

Great Neck Obstetrics & Gynecology, P.C. v Sadaty
2019 NY Slip Op 34151(U)
July 9, 2019
Supreme Court, Nassau County
Docket Number: 613147/18
Judge: Stephen A. Bucaria
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

GREAT NECK OBSTETRICS AND GYNECOLOGY, P.C.,

Plaintiff,

-against-

ANITA SADATY, M.D.,

Defendant.

TRIAL/IAS, PART 1 NASSAU COUNTY

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MOTION DATE: 05/31/19 Motion Sequence 003

The following papers read on this motion:

- Notice of Motion.....X
- Affirmation in Support.....X
- Affirmation in Opposition.....X
- Memorandum of Law in Opposition.....X
- Memorandum of Law in Reply.....X
- Affirmation in Response.....X

Upon the foregoing papers, the motion by defendant Anita Sadaty, M.D. (hereafter as "Sadaty") seeking an order pursuant to CPLR § 3211(a)(1), (2), (3), and (7), dismissing the plaintiff's amended complaint, is determined as follows.

In its amended complaint, plaintiff alleges causes of action sounding in declaratory judgment, breach of contract, unjust enrichment, and money had and received. Sadaty was a former shareholder of Great Neck Obstetrics and Gynecology, P.C. (hereafter as "GNOB"). GNOB, pursuant to an Employment Agreement entered between the parties, paid Sadaty's medical malpractice insurance premiums to MLMIC, the insurance provider, from GNOB's general operating account.

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MLMIC was thereafter acquired and demutualized from a mutual insurance company to a stock insurance company requiring MLMIC to pay each policyholder an “equitable share of each mutual policyholder for...consideration...of the stock of the corporation into which the mutual insurer is to be converted” based upon the amount paid in premiums to the provider. Pursuant to the foregoing, the payout for Sadaty’s policy was \$1,036,425.30. Said payout is what gives rise to this action. GNOB’s amended complaint essentially alleges that GNOB, rather than Sadaty, is entitled to the payout. The funds have since been held in escrow by MLMIC at the request of GNOB until the dispute as to the entitlement of the funds between the parties has been resolved.

Sadaty now seeks dismissal of each and every cause of action alleged in the plaintiff’s amended complaint.

Initially, Sadaty seeks dismissal of GNOB’s complaint based upon CPLR §§ 3211(a)(2) and (3) regarding subject matter jurisdiction and standing. “The New York Supreme Court is a court of general jurisdiction and it is competent to entertain all causes of action unless its jurisdiction has been specifically proscribed.” (NYS CLS Jud § 140-b). “The test for determining a litigant’s standing is well settled. A plaintiff has standing to maintain an action upon alleging an injury in fact that falls within his or her zone of interest.” (*Silver v Pataki*, 96 NY2d 532, 539 [2001]).

Given GNOB’s allegations in its complaint as to the subject matter herein, GNOB clearly has standing to maintain this action.

First Cause of Action

“A motion to dismiss a declaratory judgment action prior to the service of an answer presents for consideration only the issue of whether a cause of action for declaratory relief is set forth, not the question of whether the plaintiff is entitled to a favorable declaration.” (*Staver Co., Inc. v. Skrobisch*, 144 A.d. 2d 449, 450, 533 N.Y.S.2d 967 [2d Dept. 1988]).

Based on this Court’s review of the plaintiff’s amended complaint a cause of action for declaratory judgment has been plead adequately and a justiciable controversy exists. Accordingly, Sadaty’s motion for an order dismissing GNOB’s first cause of action based on declaratory judgment is **denied**.

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Second Cause of Action

An unjust enrichment cause of action “require[s] a plaintiff to set forth, inter alia, that the defendant possess[e] the property or assets.” (*Roslyn Union Free Sch. Dist. v. Barkan*, 71 AD3d 660, 661 [2d Dept 2010]). Here, the defendant is not in possession of the “property” or “assets” as the funds in dispute are held by MLMIC in an escrow account pending a resolution by the parties. Accordingly, defendant’s motion to dismiss plaintiff’s second cause of action alleging unjust enrichment is **granted**.

Third Cause of Action

The essential elements of a cause of action for money had and received are: (1) the defendant received money belonging to the plaintiff; (2) the defendant benefitted from receipt of the money; and (3) under principles of equity and good conscience, the defendant should not be permitted to keep the money. (*Marini v. Adamo*, 995 F. Supp. 2d 155, 2016 (E.D.N.Y. 2014), *aff’d*, 644 F. App’x 33 (2d Cir. 2016); *Goel v. Ramachandran*, 111 A.D.3d 783, 789-790 [2d Dept. 2013]).

GNOB’s allegations do not satisfy the elements set forth above as the defendant did not receive any of the MLMIC funds. The funds are held by MLMIC in an escrow account pending a resolution of this matter. Accordingly, defendant’s motion to dismiss the plaintiff’s third cause of action alleging “money had and received” is **granted**.

Fourth Cause of Action

“In considering a motion to dismiss the complaint pursuant to CPLR 3211(a)(1) based on documentary evidence, dismissal is warranted only where documentary evidence utterly refutes plaintiff’s factual allegations, conclusively establishing a defense as a matter of law. (*Goshen v. Mutual Life Co. of N.Y.*, 98 NY2d 314, 326, 774 N.E.2d 1190, 746 N.Y.S.2d 858; see *Sabre Real Estate Group, LLC v. Ghazvini*, 140 AD3d724, 35 N.Y.S.3d 109; *Mawere v. Landau*, 130 AD3d 986, 987 15 N.Y.S.3d 120). On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the court must accept all facts as alleged in the complaint to be true, accord the plaintiff the benefit of every favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. (*Leon v. Martinez*, 84 NY2d 83, 87-88, 638 N.E.2d 511, 514 N.Y.S.2d 972; *Sokol v. Leader*, 74 AD3d 1180, 1181-1182, 904 N.Y.2d 153). Where evidentiary material is submitted and considered on a motion to dismiss a complaint pursuant to CPLR 3211(a)(7),...the question becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one and, unless it has been shown that a material fact as claimed by the plaintiff to be one is not a fact at all and unless it can be said that no

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significant dispute exists regarding it, dismissal should not eventuate. (*Agai V. Liberty Mut. Agency Corp.*, 118 AD3d 830, 832, 988 N.Y.S.2d 644; see *Gugenheiner v. Ginzburg*, 43 NY2d 268, 275, 372 N.E.2d 17, 401 N.Y.S.2d 182; *T. Mina Supply, Inc v. Clemente Bros. Contr. Corp.*, 139 AD3d 1040, 1041, 34 N.Y.S.3d 82). (*Lakhi Gen. Contr. Inc. v. New York City School Const. Auth.*, 147 AD3d 917, 48 N.Y.S. 417 [2d Dept. 2017]).

“The essential elements of a cause of action to recover for breach of contract...[are] the existence of a contract, the plaintiff’s performance under the contract, the defendant’s breach of that contract, and resulting damages.” (*JP Morgan Chase v. J.H. Elec. of NY, Inc.*, 69 AD3d 802, 803 [2d Dept. 2010]).

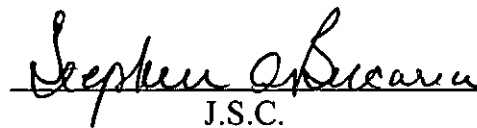
Notwithstanding the fact that GNOB has satisfactorily alleged the essential elements for a cause of action for breach of contract, the underlying dispute is not contractual in nature. Further, based upon this Court’s review of the agreements in question, none of the terms in the Shareholder Withdrawal Agreement, the Partnership Agreement, or the Subsequent Settlement Agreements address or contemplate the issue presented herein. Accordingly, defendant’s motion with regard to the plaintiff’s fourth cause of action alleging breach of contract is **granted**.

The parties are directed to appear before the undersigned on **October 7, 2019 at 9:30A.M.** for a compliance in this matter. Any outstanding discovery should be completed prior to the foregoing conference.

This constitutes the decision and Order of this Court. Any request for relief not expressly granted herein is **denied**.

So ordered.

Dated: JUL 09 2019


J.S.C.

ENTERED

JUL 15 2019

NASSAU COUNTY
COUNTY CLERK’S OFFICE