

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

John M. Daley, independent administrator )  
of the estate of John P. Daley, deceased, )  
 )  
Plaintiff, )

v. )

No. 20 L 5893

Alden-Town Manor Rehabilitation and )  
Health Care Center, Inc., an Illinois )  
corporation, d/b/a Alden Town Manor )  
Rehabilitation and Health Care Center; )  
Alden Management Services, Inc., an )  
Illinois corporation; and The Alden )  
Group, Ltd., an Illinois corporation, d/b/a )  
The Alden Group, )  
 )  
Defendants. )

**MEMORANDUM AND OPINION**

A court may grant a motion to dismiss pursuant to Code of Civil Procedure section 2-619(a)(9) if the defendant presents affirmative matter that defeats the plaintiff's cause of action. Here, the defendants failed to provide proof predicated an arbitration agreement's validity. Since the defendants failed to meet their burden, the motion to dismiss must be denied.

**Facts**

On May 5, 2016, Alden-Town Manor Rehabilitation and Health Care Center, Inc. admitted John P. Daley ("John P.") as a resident. John P. had previously suffered a stroke that hindered his cognitive functioning and precluded his capacity to contract for himself. As a result, John P.'s son, John M. Daley ("John M.") allegedly took over his father's affairs through a financial and medical power of attorney. John

M. signed Alden-Town Manor's admission forms on John P.'s behalf on the lines designated "Power of Attorney." These forms included an arbitration agreement and resident agreement.

On October 19, 2018, John P. was allegedly left unsupervised in Alden-Town Manor's lobby. John P. then left Alden-Town Manor in his wheelchair. John P. fell and sustained injuries that ultimately led to his death. This litigation ensued.

### Analysis

A motion to dismiss pursuant to Code of Civil Procedure may be granted if affirmative matter avoids the legal effect of or defeats the plaintiff's claim. *Valerio v. Moore Landscapes, LLC*, 2021 IL 126139, ¶ 19; 735 ILCS 5/2-619(a)(9). In ruling on a section 2-619 motion to dismiss, the trial court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party. *Id.* at ¶ 20. The defendant has the initial burden of establishing that the affirmative matter defeats the plaintiff's claim. *Rehfield v. Diocese of Joliet*, 2021 IL 125656, ¶ 22. Once the defendant satisfies the burden of putting forward affirmative matter, the burden shifts to the plaintiff to demonstrate that the proffered defense is unfounded or requires the resolution of a material fact. *Id.* If a defendant's motion to dismiss is based upon an agreement, valid on its face, then the burden shifts to the plaintiff to allege sufficiently and prove that a material issue of fact exists that invalidates the release agreement. *Goodman v. Hanson*, 408 Ill. App. 3d 285, 297 (1st Dist. 2011).

In this case, Alden-Town Manor asserts that John M.'s claim is defeated based on the valid arbitration agreement he signed on behalf of John P. pursuant to the authority John P. gave to John M. in the power of attorney. John M. may be correct that a power of attorney existed, yet Alden-Town Manor has not attached the power of attorney as an exhibit to its motion. It is, therefore, impossible to accept that the arbitration agreement is valid on its face given that the predicate for its validity is not in the record.

Given that the lack of proof as to the arbitration agreement's validity, this court need not address the parties' remaining arguments.

Conclusion

For the reasons presented above, it is ordered that:

1. The defendant's motion to dismiss is denied; and
2. The defendant has until December 17, 2021 to answer the complaint.

  
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John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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