

**Kardas v National Health Adm'rs, Inc.**

2014 NY Slip Op 33960(U)

November 20, 2014

Supreme Court, Dutchess County

Docket Number: 50496/14

Judge: Maria G. Rosa

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT - STATE OF NEW YORK  
DUTCHESS COUNTY

Present:

Hon. MARIA G. ROSA

Justice.

\_\_\_\_\_  
DEBRA KARDAS, Individually and o/b/o All  
Others Similarly Situated, THE POUGHKEEPSIE  
PUBLIC SCHOOL TEACHERS' ASSOCIATION  
and THE POUGHKEEPSIE PUBLIC SCHOOL  
TEACHERS' ASSOCIATION TRUST FUND,  
Plaintiffs,

DECISION AND ORDER

-against-

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NATIONAL HEALTH ADMINISTRATORS, INC.,  
NATIONAL HEALTH ADMINISTRATORS OF  
POUGHKEEPSIE, INC., JOSEPH FIEGOLI, and  
ROSALIE FIEGOLI,  
Defendants.

The following papers were read and considered on defendants' motion to dismiss.

- NOTICE OF MOTION
- AFFIRMATION IN SUPPORT WITH EXHIBITS ANNEXED THERETO
- MEMORANDUM OF LAW IN SUPPORT
- MEMORANDUM OF LAW IN OPPOSITION
- REPLY MEMORANDUM

Plaintiffs commenced this action alleging breach of contract and claims sounding in fraud based on defendants' coordination and administration of a group health plan. Defendants move to dismiss pursuant to CPLR §§3211(a)(7) and 3016(b) alleging the complaint fails to state a cause of action and/or fails to adequately detail the circumstances underlying the fraud claims asserted therein.

In determining whether a pleading is sufficient to withstand a motion to dismiss pursuant to CPLR §3211(a)(7), "the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail." Mandarin Trading Ltd. v. Willdenstein, 16 NY3d 173 (2011). The motion must be denied if the complaint "gives sufficient notice of the transactions,

occurrences, or series of transactions or occurrences intended to be proved and whether the requisite elements of any cause of action known to our law can be discerned from its averments.” JP Morgan Chase v. J.H. Elec. Of New York, Inc., 69 AD3d 802 (2<sup>nd</sup> Dept. 2010).

The complaint alleges that plaintiff Poughkeepsie Public School Teachers’ Association (“PPSTA”) created the Poughkeepsie Public School Teachers’ Association Trust Fund (“plan”) in 1994 to manage health expenses. It alleges that defendant National Health Administrators, Inc. (“NHAI”) was the third-party administrator of the plan from 2003 through 2012. It alleged that this administration was initially due to a contractual relationship and then “through defendant’s ongoing discretionary management of the plan.” Plaintiff acknowledges that the contract between it and NHAI was renewed on July 1, 2006 but questions whether such renewal complied with the plan’s declaration of trust. Pursuant to the contract, NHAI was responsible for the overall administration of the plan and all third-party administrators or entities servicing the plan. NHAI was responsible for providing services necessary to administer the plan including, but not limited to, negotiating pricing, securing insurance, acting as an intermediary when necessary, assisting in preparing tax returns or other papers required by governmental entities, consulting services and managing the day to day operation of the plan for employees. Attached to the complaint was a contract executed between NHAI and PPSTA on July 1, 2006 detailing the services to be provided and the contemplated relationship between the parties. Plaintiffs allege that the nature of the contract gave NHAI broad discretion in its management of the plan and that it abused that discretion by mismanaging plan assets, co-mingling claims for the plan with other plans it administered, engaging in self-dealing financial transactions for the benefit of NHAI and/or defendants Joseph and Rosalie Fiegoli at the expense of the plan, failing to provide an accounting of plan assets as part of a broader scheme to coverup financial irregularities, charging excessive fees, overcharging and double billing for services, failing to comply with applicable laws, co-mingling plan funds and failing to provide various services required under the contract. Plaintiffs allege that such conduct in its totality constituted both a breach of the contractual agreement between plaintiffs and NHAI and a larger breach of a fiduciary duty owed to the plaintiffs. The complaint asserts six causes of action alleging a breach of fiduciary duty, breach of contract, fraudulent concealment, fraud, unjust enrichment and conversion.

The court rejects defendants’ claim that plaintiffs have failed to state a cause of action for breach of contract. The essential elements of a cause of action to recover damages for breach of contract are the existence of a contract, plaintiffs’ performance, the defendants’ breach and damages. See Agway, Inc. v. Curtin, 161 AD2d 1040 (3<sup>rd</sup> Dept. 1990). The complaint clearly sets forth the existence of a contract between NHAI and PPSTA and alleges that plaintiffs sustained damages based on NHAI’s failure to perform certain obligations under the contract. While many of plaintiffs’ claims are devoid of specifics, the factual allegations taken together certainly gives notice of the conduct underlying a cognizable claim for breach of contract.

The court further rejects defendants’ claims that plaintiffs’ remaining causes of action must be dismissed as duplicative of the breach of contract action. Initially, the contract underlying plaintiffs’ breach of contract claim was between PPSTA and NHAI. To the extent that the

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individually named defendants and defendant National Health Administrators of Poughkeepsie, Inc. were not parties to the contract, plaintiffs' fraud and other tort claims against such defendants could not be duplicative of its breach of contract claim.

In general, the existence of a valid enforceable written contract governing a particular subject matter precludes recovery in quasi contract for events arising out of the same subject matter. Clark-Fitzpatrick, Inc. v. Long Is. R.R. Co., 70 NY2d 382, 388 (1987). However, it is also well settled that the same conduct which may constitute the breach of a contractual obligation may also constitute the breach of a duty arising out of the relationship created by contract but which is independent of the contract itself. Mandelblatt v. Devon Stores, 132 AD2d 162 (1<sup>st</sup> Dept. 1987). "This legal duty must spring from circumstances extraneous to, and not constituting elements of, the contract, although it may be connected with and dependent upon the contract." Clark-Fitzpatrick, Inc. v. Long Is. R.R. Co., 70 NY2d at 388. Viewing the allegations in the complaint in a light most favorable to the plaintiffs, the court finds factual claims therein sufficient to allege tortious conduct that arises out of the relationship created by the contract but which is independent of the contract itself. Plaintiffs make numerous factual allegations that go beyond a mere breach of contract claim. The complaint alleges that the defendants impermissibly co-mingled trust funds, engaged in business relationships on behalf of the plan with a clear conflict of interest, disclosed confidential information thereby tarnishing the plans business reputation and made material misrepresentations of fact in an attempt to conceal financial improprieties. Considering these allegations in their totality and the deferential standard afforded to plaintiffs on a motion to dismiss under CPLR §3211 (a)(7), plaintiffs have adequately pled a breach of a legal duty independent of defendants' contractual obligations. Therefore, at this stage of the proceeding, the defendants have failed to establish as a matter of law an entitlement to dismissal of plaintiffs' tort claims as duplicative of and arising out of the same subject matter as the contract between the plan and NHA1.

CPLR §3016(b) provides that "[w]here a cause of action or defense is based upon misrepresentation, fraud, mistake, willful default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail." The statute requires "only that the misconduct complained of be set forth in sufficient detail to clearly inform a defendant with respect to the incidents complained of and is not to be interpreted so strictly as to prevent an otherwise valid cause of action in situations where it may be impossible to state in detail the circumstances constituting a fraud." Lanzi v. Brooks, 43 NY2d 778, 780 (1977), see also Mandarin Trading Ltd. v. Willdenstein, 16 NY3d 173 (2011). The requirements of CPLR §3016 (b) are designed to inform a defendant with respect to the incidents complained of. Pludeman v. Northern Leasing Sys., Inc., 10 NY3d 486 (2008). The statute is not designed to prevent an otherwise valid cause of action in situations where a plaintiff lacks knowledge as to the specific details surrounding the alleged fraud. Id. Thus, where concrete facts lie within the knowledge of the party charged with the fraud, courts are not inclined to dismiss an action at an early stage where a pleading deficiency could be cured later following additional discovery. Id.

Plaintiffs' complaint is sufficient to comply with CPLR §3016(b). Plaintiffs allege that the defendants engaged in a pattern of making material misrepresentations of fact about whether claims

were due and owing from the plan, whether NHA1 was entitled to a fee for its adjudication or negotiation of claims, misrepresenting the amount of funds remaining in the plan bank account following the termination of the contractual agreement and impermissibly communicating to medical providers about the financial health of the plan. The complaint further alleges that the defendants intentionally concealed information about self-dealing and engaging in financial transactions in which they had a conflict of interest. As plaintiffs assert that many of the specific facts underlying these claims are, at present, known only by the defendants, any generalities can be cured by defendants demanding a bill of particulars and/or through the discovery process.

There is no merit to defendants' claim that allegations in the complaint should be stricken pursuant to CPLR §3024. The mere allegation that the plaintiffs misrepresented the plan as being regulated by ERISA is not of such a scandalous or prejudicial nature as to warrant being stricken under that statute. In reaching this determination, the court makes no findings as to the relevance or admissibility of this allegation for summary judgment or trial purposes.

Based on the foregoing, it is hereby

ORDERED that defendants' motion is denied in its entirety.

Counsel are directed to appear for a preliminary conference on December 17, 2014 at 10:15 a.m. unless the attached Preliminary Conference Stipulation Order is completed, signed and forwarded to this court for signature.

This constitutes the decision and order of this court.

Dated: November 20, 2014  
Poughkeepsie, New York

ENTER:

  
A handwritten signature in black ink, appearing to read 'Maria G. Rosa', is written over a horizontal line.

MARIA G. ROSA, J.S.C

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