

Manhattan Telecom. Corp. v Coordinated Behavioral Care, Inc.
2021 NY Slip Op 32656(U)
December 14, 2021
Supreme Court, New York County
Docket Number: Index No. 156369/2020
Judge: Kathy J. King
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. KATHY J KING PART 34V

Justice

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MANHATTAN TELECOMMUNICATIONS CORPORATION
A/K/A METTEL

Plaintiff,

- v -

COORDINATED BEHAVIORAL CARE, INC.,

Defendant.

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INDEX NO. 156369/2020

MOTION DATE 06/30/2021

MOTION SEQ. NO. 006 007

DECISION/ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 006) 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 121

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER .

The following e-filed documents, listed by NYSCEF document number (Motion 007) 116, 117, 118, 119, 120, 122

were read on this motion to/for REARGUMENT/RECONSIDERATION .

Upon the foregoing documents, plaintiff Manhattan Telecommunications Corporation a/k/a MetTel moves for leave to reargue the Court's March 22, 2021 decision/order denying plaintiff's motion for summary judgment (Mot. Seq #7). Plaintiff also moves for leave to renew and reargue the Court's decision denying plaintiff's motion for sanctions (Mot. Seq# 6). Defendant Coordinated Behavioral Care, Inc. opposes both motions.

BACKGROUND

In this action, plaintiff seeks to recover unpaid service charges arising from a master service agreement dated September 1, 2017, wherein plaintiff agreed to provide telephone services to defendant. Plaintiff's complaint alleges that defendant is liable for attorneys' fees (first and third cause of action) and for account stated (second cause of action) based upon defendant's default in the payment of service charges for March 2020 totaling \$31,365.45. Subsequently, plaintiff

amended its verified complaint to modify the amount owed for service charges and attorneys' fees. Defendant interposed an answer with counterclaims and affirmative defenses and, thereafter, moved to dismiss the plaintiff's amended complaint. Plaintiff moved for summary judgment on the second cause of action for account stated and for sanctions against the defendant. By order dated March 23, 2021, the Court denied plaintiff's motion for summary judgment and for sanctions, together with defendant's motion to dismiss. Thereafter, the instant motions for leave to renew/reargue followed, which the Court now considers.

DISCUSSION

It is well settled that a motion to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion but shall not include any matters of fact not offered on the prior motion" (CPLR 2221[d][2]). The Court has the discretion to determine whether to grant a motion for leave to reargue (*see Barnett v Smith*, 64 AD3d 669, 670 [2d Dept 2009] [internal citations omitted]). On the other hand, a motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination and shall contain reasonable justification for the failure to present such facts on the prior motion" (CPLR 2221 (e)(2) and (e)(3)).

The Court shall first consider plaintiff's motion for leave to reargue the denial of plaintiff's motion for summary judgment.

In the case at bar, plaintiff contends the Court overlooked or misapprehended the pleading requirements set forth in CPLR 3016(f), and that the Court failed to apply CPLR 3016(f) to the defendant's answer. It is well settled that "to meet the requirements of CPLR 3016(f), a complaint must contain a listing of the goods or services provided, with enough detail that it may readily be examined, and its correctness tested entry by entry" (*see Summit Sec. Services, Inc. v Main St.*

Lofts Yonkers, LLC, 73 AD3d 906, 907 [2d Dept 2010]; see also *Teal, Becker & Chiaramonte, CPAs v. Sutton*, 197 AD2d 768, 768-69 [3d Dept 1993]). If it does not, a defendant's general denial is sufficient (*Id.*)

A review of the moving papers in support of re-argument establishes that plaintiff did not establish prima facie entitlement to summary judgment as a matter of law, thus, the Court did not err in denying plaintiff's motion for summary judgment on its cause of action for account stated. It is well settled that the proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Manicone v City of New York*, 75 AD3d 535, 537 [2d Dept 2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; see also *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]; *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2s 395, 404 [1957]). Contrary to plaintiff's contention, the Court finds the complaint in this case did not meet the standard set forth in CPLR 3016(f), since the complaint failed to set forth a list of services rendered together with invoices or schedule of the services charged against the defendant. Additionally, the record establishes that triable issues of fact exist as to when and whether the service agreement was terminated at the time plaintiff billed the defendant for services. If the existence of an issue of fact is even arguable, summary judgment must be denied (*Phillips v Kantor & Co.*, 31 NY2d 307 [1972]; *Museums at Stony Brook v Vil. Of Patchogue Fire Dept.*, 146 AD2d 572 [2d Dept 1989]).

Plaintiff's motion for leave to reargue the Court's decision for sanctions against defendant is also denied. A review of the moving papers establishes that the Court did not err in denying plaintiff's motion for sanctions, since defendant's answer properly raised issues concerning the

accounting of the services rendered establishing an issue of fact. As to plaintiff's motion for renewal, plaintiff has not offered any new facts that were not presented in the prior motion. The Court finds plaintiff's motion is an attempt to rehash questions already decided by the Court in the prior order.

Based on the foregoing, plaintiff's motion for leave to reargue its motion for summary judgment is denied (Mot. Seq #7). Additionally, plaintiff's motion for leave to renew and reargue its motion for sanctions is also denied (Mot. Seq. #6).

This constitutes the decision/order of the Court.

<u>12/14/2021</u> DATE	/s/ <u>Kathy J King</u>			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
HECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE