

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. JOHN W. BURKE

Justice

-----X
LINDA C. TRUMP, MARY TRUMP, LISA TRUMP,
and FRED C. TRUMP, III, individually
and as parent and natural guardian of
WILLIAM TRUMP, an infant under the age
of 18 years,

TRIAL/I.A.S. PART 3
NASSAU COUNTY

Plaintiffs,

INDEX NO. 6795/00

-against-

DONALD J. TRUMP, ROBERT S. TRUMP and
MARYANNE TRUMP BARRY, as Preliminary
Co-Executors of the Estate of FRED C.
TRUMP, deceased, APARTMENT MANAGEMENT
ASSOCIATES, INC. and TRUMP MANAGEMENT,
INC.,

MOTION DATE: 8/25/00
MOTION NO. 1,2,3,4

Defendants.

-----X

2-Orders to Show Cause,	
2-Notices of Cross-Motion, Affs. & Exs.....	<u>1 - 4</u>
Answering Affidavits.....	<u>5 - 7</u>
Replying Affidavits.....	<u> </u>
Briefs: Plaintiff's/Petitioner's.....	<u>8</u>
Defendant's/Respondent's.....	<u> </u>

Upon the foregoing papers, it is ordered that this motion by plaintiffs pursuant to CPLR §6301 to enjoin the defendants, their agents, employees, servants and anyone acting on their behalf, from terminating plaintiffs' eligibility to receive health insurance benefits or from terminating plaintiffs' health insurance benefits pending the duration of this action; cross-motion by defendants (a) to fix a cash undertaking of \$500,000 or a surety bond in said amount to reimburse defendants for any loss occasioned by plaintiffs' failure to prevail; (b) to vacate the temporary restraining order and to deny a preliminary injunction and, in the event the temporary restraining order is continued, that it be conditioned on the filing of the aforesaid undertaking or cash deposit by a fixed date and to dismiss the temporary restraining order and preliminary injunction if the undertaking is not furnished; (c) to dismiss the proceeding following an evidentiary hearing as to the lack of a written contract between the plaintiffs and the defendants; (d) to compel plaintiffs to furnish an Amended Complaint to address whether or not the agreement between plaintiffs and defendants was oral or in writing and, if in writing, to produce a copy thereof and if oral to provide the

particulars thereof and to extend defendants' time to answer said Amended Complaint; (e) to dismiss the action as against the three Co-fiduciaries "because they did not in any way act as co-fiduciaries" and because the Estate of Fred C. Trump, Sr. did not make any guarantees or contracts to provide medical coverage for anyone beyond his lifetime; (f) that the coverage granted to plaintiffs was a gift and defendants cannot be compelled to continue gifts; (g) to deny the temporary restraining order based upon material misrepresentations of fact made by plaintiffs; (h) to declare the undertaking to be nunc pro tunc if the injunction is to be preserved; (i) to consider Exhibits C and D to this cross-motion and the cancellation and termination provisions therein in light of the Statute of Frauds; (j) to provide that any dispute arising out of Exhibit B shall be resolved by arbitration as provided in the Separation Agreement dated June 9, 1970; (k) to dismiss the action based on the Statute of Frauds because no written commitment by Fred Trump, Sr. survives his death; and (l) to declare that the alleged agreement is void based upon the provisions of the General Obligations Law; separate motion by plaintiffs to punish the defendants for contempt of court by reason of their violation of the terms of a Stipulation dated May 15, 2000 and "So Ordered" on July 31, 2000 by failing to continue the existing health plan coverage for Fred C. Trump, III and his dependents, Linda C. Trump and Mary Trump; cross-motion by defendants (a) to dismiss the Order to Show Cause dated August 7, 2000 (plaintiffs' motion to punish the defendants for contempt of court) because the defendants were and are in compliance with the Stipulation dated May 15, 2000 and "So Ordered" on July 31, 2000; (b) to assign this motion to I.A.S. Part 3; (c) to direct the plaintiffs to comply with the Stipulation dated May 15, 2000 and "So Ordered" on July 31, 2000 by furnishing the information required and to process future claims for medical coverage and "special benefits" through their primary insurance carrier and then through defendants' agents (AMA) in accordance with all laws, regulations and contractual provisions regarding coordination of benefits; (d) to dismiss the Order to Show Cause dated August 7, 2000 (seeking punishment of the defendants for contempt of court) by reason of plaintiffs' failure to serve defendants with a certified copy thereof pursuant to CPLR §§2105 and 5104; (e) for a hearing pursuant to CPLR §2218; (f) for a denial of the request to vacate the stay of discovery pursuant to CPLR §3214(b); and (g) for costs and sanctions; are disposed of as hereinafter provided.

Fred C. Trump, Sr. died on June 25, 1999. His son, Fred C. Trump, Jr. was divorced from plaintiff, Linda Trump, in 1970 and died in 1981. Fred C. Trump, Jr. had two children, plaintiffs, Fred C. Trump, III, and Mary Trump. Plaintiff, Lisa Trump, is the spouse of plaintiff, Fred C. Trump, III. Plaintiff, William Trump, is the disabled infant son of plaintiff, Fred C. Trump, III.

This action arises out of arrangements made by Fred C. Trump, Sr. and Trump family operated entities to furnish health and

medical insurance coverage for Trump family members and employees of Trump family enterprises.

Plaintiffs allege that the defendants threatened to terminate or terminated plaintiffs' medical benefits because certain of the plaintiffs filed objections to the probate of the will of Fred C. Trump, Sr. The plaintiffs also allege that William Trump, the infant son of plaintiff, Fred C. Trump, III, suffers from an illness which requires the expenditure of enormous sums of money for medical care. All plaintiffs contend that the loss of the coverage would be catastrophic and would cause irreparable harm to them.

The Complaint in this action seeks to permanently enjoin the defendants from discontinuing medical benefits to the plaintiffs and money damages.

After the filing of the first motion by the plaintiffs and the defendants' cross-motion thereto, the plaintiffs and the defendants, by their attorneys, entered into a Stipulation dated May 15, 2000 and "So Ordered" by the undersigned on July 31, 2000. The Stipulation provides as follows:

"The parties to the above-captioned action, by their attorneys, desire to settle Plaintiffs' motion for a preliminary injunction as follows:

"1. Apartment Management Associates, Inc. (AMA) will continue the existing AMA health plan coverage for Fred C. Trump, III, and his dependents (Lisa, Andrea, Christopher and William). Fred C. Trump, III acknowledges that he currently possesses health coverage for himself and all his dependents through his current employer. As such, he agrees to comply with all laws, regulations and contractual language regarding coordination of benefits. Furthermore, Fred C. Trump, III hereby agrees to release to AMA's representatives any and all information, including but not limited to medical insurance received or available from his employer, necessary to process any claim submitted to AMA's health plan administrator. This coverage will continue during the pendency of this action until such time as final judgment is entered.

"2. With respect to the 'special payments' (payments made pursuant to the July 19, 1999 letter from Dennis Hasher to R.B. Lewis Associates, Inc.) provided on behalf of William Trump, AMA will continue to pay for these expenses, notwithstanding the fact that they might not be 'covered expenses' under either health plan (the employer of Fred C. Trump, III or AMA) after they have been fully processed in accordance with all laws,

regulations and contractual language regarding coordination of benefits. These payments will continue during the pendency of this action until such time as final judgment is entered.

"3. AMA will continue the existing AMA health plan coverage for Linda C. Trump and Mary Trump through May 31, 2000 to afford them additional time to obtain medical insurance on their own. AMA will authorize their agent for employee benefits, R.B. Lewis Associates, Inc. to assist Linda C. Trump and Mary Trump, who agree to fully cooperate to obtain their own coverage. AMA will reimburse Linda C. Trump and Mary Trump for the costs of this coverage during the pendency of this action until such time as final judgment is entered.

"4. If final judgment on this action is entered for Defendants, Plaintiffs Mary Trump and Fred C. Trump, III agree to reimburse AMA for any and all health plan costs paid by AMA for costs incurred by all Plaintiffs subsequent to the termination date. For regular benefits, the termination date is April 30, 2000. For 'special payments' on behalf of William, referred to in paragraph 2, the termination date is March 31, 2000. Mary Trump and Fred C. Trump, III agree that their income stream or distributions from and interests in Midland Associates and affiliated entities (referred to as the 'Midland Group') may be used jointly and severably for the repayment of any expenses, whether or not incurred on their behalf or on the behalf of a co-plaintiff or dependent.

"5. Nothing contained herein shall be deemed a waiver of any rights that any party might possess."

In support of their claims the plaintiffs cite the fact that the Trump family businesses have provided medical benefits to the Trump family for 30 years. Plaintiffs also cite the fact that in a writing dated June 9, 1970 Fred C. Trump, Sr. guaranteed all of the money obligations contained in a separation agreement between plaintiff Linda Trump and Fred C. Trump, Jr. The guarantee was to terminate upon the death of Fred C. Trump, Sr. As above indicated Mr. Trump (Sr.) died in 1999.

Mary Trump states that in or about 1970 Fred C. Trump, Sr. promised his entire family that their medical and health care needs would "always" be provided for. She states that family members relied on the promise and refrained from purchasing health insurance. It is her claim that this promise was fulfilled until March of 2000 when Mary Trump and her brother Fred C. Trump, III filed objections to the probate of the will of Fred C. Trump, Sr.

It is her contention that the threat by the defendants to terminate the health insurance constitutes a breach of the promises and the written agreement of Fred C. Trump, Sr. and that the plaintiffs will be irreparably harmed if the defendants are allowed to terminate the theretofore provided health insurance coverage.

Plaintiffs also contend that the payment of medical expenses by AMA was not a gift but was, instead, a promise to pay carried out for thirty years which was reasonably relied upon by the plaintiffs to their detriment. Plaintiffs urge that the cross-motion be denied on this ground as well.

In defendants' cross-motion, defendant, Robert S. Trump, states on behalf of the defendants and the preliminary Co-Executors of the will of Fred C. Trump, Sr. that none of the defendants ever made any agreement to furnish medical care to any members of the family. Robert S. Trump, who is an officer, director and a shareholder in Apartment Management Associates, Inc. (the source of the medical payments) states that the Estate of Fred C. Trump, Sr. has no interest in the corporation. It is the claim of the defendants that the medical care was gratuitously furnished to all of the family members notwithstanding that all of the adult plaintiffs are multimillionaires whose annual income from family businesses is approximately \$200,000. When AMA's agent was advised that private duty nursing services would not be covered by insurance while William was in I.C.U. because 24-hour per day nursing care was part of the hospital service and that 24-hour per day nursing care would not be provided when William was to go home because it was outside his father's health plan and would not be covered under the "stop loss" insurance contract the agent was directed by Mr. Hasher of AMA to continue to pay nursing costs until otherwise directed. Mr. Trump states that he has since learned that 24-hour nursing care is not needed.

He further states that the AMA plan was converted to a self-funded plan intended to cover only full-time employees. An exception was obtained for Fred C. Trump, III, Mary Trump, Linda Trump and Maryanne Trump Barry at no cost to them. On July 19, 1999 Mr. Hasher directed the AMA administrator to provide "special benefits" to William Trump, the newborn son of Fred C. Trump, III. It is his position that the payments were gratuitous, that they were not conditioned upon the signing of waivers of probate and and they were not the subject of a lifetime guarantee.

AMA has demanded information with respect to the employee related health insurance furnished to Fred C. Trump, III by his employer so that the proceeds of the coverage received by him as an employee may be offset against the AMA coverage.

On August 7, 2000 the plaintiffs moved to punish the defendants for contempt of court by reason of their alleged failure to abide by the Stipulation dated May 16, 2000 and "So Ordered" by

the court on July 31, 2000 pursuant to which the defendants were to continue the existing AMA health plan for Fred C. Trump, III, his dependents, Linda C. Trump and Mary Trump. On this motion plaintiffs' attorney, Mr. Wicks, states that from May 15, 2000 to July 10, 2000 many outstanding health claims were not paid and that he so advised defendants' attorney, Mr. Laurino in writing. Mr. Laurino replied that the family insurance carriers had requested but had not received specific data on the basic (primary) health plan maintained by the employer of Fred C. Trump, III. The response also indicates that payments for the benefit of William will continue " * * notwithstanding the fact that they might not be 'covered expenses' under either health plan * * ." In short, the letter specifies the details required for making the claims.

Mr. Wicks also seeks to vacate the automatic stay of discovery occasioned by the motion to dismiss.

Defendants state that they have complied fully with the Stipulation and that they will continue to do so upon receipt of the appropriate information pertaining to existing health insurance maintained by the plaintiffs and state that they have complied with the Stipulation with respect to coverage for Linda C. and Mary L. Trump notwithstanding the failures of the said plaintiffs to provide their basic coverage data.

It is defendants' contention that the service of the Summons and Complaint and the motion papers for injunctive and monetary relief was defective in that the papers were served on the attorneys who represent the co-fiduciaries in the probate proceeding in Queens County. The order to show cause dated April 28, 2000 (Franco, J.) pursuant to which this action was commenced directed that plaintiffs serve said attorneys based upon plaintiffs' statement that personal service on the co-fiduciaries would not be possible in time to prevent defendants terminating the insurance coverage. The service is deemed to have been effective.

One day after the date of the Stipulation defendant AMA sent a letter to the plan administrator directing it to " * * implement the coverage aspects of the agreement * * ". It also advised the administrator that Fred C. Trump, III had health coverage through his employer and that claims were to be submitted to his carrier first and then processed by AMA. It further directed that " * * [i]f any claims are rejected by his carrier as 'uncovered' and then submitted to you, you need to request information regarding the medical necessity of that claim. If you find it not medically necessary, we will continue to pay as a special benefit".

Louis D. Laurino, Esq. submitted an additional affidavit in which he explains the restricted appearance of his firm for Donald J. Trump, Robert S. Trump and Maryanne Trump Barry as Preliminary Co-Executors of the Estate of Fred C. Trump, Sr. Defendants also allege that Fred C. Trump, III has not furnished the insurance

claim data requested by the defendants and needed by them to process the claims presented to the defendants. Finally, the defendants state that the issues raised by them require that the stay of discovery be lifted so that proper preparation for a hearing and/or a trial may be made.

Central to the determination of these motions and cross-motions is the Stipulation dated May 15, 2000 and "So Ordered" by the undersigned on July 31, 2000.

The plaintiffs' motion for an injunction is denied except to the extent that its terms conform to the terms of the Stipulation entered into between the parties on May 15, 2000 and "So Ordered" by the undersigned on July 31, 2000.

Defendants' first cross-motion seeks several separate items of relief designated by the letters (a) through (l). Item (a) is denied. The parties have stipulated to security for losses in the event the plaintiffs do not prevail at the trial. Items (b) and (g) are granted to the extent provided herein and are otherwise denied, plaintiffs' motion for injunctive relief having been granted in part and denied in part and security having been fixed by said Stipulation. Items (c), (e), (f), (i), (k) and (l) are denied since said items constitute issues to be determined at trial. Item (d) is granted and plaintiffs shall, within 20 days after the date of this order furnish an Amended Complaint and a Bill of Particulars stating whether the alleged existing (pre-action) agreement between plaintiffs and defendants (and any non-parties) was oral or in writing and, if in writing, plaintiffs shall produce a copy thereof and, if oral, plaintiffs shall provide the particulars thereof. Defendants shall have 20 days after the receipt of the documents referred to herein within which to answer the Amended Complaint and to demand further particulars. Item (h) is denied. The Stipulation dated May 15, 2000 shall prevail. Item (j) is denied. Fred C. Trump, Sr. was not a party to his son's separation agreement and cannot be bound by its terms.

The plaintiffs' separate motion to punish the defendants for contempt by reason of their alleged violation of the Stipulation dated May 15, 2000 by failing to continue the existing health plan coverage for Fred C. Trump, III, his dependents, Linda C. Trump and Mary L. Trump is denied with leave to renew after the completion of discovery.

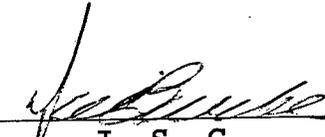
The defendants' second cross-motion seeks multiple items of relief. Item (a) seeks to dismiss plaintiffs' motion to punish the defendants for contempt of court and is denied with leave to renew upon completion of discovery. Item (b) is denied as moot, the matter having been referred to the undersigned. Item (c) is denied. The plaintiffs and the defendants are subject to the terms of the Stipulation dated May 15, 2000 and "So Ordered" on July 31, 2000. Item (d) is denied. The defendants had actual knowledge of

the existence of the order (Campanella v. Campanella, 150 A.D.2d 194). Item (e) is denied. The court declines to conduct a contempt hearing pending completion of discovery and reserves the right to refer such hearing to the trial court. Item (f) is denied. Discovery shall proceed as provided herein. Item (g) which seeks costs and sanctions is denied with leave to renew after trial.

The attorneys for all parties to this action shall appear for the purpose of a Preliminary Conference pursuant to 22 NYCRR §202.12 at the Lower Level, Nassau County Supreme Court Building, Mineola, N.Y. on December 18, 2000 at 9:30 A.M. The conference shall continue from day to day until completed and shall not be adjourned without the consent of the court. Any adjourned date granted by the court shall be deemed a court ordered date as if the date appeared in this order.

Plaintiffs shall serve a copy of this order upon the attorneys for defendants within 10 days of the date hereof.

Dated: NOV 20 2000



J. S. C.

ENTERED
NOV 27 2000
KAREN V. MURPHY
COUNTY CLERK OF NASSAU COUNTY