

**Sick Kids (Need) Involved People of N.Y. Inc. v
Children's Health Home of Upstate N.Y. (CHHUNY),
LLC**

2023 NY Slip Op 32183(U)

June 29, 2023

Supreme Court, New York County

Docket Number: Index No. 651108/2022

Judge: Lyle E. Frank

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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**

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| <p>PRESENT: <u>HON. LYLE E. FRANK</u> <i>Justice</i> -----X SICK KIDS (NEED) INVOLVED PEOPLE OF NEW YORK, INC. Plaintiff,</p> | <p>PART 11M INDEX NO. <u>651108/2022</u> MOTION DATE <u>06/10/2022</u> MOTION SEQ. NO. <u>001</u></p> |
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| <p>CHILDREN'S HEALTH HOME OF UPSTATE NEW YORK (CHHUNY), LLC, Defendant.</p> | <p>DECISION + ORDER ON MOTION</p> |
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The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19
 were read on this motion to/for DISMISSAL.

This action arises out of allegations of breach of contract, relating to issues of billing and overpayment pursuant to a contract to provide home health services¹. Defendant now moves to dismiss the complaint in entirety pursuant to CPLR § 3211(a)(1) and § 3211(a)(7). Defendant also moves for an order granting reasonable attorney fees, costs, and disbursements. Plaintiff opposes the instant motion. For the reasons set forth below, defendant’s motion to dismiss is granted and the request for attorney’s fees is denied.

Factual Background

Plaintiff Sick Kids (Need) Involved People (hereinafter “SKIP”), a nonprofit, is commenced this action seeking damages from defendant Children’s Health Home of Upstate NY (hereinafter “CHHUNY”), an LLC, alleging breach of contract.

¹ The Court would like to thank Bani Bedi for her assistance in this matter.

SKIP agreed to provide home health services to candidates referred to them by CHHUNY. CHHUNY would perform the billing and administrative work, and then pay SKIP for services provided in Upstate, New York. It is undisputed, that CHHUNY mistakenly reimbursed SKIP at the higher downstate rate, resulting in an overpayment of \$278,456.00.

In November 2021, CHHUNY automatically withdrew \$258,407.00 from the SKIP account, and also deducted amounts from future payments to SKIP.

Plaintiff alleges that defendants breached the contract, for failure to timely and properly conduct their auditing responsibilities and failed to correct their overpayment errors. Plaintiff alleges that CHHUNY waived its right to recover the overpayment due to this breach and thus seeks to recover the amounts withdrawn by CHHUNY.

Legal Standard

On a motion to dismiss the court “merely examines the adequacy of the pleadings”, the court “accept as true each and every allegation made by plaintiff and limit our inquiry to the legal sufficiency of plaintiff’s claim.” *Davis v Boehme*, 24 NY3d 262, 268 [2014] (internal citations omitted). “[T]he court was not required to accept factual allegations that are contradicted by documentary evidence, or legal conclusions that are unsupported in the face of undisputed facts.” *Zanett Lombardier, Ltd. v Maslow*, 29 AD3d 495, 495 [1st Dept 2006]; CPLR § 3211(a)(1).

Pursuant to CPLR § 3211 (a) (1), a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law. *Leon v Martinez*, 84 NY2d 83, 88 [1994]. Furthermore, judicial records, as well as documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the

contents of which are “essentially undeniable,” would qualify as “documentary evidence” in the proper case. *Fontanetta v Doe*, 73 A.D.3d 78 [2d Dept 2010].

Breach of Contract

Defendant moves to dismiss plaintiff’s cause of action against CHHUNY for breach of contract pursuant to CPLR § 3211(a)(1) and CPLR § 3211(a)(7) alleging that the plaintiff has failed to state a claim upon which relief can be granted and that defendant has a defense based on documentary evidence.

The Court finds that the plaintiff has failed to sufficiently plead a breach of contract claim. Plaintiff first alleges that the overpayments received by SKIP were caused by the malfeasance or non-feasance of defendant CHHUNY, who was contractually responsible for auditing and billing, and thus CHHUNY was not entitled to recover the money. However, the negligence of a payer does not preclude recovery of a mistaken payment made by them (*Lawrence v American Nat. Bank*, 54 NY 432 [1873]; *Banque Worms v BankAmerica Intl.*, 77 NY2d 362, 364 [1991]). Thus, defendant’s billing mistakes do not imply that they were not owed the overpaid amount.

Plaintiff argues that by failing to correct its errors after being notified about the overpayment, CHHUNY waived the right to recover its overpayment and thus was not entitled to recovery anymore. The documentary evidence of the contract between the parties clearly exhibits a ‘no waiver’ provision, stating that a failure to exercise a remedy for the breach of a contract or the acceptance of performance would not count as a waiver of the breach of contract. Under CPLR 3211 (a)(1), the plain language of the contract refutes the plaintiff’s claim that defendant waived their right to recoup their money simply because they did not try to recoup it faster. More generally, the law does not bar recovery of a mistaken payment based on the speed at which a

party seeks to recover the money. *Mutual Life Ins. Co. of NY v William B. Kessler, Inc*, 202 NYS2d 92 [NY Sup. Ct. 1960].

Finally, plaintiff argues in opposition that SKIP detrimentally relied on this overpayment and thus it would be inequitable to allow CHHUNY to recover it at this stage. When a party has been paid mistakenly for money they were not owed, the payee is only entitled to keep the payment if they detrimentally relied on it such that it would be inequitable to permit recovery. See *Hathaway v Delaware County*, 185 NY 368, 371 [1906]. Plaintiff has not pleaded how and by what amount SKIP may have detrimentally relied upon the overpayment. Furthermore, plaintiff and defendant agree that plaintiff was aware of the overpayment from the beginning and invited defendant to recoup the money. SKIP acknowledged and attempted to rectify the overpayment from the start; it is incompatible to argue that SKIP relied on the overpayment to the extent that its recovery by CHHUNY was inequitable.

Overall, plaintiff's pleading does not constitute a sufficient breach of contract action. The defendant's motion to dismiss the breach of contract action is thus granted.

Attorneys Fees, Costs and Disbursements

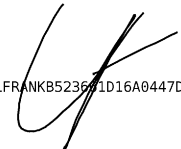
Defendant moved to recover reasonable attorneys' fees, costs, and disbursements associated with the defense of this instant lawsuit. In CHHUNY's memorandum of law, they argue that the contract provides for attorney fees in case of a lawsuit. In opposition, Plaintiff shows that the plain language of the contract provides for attorney fees only in lawsuits arising from SKIP's negligence. This instant action arises from an error made by CHHUNY. There is no contractual basis for recovering attorneys' fees. Additionally, defendant requests relief under CPLR § 8303(a) which may grant attorney fees for certain frivolous claims. However, CPLR §

8303(a) does not apply to breach of contract actions (*Carver v Apple Rubber Prods. Corp.*, 163 AD2d 849, 850 [4th Dept 1990]).

The defendant’s motion for an order granting reasonable attorneys’ fees, costs, and disbursements is thus denied. Accordingly, it is hereby

ORDERED that the motion to dismiss is granted; and it is further

ADJUDGED that the defendant’s request for an order granting attorney fees, costs, and disbursements is denied.


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6/29/2023
DATE

LYLE E. FRANK, J.S.C.

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| <input checked="" type="checkbox"/> | GRANTED | <input type="checkbox"/> | DENIED |

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| <input type="checkbox"/> | NON-FINAL DISPOSITION | | |
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APPLICATION:

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| <input type="checkbox"/> | SUBMIT ORDER | | |
| <input type="checkbox"/> | FIDUCIARY APPOINTMENT | <input type="checkbox"/> | REFERENCE |

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