

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN SS

HAMPDEN SUPERIOR COURT
CIVIL ACTION NO. 08-704

EAST LONGMEADOW MANAGEMENT SYSTEMS, INC., d/b/a
EAST LONGMEADOW SKILLED NURSING CENTER,

Plaintiff,

v.

HAMPDEN COUNTY
SUPERIOR COURT
FILED

DEC 21 2009


CLERK-MAGISTRATE

Defendant.

JOINT PRE-TRIAL CONFERENCE MEMORANDUM

Pursuant to the Court's Notice to Appear for Final Pre-Trial Conference on December 21, 2009, the parties hereby submit their Joint Pre-Trial Memorandum in the above-captioned matter:

I. AGREED FACTS

1. The plaintiff, East Longmeadow Management Systems, Inc., doing business as East Longmeadow Skilled Nursing Center (the "Plaintiff"), is a Massachusetts corporation with a principle place of business located at 305 Maple Street, East Longmeadow, Hampden County, Massachusetts 01028 (the "Plaintiff's Nursing Home").
2. The defendant, _____ formerly known as _____, is an individual who owned real property known as _____ Road, Springfield, County of Hampden, Massachusetts, _____ •from June 29, 1964 until she sold it _____
3. _____ currently resides at _____ Longmeadow, Massachusetts 01028.
4. _____'s husband, Robert _____-received care and services at the Plaintiff's Nursing Home from July 2, 2006 until he expired on August 7, 2007.

II. STATEMENT OF PARTIES

Plaintiff's Statement of What the Evidence is Expected to Show

The Court already concluded, as a matter of law, that _____ is liable to the Plaintiff for the full cost of necessities furnished to her husband, Robert _____7 The Plaintiff expects the evidence to show that the full cost of necessities furnished to _____ husband, Robert _____ is \$62,489.60.

The Plaintiff further expects the evidence to show that the Plaintiff has not received any monies to pay said \$62,489.60 balance, whether from the Medicaid, or any other third party insurance source. The Plaintiff finally expects the evidence to show that pursuant to well established Massachusetts law, the Plaintiff may pursue a collection action against _____, obtain a final judgment, and collect payment from her for the full private pay \$62,489.60 amount owed while _____ pursues possible payments for this debt from third party insurers; subject to the Plaintiff's duty to then reimburse for any third party payments she obtains.

Defendant's Statement of What the Evidence is Expected to Show

At all times material and relevant to this action, _____ was married to Robert _____ now deceased, **owned property at - Road in Springfield,** Massachusetts, separate and apart from her husband, and there was never any joint ownership interest. _____ retained an organization called "Medi-Services" and dealt with an individual by the name of Sally Feranti, to assist her in handling some of her affairs, inclusive of Medicaid and Medicare issues. W also never signed any documentation, including any contract or agreement obligation herself to any associated expenditures relating to the care and services

rendered to Robert _____ -while he resided at the East Longmeadow Skilled Nursing Center, from July 2, 2006, to the date of his death on August 7, 2007.

The Defendant expects to offer evidence to suggest that _____ mental capacity was failing at or about the time her former husband was admitted to the East Longmeadow Skilled Nursing Center, and that because of her condition, was unable to obtain Medicaid benefits, which would have addressed, in whole or in part, the amount which is claimed due and owing by the Plaintiff.

The Defendant further disputes the amount which is claimed to be due and owing, as being fair and reasonable expenses for the services allegedly rendered to her deceased husband.

III. AGREED SUGGESTED DESCRIPTION OF THE CASE FOR THE JURY

husband. Robert _____ received care and services at the Plaintiff's Nursing Home from July 2, 2006 until he expired on August 7, 2007. The Court already concluded, as a matter of law, that _____-is liable to the Plaintiff for the full cost of necessities furnished to her husband, Robert S. Wilson. The Plaintiff states that the full cost of unpaid necessities it furnished to _____ husband, Robert _____ is \$62,489.60. The Plaintiff further states that pursuant to Massachusetts law, it may pursue a collection action against _____ obtain a final judgment, and collect payment from her for the full private pay \$62,489.60 amount owed while _____ pursues possible payments for this debt from third party insurers; subject to the Plaintiffs duty to then reimburse _____ for any third party payments she obtains.

The Defendant, _____, disputes the amount of monies due and owing.

IV. STATEMENT OF ALL UNUSUAL LEGAL ISSUES

In its decision on the parties' joint motions for summary judgment, the Court interpreted a conflict between two statutes; namely G.L. c. 209, § 1, which states that both spouses are equally liable for necessities furnished by third parties to each other; and G.L. c. 209, § 7, which limits a wife's liability for necessities furnished to her husband to the amount of one hundred dollars in each case. The Court held that G.L. c. 209, § 7 was impliedly repealed by G.L. c. 209, § 1. The Court's ruling is the first decision in Massachusetts history to hold a wife liable for the full cost of necessities furnished to her husband. The Defendant has filed a Notice of Appeal.

V. WITNESS LIST

The Plaintiffs' anticipated list of witnesses:

1. Beverly Cabrini, Business Office Manager for the Plaintiff, East Longmeadow Management Systems, Inc., doing business as East Longmeadow Skilled Nursing Center, 305 Maple Street, East Longmeadow, Massachusetts 01028

Defendant's anticipated list of witnesses:

1. _____

2.

-(address will be supplemented).

6. Sally Feranti Medi - Services, *(address will be supplemented).*

7. Dr. Mitchell Clionsky, PhD., MVA Center, 300 Stafford Street, Suite 360
Springfield, Massachusetts 01104.

8. Keeper of Records of East Longmeadow Management Systems, Inc., d/b/a ^{East}
Longmeadow Skilled. Nursing Center, 305 Maple Street, East Longmeadow,

Massachusetts 01028

The parties reserve the right to rely upon any witnesses called by each other as well as the right to supplement this section of the pre-trial memorandum with reasonable notice to each other.

VI. EXPERT WITNESSES

For the Plaintiff:

None.

For the Defendant:

Dr. Mitchell Clionsky, Ph.D., MVA Center, 300 Stafford Street, Suite 360
Springfield, Massachusetts 01104.

VII. ESTIMATED LENGTH OF TRIAL

One to two days.

VIII. SPECIAL OR LIQUIDATED DAMAGES

None.

IX. POSSIBILITY OF SETTLEMENT/MEDIATION

The parties have and are continuing to attempt an amicable resolution and the Defendant has filed a Notice of Appeal.