2019 IL App (2d) 180494-U
No. 2-18-0494
Order filed January 17, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THOMAS E. ANDERSON, Plaintiff-Appellant, v. REST HAVEN ILLIANA CHRISTIAN CONVALESCENT HOME d/b/a PROVIDENCE HEALTHCARE AND REHABILITATION CENTER and MARIANJOY REHABILITATION HOSPITAL & CLINICS, INC., Defendants (Marianjoy Rehabilitation Hospital & Clinics, Inc., Defendant-Appellee).	)	Appeal from the Circuit Court of Du Page County. No. 17-L-950 Honorable Dorothy French Mallen, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Burke and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's dismissal with prejudice of plaintiff's second amended complaint alleging a violation of the Nursing Home Care Act against defendant Marianjoy Rehabilitation Hospital & Clinics, Inc. was affirmed where Marianjoy was not an "owner" or "licensee" under the Act and thus could not be liable to the plaintiff for injuries he sustained while in the nursing home's care.

¶ 2 Plaintiff, Thomas E. Anderson, appeals an order of the circuit court of Du Page County dismissing with prejudice his second amended complaint against defendant Marianjoy Rehabilitation Hospital & Clinics, Inc. (Marianjoy). Plaintiff alleged that Marianjoy violated the Nursing Home Care Act (Act) (210 ILCS 45/1-101 *et seq.* (West 2016)) when plaintiff was injured while a resident of defendant Rest Haven Illiana Christian Convalescent Home, d/b/a Providence Healthcare and Rehabilitation Center (nursing home). At issue is whether Marianjoy, which provides rehabilitation services at the nursing home, is an "owner" of it within the meaning of the Act. For the reasons that follow, we determine that Marianjoy is not an owner and affirm.

¶ 3 I. BACKGROUND

¶ 4 A. The Act

¶ 5 The Act is a comprehensive statute establishing standards for the treatment and care of nursing home residents, under which they are guaranteed certain rights and nursing home facilities are charged with certain responsibilities. *Carlton at the Lake, Inc. v. Barber*, 401 Ill. App. 3d 528, 531-32 (2010). To ensure that nursing homes comply with the Act, the legislature gave the Department of Public Health (Department) expanded regulatory and enforcement powers and it created civil as well as criminal penalties for violations of the Act. *Carlton*, 401 Ill. App. 3d at 532. To provide protection for residents, the legislature requires that private nursing homes be licensed, and the Act grants residents a private right of action for violations of their rights. *Eads v. Heritage Enterprises, Inc.*, 325 Ill. App. 3d 129, 132 (2001). Section 3-601 (210 ILCS 45/3-601 (West 2016)) provides that the "owner and licensee are liable to a resident for any intentional or negligent act or omission of their agents or employees which injures the resident." "Licensee" means the individual or entity licensed by the Department to operate the

facility. 210 ILCS 45/1-115 (West 2016). "Facility" means a private home, institution, building, residence, or any other place that provides, through its ownership or management, personal care, sheltered care, or nursing for three or more persons who are not related to the applicant or owner by blood or marriage. 210 ILCS 45/1-113 (West 2016). "Owner" means the individual, partnership, corporation, association or other person who owns a nursing home. 210 ILCS 45/1-119 (West 2016). Section 1-119 further provides that if the facility is operated by a person who leases the physical plant, and the plant is owned by another person, "owner" means the person who operates the facility, "except that if the person who owns the physical plant is an 'affiliate' of the person who operates the facility, and has significant control over the day-to-day operations of the facility, the owner of the physical plant is jointly and severally liable with the operator of the facility." 210 ILCS 45/1-119 (West 2016). The Act then ascribes a three-tiered meaning to the word "affiliate." Briefly, "affiliate" is a term of art relating the lessor-owner of the physical plant to the lessee-operator of the nursing home by law or kinship. 210 ILCS 45/1-106 (West 2016).

¶ 6 B. Plaintiff's Lawsuit

¶ 7 On March 7, 2018, plaintiff filed his second amended complaint against the nursing home and Marianjoy (collectively defendants), alleging as follows. Marianjoy provides rehabilitation and other medical services at the nursing home in Downers Grove, Illinois. In September 2015, plaintiff was admitted to the nursing home for rehabilitation following a total right knee replacement. Plaintiff's wheelchair was not equipped with footrests, and he was unable to keep his right leg off the ground while being wheeled down a hallway. His leg was dragged beneath the wheelchair, resulting in injury when his incision opened. Plaintiff alleged that defendants violated the Act in numerous ways. Plaintiff also alleged that defendants' acts were willful and

wanton. Plaintiff further alleged violations of various federal regulations, which are not germane to this appeal. Only the nursing home answered the second amended complaint.

¶ 8 On April 19, 2018, Marianjoy moved to dismiss the second amended complaint pursuant to section 2-619(a)(9) of the Code of the Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2016)), arguing, *inter alia*, that it is not an "owner" or "licensee" of the nursing home and cannot be liable for plaintiff's injuries. Marianjoy attached as exhibits to its motion an affidavit of Nancy K. Szmyd, the risk manager of Marianjoy's Wheaton hospital, and a joint venture agreement (the agreement) between Marianjoy and Rest Haven Christian Services (Rest Haven), to provide rehabilitation services at the nursing home, which Rest Haven operates. Szmyd averred that Marianjoy does not maintain nursing homes but that it provides subacute rehabilitation care (care rendered to patients who need inpatient care but less than three hours of daily therapy).

¶ 9 According to the agreement, Marianjoy provides direct rehabilitation services to patients while Rest Haven provides pharmacy, diagnostic, laboratory, and other services, including "all building services," "facility administration," "nursing administration," and "skilled and rehabilitation nursing services." In addition, the agreement requires Rest Haven to maintain all licenses and permits that are required to operate a skilled nursing facility. Nowhere does the agreement provide that Marianjoy owns or is the lessor or the lessee of any portion of the nursing home.

¶ 10 In opposition to the motion to dismiss, plaintiff furnished his affidavit stating that he was admitted to the nursing home for the sole purpose of receiving rehabilitation therapy from Marianjoy. Plaintiff averred that he specifically chose the nursing home based on advertising that the nursing home partnered with Marianjoy to deliver rehabilitation services. He identified

examples of such advertising as exhibits to his affidavit. Plaintiff also attached a progress note detailing that he was injured while being transported in a wheelchair. Although the agreement was Marianjoy's exhibit, plaintiff adopted it and argued that it establishes that defendants are partners and therefore are jointly and severally liable.

¶ 11 During the oral argument before the trial court, Marianjoy stressed that it does not own or operate the nursing home but provides services, and the court granted the dismissal on that ground. The court granted a written finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016), and plaintiff filed a timely appeal.

¶ 12 II. ANALYSIS

¶ 13 Before we reach the merits, we address the scope of our review. After plaintiff added Marianjoy as a defendant in its first amended complaint, Marianjoy moved for dismissal pursuant to section 2-619(a)(9). However, it neglected to include any affirmative matter as a basis for dismissal, and the court denied the motion without prejudice. Plaintiff then filed his second amended complaint, and Marianjoy filed a section 2-619(a)(9) motion to dismiss that complaint, attaching to the motion the agreement and Szmyd's affidavit. Although plaintiff argues that the deficient motion to dismiss the first amended complaint has a bearing on the merits of the motion to dismiss the second amended complaint, the first motion is irrelevant because the second amended complaint superseded the first amended complaint. See *Snitowsky v. NBC Subsidiary (WMAQ-TV), Inc.*, 297 Ill. App. 3d 304, 315 (1998) (amended pleadings generally supersede prior pleadings). Consequently, we will address only the motion to dismiss the second amended complaint.

¶ 14 Next, plaintiff inaccurately argues that the trial court's dismissal was based on a ground that the court raised *sua sponte*. Marianjoy argued that it is not an "owner" or "licensee," and the

court granted the dismissal on that ground. Moreover, this court reviews the trial court's judgment, not the reasons for its ruling. *Barney v. Unity Paving, Inc.*, 266 Ill. App. 3d 13, 18 (1994).

¶ 15 Turning to the merits, section 2-619(a)(9) of the Code allows involuntary dismissal where the claim asserted against the defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim. 735 ILCS 5/2-619(a)(9) (West 2016); *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). "Affirmative matter" is something in the nature of a defense that completely negates the cause of action. *Van Meter*, 207 Ill. 2d at 367. In ruling on such a motion, the court interprets the pleadings and supporting documents in the light most favorable to the nonmoving party. *Van Meter*, 207 Ill. 2d at 367-68. The appellate court reviews *de novo* a section 2-619 dismissal. *Van Meter*, 207 Ill. 2d at 368.

¶ 16 To resolve whether Marianjoy is an "owner" of the nursing home, we apply the familiar rules of statutory construction. The court's primary objective in construing a statute is to ascertain and give effect to the legislature's intent. *JPMorgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 461 (2010). The statute's plain language is the most reliable indication of that intent. *JPMorgan Chase Bank*, 238 Ill. 2d at 461. Statutory language must be given its plain and ordinary meaning, and courts cannot construe a statute in a manner that alters the plain meaning of the language adopted by the legislature. *Murray v. Chicago Youth Center*, 224 Ill. 2d 213, 235 (2007). When the statute's language is clear, it must be applied as written without resort to aids or tools of interpretation. *JPMorgan Chase Bank*, 238 Ill. 2d at 461. The statute must be read as a whole and construed so that no term is rendered superfluous or meaningless. *JPMorgan Chase Bank*, 238 Ill. 2d at 461. We will not depart from the plain language of a statute by reading into it exceptions, limitations, or conditions that conflict with the legislative intent.

JPMorgan Chase Bank, 238 Ill. 2d at 461. When a word is defined in a statute, it must be construed by applying the statutory definition provided by the legislature. *People v. Fiveash*, 2015 IL 117669, ¶ 13.

¶ 17 The legislature provided that the terms defined in the Act have the meanings ascribed to them therein. 210 ILCS 45/1-102 (West 2016). Under the Act, only the "owners" and "licensees" of a nursing home are liable for damages, costs, and fees. *Eads v. Heritage Enterprises, Inc.*, 204 Ill. 2d 92, 108 (2003); *Childs v. Pinnacle Health Care, LLC*, 399 Ill. App. 3d 167, 180 (2010). Pursuant to the agreement, Rest Haven is the licensee. To determine whether Marianjoy is an owner, we look at section 1-119 of the Act defining "owner." That section provides two ways in which a person or an entity can be an "owner." The first is to own a "facility," meaning the physical structure. "Facility" is defined as a private home, institution, building, residence, or any other *place*. (210 ILCS 45/1-113 (West 2016)). Focusing on the ownership of the physical structure comports with the legislature's intent to reform the regulatory framework applicable to long-term care facilities. See *Illinois Health Care Ass'n. v. Illinois Department of Public Health*, 879 F.2d 286, 289 (7th Cir. 1989). The legislature chose to deal with problems it perceived in the nursing home industry by regulating private facilities. *People v. Gurell*, 98 Ill. 2d 194, 205 (1983). The Act as a whole is a comprehensive legislative scheme to regulate the operation of nursing homes. *Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455, 462 (1999). Thus, the Act does not directly regulate the medical care that is administered to the residents. *Eads*, 204 Ill. 2d at 108-09.

¶ 18 Under section 1-119, the second way a person or an entity can be an "owner" is to lease the "physical plant" from its owner and operate it as a nursing home: "In the event a facility is operated by a person who leases the physical plant, which is owned by another person, 'owner'

means the person who operates the facility." 210 ILCS 45/1-119 (West 2016). Thus, to be an "owner" one either has to own the physical structure or lease it from the owner. A lessor generally will not bear liability. The exception is where a lessor has "significant control over the day-to-day operations of the facility" and is an "affiliate" of the person who operates the nursing home. 210 ILCS 45/1-119 (West 2016). "Affiliate" is defined as follows: (1) with respect to a partnership, each partner thereof, (2) with respect to a corporation, each officer, director, and stockholder thereof, and (3) with respect to a natural person, any person related in the first degree of kinship to the operator of the nursing home or related through an association with a partnership or corporation. 210 ILCS 45/1-106 (West 2016).

¶ 19 Marianjoy does not fit either statutory definition of "owner." It does not own the physical structure, and under the agreement, it neither leases the facility nor operates the nursing home. So, while plaintiff argues that Marianjoy is an "affiliate" of the nursing home because they hold themselves out as partners in rendering rehabilitation services,[1] plaintiff is using the word "affiliate" in its colloquial sense, not in the way that the legislature defined it. Under the Act, only one who both owns the physical structure and leases it to an operator of a nursing home can be an "affiliate" with the operator. That is not close to our factual scenario. It is well settled that the legislature has the power to articulate reasonable definitions of any terms within its enactment and that such definitions will be sustained to the exclusion of "hypothetical indulgences." *Laborer's International Union of North America, Local 1280 v. State Labor Relations Board*, 154 Ill. App. 3d 1045, 1058 (1987). This court cannot declare that the legislature did not mean what the plain language of the statute imports. *Laborer's International*,

[1] Marianjoy maintains that plaintiff forfeited this argument by not making it to the trial court. While plaintiff's argument is more developed on appeal, he also raised it below.

154 Ill. App. 3d at 1058. As noted, the legislature's focus is on nursing homes, not those who provide medical care to their residents. In *Eads*, our supreme court pointed out that while claims under the Act may sometimes involve a resident's medical care, they do not directly implicate the individual health-care providers. *Eads*, 204 Ill. 2d at 108. In this case, if Marianjoy breached its standard of care toward plaintiff, plaintiff had common law remedies.

¶ 20 III. CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Du Page County.

¶ 22 Affirmed.