

High Definition MRI, P.C. v Countrywide Ins. Co.

2019 NY Slip Op 32009(U)

July 8, 2019

Supreme Court, New York County

Docket Number: 650971/2013

Judge: Melissa A. Crane

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

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HIGH DEFINITION MRI, P.C.,

Plaintiff,

Index No.: 650971/2013

-against-

Mot. Seq. No. 004

COUNTRYWIDE INSURANCE COMPANY,

Defendant.

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HIGH DEFINITION MRI, P.C.,

Plaintiff,

Index No.: 651017/2013

-against-

Mot. Seq. No. 004

QBE INSURANCE CORPORATION,

Defendant.

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MELISSA A. CRANE, J.S.C.:

These summary judgment motions, and cross-motions, are consolidated for disposition. Plaintiff, High Definition MRI, P.C., moves for summary judgment against defendants Countrywide Insurance Company and QBE Insurance Company. In the Countrywide action, plaintiff seeks judgment in the amount of \$927,685.81. That includes all statutory interest and attorneys fees owed as of October 31, 2018. Plaintiff seeks reimbursement for 242 scans submitted to Countrywide that defendant Countrywide neither paid nor denied.

Plaintiff also seek a declaratory judgment that defendant failed to demonstrate *prima facie* plaintiff's fraudulent incorporation within the meaning of *State Farm v Mallela*, 4 NY3d 313 [2005]. In other words, plaintiff asks the court to declare proper incorporation of High Definition, and that High Definition's agreements to purchase equipment and lease space was a

reasonable transaction, and not intended to unlawfully divert profits from High Definition to non-physicians, like in the *Mallela* case.

In opposition, defendants ask the court to grant summary judgment to defendants, and to dismiss plaintiff's complaint. Defendants' invoke a *Mallela* defense. They claim that an insurer may withhold payment for medical services that a professional corporation provides when there is a willful and material failure to abide by" licensing and incorporation statutes (*see State Farm Mut Auto. Ins. Co. v Mallela* (4 NY3d 313, 321 [2005])). In this case, plaintiff submitted 275 claims to Countrywide. Countrywide did not deny 242 of those claims, and instead, chose to keep those claims open to further investigate the possibility that High Definition is fraudulently incorporated.

This case asks the court to address whether no-fault insurance carriers have an obligation either to pay or deny claims when they only have a *suspicion* that a provider is fraudulently incorporated. The Court of Appeals recently ruled on this issue. In *Andrew Carothers, M.D., P.C., v Progressive Ins. Co.*, -- N.E.3d --, 2019 WL 2424476 [June 11, 2019], the court stated, "[t]oday we clarify that *Mallela* does not require a finding of fraud for the insurer to withhold payments to a medical service corporation improperly controlled by nonphysicians." Although this case involves summary judgment motions, and *Carothers v Progressive* decision occurred after a jury trial, defendant's seemingly are within their right to use *Mallela* as a pretext to keep claims open.

A party seeking summary judgment must make a prima facie case showing that it is entitled to judgment as a matter of law by proffering sufficient evidence to demonstrate the absence of any material issue of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

If the movant fails to make this showing, the motion must be denied (*id.*). Once the movant meets its burden, then the opposing party must produce evidentiary proof in admissible form sufficient to raise a triable issue of material fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

In deciding the motion, the court must draw all reasonable inferences in favor of the nonmoving party and deny summary judgment if there is any doubt as to the existence of a material issue of fact (*Branham v Loews Orpheum Cinemas, Inc.*, 8 NY3d 931, 932 [2007]; *Dauman Displays v Masturzo*, 168 AD2d 204, 205 [1st Dept 1990], lv dismissed 77 NY2d 939 [1991]). “Where different conclusions can reasonably be drawn from the evidence, the motion should be denied” (*Sommer v Federal Signal Corp.*, 79 NY2d 540, 555 [1992]).

Plaintiff contends *Mallela* can be distinguished from this case. “Even if *Mallela* were at issue, High Definition is nothing like the medical practice at issue in *Mallela*. As noted in the affidavit from Mr. Chess, he is a duly licensed physician, lawfully formed High Definition, practiced medicine at High Definition, and read 100% of the scans that High Definition performed” (see NYSCEF doc no 75). In his affidavit, Mr. Chess states that he incorporated High Definition in October 2006. High Definition provided healthcare-related services to the general public from a Manhattan office and three MRI scanning locations in the Bronx, Brooklyn, and Queens (Chess Aff, para 3). Chess then states, as to each scan that High Definition is owed payment, High Definition employed services of its third party billing company, MedTrx Healthcare Solutions LLC (Chess Aff, para 7).

Plaintiff’s rendition of the facts differs from Dr. Chess’s testimony in his transcript. First, High Definition entered into agreements with the same individual that previously leased medical

offices to Dr. Carothers (i.e., Mr. Sher). High Definition also secured financing and the lender obtained a security interest. In addition, the flow chart attached to defendant's motion as "Exh H," raise issues of fact as to whether (1) High Definition is the successor entity to Andrew Carothers, M.D., P.C.; (2) whether High Definition is a sham entity; and (3) whether Harrell Shiff (a/k/a Hillel Sher), a layperson, unlawfully controlled High Definition and had High Definition's revenue channeled to him (*see NYSCEF Doc No 81, Chess Tr, June 7, 2018, p. 20-21*).

In the alternative, defendants assert that High Definition's business relationships are tantamount to fee sharing with non-professionals and, therefore, within the purview of *Mallela*. This again, is an issue of fact as to the extent that Dr. Chess, and High Definition allowed nonphysicians to control the practice of medicine.

It is apparent from Dr. Chess's transcript and affidavit, Dr. Chess's questionable affiliations with Dr. Carothers, the doctor implicated in *Mallela*, Dr. Chess's use of the same billing company, MedTrX HealthCare Solutions, LLC, as Carothers, and questions of fee sharing with non-professionals, raise issues of fact for trial as to whether High Definition was fraudulently incorporated, that the court cannot determine on papers alone.

Accordingly, it is

ORDERED that the court denies plaintiff's summary judgment motion and motion for declaratory relief; and it is further

ORDERED that the court denies defendants' cross-motion to dismiss plaintiff's
complaint.

New York, New York
July 8, 2019



JSC

HON. MELISSA CRANE