

**Rowe Plastic Surgery of Long Is., P.C. v Oxford  
Health Ins. Co., Inc.**

2022 NY Slip Op 33149(U)

July 21, 2022

Supreme Court, Queens County

Docket Number: Index No. 702017/2022

Judge: Robert J. McDonald

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK  
CIVIL TERM - IAS PART 34 - QUEENS COUNTY  
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD  
**Justice**

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ROWE PLASTIC SURGERY OF LONG ISLAND, Index No.: 702017/2022  
P.C. & NORMAN MAURICE ROWE, M.D.,  
M.H.A, L.L.C., Motion Date: 7/21/22

Plaintiffs, Motion No.: 18

- against - Motion Seq.: 1

OXFORD HEALTH INSURANCE CO., INC.,  
OXFORD HEALTH INSURANCE, INC.,  
OXFORD HEALTH PLANS (NJ), INC.,;  
OXFORD HEALTH PLANS (NY), INC.; and  
OXFORD HEALTH PLANS, L.L.C.,



Defendants.

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The following electronically filed documents read on this motion by defendants OXFORD HEALTH INSURANCE CO., INC., OXFORD HEALTH INSURANCE, INC., OXFORD HEALTH PLANS (NJ), INC.,; OXFORD HEALTH PLANS (NY), INC.; and OXFORD HEALTH PLANS, L.L.C. (collectively hereinafter Oxford) for an Order pursuant to CPLR 3211(a)(1) and (7), dismissing the complaint:

	<u>Papers</u>
	<u>Numbered</u>
Notice of Motion-Affirmation-Exhibits-Memo. of Law..EF	6 - 15
Affirmation in Opposition-Exhibits-Memo. of Law.....EF	16 - 18
Affirmation in Reply-Exhibits-Memo. of Law.....EF	19 - 24

Plaintiffs commenced this action by filing a summons and verified complaint on January 27, 2022. The complaint alleges that on July 14, 2021, plaintiffs rendered a reduction mammoplasty to a patient, submitted bills to Oxford for those services, and a balance remains unpaid. The complaint asserts four causes of action: breach of contract, unjust enrichment, promissory estoppel, and violation of New York's Prompt Pay Law.

Oxford now moves to dismiss the complaint on the grounds that the claims are preempted, for failure to state a claim upon which relief may be granted, and based upon documentary evidence.

"To succeed on a motion to dismiss pursuant to CPLR 3211(a)(1), the documentary evidence that forms the basis of the defense must be such that it resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim" (Teitler v Pollack & Sons, 288 AD2d 302 [2d Dept. 2001]). A motion to dismiss a complaint based on documentary evidence "may be appropriately granted only where the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (Stein v Garfield Regency Condominium, 65 AD3d 1126 [2009], quoting Goshen v Mutual Life Ins. Co. of N.Y., 98 NY2d 314 [2002]).

On a motion to dismiss pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the court must accept the facts alleged in the pleading as true, accord the plaintiff the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory (Goshen v Mutual Life Ins. Co. of N.Y., 98 NY2d 314 [2002]; Leon v Martinez, 84 NY2d 83 [1994]; Greer v National Grid, 89 AD3d 1059 [2d Dept. 2011]; Prestige Caterers, Inc. v Siegel, 88 AD3d 679 [2d Dept. 2011]). "If the documentary proof disproves an essential allegation of the complaint, dismissal pursuant to CPLR 3211(a)(7) is warranted even if the allegations, standing alone, could withstand a motion to dismiss for failure to state a cause of action" (Peter F. Gaito Architecture, LLC v Simone Dev. Corp., 46 AD3d 530, 530 [2d Dept. 2017]).

In support of the motion, Oxford submits the affidavit of Jane Stalinski, a Senior Legal Services Specialist and authorized representative of UnitedHealthcare Insurance Company and its affiliates, including Oxford. Ms. Stalinski affirms that the patient is, and was at the time of the claims at issue, enrolled in the Continental Industries Group, Inc. Health Benefit Plan (the Plan), which was administered by Oxford and governed by the Employee Retirement Income Security Act of 1974 (as amended), 29 USC 1001, et. seq. (ERISA). On June 18, 2021, Oxford issued a letter to the patient, approving her request for certain services to be performed by Lisa Schneider, M.D., an out-of-network provider. A copy of the letter was also sent to Dr. Schneider. The letter is annexed to the motion papers and specifically states, inter alia, that "this approval does not guarantee that the plan will pay for the service" and "[p]ayment of covered services depends on other plan rules". Also annexed to Ms. Stalinski's affidavit is a copy of the Plan.

Based on the evidence submitted, Oxford contends that the complaint must be dismissed because the state law claims are expressly preempted by ERISA. Plaintiffs first contend that the Plan is not an ERISA plan.

An ERISA plan is established if "from the surrounding circumstances a reasonable person can ascertain intended benefits, a class of beneficiaries, the source of financing, and procedures for receiving benefits" (Feifer v Prudential Ins. Co. of America, 306 F.3d 1202, 1209 [2d Cir. 2002][internal quotation marks omitted]). Here, the Plan provides that it is a Group Policy between Oxford and Continental Industries Group, Inc., the employer or party that has entered into an agreement with Oxford. The Plan further provides that the Group, i.e. Continental Industries Group, Inc., purchased the Plan from Oxford. The Plan also describes how members will be enrolled and how to receive benefits. Therefore, the Plan is an ERISA plan.

Since plaintiffs' claims all relate to Oxford's administration of an ERISA governed employee welfare benefit plan, the claims are expressly preempted by ERISA (see ERISA 514(a); 29 USC 1144(a); Pirro v Natl. Grid, 590 Fed.Appx. 19 [2d Cir. 2014]; Norman Maurice Rowe, MD, MHA, LLC v Oxford Health Ins. Co., Index No. 714272/2021 [Sup Ct., Queens Cnty. 2022]). Although plaintiffs contend that the letter formed an independent agreement between plaintiffs and Oxford, the letter was addressed to the patient and not plaintiffs.

In any event, regardless of whether the Plan is governed by ERISA, the claims fail.

The first cause of action is for breach of contract. The essential elements for pleading a cause of action to recover damages for breach of contract are the existence of a contract, the plaintiff's performance pursuant to the contract, the defendant's breach of his or her contractual obligations, and damages resulting from the breach (see Dee v Rakower, 112 AD3d 204 [2d Dept. 2013]; Elisa Dreier Reporting Corp. v Global NAPS Networks, Inc., 84 AD3d 122 [2d Dept. 2011]).

The letter which plaintiffs base their claim on is addressed to the patient and copied to non-parties Dr. Schneider and Hudson Regional Hospital. Plaintiffs are not mentioned in the letter. Moreover, the complaint does not allege that plaintiffs were intended beneficiaries of the letter, which is required for a non-party to contract state a claim for breach of contract (see East Coast Athletic Club, Inc. v Chicago Tit. Ins. Co., 39 AD3d 461 [2d Dept. 2007]).

The second cause of action is for unjust enrichment. "To prevail on a claim of unjust enrichment, a party must show that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered" (Old Republic Nat. Title Ins. Co. v Luft, 52 AD3d 491 [2d Dept. 2008]).

Here, plaintiffs allege that Oxford received goodwill in the form of the patient being happy and the patient's continued patronage, and thus, Oxford was enriched by plaintiffs performing the mammoplasty. However, such a speculative and indirect benefit on defendants is insufficient to support a claim for unjust enrichment (see Kaye v Grossman, 202 F.3d 611 [2d Cir. 2000]). Additionally, a plaintiff cannot recover under the theory of unjust enrichment if, as here, the services provided by the plaintiff were performed at the behest of someone other than the Oxford (see Kagan v K-Tel Entertainment, 172 AD2d 375 [1991]).

The third cause of action is for promissory estoppel. To state a claim for promissory estoppel, the plaintiffs must plead "(1) a clear and unambiguous promise, (2) reasonable and foreseeable reliance by the party to whom the promise is made, and (3) an injury sustained in reliance on the promise" (Sabre Intl. Sec., Ltd. v Vulcan Capital Mgt., Inc., 95 AD3d 434, 439 [1st Dept. 2012][internal quotation marks omitted]).

Here, the letter is not addressed to the plaintiffs herein, and thus, there is no clear and unambiguous promise (see MatlinPatterson ATA Holdings LLC v Federal Express Corp., 87 AD3d 836 [1st Dept. 2011][dismissing the promissory estoppel claim where the only alleged promise was contained in a letter agreement between two other parties]).

The last cause of action seeks damages for a violation of New York's Prompt Pay Statute which requires an insurer to pay undisputed claims within 30 days after receipt of an electronic submission or within 45 days after receipt by other means. The Complaint further states that Oxford did not reject the bill. However, the complaint fails to state when or how the bills were submitted to defendants. Accordingly, the Prompt Pay Claim shall be dismissed (see Michael E. Jones, M.D., P.C. v UnitedHealth Group, Inc., 2020 WL 4895675 [SDNY 2020][dismissing the Prompt Pay Act claim where plaintiff did not allege that coverage for any claim was reasonably clear or that any delay or denial was without reasonable basis or in bad faith]).

Accordingly, and for the reasons stated above, it is hereby

ORDERED, that the motion to dismiss by defendants OXFORD HEALTH INSURANCE CO., INC., OXFORD HEALTH INSURANCE, INC., OXFORD HEALTH PLANS (NJ), INC.,; OXFORD HEALTH PLANS (NY), INC.; and OXFORD HEALTH PLANS, L.L.C. is granted, and the complaint is dismissed.

Dated: July 21, 2022  
Long Island City, NY

*Robert E. McDonald*

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**ROBERT J. MCDONALD**  
**J.S.C.**

