

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF OHIO
 WESTERN DIVISION

THE VISITING NURSE ASSOCIATION	:	Case No. 1:13-cv-585
OF GREATER CINCINNATI AND	:	
NORTHERN KENTUCKY,	:	
	:	
Plaintiff,	:	Judge Timothy S. Black
	:	
vs.	:	
	:	
PROCARE HOME HEALTH, INC., <i>et al.</i> ,	:	
	:	
Defendants.	:	

ORDER GRANTING DEFENDANT PROCARE’S MOTION TO DISMISS AND DENYING ITS REQUEST FOR ATTORNEY’S FEES (Doc. 24)

This civil action is before the Court on Defendant ProCare Home Health, Inc.’s motion to dismiss for lack of personal jurisdiction and for recovery of attorney’s fees (Doc. 24), and the parties’ responsive memoranda (Docs. 28, 30).

I. FACTS¹

Plaintiff’s Amended Complaint is based on the alleged business relationship of Defendant ProCare Home Health, Inc. with Co-Defendant Healthtrends of Ohio, LLC, d/b/a/ VNA Healthtrends. Plaintiff maintains that more than three months ago it asked ProCare for the following: “...we propose that you provide us with a sworn statement regarding the relationship between ProCare and [VNA Healthtrends]...That information should include at least an identification of all owners...” (Doc. 28, Ex. E). Plaintiff maintains that, despite its repeated efforts to resolve the issue by asking ProCare to

¹ For purposes of this motion to dismiss, the Court must: (1) view the amended complaint in the light most favorable to the Plaintiff; and (2) take all well-pleaded factual allegations as true. *Tackett v. M&G Polymers*, 561 F.3d 478, 488 (6th Cir. 2009).

provide a sworn statement regarding its ownership interest in VNA Healthtrends, ProCare repeatedly refused to provide the statement and then submitted with its motion to dismiss exactly what Plaintiff had requested earlier, a sworn statement regarding the ownership interests of ProCare and VNA Healthtrends. (Doc. 24-1 at ¶ 5). Accepting the sworn statement as true, Plaintiff does not oppose ProCare’s motion to dismiss, but opposes its request for attorney’s fees.

II. ANALYSIS

In Ohio, a company may be liable for the acts of its subsidiary. *Bleckert v. TPLX Holdings, Inc.*, 221 F.3d 870, 878-79 (6th Cir. 2000). For example, if a company “exercises an undue degree of control over the subsidiary,” then the company is liable for the acts of the subsidiary. *Velandra v. Regie Nationale Des Usines Renault*, 336 F.2d 292, 296 (6th Cir. 1964).

In its Amended Complaint, Plaintiff alleges that ProCare and VNA Healthtrends have overlapping and shared officers and top-level personnel (Doc. 21 at ¶ 19), and have overlapping and shared business activities, including those activities relating to managerial decision-making, finances, marketing, and sales (*Id.* at ¶¶ 22-23). Plaintiff also alleges that ProCare, as the parent of VNA Healthtrends, exerts substantial control over it and its business activities in at least those areas of managerial decision-making, finances, marketing, and sales. (*Id.* at ¶ 26). In support of its allegations, Plaintiff attached as exhibits several publicly available documents demonstrating overlapping and

shared officers and top-level personnel, and overlapping and shared business activities between ProCare and VNA Healthtrends. (*Id.* at Exs. B-D).

However, ProCare now provides a sworn statement that it “has no ownership interest in [VNA Healthtrends]...” and represents that it is, at most, a sister company to VNA Healthtrends. (Doc. 24 at 5; Ex. 1 at ¶ 5).² Plaintiff takes this statement at face value and also acknowledges that the Supreme Court of Ohio has held that “a plaintiff cannot pierce the corporate veil of one corporation to reach its sister corporation.” *Minno v. Pro-Fab, Inc.*, 905 N.E.2d 613, 617 (Ohio 2009).

Accordingly, the only issue before the Court is whether to award ProCare’s request for attorney’s fees. ProCare maintains that it attempted to resolve the jurisdictional issue informally, but that Plaintiff demanded overbroad, premature discovery unrelated to ProCare’s lack of minimum contacts with Ohio, as well as an affidavit attesting to matters that went beyond jurisdictional issues. (Doc. 24, Exs. B-E). Therefore, ProCare alleges that it was compelled to file this motion to dismiss. ProCare argues that in light of the information available from public sources, and from ProCare itself via its counsel, Plaintiff knew this action against ProCare was groundless, yet continued to pursue it anyway. ProCare maintains that pursuant to the Ohio deceptive

² ProCare provides its home health care services only in Illinois. (Doc. 24, Ex. 1 at ¶ 3). In fact, ProCare has no business license in Ohio and does not transact any business in Ohio. (*Id.* at ¶ 4). It supplies no services in Ohio; has no offices, telephone listing, bank account, employees, agents, sales representatives, customers, or clients in Ohio; solicits no business in Ohio; derives no revenue from Ohio; and neither owns nor rents real or personal property in Ohio. (*Id.*) Accordingly, ProCare has not engaged in any of the acts within the purview of the Ohio long-arm statute. Ohio Rev. Code § 2307.382(A).

trade practices statute, such behavior warrants an assessment of attorney's fees. Ohio Rev. Code § 4165.03(B) ("An award of attorney's fees *may* be assessed against a plaintiff if the court finds that the plaintiff *knew* the action to be groundless.") (emphases added).³ Here, the Court finds that there is insufficient evidence that Plaintiff "knew" there was no basis for jurisdiction against ProCare, and thus the Court declines to award attorney's fees.

III. CONCLUSION

Accordingly, for the reasons stated here, Defendant ProCare's motion to dismiss (Doc. 24) is **GRANTED**, its motion for attorney's fees is **DENIED**, and ProCare Home Health, Inc. is **TERMINATED** from the docket. The case progresses as to Plaintiff and Defendant Healthtrends of Ohio, LLC.

IT IS SO ORDERED.

Date: 2/21/14

/s/ Timothy S. Black
Timothy S. Black
United States District Judge

³ See also *Balsley v. LFP, Inc.*, No. 1:08cv491, 2011 U.S. Dist. LEXIS 40152, at *4 (N.D. Ohio Mar. 31, 2011) (party seeking fees must demonstrate the plaintiff knew the action was groundless at the time of the complaint).