High Definition MRI, P.C. v Kemper Corp.
2019 NY Slip Op 30354(U)
February 14, 2019
Supreme Court, New York County
Docket Number: 651044/2013
Judge: Kelly A. O'Neill Levy
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

KELLY O'NEILL LEVY
JSC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 19

----------X

HIGH DEFINITION MRI, P.C.,

Plaintiff,

- v -

KEMPER CORPORATION, KEMPER INDEPENDENCE INSURANCE COMPANY, UNITRIN AUTO AND HOME INSURANCE COMPANY, RESPONSE INSURANCE COMPANY, WARNER INSURANCE COMPANY, UNITRIN DIRECT INSURANCE COMPANY, and JOHN DOES 1-10.

Defendants.

----------X

INDEX NO. 651044/2013

MOTION DATE _____

MOTION SEQ. NO. 004

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 004) 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 186

were read on this motion to/for SUMMARY JUDGMENT.

HON. KELLY O'NEILL LEVY:

In this action, a medical imaging company seeks payment for medical services rendered to patients of the defendants' insureds.

Defendants Kemper Independence Insurance Company, Unitrin Auto and Home Insurance Company, Response Insurance Company, Warner Insurance Company, and Unitrin Direct Insurance Company (collectively, hereinafter, defendants) move for an order, pursuant to CPLR § 3212, granting summary judgment in their favor and dismissing the complaint as time-barred by the three-year statute of limitations provided by CPLR § 214(2). Plaintiff High Definition MRI, P.C. opposes and cross-moves for an order (1) denying defendants' motion in its entirety, (2) granting plaintiff partial summary judgment on ten (10) claims that were submitted to defendants, which defendants either never denied or failed to timely respond to, or

alternatively, (3) granting plaintiff leave to amend its verified complaint, pursuant to CPLR § 3025. Defendants oppose.

BACKGROUND

Plaintiff, a magnetic resonance imaging ("MRI") company, seeks to recover from defendants for various New York no-fault MRI claims. Defendants are various separately run affiliate automobile insurance companies.

Plaintiff operated three MRI facilities from January 1, 2007 until September 15, 2007. During that time, plaintiff submitted claims to defendants for 182 patient scans, of which 129 remain unpaid with an aggregate value of $114,921.91. The patients were injured in or by a vehicle insured by one of the defendants and plaintiff made claims on the patients' behalf for medical benefits under the no-fault regulations, 11 NYCRR 65-1.1, et seq. Subsequently, the patients underwent MRIs at plaintiff's facilities and signed an assignment of the no-fault benefits to plaintiff. Defendants denied the claims on various grounds, such as lack of medical necessity, failure of the patients to appear for independent medical examinations and examinations under oath, as well as plaintiff's failure to appear for examinations under oath. Ten of the claims were neither timely denied nor responded to.

On December 4, 2013, following oral argument on the motion to dismiss (mot. seq. 001), the court (J. Singh) held that the right to reimbursement arises from the assignment of no-fault benefits that the patients assigned to plaintiff, and that there was no assignment of the actual insurance policy itself, just the benefits which were conferred by the no-fault regulations [December 4, 2013 Oral Argument Transcript (ex. B to the Schreiber aff.) at 20-21].

DISCUSSION

On a summary judgment motion, the moving party has the burden of offering sufficient evidence to make a *prima facie* showing that there is no triable material issue of fact. *Jacobsen v. N.Y. City Health & Hosps. Corp.*, 22 N.Y.3d 824, 833 (2014). Once the movant makes that showing, the burden shifts to the non-moving party to establish, through evidentiary proof in admissible form, that material factual issues exist. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). In deciding a motion for summary judgment, the court must view the evidence in the light most favorable to the non-moving party. *Henderson v. City of New York*, 178 A.D.2d 129, 130 (1st Dep't 1997). The court's function on a motion for summary judgment is issue-finding, rather than making credibility determinations or factual findings. *Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 505 (2012).

Applicable Statute of Limitations

The complaint, filed on March 20, 2013, alleges that plaintiff performed the radiology services from approximately January 1, 2007 through September 15, 2007. Plaintiff does not dispute that all of its claims are over three years old. Defendants assert that the claims should be dismissed as they are regulatory in nature and subject to a three-year statute of limitations based on CPLR § 214(2), while plaintiff argues that the applicable statute of limitations is for breach of contract, which is six (6) years based on CPLR § 213. At issue is whether the claims are regulatory and subject to the three-year statute of limitations or contractual and subject to the six-year statute of limitations.

CPLR § 213(2) provides a six-year statute of limitations where the plaintiff's action is based "upon a contractual obligation or liability, express or implied…" CPLR § 214(2) provides

a three-year statute of limitations where the action is "to recover upon a liability, penalty or forfeiture created or imposed by statute except as provided in sections 213 and 215."

In *Mandarino v. Travelers Prop. Cas. Ins. Co.*, where the plaintiff commenced its action on an automobile insurance contract and sought to recover as the assignee of the patient insured, the court held that the six-year statute of limitations applies to claims for no-fault assignment. *Mandarino v. Travelers Prop. Cas. Ins. Co.*, 37 A.D.3d 775, 778 (2d Dep't 2007). The court's reasoning was based on a theory that a no-fault claimant's right (or that of his or her assignee) to recover first-party benefits derives primarily from the terms of the relevant contract of insurance. *Id.* at 776. Inclusion of terms in an insurance contract, which may be mandated by statutes or regulations, does not necessarily alter the fundamentally contractual nature of the dispute between the insured (or his or her assignee), on the one hand, and his or her no-fault insurer, on the other. *Id.*

In *Contact Chiropractic, P.C. v. New York City Transit Authority*, the Court of Appeals acknowledged that in matters involving questions with respect to no-fault claims against insurance companies due to the issuance of an insurance policy, the Appellate Division applies a six-year statute of limitations. *Contact Chiropractic, P.C. v. New York City Transit Authority*, 31 N.Y.3d 187, 195 (2018). The court found that a three-year statute of limitations applied there, as the dispute arose from an instance in which the party responsible for the payment of no-fault benefits was self-insured, in contrast to the present case where the party responsible for the payment of no-fault benefits is a party to insurance contracts. *Id.* at 196. The court reasoned that the source of the claim was wholly statutory, and thus the three-year statute of limitations applied. *Id.* at 196-197. Here, the source of the claim is not wholly statutory, as defendants are parties to insurance contracts and the party responsible for the payment of no-fault benefits is not

self-insured. Furthermore, the dissent in *Contact Chiropractic* notes that there is no dispute that a no-fault action against an insurer is subject to the six-year statute of limitations governing contractual obligations. *Id.* at 200. "To suggest otherwise would make uncertain the viability of thousands of no-fault claims against insurance companies that could otherwise be timely asserted under this well-established, and much relied-upon, six-year rule." *Id.* at fn. 3.

The First Department has consistently applied a six-year statute of limitations in similar cases. In *Benson v. Boston Old Colony Ins. Co.*, where the plaintiff was struck by an automobile insured by the defendant carrier, the court found that a six-year statute of limitations applied. *Benson v. Boston Old Colony Ins. Co.*, 134 A.D.2d 214, 215 (1st Dep't 1987). In *Travelers Indem. Co. of Connecticut v. Glenwood Medical, P.C.*, where an insurer brought an action to permanently stay arbitration of a medical provider's claim for payment of no-fault first-party benefits for services provided to the insured, the court also held that the claim was subject to the six-year statute of limitations. *Travelers Indem. Co. of Connecticut v. Glenwood Medical, P.C.*, 48 A.D.3d 319, 319 (1st Dep't 2008).

Defendants contend that the holding in *Allstate Ins. Co. v. Belt Parkway Imaging, P.C.* applies. In that case, insurers brought a declaratory judgment action against medical providers, arguing that the companies were fraudulently incorporated and that the amended no-fault regulations precluded their claims and allowed the insurers to recover previously paid claims as well. *Allstate Ins. Co. v. Belt Parkway Imaging, P.C.*, 33 A.D.3d 407, 407-408 (1st Dep't 2006). The medical providers moved to dismiss and argued that retroactive application of new no-fault regulations would violate its contractual rights under Article I of the U.S. Constitution. *Id.* at 408-409. The court was not persuaded by that argument and stated that the defendants' right to reimbursement from the plaintiff was regulatory in nature. *Id.* at 409. Here, defendants do not

assert that the no-fault regulations violate their contractual rights stemming from the Constitution. At oral argument for a previous motion to dismiss (mot. seq. 001), on December 4, 2013, the court (J. Singh) recognized that in the context of a breach of contract claim, a contractual right to reimbursement does not lie. Rather, the right to reimbursement arises from assignment of no-fault benefits from automobile insurance policies that patients gave to medical providers under the no-fault regulations after receiving the MRI services from plaintiff (December 4, 2013 Oral Argument Transcript at 20-21). The court (J. Singh) held that there is no assignment of the actual insurance policy itself, but rather just the benefits which are conferred by the no-fault law (*id.*). Therefore, even though defendants were not directly in contract with plaintiff, it does not imply that the no-fault claims are not contractual and purely regulatory in nature. This court has already recognized that the patients who received MRIs at plaintiff's facilities assigned the benefits of the insurance contracts to plaintiff. Notably, the court did not dismiss plaintiff's claims for compensatory damages, which represent the value of the unpaid medical services.

Here, each of the patients had been in an automobile accident, was treated by a physician who ordered radiology services, and went to plaintiff's facilities for those services. For all services rendered, the insured received the ordered medical services from plaintiff and then executed a contract assignment of benefits to plaintiff, thereby enabling plaintiff to submit a claim to be paid by defendants in lieu of being paid by the insured. Payment for each MRI is sought on an assignment of contract benefits basis. Since plaintiff seeks to recover on unpaid claims sought on no-fault assignments of contract benefits, in contrast to *Contact Chiropractic*, the claims here are not purely regulatory. Here, although the terms of the automobile insurance

policies may be required by the no-fault regulations, this does not change the fact that the dispute is fundamentally contractual in nature and not a creature of statute.

Thus, a six-year statute of limitations applies and defendants' motion for summary judgment and dismissal of the complaint based on statute of limitations grounds is denied.

Other Claims

Plaintiff also cross-moves for partial summary judgment seeking to collect from defendants for claims billed that were either ignored or not timely denied, or alternatively, granting plaintiff leave to amend its verified complaint, pursuant to CPLR § 3025.

Defendants assert that the cross-motion should be denied because it violates the parties' January 23, 2018 stipulation. However, the language of the stipulation does not limit the scope of the motion or the cross-motion [January 23, 2018 Stipulation (ex. F to the Schreiber aff.)]. Thus, the court will consider the cross-motion on its merits.

CPLR § 3025 states that "[l]eave [to amend] shall be freely given upon such terms as may be just…" There is no evidence of prejudice to defendants from the court granting leave to plaintiff to amend its pleadings to reflect its claims for reimbursement of the unpaid medical claims. Defendants were on notice of the assignment theory of benefits and this court has previously acknowledged plaintiff's right to recover on that basis.

On December 4, 2013, the court (J. Singh) dismissed without prejudice the breach of contract claim and dismissed with prejudice any claim for consequential damages or punitive damages (December 4, 2013 Oral Argument Transcript at 21) and that remains the law of the case. The court acknowledged that the only potential claim that is viable in this case is for reimbursement of the assignment of the no-fault benefits that the insured received from the insurer (*id.*). However, the only claim remaining is for declaratory judgment.

Thus, the court grants the branch of plaintiff's cross-motion seeking leave to amend its complaint to assert a claim for monetary relief.

The court has considered the remainder of the arguments and finds them to be without merit.

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby,

ORDERED, that defendants Kemper Independence Insurance Company, Unitrin Auto and Home Insurance Company, Response Insurance Company, Warner Insurance Company, and Unitrin Direct Insurance Company's motion for an order, pursuant to CPLR § 3212, granting summary judgment in their favor and dismissing the complaint on the ground of the statute of limitations stated in CPLR § 214(2) is denied; and it is further

ORDERED, that the branch of plaintiff High Definition MRI, P.C.'s cross-motion for an order denying defendants' motion in its entirety is granted; and it is further

ORDERED, that the branch of plaintiff High Definition MRI, P.C.'s cross-motion for an order granting plaintiff partial summary judgment on ten (10) claims that were submitted to defendants, which defendants either never denied or failed to timely respond to is denied; and it is further

ORDERED, that the branch of plaintiff High Definition MRI, P.C.'s cross-motion for an order, pursuant to CPLR § 3025, granting plaintiff leave to amend its verified complaint is granted; and it is further

ORDERED, that the amended complaint in its finalized form shall be served within 30 days of this decision and order; and it is further

ORDERED, that defendants Kemper Independence Insurance Company, Unitrin Auto and Home Insurance Company, Response Insurance Company, Warner Insurance Company, and Unitrin Direct Insurance Company shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of service; and it is further

ORDERED, that counsel shall appear for a status conference at 60 Centre Street, Room 218, on May 1, 2019, at 9:30 AM.

This constitutes the decision and order of this court.

2-14-19
DATE

Kelly O'Neill Levy
KELLY O'NEILL LEVY, J.S.C.

KELLY O'NEILL LEVY
JSC

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
APPLICATION:		GRANTED	☐ DENIED		GRANTED IN PART	X	OTHER
		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE