

<b>Harte v A&amp;T Healthcare, Inc.</b>
2006 NY Slip Op 30818(U)
July 25, 2006
Supreme Court, New York County
Docket Number: 116609/05
Judge: Karla Moskowitz
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 3

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SAM HARTE, TIMOTHY FERGUSON, SCOTT LOCKWOOD  
and LYNN EDMONDS, as TRUSTEES OF THE NEW YORK  
HEALTH CARE FACILITIES WORKERS' COMPENSATION  
TRUST,

Plaintiffs,

Index No. 116609/05

-against-

**Decision and Order**

A&T HEALTHCARE, INC.,

Defendant.

-----X

**KARLA MOSKOWITZ, J.:**

Plaintiffs, trustees of a Worker's Compensation Trust, sue defendant, a member of the Trust, for trust "assessments."

Plaintiffs Sam Harte, Timothy Ferguson, Scott Lockwood and Lynn Edmondson ("Trustees"), as Trustees of the New York Health Care Facilities Workers' Compensation Trust (the "Trust") have sued defendant A&T Healthcare, LLC (incorrectly identified as A&T Healthcare, Inc.) ("A&T") for breach of contract. By this pre-answer motion (sequence number 001), A&T moves to dismiss the complaint pursuant to CPLR 3211(a)(1) on the basis that documentary evidence bars plaintiffs from maintaining the action.

**FACTS**

The court derives the following facts from the complaint and other documents that the parties submitted.

The Trust is a group self-insurance trust organized pursuant to Workers' Compensation Law ("WCL") § 50(3-a). The Trust enables its members who are employers in the healthcare

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industry to fund the cost of workers' compensation insurance. A&T was a participating member of the Trust from 1997 to 2001.

### **The Prior Action**

On June 5, 2002, the Trust commenced a lawsuit against A&T seeking to recover unpaid annual contributions that A&T allegedly owed the Trust from 1997 to 2001. The Trust determined the amount that A&T owed in annual contributions after the Trust audited A&T's books and records. The parties settled the lawsuit on January 28, 2005 and entered into a Settlement Agreement. The Settlement Agreement provided that, after A&T made the final payment to the Trust, the parties would exchange releases.

Pursuant to the January 28, 2005 Settlement Agreement, A&T paid \$285,000,000 to the Trust. The Settlement Agreement provides, *inter alia*, that,

A&T shall be fully released as a former member of the Trust from any and all claims and liabilities to the Trust with regard to contribution claims arising from the lawsuit brought by the Trust under New York County Supreme Court Index No.: 601775/03; except to the extent that Section 50-3(a) of the New York Workers' Compensation Law may be applicable. [*sic*]

(Affidavit of Margaret Onody, dated January 27, 2006, Exh. A).

Timothy Ferguson and Sam Harte, as Trustees, also signed a release on behalf of the Trust (the "Release"). The Release, signed and countersigned on January 28, 2005 and June 13, 2005, provides that

[the Trust and its Trustees] hereby release and discharge each of and both RELEASEES [A&T Healthcare, Inc. and A&T Healthcare, LLC], RELEASEES heirs, executors, administrators, successors and assigns from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which against the RELEASEES, the

RELEASORS, RELEASORS' heirs, executors, administrators, successors and assigns ever had, now have or hereafter can, shall or may have, for, upon, or by reason of, but solely with respect to claims of RELEASOR for annual contributions by RELEASEES during RELEASEES' membership in the Trust, which formed the basis of the lawsuit brought by the RELEASORS in the Supreme Court of the State of New York, New York County, bearing index number 601775/03.

(Affidavit of Sam Harte, dated March 6, 2006, Exh. 7).

A&T contends that the language of the Release bars plaintiffs from suing A&T in this action.

### **The Present Action**

On October 19, 2004, the New York State Workers' Compensation Board (the "Board") determined that the Trust was underfunded. The Board then directed the Trust to develop a "mutually acceptable corrective plan to enable the Trust to ensure its long-term viability and to limit the Trust's participating members' exposure to long-term and unexpected financial liability." (Complaint, ¶ 5). According to plaintiffs, on May 27, 2005, the Trustees proposed and adopted a plan that met with the Board's directives. The plan included the Trustees' approval of an assessment that the Trust would charge all participating members of the Trust equal to one half of the Trust's deficit for the years 1997 through 2003 (the "Assessment"). On June 1, 2005, the Board approved the Assessment.

On June 30, 2005, the Trust's program administrator, Walter Taylor, sent a letter to A&T notifying A&T of the Assessment. The letter stated that "all active and terminated members of the Trust are being assessed for their pro-rata share of the total deficit during the period of their membership in the Trust." (Notice of Motion, Exh. 8). The Trust charged A&T a \$312,889.62 Assessment and requested that A&T pay the Assessment in 36 equal monthly payments. The

Trust calculated the Assessment based upon the number of years A&T was a member of the Trust, from 1997 through 2001. A&T has not made any payments.

Plaintiffs contend that “defendant is obligated to pay the Assessment to the Trust pursuant to its commitments to the Trust and Section 4 of the By-Laws of the Trust, which states, in part, that ‘the member agrees to pay in full . . . all annual premiums, dues or assessments at the start of their coverage year and for every coverage year thereafter.’” (Complaint, ¶ 9). A&T seeks dismissal of this action relying upon the terms in the Release.

### **DISCUSSION**

On a motion to dismiss, a court will “accept as true the facts as alleged in the complaint, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory.” (*Ark Bryant Park Corp. v Bryant Park Restoration Corp.*, 285 AD2d 143, 150 [1st Dept 2001]). The applicable standard in ruling on a motion to dismiss is “so liberal that the test is simply ‘whether the proponent of the pleading has a cause of action,’ not even ‘whether he has stated one.’” (*Wiener v Lazard Freres & Co.*, 672 NYS2d 8, 13 [1st Dept 1998] [citations omitted]).

A&T contends that the Release bars all claims that plaintiffs have against A&T in this lawsuit because the “contributions” A&T paid the Trust pursuant to the settlement are identical in nature to the “Assessment” that plaintiffs now seek. Plaintiffs however, contend that the Release was limited to those claims relating to the prior action only and the Release does not apply to A&T’s shares of the Assessment. Plaintiffs asserts that “the Trust’s claims in this action are different and independent of those asserted in the Prior Action, which are covered by the Release.” (*See Memorandum of Law*, pp. 3-4). Further, plaintiffs argue that the Assessment did

not exist at the time the parties entered into the settlement and the Release. Thus, the Release does not relieve A&T from its obligation to pay the Assessment.

Releases are “governed by principles of contract law.” (*Mangini v McClurg*, 24 NY2d 556, 562 [1969]). “[I]f from the language of the instrument, it appears that the release is to be limited to certain claims, demands, or obligations, then the release will be operative as to those matters only.” (*Herman v Malamed*, 110 AD2d 575, 577 [1st Dept 1985]). To be a complete defense on a motion to dismiss, “documentary evidence must resolve all factual issues as a matter of law.” (*Dunleavy v First American Title Ins. Co. of New York*, 117 AD2d 952, 953 [3d Dept 1986]).

Here, defendants have not established that the Release resolves all factual issues as a matter of law. The plain language of the Release limits it to the claims for annual contributions “which formed the basis of the lawsuit brought by the RELEASORS in the Supreme Court of the State of New York, New York County, bearing index number 601775/03.” (Harte Aff., Exh. 7). Therefore, it appears that the Release may be operative as to those contributions that formed the basis of the prior action only.

Plaintiffs allege that the Assessment differs from the contribution. Plaintiffs rely on WCL § 317.2(e) that defines “contribution” as “an annual charge to individual members of a group self-insurer to cover its workers’ compensation liabilities and assessments.” (*See* Memorandum of Law, p. 8). They contend that the reference to “assessments” in this definition is not the same as the Assessment plaintiffs seek in this action because the Assessment is not billed on a regular, annual basis. (*See id.*; *see also* Harte Aff., ¶ 28). Plaintiffs also allege that, unlike the contributions, the Assessment is an additional “common charge which may be added

to the costs of insurance and be reflected on an insured or member's premium bill.”

(Memorandum of Law, p. 8). Plaintiffs claim that the Trust imposed the Assessment as a result of the Board's directive to increase the Trust's funding level only, and not as part of the process through which the Trust collects its contributions from its members. (*See Harte Aff.*, ¶ 20).

Because of these differences, the Board adopted and approved the Assessment pursuant to WCL Section 317.9(b)(7), a separate section of the WCL that does not deal with “contributions.” (*See Harte Aff.*, ¶ 20; Memorandum of Law, p. 9).

Accepting these facts as true, the Assessments that plaintiffs seek in this action may differ from those contributions that were the subject of the Release in the prior action. Therefore, the documentary evidence that defendants rely upon does not preclude this lawsuit.

In addition, plaintiffs rebut defendant's contention that plaintiffs “were aware of their continued ‘underfunded’ status as a result of ongoing audits by the Board well before” the settlement and that despite that knowledge, plaintiffs did not seek to amend the complaint in the prior action. (*See Memorandum of Law In Support of Motion to Dismiss*, p. 7). Plaintiffs allege that, at the time the parties entered into the settlement (January 28, 2005) of the prior action, the Board had not yet approved the proposed Assessment, so the Settlement Agreement and the Release could not have precluded any lawsuits involving the Assessment. According to plaintiffs, the Trust did not adopt a plan of action to remedy the Trust's alleged under funding until June 1, 2005 (when the Board approved the Assessment) and the Trust did not bill A&T for the Assessment until July 1, 2005. (Memorandum of Law, p. 14). Accepting as true plaintiffs' contentions, the court cannot hold as a matter of law at this juncture that the Assessment existed at the time the parties entered into the settlement and that the Release bars plaintiffs' recovery of

the Assessment. Plaintiffs were aware of the Trust's "underfunded" status during the prior action (see Affidavit of Linda Clark, Exh. A, ¶ 5), but the court cannot determine as a matter of law whether the "underfunded" status included the need for the Assessments, requiring plaintiffs to amend the complaint in the prior action to reflect as such.

Accordingly it is


ORDERED that the motion of A&T Healthcare, Inc. to dismiss the complaint is denied; and it is further

ORDERED that A&T shall serve an answer to the complaint within 20 days of Notice of Entry of this Order; and it is further

ORDERED that parties are to appear for a preliminary conference on August 24, 2006 at 11am in courtroom 248 at 60 Centre Street, New York, N.Y.

Dated: July 25, 2006

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