

Weaver v Principal Diagnostics, Inc.

2013 NY Slip Op 31119(U)

May 14, 2013

Sup Ct, Suffolk County

Docket Number: 20540-2012

Judge: Emily Pines

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**SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION, PART 46, SUFFOLK COUNTY**

COPY

Present: HON. EMILY PINES
J. S. C.

Motion Date: 02-26-2013
Submit Date: 03-05-2013
Motion No.: 004 MOTD
[] Final
[x] Non Final

_____ X
**MICKI WEAVER dba PRO ACTIVE BUSINESS
SOLUTIONS ,**

Attorney for Plaintiff
Richard J. Kaufman, Esq.
646 Main Street
Port Jefferson, New York 11777

Plaintiff,

- against -

Attorney for the Defendants
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The Zuppa Law Firm PLLC
1205 Franklin Ave Suite 340
Garden City, New York 11350

**PRINCIPAL DIAGNOSTICS, INC.,
ACCUHEALTH MANAGEMENT GROUP, INC.,
ANTHONY ROLLO, JOHN P., QUINN,
ACCUHEALTH MEDICAL CLAIMS, INC., and
FRANK LAGREGA,**

Defendants.

_____ X

ORDERED that the Defendants' motion (Mot. Seq. 004) to dismiss the second, third, and fourth causes of action is decided as set forth herein.

Factual and Procedural Background

In an Amended Verified Complaint dated November 26, 2012, the plaintiff, Micki Weaver d/b/a Pro Active Business Solutions (hereinafter "Weaver" or "Plaintiff") alleges, among other things, that on or about November 15, 2010, she entered into an employment agreement (hereinafter "Agreement") with defendant Principal Diagnostics, Inc. (hereinafter "Principal Diagnostics") "and/or such companies with whom it was affiliated." The Agreement, a copy of which is annexed as an exhibit to the Amended Verified Complaint, is in the form of a letter on the letterhead of Principal Diagnostics addressed to

Weaver. It states, in relevant part:

JOB OFFER:

Principal Diagnostics, Inc. is pleased to offer you a job as Account Executive . . .

The Agreement also has sections entitled “JOB DESCRIPTION”, “COMPENSATION AGREEMENT”, AND “PAYMENT STRUCTURE”. Weaver signed the Agreement accepting the “job offer of Account Executive by Principal Diagnostics, Inc.” The Agreement does not state that it applied to any companies with whom Principal Diagnostics was affiliated, nor does it even reference any such companies.

The Amended Verified Complaint also alleges, in relevant part:

On or about December 1, 2011, plaintiff WEAVER entered into an employment agreement with defendants PRINCIPAL DIAGNOSTIC, ACCUHEALTH GROUP and ACCUHEALTH CLAIMS to provide physician accounts for said defendants to service with such medical related services as said defendants were in the business of providing which said agreement by its terms clarified and/or superseded the agreement of November 15, 2010, and which, in addition to those services provided to PRINCIPAL DIAGNOSTICS under the prior agreement, included payment for services provided by plaintiff on behalf of defendants ACCUHEALTH CLAIMS and/or ACCUHEALTH GROUP, denominated in said agreement as “Accuhealth” (a copy of said agreement denominated as “Fee for Services Addendum” is annexed hereto as **Exhibit “2”**).

The Fee for Services Addendum states, in relevant part:

In return for services performed in accordance within [sic] the Independent Contractor Agreement, Principal Diagnostics, Inc. agrees to pay the Independent Contractor as follows as of the effective date of this addendum. This revised “schedule A” supersedes any and all previous fee for service agreements.

The first cause of action in the Amended Verified Complaint alleges that Principal Diagnostics breached “the contract” by refusing to pay Plaintiff wages, salaries and commissions under “the contract” in the amount of \$70,000. The second cause of action is for breach of contract against Principal Diagnostics, Accuhealth Management Group, Inc. (hereinafter “Accuhealth Group”) and Accuhealth Medical Claims, Inc. (hereinafter “Accuhealth Claims”). Weaver alleges, upon information and belief, that between November 15, 2010 and June 2012, Principal Diagnostics entered into a series of affiliations/joint ventures or other agreements with Accuhealth Group and Accuhealth Claims whereby each of the corporations integrally coordinated with each other and interchangeably combined their resources, including employment of personnel, such as Weaver. Weaver further alleges that the Fee for Services Addendum dated December 1, 2011, was entered into by Principal Diagnostics “as the nominal employer on behalf of all corporate defendants”. Weaver alleges that “PRINCIPAL DIAGNOSTICS and/or its shareholders, officers, agents or employees constituted a single legal unit where each was so related to the other as to be the other’s instrumentality or alter ego”, as evidenced by the fact that Weaver was “interchangeably paid by checks issued by both ACCUHEALTH CLAIMS . . . and by PRINCIPAL DIAGNOSTICS itself.” Weaver alleges that she performed services for Principal Diagnostics, Accuhealth Claims and/or Accuhealth Group between December 1, 2011 and June 15, 2012, and that said defendants refused to pay her for said services in the amount of \$70,000. The third cause of action is asserted against defendants Anthony Rollo, John P. Quinn and Frank LaGrega, and seeks to pierce the corporate veils of the corporate defendants and impose personal liability upon the individuals for the acts of the corporate defendants. Weaver alleges that the individual defendants “exercised complete domination of the corporate defendants with respect to the employment agreement with the plaintiff and that such domination was used to commit a fraud against the plaintiff,” disregarded the independent form and substance of the separate corporations, and abused the privilege of doing business in the corporate form. The fourth cause of action seeks recovery in quantum meruit.

Defendants now move to dismiss the second, third and fourth causes of action pursuant to CPLR 3211(a)(7). Alternatively, Accuhealth Claims and LaGrega move to dismiss the Amended Verified Complaint as asserted against them pursuant to CPLR 3211(a)(8). Defendants contend, among other things, that the second cause of action fails to state a breach of contract cause of action as the contracts annexed to the Amended Verified Complaint clearly indicate that they are only between Weaver and Principal Diagnostics, and that neither Accuhealth Group nor Accuhealth Claims are parties to the contracts. Defendants also argue that as asserted against Principal Diagnostics, the second cause of action is duplicative of the first cause of action, which is also for breach of contract. With regard to the third cause of action, the individual defendants contend that the Plaintiff has not alleged sufficient facts to properly state a claim for piercing the corporate veil and imposing liability upon the individual defendants. Defendants argue that the fourth causes of action, which seeks recovery in quantum meruit, should be

dismissed because a valid and enforceable contract between Weaver and Principal Diagnostics exists covering the dispute.

In opposition to Defendants' motion, Plaintiff argues, among other things, that the allegations in the Amended Verified Complaint are legally sufficient to sustain the claims asserted therein as the allegations are non-conclusory and specific statements of fact. For example, Plaintiff alleges that the corporate defendants interchangeably referred to themselves in the employment contracts, and also allege that Plaintiff was interchangeably paid by checks on different occasions issued by the corporate defendants.

Discussion

In considering a motion to dismiss a complaint pursuant to CPLR 3211(a)(7):

[T]he complaint must be liberally construed and the plaintiff given the benefit of every favorable inference (citations omitted). The court must also accept as true all of the facts alleged in the complaint and any factual submissions made in opposition to the motion (citations omitted). If the court can determine that the plaintiff is entitled to relief on any view of the facts stated, its inquiry is complete and the complaint must be declared legally sufficient (citations omitted). While factual allegations contained in the complaint are deemed true, bare legal conclusions and facts flatly contradicted on the record are not entitled to a presumption of truth (citations omitted).

(Symbol Tech., Inc. v. Deloitte & Touche, LLP, 69 AD3d 191, 193-195 [2d Dept 2009]).

Recently, in *East Hampton Union Free School Dist. v. Sandpebble Bldrs., Inc.* (66 AD3d 122 [2d Dept 2009]), the Appellate Division, Second Department discussed the concept of piercing the corporate veil. The Court stated, in relevant part:

The general rule, of course, is that a corporation exists independently of its owners, who are not personally liable for its obligations, and that individuals may incorporate for the express

purpose of limiting their liability. The concept of piercing the corporate veil is an exception to this general rule, permitting, in certain circumstances, the imposition of personal liability on owners for the obligations of their corporation. A plaintiff seeking to pierce the corporate veil must demonstrate that a court in equity should intervene because the owners of the corporation exercised complete domination over it in the transaction at issue and, in doing so, abused the privilege of doing business in the corporate form, thereby perpetrating a wrong that resulted in injury to the plaintiff.

* * *

[I]f, standing alone, domination over corporate conduct in a particular transaction were sufficient to support the imposition of personal liability on the corporate owner, virtually every cause of action brought against a corporation either wholly or principally owned by an individual who conducts corporate affairs could also be asserted against that owner personally, rendering the principle of limited liability largely illusory. Thus, the party seeking to pierce the corporate veil must also establish “that the owners, through their domination, abused the privilege of doing business in the corporate form.” Factors to be considered in determining whether the owner has “abused the privilege of doing business in the corporate form” include whether there was a failure to adhere to corporate formalities, inadequate capitalization, commingling of assets, and use of corporate funds for personal use.”

(East Hampton Union Free School Dist. v. Sandpebble Bldrs., Inc., supra at 126-127 [internal citations omitted]).

“Since, by definition, a corporation acts through its officers and directors, to hold a shareholder/officer . . . personally liable, a plaintiff must do more than merely allege that the individual engaged in improper acts or acted in ‘bad faith’ while representing the corporation” (*East Hampton Union Free School Dist. v. Sandpebble Bldrs., Inc.*, 16 NY3d 775, 776 [2011]).

Here, the Amended Verified Complaint does not plead sufficient facts to hold the individual defendants personally liable under a theory of piercing the corporate veil or sufficient facts to hold

Accuhealth Group and Accuhealth Claims liable under a theory that they are the alter ego corporations of Principal Diagnostics. Contrary to the Plaintiff's contention neither the Agreement dated November 15, 2010, nor the Fee for Services Addendum dated December 1, 2011, identifies either Accuhealth Group or Accuhealth Claims as a party to either of those agreements. Thus, there is no factual evidence supporting Plaintiff's allegation that the agreements refer to the corporate defendants interchangeably. Moreover, even assuming that the Plaintiff received checks from one or more of the corporate defendants, this does not demonstrate that the corporate defendants operated as alter egos of one another. Conclusory assertions that the corporations acted as alter egos will not suffice to support the equitable relief of piercing the corporate veil (*see, Goldman v Chapman*, 44 AD3d 938, 939 [2d Dept 2007]). Moreover, the Amended Verified Complaint does not allege facts showing that the individual defendants exercised complete domination and control over Principal Diagnostics or that they abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against Plaintiff. Also, the Amended Verified Complaint does not allege facts tending to show that there was a lack of corporate formalities, commingling of funds, or undercapitalization of Principal Diagnostics, or that the individual defendants made personal use of corporate funds (*see Allstate ATM Corp. v E.S.A. Holding Corp.*, 98 AD3d 541, 542 [2d Dept 2012]). Accordingly, the second and third causes of action are dismissed.

Finally, the existence of a valid and enforceable agreement between Plaintiff and Principal Diagnostics precludes a claim in quantum meruit against Principal Diagnostics for events arising out of the same subject matter (*see Schuckman Realty, Inc. v. Marine Midland Bank, N.A.*, 244 AD2d 400 [2d Dept. 1997]). However, inasmuch as Accuhealth Group and Accuhealth Claims both deny the existence of a contract with Plaintiff covering the dispute, Plaintiff may alternatively seek recovery in quantum meruit against them (*see AHA Sales, Inc. v Creative Bath Products, Inc.*, 58 AD3d 6, 20 [2d Dept 2008]). Accordingly, the fourth cause of action in the Amended Verified Complaint is dismissed insofar as asserted against Principal Diagnostics and the individual defendants.

This constitutes the **DECISION** and **ORDER** of the Court.

Dated: May 14, 2013
Riverhead, New York



EMILY PINES
J. S. C.

Final
 Non Final