

Biodiagnostic Labs, Inc. v Centers for Care, LLC

2023 NY Slip Op 34225(U)

November 28, 2023

Supreme Court, Kings County

Docket Number: Index No. 537690/2022

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 28th day of November 2023

HONORABLE FRANCOIS A. RIVERA

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BIODIAGNOSTIC LABS, INC.,

Plaintiff,

-against-

DECISION & ORDER

Index No. 537690/2022

CENTERS FOR CARE, LLC d/b/a Centers Health Care and d/b/a Suffolk Center for Rehabilitation and Nursing and d/b/a Swan Lake Nursing and Rehabilitation and d/b/a Williamsbridge Manor Center for Nursing & Rehabilitation and d/b/a University Nursing Home and d/b/a Far Rockaway Center for Rehabilitation and d/b/a Brooklyn Center for Rehabilitation and Residential Care; CENTERS FOR SPECIALTY CARE GROUP, LLC d/b/a Centers Health Care and d/b/a Suffolk Center for Rehabilitation and Nursing and d/b/a Swan Lake Nursing and Rehabilitation and d/b/a Williamsbridge Manor Nursing Home and d/b/a University Nursing Home and d/b/a Far Rockaway Center for Rehabilitation and d/b/a Brooklyn Center for Rehabilitation and Residential Care; UFFOLK CENTER RECEIVER, LLC d/b/a Suffolk Center for Rehabilitation and Nursing; J&H OPERATIONS, LLC d/b/a Swan Lake Nursing and Rehabilitation and d/b/a Suffolk Center for Rehabilitation and Nursing; WILLIAMSBRIDGE MANOR NURSING HOME, LLC d/b/a Williamsbridge Manor Center for Nursing & Rehabilitation; UNIVERSITY NURSING HOME, LLC d/b/a

University Nursing Home; ROCKAWAY
OPERATIONS ASSOCIATES, LLC d/b/a Far
Rockaway Center for Rehabilitation; PROSPECT
PARK OPERATING, LLC, d/b/a Brooklyn
Center for Rehabilitation and Residential Care;
Daryl Hagler; Kenneth Rozenberg; and Paul
Konstam,

Defendants.

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Recitation in accordance with CPLR 2219 of the papers considered on the notice of motion file on August 3, 2023, under motion sequence number three by defendant J & H Operations LCC (hereinafter the movants) for an order pursuant to CPLR 3211(a)(7) dismissing the amended complaint of plaintiff Biodiagnostic Labs. Inc. as asserted against it. The motion is opposed.

- Notice of motion
- Memorandum of law in support
- Affirmation in opposition
 - Exhibits 1-4
- Memorandum of law in reply
 - Exhibits 1-7

BACKGROUND

On December 27, 2002, the plaintiff commenced the instant action by filing a summons and complaint with the Kings County Clerk’s office (KCCO). On August 9, 2023, plaintiff filed an amended complaint with the KCCO.

The amended complaint alleges fifty-four allegations of fact in support of three denominated causes of action. The first and second cause of action is for damages asserted against defendants Centers and Centers Specialty. The third cause of action is against the movants based on the allegedly fraudulent transfer of funds to them by Centers and Centers Specialty.

LAW AND APPLICATION

Upon a motion to dismiss for failure to state a cause of action, the sole criterion is whether the subject pleading states a cause of action, and if, from the four corners of the complaint, factual allegations are discerned that, taken together, manifest any cause of action cognizable at law, then the motion will fail. N.Y. CPLR § 3211(a)(7) (*Feldman v. Byrne*, 210 A.D.3d 646 [2nd Dept 2022]). In considering a motion to dismiss a complaint for failure to state a cause of action, the court must afford the pleading a liberal construction, accept the facts as alleged in the pleading as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. N.Y. CPLR § 3211(a)(7) (*Whelan v. Cuomo*, 220 A.D.3d 979 [2nd Dept 2023]).

Where a cause of action is based upon fraud, the circumstances constituting the wrong shall be stated in detail (*Feldman v. Byrne*, 210 A.D.3d 646 [2nd Dept 2022] citing, *Trump Vil. Section 4, Inc. v. Vilensky*, 202 A.D.3d 865, 866 [2nd Dept 2022]). The pleading requirements of CPLR 3016(b) may be met when the facts are sufficient to permit a reasonable inference of the alleged conduct (*Feldman v. Byrne*, 210 A.D.3d 646 [2nd Dept 2022]).

To survive a motion to dismiss for failure to state a cause of action, the allegations of the pleading cannot be vague and conclusory but must contain sufficiently particularized allegations from which cognizable cause of action reasonably could be found (N.Y. CPLR § 3211(a)(7); *Feldman v. Byrne*, 210 A.D.3d 646 [2nd Dept 2022]).

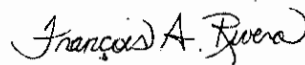
The movants seek dismissal of the plaintiff's third cause of action as asserted against it. The third cause of actions alleges a fraudulent conveyance to the movants which aggrieved the plaintiff. The amended complaint as asserted against the movant contained merely conclusory and vague allegations of fraud and therefore failed to plead a cause of action for fraudulent conveyance (CPLR 3016, *Swartz v Swartz*, 145 AD3d 818, 828 (2nd Dept. 2016)).

CONCLUSION

The motion by defendant J & H Operations LCC for an order pursuant to CPLR 3211(a)(7) dismissing the amended complaint of plaintiff Biodiagnostic Labs. Inc. as asserted against it is granted.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.

HON. FRANCOIS A. RIVERA
J.S.C.