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AARON MANOR, INC. *v.* JANET A. IRVING
(SC 18788)

Rogers, C. J., and Palmer, Zarella, Eveleigh and Harper, Js.*

Argued September 21, 2012—officially released January 1, 2013

Gerald L. Garlick, with whom was *Charles J. Irving*,
for the appellant (defendant).

Edward M. Rosenthal, for the appellee (plaintiff).

Opinion

EVELEIGH, J. In this certified appeal, the defendant, Janet A. Irving, appeals from the judgment of the Appellate Court in favor of the plaintiff, Aaron Manor, Inc., reversing the portion of the trial court's judgment awarding her attorney's fees under General Statutes § 42-150bb¹ for successfully defending against a commercial party's action based on a contract. The defendant contends that the Appellate Court improperly concluded that, in order to be a "personal representative" entitled to fees under § 42-150bb, she would have to be a legal representative of the party to the contract. We agree with the defendant and, accordingly, reverse in part the judgment of the Appellate Court.

The Appellate Court majority opinion sets forth the following facts and procedural history. "The plaintiff is a skilled nursing care facility that provides medical care, including long-term care, room and board, and prescription medication for its residents. William P. Ammon, the defendant's father, was admitted to the plaintiff's facility on October 29, 2002. Upon his admission, the defendant signed a 'Patient/Resident Admissions Agreement' (admission agreement) and various other documents as the 'responsible party' for the patient. Section II, paragraph 10, of the admission agreement states that '[i]f the responsible party has control of or access to the patient/resident's income and/or assets, the responsible party agrees that these funds shall be used for the patient/resident's welfare, including but not limited to making prompt payment for care and services rendered to the patient/resident in accordance with the terms of this agreement.'

"The defendant never had her father's power of attorney, nor had she ever been appointed conservatrix of his person or estate, or executrix or administratrix of his estate after he died. When her father was admitted to the facility, the defendant informed the plaintiff that she would be the contact person for matters concerning her father's personal care, and that her brother, William P. Ammon, Jr. (Ammon, Jr.), would be responsible for their father's financial matters. The admitting record form lists Ammon, Jr., as the person responsible for the account, and the plaintiff mailed monthly bills directly to him. Ammon, Jr., held a power of attorney for their father and paid the father's bills from the father's bank account.

"The defendant's father was a resident at the plaintiff's nursing care facility from the date of his admission until his death on July 24, 2003. Initially, the charges for his residency were covered by medicare. His private health insurance then paid for his care until March 1, 2003, at which time the plaintiff was notified by the insurer that the coverage was being discontinued on the ground that he no longer required skilled care. From

June 11, 2003, until the date of his death, the private health insurance again paid for the father's residency. Thus, the period of time uncovered by either medicare or the private health insurance was March 1 through June 10, 2003, which resulted in a total unpaid balance of \$27,340.

"The father's bank statements for the period of March 1 through June 30, 2003, indicated account balances fluctuating between \$26,000 and \$54,000. The father had additional assets, including shares of stock, certificates of deposit and a house in Bridgeport. Although the plaintiff sent monthly invoices to Ammon, Jr., the account for the father remained unpaid. Despite the outstanding bill, Ammon, Jr., wrote a check payable to the defendant for \$11,000 from the father's account as a gift in April, 2003. Similarly, he wrote a check to himself at the same time for \$11,000 from the father's account. After the father's death, the house in Bridgeport was sold, and Ammon, Jr., gifted the defendant \$55,000, and, similarly, gifted himself \$55,000 from the proceeds of that sale.

"The defendant never questioned the quality of care provided her father during his stay at the plaintiff's facility. In fact, she testified that the 'caregivers are exceptional.' Notably, her mother was a resident at the plaintiff's facility at the time of trial, and the defendant herself had been a resident in the past. Nevertheless, neither the defendant nor Ammon, Jr., paid the outstanding bill from their father's assets even though the assets were ample and more than sufficient to satisfy the amount due the plaintiff.

"The plaintiff filed the present action against the defendant in March, 2006, claiming breach of contract and fraud. The defendant, represented by her husband, [A]ttorney Charles J. Irving, filed an answer with seven special defenses and a four count counterclaim.² Pre-trial discovery and pleadings were handled by [Charles] Irving. Shortly before trial, the firm of Krasow, Garlick and Hadley, LLC, filed an appearance in lieu of [Charles] Irving on behalf of the defendant. The case was tried before the court on April 8, 2008.

"By memorandum of decision filed September 24, 2008, the court found that the defendant did not have a power of attorney for her father and did not have access to his checking account or to any of his other financial resources. Accordingly, the [trial] court rendered judgment in favor of the defendant on the complaint. The court found the issues in favor of the plaintiff on the counterclaim. Thereafter, the plaintiff filed a motion for reargument and reconsideration pursuant to Practice Book § 11-12, which the court granted but denied the relief requested.

"By motion filed October 8, 2008, the defendant requested attorney's fees pursuant to § 42-150bb and

Practice Book § 11-21 for her successful defense against the complaint. The plaintiff filed an objection to the motion, claiming, inter alia, that the defendant's attorney's fees were spent primarily on the prosecution of the counterclaim and not in the defense of the plaintiff's claim. A hearing was held November 3, 2008, at which time the defendant requested \$39,000 for pretrial and trial representation. Of that amount, \$25,481.25 was requested by [Charles Irving's] firm, Charles J. Irving, LLC, for pretrial representation.³ On November 25, 2008, Charles J. Irving, LLC, filed an appearance on behalf of the defendant in addition to the appearance already on file of Krasow, Garlick and Hadley, LLC. On February 27, 2009, the court issued its memorandum of decision on the request for attorney's fees. In that decision, the court noted that "[t]he plaintiff argues that the attorney's fees should not apply to the counterclaim upon which she did not prevail. The court agrees with this argument. Accordingly, the court awards to [the defendant] attorney's fees in the amount of \$36,000 for successfully defending the complaint in this case.' No further explanation was provided for the court's calculation of the amount awarded.

"On September 22, 2009, [Charles] Irving filed an application for a prejudgment remedy in the amount of \$75,000 to secure the attorney's fees already awarded and to secure 'substantial additional [attorney's] fees for the defense of the plaintiff's appeal, which [attorney's] fees are subject to a further award to the defendant pursuant to [§] 42-150bb.' The court granted the application in the amount of \$50,000." *Aaron Manor, Inc. v. Irving*, 126 Conn. App. 646, 648–51, 12 A.3d 584 (2011).

Thereafter, the plaintiff appealed to the Appellate Court, claiming that the trial court improperly failed to find that the defendant had breached her contract and improperly awarded attorney's fees to the defendant under § 42-150bb. *Id.*, 648. The Appellate Court disagreed with the first claim, but a majority of that court⁴ agreed with the plaintiff's second claim and reversed in part the judgment of the trial court. *Id.* Specifically, the majority concluded that the defendant was not entitled to attorney's fees under § 42-150bb because she was not the personal representative of William P. Ammon without having been made his legal representative, such as through the power of attorney or conservatorship. *Id.*, 659–61. In light of its conclusion, the majority did not reach the plaintiff's claim that the amount of fees awarded was unreasonable. *Id.*, 661 n.9.

Thereafter, the defendant sought certification to appeal from the judgment of the Appellate Court. We granted the plaintiff's petition for certification to appeal, limited to the following issue: "Did the Appellate Court properly reverse the trial court's award of attorney's fees under . . . § 42-150bb?" *Aaron Manor, Inc.*

v. *Irving*, 301 Conn. 908, 19 A.3d 178 (2011).

On appeal to this court, the defendant asserts that the trial court properly awarded her attorney's fees under § 42-150bb for successfully defending against the plaintiff's complaint. Specifically, she contends that, because § 42-150bb is a remedial statute designed to protect the consumer, it should be construed broadly so as to accomplish its purpose, and that, therefore, the Appellate Court improperly limited the definition of "personal representative," as set forth in § 42-150bb, to a legal representative. Moreover, the defendant asserts that, under the proper interpretation of the statute, the admission agreement was a consumer contract and she was a personal representative. In response, the plaintiff asserts that the Appellate Court properly concluded that the definition of personal representative under § 42-150bb should be limited to a legal representative, and that court therefore properly concluded that the plaintiff was not a personal representative for purposes of § 42-150bb. The plaintiff alternatively contends that, even if the defendant was entitled to fees under the statute, the award was excessive and unreasonable. In response, the defendant asserts that the award of attorney's fees was reasonable. We agree with the defendant.

We begin our analysis with the applicable standard of review. Whether the term personal representative, as it is used in § 42-150bb, is limited to legal representatives, presents an issue of statutory interpretation and, therefore, a question of law over which we exercise plenary review. See, e.g., *Rainforest Cafe, Inc. v. Dept. of Revenue Services*, 293 Conn. 363, 371–72, 977 A.2d 650 (2009).

Section 42-150bb provides in relevant part: "Whenever any contract or lease entered into on or after October 1, 1979, to which a *consumer* is a party, provides for the attorney's fee of the commercial party to be paid by the consumer, an attorney's fee shall be awarded as a matter of law to the consumer who successfully prosecutes or defends an action or a counterclaim based upon the contract or lease. . . . For the purposes of this section . . . 'consumer' means the buyer, debtor, lessee or *personal representative* of any of them. . . ." (Emphasis added.)

As the majority opinion of the Appellate Court pointed out, § 42-150bb is in derogation of the common law. Specifically, "[t]he general rule of law known as the American rule is that attorney's fees and ordinary expenses and burdens of litigation are not allowed to the successful party absent a contractual or statutory exception. . . . This rule is generally followed throughout the country. . . . Connecticut adheres to the American rule. . . . There are few exceptions." (Internal quotation marks omitted.) *ACMAT Corp. v. Greater New York Mutual Ins. Co.*, 282 Conn. 576, 582,

923 A.2d 697 (2007). Section 42-150bb is, however, one of those exceptions to the common-law rule. “The law expects parties to bear their own litigation expenses, except where the legislature has dictated otherwise by way of statute. . . . Costs are the creature of statute . . . and unless the statute clearly provides for them courts cannot tax them. . . . Section 42-150bb clearly authorizes an award of attorney’s fees to the consumer who successfully prosecutes or defends an action or a counterclaim on a consumer contract or lease.” (Citations omitted; internal quotation marks omitted.) *Traystman, Coric & Keramidas, P.C. v. Daigle*, 282 Conn. 418, 429, 922 A.2d 1056 (2007).

Section 42-150bb does not define the term personal representative. The plaintiff asserts that because § 42-150bb is a remedial statute designed to protect the consumer, it should be construed broadly so as to accomplish its purpose, and that, therefore, the Appellate Court improperly limited the definition of “personal representative,” as set forth in § 42-150bb, to a legal representative. In light of the particular circumstances of the present case, however, we need not conclusively resolve the scope of the term “personal representative” as used in § 42-150bb. The plaintiff brought its action against the defendant on the basis of allegations that she has a status under the contract that renders her legally responsible for the debt of her father—the consumer. Had the plaintiff prevailed on this claim, it clearly would have been entitled, under the terms of the contract, to attorney’s fees. This court has previously discussed the legislative history of § 42-150bb and recognized that it was designed to provide equitable results for a consumer who successfully defended an action under a commercial contract and the commercial party who was entitled to attorney’s fees. *Rizzo Pool Co. v. Del Grosso*, 240 Conn. 58, 74–75, 689 A.2d 1097 (1997). It would be wholly incongruous with this design to conclude that the plaintiff would be entitled to fees for successfully prosecuting the present action but that the defendant would not be entitled to fees for mounting a successful defense.

As Justice Schaller persuasively articulated in his concurring and dissenting opinion in the Appellate Court: “The purpose of § 42-150bb is to bring parity between a commercial party and a consumer who defends successfully an action on a contract prepared by the commercial party. The plaintiff bears full responsibility for placing the defendant in the position of having to defend a breach of contract action by alleging that, as the ‘responsible party,’ she was responsible for paying certain outstanding bills by virtue of her authority to act on behalf of [her father]. [The plaintiff] cannot now maintain that, because it failed to prove that [the defendant] had access to or control of [her father’s] financial assets, she had no authority to act on behalf of [her father] and is not entitled to recover

the fees she incurred defending that action.” *Aaron Manor, Inc. v. Irving*, supra, 126 Conn. App. 668–69.

Accordingly, we conclude that, under the facts of the present case, the trial court properly determined that the defendant was a consumer under § 42-150bb because she was the personal representative of the buyer, her father. Because the defendant is a consumer who defended the action successfully, under § 42-150bb she would be entitled by operation of law to reasonable attorney’s fees as provided in the contract.

Because we conclude that the Appellate Court improperly reversed the judgment of the trial court on the ground that the plaintiff was not a personal representative, we must address the plaintiff’s alternate ground for affirming the judgment of the Appellate Court. Specifically, the plaintiff claims that the trial court’s award of attorney’s fees was not reasonable and that it improperly failed to hold an evidentiary hearing or make any factual findings relating to the reasonableness of the fees. We disagree with the underlying premise of the plaintiff’s claim.

First, it is important to note that the trial court received written memoranda from both parties, heard oral argument from both parties regarding the issue of attorney’s fees and considered bills that were submitted to the court. Second, although the trial court’s memorandum of decision did not articulate the exact basis for its award of \$36,000 in attorney’s fees, it did find that the defendant was entitled to “reasonable attorney’s fees” and that “*Rizzo Pool Co. v. Del Grosso*, [supra, 240 Conn. 76], directs the trial court to fashion the award [of attorney’s fees] in conjunction with the size of the fee structured for a prevailing plaintiff commercial party as stated in the parties’ contract Part III (2) of the [a]dmissions [a]greement . . . in this case provides that such attorney’s fees would be ‘reasonable.’ ”

The plaintiff failed to seek an articulation from the trial court so as to obtain any further legal and factual basis for its award. As the party seeking to pursue this claim on appeal, the burden was on the plaintiff to provide an adequate basis for review. Consequently, because the plaintiff failed to provide an adequate record, we cannot conclude that the trial court’s award of attorney’s fees was unreasonable. Indeed, this court has repeatedly concluded that “[w]here [the party seeking to pursue a claim] has failed to avail himself of the full panoply of articulation and review procedures, and absent some indication to the contrary, we ordinarily read a record to support, rather than to contradict, a trial court’s judgment.” *Bell Food Services, Inc. v. Sherbacow*, 217 Conn. 476, 482, 586 A.2d 1157 (1991). Accordingly, we reject the plaintiff’s alternate ground for affirming the judgment of the Appellate Court.

The judgment of the Appellate Court is reversed in part as to the award of attorney's fees and the case is remanded to that court with direction to affirm the judgment of the trial court.

In this opinion the other justices concurred.

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

¹ General Statutes § 42-150bb provides: "Whenever any contract or lease entered into on or after October 1, 1979, to which a consumer is a party, provides for the attorney's fee of the commercial party to be paid by the consumer, an attorney's fee shall be awarded as a matter of law to the consumer who successfully prosecutes or defends an action or a counterclaim based upon the contract or lease. Except as hereinafter provided, the size of the attorney's fee awarded to the consumer shall be based as far as practicable upon the terms governing the size of the fee for the commercial party. No attorney's fee shall be awarded to a commercial party who is represented by its salaried employee. In any action in which the consumer is entitled to an attorney's fee under this section and in which the commercial party is represented by its salaried employee, the attorney's fee awarded to the consumer shall be in a reasonable amount regardless of the size of the fee provided in the contract or lease for either party. For the purposes of this section, 'commercial party' means the seller, creditor, lessor or assignee of any of them, and 'consumer' means the buyer, debtor, lessee or personal representative of any of them. The provisions of this section shall apply only to contracts or leases in which the money, property or service which is the subject of the transaction is primarily for personal, family or household purposes."

² In her counterclaim, the defendant claimed breach of contract, unfair trade practices, fraud and violation of the implied covenant of good faith and fair dealing.

³ "In reviewing [Charles] Irving's billing summary, we note that the first three entries are for legal services performed in July and September, 2005, which was prior to the service of process of the complaint, which occurred many months later on March 13, 2006. At the time of trial, the defendant testified that she had not yet paid [Charles Irving] his fees." *Aaron Manor, Inc. v. Irving*, 126 Conn. App. 646, 651-52 n.1, 12 A.3d 584 (2011).

⁴ Judge Schaller authored a concurring and dissenting opinion in which he concluded that "the defendant was a 'consumer' entitled to recover attorney's fees from the plaintiff under . . . § 42-150bb." *Aaron Manor, Inc. v. Irving*, supra, 126 Conn. App. 661.
