

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

2011 NY Slip Op 34254(U)

September 22, 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: 8-22-11

MOTION SEQUENCE  
NOS. 3 and 4

The following papers read on this motion:

Notice of Motion, Affirmation, and Exhibits	X
Notice of Cross-Motion, Affirmation, Affidavit, and Exhibits	X
Affirmation	X

Plaintiff moves for an order (1) pursuant to CPLR §3124 directing Defendant to respond to discovery demands; (2) pursuant to CPLR §3126 striking Defendant's answer and counterclaims upon failure to comply with said discovery demands; (3) granting judgment upon the striking of the answer; and (4) extending Plaintiff's time to respond to Defendant's discovery demands. Defendant cross-moves for an order (1) pursuant to CPLR §3122 upholding Defendant's objections to Plaintiff's discovery demands; and (2) pursuant to CPLR §§3124 and 3126 directing Plaintiff to respond to discovery demands.

Both the motion and the cross-motion are granted in part and denied in part, and are decided as set forth herein.

[\* 2]

CPLR §3101 mandates "full disclosure of all evidence material and necessary in the prosecution or defense of an action". The words "material and necessary" are interpreted liberally to allow for broad disclosure. *Congel v. Malfitano*, 84 AD3d 1145 (2<sup>ND</sup> Dept. 2011) citing *Allen v. Cromwell-Collier Publ. Co.*, 21 NY2d 403 (1968). This includes evidence required for trial preparation, as well as that which may lead to the disclosure of admissible evidence. *Montalvo v. CVS Pharmacy, Inc.*, 81 AD3d 611 (2<sup>nd</sup> Dept. 2011). See also, *Keenan v. Harbor View Health & Beauty Spa*, 205 AD2d 589 (2<sup>nd</sup> Dept. 1994).

CPLR §3124 provides that the court has the discretion to compel discovery or to strike a pleading for failure to abide with discovery and disclosure orders. At the discretion of the court, a party's failure to comply with such requests may result in sanctions pursuant to CPLR §3126.

In the instant case, the Court finds that Defendant has sufficiently provided responses to number "7" of the Document Request dated February 25, 2011; number "10" of the Second Document Request dated June 3, 2011; and number "11" of the Second Document Request dated June 3, 2011. Defendant's response to number "12" of the Second Document Request dated June 3, 2011 is also sufficient provided that Defendant produces the requested documentation within thirty (30) days of the date of this Order.

The items sought in number "6" of the Document Request dated February 25, 2011 are not material and necessary to Plaintiff's prosecution of the action based on what is pled in the complaint. Nor are the items material and necessary to Plaintiff's

defense of the counterclaim. As such, Defendant is entitled to a protective order for this request.

The items sought in numbers "8" and "9" of the Second Document Request dated June 3, 2011 are material and necessary to Plaintiff's prosecution of the case and defense of the counterclaim. However, these requests are redundant and nonsensical as the demands indicate on their face that they are already in the possession of Plaintiff. Request "8" seeks documents "sent by [Defendant] to plaintiff". Similarly, request "9" seeks records "received by [Defendant] from plaintiff". Although it is certainly possible that Plaintiff has misplaced the requested items, Defendant is under no obligation to replace them for Plaintiff and thereby assist Plaintiff in its prosecution of the case or defense of the counterclaim. As such, Defendant is entitled to a protective order for these requests.

The Court finds the items sought in numbers "1", "2", "3", "4", and "5" of the Document Request dated February 25, 2011 to be material and necessary to Plaintiff's prosecution of the case as the Second Cause of Action alleges breach of the agreement between the parties based upon Defendant's alleged failure to collect all fees to which Plaintiff claims to be entitled. The documents requested appear to be at the heart of Plaintiff's breach of contract claim as they may indicate whether Defendant properly submitted claims, bills, and appeals on behalf of Plaintiff. Although Plaintiff may already be in possession of some of these documents they seem to encompass the function of Defendant as the medical biller for Plaintiff and therefore may not be the type of documents of which Plaintiff would necessarily retain possession.

As such, Defendant is hereby directed to respond to these requests within thirty (30) days of the date of this Order. As Plaintiff is alleging breach of contract for the length of the agreement, Plaintiff is entitled to the records from the commencement of the agreement. However, Defendant is under no obligation to put the files in Excel format, as a spreadsheet, or in any other format now being requested by Plaintiff as the instant matter cannot be used by Plaintiff to assist it in hiring a new medical biller. Defendant is to copy the records in their existing format, or if the records are overly voluminous, provide Plaintiff with the ability to review the records at a mutually agreed upon location so that Plaintiff can determine which records need to be copied.

Further, Plaintiff is to respond to Defendant's discovery demands and interrogatories within thirty (30) days of the date of this Order.

All issues not addressed are denied.

This constitutes the Decision and Order of this Court.

Dated: September 22, 2011

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

**ENTERED**

SEP 27 2011

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**