

<b>Hamilton Brooks LLC v East Rockaway Care Facility</b>
2008 NY Slip Op 31019(U)
March 26, 2008
Supreme Court, Nassau County
Docket Number: 0029-07/a
Judge: Stephen A. Bucaria
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SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

HAMILTON BROOKS LLC,

Plaintiff,

-against-

EAST ROCKAWAY CARE FACILITY,

Defendant.

TRIAL/IAS, PART 4  
NASSAU COUNTY

INDEX No. 600029/07

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 § 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 Brook LLC (“Plaintiff” or “Hamilton Brook”), is in the business of providing temporary employees within the nursing home industry. The defendant, East Rockaway Care Facility (“Defendant” or “East Rockaway”), a nursing home, entered into a contract on November 7, 2005 with Hamilton Brook. Pursuant to the contract (“Agreement”), the plaintiff would supply temporary employees to the

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defendant, such as nurses, nurse's aides and other health care support staffing. These temporary employees would submit time sheets on a daily basis to a supervisor of the defendant's choosing, who, in turn, would review the time sheets and sign off on them to approve their accuracy and veracity. The Agreement states that "a supervisor's signature indicates that the work performed by Provider's employees is accurate and satisfactory to the standard of the Facility, and that the Facility agrees to pay for those services upon receipt." These signed time sheets were later grouped into an invoice, which was sent to the defendant on a weekly basis, and upon receipt, the defendant agreed to pay for those services rendered. The Agreement also provides that, if there is any dispute as to the hours worked by or wages owed to the plaintiff's employees, it must be submitted in writing by the defendant. The plaintiff sent out monthly statements that would indicate amounts past due that were still outstanding and amounts then presently due for services rendered in the previous month to the defendant. If the payment of an invoice was not made within a reasonable time, usually within one week, an interest of 5% per month would accrue to any unpaid portion of an invoice.

The plaintiff ceased doing business with the defendant on September 4, 2007 and billed the final monthly statement to the defendant for services performed through September 30, 2007.

### **PLAINTIFF'S CONTENTIONS**

The plaintiff's attorney argues that the defendant has breached its agreement and the plaintiff is owed \$86,647.57 exclusive of interest. The plaintiff has reduced that amount to \$86,592.07 to reflect a discrepancy in billing of \$55.50 for one and one half hours that was in dispute with plaintiff's temporary employees. The total interest owed has also been augmented due to the one and one half hour discrepancy from \$57,050.00 to \$57,035.00. This brings the total that the plaintiff claims is owed to them to \$143,627.07 without attorney or court fees.

The plaintiff also asserts an account stated claim, which reaches the same pecuniary remedial amount as the breach of contract claim stated above.

The plaintiff also asserts that attorney's fees are due in the amount of \$15,000.00

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**DEFENDANT'S CONTENTIONS**

The defendant asserts that it disputed numerous invoices, but that those were ignored by the plaintiff; that it did not receive all the invoices; and that the amount demanded does not reflect payments made totaling \$4,874.75.

**REPLY**

In reply, the plaintiff avers that none of the objections raised in the opposition were ever made known prior to this motion; and concedes that the objections made as to three disputed invoices, the plaintiff will adjust the amount demanded to \$143,627.07. The plaintiff argues that none of the defendant's objections were made to the plaintiff in writing as required by contract.

**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)”.

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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.

The plaintiff has also given sufficient proof of an account stated claim, and has demonstrated its prima facie entitlement to that cause of action. The defendant has not demonstrated, with admissible evidence, that an issue exists on this cause of action.

The defenses asserted in the answer, i.e., statute of limitations, laches, and waiver and estoppel have not been addressed in the opposition. Perusal of the record reveals that they are meritless and this Court will not address them further.

Plaintiff has established their entitlement to judgment as a matter of law on an account stated since 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 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. Bucaria*  
XXX

JSC  
**ENTERED**

MAR 31 2008

NASSAU COUNTY  
COUNTY CLERK'S OFFICE