

**Greenfield v Long Beach Imaging Holdings, LLC**

2012 NY Slip Op 33806(U)

April 16, 2012

Supreme Court, Nassau County

Docket Number: 000636/12

Judge: Stephen A. Bucaria

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

**ORIGINAL**

SUPREME COURT - STATE OF NEW YORK

Present:

**HON. STEPHEN A. BUCARIA**

Justice

\_\_\_\_\_  
ALAN B. GREENFIELD, M.D., P.C.,

Plaintiff,

-against-

LONG BEACH IMAGING HOLDINGS, LLC,

Defendant.  
\_\_\_\_\_

TRIAL/IAS, PART 1  
NASSAU COUNTY

INDEX No. 000636/12

MOTION DATE: March 7, 2012  
Motion Sequence # 001

The following papers read on this motion:

- Order to Show Cause..... X
- Affidavit in opposition..... X
- Memorandum..... X
- Memorandum of Law..... X

Motion by plaintiff Alan B Greenfield, MD, PC for a preliminary injunction is **denied**.

This is an action for breach of contract. Dr. Alan Greenfield is a radiologist who practices in the name of plaintiff Alan B. Greenfield, MD, PC. Defendant Long Beach Imaging Holdings, LLC is the subtenant of a medical office located at 210 West Park Avenue in Long Beach. Long Beach Imaging is owned indirectly 60 % by Merik Dobler, presumably a non-physician, and 40 % by Dr. Greenfield.

On March 1, 2010, Dr. Greenfield's professional corporation entered a lease and services agreement with Long Beach Imaging. The agreement provided that Long Beach Imaging subleased the office located at 210 West Park Avenue to the professional

corporation for a term of ten years. The agreement further provided that Long Beach Imaging leased to the p.c. certain radiology equipment, including an MRI, a mammography, and an ultrasound system. Additionally, Long Beach Imaging was to provide the p.c. with diagnostic imaging technologists and appropriate clerical and non-medical personnel.

As compensation for these services, Long Beach Imaging was to be paid "usage fees" in the amount of \$162,500 per month per month through February 28, 2011, \$212,500 per month through February 29, 2012, and \$254,167 per month through February 28, 2013. Although \$22,000 of the monthly fee is allocated to rent, and \$29,000 is allocated to equipment, the remainder of the fee is not broken down as between payroll cost and profit. The agreement provides that it may be terminated by either party based upon material breach by the other party on ten days written notice.

On January 6, 2012, Long Beach Imaging sent the professional corporation notice of default based upon 1) its removal of Long Beach Imaging's signatory authority over the p.c.'s bank account, 2) underpayment of fees in the amount of \$1.8 million, 3) unauthorized removal of a computer, and other claimed breaches of the agreement.

This action for breach of the lease and services agreement was commenced on January 18, 2012. Plaintiff alleges that Long Beach Imaging failed to pay rent to the landlord and failed to pay vendors of the professional corporation. Plaintiff further alleges that Long Beach Imaging has been overcharging the p.c. for services and has not used monies received from the p.c. for its benefit. Finally, plaintiff alleges that defendant instructed medical office employees not to report to work, cancelled patient appointments, removed the office computer, and turned off the telephone service. Plaintiff also asserts a claim for tortious interference with its prospective business relations with its patients.

Plaintiff moves for a preliminary injunction restraining defendant from interfering with its business or practice, directing defendant to return the office equipment, and directing defendant to restore the telephone service. On January 23, 2012, the parties entered into a so-ordered stipulation, resolving plaintiff's request for a temporary restraining order pending decision of the application for a preliminary injunction. The stipulation recites that on January 6, 2012 Long Beach Imaging served the p.c. with notice of default based upon its alleged failure to make payments required by the terms of the lease and services agreement. In the stipulation, the professional corporation agreed to pay Long Beach Imaging the reduced amount of \$25,000 per week as "weekly fees." The stipulation further provides that the p.c. shall grant Long Beach Imaging "real time access" to the p.c.'s bank accounts and

otherwise provide Long Beach Imaging with “prompt access” to the p.c’s bank account information.

In opposition to the motion, defendant argues that plaintiff has no cause of action for breach of contract because Long Beach Imaging terminated the agreement based upon plaintiff’s material breach on January 18, 2012, the same date that the action was commenced. Defendant further argues that plaintiff is not entitled to a Yellowstone injunction because the cure period expired. Finally, defendant argues that plaintiff has no cause of action for tortious interference with prospective economic relations because it does not allege that defendant used “wrongful means” to interfere with plaintiff’s relations with its patients.

In order to be entitled to a preliminary injunction, plaintiff must show a likelihood of success on the merits, danger of irreparable injury in the absence of an injunction, and a balance of the equities in their favor (*Aetna Ins. Co. v Capasso*, 75 NY2d 860 [1990]). The court concludes that plaintiff has failed to show a likelihood of success on the merits with respect to its claim for breach of the lease and services agreement. Moreover, plaintiff has not shown that the balance of the equities are in its favor.

Although the requested relief is phrased as a prohibition on interfering with its medical practice, plaintiff in effect requests a mandatory injunction ordering Long Beach Imaging to continue to perform the lease and services agreement. Courts rarely, if ever, grant specific performance of a contract for personal services (*Matter of Baby Boy C*, 84 NY2d 91, 101 [1994]). Because the performance of such contracts requires skill, volition, and fidelity, it is impracticable, if not impossible, for a court to supervise or secure the proper and faithful performance of such contracts (Id).

Performance of the lease and services contract requires skill and volition on Long Beach Imaging’s part with respect to the provision of diagnostic imaging technologists, as well as fidelity to the professional corporation. Since it would be impracticable for the court to supervise an agreement for personal services to a medical practice, preliminary injunctive relief is clearly not appropriate.

Moreover, where management companies controlled by non-physicians bill medical corporations at inflated rates for routine services, the arrangement is often an illegal fee splitting arrangement (See *State Farm v Mallela*, 4 NY3d 313 [2005]). The substantial and largely unexplained monthly usage fees paid to Long Beach Imaging, as well as its control

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over the professional corporation's finances, suggest that it may be participating in the fees of the professional corporation. That Dr. Greenfield holds a minority interest in Long Beach Imaging does not establish that its charges were proper. Although the court need not decide whether the lease and services agreement is an illegal fee sharing arrangement at this stage, preliminary injunctive relief is clearly inappropriate. Plaintiff's motion for a preliminary injunction is denied.

So ordered.

Dated APR 16 2012

Stephen A. Berardin  
J.S.C.

**ENTERED**  
APR 18 2012  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE