

Regina Sotnik Med., PC v J&S Stark Billing & Consulting Inc.

2020 NY Slip Op 32941(U)

September 8, 2020

Supreme Court, Kings County

Docket Number: 507062/18

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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REGINA SOTNIK MEDICAL PC,
Plaintiff, Decision and order

- against - Index No. 507062/18

J&S STARK BILLING & CONSULTING INC.,
Defendants, September 8, 2020

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff and defendant have both moved and cross-moved seeking to dismiss the pleadings for the failure of each party to engage in discovery. The motions have been opposed respectively and papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

According to the Complaint the plaintiff physician (RSM) hired defendant medical billing company to submit all bills for services rendered to insurance companies for payment. The Complaint alleges the defendant failed to submit bills for payment in a timely manner and consequently failed to recover a large percentage of the bills that were rightly due the plaintiff. The Complaint further alleges the defendant failed to timely appeal rejected claims and failed to pursue invoices from patients that did not have any insurance. The Complaint alleges two causes of action, for breach of contract and for breach of duties as the agent of the plaintiff.

The plaintiff seeks various discovery and has made numerous

discovery requests. Specifically, the plaintiff has sought "(i) All reports, showing charges, payments and adjustments, by each payor, for the RSM account for the first quarter of years 2015 through 2017; (ii) All denial reports for the RSM account for the first quarter of years 2015 through 2017; (iii) All documents containing or reflecting a summary of adjustments for the RSM account for the first quarter of the years 2010 through 2017, including, but not limited to, all reports that are coded to identify why each amount was written off; (iv) All documents reflecting the fee schedule for RSM account for the years 2015 through 2017" (see, Affirmation in Support of Motion, ¶9).

The defendant has essentially refused to provide such discovery arguing that it is not their burden to provide information to substantiate plaintiff's claims without an independent basis for such claims. As argued by the defendant the plaintiff must "substantiate the allegations that almost a million dollars in invoices were not properly submitted" and must do so without the need to go "through Defendant's documents. That is not how litigation works. Plaintiff should have had a good faith basis for its claims" (see, Memorandum of Law in Opposition, page 1).

The defendant argues that "plaintiff has not identified a single patient whose invoices for services were not properly submitted" (see, Memorandum of Law in Opposition, page 6).

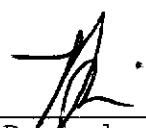
However, there is no way the plaintiff could have such information in its possession. Indeed, the plaintiff legitimately seeks all such invoices so it can determine whether in fact the defendant committed any wrongdoing and further pursue the action. This does not mean the entire lawsuit is a baseless fishing expedition. Rather, the good faith basis for the lawsuit is based upon the adjustments, amounts billed that were not paid by the insurance companies, totaling almost one million dollars. The plaintiff claims those adjustments are too high and consequently the defendant committed wrongdoing in its handling of the claims submitted. Only further discovery can sharpen that issue and as noted only the defendant possesses that information. The defendant's insistence it committed no wrongdoing are arguments properly made upon a motion to dismiss, which the defendant did not pursue, but do not insulate the defendant from producing the requested discovery. The plaintiff simply requests a copy of every invoice submitted by the defendant to insurance companies in an informational format so that an analysis of the ultimate determination from the insurance company can be made which will likewise inform whether the plaintiff has any viable claims against the defendant. Therefore, the plaintiff's motion is granted. The defendant must provide, for each claim provided by plaintiff to be submitted by defendant, an invoice that includes the patient name, insurance company billed, date of

adjustments or write offs. The defendant will have 45 days from the date of this order in which to comply. Following the production of these invoices, the plaintiff will have thirty days to respond to the demands the defendant served. All motions seeking dismissal or sanctions are denied.

So ordered.

ENTER:

DATED: September 8, 2020
Brooklyn NY



Hon. Leon Ruchelsman
JSC