

Integra Partners LLC v Landau
2012 NY Slip Op 33302(U)
January 4, 2012
Sup Ct, NY County
Docket Number: 650344/2011
Judge: Melvin L. Schweitzer
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MELVIN L. SCHWEITZER
Justice

PART 45

INTEGRA PARTNERS LLC,

Plaintiff,

-against-

LANDAU, JOEL

Defendant.

INDEX NO. 650344/2011

MOTION DATE _____

MOTION SEQ. NO. 006

MOTION CAL. NO. _____

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion by defendants to dismiss the claims against them is GRANTED;

Plaintiff's motions for sanctions is GRANTED as against defendants Stein and Reliance per the attached Decision and Order dated January 4, 2012.

Dated: January 4, 2012

MELVIN L. SCHWEITZER, J.S.C.
MELVIN L. SCHWEITZER
J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG.

☐ SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 45

-----X
INTEGRA PARTNERS LLC and INTEGRA
PARTNERS IPA, LLC,

Plaintiffs,

-against-

JOEL LANDAU, MORDECHAI STEIN and
RELIACARE ALLIANCE IPA, LLC,

Defendants.
-----X

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: Index No. 650344/2011

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: DECISION AND ORDER

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: Sequence Nos. 001 and 006
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MELVIN L. SCHWEITZER, J.:

This case involves claims of misappropriation of confidential information and trade secrets. It stems from relationships formed pursuant to consulting arrangements relating to the provision of healthcare services.

Background

Plaintiffs, Integra Partners LLC and Integra Partners IPA, LLC (collectively, Integra) provide services for health insurance companies acting as managed care organizations (MCO). Integra's role is to interface with durable medical equipment (DME) and orthotics and prosthetics (O&P) providers in order to facilitate the delivery of their services to the MCO's insureds. Their business model enables patients in need of medical services to access a broad network of providers who are credentialed by the MCOs. In turn, the providers are exposed to a pool of patients they might not otherwise engage. In addition to fulfilling their role as a clearinghouse, Integra performs what it characterizes as streamlined billing and reimbursement processes. It asserts, however, that the key to its business success is its large network of relationships with DME and O&P providers.

In October 2006, Integra entered into a consulting agreement (Consulting Agreement) with the IntelliMed Group Inc. (InteliMed) pursuant to which InteliMed agreed to provide services relating to business development focused on enrolling MCOs in Integra's network. The Consulting Agreement was a short form document incorporating a work plan, setting forth a fee arrangement and also providing that information learned during the course of the assignment was to be deemed confidential and not shared without the permission of Integra. The Consulting Agreement also provided that "... any dispute hereunder shall be subject to mediation by a mediator mutually agreed upon by the parties." It was executed on behalf of InteliMed by Joel Landau (Mr. Landau).

In March 2009, Integra entered a contracting agreement (Contracting Agreement) with AAA Home Health Care Equipment, LLC (AAA) pursuant to which AAA became a member of Integra's provider network. The Contracting Agreement provided that all knowledge about Integra learned by AAA be maintained on a confidential basis. It was executed on behalf of AAA by Mordechai Stein (Mr. Stein).

In 2010, Mr. Stein formed Reliacare Alliance IPA, LLC (Reliacare) and, allegedly, Mr. Landau became heavily involved in its business. Integra alleges that in 2011 it learned that Reliacare was involved in business activities similar to Integra's, and, in a conclusory fashion, further alleges that it copied and used its proprietary applications and provider agreements and that it made disparaging representations regarding Integra to Integra's customers.

Integra demanded that Messrs. Stein, Landau and Reliacare cease their wrongful conduct and return any misappropriated confidential information. However, defendants did not respond to the demand and plaintiffs commenced this action. Plaintiffs assert claims for breach of

contract and breach of fiduciary duty against Messrs. Landau and Stein, misappropriation of trade secrets and confidential information, tortious interference with business advantage and conspiracy against all defendants, and unjust enrichment and a demand for an accounting against Reliacare.

Defendants move to dismiss the complaint pursuant to CPLR 3211 (a) (1), 3211 (a) (7), CPLR 7503 (a) and CPLR 2201. Defendants assert that the Consulting Agreement provides that all disputes shall be subject to mediation,¹ that the Consulting and Contracting Agreements were arrangements with corporations and not the individual defendants, that all claims other than the breach of contract claim are duplicative of the contract claim, that the tortious interference claim fails to identify specific contracts and customers which were diverted and that if the claims are not dismissed in their entirety, they should be stayed pending mediation.

Additionally, plaintiffs move for sanctions against Mr. Stein and Reliacare, and Mr. Stein and Reliacare move for sanctions against plaintiffs.

Discussion

CPLR 3211 (a) provide, in pertinent part, “[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that (7) the pleading fails to state a cause of action”

Courts are instructed to construe a complaint liberally when determining if it withstands a motion to dismiss under CPLR 3211 (a) (7), accepting all allegations as true and giving the plaintiff the benefit of every favorable inference. *511 West 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 152 (2002). “[T]he sole criterion is whether the pleading states a

¹ Plaintiffs and Mr. Landau proceeded to mediation and this case against Mr. Landau was dismissed.

cause of action.” *Weiss v Cuddy & Feder*, 200 AD2d 665, 666-67 (2d Dept 1994) (quoting *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 (1977)). If allegations are discerned from the four corners of the complaint which, taken as a whole, state *any* cause of action recognized by law, a motion to dismiss under CPLR 3211 (a) (7) must be denied. *Id.*, 200 AD2d at 667; *Cooper v 620 Prop. Assoc.*, 242 AD2d 359, 360 (2d Dept 1997).

Individual Defendant

Breach of Contract

Each of the individual defendants executed the respective agreements as a representative of a corporation. This is made clear by an examination of the Consulting Agreement and the Contracting Agreement. It is well settled law that execution of a contract by an individual does not bind the individual absent a clear provision to such effect in the agreement. *Diaz v Segal*, 23 AD3d 251 (1st Dept 2005); *Lichtman v Mt. Judah Cemetary*, 269 AD2d 319 (1st Dept 2000). There is no such provision here. Had plaintiffs intended to bind the individuals, they could easily have inserted a provision to do just that. They did not, and may not now correct this deficiency by conclusory allegations of personal dominance by the defendants of the respective corporations. Accordingly, plaintiffs’ claim against Mr. Stein for breach of contract is dismissed.

Additionally, each of the other claims asserted in the complaint against the individual defendants, other than the tortious interference claim, are duplicative of the breach of contract claims against the individual defendants. The claims are misappropriation of trade secrets and confidential information, and for unfair competition. Such claims are, for this additional reason, dismissed against Mr. Stein. *See Celley v Barclays Bank, PLC*, 48 AD3d 301 (1st Dept 2008) and *Banker v Time Warner Cable*, 2009 WL 1957740 (Sup Ct NY Cty 2009).

Breach of Fiduciary Duty

The complaint does not contain a sole allegation which could be used to support a claim that Mr. Stein was a fiduciary with respect to Integra. Accordingly, plaintiffs' claim for breach of fiduciary duty against Mr. Stein is dismissed.

As for the tortious interference claim, plaintiffs have alleged, in a completely conclusory fashion, that the individual defendants are interfering with plaintiffs' operations and damaging its good will in the market place. However, the complaint does not reference any specific customer or operation that has been interfered with. As such, it is deficient and is, accordingly, dismissed as against Mr. Stein. *Learning Annex Holdings, LLC v Gittelman*, 48 AD3d 211 (1st Dept 2008).

Reliacare Alliance IPA, LLC

Reliacare was not a party to any contract with plaintiffs. For this reason alone the breach of contract claim and all claims duplicative of such claim are dismissed.² Moreover, for the reason stated above the tortious interference claim is also dismissed.

As the claims against Mr. Stein and Reliacare are dismissed for the reasons stated above, there is no need for the court to address Mr. Stein's argument concerning the effect of the mediation provision in the contractual arrangements here.

Accordingly, it is

ORDERED that each of the claims against the defendants are dismissed pursuant to CPLR 3211 (a) (7).

² The theory of law with respect to duplicative claims cannot be avoided because the complaint purports to assert claims against Reliacare as a separate defendant. The entire theory of the complaint is that Reliacare is merely the instrumentality through which the individual defendants have attempted to benefit from their respective corporations' breaches of the subject agreements. Under these circumstances, plaintiff is limited to the rights set forth in those agreements. Furthermore, the allegations against Reliacare are conclusory and, as such, do not state a cause of action.

Sanctions

The court finds that defendants Stein and Reliacare repeatedly and willfully disobeyed their discovery obligations over an extended period, including two orders of this court.

Accordingly, it is

ORDERED that plaintiffs' motion for sanctions is granted and that defendants Stein and Reliacare are hereby sanctioned by this court in the amount of \$500 each, and shall deposit said amount with the County Clerk (Room ³⁰⁰~~141B~~), together with a copy of this order, for transmittal to the New York State Commissioner of Taxation and Finance; and it is further

ORDERED that written proof of the payment of this sanction shall be provided to the Clerk of Part 45 and opposing counsel within 30 days after service of a copy of this order with notice of entry; and it is further

ORDERED that, in the event that such proof of payment is not provided in a timely manner, the Clerk of the court, upon service upon him of a copy of this order with notice of entry and an affirmation or affidavit reciting the fact of such non-payment, shall enter a judgment in favor of the Commissioner and against defendants Stein and Reliacare in the aforesaid sum.

The court finds no basis to support defendants' cross-motion for sanctions.

Accordingly, it is

ORDERED that defendants' cross-motion for sanctions is denied.

Dated: January 4, 2012

ENTER:

J.S.C.

MELVIN L. SCHWEITZER
J.S.C.