

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONTGOMERY

Index No.

ST. MARY'S HEALTHCARE
d/b/a WILKINSON RESIDENTIAL HEALTH CARE
FACILITY,

Plaintiff designates Montgomery
County as the place of trial

The basis of venue is Plaintiff's
place of business.

Plaintiff,

SUMMONS

vs.

ROSE ANN MATTHEWS,

Plaintiff's address:
4988 State Highway 30
Amsterdam, New York 12010

Defendant.

To the above named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: January 3, 2022

UNDERBERG & KESSLER LLP

By: 

Ericka B. Elliott, Esq.
Attorneys for Plaintiff
300 Bausch & Lomb Place
Rochester, New York 14604
Telephone: (585) 258-2800

Defendant's address:

Rose Ann Matthews
147 Wallins Corners Road, Apt 57
Amsterdam, New York 12010

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONTGOMERY

Index No.

ST. MARY'S HEALTHCARE
d/b/a WILKINSON RESIDENTIAL HEALTH CARE
FACILITY,

**VERIFIED
COMPLAINT**

Plaintiff,

vs.

ROSE ANN MATTHEWS,

Defendant.

Plaintiff, St. Mary's Healthcare d/b/a Wilkinson Residential Health Care Facility, by its attorneys, Underberg & Kessler LLP, for its Verified Complaint against Defendant Rose Ann Matthews, herein alleges as follows:

PARTIES

1. At all times hereinafter mentioned, St. Mary's Healthcare d/b/a Wilkinson Residential Health Care Facility ("Wilkinson RHCF" or "Plaintiff" or the "Facility") was and is a not-for-profit corporation duly organized and existing under the laws of the State of New York, with an office and principal place of business located at 4988 State Highway 30, Amsterdam, New York, County of Montgomery, and is a licensed skilled nursing facility, which provides long-term healthcare services.

2. Upon information and belief, at all times hereinafter mentioned, Edwin Matthews (hereinafter "Decedent") was an individual residing at Wilkinson RHCF, 3988 State Highway 30, Amsterdam, New York, County of Montgomery, from December 5, 2013 through November 15, 2021.

3. Upon information and belief, and at all times hereinafter mentioned, Rose Ann Matthews (hereinafter “Defendant Matthews”) was the spouse of Decedent and is an individual residing at 147 Wallins Corners Road, Apt 57, Amsterdam, New York, County of Montgomery.

4. Upon information and belief, at all relevant times, Defendant Matthews was the Power of Attorney for Decedent and had access to Decedent’s finances and assets. A copy of the Power of Attorney appointing Rose Ann Matthews is attached hereto and as **Exhibit “A.”**

BACKGROUND

5. During the period from December 5, 2013 through November 15, 2021, at the specific instance and request of Decedent and Defendant Matthews, Plaintiff rendered nursing home and healthcare services to Decedent.

6. On or about December 5, 2013, a Medicaid application was submitted to the Montgomery County Department of Social Services (“DSS”) on behalf of Decedent.

7. On May 14, 2015, DSS issued a Notice of Intent to Establish a Liability Toward Chronic Care (“NOI”) which 1) approved Medicaid coverage starting December 1, 2013; 2) determined that Decedent must pay her gross monthly income to Wilkinson RHCF. Copies of said NOI are attached hereto as **Exhibit “B.”**

8. Decedent died on November 15, 2021.

9. Upon information and belief, as of the date of this pleading, no estate was filed on behalf of Decedent.

10. As of November 30, 2021, there is a balance due and owing from Decedent in the amount of \$30,455.75 for services rendered to Decedent. A copy of the billing statement is annexed hereto and incorporated herein as **Exhibit “C.”**

AS FOR PLAINTIFF'S FIRST CAUSE OF ACTION
AGAINST DEFENDANT ROSE ANN MATTHEWS
(Breach of Contract)

11. Plaintiff repeats and realleges each and every allegation contained in paragraphs “1” through “10” of this complaint with the same force and effect as though set forth at length herein.

12. In consideration for providing care to Decedent, Defendant Matthews (“Resident’s Spouse/Sponsor”) signed an Admission Agreement with the Facility dated December 5, 2013 (hereinafter the “Agreement”). A copy of the Agreement is attached hereto and made a part hereof as **Exhibit “D.”**

13. Pursuant to the Agreement, Defendant Matthews agree[d] “The Resident understood that, upon Medicaid eligibility, DSS will require most monthly income (the “Net Available Monthly Income” or “NAMI”) to be paid to the Facility as part of the Medicaid rate. If DSS sets a NAMI amount, the Resident agrees (1 to pay the NAMI by the 10th of each month...” See the Agreement, Exhibit D, at page 8, ¶ 3G.

14. Defendant Matthews further agree[d] “that any moneys or funds that are listed in the County DSS budget letter are the NAMI amounts which are required to be turned over to the Facility for payment to the Facility for care rendered to the Resident. The Resident and/or Designated Representative hereby acknowledge that these funds are to be used to pay for the care of the Resident at the Facility and agree to remit such funds promptly to the Facility.” See id. at page 8, ¶ 3G.

15. Defendant Matthews further agree[d] “If Medicaid eligibility is established, the Designated Representative and/or Spouse/Sponsor either (i) personally agrees to pay the Resident’s monthly NAMI...” See id. at page 9, ¶ 4A.

16. Defendant Matthews further agree[d] “The Designated Representative and/or Spouse/Sponsor agree to use their personal resources if necessary to pay damages to the Facility resulting from a breach of their personal and independent obligations of the Facility promised at Section 4 above. Such damages include collection costs and attorney fees.” See id. at page 10, ¶ 4B.

17. To date, the sum of \$30,455.75 is due and owing to Plaintiff for the services it rendered to Decedent pursuant to the Agreement.

18. Plaintiff performed all of its obligations under the Agreement.

19. Defendant Matthews breached the Agreement with Plaintiff by failing to pay Plaintiff pursuant to the Agreement.

20. By reason of Defendant Matthews’s breach of the Agreement, Plaintiff has been damaged in the sum of \$30,455.75, plus attorneys’ fees.

WHEREFORE, Plaintiff respectfully requests that the Court grant Plaintiff the following:

A. Judgment pursuant to the first cause of action against Defendant Rose Ann Matthews in the amount of \$30,455.75;

B. Judgment against Defendant Rose Ann Matthews for all costs of collection, including reasonable attorneys’ fees pursuant to the Agreement;

C. Judgment against Defendant Rose Ann Matthews for the costs and disbursements of this action; and

D. For such other and further relief as the Court may deem just and proper.

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