

New York Univ. Med. Ctr. v Choudhury

2009 NY Slip Op 30017(U)

January 6, 2009

Supreme Court, New County

Docket Number: 108275/06

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. JUDITH J. GISCHE
J.S.C. Justice

PART 10

Index Number : 108275/2006

NYU MEDICAL CENTER

vs.

CHOUDURY, NILIMA

SEQUENCE NUMBER : 002

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

motion (b) and cross-motion(s) decided in accordance with the annexed decision/order of even date.

UNFILED JUDGMENT
This judgment has not been taken to the County Clerk and notice of every cause to be argued hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1415).

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 1/6/09

HON. JUDITH J. GISCHE J.S.C.
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10**

-----X
New York University Medical Center,

Plaintiff

-against-

Nilima Choudhury,

Defendant

-----X
Nilima Choudhury,

3rd Party Plaintiff

-against-

Horizon Health Care Services, Inc.,

3rd Party Defendant

-----X

DECISION/ORDER

Index No.: 108275/06
Seq. No.: 002

Present:
Hon. Judith J. Gische
J.S.C

TP Index No.:
590954/06

UNFILED JUDGMENT
This judgment has not been reviewed by the County Clerk and hence of entry cannot be ordered toward execution. Obtain entry, counsel or authorized non-attorney not to appear in person at the Judgment Clerk of County.

Recitation, as required by CPLR § 2219 [a], of the papers considered in the review of this/these motion(s):

Papers	Numbered
Pltff NYU's n/m 3212 w/MAM affirm, MB affid, exhs	1
Def NC's opp w/BMD affirm, exhs	2
Pltff NC's reply w/MAM affirm	3

Upon the foregoing papers the court's decision is as follows:

GISCHE, J.

This is an action by plaintiff-hospital ("NYU") to collect payment for hospital and

medical services rendered to defendant Nilima Choudhury s/h/a Nilma Choudhury ("Dr¹. Choudhury"). Dr. Choudhury has brought a third party action against her health insurance provider ("Horizon") for breach of contract, claiming it is responsible for these services and should pay the debt NYU seeks to collect from her.

A prior motion by Horizon to dismiss the third party complaint against it was denied for the reasons set forth in this court's decision/order dated July 27, 2007.

The court has before it NYU's pre-note of issue motion for summary judgment dismissing the answer and affirmative defenses and for a money judgment in its favor on the complaint. Dr. Choudhury opposes the motion; Horizon has taken no position.

Since issue has been joined and the motion is brought in compliance with the time requirements of CPLR 3212 it will be considered on its merits. Brill v. City of New York, 2 NY3d 648 (2004). The court's decision follows.

Arguments

There is no dispute that Dr. Choudhury underwent surgery at NYU on December 23, 2003 at which time Dr. Noel Cohen implanted a device known as a cochlear implant. NYU claims that Dr. Choudhury owes \$69,587.33 in unpaid services which include the cost of device itself, medical supplies and a two day stay in the hospital. Based upon these claims it has asserted a breach of contract (1st) cause of action and a (2nd) cause of action for an account stated.

In support of this motion, NYU argues that Dr. Choudhury has no viable defense against the hospital because she does not deny having the services rendered or their

¹Plaintiff is herself a medical doctor.

cost, but only has a dispute with her insurance company who has denied her claim for payment of the surgery. Horizon contends that Dr. Choudhury is not eligible for insurance benefits because she failed to use an "in network" doctor, she did not obtain the appropriate approval to have the surgery done by Dr. Cohen, who is out of network, and surgery was for a pre-existing condition which is ineligible under her health benefit plan. Thus, Horizon contends Dr. Choudhury is personally responsible for NYU's bill.

NYU argues in support of its motion for summary judgment that Dr. Choudhury admits she had the surgery and that it retained the bill it sent her without challenging it. NYU further contends that Dr. Choudhury entered into and signed a financial agreement ("financial agreement") when she was admitted agreeing to be personally responsible for the hospital bills in the event her insurance disclaimed coverage. The financial agreement provides as follows:

"7. FINANCIAL LIABILITY: I understand that I am personally financially responsible for charges incurred for services rendered by NYU Hospitals Center, if any of the following applies:

My health plan requires prior authorization or referral by a Primary Care Physician (PCP) before receiving services at NYU Hospitals Center and I have not obtained such an authorization or referral or I receive services in excess of such authorization or referral, and or

My health plan determines that my condition is pre-existing, and/or

My health plan determines that the services I receive at NYU Hospitals Center are not medically necessary ... "

In her answer, Dr. Choudhury denied the allegations in the complaint and

asserted a number of affirmative defenses ("AD") against the hospital: failure to state a cause of action (1st AD), doctrine of accord and satisfaction (2nd AD), doctrine of estoppel (3rd AD), no breach of contract (4th AD), unclean hands (5th AD), the monies are the responsibility of a third party over which she has no control (6th AD), plaintiff's actions are barred by the statute of limitations (7th AD), defendant did not violate a legal duty to plaintiff (8th AD), statute of frauds (9th AD) and plaintiff agreed to be bound by defendant's insurance as a method of payment (10th AD).

In opposition to NYU's motion, Dr. Choudhury first argues that the bill she received is from "New York University Medical Center," and her financial agreement is with "New York University Hospitals Center," therefore the "medical center" is trying to enforce a contract to which it is not a party. Dr. Choudhury also argues that under the financial agreement, "New York University Hospitals Center" agreed to accept her health insurance as some form of payment and by doing so, committed itself to waiting for the dispute she has with the insurance company to be resolved before holding her personally responsible for the cost of her surgery.

Discussion

On a motion for summary judgment the party seeking judgment in its favor without a trial has the initial burden of proving that it is entitled to summary judgment as a matter of law. Once (and if) this burden is met, it will then shift to the opponent who must demonstrate, by admissible evidence, the existence of a factual issue requiring a trial. Zuckerman v. City of New York, 49 NY2d 557 (1980). The disputed issues must be real and not just shadowy semblances, which is why summary judgment requires parties to lay bare its proof. SJ Capelin v. Globe, 34 NY2d 338 (1974). The court's

function on these motions is limited to "issue finding," not "issue determination."

Sillman v. Twentieth Century Fox Film, 3 NY2d 395 (1957).

Dr. Choudhury has not challenged the bill she received nor does she contend any mistake was made, or that there are any unexplained charges on it. As per the financial agreement, Dr. Choudhury authorized payment of any insurance benefits she might be eligible for directly to NYU Hospitals Center. The bill she received and submitted to her insurance company also makes reference to services rendered while at the medical center. Thus while defendant argues that her financial agreement is not with the medical center, but "NYU Hospitals Center," they appear to be one and the same, or at least interchangeable for billing purposes.

While NYU may have processed Dr. Choudhury's claim through her insurance company, the financial agreement unambiguously provides that defendant is "personally financially responsible" for services rendered in the event the patient's insurer declines coverage and in other circumstances.

Although defendant urges that the court deny entry of judgment in favor of the plaintiff because NYU agreed to take plaintiff's health insurance as a form of payment, and the plaintiff even filed an appeal on her behalf, their financial agreement expressly provides that Dr. Choudhury is ultimately, personally financially responsible for this bill. Defendant/ 3rd party plaintiff's claims against Horizon are separate and independent from the claims NYU has against her. Thus, while defendant may have contract claims against her insurer, NYU is not a party to that contract, and therefore, does not have to wait until that dispute is resolved before it is entitled to summary judgment.

The court has examined Dr. Choudhury's affirmative defenses to see if any of

them are effective against plaintiff's motion for summary judgment. None of them have any supporting facts; all of them are offered ipse dixit without any explanation. Thus, for example, Dr. Choudhury fails to explain why this action is not timely under the statute of limitations. Contract based claims are subject to a six year statute of limitations. CPLR § 213. Her surgery took place in 2003 and this action was commenced in 2006.

NYU has met its burden and is entitled to summary judgment in its favor for the amount demanded in the complaint. None of the affirmative defenses asserted by Dr. Choudhury are valid against the hospital's claims. NYU has established that under the parties' financial agreement, defendant agreed she was "primarily financially responsible" for services rendered to her. Dr. Choudhury has failed to raise issues of fact for trial.

Therefore, plaintiff NYU's motion for summary judgment is granted and the affirmative defenses asserted by defendant against the hospital are all dismissed. The clerk shall enter judgment in favor of plaintiff against defendant Nilima Choudhury s/h/a Nilma Choudhury in the amount of \$69,587.33, together with interest from December 24, 2003, costs and disbursements.

This case was previously scheduled for an appearance on **February 26, 2009 at 9:30 a.m.** Since the third party action continues, that date remains and appearances by the parties to the that action is required.

Conclusion

In accordance with the foregoing,

It is hereby

ORDERED that plaintiff's motion for summary judgment in its favor is granted and the defendant's affirmative defenses against the hospital are hereby dismissed; and it is further

ORDERED that the clerk shall enter judgment in favor of plaintiff New York University Medical Center against defendant Nilima Choudhury s/h/a Nilma Choudhury in the sum demanded in the complaint, to wit: Sixty Nine Thousand Five Hundred Eighty Seven and 33/100 Dollars (\$69,587.33), together with interest from December 24, 2003, costs and disbursements; and it is further

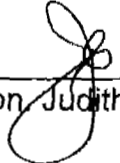
ORDERED that the 3rd party action continues and will appear on the court's calendar for a status conference on **February 26, 2009 at 9:30 a.m.**; and it is further

ORDERED that any relief not expressly addressed is hereby denied; and it is further

ORDERED that this constitutes the decision, order and judgment of the court.

Dated: New York, New York
January 06, 2009

So Ordered:



Hon. Judith J. Gische, J.S.C.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be entered in the record hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).