on July 23, 1997 and remained there to the date of her death on August 5, 1997. The autopsy Report finds that Nettie Klinkowitz suffered from Multiple Acute Cerebral Hemorrhage and Cerebellar Infarction due to "Hypertensive Arteriosclerotic Cardiovascular Disease."

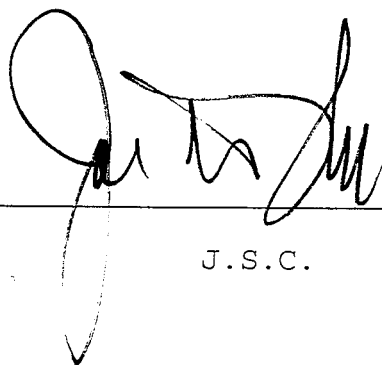
While there is allusion by plaintiff to arguably relevant statements by neighbors and a landscaper, no affidavits from these individuals are submitted nor is there any reference to their unavailability. The PCA Mireille Degand, no longer an employee of defendant, was not deposed nor has plaintiff sought the assistance of the Court to depose her. An affidavit of Ms. Degand and her statements to her employer (defendant) in an incident report are before the Court and are exculpatory. She avers in her affidavit

attached to defendants moving papers, "as Nettie was entering her home through the back door, I remained directly behind her which is proper. As she was entering the home, Nettie fell and struck her head on the wall inside the home. Nettie had a bump on her head. I applied water and ice to the bump and waited for Karen to arrive home so that she could be brought to the Hospital." The affidavit further asserts that she was assigned from 10:00 a.m. to 4:00 p.m. and that the incident occurred in "the late afternoon".

While the plaintiff here asserts that there is more than one version of the facts, the Court does not find any competent evidence of such.

Plaintiff has offered no direct evidence of negligence by the aide; the facts demonstrated do not give rise to a reasonable inference of negligence by circumstantial evidence; any such evidence would be based on speculation.

This constitutes the Decision and Order of the Court.



A handwritten signature in black ink, appearing to be "J. S. C.", is written over a horizontal line. The signature is stylized and cursive.

J.S.C.

Dated: May 15, 2002

**ENTERED**

**MAY 22 2002**

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**