

**AAA Vascular Care, PLLC v Integrated Healthcare  
Mgt., LLC**

2011 NY Slip Op 34253(U)

July 6, 2011

Supreme Court, Nassau County

Docket Number: 2792-2011

Judge: Steven M. Jaeger

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEVEN M. JAEGER,  
Acting Supreme Court Justice

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AAA VASCULAR CARE, PLLC,

Plaintiff,

-against-

INTEGRATED HEALTHCARE MANAGEMENT,  
LLC,

Defendant.  
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TRIAL/IAS, PART 43  
NASSAU COUNTY  
INDEX NO.: 2792-2011

MOTION SUBMISSION  
DATE: 4-21-11

MOTION SEQUENCE  
NO. 2

The following papers read on this motion:

- Notice of Motion and Affirmation X
- Memorandum of Law (Plaintiff and Defendant) X
- Defendant's Reply Brief in Support X

Motion by defendant for judgment dismissing the complaint pursuant to CPLR 3211(a)(7) is granted to the extent that the fourth cause of action for wrongful withholding, and plaintiff's request for punitive damages, are both dismissed. The remainder of the motion is denied.

Plaintiff is a professional service corporation for a medical practice. Defendant is a medical billing service. According to plaintiff, it had an oral agreement with defendant to process all of its claims for professional fees, incidental expenses, charges, and supplies due from various governmental subdivisions and agencies, insurance companies, and patients (complaint, par. 7).

[\*2]  
The parties' agreement allegedly commenced prior to June 1, 2008, and was terminated by plaintiff effective January 1, 2011.

This action was commenced in February, 2011. The complaint contains four causes of action. In the first cause of action plaintiff alleges that defendant has refused to turn over its records and files, and seeks injunctive relief directing the return of its property. The second cause of action is a claim for breach of the oral agreement and damages. In the third cause of action plaintiff seeks a declaration that defendant is entitled to "no payment at all" (complaint, par. 45). The fourth cause of action appears to allege a claim for wrongful withholding of plaintiff's property, pursuant to which plaintiff seeks both compensatory and punitive damages.

Defendant seeks judgment dismissing the entire complaint. Defendant argues that plaintiff has failed to set forth the essential terms and conditions of any contract, that the fourth cause of action is too vague and conclusory to apprise it of the claim against it, and that the first and third causes of action are not independently viable if the substantive claims in the second and fourth causes of action are dismissed.

#### **3211(a)(7) Standard for Dismissal**

On a motion to dismiss pursuant to CLR 3211, the facts as alleged must be accepted as true, the pleader must be accorded the benefit of every favorable inference, and the court must determine only whether the facts as alleged fit within any cognizable theory (*Samiento v World Yacht Inc.*, 10 NY3d 70, 79 [2008]; *Amav Industries, Inc. Retirement Trust v Brown, Raysman, Millstein, Felder & Steiner, LLP*, 96 NY2d 300, 303 (2001)). The test to be applied is whether the complaint "gives

[\* 3]

sufficient notice of the transactions and occurrences intended to be proved (*JP Morgan Chase v JH Electric of New York, Inc.*, 69 AD3d 802 [2<sup>nd</sup> Dept 2010]). Bare legal conclusions and factual claims flatly contradicted in the record are not presumed to be true (*Heller v Frota Oceanica E Amazonica, SA*, 81 AD3d 894 [2<sup>nd</sup> Dept 2011]; *Riback v Margulis*, 43 AD3d 1023 [2<sup>nd</sup> Dept 2007]).

### **Second Cause of Action for Breach of Oral Agreement**

The elements of a cause of action for breach of contract are (1) the existence of a contract; (2) the plaintiff's performance under the contract; (3) the defendant's breach; and (4) resulting damages (*Elisa Dreier Reporting Corp. v Global Naps Network, Inc.*, 84 AD3d 122 [2<sup>nd</sup> Dept 2011]; *Palmetto Partners, LP v AJW Qualified Partners, LLC*, 83 AD3d 804 [2<sup>nd</sup> Dept 2011]). Here, the complaint plainly alleges the existence of an oral agreement, defendant's breach thereof, and resulting damages. Plaintiff's own performance may be inferred from the allegations that defendant has made unwarranted demands of plaintiff for payment of amounts that are disputed, that the monies defendant seeks are either not due or may be due after review of the records that have been withheld, and that defendant is entitled to no payments at all (complaint, pars. 35, 37, 45). Viewing the allegations of the complaint in the light most favorable to plaintiff, the Court finds that plaintiff has stated a cause of action for breach of contract.

### **Fourth Cause of Action for Wrongful Withholding**

Plaintiff refers to its fourth cause of action for malicious withholding of property as "a clear Tort" (Plaintiff's memorandum of law, p. 22). While medical records may be the subject of a cause of action for conversion (*Comprehensive Community*

[\* 4]

*Development Corp v Lehach*, 223 AD2d 399 [1<sup>st</sup> Dept 399]; see *Della Pietra v State*, 125 AD2d 936 (4<sup>th</sup> Dept 1986), *affd* 71 NY2d 792 [1988] (conversion of books, records, and documents by State task force)), the Court is aware of no cause of action for wrongful withholding. As alleged, the fourth cause of action fails to state a claim for relief.

### **Punitive Damages**

Punitive damages may not be recovered in connection with an ordinary breach of contract (*Rocanova v Equitable Life Assur. Soc. of US*, 83 NY2d 603, 613 [1994]; *Nationwide Insulation & Sales Inc. v Nova Cas. Co.*, 74 AD3d 1297 [2<sup>nd</sup> Dept 2010]). In limited circumstances punitive damages may be available where it is necessary to deter conduct which may be characterized as a “fraud evincing a high degree of moral turpitude” or “such wanton dishonesty as to imply a criminal indifference to civil obligations” directed “at the public generally” (*Rocanova* at 613 quoting *Walker v Sheldon*, 10 NY2d 401, 404-405 [1961]). As plaintiff’s “tort” claim has been dismissed for failure to state a cause of action, what remains is a contract action involving only the parties. Plaintiff has not alleged conduct that meets the high standard for punitive damages set forth above. Under these circumstances plaintiff has failed to state a claim for punitive damages, and the request for such relief in the complaint must be dismissed.

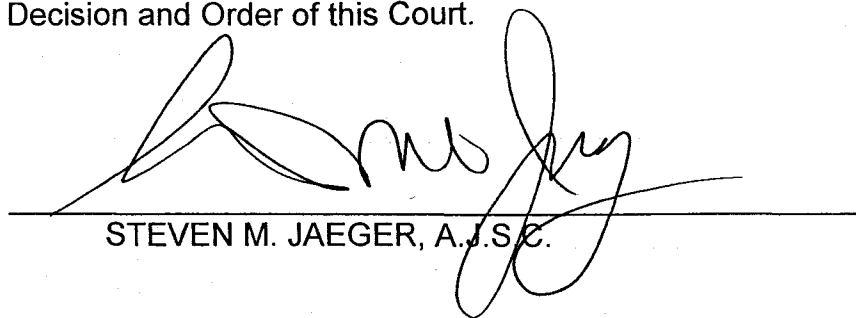
### **First and Third Causes of Action for Injunctive and Declaratory Relief**

Defendant argues that the first and third causes of action cannot survive without a viable substantive cause of action. The Court has sustained the breach of contract

claim for the purposes of this dismissal motion. Consequently, defendant's argument is moot. No other basis for dismissal has been presented. Accordingly, dismissal of the first and third causes of action is denied.

This constitutes the Decision and Order of this Court.

Dated: July 6, 2011



STEVEN M. JAEGER, A.J.S.C.

**ENTERED**  
JUL 11 2011  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE