

**Centurion Billing, Inc. v Peggy Ann Garjian, M.D.,
P.C.,**

2009 NY Slip Op 31303(U)

June 2, 2009

Supreme Court, Richmond County

Docket Number: 101028/06

Judge: Joseph J. Maltese

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND DCM PART 3**

**Index No.:101028/06
Motion No.:001 & 002**

CENTURION BILLING, INC.,

Plaintiff

against

DECISION & ORDER

HON. JOSEPH J. MALTESE

PEGGY ANN GARJIAN, M.D., P.C.,

Defendants

The following items were considered in the review of this motion and cross-motion for summary judgment

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Affidavits Annexed	1
Notice of Cross-Motion and Affidavits Annexed	3
Replying Affidavits	5
Memorandum of Law	2, 4, 6
Exhibits	Attached to Papers

The plaintiff moves for an order granting the plaintiff summary judgment on the first, second and third causes of action, dismissing the defendant's counterclaims, and scheduling a hearing to determine the plaintiff's damages on their three causes of action. The defendant cross-moves for an order granting summary judgment to the defendant on her first, second and third counterclaims, denying the plaintiff's motion and dismissing the plaintiff's complaint. The plaintiff's motion is granted. The defendant's cross-motion is denied in its entirety.

Facts

It is undisputed that the parties entered into a written agreement on or about June 11, 2002. The contract provided that the defendant would pay the plaintiff six percent (6%) for the latter's collection and billing services for a period of one year. On June 1, 2004, the parties entered into a second contract for a period of two years.

Both contracts read as follows:

- “1. That as of this date, a valid business relationship exists between the biller and the client. The client has requested the billing services of the biller and the [sic] has agreed to perform in this capacity for the client . . .
4. Dr. Garjian will pay to Centurion the sum of six percent (6%) of the sums *collected for services* [emphasis added] . . .
5. Centurion shall be paid on a monthly basis for the sum collected.
6. That Centurion will do all the coding of claims with the knowledge and supervision of Dr. Garjian.
7. That all the monies received by Centurion, as a result of these activities, and on behalf of Dr. Garjian, will be deposited directly into Dr. Garjian’s account. That Centurion will not have control over the bank account, and will be unable to withdraw funds under any circumstances that Centurion will forward to Dr. Garjian a statement for services rendered, on a regular basis, that the fee for those services will be paid by Dr. Garjian to the appropriate insurance company.

At issue in the instant motion is the term “collected for services.” The defendant maintains that since she directly paid for the drug Remicade, the payment did not constitute a service that required billing. On the other hand, the plaintiff argues that although the defendant may have paid for Remicade, billing entries were required for the office visit and the injection. The plaintiff therefore alleges that the defendant breached her part of the contract by failing to pay the amount owed to the plaintiff.

Discussion

Summary judgment is appropriate where there are no genuine issues of material fact to be resolved at trial. The movant must “establish his cause of action or defense sufficiently to warrant the court as a matter of law in directing a judgment in his favor.” Once this burden of proof has been met, the opponent of the motion for summary judgment must “show facts sufficient to require a trial of any issue of fact.”¹

When appropriate, summary judgment has the additional benefit of expediting all civil

¹ *Zuckerman v. City of New York*, 40 NY2d 557 [1980].

cases by eliminating from the trial calendar claims that can be properly resolved as a matter of law.² An unfounded reluctance to employ this remedy serves only to swell trial calendars and to deny other litigants the right to have their claims promptly adjudicated.³

Ambiguity in the Contract

Ambiguity in a contract is a question of law solved exclusively by the courts. In determining whether a contract, clause, or concept is ambiguous, courts look within the four corners of the document, not to outside sources.⁴ In general, courts

should examine the entire contract and consider the relation of the parties and the circumstances under which it was executed. Particular words should be considered, not as if isolated from the context, but in the light of the obligation as a whole and the intention of the parties as manifested thereby. Form should prevail over substance and a sensible meaning of words should be sought.⁵

By looking at the four corners of this case's contract, the services rendered in paragraph four refer to the billing services in paragraph one. The defendant argues that it refers to her services, which would not include the purchase of Remicade. Nevertheless, a closer examination of the entire contract and the relation between the parties strongly suggests that the term "services" refers to the plaintiff billing services. In the defendant's examination before trial, the following exchange confirmed that the plaintiff performed billing for the administration of Remicade:

Q. Did they collect the money for you for that drug [Remicade]?
A. But I paid for the drug.
Q. Please answer the question. Did they collect the money?
A. They collected the money.⁶

² *Andre v. Pomeroy*, 35 NY2d 361, 362 NYS2d 131 [1974].

³ *Gibbons v. Hantman*, 58 AD2d 108, aff'd 43 NY2d 941, [1978].

⁴ *Kass v. Kass*, 91 NY2d 554 [1998].

⁵ *Id.*, citing *Atwater & Co. v. Panama RR Co.*, 246 NY 519 [1927].

⁶ Testimony of Peggy Ann Garjian, November 6, 2008, 19-20.

The defendant admitted during her deposition that the plaintiff had collected the money for the drug. Irrespective of whether the defendant paid for the drug directly, the plaintiff continued to render billing services for the drug. Hence, this court rules that there is no ambiguity in the term “for services rendered” referenced in the most recent contract between the parties. As such, the plaintiff is entitled to receive damages for services that it rendered and which were unpaid.

Prior Dealings

Notwithstanding the fact that this court has determined that the term for “services” is clear from the reading of the entire contract, we will entertain an extrinsic analysis of the parties’ behavior to determine the meaning of the contract. “Where the language of an agreement leaves the intention of the parties doubtful or ambiguous, all prior dealings of the parties are admissible to determine their intent.”⁷

Since 2002, the parties had engaged into a contractual relationship without any objections until the defendant expressed dissatisfaction with the plaintiff’s performance in July and August of 2005, more than three years later. The defendant alleges that she did not object to the billing before because she was too busy to notice the billing statements, which did not contain an Explanation of Benefits. There is no indication, however, that the billing practices had changed during the course of their business relationship. A three-year period of dealings between the parties demonstrate that the billing for Remicade constituted the services referred to in the contract.

Hearsay

A statement associated with an offer to compromise is not admissible in evidence against the maker if offered on issues of liability or damage.⁸ The defendant argues that during a

⁷ *Kenneth D. Laub & Co., Inc. v. 101 Park Ave. Assoc.*, 162 AD2d 294 [1st Dept 1990].

⁸ *Smith v. Satterlee*, 130 NY 677 [1891].

meeting on September 21, 2005 the plaintiff had admitted that the billing was improper and introduces before this court a letter authored by the plaintiff containing the following statement,

“[T]he terms of our medical billing services were uncertain. We have contracted with you to perform medical billing services and be compensated at a fixed rate until December 2006. However, you have informed us that you are dissatisfied with the terms of this contract. We would be glad to discuss possible revisions to the contract provided they are acceptable for all parties. Until we come to a mutual understanding, we will hold all your billing work.”

Pamela Lynn Gargian, the defendant’s sister, also witnessed the meeting between the parties and mentioned the plaintiff’s willingness to “stay friendly and resolve [all parties’] differences,”⁹ alluding to a possible settlement. She further stated, “In order to reconcile my sister’s complaints, the two representatives from Centurion Billing, Inc., even offered to extend credit to my sister based on the fact that they had charged her for medications that she had paid for and should not have been a part of their billing.”¹⁰ By examining the defendant’s proffered evidence, this court concludes that the purpose of the meeting and the subsequent letter constitute an offer to settle the dispute between the parties, rendering any statements or confessions contained therein inadmissible for evidence.

In reviewing all the papers submitted to this court, the defendant fails to create any issue of fact as to the intention of the contract.

Accordingly, it is hereby:

ORDERED, that the plaintiff’s motion for summary judgment pursuant to *CPLR* §3212 and to dismiss the defendant’s counterclaims is granted; it is further

⁹ Affidavit of Pamela Lynn Garjian ¶ 3.

¹⁰ Affidavit of Pamela Lynn Garjian ¶ 4.

ORDERED, that the defendants' cross-motion for summary judgment pursuant to *CPLR* §3212 and to dismiss the plaintiff's complaint is denied in its entirety; it is further

ORDERED, that within sixty (60) days from the date thereof, plaintiff shall serve a copy of this order with notice of entry, a note of issue and a statement of readiness upon the Clerk and shall pay the proper fees, if any, and said Clerk shall place this action on the Inquest/Trial Calendar; and it is further

ORDERED, that the case is referred to a Judicial Hearing Officer to hear and determine the assessment of damages at inquest.

ENTER,

DATED: June 02, 2009

Joseph J. Maltese
Justice of the Supreme Court