Westside Radiology Assoc., P.C. v St. Luke's-Roosevelt Hosp. Ctr.
2017 NY Slip Op 31177(U)
June 2, 2017
Supreme Court, New York County
Docket Number: 652999/2015
Judge: Anil C. Singh

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

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WESTSIDE RADIOLOGY ASSOCIATES, P.C.,

Plaintiff,

-against-

THE ST. LUKE'S-ROOSEVELT HOSPITAL CENTER, SLRHC 425 WEST 59TH STREET CONDOMINIUM, LLC, BETH ISRAEL MEDICAL CENTER

Defendants.

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DECISION AND ORDER

Index No. 652999/2015
Mot. Seq. 004

HON. ANIL C. SINGH, J.:

Plaintiff Westside Radiology Associates, P.C. ("Plaintiff" or "WSR") seeks dismissal pursuant to CPLR §§3211(a)(1) and (a)(7) of the Amended Counterclaims ("Counterclaims") of Defendant Beth Israel Medical Center ("BIMC") for breach of contract, unjust enrichment and promissory estoppel.

The following facts are pled in the Complaint. Prior to Mount Sinai's acquisition of BIMC, all radiologists affiliated with Westside Radiology provided radiology services to BIMC. BIMC provided WSR with access to and support with respect to its Radiology PACS system and Radiology Information System ("Software Systems"). Following the acquisition, BIMC no longer needed WSR's radiology services. However, WSR required access to the medical records stored on the Software Systems until it could transition to another platform to store its records.

By agreement dated January 1, 2015 between BIMC and WSR (the "Transition Agreement"), the parties agreed that,

> Whereas BIMC as an accommodation to WSR is willing to provide WSR with access and support to its Radiology PACS system and Radiology Information System ("Software Systems") during a transition period for the benefit of WSR Patients...(1) BIMC will continue to allow WSR access to the Software Systems for the benefit of WSR patients until December 31, 2015. If necessary, this date can be extended by the parties by mutual agreement which shall not be unreasonably denied...(2)...This agreement and the HIPAA Business Associate Addendum is the entire agreement between the parties and may only be modified by a written agreement signed by both parties.

Under the Transition Agreement, there was no payment provision.

On July 27, 2015, BIMC proposed an Implementation of Transition Agreement (the "Proposed Implementation Agreement"). The Proposed Implementation Agreement imposed new terms to the Transition Agreement. Specifically, in relevant parts, it states, "WSR agrees to reimburse BIMC for the ongoing costs and expenses associated with WSR's use of the Software System during the transition period...from January-September 2015 totaling $360,216.00, and thereafter on the first day of each subsequent month of the transition period the then current monthly charges."

WSR alleges that the parties were unable to agree regarding the terms of the Proposed Implementation Agreement. The Proposed Implementation Agreement was never signed.

On August 31, 2015, WSR brought this action seeking declaratory judgment and injunctive relief against BIMC and two other defendants St. Luke's-Roosevelt Hospital Center ("St. Luke's") and SLRHC 425 West 59th Street Condominium, LLC ("SLRHC") after it was advised by BIMC that BIMC would terminate WSR's access to the Software Systems on September 1, 2015 unless WSR executes the Proposed Implementation Agreement and pay the amounts specified therein.

In its Answer dated September 6, 2016 and in response to the motion to dismiss, BIMC has asserted three counterclaims against WSR for breach of contract of the Transition Agreement and Proposed Implementation Agreement, unjust enrichment and promissory estoppel.

BIMC contends that as consideration for the Transition Agreement, the parties agreed that WSR would reimburse BIMC for the costs and expenses associated with WSR's use of the Software Systems in the amount of $40,024 per month.

In support its position, BIMC provides the court with emails dated August 17, 2015 and August 19, 2015. (NYSCEF No. 67, 68). BIMC alleges that the emails are a preliminary binding agreement between the parties which require WSR to pay $40,024 per month for every month in 2015.

DISCUSSION

Pursuant to CPLR 3211(a), "[m]otion to dismiss a cause of action. A party may move for judgment dismissing one or more causes of action asserted against

him on the ground that: a defense is founded upon documentary evidence." CPLR 3211(a)(1). "To be considered 'documentary,' for purposes of motion to dismiss based on documentary evidence, evidence must be unambiguous and of undisputed authenticity." CPLR 3211(a)(1); Fountanetta v. Doe, 73 A.D.3d 78 (2d Dept 2010). To succeed on a [CPLR 3211(a)(1)] motion, a defendant must display that the documentary evidence resolves all factual issues as a matter of law and definitively disposes of the plaintiff's claim. Ozdemir v. Caithness Corp., 285 A.D.2d 961, 963 (2d Dept 2001), leave to appeal denied 97 N.Y.2d 605. Alternatively, documentary evidence must clearly contradict plaintiffs' factual allegations, convincingly establishing a defense as a matter of law. Goshen v. Mutual Life Ins. Co. of New York, 98 N.Y.2d 314, 326 (2002).

On a motion to dismiss a complaint for failure to state a cause of action under CPLR 3211(a)(7), all factual allegations must be accepted as truthful, the complaint must be construed in the light most favorable to the plaintiffs, and the plaintiffs must be given the benefit of all reasonable inferences. Allianz Underwriters Ins. Co. v. Landmark Ins. Co., 13 A.D.3d 172, 174 (1st Dept 2004). The court determines whether the facts, as alleged, fit within any cognizable legal theory. Leon v. Martinez, 84 N.Y.2d 83, 87-88 (1994). The court must deny a motion, "...if from the pleadings' four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law." 511 W. 232nd Owners Corp. v

Jennifer Realty Co., 98 N.Y. 2d 144, 152 (2000). "The facts pleaded are presumed to be true and accorded every favorable inference, nevertheless, allegations consisting of bare legal conclusions, as well as factual claims either inherently incredible or contradicted by documentary evidence, are not entitled to such consideration." Quatrochi v Citibank, N.A., 210 A.D. 2d 53 (1st Dept 1994).

Breach of contract

The "essential elements of a cause of action to recover damages for breach of contract are existence of a contract, plaintiff's performance under the contract, defendant's breach of that contract, and resulting damages." JP Morgan Chase v J.H. Elec. of New York, Inc., 69 A.D. 3d 802 (2d Dept 2010). See also, Second Source Funding, LLC v Yellowstone Capital, LLC, 144 A.D. 3d 445 (1st Dept 2016). If "[t]he terms are unambiguous; the intent of the parties must be ascertained in accordance with the language of the agreement." Sterling Fifth Assoc. v Carpentille Corp., Inc., 9 A.D. 3d 261, 262 (1st Dept 2004).

Here, BIMC's counterclaim for breach of contract is dismissed.

WSR has not breached the Transition Agreement. The Transition Agreement was signed by both parties and is a valid contract providing WSR with access to BIMC's Software Systems until December 31, 2015. The Transition Agreement does not state an amount to be paid by WSR to BIMC for access to the Software

Systems in 2015. BIMC has failed to allege a provision of the Transition Agreement that has been breached by WSR.

BIMC also argues that there was a preliminary binding agreement as to the parties' financial arrangement. BIMC contends that the parties were negotiating additional terms with the intent of being bound by those terms. Specifically, BIMC argues that as consideration for receiving continued access to and support for the Software Systems, the parties agreed that WSR would reimburse BIMC for the costs and expenses associated with WSR's use of the Software Systems in the amount of $40,024 per month. BIMC's contentions are unavailing.

There was no preliminary binding agreement. BIMC relies on Teachers Ins. and Annuity Ass'n of Am. v Tribune Co., 670 F Supp 491, 498 (S.D.N.Y. 1987) where the court held that there were two types of preliminary contracts. Here, BIMC argues that the emails in this action fall under the second type of preliminary agreement which is when parties to a contract "express[] mutual commitment to a contract on agreed major terms, while recognizing the existence of open terms that remain to be negotiated." The court further held that "[t]he second type—the binding preliminary commitment—does not commit the parties to their ultimate contractual objective but rather to the obligation to negotiate the open issues in good faith in an attempt to reach the alternate objective within the agreed framework." Id. "This obligation does not guarantee that the final contract will be concluded if both parties

comport with their obligation, as good faith differences in the negotiation of the open issues may prevent a reaching of final contract. It is also possible that the parties will lose interest as circumstances change and will mutually abandon the negotiation. The obligation does, however, "bar a party from renouncing the deal, abandoning the negotiations, or insisting on conditions that do not conform to the preliminary agreement." Id.

However, the Court of Appeals in IDT Corp. v. Tyco Group, 13 N.Y.3d 209, 213 (2009) has rejected the "rigid classifications into Types" in favor of asking "whether the agreement contemplated the negotiation of later agreements and if the consummation of those agreements was a precondition to a party's performance." A line of First Department cases follow the IDT holding. In Amcan Holdings, Inc. v. Canadian Imperial Bank of Commerce, 70 A.D.3d 423, 426–27 (1st Dept 2010), the court held that an executed document titled "Summary and Terms of Condition" was not a binding agreement. Citing the standard laid out in IDT, the court held that the Summary "made a number of references to future definitive documentation". See also, Offit v. Herman, 132 A.D.3d 409, 410 (1st Dept 2015) (holding that an "agreement in principle, subject to documentation acceptable to the parties and court approval' was not binding); Northern Stamping, Inc. v. Monomoy Capital Partners, L.P., 129 A.D.3d 448, 449 (1st Dept 2015) (where the court held that a letter agreement which states that "[a]ll other terms of this Letter constitute statements of

present intention adopted to facilitate the negotiation of definitive agreements" do not constitute a contract or agreement).

Here, the emails between WSR and BIMC's representatives, Mr. Forthuber and Mr. Katz respectively, contemplate the negotiation of subsequent agreements. In particular, in the August 17, 2015 email, Mr. Forthuber writes that they have "long ago agreed on financial terms" but will only forward payment "once we have finalized this letter agreement". In the same email, Mr. Forthuber states that a call to further discuss the terms of the letter agreement was "cancelled without explanation" by BIMC. Moreover, in the August 19, 2015 letter, Mr. Forthuber committed to making payment before September 1, 2015 but adds that "we are proceeding in good faith that we will be able to mutually agree to all the necessary revisions and terms for the side letter regarding the Implementation Agreement". However, by August 31, 2015, the Complaint alleges that BIMC threatened to stop providing access to the Software Systems if payment was not made. The emails demonstrate that WSR was prepared to make payments subject to agreeing on the revisions to the Implementation Agreement. The emails did not constitute a contract but were statements of present intention adopted to facilitate the negotiation of definitive agreements.

Moreover, the Transition Agreement unequivocally provides that the terms agreed therein are "for good and adequate a (sic) consideration" and that the access

granted to WSR is "an accommodation". The Transition Agreement further provides that "the Agreement and the HIPAA Business Associate Addendum[1] is the entire agreement between the parties and may only be modified by a written agreement signed by both parties".

Accordingly, WSR's motion to dismiss BIMC's Counterclaim for breach of contract is granted.

Unjust Enrichment

An unjust enrichment claim is not available where it simply duplicates, or replaces, a conventional contract or tort claim." Corsello v Verizon New York, Inc., 18 N.Y. 3d 777 (2012).

BIMC's unjust enrichment claim replicates its breach of contract claim. Moreover, BIMC's claim that it did not receive adequate consideration and WSR was unjustly enriched is disingenuous. The Transition Agreement states that the terms agreed therein are "for good and adequate a (sic) consideration" and that the access granted to WSR is "an accommodation".

Accordingly, WSR's motion to dismiss BIMC's Counterclaim for unjust enrichment is granted.

Promissory Estoppel

[1] The HIPAA Business Associate Addendum is irrelevant to the discussion at hand.

BIMC argues that it was injured by its reliance on WSR's promise because it sustained $480,299.00 in damages by allowing WSR to use its Software Systems.

The elements of a claim for promissory estoppel are: (1) a promise that is sufficiently clear and unambiguous, (2) reasonable reliance on the promise by a party, and (3) injury caused by the reliance. Matlin Patterson ATA Holdings LLC v Fed. Express Corp., 87 A.D. 3d 836 (1st Dept 2011).

Here, BIMC was contractually obligated to provide access to its Software Systems for the benefit of WSR's patients pursuant to the Transition Agreement. The alleged promise by WSR was made in the process of negotiations and is inconsistent with the Transition Agreement. As such, there can be no reasonable reliance on the alleged promise.

Therefore, WSR's motion to dismiss BIMC's Counterclaim for promissory estoppel is granted.

Accordingly, it is hereby,

ORDERED that Plaintiff Westside Radiology Associate's motion to dismiss Defendant Beth Israel Medical Center's Amended Counterclaims is granted without leave to replead.

Date: June 2, 2017
New York, New York

Anil C. Singh