

<b>Ackerman v Zaccheo</b>
2010 NY Slip Op 30402(U)
March 3, 2010
Supreme Court, Nassau County
Docket Number: 023443/2009
Judge: Ira B. Warshawsky
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SHORT FORM ORDER

SUPREME COURT : STATE OF NEW YORK  
COUNTY OF NASSAU

PRESENT:

HON. IRA B. WARSHAWSKY,  
Justice.

TRIAL/IAS PART 8

PAUL ACKERMAN, M.D. and NORTH STAR  
ORTHOPEDICS,

Plaintiffs,

INDEX NO.: 023443/2009  
MOTION DATE: 12/17/2009  
MOTION SEQUENCE: 001 and  
002

-against-

FREDERICK ZACCHEO, Individually, and as  
Owner of QUICK LINK MEDICAL BILLING SVD,  
a/k/a QUICK LINE MEDICAL BILLING SERVICE,  
GARY SHEYNERMAN, Individually, and as  
Owner of SEVEN STARS MANAGEMENT, INC.  
and NEW LINE GROUP, INC.,

Defendants.

The following papers read on this motion:

Order to Show Cause, Affirmations, Affidavit & Exhibits Annexed .....	1
Order to Show Cause, Affirmation, Affidavits, Answer & Exhibits Annexed .....	2
Affidavit of Thomas Dale in Further Support & Exhibit Annexed .....	3
Memorandum of Law in Opposition to Defendants' Order to Show Cause .....	4
Verified Answer to the Amended Complaint with Counterclaims .....	5

PRELIMINARY STATEMENT

Plaintiff seeks (1), to enjoin defendant Sheynerman, individually and as owner of Seven Stars Management, Inc. ("Seven Stars") and New Line Group ("New Line"), from using, altering, copying, transferring or destroying plaintiffs' computers allegedly taken by

defendants from offices of North Star, 1408 Ocean Avenue, 3<sup>rd</sup> Floor, Brooklyn, New York on or before November 12, 2009; (2) to enjoin Frederick Zaccheo (“Zaccheo”), individually and as owner of Quick Link Medical Billing SVD, a/k/a Quick Link Medical Billing Service (“Quick Link”) from using, altering, copying, transferring or destroying plaintiffs’ information, material, records, data, or other property taken or removed from North Star, at 1408 Ocean Avenue, 3<sup>rd</sup> Floor, Brooklyn New York on or before November 12, 2009; directing defendants to return all property taken from plaintiffs’ on or before November 12, 2009, including computers and information, material, records, or data regarding plaintiffs’ patients; directing all defendants to preserve all information, material, records, data, or other property taken or removed from plaintiffs. Plaintiffs obtained a temporary restraining order essentially granting the relief requested in the application for injunctive relief pending the hearing and determination of this motion.

Defendants’ position is simple: they do not have any of the material allegedly taken from the offices from which plaintiff practiced, and they are not in possession of computers or other material or information which plaintiff claims entitlement to in this proceeding.

#### BACKGROUND

Plaintiff Ackerman is an orthopedic surgeon who practices from a number of locations, including 1408 Ocean Avenue, Brooklyn, New York. Defendant Sheynerman, together with Seven Seas and New Line provided management services to plaintiff. According to Ackerman’s affidavit,<sup>1</sup> he became disenchanted with the management services he was receiving in that he had lost control of the billing and was denied access to his office records. As a consequence, he vacated the premises between November 12 and November 14, 2009. When he returned to remove his computers, however, he found that they had been removed.

Defendant Zaccheo owns Quick Link Medical Billing Service (“Quick Link”),

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<sup>1</sup> Attached to Plaintiffs’ Order to Show Cause.

which has been providing billing services to plaintiff. Plaintiff claims that he terminated services of Zaccheo and Quick Link on November 13, 2009 and demanded the return of billing records for his practice, a demand with which they have failed to comply.

The underlying action began with the filing of a Summons and complaint on November 16, 2009. It seeks injunctive relief premised upon misappropriation of confidential information, conversion and recovery of attorneys' fees, and includes four causes of action: 1) conversion against Sheynerman, Seven Stars and New Line; 2) conversion against Zaccheo and Quick Link; 3) request for permanent injunction against Sheynerman, Seven Stars and New Line; and, 4) request for a permanent injunction against Zaccheo and Quick Link.

The verified answer contains ten counterclaims: 1) an unpaid balance of \$117,000 loaned by Zaccheo to Ackerman and North Star between October 3, 2003 and November 1, 2004; 2) an unpaid balance of \$147,000 loaned by Scheynerman to Ackerman and North Star between October 3, 2003 and August 2009; 3) unpaid management fees of \$93,000 and an unpaid termination fee of \$200,000 owed by North Star to New Line; 4) payment for unpaid services performed by New Line for North Star having a reasonable value of \$93,000; 5) unjust enrichment as a result of services rendered on behalf of North Star by New Line in the value of \$93,000; 6) \$120,000, constituting the reasonable value of work, labor and services performed by New Line, and owed by Quick Link; 7) unjust enrichment of Ackerman and North Star in the amount of \$120,000 by virtue of the work, labor and services provided by Zaccheo and Quick Link; 8) slander per se by plaintiff Ackerman to other physicians alleging that Fred Zaccheo and Gary Sheynerman stole from him, for which damages in the amount of \$1,000,000 are claimed; 9) intentional interference with business reputation of defendants by accusing them of criminal and fraudulent activity to business associates and employees of defendants; and, 10) by unlawfully removing the furnishings and equipment of Dr. Nieto, with whom plaintiff shared office space, tortiously interfering with the contractual relations of defendants.

On December 9, 2010 the parties appeared for a preliminary conference on the issues raised by the competing orders to show cause. Certain issues were resolved at that time, among them the following:

- Dr. Ackerman was to arrange for the return of the paper files of Dr. Nieto to the extent that they were erroneously removed by him in the latter part of November 2009;
- Zaccheo is to make available to Ackerman the contents of his records as they relate to patient treatment, including such items as patient identification, operative reports, post-operative treatment, insurance information, benefits number, and follow-up care, but not necessarily relating to billing records, payment for which is a part of the counterclaims.

#### DISCUSSION

“A court evaluating a motion for a preliminary injunction must be mindful that ‘(t)he purpose of a preliminary injunction is to maintain the status quo, not to determine the ultimate rights of the parties’ ”. (*Masjid Usman, Inc. v. Beech 140, LLC*, 68 A.D.3d 942 (2d Dept. 2009) citing, *Matter of Wheaton/TMW Fourth Avel, LP v. New York City Dept. of Blgs.*, 65 A.D.3d 1051, 1052 (2d Dept. 2009)). Both applications by counsel are appropriately directed toward that end, and the Court believes that the cooperation by counsel in the December 9, 2009 conference essentially paved the way for the restoration of the situation to the status quo. Issues with respect to the adequacy of practice management services, and the status of indebtedness among the parties are to proceed within the framework of a discovery schedule to be agreed upon among the parties. To that end, the parties are directed to appear for the preparation of a Preliminary Conference Order on March 22, 2010, at 9:30 A.M. If this time is inconvenient for the parties, they are to contact the Court, either by telephone conference call, or with consent of the other, to re-schedule the Preliminary Conference.

In the interim, the Court simply reiterates the directives of December 9, 2009, with

the concurrence of the parties. To the extent that Frederick Zaccheo and Quick Link Medical Building, SVD, a/k/a Quick Link Medical Billing Service, is in possession of patient information for clients of Paul Ackerman, M.D., and North Star Orthopedics, they are directed to, if they have not already done so, communicate that information to them. The medical information, as previously noted, is that which is necessary for the plaintiffs to maintain a continuum of care for their patients, including such materials as patient names and addresses, operative records, records of post-operative treatment, insurance coverage and codes, correspondence and scheduling information. Not included are those billing records which are the subject of counterclaims, for which Zaccheo and Quick Link claim that they have not been paid.

Plaintiffs are directed, to the extent that they have not done so, to return those patient files relating to patients of Dr. Nieto. These are files to which Plaintiffs are not entitled and which were probably removed in error during the somewhat hasty evacuation of the Ocean Avenue offices.

To the extent that both sides seek to enjoin the other from disparaging one another to persons other than counsel and persons directly involved in the prosecution or defense of the action, this relief is granted. The term "commercial defamation" has proliferated into a plethora of meanings. For the purpose of this decision, the Court is, at least for the present, dealing with allegations of dishonesty and diversion of funds on the part of Zaccheo and Quick Link, and dereliction in payment of bills and other debts on the part of plaintiffs. These are components of the underlying claims, most particularly the counterclaims, and further conduct which damages defendants or plaintiffs in their business capacity, may well be determined to be misconduct for which damages are recoverable.

This constitutes the Decision and Order of the Court.

Dated: February 17, 2010

**ENTERED** *J.S. Warshawsky*  
J.S.C.

FEB 23 2010  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE