SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. CAROL EDMEAD PART 35

Index Number : 650436/2013
JEFFREY CHESS, M.D., P.C.
vs
CHAUDHRY, DANNY
Sequence Number : 001
DISMISS ACTION

INDEX NO. _____
MOTION DATE 5/21/13
MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

In accordance with the accompanying Memorandum Decision, it is hereby

ORDERED that defendants' motion to dismiss the complaint of plaintiff Jeffrey Chess, M.D., P.C. on the grounds of lack of personal jurisdiction (CPLR 3211(a)(8)), *forum non conveniens* (CPLR 327), defense based on documentary evidence (CPLR 3211(a)(1)), and for failure to state a cause of action (CPLR 3211(a)(7)) is denied, except that the complaint is severed and dismissed as against defendant Danny Chaudhry a/k/a Ata Chaudhry pursuant to CPLR 3211(a)(7), and the Clerk may enter judgment accordingly and it is further

ORDERED that defendant shall serve a copy of this order with notice of entry upon plaintiff within 20 days of entry; and it is further

ORDERED that the remaining defendants shall serve and file their Answer within 30 days of the date of entry of this decision; and it is further

ORDERED that the parties shall appear for a preliminary conference on September 17, 2013, 2:15 p.m.

This constitutes the decision and order of the Court.

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

Dated: 6/24/13

J.S.C.

HON. CAROL EDMEAD

1. CHECK ONE: ..... ☐ CASE DISPOSED ☑ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☑ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

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JEFFREY CHESS, M.D., P.C.,

Plaintiff,

Index # 650436/2013

-against-

DANNY CHAUDHRY a/k/a ATA CHAUDHRY,
HUDSON RADIOLOGY CENTER, LLC,
MAGNETIC RESONANCE OF NEW JERSEY, P.A.,
MAGNETIC RESONANCE OF NEW JERSEY, INC.,
MAGNETIC RESONANCE OF NEW JERSEY-NUTLEY, LLC,
AMERICAN DIAGNOSTIC IMAGING, INC.,
AMERICAN DIAGNOSTIC IMAGING OF NEW JERSEY, INC.,
and AMERICAN DIAGNOSTIC IMAGING OF NUTLEY, LLC,

Defendants.

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HON. CAROL ROBINSON EDMEAD, J.S.C.

MEMORANDUM DECISION

In this action to recover monies for professional services rendered, defendants Danny Chaudhry a/k/a Ata Chaudhry ("defendant"), Hudson Radiology Center, LLC ("Hudson Radiology Center"), Magnetic Resonance of New Jersey, P.A., Magnetic Resonance of New Jersey, Inc., Magnetic Resonance of New Jersey-Nutley, LLC (collectively, "Magnetic Resonance of New Jersey"), American Diagnostic Imaging, Inc., American Diagnostic Imaging of New Jersey, Inc., and American Diagnostic Imaging of Nutley, LLC (collectively, "American Diagnostic Imaging") (all collectively referred to as "defendants") move to dismiss the complaint of plaintiff Jeffrey Chess, M.D., P.C. ("plaintiff") on the grounds of lack of personal jurisdiction (CPLR 3211(a)(8)), *forum non conveniens* (CPLR 327), defense based on documentary evidence

(CPLR 3211(a)(1)), and for failure to state a cause of action (CPLR 3211(a)(7)).[1]

Factual Background[2]

This action arises out of an agreement allegedly entered into between the defendants and plaintiff for plaintiff to read and interpret magnetic resonance imaging ("MRI") and other radiological studies. Plaintiff, a radiologist licensed in New York and New Jersey, alleges that defendant telephoned him approximately two years ago expressing an interest in hiring him to read and interpret MRI and other radiological studies for his centers, Hudson Radiology Center, Magnetic Resonance of New Jersey, and American Diagnostic Imaging. They later met to discuss defendant's offer to hire plaintiff, and after negotiations, agreed for plaintiff to read and interpret MRI and other radiological studies at the three centers at the rate of $45.00 per study/read. Plaintiff performed readings for defendants for the next two years, and sent monthly invoices for these services; defendant never objected to the rate.

In the summer of 2012, defendants began falling behind in paying the invoices, and stopped paying the invoices in full each month. Plaintiff and defendants discussed these overdue payments, and defendants never objected to the invoices. Plaintiff sent numerous invoices to the centers for payment. Defendants failed to make any payments, or object to the invoices. Finally, on November 28, 2012, plaintiff sent a letter to defendants demanding payment, which went ignored. Therefore, plaintiff sues for breach of contract, account stated, *quantum meruit*, and unjust enrichment.

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[1] Defendants' notice of motion cites CPLR 3211(a)(2), which permits dismissal based on the court not having jurisdiction of the subject matter of the cause of action. However, the memorandum of law and affirmation in support do not set forth any arguments applicable to this section. Therefore, the Court does not address CPLR 3211(a)(2).

[2] The Factual Background is taken from the Complaint.

In support of dismissal, defendants contend, though the affidavit of Ata Chaudhry, that plaintiff first contacted him by traveling to defendant's offices in New Jersey to discuss his desire to work as an independent contractor for the centers. Plaintiff was advised that all films would be from patients that were imaged in New Jersey. Plaintiff later visited New Jersey several times to provide his services. An agreement was reached in New Jersey between plaintiff and Hudson Radiology, LLC, Magnetic Resonance of New Jersey, P.A., and American Diagnostic Imaging, Inc., and it was clear that plaintiff would only get paid when the "responsible party," *i.e.*, insurance carriers, paid the bill. The centers bill responsible parties for their services in gross, meaning that a portion of the fee billed to the responsible parties represents the fee for independent contractors. Thus, if a bill remains outstanding, then both plaintiff and the center must wait for payment, which is a standard arrangement in New Jersey. Plaintiff understood that some of the responsible parties are government entities, such as Medicare and Medicaid, which are often slow in making payment, and that images related to accident cases have a high rate of non-payment, and thus, there was a high risk that he would not get paid for some of the readings.

Defendant also states that plaintiff asked if the centers could pay him in advance as a loan once a month, and such loan was made based on billings, rather than actual collections. However, plaintiff was informed that if a bill was not paid, then the amount of the loan would have to be paid back, and he agreed that such an amount would be used to offset/reduce any future amount owed. If no future amount was owed to plaintiff, then plaintiff would be required to pay the center back for the money that was paid in advance. Defendants submit a document purportedly showing that the facilities no longer owe plaintiff any amount of money.

Defendants argue the centers are all located in New Jersey, and that none of the

defendants transact business in New York. Thus, no jurisdiction exists under CPLR 302(a)(1). As defendants are registered in New Jersey, the films and radiological studies were done in New Jersey, and they operate in New Jersey, defendants do not have minimum contacts with New York. And, any exercise of personal jurisdiction would offend notions of fair play and substantial justice. It would be burdensome for these local, New Jersey companies to present their witnesses and documents in New York where New Jersey has a substantial interest in adjudicating a matter which is heavily regulated in New Jersey. Plaintiff, who contacted defendant while in New Jersey and performed services for New Jersey patients should be required to commence a suit in New Jersey. Nor are defendants subject to general jurisdiction, as defendants do not have continuous and systematic contacts with New York. Defendant does not do business in New York, and does not own property there.

Alternatively, the Court should dismiss the action for *forum non conveniens* because the proper forum for this action is New Jersey. There is no nexus between New York and the claims herein.

Further, the documentary evidence, *i.e.*, the printout from the centers showing payments to plaintiff, indicate that plaintiff was paid a substantial amount by defendants and the remainder of what he seeks is not justified since the invoices have not been paid by the responsible parties.

And, plaintiff fails to state a claim for breach of contract against defendant personally, as the agreement was between plaintiff and American Diagnostic Imaging, Inc., Hudson Radiology, LLC and Magnetic Resonance of New Jersey, P.A. The other defendants were not party to the agreements. There is no evidence that plaintiff is owed any amount on the outstanding invoices to support the account stated claim. The invoices were not received at the time plaintiff alleges,

and were objected to by the centers (see email, dated October 23, 2012). Also, plaintiff is not entitled to any amount because the agreement was that he would only be paid if the responsible parties paid their bills. And, the *quantum meruit* and unjust enrichment claims should be dismissed because the parties' dispute is covered by a contract. In any event, plaintiff is not entitled to the amount sought for the reasons above.

Plaintiff only provided services for American Diagnostic Imaging, Inc. and Hudson Radiology, LLC and Magnetic Resonance of New Jersey, and thus the remainder of the defendants should not be in this suit.

Furthermore, defendant is not personally liable for contracts between the corporate entities and plaintiff. Defendant manages the centers and may have an ownership interest in some of them.

In opposition, plaintiff argues that jurisdiction pursuant to CPLR 302(a)(1) is proper even though defendants never entered New York as long as defendants' activities in New York were purposeful and there is a substantial relationship between the transaction and the claim. Defendants hired a New York radiologist to interpret their MRI studies from his offices in New York. Each of the centers conducts business with plaintiff in New York. In 2010, defendant called plaintiff in New York to solicit the agreement, and invited plaintiff to his offices in New Jersey. Plaintiff has a New York telephone number and address listed on plaintiff's website. Defendants' MRI studies are electronically saved on their computer server, and plaintiff accessed, interpreted, read, and performed dictations of these studies from and in his office in New York. Defendants faxed a log of the patients and scans which they wanted read to plaintiff in New York. And, plaintiff emailed his reports and his invoices to defendants from New York,

and defendants' checks for payments were sent to plaintiff in New York. Plaintiff did not perform any of his services in New Jersey.

The Complaint cannot be dismissed on the basis of defendant's conclusory and conflicting affidavit and email, which do not constitute documentary evidence. Defendants never objected to the rate, the number of studies listed on the invoices, or the invoices sent. And, the agreed price of $45 was less than what plaintiff's standard rate, which defendants agreed to pay regardless of whether they were paid by any third party for conducting the MRI scan. Plaintiff had no involvement with defendants' billings or collections, and any claim that a bill might not be paid based on a radiologist's performance is unfounded. Plaintiff never agreed to wait for payments from defendants until they received payments from any responsible third party. Plaintiff billed monthly, and until recently, was paid by defendants monthly. Plaintiff never agreed to, asked for, or received advances in the form of a loan.

And, the complaint sufficiently states claims for breach of contract and account stated. The *quantum meruit* and unjust enrichment are also sufficiently stated, and can be alleged since the parties disagree as to the terms of the agreement. Additionally, caselaw holds that defendant may be held personally liable even though the contracts were made on behalf of the centers.

Further, New York is not an inconvenient forum. Defendants are located 13 miles from the New York courthouse, and New York is the most logical forum to hear a dispute involving defendants which hired a New York company in New York and which arises out of services performed in New York.

In reply, defendants add that there is no fee provision permitting the recovery of attorneys' fees. The invoices on which plaintiff sues were all addressed to defendants in New

Jersey, and faxes to New York do not constitute sufficient contact with New York. Further, although New Jersey is not far from New York, New York is not the proper forum for this action, in which patients went to the centers in New Jersey to seek readings and this action involves New Jersey witnesses. The invoices submitted by plaintiff are only to three of the defendants, and thus, the Court should dismiss the remaining defendants from this action. And, because a corporation exists independently of its owners, and there is no allegation in the complaint suggesting that defendant is liable or that any of his personal funds were ever used in this case, the action should be dismissed against him.

Discussion

CPLR 3211(a)(5)-Lack of Personal Jurisdiction

CPLR 302 (a)(1), on which plaintiff relies, provides that a court may exercise personal jurisdiction over a non-domiciliary who, in person or through an agent, "transacts any business" *within* the State, provided that the cause of action arises out of the transaction of business (*Lebel v Tello*, 272 AD2d 103, 707 NYS2d 426 [1st Dept 2000]). "Although CPLR 302(a)(1) is a 'single act statute,' whereby physical presence is not required and one New York transaction is sufficient for personal jurisdiction, it is only applicable where the defendant's New York activities were purposeful and substantially related to the claim" (*D & R Global Selections, S.L. v Pineiro*, 90 AD3d 403, 934 NYS2d 19 [1st Dept 2011] *citing Deutsche Bank Sec., Inc. v Montana Bd. of Invs.*, 7 NY3d 65, 71, 818 NYS2d 164, 850 NE2d 1140 [2006], *cert. denied* 549 US 1095, 127 SCt 832, 166 LEd2d 665 [2006] [internal quotation marks and citation omitted]). "Purposeful activities are those with which a defendant, through volitional acts, avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and

protections of its laws" (*Fischbarg v Doucet*, 9 NY3d 375, 380, 849 NYS2d 501, 880 NE2d 22 [2007]).

In determining the first part of the test of whether a "transaction of business" has occurred "[t]he key inquiry is whether [the] defendant purposefully availed itself of the benefits of New York's laws" *(State v McLeod*, 12 Misc 3d 1157(A), 819 NYS2d 213 (Table) [Supreme Court, New York County 2006] *citing Courtroom Television Network v Focus Media, Inc.*, 264 AD2d 351, 353, 695 NYS2d 17 [1st Dept 1999]).

As for the second part of the test, "[a] suit will be deemed to *have arisen out* of a party's activities in New York if there is an articulable nexus, or a substantial relationship, between the claim asserted and the actions that occurred in New York" (*Deutsche Bank; Henderson v INS*, 157 F3d 106, 123 [2d Cir1998][internal quotation marks omitted]).

Under the statute, "proof of one transaction in New York is sufficient to invoke jurisdiction ... so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted" (*Copp v Ramirez*, 62 AD3d 23, 874 NYS2d 52 [1st Dept 2009]). As the party seeking to assert personal jurisdiction, plaintiff bears the ultimate burden of proof on this issue (*see Jacobs v Zurich Ins. Co.*, 53 AD2d 524, 384 NYS2d 452 [1st Dept 1976]). The facts pleaded in the Complaint and affidavit should be construed in the light most favorable to the plaintiff (*Forward Foods LLC v Next Proteins, Inc.*, 21 Misc 3d 1113(A), 873 NYS2d 511 (Table) [Supreme Court, New York County 2007] *citing, Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]).

That the centers are located and operated in New Jersey, that the films were done in New Jersey, for New Jersey residents, that defendants were to be paid in New Jersey by other parties,

and that plaintiff advised that he was licensed in New Jersey, are inconsequential; it cannot be disputed that these activities and factors do not give rise to the causes of action herein. Critical, initially, is whether defendants performed any one transaction or activity in connection with New York that was sufficiently purposeful under CPLR 302(a)(1) caselaw.

In *Fischbarg v Doucet* (9 NY3d 375, 849 NYS2d 501 [2007]), plaintiff, a New York attorney commenced an action in New York County against his former clients who were California residents, for attorneys' fees. The Court of Appeals held that "defendants' purposeful attempt to establish an attorney-client relationship here and their direct participation in that relationship via calls, faxes and e-mails that they projected into this state over many months" was sufficient to support jurisdiction.

Similarly, the defendants' regular communication with plaintiff in this state in a continued pursuit of plaintiff's services performed in New York over a two-year period, including payments sent to New York, are sufficient to support jurisdiction over the defendants, even though defendants never entered New York. The record establishes that regardless of which party initiated the relationship at the outset, defendant invited plaintiff to defendant's office in New Jersey, and they reached an agreement for plaintiff to interpret defendants' images. *Over the next two years*, defendant *caused faxes to be sent to plaintiff in New York, via* plaintiff's New York fax number, of logs of patients for whom readings were needed, and *plaintiff was given access to defendants' servers in order to interpret the MRI studies from plaintiff's New York office*. Plaintiff sent the corporate defendants invoices for such services, which contain plaintiff's New York office address, and *defendants mailed plaintiff checks for payments for plaintiff's services to his New York office*. None of these facts are disputed, and distinguish

defendants from the defendant in *Barrington Capital Group v Arsenault* (281 AD2d 166, 721 NYS2d 58 [1st Dept 2001]), in which the Court held that "five phone calls over the course of three days to plaintiff's office in New York to place orders for the purchase of stock," was insufficient "to support an exercise of personal jurisdiction by the courts of this State over defendant" (*cf.*, *L. F. Rothschild, Unterberg, Towbin v McTamney*, 89 AD2d 540, 452 NYS2d 630 [1st Dept 1982] (Pennsylvania defendant's only relevant contact with New York was several telephone conversations at his home with a New York account representative regarding a stock purchase, and a letter defendant sent to plaintiff's New York office protesting the stock purchase)).

And, plaintiff's instant action clearly arises out of defendants' transaction of business in New York. Plaintiff seeks payments for services he performed in interpreting the very MRI and radiological studies that defendants made available to plaintiff in plaintiff's New York office.

Further, based on the above factors, a finding jurisdiction over the defendants does not offend fair play and substantial justice, and accords with due process. "So long as a party avails itself of the benefits of the forum, has sufficient minimum contacts with it, and should reasonably expect to defend its actions there, due process is not offended if that party is subjected to jurisdiction even if not 'present' in that State" (*Fischbarg v Doucet*, 9 NY3d 375, 880 NE2d 22 [2007] *citing Kreutter v McFadden Oil Corp.*, 71 NY2d 460, 466, 522 NE2d 40 [1988]). Given that defendants purposefully availed themselves of "New York's [radiological] services market by establishing a continuing [ ] relationship with plaintiff" and their "contacts here were sufficient, consisting of solicitation of plaintiff's services here and frequent communications with him," "they should have reasonably expected to defend against a suit based on their relationship

with plaintiff in New York (*Fischbarg v Doucet, supra, citing George Reiner & Co., Inc. v Schwartz*, 41 NY2d 648, 653, 363 NE2d 551 [1977] (New York contacts that "contemplated and resulted in a continuing relationship ... certainly are of the nature and quality to be deemed sufficient to render (defendants) liable to suit here")).

Therefore, dismissal for lack of personal jurisdiction is denied.

CPLR 327-Forum Non Conveniens

A court may stay or dismiss an action pursuant to CPLR 327 if it finds "that in the interest of substantial justice the action should be heard in another forum" (CPLR §327(a);[3] *Atlantic Mut. Ins. Co. v Cadillac Fairview US, Inc.*, 125 AD2d 181, 508 NYS2d 445 [1st Dept 1986][a court can stay or dismiss an action when it determines that such action, although jurisdictionally sound, would be better adjudicated elsewhere than in New York State]; *Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 479 [1984], *cert denied* 469 US 1108 [1985]).

Although no one factor is controlling, factors which the court must weigh in deciding a motion to dismiss on such grounds are the residency of the parties, the potential hardship to proposed witnesses, the availability of an alternative forum, the situs of the underlying action and the burden which will be imposed upon the New York courts (*Neville v Anglo American Management Corp.*, 191 AD2d 240, 594 NYS2d 747 [1st Dept 1993]; *Daly v Metropolitan Life Ins. Co.*, 4 Misc 3d 887, 894 [Supreme Court, New York County 2004]). "The burden rests upon the defendant challenging the forum to demonstrate relevant private or public interest

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[3] CPLR §327(a) provides: "When the court finds that in the interest of substantial justice the action should be heard in another forum, the court, on the motion of any party, may stay or dismiss the action in whole or in part on any conditions that may be just. The domicile or residence in this state of any party to the action shall not preclude the court from staying or dismissing the action."

factors which militate against accepting the litigation" (*Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 479 [1984], *cert denied* 469 US 1108 [1985]). To override plaintiff's chosen forum, "defendant[. . .] bear[s] the burden to identify the non-party witnesses and the testimony they would offer and to show it would be unobtainable in this forum (*Islamic Republic*, at 479-480 [defendant can overcome this burden by showing that it will suffer a disproportionate hardship]; *cf. Anagnostou v Stifel*, 204 AD2d 61, 62 [1st Dept 1994]).

Defendants failed to demonstrate that this action would be better adjudicated in New Jersey. Plaintiff resides in New York, and the services performed, for which plaintiff seeks payment herein, occurred in New York. As such, the evidence upon which plaintiff would rely is located in New York. Defendants have not shown that any non-party witnesses or testimony they would offer would be unobtainable in New York. Indeed, it is undisputed that defendant's centers are located within 15 miles from New York, where this case is venued, and no disproportionate hardship has been articulated. That the patients for whom the images were created are New Jersey residents is of no moment, as such patients are not witnesses or relevant to plaintiff's action or the defense of plaintiff's action. This action is premised on services plaintiff rendered in New York based on information he accessed on a computer, albeit on a server located in New Jersey. While New Jersey may heavily regulate defendants' services, the quality of defendants' services are not at issue herein. Therefore, having failed to establish that New Jersey is a better forum for this litigation, dismissal pursuant to CPLR 327 is unwarranted, and denied.

CPLR 3211(a)(1)-Documentary Evidence

A motion to dismiss pursuant to CPLR 3211(a)(l) on the basis of a defense founded upon

documentary evidence may be granted "only where the documentary evidence utterly refutes [the complaint's] factual allegations, conclusively establishing a defense as a matter of law"(*DKR Soundshore Oasis Holding Fund Ltd. v Merrill Lynch Intern.*, 80 AD3d 448, 914 NYS2d 145 [1st Dept 2011] *citing Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326, 746 NYS2d 858 [2002]). The test on a CPLR 3211 (a)(1) motion is whether the documentary evidence submitted "conclusively establishes a defense to the asserted claims as a matter of law" *(Scott v Bell Atlantic Corp.*, 282 AD2d 180, 726 NYS2d 60 [1st Dept 2001] *citing Leon v Martinez, supra*, 84 NY2d 83, 88; *IMO Indus., Inc. v Anderson Kill & Olick, P.C.*, 267 AD2d 10, 11, 699 NYS2d 43 [1st Dept 1999]). The affidavit, email, and print out of payments made to defendants do not constitute documentary evidence within the meaning of CPLR 3211(a)(1) (*Regini v Board of Managers of Loft Space Condominium*, --- N.Y.S.2d ----, 2013 WL 2631299 [1st Dept 2013], *citing Flowers v 73rd Townhouse LLC*, 99 AD3d 431, 951 NYS2d 393 [1st Dept 2012]). They do not conclusively establish the terms of the parties' agreement, or that defendants are not liable to plaintiff for the services he performed. Therefore, dismissal pursuant to CPLR 3211(a)(1) is denied.

CPLR 3211(a)(7)-Failure to State a Cause of Action

In determining a motion to dismiss pursuant to CPLR 3211 (a)(7), the Court's role is ordinarily limited to determining whether the complaint states a cause of action (*Frank v Daimler Chrysler Corp.*, 292 AD2d 118, 741 NYS2d 9 [1st Dept 2002]). The standard on a motion to dismiss a pleading for failure to state a cause of action is not whether the party has artfully drafted the pleading, but whether deeming the pleading to allege whatever can be reasonably implied from its statements, a cause of action can be sustained (*see Nonnon v City of New York*, 9

NY3d 825 [2007]; *Stendig, Inc. v Thom Rock Realty Co.*, 163 AD2d 46 [1st Dept 1990]; *Leviton Manufacturing Co., Inc. v Blumberg*, 242 AD2d 205, 660 NYS2d 726 [1st Dept 1997]). "Affidavits and other evidence may be used freely to preserve inartfully pleaded but potentially meritorious claims" (*Eiseman, citing R.H. Sandbar*, 148 AD2d at 318).

The elements of a claim for breach of contract are (1) the existence of a contract, (2) due performance of the contract by claimant, (3) breach of the contract by the other party, and (4) damages resulting from the breach (*Harris v. Seward Park Housing Corp.* 79 AD3d 425, 426, 913 NYS2d 161 [1st Dept 2010]; *Morris v 702 East Fifth Street HDFC*, 46 AD3d 478, 850 NYS2d 6 [1st Dept 2007]; *Renaissance Equity Holding, LLC v Al-An Elevator Maintenance Corp.*, 36 Misc 3d 1209(A), 954 NYS2d 761 (Table) [Supreme Court, New York County 2012]). Here, plaintiff's complaint sufficiently alleges the parties' agreement for plaintiff to perform services, the rate at which the parties agreed to pay plaintiff, plaintiff's performance of services as requested, the corporate defendants' failure to pay pursuant to such agreement, and resulting damages. The Complaint identifies all of the corporate defendants as parties with whom plaintiff contracted for the payment of services, and assuming the truth of such allegations, as this Court must, the Complaint sufficiently states a cause of action for breach of contract against all corporate defendants.

To state a cause of action of account stated, plaintiff must allege defendant's receipt and retention of the subject statement of account without proper objection within a reasonable time (*see, e.g., Loheac v Children's Corner Learning Center*, 51 AD3d 476 [1st Dept 2008]; *Ruskin, Moscou, Evans & Faltischek v FGH Realty Credit Corp.*, 228 AD2d 294, 295 [1st Dept 1996]). Thus, "where an account is made up and rendered, the one who receives it is bound to examine

it, and, if the accounting is admitted as correct, it becomes a stated account and is binding on both parties, the balance being the debt which may be sued for and recovered by law" (*Rosenman Colin Freund Lewis & Cohen v Neuma*, 93 AD2d 745 [lst Dept 1983]). Moreover, "where an account is rendered showing a balance, if the party receiving the account fails to dispute its correctness or completeness, that party will be bound by it as an account stated, unless fraud, mistake or other equitable considerations are shown" (*Peterson v IBJ Schroder Bank & Trust Co.*, 172 AD2d 165 [1st Dept 1991]). Here, plaintiff's Complaint sufficiently alleges that plaintiff mailed the corporate defendants several, dated invoices, detailing the amounts due and owing and the services rendered, defendants' receipt and retention of such invoices, and that none of the defendants objected to any part of the invoices. Specifically, plaintiff sent invoices dated October 3, 2012 to Hudson Radiology Center for $25,265.00, to Magnetic Resonance of New Jersey for $4,410.00, and to American Diagnostic for $12,645.00, to which defendants did not object. Similar invoices dated November 4, 2012 for different amounts were sent to these centers. Plaintiff advised defendants that the overdue balances were subject to a 5% late fee, which would be waived if the invoices were paid by a certain date. Plaintiff claims that defendants failed to make any payments, or object to the invoices. Finally, on November 28, 2012, plaintiff sent a letter to defendants demanding payment, which went ignored. Contrary to defendants' contention, plaintiff need not establish or prove the amounts due and owing at this stage of the litigation. Therefore, plaintiff has stated a claim for account stated.

In order to assert a *quantum meruit* claim, plaintiff must allege "the performance of services in good faith, acceptance of the services by the person to whom they are rendered, an expectation of compensation therefor, and the reasonable value of the services" (*Georgia Malone*

& Co., Inc. v Ralph Rieder, 86 AD3d 406, 926 NYS2d 494 [1st Dept 2011] *citing Freedman v Pearlman*, 271 AD2d 301, 304 [2000]). Here, the Complaint sufficiently alleges that services were performed as requested and accepted by the corporate defendants, plaintiff expected to be paid as agreed, and the reasonable value of plaintiff's services are no less than $46,270.00.

Unjust enrichment is "defined as the receipt by one party of money or a benefit to which it is not entitled, at the expense of another" (*Abacus Federal Savings Bank v Lim*, 75 AD3d 472, 905 NYS2d 585 [1st Dept 2010]). Thus, to state an unjust enrichment claim, plaintiff must allege "that the other party was enriched, at plaintiff's expense, and that 'it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered'" (*Georgia Malone & Co., Inc. v Ralph Rieder*, 86 AD3d 406, 926 NYS2d 494 [1st Dept 2011]). Further, although privity is not required for an unjust enrichment claim (*Georgia Malone & Co., Inc. v Ralph Rieder*, *supra, citing Sperry v Crompton Corp.*, 8 NY3d 204, 215, 831 NYS2d 760, 863 NE2d 1012 [2007]), "a claim will not be supported unless there is a connection or relationship between the parties that could have caused reliance or inducement on the plaintiff's part" (*Georgia Malone & Co., Inc. v Ralph Rieder*, *supra, citing Mandarin Trading Ltd. v Wildenstein,* 16 NY3d 173, 182, 919 NYS2d 465, 944 NE2d 1104 [2011]). Here, plaintiff sufficiently alleges that by reading and interpreting MRI studies that defendants performed at the centers, plaintiff conferred a material benefit on the corporate defendants, which they accepted and appreciated. Further, based on the parties' long-term business relationship and the value and extent of the services, it would be inequitable to permit defendants to withhold payment from plaintiff for the agreed-upon value of such services.

Contrary to defendants' contention, as "plaintiff is entitled to plead inconsistent causes of

action in the alternative, the quasi-contractual claims are not precluded by the pleading of a cause of action for breach of an oral agreement" (*Winick Realty Group LLC v Austin & Associates*, 51 AD3d 408, 857 NYS2d 114 [1 Dept 2008]). The parties dispute whether defendants agreed to pay plaintiff for the amounts he seeks to recover (that were allegedly not paid by responsible third parties) (*see IIG Capital LLC v Archipelago, L.L.C.*, 36 AD3d 401, 829 NYS2d 10 [1st Dept 2007] ("Where there is a bona fide dispute as to the existence of a contract or where the contract does not cover the dispute in issue, plaintiff may proceed upon a theory of quantum meruit and will not be required to elect his or her remedies")).

However, as to defendant Chaudhry, the Complaint alleges that Chaudhry called plaintiff to discuss hiring plaintiff to read MRI and other radiological studies "for Hudson Radiology Center, Magnetic Resonance of New Jersey, and American Diagnostic Imaging" (¶15). Plaintiff alleges that defendant "is the only person with whom [plaintiff] met and interacted *on behalf of* Hudson Radiology Center, Magnetic Resonance of New Jersey, and American Diagnostic Imaging" (emphasis added) (¶16). Further, plaintiff alleges that the "subsequent agreement reached by the parties was with respect to *all three centers*: Hudson Radiology Center, Magnetic Resonance of New Jersey, and American Diagnostic Imaging" (¶18). Plaintiff also alleges that the invoices were sent to the *centers*. That defendant is a corporate officer and has an ownership interest in some of the defendants is unavailing. There are no allegations asserted against defendant, which if true, warrant piercing the corporate veil, or indicate that plaintiff's services were performed on defendant's individual behalf (*Kremer v Sinopia LLC*, 104 AD3d 479, 961 NYS2d 383 [1st Dept 2013]; *Georgia Malone & Co., Inc. v Ralph Rieder*, 86 AD3d 406, 926 NYS2d 494 [1st Dept 2011]). Nor is there any indication that defendant individually affirmed a

personal interest in engaging plaintiff's services, thereby rendering the caselaw cited by defendants distinguishable (*cf. Georgia Malone & Co., Inc. v Rieder*, 86 AD3d 406, 926 NYS2d 494 [2011]). Similarly, as all of plaintiff's allegations indicate that the invoices were sent to the centers and none of the underlying invoices, which are annexed to the plaintiff's opposition papers, are addressed to defendant individually, plaintiff failed to state a claim for account stated against defendant (*Sound Communications, Inc. v Rack and Roll*, 88 AD3d 523, 930 NYS2d 577 [1st Dept 2011] *citing Roth Law Firm, PLLC v Sands*, 82 A.D.3d 675, 676, 920 NYS2d 72 [2011]).

Therefore, although plaintiff sufficiently stated all of the claims against the corporate defendants,[4] dismissal of the complaint as against defendant individually is warranted pursuant to CPLR 3211(a)(7).

Conclusion

Based on the foregoing, it is hereby

ORDERED that defendants' motion to dismiss the complaint of plaintiff Jeffrey Chess, M.D., P.C. on the grounds of lack of personal jurisdiction (CPLR 3211(a)(8)), *forum non conveniens* (CPLR 327), defense based on documentary evidence (CPLR 3211(a)(1)), and for failure to state a cause of action (CPLR 3211(a)(7)) is denied, except that the complaint is severed and dismissed as against defendant Danny Chaudhry a/k/a Ata Chaudhry pursuant to CPLR 3211(a)(7), and the Clerk may enter judgment accordingly and it is further

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[4] It bears noting that while defendants maintain that plaintiff only provided services for three of the corporate defendants, the Complaint alleges that the agreement was with all of the corporate defendants, and there is no documentary evidence to conclusively establish otherwise, at this juncture.

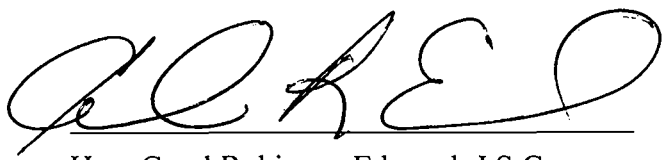
ORDERED that defendant shall serve a copy of this order with notice of entry upon plaintiff within 20 days of entry; and it is further

ORDERED that the remaining defendants shall serve and file their Answer within 30 days of the date of entry of this decision; and it is further

ORDERED that the parties shall appear for a preliminary conference on September 17, 2013, 2:15 p.m.

This constitutes the decision and order of the Court.

Dated: June 24, 2013



Hon. Carol Robinson Edmead, J.S.C.

HON. CAROL EDMEAD