

No. 1-12-0450

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(3)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LEXINGTON HEALTH CARE CENTER OF)	Appeal from the
STREAMWOOD, INC.,)	Circuit Court of
)	Cook County.
Plaintiff-Appellant,)	
)	
v.)	10 M1 108241
)	
INGER M. GRAVES,)	Honorable
)	Joyce Gorman,
Defendant-Appellee.)	Judge Presiding.

PRESIDING JUSTICE NEVILLE delivered the judgment of the court.
Justices Sterba and Pierce concurred in the judgment.

ORDER

- ¶ 1 *Held:* The court will not hold an agent personally liable on a contract the agent signed solely as a representative for her principal.
- ¶ 2 Lexington Health Care Center of Streamwood, Inc., accepted Dee Graves as a patient in 2009. Three months later, Dee's daughter, Inger Graves, signed a contract with Lexington. Dee died shortly thereafter, leaving part of his bill unpaid. Lexington sued Inger. Inger moved for summary

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judgment on the complaint, arguing that she signed the contract solely as Dee's agent, and not in any capacity in which Lexington could hold her personally liable for breach of the contract. The trial court granted Inger's motion for summary judgment. On appeal, Lexington argues that the terms of the contract make Inger liable for the unpaid bill. We find that Inger signed the contract solely as Dee's agent, and therefore the contract bound only Dee and not Inger. Therefore, we affirm the trial court's judgment.

¶ 3

BACKGROUND

¶ 4 On March 26, 2009, Dee Graves moved into facilities operated by Lexington. On June 30, 2009, Don Vasquez, acting on behalf of Lexington, signed a document with the following provisions:

"CONTRACT BETWEEN RESIDENT AND LEXINGTON HEALTH CARE CENTER

This Admission Agreement and the accompanying Designation of Resident's Representative form (collectively, this 'Agreement') executed this 30th day of June 2009, by and between Lexington Health Care Center of Streamwood, Inc. (hereinafter, 'Facility'), Dee Graves (hereinafter, 'Resident'), _____ (hereinafter, 'Resident's Representative'), and _____ as trustee(s) of trusts holding assets for the Resident's benefit, if such trust exists.

*** 'Resident's Representative' means the same thing as

'Responsible Party,' and both terms mean a person who is now, or in the future may become, responsible to use the Resident's assets to pay the Facility for all amounts billed by the Facility for care provided to the Resident not paid by *** [any] other source. ***

*** The Facility accepts Resident and Resident, Resident's Representative accept Facility, as the provider of health care services to be rendered to Resident ***.

*** The term of this Agreement shall begin on the date of admission ***.

* * *

*** Resident and Resident's Representative agree to assume full responsibility in making timely and proper application for Public Assistance ***. A failure by the Resident or Resident's Representative to so apply for Public Assistance *** constitutes a breach of this Agreement and subjects the Resident and Resident's Representative to personal liability to the Facility ***.

* * *

*** Resident's Representative, if applicable, is _____.
***.

*** If Resident is unable to personally execute this Agreement, the person/entity signing this Agreement on the

Resident's behalf, hereby represents that he/she/it is the duly appointed Guardian of the Resident ***, a Trustee of trusts controlling Resident's assets, Resident's Representative, as defined herein, or has been designated by the Resident as Property Power of Attorney ***. Any failure by such person to fulfill their legal obligation to use the Resident's funds to pay Facility any amounts for services provided to Resident not covered by *** other sources or to fulfill their duties *** to use the Resident's assets to pay the Facility for all amounts billed by the Facility for care provided to the Resident will subject such person to liability for breach of this Agreement ***."

¶ 5 The form had lines for the signatures of Dee, Lexington, the Resident's Representative, and the Trustee of Trusts Dee owns. Inger signed on the line marked Resident's Representative. She left the line for her title blank, even though Dee had signed a Property Power of Attorney form which designated Inger as Dee's agent with the authority to manage Dee's assets. The form did not include a line for the signature of an agent other than a Resident's Representative.

¶ 6 Lexington also obtained Inger's signature on a second form, titled Designation of Resident's Representative. According to this form,

"At or before admission to the Facility, the Resident or a family member or friend of the Resident should designate, in writing, a 'Resident's Representative' who can legally use the Resident's assets,

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now or in the future, to pay for the Resident's care ***. The Resident or the Resident's family member or friend should *** place a check mark next to the option that most closely describes *** the Resident's designation of a Resident's Representative."

¶ 7 Inger checked the option stating that

"The Resident has already designated another person as his or her Property Power of Attorney, and that Property Power of Attorney has already become effective with the person designated as the Property Power of Attorney currently making all decisions regarding the Resident's assets not held in trust for the Resident's benefit ***.

If the Resident's Property Power of Attorney *** fail[s] to use the Resident's assets under their control to pay the Facility any amounts not paid by *** other parties, then, and only then, shall such Property Power of Attorney *** become personally liable to Facility for any such unpaid amounts."

¶ 8 Lexington discharged Dee on July 5, 2009. Dee died on July 24, 2009. According to Lexington's records, at his death Dee left unpaid a bill from Lexington for \$24,814.06.

¶ 9 On March 18, 2010, Lexington sued Inger for breach of contract, seeking to recover the unpaid balance. Lexington named Inger, without any designation of a special capacity, as the sole defendant. In its amended complaint, Lexington emphasized that the contract Inger signed subjects her to "personal liability" to Lexington, and she became "personally liable" to Lexington for the

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unpaid balance. Lexington claimed that Inger failed to use Dee's income and assets to pay for Lexington's services, that she failed to deposit social security checks with Lexington, and that she failed to apply for public aid.

¶ 10 Inger moved for summary judgment based primarily on her contention that she signed the contract only as Dee's agent. She added several other possible bases for summary judgment. First, according to Inger, Lexington in its contract attempted to circumvent a federal statute that precluded Lexington from requiring a third party to guarantee payment of Dee's debt. See 42 U.S.C. § 1396r(c)(5)(A)(ii). Second, Dee incurred most of the debt to Lexington before June 30, 2009, and therefore the suit against Inger constituted an attempt to hold her liable for Dee's prior debts, in violation of the statute of frauds. See 740 ILCS 80/1 (West 2010). Finally, Inger argued that Lexington's accounts showed that after the date on which Inger signed the contract, Dee incurred only \$1,200 in charges before Lexington discharged him, and Lexington also received \$1,970 from Dee's insurance after June 30, 2009. Inger argued that the insurance completely amortized any debt she could owe personally under the contract.

¶ 11 In discovery, Lexington received all of Dee's bank statements for the last three years of his life. Lexington appended the statements to its response to the motion for summary judgment. Although Lexington alleged in its complaint that Inger misused Dee's funds, it did not point to any of the bank statements as support for its allegations. Instead, Lexington sought further discovery. It did not specify any particular documents it needed or any transactions in which Inger may have violated her duties under the Property Power of Attorney Dee signed.

¶ 12 The trial court granted Inger summary judgment on grounds that Inger signed the contract

only as Dee's agent, and therefore Lexington must seek its contractual remedies solely from Dee and his estate. Lexington appealed. Inger moved to dismiss the appeal, arguing that Lexington conceded that it had sued the wrong party. When this court received no response from Lexington, we granted the motion and dismissed the appeal. Lexington moved for reconsideration. It explained that it did not receive the motion to dismiss, and it did not concede that it sued the wrong party. We now grant Lexington's motion for reconsideration, vacate our dismissal of the appeal, and enter this order instead.

¶ 13

ANALYSIS

¶ 14 We review *de novo* an order granting a motion for summary judgment. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). Lexington argues first that the trial court's finding of agency has no bearing on the proper disposition of the complaint. The trial court held that Lexington could not hold Inger personally liable for Dee's debt, because Inger signed the contract only as Dee's agent. See *Carter v. SSC Odin Operating Co., LLC*, 2012 IL 113204 ¶ 56 *petition for cert. filed* Feb. 15, 2013 (No. 12-1012); *Kankakee Concrete Products Corp. v. Mans*, 81 Ill. App. 3d 53, 57 (1980). Lexington argues that it "didn't sue [Inger] personally, but in her capacity as Power of Attorney and Responsible Party." It adds that it "is not seeking to impose such personal liability against Ms. Graves in this case."

¶ 15 The complaint names only Inger, without any designation of special capacity, as the sole defendant in this case. The complaint repeatedly emphasizes that under the terms of the contract, Lexington can hold Dee's Representative "personally liable" for breach of the contract. We agree with the trial court that Lexington sought in the complaint to hold Inger personally liable for breach

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of contract.

¶ 16 The trial court held that it could not hold Inger liable for breach of the contract, because she signed the contract only as an agent for Dee, and not in her individual capacity. Lexington counters that Inger signed in her capacity as the holder of a power of attorney for Dee, and the contract expressly imposes obligations on her in her capacities as Dee's representative and as holder of his power of attorney. The issue arises as a matter of contract interpretation. "In determining whether it is the intention of the parties to bind the *** principal or to bind the purported agent individually, all of the facts and circumstances surrounding the making of the contract are properly considered by the court." *Freeport Journal-Standard Publishing Co. v. Frederic W. Ziv Co.*, 345 Ill. App. 337, 347 (1952), quoted in *M & J Diesel Locomotive Filter Corp. v. Nettleton*, 56 Ill. App. 2d 146, 151 (1965).

¶ 17 In support of its interpretation of Inger's signature on the contract, Lexington points to the addendum to the contract in which Dee, through his agent, Inger, admitted that he had already given Inger a power of attorney to manage his assets. We do not see how Dee's admission makes Inger personally liable for amounts billed by Lexington. On the contrary, all of Inger's signatures on the contract and supplemental documents indicate that she signed solely in her capacity as Dee's agent. The contract warned Dee about the duties Lexington would impose on Inger if she signed in any further capacity. Dee and Inger chose to indicate with every signature that Dee accepted the contract, but no signature indicates Inger's agreement to the terms of the contract, or her intent to accept personal liability if Dee failed to comply with the contract. We agree with the trial court that Inger never signed the contract in a manner that would bind her personally to the terms of the contract.

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See *Kankakee*, 81 Ill. App. 3d at 57.

¶ 18 Lexington cites several cases from other jurisdictions in which courts found a signatory personally liable on a contract with a nursing home when the signatory failed to use the resident's assets to pay the nursing home's bills. See *Sunrise Healthcare Corp. v. Azarigian*, 821 A.2d 835 (Conn. App. 2003); *Manahawkin Convalescent v. O'Neill*, 43 A.3d 1197 (N.J. Super. 2012) *petition for certification granted* 54 A.3d 811 (2012); *Shaw v. Covenant Care Waldron Home*, 944 N.E.2d 580 (Ind. App. 2011) (unpublished memorandum decision). The courts in those cases found evidence that the persons found liable had accepted the terms of the contracts, and they had not signed solely as agents for the nursing home residents. Because we find that Inger never agreed to bind herself to the terms of Lexington's contract with Dee, we affirm the decision to grant Inger's motion for summary judgment. We need not address the other bases Inger advanced for her motion for summary judgment.

¶ 19

CONCLUSION

¶ 20 Dee, through his agent, Inger, signed a contract with Lexington shortly before he died. Although Dee admitted in the contract that he assigned a property power of attorney to Inger, neither Dee nor Inger indicated in the contract that Inger signed in her capacity as holder of a power of attorney, or that she intended to accept personal responsibility for ensuring that Dee complied with the contract. Because Lexington sought to hold Inger personally liable on a contract she signed solely as an agent for Dee, we affirm the decision to grant summary judgment in favor of Inger.

¶ 21 Affirmed.