

Kucherovsky v Excel Med. & Diagnostic Servs., P.C.
2010 NY Slip Op 30482(U)
March 3, 2010
Supreme Court, New York County
Docket Number: 100488/08
Judge: Joan A. Madden
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

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

PRESENT:HON. JOAN A. MADDEN
Justice

PART 11

LEON KUCHEROVSKY,

Plaintiff,

INDEX NO. : 100488/08

MOTION SEQ NO: 004

- v -

EXCEL MEDICAL & DIAGNOSTIC SERVICES, P.C., PERSAD CHALASANI, M.D. UNIVERSAL FINANCIAL SOLUTIONS, LTD, and IQBAL MERCHANT, M.D.,

Defendants.

The following papers, numbered 1 to _____ were read on this motion to reargue/reconsider

Notice of Motion/ Order to Show Cause --- Affidavits --- Exhibits _____

Answering Affidavits --- Exhibits _____

Replying Affidavits _____

Cross-Motion: [] Yes [x] No

FILED PAPERS NUMBERED

MAR 10 2010

NEW YORK COUNTY CLERK'S OFFICE

In this interpleader action in which the plaintiff seeks permission to distribute certain funds held by him and to discharge him from liability, defendant Prasad Chalasani, MD ("Chalasani"), who is pro se, moves for renewal and/or reargument of this court's decision and order dated November 18, 2009, which denied Chalasani's request to disburse to him a portion of the funds held by plaintiff in escrow. Moriah United Corporation ("Moriah") which was granted leave to intervene based on its interest in the escrowed funds opposes the motion.

Plaintiff came to hold the funds at issue after the purchase by defendant Universal Financial Solutions, Ltd ("Universal") of outstanding no fault receivables from defendants Excel

Medical P.C. and Excel Medical & Diagnostic Services, P.C. (together "Excel") pursuant to a General Assignment and Bill of Sale dated February 2005.¹ Plaintiff was retained by defendants Universal, Chalasani and defendant Iqbal Merchant, M.D. ("Merchant") to collect the open no fault receivables. Moriah is a judgment creditor of Universal.

This interpleader action was commenced by plaintiff after various disputes arose regarding the distribution of monies collected by him which are being held in escrow. Universal has failed to answer or respond to the interpleader complaint and has not submitted any papers or appeared at either of the two court conferences held in this matter despite having been given notice of such conferences.

Chalasani moved for an order disbursing a portion of the funds held by plaintiff in escrow (motion seq nos. 001, 002).² In support of his request for relief Chalasani attached an October 2006 agreement, in support of motion seq. no. 001 and a September 8, 2006 agreement in support of motion seq. no. 002. Notably, neither of these agreements is signed by Merchant. Moreover, at a court conference held on October 8, 2009, plaintiff, Chalasani and Merchant agreed on the record that an agreement dated November 6, 2006 (hereinafter "the November 6 agreement"), controlled the distribution of the monies collected by plaintiff.

The November 6 agreement, which is signed by Chalasani, Merchant and Universal, provides that future collections and proceeds from insurance claims collected from Excel will be disbursed as follows: "1. Legal and billing company fees and expenses to be paid first from gross collected proceeds, 2. Remaining balance disbursed as follows: a. Dr. Chalasani 27.5%, b. Dr. Merchant 27.5% c. Universal Financial Solutions, LLC 45%." It also provides that "after Universal Financial Solutions, LLC receives \$100,000, the remaining funds collected after legal

¹Chalasani and Merchants are not parties to the agreement although it appears that they signed the agreement on behalf of defendants Excel Medical P.C. and Excel Medical & Diagnostic Services, P.C., respectively.

² Motion seq. no. 001 and 002 are consolidated for disposition.

and collection fees are deducted will be as follows: “a. Dr. Chalasani 30%, b. Dr. Merchant 30% c. Universal Financial Solutions, LLC 40%.”

By Stipulation notarized on October 15, 2009, plaintiff, Chalasani and Merchant agreed to accept the following accounting as to disbursed funds collected by plaintiff as true and accurate:

- a) From approximately August 31, 2005 through and including the date of this stipulation, the total amount collected on behalf of Excl Medial & Diagnostics Services, P.C. is \$256,289.57.
- b) From approximately August 31, 2005 though and including the date of this stipulation, a total of \$130,138.78 was forwarded to defendant UFS, [i.e. Universal] as per direction of defendant Chalasani [and] defendant Merchant.
- c) From approximately August 31, 2005 though and including the date of this stipulation, defendant Chalasani and Merchant each received \$10,353.06 respectively from [plaintiff's]...escrow [account] as per agreement dated November 6, 2006 and written direction of defendants Chalasani, Merchant and UFS [i.e. Universal].
- d) From approximately August 21, 2005 (sic) though and including the date of this stipulation, \$39,041.66 was issued to [plaintiff] for fees, expenses, costs and disbursements as per retainer agreement and written direction of defendants Chalasani, Merchant and UFS [i.e. Universal].
- e) As of the date of this stipulation \$66,403.01 is being held in escrow pending this court's determination as to how to disburse these moneys. Collection is ongoing.

Notwithstanding the stipulation regarding the accounting of the funds collected and disbursed by plaintiff, in its decision and order dated November 18, 2009 (“the original decision”), the court denied Chalasani’s motions to direct the disbursement of the \$66,403.01

held in escrow to Chalasani and Merchant, and precluded plaintiff from distributing the moneys in escrow pending further court order, finding that the accounting set forth in the stipulation conflicted with the distribution of the monies as provided for under the November 6 agreement. Specifically, the court noted that the stipulation indicates that Universal received approximately \$130,000 of the approximately \$150,00 distributed which is substantially in excess of the 45% distribution Universal was to receive up to \$100,000 and the 40% distribution thereafter as provided in the November 6 agreement. According to the stipulation, Merchant and Chalasani each received approximately \$10,000 each of the approximately \$150,000 distributed, substantially less than the 55% and the 60% that they were to receive under the November 6 agreement. The court further noted that absent from the record is any explanation which would enable the court to reconcile the distribution as set forth in the stipulation and the distribution as contemplated by the November 6 agreement.

The court also noted that a review of the County Clerk's file indicates that as to Universal, there is no affidavit of service of the interpleader summons and complaint.

Chalasani now moves for renewal/reargument on the original decision based on a plaintiff's affidavit in support of interpleader and the exhibits attached thereto, which was filed with the County Clerk at the time of the original motion but not considered in connection with the original decision. In addition, on December 9, 2009, plaintiff filed with the County Clerk an affidavit of service reflecting that Universal was timely served with the interpleader summons and complaint.

In the affidavit in support of interpleader, plaintiff states, and submits evidence that, in accordance with the November 6 agreement the \$37,647.50 in escrow at that time was distributed as follows: \$10,353.06 each to Chalasani and Merchant and \$16,941.38 (i.e. 55% to Chalasani and Merchant and 45% to Universal). He also states and submits evidence that from December 14, 2006 to May 25, 2007, his office collected \$72,211 (less costs, fees and expenses).

Plaintiff disbursed the \$72,211 to Universal, and that this disbursement was in

accordance with a November 30, 2006 agreement executed by Chalasani, Merchant and Universal authorizing him to disburse all future receivables to Universal (Plaintiff's affidavit in support of interpleader, Exhibits I and J). In his affidavit, Chalasani states that after receiving the money, Universal was to distribute the moneys in accordance with the November 6 agreement. However, Universal did not distribute the moneys to Chalasani and Merchant.

By letter dated May 9, 2007, Chalasani wrote to plaintiff that he was not "getting the cooperation of Universal" and requested that plaintiff not send Universal any more money (Id., Exhibit K).³ By letter dated May 21, 2007, Merchant also requested that plaintiff not distribute any further funds to Universal based on Universal's failure to keep an accounting and distribute funds as agreed upon. (Id.).

Plaintiff submits a summary accounting (Id., Exhibit S) indicating that he had collected a total of \$253,580.80, of which \$89,152.85 had been distributed to Universal after the November 6, 2006 agreement, consisting of \$16,941.38 which was Universal's 45% share of the \$37,647.50 distributed after the parties settled their first dispute and the \$72,211 which plaintiff paid to Universal. The summary also shows that prior to the November 6 agreement, plaintiff had distributed \$40,985.93 to Universal. Thus, according to the accounting, Universal has been paid a total of \$130,138.78. The accounting shows that Chalasani and Merchant received \$10,353.06 each and that plaintiff received \$38,941.66 in expenses and was holding \$63,794.24 in escrow. By September 2009, plaintiff was holding \$99,098.96 in escrow and stated that he continues to collect money.

The statement in the summary accounting and the facts as stated in plaintiff's affidavit in support of the interpleader are consistent with the October 15, 2009 stipulation which both indicate that Universal has been paid a total of \$130,138.78, and that Chalasani and Merchant received \$10,353.06 each. The only difference between the October 15, 2009 stipulation and the

³However, by letter dated June 14, 2007, Chalasani indicated that Universal had agreed to give him an accounting and authorized plaintiff to send Universal the money.

summary accounting is that the stipulation shows the plaintiff has collected approximately an additional \$3,000 as is reflected in the total amount collected and held in escrow. As based on the plaintiff's affidavit in support of interpleader which was not previously considered by the court, the amounts paid under the November 6 agreement and those agreed upon in the stipulation are consistent, renewal is properly granted based on this new information. See CPLR 2221(e); Tishman Constr. Corp. of New York v. City of New York, 280 AD2d 374, 376 (1st Dept 2001).

Moriah argues, however, that the new evidence does not provide an adequate basis for determining as a matter of law that Chalasani and Merchant are entitled to all the moneys in escrow on the theory that Universal has already be paid more than its share under November 6 agreement. Specifically, Moriah argues that there are factual issues as to whether the November 6 agreement was modified by the subsequent agreement on November 30, 2006 authorizing plaintiff to disburse all moneys collected to Universal. In addition, Moriah asserts that as the November 6 agreement was expressly made applicable only "to future collections," the agreement has no bearing on the allocation of the \$40,985.93 that was distributed to Universal before the November 6 agreement.⁴

The court finds that the evidence in the record is sufficient to establish that the November 6 agreement governed the parties' relationship and that the November 30 agreement did not modify the allocation of the moneys as provided under the November 6 agreement but, rather,

⁴Moriah also argues that the November 6 agreement could not effectively amend the February 1, 2005 General Assignment and Bill of Sale under which entities named Excel Medical Care, P.C., Excel Medical and Diagnostic Services, P.C. assigned certain accounts receivable to Universal since the Excel entities did not executed the November 6 agreement. This argument is without merit notwithstanding the characterization of the November 6 agreement as an "Amendment to the February 1, 2005 General Assignment and Bill of Sale," since it only affected the distribution of the proceeds among Universal, Chalasani and Merchant and did not impact on any of the rights or obligations provided under the February 1, 2005 agreement.

authorized plaintiff to pay the money to Universal which, in turn, was charged with accounting for and distributing the moneys in accordance with the November 6 agreement. The statements in Chalasani's affidavit and the letters sent to plaintiff after Universal failed to distribute the \$72,211, support this conclusion and the record is devoid of any evidence to the contrary other than speculation by Moriah. That being said, however, as Moriah argues, since the November 6 agreement is only applicable to "future collections" there has been no showing that the \$40,985.93 distributed to Universal before the November 6 agreement was governed by the November 6 agreement, and the record is insufficient to establish that Chalasani and Merchant are entitled to any of the \$40,985.93 distributed to Universal.

The record is sufficient, however, to show that Chalasani and Merchant are entitled 27.5% of the \$109,858.50 distributed by plaintiff after the November 6 agreement, which would entitle them to \$30,211.09, less the \$10,353.06 they already received which equals \$19,858.03 each. With respect to the funds held by plaintiff in escrow, the record shows that distribution of those funds should be based on the November 6 agreement.⁵ However, based on the record before the court, the exact amount to which each of Universal, Chalasani and Merchant would be entitled to based on the November 6 agreement cannot be determined, particularly as plaintiff's collection of moneys is apparently continuing.

Accordingly, plaintiff is directed to settle an order on notice to all parties, including Universal and Moriah, setting forth the allocation of the funds in escrow among Universal, Chalasani and Merchant based on the November 6 agreement and providing for the distribution of those amounts to which Chalasani and Merchant are entitled. Plaintiff shall also submit with the order and provide to the parties, an accounting substantiating the figures provided for in the

⁵In his motion for renewal, Chalasani submits an agreement dated September 28, 2009, which appears to be between Chalasani and Merchant and which provides for a division of the funds in escrow of 70% to Chalasani and 30% to Merchant. As Universal did not agree to the terms of the September 28, 2009 agreement, such agreement is insufficient to modify the November 6 agreement.

amount of \$1,878,022.95, no moneys shall be distributed to Universal pending further order of the court.

In view of the above,

ORDERED that Chalasani's motion for reargument/renewal of the court's original decision is granted insofar as renewal is granted; and it is further


ORDERED that upon renewal, Chalasani's request for relief is granted to the extent of directing the plaintiff to distributed \$19,858.03 each to Chalasani and Merchant within ten days of the date of this order and with respect to the remaining funds in escrow to settle an order on notice and provide an accounting as directed above; and is further

ORDERED that plaintiff shall distribute no money to Universal pending further order of the court; and it is further

ORDERED that the parties shall appear on April 8, 2010 at 10:00 am, in Part 11, room 351, 60 Centre Street, New York, NY for a conference regarding the status of this action, including whether any discovery is needed regarding the proper distribution of the remaining monies held by plaintiff in escrow.

A copy of this order is being served by my chambers on parties or their counsel.

DATED: March 3, 2010



J.S.C.

Check one: [] FINAL DISPOSITION [x] NON-FINAL DISPOSITION

FILED
MAR 10 2010
NEW YORK
COUNTY CLERK'S OFFICE