

DOCKET NO. DBD CV-21-6040554-S : SUPERIOR COURT
 NEW MILFORD CROSSINGS, LLC : J.D. OF DANBURY
 V. : AT DANBURY
 GAIL ALOIA : MAY 22, 2024

OFFICE OF THE CLERK
 SUPERIOR COURT
 2024 MAY 22 1:30 PM
 JUDICIAL DISTRICT
 DANBURY
 STATE OF CONNECTICUT

MEMORANDUM OF DECISION

This action came to this court by way of writ, summons and complaint dated August 30, 2021 with return date of September 21, 2021. The plaintiff is New Milford Crossings LLC, d/b/a Village Crest Center for Health and Rehabilitation (“Village Crest”). The defendant Gail Aloia was a resident of the health care facility during the period of time from May 26, 2020 until November 19, 2020. The plaintiff filed this action in two counts, breach of contract (Count one) and unjust enrichment (Count two). Both counts allege the admission and care of Gail Aloia as a client for services at the health care facility and her failure to pay for services from September 28, 2020 until November 19, 2020.¹

The defendant filed an appearance as self-represented on September 20, 2021. The defendant filed an answer which included what she termed a special defense to the complaint on September 20, 2021. The plaintiff filed a reply on July 8, 2022 which alleged there is no legal basis for a special defense that there is a pending appeal of benefits. The defendant did not pursue this defense and the plaintiff has denied there is presently pending any appeal of benefits from United Healthcare.

The case proceeded with discovery and on August 5, 2022, the defendant filed a limited appearance for counsel to address drafting a motion for extension of time and requests for admissions to be completed. On September 8, 2022, counsel for the defendant filed the certificate of completion of representation. The defendant has proceeded as a self-represented party.

Thereafter, the defendant failed to appear for pretrials and trials in this matter. The court, Judge Shaban, entered a default on January 23, 2024. The defendant did not file a motion to re-open and upon request the action was scheduled for hearing in damages on February 21, 2024. The defendant although receiving notice did not appear at the hearing and her daughter appeared to request a continuance indicating that the defendant was ill and unable to attend. The court did not go forward with the matter on this date. The court indicated on the record that the defendant would be required to

¹ From the date of admission until September 28, 2020, United Healthcare paid for the services provided to the defendant from New Milford Crossings LLC, d/b/a Village Crest.

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submit a note from a medical doctor that she was unable to attend the court proceedings. The court re-scheduled the hearing in damages for May 8, 2024. The defendant did not submit a medical note regarding her inability to attend the February 21 hearing. On May 7, 2024, the defendant filed another motion for continuance again stating she was ill and would be unable to attend. She asked to have the matter continued with no specific date. The court denied the request setting the failure to follow prior court orders and ordered that to continue the matter the defendant would once again need a medical note. (D.E. # 121.01). The plaintiff objected to both motions for continuance. The defendant did not submit a note from a medical doctor and on May 8, 2024 when the defendant again failed to appear or provide the court with a doctor's note of inability to attend, the court conducted the hearing and received testimony and evidence. At the conclusion of the testimony and submission of evidence, the court requested an affidavit in support of the request for attorney's fees and a memorandum addressing the basis of the 10 percent interest claimed by the plaintiff. An affidavit was submitted on May 15, 2024 and a memorandum regarding the interest on May 20, 2024. The court conducted a remote hearing to address these issues on May 21, 2024. Counsel for the plaintiff and Ms. Aloia attended the remote hearing.

"Upon default, the plaintiff ordinarily becomes entitled to recover damages. . . The right to further substantial damages remains to be established by the plaintiff at a hearing in damages." (Citations omitted.) *Kloter v. Carabetta Enterprises, Inc.*, 186 Conn. 460, 464, 442 A.2d 63 (1982). The burden of proof for an award of more than nominal damages is a preponderance of the evidence. *Whitaker v. Taylor*, 99 Conn. App. 719, 734-34, 916 A.2d 834 (2007). "[T]he burden of proving damages is on the party claiming them." *Gargano v. Heyman*, 203 Conn. 616, 620, 525 A.2d 1343 (1987).

On May 8, 2024, the plaintiff presented testimony from Debbie Kantor, the Business Office Manager of Village Crest. Through the testimony of Ms. Kantor and admission of exhibits, the court makes the following findings of fact. Ms. Aloia entered the Village Crest facility as a patient on May 26, 2020. Upon her admission, the defendant signed a Resident Admission Agreement on or about May 27, 2020.² When Ms. Aloia was admitted she was a private pay patient. Her insurance through United Healthcare

² The Agreement includes the initial signature of the defendant and the date is present on the bottom of the form with the signature of the Administrator.

paid the cost of care up until September 8, 2020.³ The agreement which was signed by the defendant indicated a daily rate of \$407 per day for all of the services provided for the defendant. (Ex. 1). The services included her room and board as well as additional care such as nursing or recreational activities while she was a resident. However, in September 2020, the insurance provider indicated it would cease making payments. The defendant was responsible for payments after September 7, 2020. The defendant could also request payment from Medicare but she did not file a Medicare application for payment. The plaintiff through Village Crest sent invoices to the defendant for their services. (Ex. 3). Each invoice noted the cost for services of \$407 per day. The invoices were sent to Gail Aloia at 97 Pondview Terrace, Danbury, Connecticut. The days charged to Ms. Aloia were the dates after insurance no longer covered her care. She received a final invoice which charged for 23 days in September 2020, 31 days in October 2020 and 19 days in November 2020. The full amount of the invoice for the days of service at \$407 per day amounted to \$29,711. (Ex. 2). The invoice notes that the defendant made one payment in the amount of \$3,000. Thus, there was a balance of \$26,711 for the care and services rendered to Ms. Aloia while as a resident at Village Crest.

While a patient and after discharge, the plaintiff provided the invoices for services to the defendant. There was a demand for payment but other than the \$3,000, the defendant did not pay for the services provided by the plaintiff. The plaintiff's witness Ms. Deborah Kantor, provided the background of coverage, payment of sums by the defendant and outstanding balance. The defendant was provided a final statement on June 9, 2021 which supported a balance of \$26,711. (Ex. 2, Ex. 4). The plaintiff also seeks the payment of attorney's fees and interest on the amount due and owing.

The court requested documentation for the requested attorney's fees. The plaintiff submitted an affidavit dated May 15, 2024. The affidavit set forth the hours expended, the work performed and the hourly rate for counsel performing the work. (D.E. # 120). The affidavit presents hours for the various tasks related to this action and the hourly rate of counsel. At the May 21, 2024 follow up status, Attorney Panagoulis explained the fee amount and identified counsel who performed the work. The total fee requested was \$3,887.50. The court finds this fee is supported by the work outlined in the

³ This time period included an extension of the original time period for services and payment from United Healthcare.

affidavit and well within a range of fees for this matter.⁴ Thus, the judgment will include attorney's fees in the amount of \$3,887.50.

Thereafter, Attorney Panagoulis provided background information in support of the request for interest pursuant to General Statutes § 37-3a. This statute provides in relevant part: "... [i]nterest at the rate of ten percent a year, and no more, may be recovered and allowed in civil actions or arbitration proceedings. . . as damages for the detention of money after it becomes payable." The plaintiff provided testimony and exhibits that the services were provided to the defendant from May 26, 2020 through November 20, 2020. The plaintiff also provided a statement of the sums due on June 9, 2021 but no response as to a non-payment. The plaintiff requests the payment of interest permitted by the statute in the amount of 10 percent or \$7,777.86. The plaintiff has requested the interest for the dates beginning June 9, 2021 through May 8, 2024 when the hearing was conducted. The basis for the full 10 percent in accordance with the argument of counsel was that the defendant wrongfully refused a payment she knew was owed and had no good cause for the non-payment. In the request for admissions, the defendant recognized her responsibility for the payment and other than a prior submission for insurance payment had no outstanding appeal to give any validity to her claim that it was under review for payment. In the hearing to determine the requests for payment, the defendant did not have any response for the failure to pay in the past or to the inclusion of interest as provided by the statute. The statute however, gives the court the discretion as to the award. *Picton v. Picton*, 111 Conn. App. 143 (2008). In reviewing the circumstances of the defendant's placement at Village Crest and the changes in the payment providers for this defendant who was unable to obtain additional financial assistance, this court will not award the full 10 percent for interest and determines that an award of half the sum, 5 percent, is appropriate given the status of the defendant, the additional costs that are being awarded by the court for full payment and the attempts to obtain financial assistance for her care. Thus, prejudgment interest will enter for 5 percent amounting to an interest award of \$3,888.93.

Judgment shall enter in favor of the plaintiff in the total amount of \$34,487.43 which is the award of \$26,711.00 for the debt, \$3,887.50 for attorney's fees and \$3,888.93 for interest from June 9, 2021 until May 8, 2021.

⁴ It is noted that the fees did not include the time spent in court for the appearance at hearing in damages which did not proceed and thereafter for the hearing before this court with the supporting witness on May 8, 2024.

THE COURT

B. J. R.

Brazzel-Massaro, J.T.R.

Decision entered in accordance
with the findings on 5/22/24.

Parties/Attorneys of record notified.

H. J. R.
H. J. R.
5/22/24