

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

KATHLEEN AUDIA,

Plaintiff,

v.

BRIAR PLACE, LTD., an Illinois Corporation,

Defendant.

Case No. 1:17-cv-06618

Hon. Samuel Der-Yeghiayan

**DEFENDANT BRIAR PLACE, LTD.’S
RULE 12(b)(6) MOTION TO DISMISS AMENDED COMPLAINT**

COMES NOW Defendant, BRIAR PLACE, LTD., (hereinafter, “Defendant” and/or “Briar Place”), by and through its attorneys, Omar J. Fayez and Anthony A. Cavallo of HUSTON, MAY & FAYEZ LLC, and respectfully submits, pursuant to Rule 12(b)(6) of the Fed. R. Civ. Pro. its Motion to Dismiss Plaintiff’s Amended Complaint. In support of its Motion, Defendant states as follows:

The Amended Complaint attempts to state causes of action based on 1) the Rehabilitation Act, 29 U.S.C. §704 (Count I); 2) the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116 (Count II); 3) negligence (Count III); and 4) the Illinois Nursing Home Care Act, 201 ILCS 45/1-101, et seq. (Count IV).

As will be set forth in its Memorandum in support of this Motion, Rule 12(b)(6) warrants dismissal of Plaintiff’s Amended Complaint.

Plaintiff’s Amended Complaint fails to state a claim upon which relief may be granted and dismissal is appropriate under Fed. R. Civ. Pro. Rule 12(b)(6) since 1) there are insufficient factual allegations that Defendant intentionally discriminated against and was deliberately indifferent to Plaintiff to support a claim for damages under the Rehabilitation Act (Count I); 2) the Affordable Care Act (Count II) does not provide a private right of action; 3) Plaintiff failed to attach a Section

2-622 affidavit to support her claim for negligence and healing arts malpractice (Count III), and 4) there are no allegations suggesting that Defendant's conduct was willful or wanton or recklessly indifferent to support a claim for punitive damages under the Illinois Nursing Home Care Act (Count IV). Further, to the extent that this court dismisses Plaintiff's federal claims in Counts I and II, it should also decline to exercise jurisdiction over her state law claims in Counts III and IV, should they not be dismissed.

III. Conclusion

WHEREFORE, Defendant, BRIAR PLACE, LTD., respectfully requests that this Court dismiss Plaintiff's Amended Complaint with prejudice pursuant to Rule 12(b)(6) of the Fed. R. Civ. Pro., and/or for any other relief which this Court deems just and appropriate.

Respectfully submitted,

HUSTON, MAY & FAYEZ, LLC

BY: /s/ Anthony A. Cavallo
One of the Attorneys for Defendant
BRIAR PLACE, LTD.

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