SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present:
HON. DANIEL PALMIERI
Acting Justice Supreme Court

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TRANSITIONS OF LONG ISLAND,

Plaintiff,

-against-

PAUL COPPOLA a/k/a PAUL CAPPOLA and JEANNE M. COPPOLA a/k/a JEANINE M. CAPPOLA,

Defendants.

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TRIAL PART: 48

INDEX NO.:8433/07

MOTION DATE:11-16-07
SUBMIT DATE:1-8-08
SEQ. NUMBER - 001

The following papers have been read on this motion:

Notice of Motion, dated 10-18-07.....1
Affidavit in Opposition, dated 12-13-07.....2
Reply Affirmation, dated 12-13-07.....3

The plaintiff's motion for summary judgment is granted to the extent that summary judgment is granted as against defendant Jeanne M. Coppola a/k/a Jeanine M. Cappola. Judgment may be entered by the Clerk in favor of the plaintiff against this defendant in the sum of $26,449.93, with interest at the legal rate from April 7, 2005, with the costs and disbursements of the action, as taxed by the Clerk. Summary judgment is denied as against Paul Coppola a/k/a Paul Cappola. Entry of judgment may await resolution of the case as against Paul Coppola, a/k/a Paul Cappola.

Defendant Jeanne M. Coppola a/k/a Jeanine M. Cappola was given medical care and treatment by the plaintiff at its facility at various dates between May 7, 2004 and October 29,

2004. Because the injury was the result of an accident in which she had been struck by an automobile as a pedestrian, No-Fault coverage existed from both the offending vehicle and from a policy owned by defendants, who are husband and wife. However, coverage benefits from both policies were exhausted before all treatment was completed. The plaintiff then billed the defendants' private health insurance carrier, Blue Cross Blue Shield. It is undisputed that coverage was declined by Blue Cross Blue Shield, and that Ms. Coppola ultimately was left with an unpaid bill in the amount of $26,449.93. No challenge is made by the defendants with regard to the services performed or the reasonableness of the charges therefor.

Prior to beginning treatment, she had signed an assignment of benefits form for coverage under the No-Fault law. One provision of that form states that the "agreement shall become null and void if at any time it is determined that benefits are not payable due to the following circumstances: lack of coverage..." No other assignment form or other agreement is presented by the moving plaintiff, including any writing or other proof that defendant Paul Coppola agreed to be liable for her bill.

As this is a motion for summary judgment, the well-established principles applicable to such motions apply. Generally speaking, to obtain summary judgment it is necessary that the movant establish its claim or defense by the tender of evidentiary proof in admissible form sufficient to warrant the court, as a matter of law, in directing judgment in its favor (CPLR 3212 [b]), which may include deposition transcripts and other proof annexed to an attorney's affirmation. *Olan v Farrell Lines,* 64 NY2d 1092 (1985). Absent a sufficient showing, the court should deny the motion, irrespective of the strength of the opposing

papers. *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 (1985).

If a sufficient *prima facie* showing is made, however, the burden then shifts to the non-moving party. To defeat the motion for summary judgment the opposing party must come forward with evidence to demonstrate the existence of a material issue of fact requiring a trial. CPLR 3212 (b); *see also GTF Marketing, Inc. v. Colonial Aluminum Sales, Inc.*, 66 NY2d 965 (1985); *Zuckerman v. City of New York*, 49 NY2d 557 (1980). The non-moving party must lay bare all of the facts at its disposal regarding the issues raised in the motion. *Mgrditchian v. Donato*, 141 AD2d 513 (2d Dept. 1988). If such party defends a motion by resort to CPLR 3212(f), that is, the party has a defense sufficient to defeat the motion but that the supporting facts cannot yet be stated, that party must be able to make some showing that such facts do in fact exist; mere hope that discovery may reveal those facts is insufficient. *Companion Life Ins. Co. v All State Abstract Co.*, 35 AD3d 519 (2d Dept. 2006).

Applying these well-established principles to the case at bar, it is apparent that the plaintiff is entitled to summary judgment as against Jeanne M. Coppola, but not against Paul Coppola.

Plaintiff certainly was entitled to seek payment for any treatment rendered to Mrs. Coppola for which no insurance coverage existed. It has presented proof that such services were rendered to her, and that charges in the amount sought resulted. It thus makes out a *prima facie* showing of entitlement to judgment as a matter of law. In response, the defendants make no challenge to the bill or to the services rendered, as noted above. Rather, they assert that the plaintiff has no standing to sue, that the assignment is not a basis for suit because the defendants did not there promise to pay more that what the insurance would

provide, and that the plaintiff did not make reasonable attempts to challenge the denial by Blue Cross Blue Shield. Finally, they urge that no discovery has been had in this case.

None of these defenses is sufficient. The plaintiff has presented proof that it was a viable corporation at the time services were rendered, and was absorbed by another entity at the end of 2006. There is thus no bar to the corporation suing the defendants, as a dissolved corporation may sue or be sued after dissolution. Business Corporation Law § 1006(a)(4). The assignment agreement simply provides that any No Fault benefits due the defendant Jeanne M. Coppola could be collected by the plaintiff, and also provides that an absence of coverage (which undisputedly occurred here upon exhaustion of benefits) rendered such agreement void. It contains no language indicating that the plaintiff is barred from seeking any balance due from the defendants. Indeed, the insurance company that declined coverage was not one obligated to pay under the No Fault law, rendering the assignment inapplicable, in that by its terms it concerned only those benefits paid under that statute.

With regard to the alleged failure of the plaintiff to challenge the denial by Blue Cross Blue Shielf, the defendants have presented no authority in support of the dubious proposition that the medical provider had a common-law duty to do so. Indeed, as the plaintiff correctly notes, it is no defense to the instant action that the debtor's insurance carrier refused to cover the bill. *See, Gray B.R. Trucking Co.* 59 NY2d 649 (1983); *Finchside Intl. v Coquette Co.*, 232 AD2d 312 (1st Dept. 1996). Finally, the fact that discovery has not been conducted is no bar in the absence of a showing that facts may exist sufficient to defeat the motion. *Companion Life Ins. Co. v All State Abstract Co., supra.* Accordingly, summary judgment

is granted to the plaintiff against Ms. Coppola. Interest shall run from the date of the last statement presented by the plaintiff, indicating the unpaid charges.

However, the plaintiff has failed to make out a *prima facie* showing that Paul Coppola may be held liable for his wife's debt. The plaintiff has presented no writing in which he agreed to pay or to guarantee payment of her obligations, and plaintiff makes no reference to one. The sole basis for seeking payment from him is under the doctrine that a spouse may be held liable for necessaries provided to the other spouse, but this applies only where a demonstration has been made that the plaintiff furnished treatment on the non-debtor spouse's credit, that the debtor spouse as primary obligor does not have the means to satisfy the plaintiff creditor, and that the non-debtor spouse possesses such means. *Medical Business Assocs. v Steiner,* 183 AD2d 86, 97-98 (2d Dept. 1992); *Our Lady of Lourdes Mem. Hosp. v Frey,* 183 AD2d 994, 995 (3d Dept. 1992); *see also, Gilberg v Lennon,* 212 AD2d 662, 663 (2d Dept. 1995). As absolutely no evidence has been presented making such showings, the motion as to this defendant must be denied, even though this issue was not addressed in the opposing papers. *Winegrad v New York Univ. Med. Ctr., supra.* The same is true with regard to the cause of action for an account stated, as there is nothing to show that the plaintiff sent bills to Paul Coppola himself, in which a demand for payment was made of him as being individually responsible for such payment, and that he retained those bills without objection. *See, Sisters of Charity v Riley,* 231 AD2d 272, 282-283 (4th Dept. 1997). Indeed, the statement presented does not even bear the address or the name of Paul Coppola; it is apparently addressed to the insurance company GEICO. While sufficient as

a final statement of services rendered and the charges for those services, the account, it is insufficient as a bill rendered to Mr. Coppola. Accordingly, summary judgment is denied as to this defendant.

However, as neither of these defenses were asserted by Paul Coppola as a reason for dismissal of the action against him alone, nor proof presented in support thereof, and the bases advanced for dismissal of the action in its entirety have been rejected, the Court declines to search the record and dismiss the action against him. Nevertheless, the Court warns the plaintiff that if, in view of this decision and any discovery it may conduct, it appears that it does not have a good-faith basis for pursuing Paul Coppola for payment, it should discontinue the action against him, or risk sanctions for frivolous conduct. *See,* 22 NYCRR § 130-1.

This shall constitute the Decision and Order of this Court.

ENTER

DATED: January 25, 2008

HON. DANIEL PALMIERI
Acting Supreme Court Justice

TO: Smith, Carroad, Levy & Finkel, LLP
By: Timothy Wan
Attorneys for Plaintiff
5036 Jericho Turnpike
Commack, NY 11725

James M. Haddad, Esq.
Pirk & Haddad, L.L.P.
Attorneys for Defendants
36 Nimitz Street
Huntington, NY 11735