

SHORT FORM ORDER  
SUPREME COURT - STATE OF NEW YORK

Present:  
**HON. EDWARD W. MC CARTY, III**  
Justice.

TRIAL/IAS, PART 1  
NASSAU COUNTY

SANDS POINT CENTER FOR HEALTH AND  
REHABILITATION.

INDEX NO.: 13832/08

Plaintiff(s).

-against-

MOTION DATE: 08/18/10  
MOTION SEQ.: #001

FAY J. TADDONIO.

Defendant(s).

The following papers read on this motion:

- Notice of Motion/Order to Show Cause.....X
- Cross-Motion.....
- Answering Affidavits.....X
- Replying Affidavits.....

Motion by plaintiff for an order pursuant to CPLR 3212 granting summary judgment to plaintiff against defendant, is denied.

This is an action for breach of contract, fraudulent conveyance and unjust enrichment arising from defendant's non-payment of \$36,880.24 allegedly due plaintiff pursuant to plaintiff nursing home's admission agreement for Tomasina Beyer, signed by defendant Fay Taddonio, as responsible party, on March 28, 2007.

By signing the admission agreement as a responsible party, defendant personally guaranteed continuity of payment from Tomasina Beyer's funds to which she had access or control and agreed to arrange third-party payment if necessary to meet Ms. Beyer's cost of care.

Plaintiff attempts to establish that defendant had access or control to Tomasina Beyer's funds by submitting a copy of a power of attorney from Ms. Beyer to defendant dated August 24, 2006. However, it appears that such power of attorney might have been revoked by Ms. Beyer at some point because plaintiff's also submit a Quit Claim Deed of Ms. Beyer's life estate in 31 Waldo Lane, Munsey Park, New York to defendant, which Quit Claim Deed was signed for Ms. Beyer by Diane Cannon,

defendant's successor as attorney-in-fact, on March 13, 2008. Therefore, there is an issue of fact as to whether defendant had access or control to the only apparent asset of Tomasina Beyer during the period from March 24, 2007 through September 1, 2007 when neither Medicare nor Medicaid covered Ms. Beyer's nursing home care. Moreover, even if defendant had access or control to such asset, plaintiff has failed to establish if Ms. Beyer's only apparent asset, her life estate in 31 Waldo Lane, Munsey Park, New York, had any value. To the extent that Medicaid granted Ms. Beyer coverage while she still held her life estate in such premises, there is a question of fact as to what value, if any, this asset might have had.

Issues of fact preclude the granting of plaintiff's motion for summary judgment.

Motion denied.

Date: September 22, 2010

**EDWARD W. McCARTY III**

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J.S.C.

**ENTERED**

SEP 29 2010

NASSAU COUNTY  
COUNTY CLERK'S OFFICE