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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-726

Filed: 21 February 2017

New Hanover County, No. 16-CVD-526

WRIGHTSVILLE HEALTH HOLDINGS, LLC D/B/A AZALEA HEALTH & REHAB,
Petitioner,

v.

MELISSA BUCKNER, Defendant.

Appeal by plaintiff from order entered 19 May 2016 by Judge Melinda H. Crouch in New Hanover County District Court. Heard in the Court of Appeals 30 November 2016.

Clement Wheatley, by Darren W. Bentley, for plaintiff-appellant.

Craige & Fox, PLLC, by Jennifer Marshall Roden, for defendant-appellee.

DAVIS, Judge.

Wrightsville Health Holdings, LLC d/b/a Azalea Health & Rehab Center (“Azalea Health”) appeals from the trial court’s 19 May 2016 order granting the motion to dismiss of Melissa Buckner (“Defendant”). On appeal, Azalea Health argues that the trial court erred in dismissing its claim for breach of contract. After careful review, we affirm.

Factual and Procedural Background

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Azalea Health is a short-term rehabilitation center located in New Hanover County, North Carolina. Sharon Buckner (“Mrs. Buckner”) was a resident of Azalea Health from 19 June 2014 to 30 December 2014. Upon Mrs. Buckner’s admission to Azalea Health, Defendant — Mrs. Buckner’s adult daughter — signed a document (the “Admission Agreement”) formalizing her admission. The Admission Agreement described the care Mrs. Buckner would receive and outlined her responsibility for payment of these services.

On 1 October 2015, Azalea Health made demand upon Defendant for \$15,001.60 in payments due pursuant to the Admission Agreement. Upon Defendant’s refusal to make this payment, Azalea Health filed a complaint against Defendant on 16 February 2016 in New Hanover County District Court. On 16 March 2016, Defendant filed a motion to dismiss pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, asserting that no contract existed between Azalea Health and Defendant.

A hearing was held before the Honorable Melinda H. Crouch on 18 April 2016, and an order was subsequently entered on 19 May 2016 granting Defendant’s motion to dismiss. On 6 June 2016, Plaintiff filed a timely notice of appeal.

Analysis

When reviewing an order of dismissal for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6), we assess the legal sufficiency of the complaint while taking all of the material factual

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allegations included therein as true.¹ Legal conclusions, however, are not entitled to a presumption of validity. An allegation that a valid contract exists between parties is a legal conclusion.

Charlotte Motor Speedway, LLC v. Cty. of Cabarrus, 230 N.C. App. 1, 6, 748 S.E.2d 171, 175 (2013) (internal citations and quotation marks omitted and footnote added), *dismissing review as improvidently granted*, 367 N.C. 533, 766 S.E.2d 340 (2014).

When considering a motion to dismiss pursuant to Rule 12(b)(6), “[t]he complaint must be liberally construed, and the court should not dismiss the complaint unless it appears beyond a doubt that the plaintiff could not prove any set of facts to support his claim which would entitle him to relief.” *Craven v. SEIU COPE*, 188 N.C. App. 814, 816, 656 S.E.2d 729, 731 (2008) (citation and emphasis omitted). “Dismissal is proper when one of the following three conditions is satisfied: (1) the complaint on its face reveals that no law supports the plaintiff’s claim; (2) the

¹ We note that the trial court made findings of fact and conclusions of law in its order granting Defendant’s motion to dismiss.

[A] trial court cannot make “findings of fact” conclusive on appeal on a motion to dismiss for failure to state a claim under Rule 12(b)(6). The only purpose of a Rule 12(b)(6) motion is to test the legal sufficiency of the pleading against which it is directed. In deciding such a motion the trial court is to treat the allegations of the pleading it challenges as true. The function of a motion to dismiss is to test the law of a claim, not the facts which support it.

White v. White, 296 N.C. 661, 667, 252 S.E.2d 698, 702 (1979). Thus, we disregard the trial court’s findings in our review of Azalea Health’s arguments on appeal.

complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff's claim.” *Podrebarac v. Horack, Talley, Pharr, & Lowndes, P.A.*, 231 N.C. App. 70, 74, 752 S.E.2d 661, 663 (2013) (citation omitted).

“When documents are attached to and incorporated into a complaint, they become part of the complaint and may be considered in connection with a Rule 12(b)(6) motion without converting it into a motion for summary judgment.” *Schlieper v. Johnson*, 195 N.C. App. 257, 261, 672 S.E.2d 548, 551 (2009) (citation omitted); *see also* N.C. R. Civ. P. 10(c) (“A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.”).

In the present case, Azalea Health argues that it alleged a *prima facie* claim for breach of contract against Defendant in its complaint. “The elements of a claim for breach of contract are (1) existence of a valid contract and (2) breach of the terms of that contract.” *Poor v. Hill*, 138 N.C. App. 19, 26, 530 S.E.2d 838, 843 (2000) (citation omitted).

Azalea Health's complaint alleged, in pertinent part, as follows:

7. Under the Contract, [Defendant] has an obligation to satisfy her mother's financial obligations to Azalea Health.

. . . .

10. Pursuant to the Contract, [Defendant] agreed that if any of her mother's assets transferred by operation of law and such transfer causes her mother's remaining resources

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to be insufficient to pay the debt in full, then [Defendant] would be personally responsible for the remaining debt.

11. Pursuant to the Contract, [Defendant] agreed that if any of her mother's funds were not turned over to Azalea Health for payment of her mother's financial obligations, then she would pay from her own resources any unpaid charges due.

Normally, based on our standard of review applicable to orders of dismissal under Rule 12(b)(6), we would simply accept these allegations from the complaint as true. However, Azalea Health also attached a copy of the Admission Agreement to its complaint, thereby incorporating the contract as part of the complaint. *See Charlotte Motor Speedway*, 230 N.C. App. at 6, 748 S.E.2d at 176 (“[T]he trial court was permitted to consider this document [attached to the complaint] to determine whether a contract did, in fact, exist between the parties.” (citation omitted)). Accordingly, we are not bound by Azalea Health's statements in its complaint characterizing the terms of the Admission Agreement and are instead able to review the document for ourselves.

The first line of the Admission Agreement stated as follows:

This Agreement is made and entered into this 19th day of June, 2014 (the “EFFECTIVE DATE”) by and between Wrightsville Health Holdings LLC DBA Azalea Health & Rehab Center (the “FACILITY”) and Sharon Buckner (“Resident”) and/or *Sharon Buckner* (“Representative”). Hereinafter, when capitalized, the term “You” shall refer jointly and severally to the Resident and the Representative.

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(Emphasis added.) Therefore, by the clear terms of this provision, Mrs. Buckner was named not only as the “Resident” but also as the “Representative.”

On the final page (the “Signature Page”) of the Admission Agreement, the contract listed “Sharon Buckner” as the “Resident” with the space for the Resident’s signature left blank. The Signature Page then listed the “Authorized Representative” as “Sharon Buckner/Melissa Buckner – POA[.]” and Defendant signed her own name and dated her signature in the space for the “Representative Signature.” At the bottom of the Signature Page the contract stated: “If Authorized Representative signs Agreement, Indicate relationship/authority below (check one)[.]” Boxes were then listed for the following: “Legal Guardian”; “Conservator”; “Durable Power of Attorney”; “General POA”; “Spouse”; or “Other (explain)[.]” All of these boxes were left blank.

In seeking to hold Defendant personally liable under the Admission Agreement, Azalea Health relies primarily upon the following section (the “Guarantee of Payment Section”) of the document:

RESPONSIBILITY TO PAY IF MEDICAID NOT
APPROVED: POTENTIAL FOR DISCHARGE &
PERSONAL GUARANTEE

FACILITY cannot continue to provide services without payment. If the facility is not paid timely by someone, then it will seek to discharge the resident.

Many of our residents’ family members and other representatives wish to make sure that care and services

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to their loved ones are not terminated or interrupted if Medicaid is not approved, and the resident does not have the resources to pay for care.

If the Representative would like to join others in avoiding having the facility seek to discharge the Resident for nonpayment in that instance, then he/she should initial “yes” below.

If the Representative does not wish to protect the resident from being discharged for non-payment if Medicaid coverage is not approved, and the resident does not have the resources to pay for care, then he/she should initial “no” below.

BY INITIALING “YES”, THE REPRESENTATIVE IS AGREEING TO VOLUNTARILY PERSONALLY GUARANTEE PAYMENT TO THE FACILITY, BE JOINTLY AND SEVERALLY LIABLE FOR ALL SERVICES AND SUPPLIES RECEIVED BY THE RESIDENT IN THE EVENT THAT THE RESIDENT’S APPLICATION TO MEDICAID IS DENIED OR COVERAGE IS TERMINATED OR INTERRUPTED, AND TO MAKE ALL PAYMENTS WHEN THEY COME DUE. THE REPRESENTATIVE UNDERSTANDS THAT HE OR SHE IS NOT REQUIRED BY LAW OR THE FACILITY TO PERSONALLY GUARANTEE PAYMENT. THE REPRESENTATIVE AGREES THAT THIS GUARANTEE WILL CONTINUE UNTIL ALL FINANCIAL OBLIGATIONS TO THE FACILITY HAVE BEEN PAID IN FULL.

Defendant signed her own initials below this statement next to the word “Yes.”

Based on our review of the Admission Agreement, we conclude that Mrs. Buckner — not Defendant — formed a binding obligation with Azalea Health as both “Resident” and “Representative.” Because Mrs. Buckner, rather than Defendant, is

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listed at the top of the contract as the “Representative,” Defendant’s signature at the bottom of the contract must be read simply as Defendant signing on behalf of Mrs. Buckner — presumably based on Defendant’s status as her attorney-in-fact pursuant to a valid power of attorney.

Similarly, by initialing the Guarantee of Payment Section, Defendant was acknowledging that the “Representative” — that is, Mrs. Buckner — agreed to the terms of that section. In sum, because Defendant was neither the Resident nor the Representative under the Admission Agreement, her signature and initials on the document merely obligated her *mother* to comply with the terms of the Admission Agreement. Accordingly, the trial court properly dismissed Azalea Health’s claim for breach of contract against Defendant.

Conclusion

For the reasons stated above, we affirm the trial court’s 19 May 2016 order.

AFFIRMED.

Judges STROUD and HUNTER, JR. concur.

Report per Rule 30(e).