

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X
SUSAN SCHMIDT, as ATTORNEY-IN-FACT for REGINA
PINKALL, individually and on behalf of all others similarly
situated,

VERIFIED ANSWER

Index No.: 2019-52328

Plaintiffs,

-against-

SAPPHIRE NURSING AT WAPPINGERS, LLC, MACHLA
ABRAMCZYK; ESTHER FARKOVITS, RICHARD
PLATSCHEK; ROBERT SCHUCK; and DOES 1-25,

Defendants.
-----X

Defendant SAPPHIRE NURSING AT WAPPINGERS, LLC, MACHLA
ABRAMCZYK; ESTHER FARKOVITS, RICHARD PLATSCHEK; ROBERT SCHUCK; and
DOES 1-25, by their attorneys, **CAITLIN ROBIN & ASSOCIATES**, answering the Complaint
of the Plaintiffs herein, respectfully allege(s) as follows:

NATURE OF THE ACTION

1. DENIES each and every allegation contained in the paragraphs "1", "2", "3", "4", "5"
and "6".

PARTIES

2. DENIES knowledge or information sufficient to form a belief as to each and every
allegation contained in paragraphs "7", "8" and "9".

3. DENIES each and every allegation contained in paragraphs "10" and "12" leaving
conclusions of law and fact to be determined by the Court.

4. ADMITS each and every allegation contained in paragraph "11".

JURISDICTION AND VENUE

5. DENIES each and every allegation contained in paragraphs "13", "14", "15" and "16".

FACTUAL BACKGROUND

6. DENIES knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "27" and "28".

7. DENIES each and every allegation contained in paragraphs "29", "30", "31", "32", "33", "34", "35", "36", "37", "38", "39", "40", "41", "42", "43", "44", "45", "46" and "47".

CLASS ACTION ALLEGATIONS

8. DENIES each and every allegation contained in paragraphs "48", "49", "50", "52", "53", "54", "55", "56", "57", "58", "59" and "60".

9. DENIES each and every allegation contained in the paragraphs "51" leaving conclusions of law and fact to be determined by the Court.

FIRST CAUSE OF ACTION

10. Defendant repeats and re-alleges every defense to all prior allegations contained in paragraphs "1" to "60" as set forth in paragraph "61".

11. DENIES each and every allegation contained in the paragraphs "62", "66", "67", "68" and "70" leaving conclusions of law and fact to be determined by the Court.

12. DENIES each and every allegation contained in paragraphs "63", "64", "65", "69", "71", "72", "73", "74", "75", "76", "77", "78", "79" and "80".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

13. Whatever injuries plaintiff may have sustained at the time and place alleged in the Verified Complaint were caused in whole or in part by the culpable conduct and want of care on the part of the Plaintiff and without any negligence or fault or want of care on the part of the Defendant.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

14. Defendant invokes the protection of Public Health Law§ 2805(d)(4) with respect to the alleged cause of action for informed consent and reserve all rights pursuant thereto.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

15. Upon information and belief that injuries and damages alleged were caused by the culpable conduct of some third person or persons over whom answering Defendant neither had nor exercised control.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

16. The plaintiff pursuant to CPLR§ 3211(a)(3) lacks the capacity to sue.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

17. Plaintiff failed to properly serve the Complaint pursuant to CPLR as such this Court lacks jurisdiction over answering Defendant.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

18. The Complaint is time barred in as much as the suit was not instituted within the applicable Statute of Limitations and therefore all allegations therein are time barred.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

19. This answering Defendant asserts all rights pursuant to CPLR§ 1600 et seq. The equitable share of liability, if any, of the answering Defendant shall be determined pursuant to the provisions of Article 16 of the CPLR.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

20. Defendant relies on the provision of Article 14 of the CPLR for contribution and indemnification among all tort feasons.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

21. That the Complaint fails to state a cause of action upon which relief can be granted against the Defendant.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

22. To the extent Plaintiff is asserting a cause of action in malpractice; Plaintiff's complaint is defective in that it does not contain a Certificate of Merit and other related requirements of the CPLR.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

23. Defendant invokes the protection of the Public Health Law §2801-d with respect to and to the extent of any cause of action for deprivation of the resident's rights. Defendant exercised all care reasonably necessary to prevent and limit the deprivation and injury to Plaintiff.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

24. Upon information and belief, any past or future costs and/or expenses incurred or to be incurred by the Plaintiff for medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss, has been or will with reasonable certainty be replaced or indemnified in whole or in part from a collateral source as defined in section 4545(c) of the CPLR.

25. If any damages are recoverable against the answering party, the amount of such damages shall be diminished by the amount of the funds which Plaintiff has received or shall received from such collateral source.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

26. In the event that any person or entity liable or claimed to be liable for the injury alleged in this action has been given or may hereafter be given a release of covenant no to sue, Defendant will be entitled to protection under General Obligation Law 15-108 and the corresponding reduction of any damages, which may be determined to be due against this answering Defendant.

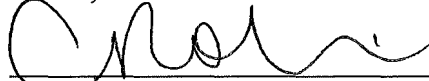
AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

27. The Plaintiff entered Defendant's facility with a pre-existing clinical condition or conditions that rendered the alleged injuries and alleged diminution of activities of daily living unavoidable.

WHEREFORE, Defendant SAPPHIRE NURSING AT WAPPINGERS, LLC, MACHLA ABRAMCZYK; ESTHER FARKOVITS, RICHARD PLATSCHEK; ROBERT SCHUCK; and DOES 1-25, demands judgment dismissing the Complaint of the Plaintiff together with the costs and disbursements of this action.

Dated: New York, New York
August 13, 2019

Yours, etc.



Caitlin Robin
Caitlin Robin & Associates PLLC
Attorneys for Defendant
SAPPHIRE NURSING AT WAPPINGERS, LLC,
MACHLA ABRAMCZYK; ESTHER
FARKOVITS, RICHARD PLATSCHEK;
ROBERT SCHUCK; and DOES 1-25,
30 Broad Street, Suite 702
New York, NY 10004
(646) 524-6026
Our File No.

TO:

FINKELSTEIN, BLANKINSHIP,
FREI-PEARSON & GARBER, LLP
Attorneys for Plaintiffs
By: /s/Todd S. Garber
Todd S. Garber
Jeremiah Frei-Pearson
John Sardesai-Grant
Ayana McGuire
445 Hamilton Avenue, Suite 605
White Plains, New York 10601
Tel: (914) 298-3281
Fax: (914) 824-1561

ATTORNEY'S VERIFICATION BY AFFIRMATION

Caitlin Robin, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am an attorney at **CAITLIN ROBIN & ASSOCIATES**, attorneys of record for Defendant(s), YERTLE OPERATIONS LLC d/b/a FISHKILL CENTER FOR REHABILITATION AND NURSING; MACHLA ABRAMCZYK; ESTHER FARKOVITS; RICHARD PLATSCHEK; ROBERT SCHUCK; and DOES 1-25 I have read the annexed **VERIFIED ANSWER** and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files.

The reason I make the foregoing affirmation instead of the Defendant(s) is because Defendant(s) is/are not presently in the county wherein the attorneys for the Defendant(s) maintain their offices.

Dated: New York, New York
August 13, 2019


Caitlin Robin

AFFIDAVIT OF SERVICE

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

Sandy Sun being duly sworn, deposes and says:

I am over 18 years of age, I am not a party to the action, and I reside in Essex County in the State of New Jersey.

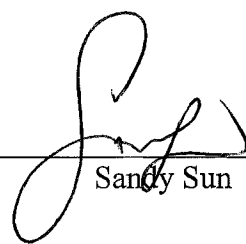
I served a true copy of the annexed

VERIFIED ANSWER

on August 13, 2019

by mailing the same in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee as indicated below:

FINKELSTEIN, BLANKINSHIP,
FREI-PEARSON & GARBER, LLP
Attorneys for Plaintiffs
By: /s/Todd S. Garber
Todd S. Garber
Jeremiah Frei-Pearson
John Sardesai-Grant
Ayana McGuire
445 Hamilton Avenue, Suite 605
White Plains, New York 10601



Sandy Sun

Sworn to before me August 13, 2019



Notary Public

JULIE ANNE LARSEN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01LA6352111
Qualified In New York County
My Commission Expires 12-19-2020

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Caitlin Robin & Associates, PLLC
Attorneys for Defendant
SAPPHIRE NURSING AT WAPPINGERS, LLC, MACHLA ABRAMCZYK; ESTHER FARKOVITS, RICHARD PLATSCHEK; ROBERT SCHUCK; and DOES 1-25
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