

<b>Utopia Home Care, Inc. v Revival Home Health Care, Inc.</b>
2016 NY Slip Op 32138(U)
August 17, 2016
Supreme Court, Suffolk County
Docket Number: 03404/2013
Judge: Jerry Garguilo
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SUPREME COURT - STATE OF NEW YORK  
COMMERCIAL DIVISION IAS PART 48 - SUFFOLK COUNTY

**PRESENT:**

HON. JERRY GARGUILO  
SUPREME COURT JUSTICE

DECISION AFTER TRIAL

UTOPIA HOME CARE, INC.,

Plaintiff,

-against-

REVIVAL HOME HEALTH CARE, INC., SPITZER  
CONSULTING CO., LTD. AND GAMZEL NY, INC.  
d/b/a REVIVAL HOME HEALTH CARE,

Defendants.

**PLAINTIFF'S ATTORNEY:**

AHERN & AHERN, ESQS.  
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KINGS PARK, NY 11754  
631-269-9500

**DEFENDANT'S ATTORNEY:**

*Attorney for Gamzel, NY, Inc.*  
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This matter was tried before the Court on Monday, June 20, 2016 and Tuesday, June 21, 2016. On behalf of the Plaintiff, Utopia Home Care, Inc., (Utopia) Diane Martinez was called as a witness. The Defendant called Dina Benedetto and Steven Schwartz. The Plaintiff recalled Diane Martinez as a rebuttal witness.

The Plaintiff's complaint is a breach of contract action wherein the Plaintiff claimed that it is entitled to a judgment in the amount of Sixty Thousand Six Hundred Seventy Two Dollars and Thirteen Cents (\$60,672.13), plus interest for services rendered to the Defendant, Revival Home Health Care, Inc., (Revival).

The Defendant claimed that recovery is barred by an amendment to a written contract that required the Plaintiff to submit all invoices within thirty (30) days. Failing to submit invoices forfeits payment.

As noted above, the Plaintiff's sole witness was Diane Martinez, the President of Utopia. Martinez testified as to the familiarity with the claim and identified a written contract between the parties dated January 1, 2006. That contract was executed by Manuel G. Martinez, on behalf of Utopia. It should be noted that Utopia is a family run business.

Diane Martinez, her father, Manuel G. Martinez and her brother, David Martinez are the sole officers and shareholders of the Plaintiff. Diane Martinez testified that only those family members were authorized to enter into written contracts on behalf of Utopia. She specifically denied that anyone else was allowed, permitted and/or authorized to bind Utopia in a contractual sense.

The January 1, 2006 contract details the means and methods of payment to Utopia. In essence, Utopia provided services for patients referred by Revival. Revival, in turn would pay Utopia an agreed upon hourly rate and Utopia would pay their aides.

As to sufficiency of their claim, Ms. Martinez identified written invoices and back up for said invoices in support of Utopia's claim. The dispute involves non-payment of invoices from the period commencing February 2011 through May of 2011. It should be noted that Ms. Martinez testified that she personally canceled her company's contract with Revival by letter dated June 6, 2011, indicating that Utopia would no longer service Revival's cases due to Revival's mandate in May of 2011 that would reduce Utopia's reimbursement by approximately Two Dollars (\$2).

Revival's defense rests on a document it claims is a written amendment to the contract. That document, in evidence, is the basis of Revival's claim that its contract with Utopia was amended. That document, dated July 19, 2010 provides that Utopia will not get paid if they do not bill Revival within Thirty (30) days of service. That document which purportedly amends the agreement between the parties was executed by a person known as Anne Marie Rahi. Revival claims that Ms. Rahi executed the document on behalf of Utopia and consequently bound them to the terms of the amendment.

As noted above, Ms. Martinez testified that Utopia, a family owned company, allowed only family members to execute legal documents on its behalf, and as such, Ms. Rahi never had the authority to bind Utopia in a contractual sense.

Subsequent to July 19, 2010, Utopia was presented with the purported amendment to its contract. At that time, its chief financial officer submitted an email to Revival that noted "Anne Marie Rahi was an administrator for our New York offices only and her function was to provide oversight of daily operations. She had no authority to negotiate or approve any contract amendments. We have no record of this document you sent us and therefore cannot recognize it as an amendment to our binding contract with you."

It is undisputed that the parties did enter into a written contract effective January 1, 2006. Furthermore, Utopia submitted documentary proof of its bills for services rendered

in the amount of Sixty Thousand Six Hundred Seventy Two Dollars and Thirteen Cents (\$60,672.13). The January 1, 2006 contract did allow for a set off of twenty five percent (25%) or nonpayment in the event Utopia's submissions for payment did not comply with the terms of the undisputed contract. Utopia submitted written documentation of timely billing.

It is somewhat remarkable that the key witness as to the issue of agency, authority, apparent authority and/or estoppel to deny authority, Anne Marie Rahi, was not called as a witness. More compelling is that the Defendant's witness, Steven Schwartz, could offer no testimony indicating a direct knowledge of the circumstances surrounding the execution of the purported amendment. Mr. Schwartz indicated that he never dealt with Ms. Rahi.

The Court has examined a July 19, 2010 document, which the Defendant claims is the amendment that substantiates its defense. That document is addressed to Utopia Home Care, Brooklyn and it is to the attention of the "Home Health Aide Vendor Administrator." The document reads as follows:

In order to clearly state the expectations of our agreement regarding time frames for submission of bills to Revival Home Health Care we are sending this attestation of agreement regarding all home health care hours billed to this agency. It is the requirement of the vendor to submit all billings to this agency in no less than 30 days from the time of service.

This is a standard of practice within our industry and we are strongly adhering to these standards as of August 16, 2010. No billings older than 30 days will be honored after that date. This keeps our agency from submitting late or non reimbursable services to the various payors of our services.

Your prompt attention to this matter is greatly appreciated and expected. Please retain the copy marked, "Vendor Copy" and send the copy back to us marked "Please return this to Revival Home Healthcare" Please return this no later than August 23, 2010 to the following:

Name: Revival Home Healthcare  
Address: 5350 Kings Highway  
Brooklyn, New York 11203  
Attn: Joe Sochszewsky

You should also be aware that in the event our contract with you is renewed or extended, we will require an amendment to the contract that confirms your agreement to these terms.

Please do not hesitate to communicate with us if you have any questions concerning this matter. We can be reached at: 718-629-1000 x 222 or x 216.

Sincerely Yours

Thereafter, there is an acknowledgment which reads as follows:

ACKNOWLEDGED AND AGREED THIS 23 DAY OF July, 2010.

The acknowledgment is purportedly signed by the aforementioned uncalled witness, Anne Marie Rahi.

It is noteworthy, that the document relied upon by the Defendant calls itself a "Attestation of Agreement." Furthermore, it is equally compelling that the July 19, 2010 purported amendment used the following language:

You should also be aware that in the event our contract with you is renewed or extended, we will require an amendment to the contract that confirms your agreement to these terms.

By it's very language, the July 19, 2010 document indicates that in the future an amendment will be required comporting with contents of the July 19, 2010 letter. Nowhere does the document refer to itself as an amendment, and in the absence of testimony by Ms. Rahi on the question of authority, whether it actual or apparent, the defense must fall.

As pointed out by the Plaintiff

To create the claim of apparent authority, essential to the creation of apparent authority are words or conduct of the principal, communicated to a third party, that give rise to the appearance and belief that the agent possesses authority. ..."the existence of 'apparent authority' depends upon a factual showing the third party relied upon the misrepresentation of the agent

because of some misleading conduct on the part of the principal, not the agent. Moreover, a third party with whom the agent deals may rely on an appearance of authority only to the extent that such reliance is reasonable." See Hallock v. State, 64 NY2d 224, 231.

It is therefore the decision of the Court after trial that the Plaintiff submit judgment in the principal sum of Sixty Thousand Six Hundred Seventy Two Dollars and Thirteen Cents (\$60,672.13) with statutory interest from July 1, 2011 and a statutory bill of costs.

The foregoing constitutes the Decision After Trial.

**Dated: August 17, 2016**

  
HON. JERRY GARGUILO, JSC