Batash v Healthfirst PHSP, Inc.
2020 NY Slip Op 31846(U)
May 29, 2020
Supreme Court, New York County
Docket Number: 655199/18
Judge: Nancy M. Bannon

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 42

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STEVEN BATASH, M.D.,

Plaintiff,

Index No.655199/18

v

DECISION AND ORDER

HEALTHFIRST PHSP, INC., HEALTHFIRST INSURANCE COMPANY, INC., HEALTHFIRST HEALTH PLAN, INC.,

MOT SEQ 001

Defendants.

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NANCY M. BANNON, J.:

I. INTRODUCTION

In this action for, *inter alia*, breach of contract, the plaintiff-medical doctor was a participating provider in the defendants' health care programs and claims that the defendants failed to pay him $240,000 on properly documented medical claims, frustrated the contract's appeals process of their denial of his claims, wrongfully terminated the plaintiff as a participating provider based on false accusations of fraud, and then issued a purportedly invalid final audit two months after terminating him, which demanded that he repay the defendants $30,494 for claims already they paid. The defendants move under CPLR 3211(a)(7) to dismiss the portion of the first cause of action purporting to assert a breach of contract based on demand for the repayment of

$30,434 in the final audit, the fifth cause of action for account stated, the sixth cause of action for unjust enrichment/*quantum meruit*, the seventh cause of action for breach of the implied covenant of good faith and fair dealing, and the eighth cause of action for a judgment declaring that the final audit is invalid and that the plaintiff has no obligation to repay the $30,494 demanded in the final audit. The motion is granted.

II. BACKGROUND

The plaintiff is a medical doctor who operates an endoscopy facility. The defendants administer health insurance benefits for individuals who are eligible for government-sponsored health insurance programs such as Medicare and Medicaid. Among other things, doctors like the plaintiff contract with the defendants to submit their insurance claims to the defendants or reimbursement.

On or about January 1, 2017, the plaintiff entered into a participating provider agreement with the defendants under which the plaintiff agreed to provide health care services to patients enrolled in the defendants' health are plans and the defendants agreed to reimburse the plaintiff for his services.

Between April 11, 2017 and March 15, 2018 the defendants allegedly denied certain claims and failed to reimburse for approximately $240,000 in medical claims for services he

performed on behalf of the members of the defendants' health plans. In denying the claims, the defendants allegedly denied claims arbitrarily and failed to provide specific reasons for denying the claims and rendered it both impossible and futile to successfully appeal the defendants' denial of his claims. On March 14, 2018, the defendants allegedly terminated the plaintiff as a participating provider for cause. On June 13, 2018, the defendants allegedly issued a final audit to the plaintiff in which they demanded that the plaintiff repay to them $30,494 in overpayments the defendants claim to have overpaid under the claims that the plaintiff submitted to them.

On October 19, 2018, the plaintiff commenced this action by filing a summons and complaint alleging 8 causes of action. The first cause of action is for breach of contract and alleges that the defendants breached the contract by failing to pay $240,000 in claims and then issuing the final audit demanding that the plaintiff repay them $30,494.[1] The fifth cause of action is for account stated. The sixth cause of action is for unjust enrichment and quantum meruit. The seventh cause of action is for breach of the implied duty of good faith and fair dealing.

[1] The defendants do not seek dismissal of the second, third, and fourth causes of action, and as such, they are not the subject of this motion. The second and third causes of action are for violation of Insurance Law 3224-a and Public Health Law 4406-d, respectively. The fourth cause of action is for breach of contract solely arising from the defendants' alleged wrongful termination for cause.

The eighth cause of action seeks a judgment declaring that the final audit is invalid and that the plaintiff has no obligation to repay the defendants the $30,494 they demanded therein.

III. DISCUSSION

When assessing the adequacy of a pleading in the context of a motion to dismiss under CPLR 3211(a)(7), the court's role is "to determine whether [the] pleadings state a cause of action." 511 W. 232nd Owners Corp. v Jennifer Realty Co., 98 NY2d 144 (2002). To determine whether a claim adequately states a cause of action, the court must "liberally construe" it, accept the facts alleged in it as true, accord it "the benefit of every possible favorable inference" (id. at 152; see Romanello v Intesa Sanpaolo, S.p.A., 22 NY3d 881 (2013)); Simkin v Blank, 19 NY3d 46 (2012)), and determine only whether the facts, as alleged, fit within any cognizable legal theory. See Hurrell-Harring v State of New York, 15 NY3d 8 (2010); Leon v Martinez, 84 NY2d 83 (1994); Weil, Gotshal & Manges, LLP v Fashion Boutique of Short Hills, Inc., 10 AD3d 267 (1st Dept. 2004); CPLR 3026.

The defendants move to dismiss the portion of the first cause of action for breach of contract in so far as it alleges that the defendants breached the contract by demanding the repayment of $30,494 in the final audit.

The elements of a cause of action for breach of contract are

(1) the existence of a contract, (2) the plaintiff's performance under the contract, (3) the defendant's breach of that contract, and (4) resulting damages. See Harris v Seward Park Housing Corp., 79 AD3d 425 (1st Dept. 2010). Boilerplate allegations of damages are insufficient to sustain a complaint for breach of contract. See Gordon v Dino De Laurentiis Corp., 141 A.D.2d 435 (1st Dept. 1988). The pleadings must set forth facts showing the damages attributable to defendants' conduct or facts from which the damages might be reasonably inferred. See Arcidiacono v Maizes & Maizes, LLP, 8 AD3d 119 (1st Dept. 2004).

The plaintiff does not allege any damages he suffered as a result of the final audit. The plaintiff does not allege that he has paid the defendants any portion of the money they demanded nor does the plaintiff allege that he expended additional funds appealing the final audit. Thus, the defendants' motion to dismiss the portion of the first cause of action alleging breach of contract based on the final audit is granted.

The defendants' motion to dismiss the fifth cause of action for account stated is likewise granted. "An account stated is an agreement between the parties to an account based upon prior transactions between them with respect to the correctness of the separate items composing the account and the balance due, if any, in favor of one party or the other. . . In this regard, receipt and retention of plaintiff's accounts, without objection within a

reasonable time, and agreement to pay a portion of the indebtedness, [gives] rise to an actionable account stated." Shea & Gould v Burr, 194 AD2d 369, 370 (1st Dept. 1993); see also Morrison Cohen Singer and Weinstein, LLP v Waters, 13 AD3d 51 (1st Dept 2004). "[T]here can be no account stated . . . where any dispute about the account is shown to have existed." Abbott, Duncan & Wiener v Ragusa, 214 AD2d 412, 413 (1st Dept. 1995). "A claim for account stated may not be utilized as another means to attempt to collect under a disputed contract." Martin Bauman Assoc. Inc. V. H&M Intern. Transport, Inc., 171 AD2d 479, 485 (1st Dept. 1991).

Here, the plaintiff alleges throughout the complaint that the defendants routinely disputed the amounts allegedly due him under the contract in denying his claims and appeals. That is, the plaintiff himself establishes that the defendants did object. For that reason, the fifth cause of action for account stated is dismissed pursuant to CPLR 3211(a)(7).

The sixth cause of action for unjust enrichment and quantum meruit is dismissed as duplicative of the breach of contract claim. see Hegman v Swenson, 149 AD3d 1 (1st Dept. 2017). Where a plaintiff seeks to recover under an express written agreement, no cause of action lies to recover for unjust enrichment. See Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., 70 NY2d 382 (1987); see also Stang LLC v Hudson Sq. Hotel LLC, 158 AD3d 446 (1st

Dept. 2018). Similarly, to establish a claim for quantum meruit, a plaintiff must establish the absence of a valid and enforceable written contract for the same services, since "[t]he existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter. A 'quasi contract' only applies in the absence of an express agreement, and is not really a contract at all, but rather a legal obligation imposed in order to prevent a party's unjust enrichment." Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., supra at 388.

Here, the plaintiff alleges that he entered into a written agreement that governed his relationship with the defendants. Thus, the sixth cause of action for unjust enrichment and quantum meruit is dismissed pursuant to CPLR 3211(a)(7).

The seventh cause of action is for breach of the implied duty of covenant of good faith and fair dealing. A claim for the breach of the duty of good faith and fair dealing will be dismissed as duplicative of a breach of contract claim where "[t]he allegations in the complaint [are] premised on the same conduct as the breach of contract claim and [are] intrinsically tied to the damages allegedly resulting from a breach of the contract." Art Capital Grp., LLC v Carlyle Inv. Mgt. LLC, 151 AD3d 604, 605 (1st Dept. 2017). The allegations in plaintiff's

seventh cause of action for breach of the implied covenant of good faith and fair dealing are based upon the same allegations as the first and fourth causes of action for breach of contract. The seventh cause of action is based on the defendants' alleged failure to pay $240,000 in valid medical claims due and owing under the contract, their frustration of the contract's appeals process, the wrongful termination of the plaintiff as a participating provider based on purportedly false allegations of fraud, and the defendants' alleged invalid final audit and the demand for repayment in connection therewith. Thus, the seventh cause of action is dismissed pursuant to CPLR 3211(a)(7).

However, the defendants' motion to dismiss the eighth cause of action for a judgment declaring that the final audit is invalid and that the plaintiff has no obligation to repay the defendants the $30,494 they demanded in the final audit is denied. The defendants argue that this court must dismiss the eighth cause of action because the contract purportedly sets forth a detailed internal appeals procedure that the plaintiff was obligated to follow after receiving what he believed to be a wrongful demand from the defendants to recoup overpayments. The defendants argue that when a contract expressly sets forth reasonable means for resolving disputes other than an action for declaratory judgment, a plaintiff may not a declaratory judgment.

Contrary to the defendants' contention, however, "where it

becomes clear that one party will not live up to a contract, the aggrieved party is relieved from the performance of futile acts or conditions precedent." Sunshine Steak, Salad & Seafood, Inc. v WIM Realty, Inc., 135 AD2d 891, 892 (3rd Dept. 1987); see also Duke Media Sales v Jakel Corp., 215 AD2d 237 (1st Dept. 1995). Accepting the complaint's allegations as true, as the court must on a motion pursuant to CPLR 3211(a)(7), the plaintiff has stated a cognizable claim for a declaratory judgment in spite of any purported obligation to resolve the dispute over the final audit through the contract's appeals process. The plaintiff amply alleges facts demonstrating that the defendant was not willing to live up to the contract when it issued the final audit and demanded the repayment of $30,494. By the time the defendants had issued the final audit, the complaint alleges that they had repeatedly breached the contract by (i) failing to pay $240,000 in valid claims, (ii) frustrating the appeals process in bad faith so as to render it futile after putting the plaintiff to enormous expense in navigating the process, and (iii) wrongfully terminating the plaintiff as a participating provider based on purportedly false accusations of fraud. See Duke Media Sales v Jakel Corp., supra; citing Sunshine Steak, Salad & Seafood, Inc. v WIM Realty, Inc., supra. Thus, the plaintiff has stated a cognizable claim that he should be permitted to seek a judicial declaration that the defendants' final audit is invalid and that

the plaintiff is not contractually obligated to repay the defendants $30,494. As such, the motion to dismiss the eighth cause of action is denied.

IV. CONCLUSION

Accordingly, for the reasons set forth herein, it is hereby

ORDERED that the defendants' motion to dismiss is granted to the extent of dismissing (i) the portion of the first cause of action alleging that the defendants breached their contract with the plaintiff by issuing the final audit and demanding repayment of $30,494 and (ii) the fifth, sixth, and seventh causes of action; and the motion is otherwise denied; and it is further

ORDERED that the defendants shall serve an answer to the remaining causes of action of the complaint within 20 days after service of a copy of this order with notice of entry; and it is further

ORDERED that counsel shall contact the court on or befoer July 31, 2020, to schedule a telephonic settlement conference.

This constitutes the Decision and Order of this Court.

Dated: May 29, 2020

NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON