

STATE OF NEW YORK  
SUPREME COURT

ULSTER COUNTY

HUTTON DEVELOPERS (AN  
ILLINOIS PARTNERSHIP),

Plaintiff,

- against -

**Decision & Order**  
**Index No.: 03-2627**

346-364 WASHINGTON AVENUE  
CORPORATION et al.,

Defendants.

Supreme Court, Ulster County

RJI# 55-03-01612

Motion Term

**Present: E. Michael Kavanagh, JSC**

Appearances:


Bleakley Platt & Schmidt  
William Harrington Esq.  
Counsel for plaintiff  
One North Lexington Avenue  
PO Box 5056  
White Plains, New York 10602-5056

Michael Hayes Esq.  
Daniels & Porco  
Counsel for Benedictine and Ten Broeck Commons Defendants  
517 Route 22  
PO Box 668  
Pawling, New York 12564-0668

Lisa Ullman Esq.  
New York State Attorney General's Office  
Counsel for New York State Department of Health  
The Capitol  
Albany, New York 12224

**Kavanagh, J**

This action involves the Hutton Nursing Home [hereinafter the Nursing Home]  
which is owned by Charles Glessing and operated out of a building owned by plaintiff

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**MAY 20 2004**  
  
**ALBERT SPADA**  
**ULSTER COUNTY CLERK**

and leased to the defendant Washington Avenue Corporation. In October 2000, Glessing entered into an agreement to sell his ownership interest in the business to defendant Benedictine Hospital; in furtherance of that agreement, Benedictine would become, with the approval of the Department of Health, the receiver of the Nursing Home and be charged with its daily operation. Benedictine has now proposed that the entire operation of the Nursing Home be transferred to Ten Broeck Commons, a subsidiary owned and operated by Benedictine.

Plaintiff, as owner and landlord of the property wherein the Nursing Home was operated, has commenced this action and sought by order to show cause to enjoin Benedictine and the New York State Department of Health from proceeding with the plan to close the Hutton Nursing Home and from approving the transfer of any of its residents to the Ten Broeck Commons.

Plaintiff's causes of action are as follows: 1) that defendants Washington Avenue, Glessing and Benedictine Hospital committed waste in violation of the sub-lease by negligently or intentionally allowing the Nursing Home facility to physically deteriorate and to fall into a state of despair; 2) that defendants Glessing and Benedictine Hospital, as receivers, breached their fiduciary duty to plaintiff by failing to maintain, preserve and protect its leasehold interest in the premises and by facilitating the transfer of its residents to an entity owned by Benedictine; 3) that the defendant Benedictine had tortuously interfered with plaintiff's contractual relations with Glessing by supporting the transfer; 4) for a declaratory judgment that Benedictine be required to provide a full accounting; that its receivership has expired and that a new receiver be appointed; and 5) that a permanent injunction be issued barring the Department of Health from taking

any action designed to transfer of the Nursing Home's operating license to Benedictine. Notably, plaintiff also commenced a separate action for eviction against the Nursing Home for nonpayment of rent and has obtained a judgment in that proceeding.

Defendants Benedictine and Department of Health move to dismiss the complaint on the grounds that the claims fail to state a cause of action.

#### The Benedictine Defendants

As to the first cause of action alleging waste, defendants move to dismiss on the grounds that the complaint fails to detail with any particularity the allegations of waste and therefore does not spell out a cause of action. Indeed, the cause of action claims "defendants committed waste upon the Premises by negligently or intentionally allowing it to physically deteriorate and to fall into a state of disrepair, including without limitations, the physical building, equipment and furnishings of the Nursing Home". Beyond that conclusory allegation the complaint does not in any fashion specify the particular act(s) of waste alleged to have been committed by the defendants. It appears as though plaintiff's principal complaint is that Glessing and Benedictine have purposely allowed the facility which houses the Nursing Home to deteriorate to such a state as to compel DOH to approve its transfer to another facility owned by Benedictine. However, Plaintiff's failure to specify how defendants' actions or omissions have served to bring about this condition is fatal to its claim for waste and this cause of action must be dismissed.

The second cause of action alleges that the receiver by its conduct has breached its fiduciary duty. Benedictine as receiver serves as a fiduciary to the owner of the Nursing Home operation and its clients— this relationship and its attendant duties do

not extend to plaintiff in its capacity as landlord and owner of the premises wherein the Nursing Home is located. While the lease obligates Benedictine as receiver to pay rent, it does not serve to create a fiduciary relationship between Benedictine as receiver and plaintiff as landlord.<sup>1</sup> Benedictine was appointed receiver by DOH to operate the Nursing Home and to ensure that its residents were provided with necessary services; that relationship which defines its fiduciary responsibilities does not extend to plaintiff. Absent such a relationship any cause of action alleging a breach of a fiduciary responsibility must be dismissed.

Plaintiff's third cause of action claims that Benedictine tortuously interfered with its contract with Glessing by engaging in activities that were calculated to prompt DOH to order the transfer of the Nursing Home operation to another facility, and thus depriving plaintiff of this tenant. The transfer of the residents and the accompanying operating license was done with the approval of DOH because it was necessary to ensure the safety of the residents. Plaintiff's contract with Glessing does not give plaintiff any proprietary rights in the operating license nor does it give plaintiff standing to complain about DOH's decision permitting the transfer of the residents. Any claim that plaintiff has as a result of this Decision is in effect defined by the terms of its lease with Glessing and any damages to which plaintiff might be entitled must flow from a breach of any of its provisions. Those damages would be limited to whether terms of the lease had been breached and plaintiff has been damaged as a result of that breach. This claim must therefore be dismissed.

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<sup>1</sup>As noted plaintiff has obtained a judgment in a separate proceeding against Benedictine for the non payment of rent.

Benedictine Defendants and DOH's motion to dismiss  
the Fourth and Fifth Cause of action

In the fourth cause of action, plaintiff seeks a judgment declaring that Benedictine's status as Receiver of the Nursing Home has by law expired and cannot be renewed; and that a new Receiver should be appointed.

Specifically, plaintiff argues that Benedictine's appointment as Receiver expired on July 31, 2003 and therefore any actions taken by it after that date including the proposed transfer of the residents are null and void. Benedictine's appointment was based on a provision of the Public Health Law which allows for the voluntary appointment of a receiver, by agreement between the DOH and the owner of the residential health facility. Even if one were to concede that Benedictine's status as receiver is in doubt plaintiff as landlord does not have standing to seek its termination or to otherwise raise objections to actions taken by Benedictine in its receivership capacity. This agreement was between Glessing, Benedictine and DOH and by its terms it provided that "nothing contained in this Agreement is intended to or shall be construed to confer any rights or remedies on any person or entity not a party to this Agreement".

Moreover, plaintiff has no legally protected interest that would be served by its attempt to prevent DOH from transferring the operating license. The fact that it lost a tenant and that its building can no longer be used as a Nursing Home does not give plaintiff the right to contest this decision. This decision must be based not on whether plaintiff's economic well-being will be adversely effected but on what is in the best interests of the

Nursing Home residents. Given its lack of standing this action must also be dismissed.

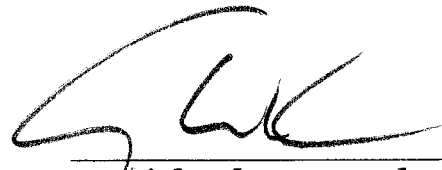
In short, plaintiff's attempts to prevent the operation of this Nursing Home to leave its premises can be no more than its pursuit of its rights under its lease contract in the parallel proceedings. Plaintiff's efforts in this proceeding fall short of providing any basis for the relief that it seeks.

Accordingly, it is hereby

**ORDERED** that the motions to dismiss are granted and the complaint is dismissed in its entirety.

This constitutes the Decision and Order of this Court. All papers are being returned to counsel for the Benedictine defendants. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the provisions of that rule regarding entry, filing and notice of entry.

**SO ORDERED!**



**E. Michael Kavanagh, JSC**

Dated: April <sup>30</sup>, 2004  
Kingston, New York

Papers Considered:

Order to show cause; affirmation of William Harrington; Affidavit of Robert Goldman with exhibits

Notice of Motion; Affirmation of Michael Hayes Esq. with exhibits

Notice of motion of AG

Affirmation in opposition to AG's motion of William Harrington with exhibits