

Oxford Health Plans (NY), Inc. v Art Collection Inc.

2022 NY Slip Op 31454(U)

May 3, 2022

Supreme Court, New York County

Docket Number: Index No. 655836/2020

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS **PART** **57TR**

Justice

-----X

OXFORD HEALTH PLANS (NY), INC.

Plaintiff,

- v -

THE ART COLLECTION INC. N/K/A AIDEN FINE ARTS
INC.,

Defendant.

-----X

INDEX NO. 655836/2020

MOTION DATE 04/11/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for SUMMARY JUDGMENT.

BACKGROUND

Plaintiff commenced this action seeking a judgment for insurance premiums alleged due from defendant pursuant to a contract between the parties.

PENDING MOTION

On March 18, 2022, plaintiff moved for summary judgment. On April 8, 2022, the motion was fully briefed and submitted to this court for determination. For the reasons stated below, the motion is denied.

ALLEGED FACTS

Plaintiff submits a statement of material facts which includes the following assertions:

As part of its business of providing health insurance, plaintiff offers group coverage to employers in New York for their employees. Plaintiff and defendant have had a business

relationship since 2016 in which plaintiff has provided group health insurance to defendant and issued monthly invoices for premiums which defendant paid.

Plaintiff and defendant entered into a Group Policy and Group Enrollment Agreement on or about May 1, 2019. Pursuant to the Contract, Defendant agreed to pay monthly premiums to Plaintiff in exchange for Plaintiff providing health insurance to certain employees of Defendant. Plaintiff performed under the Contract and provided the health insurance coverage as provided therein.

Plaintiff sent defendant monthly statements indicating the health insurance premiums owed by defendant to plaintiff. On or about June 7, 2019, plaintiff issued Invoice No. 53896941 to defendant for the coverage period of July 1, 2019 to July 31, 2019 in the amount of \$25,359.57 with a due date for payment of July 1, 2019. On or about July 5, 2019, plaintiff issued Invoice No. 53951986 to defendant for the coverage period of August 1, 2019 to August 31, 2019 in the amount of \$2,292.96. with a due date for payment of August 1, 2019.

Pursuant to Section V of the Contract, the invoices were sent via mail to 39 Cuttermill Road Great Neck, NY 11021 and addressed to Elyahoo Sakhai. Defendant retained the invoices without objection. Defendant did not make any payments toward the invoices.

Defendant alleges that the agreement between the parties was terminated on or about May 31, 2019. In connection with the Termination, the parties entered into a new agreement on or about May 1, 2019. Defendant has fully complied with its obligations under the New Agreement, including payment of premiums for the months of July and August 2019. Payments for such premiums are automatically deducted from defendant's bank account.¹

¹ Defendant has improperly failed to respond to the Plaintiff's Statement of Material Facts, as required by 22 NYCRR § 202.8-g(b), while the Court will consider the facts alleged in defendant's affidavit in opposition and the documents submitted, in the future counsel should be aware a failure to properly respond to such a statement as required by the rules could be deemed an admission.

Plaintiff in reply argues for the first time that the outstanding balance is not based on July and August 2019 premiums but for unspecified periods which came due before May 2019.

DISCUSSION

In order to prevail on a motion for summary judgment, the moving party must establish its cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in its favor. *Winegrad v. New York Univ. Med. Ctr.*, 64 N.Y.2d 851 (1985); *Zuckerman v. City of New York*, 49 N.Y.2d 557 (1980). Absent such a *prima facie* showing, the motion must be denied, regardless of the sufficiency of the opposing papers (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). However, “[o]nce the movant makes the required showing, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish the existence of a material issue of fact that precludes summary judgment and requires a trial” (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007], citing *Alvarez*, 68 NY2d at 324). “[A]ll of the evidence must be viewed in the light most favorable to the opponent of the motion” (*People v Grasso*, 50 AD3d 535,544 [1st Dept 2008]). “On a motion for summary judgment, the court’s function is issue finding, not issue determination, and any questions of credibility are best resolved by the trier of fact” (*Martin v Citibank, N.A.*, 64 AD3d 477,478 [1st Dept 2009]; see also *Sheehan v Gong*, 2 AD3d 166,168 [1st Dept 2003] [“The court’s role, in passing on a motion for summary judgment, is solely to determine if any triable issues exist, not to determine the merits of any such issues”], citing *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]).

While plaintiff initially met its burden in establishing summary judgment defendant’s opposition has created a material question of fact as to what months are alleged as unpaid and if

in fact payment was made. In its moving papers and statement of material facts plaintiff very clearly alleges the unpaid premiums are for July and August 2019.

On or about June 7, 2019, Oxford issued Invoice No. 53896941 to Defendant **for the coverage period of July 1, 2019 to July 31, 2019** in the amount of \$25,359.57. The due date of payment was July 1, 2019. On or about July 5, 2019, Oxford issued Invoice No. 53951986 to Defendant **for the coverage period of August 1, 2019 to August 31, 2019** in the amount of \$2,292.96.

In its reply papers, plaintiff for the first time changes its position and states the invoices were issued in July and August 2019, but were for premiums in months prior to May 2019, which are unidentified.

In addition to the foregoing conflict, defendant points out that no discovery has yet taken place between the parties.

Based on the foregoing plaintiff's motion for summary judgment is denied.

CONCLUSION

WHEREFORE it is hereby:

ORDERED that plaintiff's motion for summary judgment is denied; and it is further

ORDERED that the parties appear for a virtual preliminary conference on June 29, 2022 at 11:30 am; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.



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5/3/2022

DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE