

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

MID-ATLANTIC PAIN INSTITUTE, PA.,)	
d/b/a MID-ATLANTIC SPINE,)	
)	
Defendant Below, Appellant)	
)	
v.)	C.A. No.: 2006-02-179
)	
AMERI-SCRIPT PROFESSIONAL,)	
)	
Plaintiff Below, Appellee)	
)	

Date Submitted: January 23, 2007
Date Decided: February 23, 2007

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DECISION AFTER TRIAL

Defendant Below/Appellant Mid-Atlantic Pain Institute, P.A., doing business as Mid-Atlantic Spine (hereinafter “Mid-Atlantic Spine”), brings this appeal from a default judgment entered in the Justice of the Peace Court. Plaintiff Below/Appellee Ameri-Script Professional (hereinafter “Ameri-Script”) allege that it contracted with Mid-Atlantic Spine to provide transcription services and that Mid-Atlantic Spine breached the contract by failing to pay a remaining balance of \$1,368.50. Mid-Atlantic Spine denies the allegation of Ameri-Script asserts affirmative defenses that Ameri-Script failed to perform its contractual

obligations, and owes Mid-Atlantic Spine an amount in excess of the \$1,368.50 claimed. Following trial on January 23, 2007, the Court reserved decision. This is the Court's final decision.

FACTS

The relevant facts are as follows: On July 17, 2003 Mid-Atlantic Spine and Ameri-Script entered into an agreement under which Ameri-Script would "be paid an hourly fee of \$16.00 by Mid-Atlantic Spine for medical transcription services." Ameri-Script reserved the right to increase its fee to \$17 per hour after a period of one year. The agreement provides that Ameri-Script would provide the following services:

- “Typing medical dictation, from micro cassettes [for several named medical personnel].
- Saving all medical transcription provided to Mid-Atlantic Spine on disks provided by Mid-Atlantic Spine.
- Providing Mid-Atlantic with a disk, twice per month, containing all medical transcription completed for Mid-Atlantic Spine.
- Providing paper copies of the above-referenced transcription to Mid-Atlantic within a maximum of 48 hours after the date cassettes are received. Ameri-Script will however, do its best to provide paper copies . . . within 24 hours tapes are received.”

As an exception to the 48-hour provision, the terms provided that Ameri-Script might take an additional 24 hours to complete dictation “on those occasions when the work included Dr. Falco's office and involved a full days' worth of dictation.”

At trial Mid-Atlantic Spine alleged Ameri-Script breached the contract by returning dictation later than the agree-upon 48- or 72-hour periods. However, the evidence presented at trial showed that late returns were not a regular or substantial issue over the multi-year relationship, and that Mid-Atlantic had never raised lateness as a ground for refusing payment until the final payment.

Mid-Atlantic Spine also claimed that Ameri-Script had failed to return certain tapes, but Ameri-Script's transcription log showed that all these tapes had been returned to Mid-Atlantic Spine. Moreover, Ameri-Script presented testimony attributing some of the above problems to a lack of communication by Mid-Atlantic Spine employees.

Mary McKnight, principal of Ameri-Script, testified at trial that she never billed Mid-Atlantic Spine for work that was not performed. The final bill submitted to Mid-Atlantic Spine, for which Ameri-Script is seeking payment, included a bill for 51 hours spent copying the transcripts to diskettes that were provided to Mid-Atlantic Spine. Gwen Koch, an administrator for Mid-Atlantic Spine, testified at trial that she had no knowledge of any agreement whereby Mid-Atlantic Spine was to pay Ameri-Script for time spent copying transcripts to diskette.

DISCUSSION

In a breach of contract action, the party seeking recovery must establish the existence of a valid agreement, substantial performance or compliance with the terms of the agreement and failure of the defendant to perform as required by the terms of such agreement. *Emmett S. Hickman Co. v. Emilia Capaldi, Developer*, Del. Super., 251 A.2d 571 (1969). The Breach must be material for the non-breaching party to recover. However, where the breaching party alleges excuse from performance as a result of plaintiff's actions, such actions must be material and not excused.

Ameri-Script seeks payment for transcription services it alleged rendered to Mid-Atlantic Spine pursuant to their contract. Mid Atlantic Spine denies liability on the basis the

work was not within the scope of the contract, the work was delivered late and some of the work was not performed.

The arrangement of the parties involved an open agreement whereby Mid-Atlantic Spine would deliver medical dictation tapes to Ameri-Script for transcription and typing. The Agreement also required Ameri-Script to save all transcription on computer disk. When the parties' arrangement began to deteriorate because Mid-Atlantic Spine was concerned that all the tapes would not be transcribed in a timely manner, a dispute arose regarding the balance due under the contract. Mid-Atlantic spine provided a list of outstanding transcription it believed was not provided. A meeting was held after which Ameri-Script sent the requested materials to Mid-Atlantic Spine. Gwen Kath, administrator for Mid-Atlantic Spine testified they also informed Ameri-Script that they wanted all of the work which was stored on the computer disk to protect the confidentiality of their clients. She further testified her company was provided with 200 disks. Ameri-Script charged a fee for this service at the contract rate on the theory it was required under the contract.

The July 17, 2003 agreement states that Ameri-Script was to be paid an hourly rate "for medical transcription services." Ameri-Script claimed payment under this provision if the contract had simply provided an hourly rate "for medical transcription," I think the unambiguous meaning of the language would exclude anything other than time spent in actual transcription. However, the inclusion of the term "services" suggests an arrangement whereby Ameri-Script would be compensated not just for the act of transcribing, but also for time spent in auxiliary tasks related to transcription.

Other portions of the agreement's language support this analysis. After outlining Ameri-Script's hourly fee for transcription services, the agreement explicitly links the stated

hourly rate to a detailed list of responsibilities. The transitional phrase “In this regard” provides the grammatical bridge between a paragraph devoted to the fee arrangement and the detailed list of services that Ameri-Script would deliver in exchange for those fees. It is important to note that the list of services specifically mentions “Typing medical dictation” and “Saving all medical transcription . . . on disks” as separate tasks. Therefore, because the act of saving transcriptions to diskettes falls under the broad terminology of “transcription services,” and because the agreement specifically mentions that task in its listing of services, I find that the terms of the contract unambiguously provide that Ameri-Script should be compensated for the 51 hours spent copying Mid-Atlantic Spine’s transcripts to disks.

Although Mid-Atlantic Spine offered some evidence that Ameri-Script had delivered late transcripts on occasion, I do not find that such action by Ameri-Script materially breached the agreement between the parties. Therefore, Mid-Atlantic Spine remains bound to honor the terms of the contract. I further find that Ameri-Script had delivered all of the material required under the agreement, and find for the plaintiff on defendant’s counter-claims.

CONCLUSION

Accordingly, judgment is hereby entered for Plaintiff and against Defendant in the amount of \$1368.50 with cost of these proceedings, pre-judgment interest at the rate of 8% from the date of breach, and post-judgment interest at 8% until paid. Both parties agree that Defendant is entitled to offset this judgment by any amount awarded for Defendant against Plaintiff in other proceedings.

IT IS SO ORDERED this 23rd day of February, 2007

Alex J. Smalls
Chief Judge

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