

Staten Island Univ. Hosp. v Lederman
2012 NY Slip Op 31736(U)
June 29, 2012
Sup Ct, Richmond County
Docket Number: 101154/05
Judge: Joseph J. Maltese
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND DCM PART 3**

Index No.: 101154/05

STATEN ISLAND UNIVERSITY HOSPITAL,

Plaintiff

against

DECISION & ORDER

**GILBERT S. LEDERMAN, M.D. and
GILBERT S. LEDERMAN, M.D., P.C.**

HON. JOSEPH J. MALTESE

Defendants

This is a contract action between Staten Island University Hospital (SIUH) and Gilbert S. Lederman, M.D. and Gilbert S. Lederman, P.C. (Dr. Lederman), whereby various claims and counterclaims were agreed to by the parties and others were tried by this court without a jury on September 14, 15, 19 and 20, 2011.

Plaintiff's Claims

This is an action that was brought by the plaintiff, SIUH, which asserts three causes of action. The first cause of action for breach of contract alleges that the parties entered into three written agreements. The first agreement, dated December 31, 1996 ("1996 Agreement"), states, in part, that Dr. Lederman was engaged to manage and operate SIUH's Department of Radiation Oncology and to conduct a radiation oncology practice on the plaintiff's premises. The second agreement ("Settlement Agreement") dated January 26, 2004, terminated the December 31, 1996 agreement. The third agreement ("Letter Agreement") which was also dated January 26, 2004, granted defendants a license to conduct a private radiation oncology practice on the plaintiff's premises at SIUH.

The plaintiff asserts in its complaint that "from February 10, 2004 until October 8, 2004, defendants occupied and utilized plaintiff's office space, medical equipment, and staff services for their private radiation oncology practice," and that the fair market rate for the office space, medical

equipment, staff services occupied and utilized by defendants for that period was \$430,225. The first cause of action claims defendants breached the Letter Agreement by failing to pay for the occupation and use of the plaintiff's office space, medical equipment and staff services as agreed. There is no claim that defendants breached the 1996 Agreement or the January 26, 2004 Settlement Agreement.

The second cause of action for Unjust Enrichment alleges that defendants have failed to pay for the "fair and reasonable value of plaintiff's office space, medical equipment and staff services occupied and utilized by defendants from February 10, 2004 until October 8, 2004."

The third cause of action is "on the basis of Quantum Meruit, in that plaintiff is entitled to recover from the defendants the fair and reasonable value of the defendant's occupation and use of its office space, medical equipment, and staff services..."

Defendants' Claims

Dr. Lederman denied most of the allegations of the complaint, specifically denying that under the 1996 Agreement he conducted a *private* radiation oncology practice at the hospital, but that the Letter Agreement dated January 26, 2004 did grant him a "license to conduct a *private* radiation oncology practice" at the hospital. Moreover, he denies that he was unjustly enriched, or that on the basis of quantum meruit, plaintiff is entitled to recover from him "the fair and reasonable value of the defendant's occupation and use of its office space, medical equipment, and staff services." (emphasis added).

Dr. Lederman, in his Seventh Affirmative Defense, alleges that "plaintiff has already been compensated for the plaintiff's costs in providing and maintaining the Department of Radiation oncology facilities, staff and premises (including without limitation the space, equipment and personnel allegedly provided to defendants), by patients and/or their insurance carriers, which, is in effect double billing and are precluded from recovering against defendants on a quantum meruit or unjust enrichment basis."

Dr. Lederman raised three counterclaims to the plaintiff's complaint each arising from his allegations that plaintiff failed to comply with its obligations under the January 26, 2004 Settlement Agreement. The first counterclaim asserted that the plaintiff did not pay \$150,000 of the \$300,000 consideration for terminating his contract one year earlier than its December 31, 2004 expiration date. Indeed, in a stipulation SIUH agreed to pay this claim to Dr. Lederman. The second counterclaim was for the balance of unpaid self pay patients and the third counterclaim was for unpaid roster patients.

Stipulations of Fact

The parties agreed before the trial started to several issues. The defendants agreed to pay plaintiffs the amount claimed for the use of office space (\$27,418) and equipment (\$4,903), for a total of \$32,321. But not for hospital staff. The plaintiff agreed to pay the defendants the amounts due for the first counterclaim of \$150,000 for arrears in the monetary settlement of paragraph 3a of the Agreement and General Release dated January 26, 2004 (outlined above), and the third counterclaim for reimbursement for unpaid roster patients at the sum of \$223,640.41.

The parties were also able to agree to certain facts concerning the self pay patients, which was the subject of the second counterclaim. Defendant's Exhibit B is a summary of raw data regarding the self pay patients, which includes the month, year, patient's name, and amounts paid to SIUH and Dr. Lederman for those self pay patients. The plaintiff did not agree to the conclusions contained in Defendants' Exhibit B, that is, how much is owed to Dr. Lederman for those self pay patients, and submitted their own summary.

Discussion

Under the 1996 Agreement, Dr. Lederman agreed to be the exclusive provider of radiotherapy services at SIUH and to not engage in the private practice of medicine or radiation therapy. The 1996 Agreement, paragraph 3.4 states Outside Activities: "(Dr. Lederman) shall devote his full time and attention to the provisions of Radiotherapy Services and Administration Services to the Department and shall not furnish Radiotherapy Services or Administrative otherwise engage

in the private practice of medicine without the express written approval of Hospital's Chief Executive or his designee." Paragraph 7.1 states: "*No Engagement in Business*: During the Term of this Agreement... (Dr Lederman) shall not, for whatever reason (I) engage, directly or indirectly, in the practice of Radiotherapy..."

The relationship between SIUH and Dr. Lederman was explained by Dr. Lederman's expert, George Chapman (602-610): "The relationship between the physician and the hospital was a home run. I thought it worked out really well as far as billing by The Hospital, billing by the physician and being Stark compliant." (602); "Dr. Lederman only billed for the professional services and insurance companies pay the physician just professional services. There is no overhead in it (606); the hospital bills for all of the overhead. They get paid one hundred percent for that. That would be a double dip by the hospital request a physician to pay out of his professional fee overhead which they're already collecting from the insurance company." (607). Mr. Chapman stated further that included in the Hospital billing for the technical component was: "the equipment, the maintenance, the dosimetry, the radiotherapists, the nurses, the secretary, the receptionists, the billing, the janitor, the consultant, the lawyer, the accountants and the cafeteria workers." The doctor's professional billing includes "just his services" (608-609). Every time the doctor uses an office or examination room, the hospital is reimbursed. The room cost is built into the hospital's facility cost (639-640, 645-646).

Except for his secretary, Pat Greaney, who was assigned to him while he was Director of the Department of Radiation Oncology, and fired shortly after he resigned that position, Dr. Lederman did not "utilize" hospital staff at any time during his association with SIUH.

The hospital billed for and was reimbursed by the insurers for all of these employees (609-611). Dr. Lederman at no time had a *private* radiation oncology practice going on in Staten Island (275, 287) prior to January 26, 2004. Dr. Lederman had his own billing company and in fact, the hospital billers would look at the doctors billing sheets to make sure the hospital could bill for the same services, and that "the hospital bills the technical fees for every service that's performed by the hospital employees" (466-469).

The documentary evidence from the Hospital also supports the defendant's position that the hospital billed the technical component for all services performed in the department: "given the services were performed at SIUH facilities, using SIUH equipment, space and staff, SIUH was entitled to bill for the complimentary 'Technical Component.'"

The Letter Agreement clearly indicates that Dr. Lederman will enter into a "rental or license agreement" for "space." The parties will negotiate "the location and amount of the space" and the "rent or fee." The agreement does not state that it would cover "staff," which Dr. Lederman was never previously required to pay for. The hospital had four other contracts for shared use of staff with other medical providers, each of which clearly specifies that staff would be shared (Exhibits L, M., N, O). The first time anyone from the Hospital demanded that Dr. Lederman pay for staff in the department was by letter dated June 8, 2004 (Exhibit 23), more than four months after Dr. Lederman had stepped down as Director, and three weeks after Dr. Lederman's attorney, Wayne Roth demanded payment for the unpaid roster patients and self pay patients (Exhibit 20). Mr. Pullano, SIUH's Vice President for Radiation Oncology, testified that he did not "in any way, shape or form" speak to Dr. Lederman about paying for staff (482).

The Letter Agreement dated January 26, 2004, is unambiguous. Dr. Lederman did not agree to pay for the Hospital's staff. Accordingly, the plaintiff's first cause of action seeking payment for hospital staff members is dismissed.

The quantum meruit and unjust enrichment theories are equitable in nature, and are appropriate only if there is no valid and enforceable contract between the parties covering the dispute at issue. But here there was a written contract which covered only space and equipment, which did not list staff. *Gleitch v. Gritsapis*, 2010-01461, 2011 N.Y. Slip Op. 05483, 927 NYS2d 349 (2d Dept 2011), *AHA Sales, Inc. v. Creative Bath Prods., Inc.*, 58 AD3d at 20, 867 NYS2d 169 (2d Dept 2008). A cause of action alleging unjust enrichment requires proof that (1) the defendant was enriched, (2) at the plaintiff's expense, and (3) that it is against equity and good conscience to permit the defendant to retain what is sought to be recovered. *Gleitch v. Gritsapis, supra*, citing *AHA Sales*,

Inc. v. Creative Bath Prods., Inc., supra, Cruz v. McAneney, 31 AD3d 54, 816, NYS2d 486 (2d Dept 2006), and *Citibank, N.A. v. Walker*, 12 AD3d at 481, 787 NYS2d 48 (2d Dept 2004).

In this case, plaintiff has failed to prove that the defendant was unjustly enriched or that the plaintiff suffered any financial loss. The defendant provided professional services to patients at SIUH and billed only for those professional services. The Hospital did not provide any competent testimony or evidence to rebut defendants' proof that the Hospital billed technical fees and was reimbursed for every staff service provided in the department. Therefore, the second cause of action for unjust enrichment is dismissed.

In the plaintiff's third cause of action for quantum meruit, there must be "evidence of (1) the performance of services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation therefor and (4) the reasonable value of the services allegedly rendered. *AHA Sales, Inc. v. Creative Bath Prods., Inc.*, supra, *Cruz v. McAneney*, supra, *Citibank, N.A. v. Walker*, supra, and *Stephan B. Gleitch & Assoc. v. Gritsipis*, supra.

In this case, the plaintiff did not prove what, if any, services were provided to Dr. Lederman by SIUH. None of the witnesses who worked in the Department of Radiation Oncology (Ms. Yarshevitz, Ms. Wasserman, Ms. Deluca or Ms Lombardo) testified they performed any services for Dr. Lederman or his doctors. John Pullano testified that some employees of the Hospital worked exclusively for Dr. Lederman. However, neither he nor General Counsel, Arthur Fried, nor Ms. Henderson, the Deputy Counsel, could identify any specific employee that performed services exclusively for Dr. Lederman. The plaintiff likewise did not prove that Dr. Lederman accepted the services of any specific employee and failed to prove the reasonable value of any services actually provided. Since the plaintiff failed to make out a prima facie case on the third cause of action for quantum meruit, that cause of action is dismissed.

While SIUH now argues that the agreement between SIUH and Dr. Lederman was to include payment for staff, that was not included in the January 26, 2004 agreement, nor was that the prior course of conduct since 1996 while Dr. Lederman worked at SIUH. Moreover, when Dr. Lederman worked at the hospital, he billed insurance providers directly where possible, while SIUH billed for the technical components of the radiation treatments, hospital rooms and the staff that serviced them.

Where Dr. Lederman's fees were not billable directly, such as with the roster payments and the self paid patients, a formula for payment was established initially at 25% for Dr. Lederman and the lion's share of 75% for the hospital, which included paying for the hospital staff. As part of the settlement agreements of 2004, that payment schedule was reduced for the self paid patients to \$3,000 for Dr. Lederman and the balance for the hospital.

What is more telling is that SIUH wanted Dr. Lederman out as Director of Radiation Oncology after 2002 when it commenced to reduce his agreed upon payments of 25% for both roster patients and self paid patients to merely \$3,000 per self paid patients. SIUH was so adamant in removing Dr. Lederman that it agreed to pay him \$300,000 to merely resign as Director in January of 2004, rather than wait until his contract expired in December 31, 2004.

It was not until Dr. Lederman sought enforcement of the January 26, 2004 agreements for payments for his termination payable at the rate of \$37,500 per quarter for 8 quarters and the payment of the outstanding roster and self paid patients, did SIUH seek payments for staff, in addition to the rent for office space and equipment. At no time did Dr. Lederman agree to pay for staff, indeed the correspondence from Wayne Roth, his attorney, indicates quite the contrary where he rhetorically questioned on June 10, 2004 in a letter to Ann Marie Henderson, SIUH's Deputy General Counsel:

Do the surgeons operating on patients on an ambulatory or in-patient basis pay for the scrubs and operating room nurses and personnel? Do surgeons pay moneys for the use of the OR?

While Ms. Henderson never addressed those questions, the obvious answer is “No.”

SIUH’s position that the agreement with Dr. Lederman to include staff payments was implied by the agreement to pay for space and equipment is not credible. For SIUH to now argue for quantum meruit and unjust enrichment at the sum of almost \$400,000 for 10 months is ludicrous and against the weight of the credible evidence in this case.

SIUH contends that because Dr. Lederman referred patients to SIUH that he must individually pay for rent, equipment and staff utilized by his hospital based practice now that he was no longer the Director of Radiation Oncology. Dr. Lederman, in fact did agree in writing in the 2004 Agreement to pay for rent for the space and equipment that he used which the parties have stipulated is \$32,321. He never agreed to pay for staff. In fact, Dr. Lederman did not directly refer patients for treatment at the hospital. A multi-disciplinary committee determined how and if the patients were to be treated in the hospital. Indeed, some patients were treated in departments outside of the Radiation Oncology Department where Dr. Lederman worked and some patients were not treated at all.

SIUH argues through their former counsel that the federal Stark provisions of 42 USCA § 1395nn or the New York False Claims Act, commonly known as the state Anti Kickback Law statute of the New York State Social Services Law § 366-d, are the reasons why SIUH needed to amend its contract arrangement with Dr. Lederman, who treated all patients of his practice at SIUH, which it claimed appeared to violate those statutes. However, the Stark and Anti Kickback laws were in place when Dr. Lederman renewed his contract in 1996 and were in place when he entered into the 2004 Agreements.

This court finds that such an argument is a pretext in SIUH's attempt to oust Dr. Lederman for a variety of matters, which resulted in adverse publicity for the hospital. Nonetheless, this court does not find that there were any violations of the federal Stark and state Anti Kickback laws, nor had any state or federal agency ever proceeded against SIUH and Dr. Lederman's practice for any violations of those statutes.

Accordingly, SIUH's arguments that there were violations of law that mandated a reformation of the contract with Dr. Lederman, and further mandated that he pay for the use of hospital staff is without merit.

Self Pay Patients

Self pay patients were patients who came to SIUH uninsured, often from out of the country, and agreed to pay for treatment in the Department of Radiation Oncology directly. The hospital collected all of the fees, and then paid Dr. Lederman. The agreement and course of conduct between the parties before April, 2002, was from the total amount collected from the patient, 75% of the proceeds would go to the hospital and other providers, 25% would go to Dr. Lederman. The background for this procedure is set forth in the memorandum of Alfred Cancellieri to Ralph Lamberti dated July 10, 2001 in trial Exhibit I. However, the Agreement and General Release dated January 26, 2004 stated that Dr. Lederman agreed to take \$3,000 for amounts due for self pay patients. Exhibit A, paragraph 3(c) states:

3. Consideration. In consideration of DR. LEDERMAN's covenants and representations in this Agreement, the SIUH agrees to provide DR. LEDERMAN the following payment(s) and/or benefit(s) (hereinafter referred to as the "Consideration")...

(c) SIUH shall reconcile and pay within 60 days from the Termination Date, amounts due to DR. LEDERMAN and/or the P.C. for patient care services provided under the Director of Radiation Oncology Agreement prior to the Termination Date at the rate of \$3000 per self-pay patient and 25% of fees actually collected by SIUH for roster patients. In the event of a dispute as to any amounts due under this provision, such dispute shall not affect in any way the validity of this agreement or the releases herein, nor

shall it constitute a breach of this agreement. Such disputes shall be negotiated between the parties in good faith and if the dispute cannot be reconciled through this process, the parties may pursue such remedies as they deem appropriate.

4. No Other Payments or Benefits. SIUH has no obligation to make any payment or provide any benefit to or on behalf of DR. LEDERMAN or the P.C. other than the payments and benefits specifically identified in this Agreement. Notwithstanding anything to the contrary contained herein, DR. LEDERMAN and/or the P.C. shall hereafter be promptly compensated (no later than sixty (60) days after SIUH receives payment) at the rate of 25% of fees actually collected by SIUH per case for radio surgery services provided by DR. LEDERMAN or the P.C. to patients with insurance or managed care plans, which do not permit the professional and hospital components of services to be billed separately, or for which SIUH has chosen to receive a global payment for services, and at the rate of \$3,000 per self pay patient if the reimbursement to SIUH is \$15,000 or greater per patient and at a negotiated rate per self pay patient if the reimbursement is less than \$15,000 per self pay patient. DR. LEDERMAN and the P.C. further agree that all rates to such patients are to be negotiated by SIUH and DR. LEDERMAN and the P.C. hereby assign to SIUH any and all billings and collections for services provided to such SIUH patients, regardless of the location such services are provided. In the event DR. LEDERMAN and/or the P.C. is reimbursed directly or receives payment for services to such patients, the reimbursement and/or repayment shall promptly be delivered to SIUH.

It should be noted that paragraph 15 of that Agreement and General Release states:

15. Complete Agreement. This Agreement constitutes the complete understanding between the parties and supersedes any and all other agreements, understanding, and discussions, whether written or oral between the parties. The Agreement may not be altered, and no other promises or agreements between the parties shall be binding, unless in writing and signed after the Effective Date by DR. LEDERMAN, an authorized officer of the P.C. and an authorized officer of SIUH.

The clear language of the agreement will be enforced. As indicated, “The interpretation of an unambiguous contract provision is a function for the court, and matters extrinsic to the agreement may not be considered when the intent of the parties can be gleaned from the face of the instrument,”

Teitelbaum Holdings v. Gold, 48 NY2d 51, 421 NYS2d 556, 396 NE2d 1029 (1979), citing *West Weir & Bartel v. Carter Paint Co.* 25 NY2d 535, 307 NYS2d 449, 255 NE2d 709 (1969). See also *Chimart Assoc. v. Paul*, 66 NY2d 570, 498 NYS2d 344, 489 NE2d 231 (1986).

In the Letter Agreement dated January 26, 2004, the parties agreed that they would “reconcile” all past self pay patients’ payments at the \$3,000 rate (42). On January 26, 2004, Dr. Lederman agreed to accept \$3,000 for all the outstanding invoices for self pay patients. Since the parties could not agree to “reconcile” the outstanding balance due to Dr. Lederman for self paid patients at the agreed upon \$3,000 per patient rate, this court, after hearing the testimony concerning that issue and reviewing the stipulated raw data contained in Defendants’ Exhibit B, and the defendants’ alternative charts attached to their Summation and Response to Defendants’ Trial Memorandum decides as follows.

That the reconciliation of payments owed Dr. Lederman and the amount owed SIUH in reimbursement yields the following:

Amount owed Dr. Lederman for self paid patients	\$228,433.10
Amount owed SIUH for self paid patients	<u>\$190,999.25</u>
Balance owed Dr. Lederman for self paid patients	\$ 37,433.85

Therefore, after the reconciliation of self paid patients, Dr. Lederman is owed \$37,433.85.

Consequently, pursuant to the stipulations of the parties, the dismissal of the plaintiffs' claims for payment of staff and the foregoing reconciliation of the self paid patients, the following monies are credited to each of the parties, resulting in a net balance due to Dr. Lederman of \$378,753.26:

	SIUH	Dr. Lederman
Space & Equipment	\$32, 321.00	
Settlement Arrears		\$150,000.00
Roster Patients		\$223,640.41
Self Paid Patients		+ <u>\$ 37,433.85</u>
Total due Dr. Lederman		\$411,074.26
Total due SIUH	\$32,321.00	- <u>\$ 32,321.00</u>
Net Balance due Dr. Lederman		\$378,753.26

Accordingly, it is hereby:

ORDERED, that the plaintiff's first, second and third causes of action are dismissed except that the defendants stipulated that they owe the plaintiff the sum of \$32,321.00 for the use of office space and equipment from February 9, 2004 until October 31, 2004; and it is further

ORDERED, that the plaintiff stipulated that it owed the defendants on the first counterclaim the sum of \$150,000; and it is further

ORDERED, that pursuant to stipulation, the plaintiff owes the defendant the sum of \$223,640.41 for roster patients on the defendants' third counterclaim; and it is further

ORDERED, that after reconciling the amount of credits due the parties on the outstanding self paid patient payments paid directly to the hospital, the defendants are entitled to the sum of \$37,433.85 on the second counterclaim; and it is further

ORDERED, that in view of the foregoing credits due the parties, the defendants are entitled to the sum of \$378,753.26 from the plaintiff.

Settle judgment on notice.

ENTER,

DATED: June 29, 2012

Joseph J. Maltese
Justice of the Supreme Court