

Document # 3

State Court Writ of Habeas Corpus

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In The Matter of the Application of
CARMEN BRITT and **LULA BAITY**, Petitioners,
for a Writ of Habeas Corpus to Inquire into
the Cause of Detention of **LULA BAITY**,

Petitioners,

vs.

ELAINE GARBE, Supervisor,
Buffalo Municipal Housing Authority
300 Perry Street, Buffalo, New York 14204;
JERI GIWA, Case Manager,
Buffalo Municipal Housing Authority
300 Perry Street, Buffalo, New York 14204;
GRACE MANOR HEALTH CARE FACILITY, INC.,
10 Symphony Circle
Buffalo, New York 14201;

MARY STEPHAN, Registered Nurse, and Facility Representative,
Grace Manor Health Care Facility, Inc.,
10 Symphony Circle
Buffalo, New York 14201

Respondents.

ORDER TO SHOW CAUSE
ON PETITION FOR A WRIT OF
HABEAS CORPUS: CPLR 7002

Index No. I-2003- 12800
IAS Judge:

Upon the annexed affirmation of **RICHARD L. BAUMGARTEN, ESQ.**, attorney for
Petitioners, and the verified petition of Petitioners **CARMEN BRITT** and **LULA BAITY**, sworn the
15th day of December, 2003, and upon all papers and proceedings heretofore had herein;

Let the respondents, **ELAINE GARBE**, **JERI GIWA** and **MARY STEPHAN**, show cause at a
Special Term, Part 3, of this Court, to be held on the 23RD day of December, 2003, at 10:30 o'clock in
the forenoon of that day or as soon thereafter as Petitioners can be heard at the Courthouse located at
92 Franklin St. Buffalo, New York, why an Order granting a Writ of

EXHIBIT

12
1/23/07 *Handwritten*

Habeas Corpus pursuant to CPLR Article 7002 should not be entered in favor of Petitioners for the relief sought herein, as more fully alleged in the supporting verified petition.

Sufficient cause appearing therefore, let service of a copy of this Order to Show Cause together with the papers upon which it was granted, be made in the following manner:

Service upon the respondent, **ELAINE GARBE**, or a person designated to accept such personal services, at her office address located at Buffalo Municipal Housing Authority, 300 Perry Street, Buffalo New York 14204 on or before the 20th day of December, 2003, shall be deemed sufficient service;

Service upon the respondent, **JERI GIWA**, or a person designated to accept such personal services, at her office address located at Buffalo Municipal Housing Authority, 300 Perry Street, Buffalo New York 14204 on or before the 20th day of December, 2003, shall be deemed sufficient service; and,

Service upon the respondent, **MARY STEPHAN**, or a person designated to accept such personal services, at her office address located at Grace Manor Health Care Facility, Inc., 10 Symphony Circle, Buffalo, New York 14204 on or before the 20th day of December, 2003, shall be deemed sufficient service.

JAC Any answer or responding papers shall be served upon Petitioner's attorney at least 10 day before the return date of this Order.

~~ENTERED~~: December 19 2003.

GRANTED
DEC 19 2003

SUSAN S. GREGORY
ASSOC COURT CLERK

SUSAN S. GREGORY

Joseph P. Con...
JUSTICE OF THE SUPREME COURT

At a Special Term of the Supreme Court, State of
New York, held in and for the County of Erie on
December 23, 2003.

Present: HON. JOHN P. LANE, J.S.C.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In The Matter of the Application of
CARMEN BRITT and LULA BAITTY, Petitioners,
for a Writ of Habeas Corpus to Inquire into
the Cause of Detention of **LULA BAITTY**,

Petitioners,

vs.

**PETITION FOR A WRIT OF
HABEAS CORPUS AND
WARRANT CPLR 7002**

Index No. I-2003-12800
IAS Judge:

ELAINE GARBE, Supervisor,
Buffalo Municipal Housing Authority
300 Perry Street, Buffalo, New York 14204;
JERI GIWA, Case Manager,
Buffalo Municipal Housing Authority
300 Perry Street, Buffalo, New York 14204;
GRACE MANOR HEALTH CARE FACILITY, INC.,
10 Symphony Circle
Buffalo, New York 14201;
MARY STEPHAN, Registered Nurse, and Facility Representative,
Grace Manor Health Care Facility, Inc.,
10 Symphony Circle
Buffalo, New York 14201

Respondents.

To: The Honorable: **JOHN P. LANE**
Justice of the Supreme Court of the State of New York

Your Petitioners Carmen Britt and Lula Baitty respectfully allege and show:

1. Upon the petition of **Carmen Britt**, verified the 15th day of December, 2003 and **Lula Baity**, verified the 15th day of December, 2003, through and by their attorney, **Richard L. Baumgarten, Esq.**, application is made on behalf of petitioners **Lula Baity** and **Carmen Britt** for a Writ of Habeas Corpus and for a warrant ordering the Respondents to return forthwith Ms. Baity and her belongings to her home.

2. Petitioner, **Lula Baity** is eighty seven (87) years of age, has never married and has no children. She is a resident of the City of Buffalo, County of Erie, State of New York who, upon information and belief, at all times prior to October 1, 2003, resided at the Buffalo Municipal Housing Projects, 344 Perry Street, Apt. 4B, Buffalo, New York 14204. Upon information and belief, Ms. Baity is being held by the respondents in unlawful and illegal confinement. There is good and sufficient reason to believe that Ms. Baity will suffer irreparable injury before she can be relieved by a Writ of Habeas Corpus. The ground for this belief is that an unexplained, unwanted and forced isolation by Respondents from familiar surroundings, her family member and long-time friends can and, is highly likely to be, dangerous to the 87 year old Ms. Baity's physical, emotional and mental health and can cause a decline and even illness.

3. Petitioner, **Carmen Britt** is forty seven (47) years of age and a resident of the City of Buffalo, County of Erie, State of New York. Ms. Britt is the niece of Ms. Baity, the person who is the subject of the unlawful confinement being challenged herein, with full New York State Durable Power-of-Attorney to act for and on her aunt, Ms. Baity's behalf.

4. The place where Miss Baity is detained and restrained of her liberty is, upon information and belief, Grace Manor Health Care Facility, Inc., 10 Symphony Circle, Buffalo, New York 14201.

5. That the individuals by whom Ms. Baity is imprisoned and/or whom are responsibly for Ms. Baity's unlawful restraint at Manor Health Care Facility, Inc., are respondents **Mary Stephan**,

Registered Nurse, and Facility Representative of Grace Manor Health Care Facility, Inc., Elaine Garbe, Supervisor, Buffalo Municipal Housing Authority and Jeri Giwa, Case Manager, Buffalo Municipal Housing Authority, respectively.

6. That no court or judge of the United States has exclusive jurisdiction to order Miss Baity released.

7. That the cause or pretense of the detainment, imprisonment and restraint of Ms. Baity, upon information and belief, is that on September 30, 2003, Crisis Services Outreach received a request from respondent Giwa for a mental health evaluation of petitioner Baity. Upon the arrival of Crisis Services personnel at Ms. Baity's home, respondent Giwa identified herself as Ms. Baity's social worker and falsely and maliciously reported that Ms. Baity was increasingly confused and disorganized and was talking rapidly with little content. Respondent Giwa further reported that Ms. Baity was not taking care of herself, not paying rent, refusing to see a doctor, and the house was very cluttered. Additionally, respondent Giwa, having full knowledge of the names, addresses and telephone numbers, of Ms. Baity's family members, remained silent of that fact and, perforce, did not disclose such information to Crisis Services personnel.

8. Petitioner Baity, for the past thirty (30) years has lived and prospered in her apartment at the 344 Perry Street, Apt. #4B, Buffalo, New York. Ms. Baity, at the behest of Respondents, was involuntarily removed from her home and transported by ambulance to the Erie County Medical Center ("ECMC") on September 30, 2003. She was admitted medically (versus psychiatrically) with a diagnosis of unable to care for herself. Annexed hereto as Exhibit "A" is a copy of Crisis Services Case Summary, dated October 14, 2003.

9. Thereafter, very late in the afternoon (or early evening) of September 30, 2003, respondent Giwa, approximately four (4) to five (5) hours after Ms. Baity was taken to ECMC, telephoned the

residence of Mr. and Mrs. J.D. and Mattie Britt, the brother and sister-in-law, respectively of Ms. Baity, and, for the first time, notified the immediate family of Ms. Baity's hospital confinement.

10. Petitioner, Carmen Britt, immediately, upon being informed of her aunt's situation, visited the ECMC and inquired into the basis for Ms. Baity's detention/hospitalization. ECMC staff thereupon advised Ms. Britt that Crisis Services had brought Ms. Baity to the Hospital at the specific directive of [respondent] Jeri Giwa and, moreover, that hospital staff had not been informed by Ms. Giwa that petitioner Baity had existing family. Further, hospital staff stated to Ms. Britt that [respondent] Jeri Giwa was the individual, taking it upon herself, to make all arrangements concerning Ms. Baity's well-being.

11. Over the adamant objections of petitioners Baity and Britt, ECMC staff, absent a court order or other legitimate or lawful basis, ECMC outright refused to release the elderly Ms. Baity on her own accord or, otherwise, release her to any family member or Ms. Britt, despite being advised that Ms. Britt then had a valid NYS Power-of-Attorney signed by petitioner Baity. Instead, to the contrary, at the specific directive of respondent Giwa, ECMC transferred Ms. Baity to a nursing home at Grace Manor Health Care Facility, Inc.

12. Thereafter, in furtherance of a conspiracy to deprive petitioner Baity of her rights, privileges and liberty, respondents, Elaine Garbe and Jeri Giwa, having displaced Ms. Baity from her premises without reasonable or probable cause, improperly, and if not maliciously, forthwith brought an eviction proceeding returnable in Buffalo City Court on November 10, 2003, seeking an order of eviction against Ms. Baity from her Perry Street apartment. See Exhibit "B".

13. Counsel appeared and represented petitioner Baity in the Buffalo City Court eviction proceeding. Gillian Brown, Esq., appeared on behalf of Respondents. Upon your affiant's advising Mr. Brown of the salient facts in this matter, an agreement was reached by Mr. Brown and affiant counsel to

the effect that Ms. Baity would bring her rent current by a specific date and, in return, the eviction petition would be terminated and rendered moot. Thereafter, as agreed, on December 4, 2003, Ms. Baity's family paid her rent current and the eviction was mooted. See Exhibit "C".

14. That the detainment and restraint of Ms. Baity, upon information and belief, was not a voluntary choice of Miss Baity, who, at all times mentioned herein, was, and is now, of stable mind and body, but, rather, a wholly illegal action by the Respondents. Moreover, on a number of occasions while she was wrongly placed in the nursing home by Respondents, Ms. Baity expressed her deep longing to return to her Perry Projects home, of thirty years standing.

15. Upon information and belief, Ms. Baity and her relatives, prior to her unlawful confinement by Respondents, had spoke often to each other on the telephone and visited with one another in person on a regular basis. Further, prior to confinement, Ms. Baity and her family had always spent occasional holidays together.

16. That the imprisonment and restraint by Respondents of the elderly Ms. Baity in the hospital and thereafter in a nursing home was, and is now, illegal in that, upon information and belief, it had been effected by the Respondents as a result of false statements and forcible conduct as and against Ms. Baity's free and voluntary will.

17. Ms. Baity has been a recipient of Medicare for many years. Upon information and belief, Ms. Baity's Medicare Benefits have been discontinued and/or otherwise significantly reduced as a result of Respondents' unlawful actions. In fact, respondent, Grace Manor Health Care Facility, Inc., by letter, dated October 15, 2003 (Exhibit "D"), notified petitioner, Carmen Britt, to the effect: "On 10/15/03, we reviewed our medical information and found that the services provided to LULA BAITY is terminated beginning 10/16/03 because:

'No longer qualified as covered for payment under Medicare Part A. The reason is: Medicare covers Medically necessary skilled nursing care on a daily basis. There is no evidence of medical Complications (sic) or

other medical reasons that require the skills of a professional nurse or therapist and therefore, not covered under Medicare Part A.¹

18. That there is good and just reason to believe that Miss Baity has suffered and will continue to suffer irreparable injury if she is not immediately returned to her home of thirty years, together with all of her belongings.

19. That the imprisonment, detention and restraint by Respondents of Miss Baity is not by virtue of a mandate.

20. That patently the instant imprisonment, detention and restraint of Miss Baity is illegal under the prior rulings of this Court and the Appellate Division, Fourth Department, in Brevorka v Schuse, 227 AD2d 969, 643 NYS2d 861 (4th Dept. 1996).

21. That no previous application has been made for the writ herein.

22. That no appeal has been taken from any order or judgment in any action or proceeding against Miss Baity whereby she has been imprisoned, detained or restrained of her liberty.

WHEREFORE, Petitioners prays that a Writ of Habeas Corpus directed to said respondents, Mary Stephan, Elaine Garbe and Jeri Giwa issue for the purpose of inquiring into the cause of the imprisonment, detention and restraint of petitioner, Ms. Lula Baity, and of delivering her therefrom, pursuant to the statute in such case made and provided, and that a warrant be issued directing said Respondents to immediately return Ms. Baity forthwith to her home at 344 Perry Street, Apt. 4-B,

¹ Respondent, Grace Manor Nursing Home, by its own admission, has confirmed that Ms. Baity is capable of caring for herself and is not suffering from any physical or mental infirmity rendering her incapable of caring for herself: "There is no evidence of medical complications or other medical reasons that require the skills of a professional nurse or therapist." Indeed, the undisputed and irrefutable medical evidence also demonstrates that ECMC psychiatric emergency staff determined that Ms. Baity was not in need of psychiatric care and treatment when admitted and, thereafter, discharged to Respondent nursing home. (see Exhibit "A", supra.)

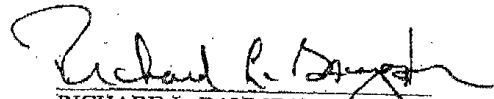
Buffalo, New York 14204, together with all of her belongings, and further, that the Respondents be ordered to desist from offensive conduct and stay away from Ms. Baity pending a hearing on this matter at a date to be determined by the court, such date to be determined after the passage of enough time to allow Ms. Baity once again to settle in her own home.

Additionally, Petitioners request an Order directing Respondents to restore, or take such necessary steps so as to restore Ms. Baity's Medicare Part A, which Respondents caused to be improperly discontinued.

Finally, Petitioners request the Court, in its discretion, to enter an Order requiring that Erie County Department of Social Services for the Aging (or other responsible agency) act to engage home care aide service on Ms. Baity's behalf, and grant such other and further relief as may appear just and proper.

Dated: December 15, 2003
Buffalo, New York

Respectfully submitted,




RICHARD L. BAUMGARTEN, ESQ.
Attorney for Petitioners Britt and Baity
P.O. Box 242
Buffalo, New York 14201
(716) 553-2444 alt. # (716) 903-7219

Affirmed this 15 day of December, 2003.

ATTORNEY AFFIRMATION

State of New York)
County of Erie) ss.:

Richard L. Baumgarten, Esq., the above-named attorney petitioner, being duly sworn, says that the contents of the foregoing Petition for a Writ of Habeas Corpus are well known to him, and that the same is true to his own knowledge, except for the matters stated upon information and belief, and as to those matters, I believe them to be true.


Richard L. Baumgarten, Esq.

Affirmed this 1 day of December, 2003.

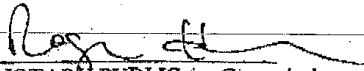
VERIFICATION

State of New York)
County of Erie) ss.:

LULA BAITY, the above-named petitioner, being duly sworn, says that the contents of the foregoing Petition for a Writ of Habeas Corpus are well known to her, and that the same is true to her own knowledge, except for the matters stated upon information and belief, and as to those matters, she believe them to be true.


LULA BAITY

Sworn to before me this 15 day of December, 2003.


NOTARY PUBLIC (or Commissioner
of Deeds)

ROGERS HICKS
COMMISSIONER OF DEEDS
In and for Buffalo, Erie County, NY
Commission Expires December 31, 2004

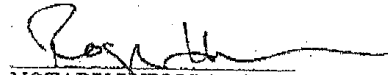
VERIFICATION

State of New York)
County of Erie) ss.:

CARMEN BRITT, the above-named petitioner, being duly sworn, says that the contents of the foregoing Petition for a Writ of Habeas Corpus are well known to her, and that the same is true to her own knowledge, except for the matters stated upon information and belief, and as to those matters, she believe them to be true.


CARMEN BRITT

Sworn to before me this 15 day of December, 2003.


NOTARY PUBLIC (or Commissioner
of Deeds)

ROGERS HICKS
COMMISSIONER OF DEEDS
In and for Buffalo, Erie County, NY
Commission Expires December 31, 2004