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THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
MONMOUTH COUNTY
LAW DIVISION
DOCKET NO. L-3685-20

ATLANTIC PLASTIC & HAND
SURGERY, P.A.,

Plaintiff,

v.

WILLIAM F. RALLING, STEPHEN
L. RALLING, AND SHERYL
RALLING,

Defendants.

APPROVED FOR PUBLICATION
December 9, 2022
COMMITTEE ON OPINIONS

Decided: November 16, 2021

Shawn J. Wallach, for plaintiff (Law Offices of Shawn J. Wallach, PC, attorneys)

Max Vilenchik and William F. Chandler, for defendants (Max Vilenchik, Esq. PLLC, attorneys)

ACQUAVIVA, J.S.C.

This litigation arises from unreimbursed medical expenses incurred by a twenty-four-year-old who was a named "adult child" dependent on a parent's health insurance policy, pursuant to the Patient Protection and Affordable Care

Act (ACA). Following failed efforts to recoup the unreimbursed fee, Atlantic Plastic & Hand Surgery, P.A. (Atlantic) sued the patient and his parents.

This summary judgment motion concerns two questions of first impression in New Jersey. First, pursuant to the Statute of Frauds, can a family member's oral guaranty of payment be enforceable where the promisor has no pecuniary interest? Second, can a parent who is the insurance policyholder be liable for unreimbursed medical expenses incurred by an emancipated child who is a covered "adult child" dependent pursuant to the ACA? The court answers both questions in the negative.

I.

In October 2017, William Ralling[1] suffered significant facial, elbow, and hand injuries in a skateboarding accident. At the time, William was twenty-four years old and a named "adult child" dependent on his father Stephen Ralling's health insurance policy, provided by Horizon Blue Cross Blue Shield of Texas (HBCBSTX).

Following the injury, William went to the emergency room at Riverview Hospital, where he was joined by his mother Sheryl Ralling. William

[1] Due to the defendants' common surname, each defendant will be identified by first name following the initial reference. No disrespect is intended.

consulted with Dr. Michael Risin, a physician and Atlantic shareholder, who disclosed that he was out-of-network vis-à-vis HBCBSTX.

William provided consent to proceed, signing various documents, the substance of which is disputed by the parties, but not germane to the narrow legal issues addressed here. Although Sheryl only signed a document as a witness, during the conversation she stated words to the effect of "[w]e have insurance, let [Dr. Risin] work" – phraseology Dr. Risin understood to be a guaranty of payment by Sheryl of any unreimbursed expenses. Stephen was not present at the hospital.

Atlantic contends that the usual and customary charges for the services provided to William totaled $50,626.38. HBCBSTX, however, paid $1,423.29 via check sent to Stephen that was subsequently forwarded to Atlantic. Thus, the outstanding balance is $49,202.47. Attempts to resolve the balance failed, and Atlantic sued the Rallings on myriad legal theories including breach of contract, book account, unjust enrichment, and quantum meruit.

Cross motions for summary judgment were filed. All issues with respect to William were addressed by the court on the record.

II.

Summary Judgment

Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). A court does not act as factfinder when deciding a summary judgment motion. Judson v. Peoples Bank & Tr. Co. of Westfield, 17 N.J. 67, 73 (1954).

In Brill v. Guardian Life Insurance Co. of America, the Court stated that a summary judgment motion requires the court "to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." 142 N.J. 520, 523 (1995) (quotation omitted).

A genuine issue of material fact must be substantial in nature. Id. at 529 (juxtaposing substantial to imaginary, unreal, or fanciful). Where the evidence presented "is so one-sided that one party must prevail as a matter of law," courts should not hesitate to grant summary judgment. Liberty Surplus Ins. Corp., Inc. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007) (quotation

omitted). Said another way, the non-movant "must do more than show that there is some metaphysical doubt as to the material facts." Triffin v. Am. Int'l Group, Inc., 372 N.J. Super. 517, 523-24 (App. Div. 2004) (quotation omitted).

Statute of Frauds

Sheryl argues that, to the extent her oral comments at the hospital may be construed as a guaranty of William's unreimbursed medical expenses, such is unenforceable pursuant to the Statute of Frauds. Specifically, N.J.S.A. 25:1-15 provides: "A promise to be liable for the obligation of another person, in order to be enforceable, shall be in a writing signed by the person assuming the liability or by that person's agent." Atlantic, conversely, contends that this statutory provision does not apply due to the common law "leading object" exception. Analysis of the warring contentions requires historical perspective.

Modeled on Parliament's 1677 enactment of the English Act for Prevention of Frauds and Perjuryes, 29 Car. 2, c. 3, reprinted in 5 The Statutes of the Realm 839 (1819), the Statute of Frauds requires specified agreements be in writing to be enforceable. N.J.S.A. 25:1-5; 25:1-10 to -16. This writing requirement "recognizes that certain agreements may be 'susceptible to fraudulent and unreliable methods of proof.'" Maeker v. Ross, 219 N.J. 565, 578 (2014) (quoting Lahue v. Pio Costa, 263 N.J. Super. 575, 599 (App. Div.), certif. denied, 134 N.J. 477 (1993)); accord Moses v. Moses, 140 N.J. Eq. 575,

584 (E & A 1947) ("The primary design of . . . the Statute of Frauds is to avoid the hazards attending the use of uncertain, unreliable and perjured oral testimony . . . .").

The current statutory provision at issue here—N.J.S.A. 25:1-15—has its roots in the repealed N.J.S.A. 25:1-5(b). In similar language, the repealed precursor provided:

> No action shall be brought upon any of the following agreements or promises, unless the agreement or promise upon which such action shall be brought or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or by some other person thereunto by him lawfully authorized:
>
> . . . .
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> b. A special promise to answer for the debt, default or miscarriage of another person.

The former provision served as backdrop in Howard M. Schoor Associates, Inc. v. Holmdel Heights Construction Co., 68 N.J. 95 (1975), New Jersey's formative authority on the "leading object" exception. There, the plaintiff engineering and surveying firms alleged that Alan Sugarman, who owned approximately one-fifth of the defendant company's stock, orally promised to pay all of plaintiffs' outstanding bills as well as future charges. The defendant entity, Holmdel Heights Construction Company, was developing a tract of land to construct homes. The requested engineering work

was necessary for the project to advance. Following that verbal promise, Sugarman made a lump sum payment to demonstrate "good faith in giving [a] personal guaranty as to payment of the outstanding and continuing obligation." Id. at 99.

The Schoor Court adopted the common law "leading object" exception to the Statute of Frauds, articulating the exception as follows: "[W]hen the leading object of the promisor is to subserve some interest or purpose of [the promisor's] own, notwithstanding the effect is to pay or discharge the debt of another, [the] promise is not within the statute." Id. at 102 (quoting 2 Corbin on Contracts, § 366 (1950)). The Court continued, "it becomes important, and probably decisive, to determine what interest, purpose or object was sought to be advanced by [the] promise to pay . . . ." Ibid. (emphasis added).

In defining the object, the Court relied on leading treatises, quoting the Restatement (First) of Contracts § 184 (1932), which provided that, to be exempted from the Statute of Frauds' writing requirement, the promisor's interest must be "mainly for [the promisor's] own pecuniary or business advantage, rather than in order to benefit the third person." Id. at 104-05 (emphasis added). The Court further observed that "[t]he identical formulation of the rule appears in the Restatement (First) of Security § 93 (1941)." Id. at 105.

The dispositive nature of Sugarman's pecuniary interest was omnipresent in the Court's rationale. The Court reasoned that Sugarman's "substantial pecuniary and business interest [was] furthered" by the oral promise, making it "abundantly clear" that the leading object of the promise was Sugarman's own financial interest, thereby exempting the promise from the Statute of Frauds' writing requirement. Id. at 106.

Nearly two decades later, in 1996, the Legislature amended the Statute of Frauds to delete paragraph b from N.J.S.A. 25:1-5. However, in the same piece of legislation, the Legislature "enacted a new coordinate statute requiring guarantees to be in writing"—N.J.S.A. 25:1-15—the provision at issue here. Walder, Sondak, Berkeley & Brogan v. Lipari, 300 N.J. Super. 67, 76 (App. Div. 1997) (discussing legislative history). Analyzing the legislative history surrounding the repeal and replacement of the writing requirement at issue, Walder concluded that, "in the absence of a meaningful difference between the former and current statutes, we reject [the] contention that the Legislature intended to invalidate Schoor." Id. at 77. In a word, Schoor lives.

The facts in Walder further support the viability of Schoor's pecuniary interest requirement. There, Joseph Lipari, the then-mayor of Passaic, was under federal investigation. In addition to that elected position, Lipari partially owned and dominated the management of the businesses that

employed his children. Lipari received a weekly salary from the businesses, totaling more than $500,000 annually. Id. at 70.

Lipari hired the firm of Walder, Sondak, Berkeley & Brogan for representation in the criminal investigation. At the first meeting between client and attorney, Lipari expressed concern about protecting the businesses. Following his indictment, Lipari advised counsel that he and the businesses "would make payment for all legal services rendered to [Lipari]" by the firm and that the services rendered to Lipari "were for [the businesses'] benefit as well." Id. at 72. Both of Lipari's children testified that in view of the federal investigation "the continued association of Lipari with defendants' business in the minds of some of their customers gave defendants a reason to help Lipari fight potential convictions that would harm their reputation and induce some customers to stop doing business with them." Id. at 78. Thus, Lipari's pecuniary interest was obvious—any reputational damage would adversely impact the businesses' goodwill, thus harming Lipari's ownership interest and, potentially, Lipari's on-going remuneration. No published authority has addressed the leading object exception since Walder.

The pecuniary requirement not only survived New Jersey's statutory amendment but continues to persevere in secondary authority. For example, Section 116 of the Restatement (Second) of Contracts provides that an oral

guaranty falls outside the Statute of Frauds "if the consideration for the promise is in fact or apparently desired by the promisor mainly for [the promisor's] own economic advantage, rather than in order to benefit the third person." (Emphasis added). The point is reinforced in the Restatement's illustrations, which reject emotional ties as sufficient to invoke the leading object exception. Specifically, Illustration 1 provides:

> D owes C $1,000. C is about to levy an attachment on D's factory. S, who is a friend of D's desiring to prevent [D]'s financial ruin, orally promises C that if C will forbear to take legal proceedings against D for three months S will pay D's debts if D fails to do so. S has no purpose to benefit himself and C has no reason to suppose so. S's promise is not enforceable.
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> [Id.]

Atlantic cites no authority to the contrary—that is, authority indicating that friendship or familial affection satisfy the leading object exception.

The rationale supporting the pecuniary advantage requirement is unassailable—the pecuniary interest "provide[s] persuasive objective evidence that any promise was actually made." 4 Corbin on Contracts, § 16.1 (rev. ed. 1997). Obviously, the signed writing protects against perjury, but, more relevant here, the pecuniary interest requirement "protect[s] family members and others closely associated with principal debtors from their rashest oral promises, induced by emotion or by the exigencies of relationships, and often

without any real opportunity for awareness of the nature and magnitude of the risks undertaken." Id. All risks present here.

That rationale animates the overwhelming majority of cases declining to apply the leading object exception to enforce oral promises where the benefit is non-pecuniary. See, e.g., Riba v. Pila, 543 So.2d 429, 430 (Fla. Dist. Ct. App. 1989) (promise made "to keep peace in the family"); Ebb Corp. v. Glidden, 366 S.E.2d 440 (N.C. 1988) (per curiam) (adopting reasoning of dissent below, reported at 87 N.C. App. 366, 372-73 (N.C. Ct. App. 1987) (Becton, J., dissenting), which recognized "clear and settled law that the parent-child relationship is not sufficient in and of itself to take an oral promise by a parent to pay a child's debts outside the Statute of Frauds by applying the main purpose doctrine").

Here, no evidence indicates that Sheryl received any pecuniary or financial benefit. Nothing in the record indicates that Sheryl's comments made at the hospital were anything other than parental support of William. To be sure, Atlantic conceded as much at oral argument stating, "I can't think of anything financial [Sheryl] had to gain," as opposed to the parental benefits of a child receiving health care for facial injuries.

Therefore, based on the decades-long thread of pecuniary advantage that is woven through New Jersey's leading object tapestry, the court holds that

oral promises supported by familial bonds only—without any pecuniary or economic advantage to the promisor—do not satisfy the leading object exception to the Statute of Frauds and, accordingly, must be in writing to be enforceable pursuant to N.J.S.A. 25:1-15. Because Sheryl's oral representation falls beyond the "leading objection" exception and, thus, is unenforceable, summary judgment shall be entered in Sheryl's favor.

Policyholder Liability

With respect to Stephen, Atlantic contends that liability exists by virtue of Stephen's status as the primary insured and policyholder of a health insurance plan that, consistent with the ACA, extended coverage to William, an "adult child." The court is unpersuaded.

Under New Jersey law, William became an adult on his eighteenth birthday. Pursuant to N.J.S.A. 9:17B-3, on that birthday, William had the "legal capacity to act and the same powers and obligations" of an adult. "[E]very act or action of any such person shall be . . . valid, binding, and enforceable by or against such person . . . and no act or action by any such person . . . shall be subject to disaffirmance because of minority." Id.; accord N.J.S.A. 9:17B-1 (legislative findings extending basic contractual rights to persons eighteen years of age); Hull v. Weir, 122 N.J. Super. 219 (Law Div. 1993) (holding eighteen-year-old may contractually settle lawsuit without

court approval). Here, at the time of Atlantic's services, William was an emancipated adult capable of contracting for the provided care.[2]

It is equally undisputed that, pursuant to the ACA, health insurers are obligated to allow willing parents to include an "adult child" under the age of twenty-six on their health insurance policies. See 42 U.S.C. § 300gg-14(a).[3] Specifically, the ACA provides that: "A group health plan and a health insurance issuer offering group or individual health insurance coverage that provides dependent coverage of children shall continue to make such coverage available for an adult child until the child turns twenty-six years of age." Id.

Contrary to Atlantic's reading of the ACA, that provision imposes no obligations on a policyholder, but merely mandates that the insurer make the specified coverage available. The ACA is silent with respect to imposing any financial obligations on a parental policyholder vis-à-vis unreimbursed

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[2] William was twenty-four years old at the time of the procedure. His parents were married. There is no dispute that William was emancipated. Accordingly, the court will not wade into the waters of whether a similar result would accrue where the child's parents are not married, the child remains unemancipated, and obligations for the child's basic necessities, including unreimbursed medical expenses, are apportioned by a court through a consensual agreement or, alternatively, via judicial determination following a plenary hearing.

[3] New Jersey law was amended to be consistent with the ACA on this point. See, L. 2019, c. 356 (amending various statutes to require insurers that provide coverage for a dependent to "continue to make that coverage available for an adult child until the child turns twenty-six years of age . . . .").

medical expenses due providers occasioned by, as here, medical care requested by, approved by, and received by an adult child. Importantly, Atlantic fails to cite—and research did not reveal—any authority supporting its theory of liability.

Thus, in the absence of any common law financial obligation to an adult child, any statutory law, or any regulatory obligation imposing a financial obligation on a parental policyholder, the only other potential theory is that of a guaranty. However, as previously discussed, the Statute of Frauds requires such a guaranty to be memorialized in a writing "signed by the party to be charged therewith." N.J.S.A. 25:1-15. Nothing in the record indicates that the health insurance card presented by William to Atlantic was signed by Stephen. Thus, because no signed, written guaranty was memorialized, the Statute of Frauds prevents enforcement of any purported contract created by the health insurance card.

This question presents an issue of first impression in New Jersey. In fact, research revealed only one published opinion in the nation addressing the issue, Westchester County Health Care Corp. v. Ceus, 92 N.Y.S.3d 861 (Sup. Ct. N.Y., Westchester Cnty. 2019). There, as here, an adult child covered by a parent's insurance policy received medical care that was not fully reimbursed by the insurer. The provider sought to recoup the unreimbursed amounts from

the parental policyholder. There, as here, the court rejected the providers' contentions that parental responsibility, statutory law, or contract law imposed an obligation on the parental policyholder. The same result is appropriate here, premised on the same rationale.

Accordingly, summary judgment shall too be entered in favor of Stephen, as there is no authority imposing liability on the parental insurance policyholder for unreimbursed medical expenses incurred by an emancipated, "adult child" dependent.[4]

[4] The litigation against William was subsequently settled.