

Comprehensive Staffing Solutions, LLC v Premier Health Servs., Inc.

2010 NY Slip Op 30925(U)

April 13, 2010

Supreme Court, NY County

Docket Number: 117019/08

Judge: Carol R. Edmead

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

PRESENT: HON. CAROL EDMEAD
Justice

PART 35

COMPREHENSIVE SOLUTIONS, LLC,
Plaintiff,

INDEX NO. 117019/08

MOTION DATE 4/13/2010

- v -

MOTION SEQ. NO. _____

PREMIER HEALTH SERVICES, INC.
Defendant

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on 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

This motion is decided in accordance with the annexed decision.

This constitutes the decision and order of the Court.

FILED
APR 20 2010
NEW YORK
COUNTY CLERK'S OFFICE

HON. CAROL EDMEAD

J.S.C.

Dated: 4/13/2010

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 35

-----x
COMPREHENSIVE STAFFING SOLUTIONS, LLC,

Plaintiff,

Index No.: 117019/08

-against-

PREMIER HEALTH SERVICES, INC. d/b/a
RESORT DIALYSIS CENTER a/k/a RESORT
NURSING HOME,

Defendant.

CAROL ROBINSON EDMEAD, J.:

FACTUAL BACKGROUND

Plaintiff moves, pursuant to CPLR 3215, for a default judgment.

Plaintiff is a New York limited liability company engaged in the business of providing staffing services to companies in need of nurses, therapists, and other health care professionals. Between March 19, 2007, and November 2, 2007, plaintiff allegedly provided professional nurse staffing and/or other staffing services to defendant. A copy of the agreement is attached as Exhibit A to the instant motion, and is signed by Jacob Herles as the administrator for Resort Nursing Home.

Plaintiff asserts that defendant received and accepted the above-noted staffing provided by plaintiff, thereby owing plaintiff the sum of \$85,736.37 as of October 23, 2009, including

DECISION
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the principle amount plus legal interest thereon, no part of which has been paid to date.

Statements and invoices were sent to defendant, which defendant allegedly received without objection or protest. Motion, Ex. B. On August 5, 2008, a final notice of the amount due was sent to defendant. Motion, Ex. C.

In the complaint, plaintiff asserts four causes of action: (1) breach of contract; (2) account stated; (3) attorney's fees; and (4) unjust enrichment.

In opposition to the instant motion, defendant Premier Health Services, Inc. (Premier), by its attorney, asserts that it did not receive notice of the present action, and that the signatory to the contract in question, Resort Nursing Home, is a separate entity from defendant, and therefore that there is no privity between plaintiff and defendant Premier Health Services, Inc. (Premier). It is also noted that Premier served and filed an answer to this action on February 16, 2010. Opp., Ex. A.

DISCUSSION

The CPLR allows a party to move for a default judgment against a defendant who has failed to appear.

In the instant matter, the action was commenced by service of a summons and complaint upon the Secretary of State of the State of New York on December 22, 2008. Motion, Ex. D. Such service is permitted on New York corporations, pursuant to the

provisions of Business Corporation Law (BCL) § 306, and service upon a domestic corporation is complete when such service is effectuated. *Smith v Giuffre Hyundai, Ltd.*, 60 AD3d 1040 (2d Dept 2009). Premier's assertion, based on an affirmation from its attorney and not from an individual with personal knowledge, that it did not receive notice of this action is therefore found to be without merit. See *Figueroa v Luna*, 281 AD2d 204 (1st Dept 2001).

However, this state favors determinations on the merits, and plaintiff has failed to articulate any prejudice that it might suffer as a result of Premier's delay in answering the complaint. *Pagan v Four Thirty Realty LLC*, 50 AD3d 265 (1st Dept 2008). In addition, a question of fact has arisen as to whether the signatory to the contract in question is legally related to Premier.

Unlike motions to vacate a default judgment, pursuant to CPLR 5015 (a), wherein the movant must demonstrate both a reasonable excuse and a meritorious defense, in the instant matter, no default judgment has yet been entered, and the burden is on plaintiff, who seeks such judgment, to demonstrate a prima facie entitlement thereto.

New York law

"does not contemplate that default judgments are to be rubberstamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie

validity of the uncontested cause of action. The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts. Here, plaintiff failed to meet even that minimal standard [internal citation omitted]."

Feffer v Malpeso, 210 AD2d 60, 61 (1st Dept 1994).

In the instant matter, plaintiff has failed to provide evidence that the signatory to the contract and Premier are one and the same, thereby meeting its prima facie right to judgment as against Premier. As a consequence, plaintiff's motion must be denied.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that plaintiff's motion for a default judgment is denied.

Dated: 4/13/10

ENTER: 

Carol Robinson Edmead, J.S.C.

HON. CAROL EDMEAD

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