

Law Offs. of Zara Javakov Esq., PC v Rybak
2022 NY Slip Op 30983(U)
March 28, 2022
Supreme Court, Kings County
Docket Number: Index No. 509832/2021
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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LAW OFFICES OF ZARA JAVAKOV ESQ., PC,

Plaintiff, Decision and order

- against - Index No. 509832/2021

OLEG RYBAK ESQ., RYBAK FIRM, PLLC,
KARINA BARSKA, ESQ. THE GELLER LAW GROUP, PC,
MARK GELLER, ESQ., MICHAEL SOYBELMAN AND
COUNTRY-WIDE INSURANCE COMPANY,

Defendants, March 28, 2022

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved pursuant to CPLR §6301 seeking an injunction staying the defendant from taking any action regarding any clients the plaintiff asserts are in fact the clients of the plaintiff. The defendant Rybak opposes the motion. Papers were submitted by the parties and arguments held and after reviewing all the arguments this court now makes the following determination.

According to the complaint, in 2019 defendant the Geller Law Group transferred cases that were pending in Civil Court to the plaintiff. All the cases involved recovery for unpaid no fault benefits. In February 2021 the plaintiff discovered that defendant Rybak firm was representing many of the providers that had been transferred to the plaintiff and that were really the clients of the plaintiff. According to the complaint Rybak claims to be counsel in at least 324 cases that were duly transferred to the plaintiff. The complaint seeks seven causes of action including a declaratory judgement the plaintiff is the attorney of record for

all these disputed cases. Further, there are causes of action for attorney's fees, prima facie tort, tortious interference with business relations, unjust enrichment, conversion and an attorney lien. The plaintiff has moved seeking an injunction staying all actions wherein Rybak alleges they are the proper counsel and freezing all settlement proceeds received in any of the disputed cases.

Conclusions of Law

CPLR §6301, as it pertains to this case, permits the court to issue a preliminary injunction "in any action... where the provider has demanded and would be entitled to a judgment restraining defendant from the commission or the continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the provider" (id). A party seeking a preliminary injunction "must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of the injunction and a balance of the equities in its favor" (Nobu Next Door, LLC v. Fine Arts Hosing, Inc., 4 NY3d 839, 800 NYS2d 48 [2005], see also, Alexandru v. Pappas, 68 Ad3d 690, 890 NY2d 593 [2d Dept., 2009]). Further, each of the above elements must be proven by the moving party with "clear and convincing evidence" (Liotta v. Mattone, 71 AD3d 741, 900 NYS2d 62 [2d Dept., 2010]).

Considering the first prong, establishing a likelihood of success on the merits, the plaintiff must prima facie establish a

reasonable probability of success (Barbes Restaurant Inc., v. Seuzer 218 LLC, 140 AD3d 430, 33 NYS3d 43 [2d Dept., 2016])). In this case the plaintiff has presented evidence that the Geller Law Group executed consents to change attorneys in favor of plaintiff. Thus between December 2018 and October 2019 the Geller Law Group executed a consent to change attorney form in favor of the plaintiff for 21 cases where 2&9 Acupuncture PC is a provider. They also executed a consent to change attorney form where 3Y Acupuncture PC is a provider in 1 case. They also executed a consent to change attorney form where A&F Medical PC is a provider in 5 cases. They also executed a consent to change attorney form where Alas Lifespan Wellness PT is a provider in 3 cases. They also executed a consent to change attorney form where At Bay Chiropractic PC is a provider in 12 cases. They also executed a consent to change attorney form where Bay Medical PC is a provider in 4 cases. They also executed a consent to change attorney form where Best Choice Medical Supply Inc., is a provider in 13 cases. They also executed a consent to change attorney form where BL Happy Life Acupuncture PC., is a provider in 29 cases. They also executed a consent to change attorney form where Best Chiropractic First Aid PC, is a provider in 12 cases. They also executed a consent to change attorney form where Best Chiropractic Quality Care PC, is a provider in 14 cases. They also executed a consent to change attorney form where Christopher Scarangella DC, is a

provider in 11 cases. They also executed a consent to change attorney form where Desirable Chiropractic PC, is a provider in 19 cases. They also executed a consent to change attorney form where DRAC Medical PC, is a provider in 4 cases. They also executed a consent to change attorney form where Dunamis Rehab PT, PC, is a provider in 89 cases. They also executed a consent to change attorney form where East Flatbush Medical PC, is a provider in 59 cases. They also executed a consent to change attorney form where Enjoy Rehab PT PC, is a provider in 1 case. They also executed a consent to change attorney form where Excel Medical and Diagnostic PC, is a provider in 7 cases. That totals 304 cases. In addition there are individual consents to change attorney forms executed in 37 cases. That totals 341 cases. They also executed a consent to change attorney form where Forest Park Acupuncture PC, is a provider in 16 cases. They also executed a consent to change attorney form where Getwell Acupuncture PC, is a provider in 11 cases. They also executed a consent to change attorney form where Good Energy Acupuncture PC, is a provider in 18 cases. They also executed a consent to change attorney form where Han Xu Acupuncture PC, is a provider in 34 cases. They also executed a consent to change attorney form where Health Aid Medical Supply Inc., is a provider in 2 cases. They also executed a consent to change attorney form where Holy Star Acupuncture PC, is a provider in 22 cases. They also executed a consent to change attorney form where Intercounty Acupuncture PC, is a provider in 6 cases. They also

executed a consent to change attorney form where JB Chiropractic Services PC, is a provider in 10 cases. They also executed a consent to change attorney form where Joseph Bater DC, is a provider in 26 cases. They also executed a consent to change attorney form where M & D Elite Pharmacy LLC, is a provider in 5 cases. They also executed a consent to change attorney form where M & E General Supply Inc., is a provider in 4 cases. They also executed a consent to change attorney form where Manhattan Beach Pharmacy, is a provider in 17 cases. They also executed a consent to change attorney form where Mindful Acupuncture PC, is a provider in 13 cases. They also executed a consent to change attorney form where Mingming Acupuncture PC, is a provider in 24 cases. They also executed a consent to change attorney form where Mobility Experts Medical PC, is a provider in 6 cases. They also executed a consent to change attorney form where New Beginning Chiropractic PC, is a provider in 28 cases. They also executed a consent to change attorney form where New Focus Acupuncture PC, is a provider in 7 cases. They also executed a consent to change attorney form where NR Motion PT PC, is a provider in 30 cases. They also executed a consent to change attorney form where O&M Medical PC, is a provider in 5 cases. They also executed a consent to change attorney form where Optimum Pharmacy LLP, is a provider in 13 cases. They also executed a consent to change attorney form where PMR Medical Diagnostics PC, is a provider in 6 cases. They also

executed a consent to change attorney form where Prosper Acupuncture PC, is a provider in 11 cases. They also executed a consent to change attorney form where Queens Dart Acupuncture PC, is a provider in 9 cases. They also executed a consent to change attorney form where RA Acupuncture PC, is a provider in 20 cases. They also executed a consent to change attorney form where Reborn Acupuncture PC, is a provider in 18 cases. They also executed a consent to change attorney form where Rehabxpress PT PC, is a provider in 6 cases. They also executed a consent to change attorney form where Riaz Medical PC, is a provider in 16 cases. They also executed a consent to change attorney form where Right Choice Medical Supply Inc., is a provider in 2 cases. They also executed a consent to change attorney form where ROM Medical PC, is a provider in 15 cases. They also executed a consent to change attorney form where Shashek Chiropractic PC, is a provider in 9 cases (it should be noted a duplicate list was included for this provider). They also executed a consent to change attorney form where Shore Parkway Chiropractic PC, is a provider in 32 cases. They also executed a consent to change attorney form where Sutphin Complete Medical Care PC, is a provider in 23 cases. They also executed a consent to change attorney form where Synoptic Physical Therapy PC, is a provider in 30 cases. They also executed a consent to change attorney form where Tong Li MD PC, is a provider in 202 cases. They also executed a consent to change attorney form

where Top Medical PC, is a provider in 2 cases. They also executed a consent to change attorney form where Traditional Acupuncture Healthcare PC, is a provider in 1 case. They also executed a consent to change attorney form where Unique Chiropractic Care PC, is a provider in 1 case. They also executed a consent to change attorney form where Victory Rehab PT PC, is a provider in 1 case. They also executed a consent to change attorney form where Vital Point Acupuncture PC, is a provider in 11 cases. They also executed a consent to change attorney form where VNP Acupuncture PC, is a provider in 4 cases. They also executed a consent to change attorney form where VP Chiropractic Adjustment PC, is a provider in 18 cases. They also executed a consent to change attorney form where Yongming Mao Physician PC, is a provider in 12 cases. That totals 1,087 cases wherein the Geller Law Group executed consents to change attorney to the plaintiff. All those cases are included within NYSCEF Document #5. Thus, the plaintiff has presented a likelihood of success they represent the provider in all those cases. In opposition, the defendant argues that the Geller Firm "transferred many of those cases to the Rybak firm" (Affirmation in Opposition, ¶6). However, that opposition does not explain how such a transfer could have possibly taken place if consents to transfer to the plaintiff had already been executed. Thus, it is of no moment who was listed as the attorney of record since the consents to change counsel override any such "list" and

conclusively establish the plaintiff as the correct attorney. Nor can the defendants challenge the lack of client notarization on some of the forms or the fact the consents were executed in bulk form. First, those deficiencies do not somehow revoke or rescind Geller's clear intent and indeed, his execution, to transfer the cases to the plaintiff. Moreover, pursuant to CPLR §2101(f) any such defect is deemed waived by the party if there is no objection within fifteen days after service. Thus, the defendant has no standing to object to the form of the consents where the respective providers have waived such issues.

In efforts to demonstrate the defendant is the attorney of record and legitimately represents many of the providers the plaintiff claims to represent, the defendants cite five cases, namely Mingming Acupuncture, P.C. v. Country-Wide Insurance, Index Number 39625/2015, Civil Court of the City of New York, Kings County, Dunamis Rehab, P.T., P.C., 40962/2015, Civil Court of the City of New York, Kings County and Han Xu Acupuncture, P.C., Index Numbers, 44391/2015, 44430/2015 and 44435/15, Civil Court of the City of New York, Kings County wherein they claim to be the attorney of record. First, the Mingming matter is not one of the cases listed by the plaintiff at all, consequently, that case is not disputed. Concerning the Dunamis matter, that case was included within the consent to change attorney form executed on April 29, 2019 and signed and notarized by Dunamis as well. A

printout from the Unified Court System listing Rybak as counsel does not raise any question of fact challenging the validly executed consent to change attorney form. Again, concerning the Han Xu matters, those cases were included within the consent to change attorney form executed on May 9, 2019 and signed and notarized by Han Xu as well. Again, printouts from the Unified Court System listing Rybak as counsel do not raise any question of fact challenging the validly executed consent to change attorney form.

Rybak has submitted a sur-reply which demonstrates that Geller in fact signed consents to transfer cases to Rybak. However, every single one of those consents is dated after Geller had already executed documents transferring the cases to the plaintiff. Notwithstanding the curious nature of these subsequent consents, once Geller executed consents to the plaintiff, they were no longer the attorney of record and could not thereafter further execute any document in any of the cases. To the extent Rybak has been harmed by agreeing to accept cases already transferred to plaintiff such complaints must be directed toward Geller not the plaintiff. Therefore, there really can be no question of fact the plaintiff will prevail they are the attorney of record regarding the 1,087 cases listed in NYSCEF Document #5. Thus, the motion seeking an injunction permanently staying the defendant Rybak from involvement in any manner and taking any action regarding any of the 1,087

cases noted is granted and defendant Country-Wide is restrained from participating with the defendants in any of those cases. This injunction will not apply to any cases not listed in that document. Further, any settlements obtained by the defendants concerning any of the cases noted must be held in escrow pending further progression of this case.


The plaintiff additionally sought a determination declaring they are the attorney of record in all the above noted cases. While that request seems at this juncture appropriate, it is well settled that absent extraordinary circumstances a preliminary injunction is improper where to grant such relief the movant would thereby obtain the ultimate relief she would receive in a final judgement (Zoller v. HSBC Mortgage Corp. (USA), 135 AD3d 932, 24 NYS3d 168 [2d Dept., 2016]). In any event, the order dated March 24, 2022 is vacated as to the plaintiff.

Thus, that ultimate determination must await the necessary motion seeking that relief. In any event, as noted, the defendants are hereby enjoined from acting as counsel in any manner on any of those 1,087 cases and are restrained from releasing any funds obtained in any of those cases until these issues are resolved.

So ordered.

ENTER:

DATED: March 28, 2022
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC