

Hamilton Brooks LLC v Little Neck Nursing Home

2008 NY Slip Op 31018(U)

March 26, 2008

Supreme Court, Nassau County

Docket Number: 0028-07/

Judge: Stephen A. Bucaria

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

HAMILTON BROOKS LLC,

Plaintiff,

-against-

LITTLE NECK NURSING HOME,

Defendants.

TRIAL/IAS, PART 4
NASSAU COUNTY

INDEX No. 600028/07

MOTION DATE: Feb. 1, 2008
Motion Sequence # 001

The following papers read on this motion:

- Notice of Motion..... X
- Affidavit in Opposition..... X
- Reply Affidavit.... X

This motion, by plaintiff, for summary judgment pursuant to CPLR §3212 based on documentary evidence and for an account stated against defendant East Rockaway Care Facility, is determined as hereinafter set forth.

FACTS

The plaintiff, Hamilton Brooks LLC (“Plaintiff” or “Hamilton Brooks”), provides temporary employees to the nursing home sector. The defendant, Little Neck Nursing Home (“Defendant” or “Little Neck”), entered into a contract with the plaintiff on April 27, 2005. Pursuant to the contract (“Agreement”), the plaintiff would supply temporary employees to the defendant in exchange for payment. These temporary employees would

COURT

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submit time sheets on each day worked to the defendant's supervisor, who would review the time sheets and sign off on them to approve their accuracy and veracity. The Agreement indicates that a "supervisor's signature on the Time sheet shall indicate that the Healthcare Professional performed the services in a satisfactory manner and the Facility agrees to pay for those services." These signed time sheets were later grouped into a weekly invoice and sent to the defendant upon which the defendant agreed to pay for those services rendered. If there were any disagreement as to hours worked by or wages owed to the plaintiff's employees, the agreement states that all disputes must be made in writing. The plaintiff would also send out monthly statements indicating amounts past due that were still outstanding and amounts then presently due for services rendered in the previous month. If the payment of an invoice was not made within a reasonable time an interest of 1% per month would accrue to any unpaid portion of an invoice.

The plaintiff ceased doing business with the defendant on August 31, 2007, and billed the final monthly statement for services performed.

PLAINTIFF'S CONTENTIONS

The plaintiff's attorney argues a breach of contract claim against Little Neck in which the plaintiff is owed \$165,142.88 exclusive of interest. The plaintiff also asserts an account stated claim in the sum of \$139,413.22 and interest in the amount of \$25,729.56 for a total of \$165,142.88. The plaintiff demands that the defendant pay the plaintiff's costs for enforcing and collecting any amounts due under the Agreement, including an amount for reasonable attorney fees.

DEFENDANT'S CONTENTIONS

The defendant asserts that it disputed numerous invoices and that there was an agreement that they would be adjusted. The defendant avers that these adjustments were made and that some payments were made for a period of time. The defendant further asserts that the plaintiff admitted, in a letter, that invoices were incorrect and summary judgment should be denied.

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REPLY

In reply, the plaintiff asserts that despite the defendant's opposition, the defendant has not demonstrated proof of written disputes of the invoices as required by the agreement. It argues that the letter referenced by the defendant does not demonstrate that the invoices were wrong, only that the plaintiff agreed to give the defendant more time to pay the amount due. It further argues that the opposition is devoid of any assertion that the defendant does not owe the plaintiff the amount demanded.

DECISION

The rule in motions for summary judgment has been succinctly re-stated by the Appellate Division, Second Dept., in (**Stewart Title Insurance Company, Inc. v Equitable Land Services, Inc.**, 207 AD2d 880, 616 NYS2d 650, 651, 1994):

“It is well established that a party moving for summary judgment must make a **prima facie** showing of entitlement as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact (**Winegrad v New York Univ. Med. Center**, 64 NY2d 851, 853, 487 NYS2d 316, 476 NE2d 642; **Zuckerman v City of New York**, 49 NY2d 557, 562, 427 NYS2d 595, 404 NE2d 718). Of course, summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (**State Bank of Albany v McAuliffe**, 97 AD2d 607, 467 NYS2d 944), but once a **prima facie** showing has been made, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish material issues of fact which require a trial of the action (**Alvarez v Prospect Hosp.**, 68 NY2d 320, 324, 508 NYS2d 923, 501 NE2d 572; **Zuckerman v City of New York**, *supra*, 49 NY2d at 562, 427 NYS2d 595, 404 NE2d 718)”.

In applying the above legal principles to the facts of the case at bar, this Court has thoroughly examined the entire record, as presented, in the context of the applicable case law and statutory law. Even construing the evidence in the light most favorable to

defendant (Museums at Stony Brook v. Village of Patchogue Fire Department, 146 AD2d 572, 536 NYS2d 572, Second Dept., 1989; see also, Creighton v. Milbauer, 191 AD2d 162, First Dept., 1993), summary judgment is warranted.

For a case at bar to proceed, that is, for the plaintiff's motion for summary judgment to be defeated, a question of fact must exist that would require a jury to determine the issue of defendant's liability.

There are no mailings or memos that the defendant rejected or disputed any invoices. Furthermore, the Agreement provides the ability for the defendant to dispute any hours worked by any of the plaintiff's employees, so long as it is in writing. The defendant has not objected to any of the time sheets submitted and has not given an oral or written request to dispute the hours worked at any time. Instead, the defendant states that "although Plaintiff did in fact provide certain services for LNNH and did send invoices for such services, the invoices were not accepted " and provides no evidence to support its claim.

The plaintiff has established its entitlement to judgment as a matter of law on an account stated claim because the defendant signed the time sheets upon which this cause of action is based. The Agreement provides that "the supervisor's signature on the Time sheet shall indicate that the Healthcare Professional performed the services in a satisfactory manner and the Facility agrees to pay for those services." The defendant's lack of written disputes furthers the presumption that the defendant was satisfied with the work performed by the plaintiff's employees and continued to receive their services. The defenses asserted in the answer, i.e., statute of limitations, laches, and waiver and estoppel, have not been addressed in the opposition to this motion. Perusal of the record reveals that they are meritless and this Court will not address them further.

The defendant has not offered sufficient evidence to establish any material issues of fact. The plaintiff's motion for summary judgment is **granted**.

This order concludes the within matter assigned to me pursuant to the Uniform Rules for New York State Trial Courts.

So Ordered.

Dated MAR 26 2008

Stephen A. Surace
XXY ENTERED JSC

MAR 31 2008