SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 39

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ALLSTATE INSURANCE COMPANY, et al.,

Plaintiffs,

-against-

ALEX BUZIASHVILI, et al.,

Defendants.

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DECISION and ORDER

Index No. 603776/2003
Motion Seq. No. 027

HON. SALIANN SCARPULLA, J.:

Plaintiffs move for summary judgment with respect to the first through seventeenth, twenty-first through twenty-third, thirty-fifth and thirty-sixth causes of action in this matter based upon claims of fraud, violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) (18 USC §§ 1961–1968), unjust enrichment, and seeking a declaratory judgment that defendants are not entitled to reimbursement for medical services rendered fraudulently, or not rendered at all.

Background

The Complaint in this matter stems from an extensive investigation, known as "Operation Gateway," into potential no-fault insurance fraud in New York State. The criminal investigation showed that an entity known as Parallel Management purchased the names and medical licenses of physicians and used them illegally to establish various medical professional corporations (herein, "the Parallel PCs"). The defendant owners of these corporations (herein, the "Paper Owners") maintain that they did not own, control

or operate the Parallel PCs. According to the complaint, additional defendants (herein, "the Principals") did own, control, and operate the Parallel PCs.

Operation Gateway resulted in some sixty arrests, and the criminal indictment of defendant Alex Buziashvili ("Buziashvili") and his associated corporation, defendant Parallel Management. Buziashvili was charged with several crimes, including enterprise corruption, fraud, and falsifying business records. Buziashvili and Parallel Management ultimately plead guilty to charges of tax evasion and falsifying business records in satisfaction of all criminal charges contemplated against them, and they agreed to pay a $750,000.00 fine.

On December 3, 2003, plaintiffs commenced this action against, among others, the medical clinics targeted in Operation Gateway, Parallel Management, Buziashvili, and associated individuals which the plaintiffs generally identify in four categories: (i) the Principals; (ii) the Parallel PCs; (iii) Parallel Management together with additional sub-management companies (the Sub-MCs); and (iv) the Paper Owners.

Plaintiffs allege that the Principals owned and operated the Parallel PCs in violation of New York law, that although the Paper Owners were listed as the record owners of their respective Parallel PCs, the PCs were in fact controlled and beneficially owned by one or more of the Principals who are non-physicians, and thus were fraudulently formed and operated in contravention of New York law. According to the complaint, the Principals, through Buziashvili, Parallel Management, and the Sub-MCs, entered into oral management agreements with the Parallel PCs to ostensibly provide management services, but the management agreements were actually used as conduits

through which tens of millions of dollars in fraudulent insurance payments were siphoned off to the Principals.

The Defendants also allegedly engaged in a fraudulent billing scheme through which they submitted claims for reimbursement of treatment that was medically unnecessary, never rendered, and/or of no diagnostic or treatment value.

Over the past several years, plaintiffs have discontinued the action against some of the defendants. Plaintiffs now seek summary judgment on their complaint against the remaining twenty-seven defendants. Ten of the remaining defendants, Alex Buziashvili, Lyubov Mirvis, Julia Rabinovich, Alexander Brodsky, Albert E. Winyard III, Zenaida Reyes-Arguelles, Robert Kronenberg, MD, Parallel Management Group, Inc., Alba Management Group, Inc., and Linden Medical, PC (collectively, the "Ten Remaining Defendants") oppose plaintiffs' summary judgment motion.

Seventeen defendants did not submit any opposition to plaintiffs' motion for summary judgment: Gary Grinberg, Edouard Rozenthāl, Oleg Mirochnik, Vladislav Fomenko, Yefim Gertopsky, Yuri Grinberg, Iosif Dubossarsky, Leonid Slutsky, Fast Pace Management, Inc., Dial Management, Inc., Glebe Management, Inc., Demo Management Group, Inc., Circle Management Group, Inc., Lid Management, Inc., Top Management Group, Inc., Better Health Medical, PLLC, and 563 Grand Medical PC (collectively, "Seventeen Defaulting Defendants").

Unjust Enrichment, Fraud, and Declaratory Judgment Claims

Plaintiffs have submitted a plethora of evidence to support their motion for summary judgment with regard to their claims of unjust enrichment, fraud, and for a

declaratory judgment. Plaintiffs have submitted reams and reams of American Express statements, federal tax returns, payroll records, bank records, general ledgers, EIN applications, personal guarantees, profit loss statements, deposition testimony, certificates of incorporation, various service orders, corporate books, various services contracts, invoices, cancelled checks, biennial statements to the NYS Department of State (Division of Corporations), annual registrations, lease and sublease agreements, Internal Revenue Service W-2 forms, marketing materials, and pattern analyses submitted by experts.

In response to this collection of evidence supporting the motion for summary judgment, the defendants submit the thinnest, general denial. With the exception of some three or four paragraphs, defendants' only response to plaintiffs' detailed, voluminous Rule 19-a Statement of Material Facts is to state, more than 300 times that "Defendants submit that this is not a 'separate, short and concise statement of material fact' as required by Rule 19-a. Said Defendants state that these facts do not implicate Defendants."

This is patently insufficient. Rather, in opposition, "[i]t is incumbent upon a defendant who opposes a motion for summary judgment to assemble, lay bare and reveal his proofs, in order to show that the matters set up in his answer are real and are capable of being established upon a trial." *Di Sabato v Soffes*, 9 AD2d 297, 301 (1st Dept 1959).

Plaintiffs cite *Allstate Ins. Co. v Belt Parkway Imaging, P.C.* (2011 WL 758312 [Sup Ct, NY County 2011], Bransten, J), which dealt with a remarkably similar situation to this action. In *Belt Parkway*, plaintiff insurance companies were participants in New York's no-fault automobile insurance program. Allegedly, defendants engaged lay

persons as owners of professional corporations in order to transfer illicit profits from the defendants to paper owners in violation of Business Corporation Law §§ 1503 (a), 1507, and 1508.

Belt Parkway acknowledged the standards set forth by the Court of Appeals in *State Farm Mut. Auto. Ins. Co. v Robert Mallela et al.* (4 NY3d 313 [2005]), which provide guidance on how to determine whether companies fail to meet the applicable state licensing requirements that prohibit nonphysicians from owning or controlling medical service corporations. *Mallela* concluded that where proper evidence is adduced that unlicensed individuals paid physicians to use their names on paperwork filed with the state to establish medical service corporations, actually operated the companies, and billed at inflated rates for routine services so that the actual profits did not go to the nominal owners, but were channeled to the nonphysicians who owned the management companies, insurance companies may withhold payment.

Here, as in *Belt Parkway*, there is overwhelming evidence establishing that the defendants permitted the nonphysicians to control and dominate the Parallel PCs. What is more, there is sufficient evidence to establish that the defendants made material misrepresentations of fact, had knowledge of falsity, intended to induce reliance, and thereby caused damage to the plaintiffs. *Art Capital Group, LLC v Neuhaus*, 70 AD3d 605, 607 (1st Dept 2010).

Additionally, given that the Parallel PCs and their Paper Owners were not entitled to payments from the plaintiff insurers, sufficient evidence has been adduced that the defendants were enriched at the expense of plaintiffs, and that, in good conscience and

equity, they should not be permitted to keep what the plaintiffs seek to recover. *Cruz v McAneney*, 31 AD3d 54, 59 (2d Dept 2006).

The evidence submitted shows that there is no defense to the causes of action for fraud, unjust enrichment, and a declaration supporting such a finding. The papers and proof submitted warrant that the court direct judgment in favor of the plaintiffs on those aspects of the complaint as a matter of law. More specifically, this court finds that the defendants fraudulently incorporated the Parallel PCs, and engaged in illicit fee splitting and billing fraud. In addition, the Parallel PCs, through the action of layperson Principals, violated Article 15 of the Business Corporation Law and New York's prohibition of the corporate practice of medicine.

Accordingly, plaintiffs' motion for summary judgment on the twenty-second cause of action (unjust enrichment), the twenty-third cause of action (fraud), that the thirty-fifth and thirty-sixth causes of action (declaratory judgment) is granted on the issue of liability against the Ten Remaining Defendants and the Seventeen Defaulting Defendants.[1]

Racketeer Influenced and Corrupt Organizations Act (RICO) Claims

Plaintiffs also seek summary judgment on their causes of action for violation of RICO (18 USC §§ 1961–1968) and RICO conspiracy.[2] To prove a violation of RICO, a

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[1] To the extent plaintiffs move for summary judgment on the unjust enrichment, fraud, and declaratory judgment claims against the Seventeen Defaulting Defendants, I grant this branch of the plaintiffs' motion on default.

[2] To the extent plaintiffs move for summary judgment on the RICO and RICO conspiracy claims against the Seventeen Defaulting Defendants, I grant this branch of the plaintiffs' motion on default.

finding of specific (*i.e.* subjective/actual) intent is required. *See 236 Cannon Realty, LLC v Ziss*, 2005 WL 289752, at *5 (SDNY 2005) ("[a] plaintiff also must show that the defendants acted with the specific intent to engage in the scheme to defraud") (citations omitted). Classically, intent is a fact-laden inquiry, and is inappropriate for determination on summary judgment. *National Union Fire Ins. Co. of Pittsburgh, Pa. v Robert Christopher Assocs.*, 257 AD2d 1, 6 (1st Dept 1999) (questions of intent should generally not be determined on summary judgment); *accord National Union Fire Ins. Co. of Pittsburgh, Pa. v Turtur*, 892 F2d 199, 205 (2nd Cir 1989); *see also Ikuno v Yip*, 912 F2d 306, 310-311 (9th Cir 1990) (while specific intent can be proven circumstantially, it is, nonetheless, ill-suited for adjudication on summary judgment).

To be sure, the intent of the parties may be determined from, for example, a set of documents, or the face of the agreement, making summary judgment feasible and appropriate. *American Exp. Bank Ltd. v Uniroyal*, 164 AD2d 275, 277 (1st Dept 1990). However, where, as here, it becomes necessary to refer to actions or conduct extrinsic to that documentation to determine intent, there is a question of fact, summary judgment should be denied, and the determination should be made by the finder of fact. *See id.*; *see also IBM Credit Financing Corp. v Mazda Motor Mfg., [USA] Corp.*, 152 AD2d 451, 452 (1st Dept 1989).

Moreover, New York courts have noted, particularly with regard to RICO actions, that summary judgment is ordinarily inappropriate where a defendant's intent is implicated, and that such a determination should be left to the finder of fact. Additionally, to the extent that the defendants assert that the activities of the Parallel PCs

were a matter of convenience, or in some way only sloppy or negligent (*see* Transcript of June 22, 2016, 21:6-22:5), but not imbued with the requisite intent, I decline to grant summary judgment against them on the RICO and RICO conspiracy claims. *See Qatar Natl. Nav. & Transp. Co. v Citibank*, No. 89 Civ. 0464, 1992 WL 276565, at *5 (SDNY Sept. 29, 1992), *aff'd* 182 F3d 901 (2d Cir 1999); *see also Edmonds v Seavey*, 2009 WL 2949757, at *5 (SD NY 2009).

In conclusion, I find that material issues of fact exist as to whether the remaining defendants demonstrated the requisite specific intent comporting with knowingly allowing the Parallel PCs and Paper Owners to use their name and/or license number on bills for services that were either never rendered, performed by unlicensed individuals, or medically unnecessary. Therefore, the motion for summary judgment on the first through seventeenth causes of action for RICO violations, and the twenty-first cause of action for RICO conspiracy is denied with respect to the Ten Remaining Defendants.

In accordance with the foregoing, it is

ORDERED that plaintiffs' motion for summary judgment on the twenty-second cause of action for unjust enrichment and twenty-third cause of action for fraud to the extent that these claims relate to the Seventeen Defaulting Defendants is granted on the issue of liability, without opposition; and it is further

ORDERED that plaintiffs' motion for summary judgment on the twenty-second cause of action for unjust enrichment and twenty-third cause of action for fraud to the extent that these claims relate to the Ten Remaining Defendants is granted on the issue of liability; and it is further

ORDERED that plaintiffs' motion for summary judgment on the thirty-fifth and thirty-sixth causes of action for declaratory judgment to the extent that these claims relate to the Seventeen Defaulting Defendants is granted, without opposition; and it is further

ORDERED that plaintiffs' motion for summary judgment on the thirty-fifth and thirty-sixth causes of action for declaratory judgment to the extent that these claims relate to the Ten Remaining Defendants is granted; and it is further

ORDERED that plaintiffs' motion for summary judgment on the first through seventeenth causes of action for RICO violations, and the twenty-first cause of action for RICO conspiracy to the extent that these claims relate to the Seventeen Defaulting Defendants is granted on the issue of liability, without opposition; and it is further

ORDERED that plaintiffs' motion for summary judgment on the first through seventeenth causes of action for RICO violations, and the twenty-first cause of action for RICO conspiracy to the extent that these claims relate to the Ten Remaining Defendants is denied; and it is further

ORDERED that a trial shall be conducted before the Court on the first through seventeenth causes of action for RICO violations, and the twenty-first cause of action for RICO conspiracy to the extent that these claims relate to the Ten Remaining Defendants; and it is further

ORDERED that, after trial on the RICO and RICO conspiracy claims, a hearing on the amount of damages to be awarded to the plaintiffs on their complaint shall be conducted before a Special Referee; and it is further

ORDERED that counsel are directed to appear for a pre-trial conference at 60 Centre Street, Room 208, on June 7, 2017 at 2:15pm; and it is further

ORDERED that a final judgment shall be entered after trial and a hearing to determine the amount of damages to be awarded to plaintiffs.

This constitutes the decision and order of the Court.

DATE: 4/21/17

SALIANN SCARPULLA, JSC