

**Manhattan Telecom. Corp. v Coordinated Behavioral  
Care, Inc.**

2024 NY Slip Op 32689(U)

July 29, 2024

Supreme Court, New York County

Docket Number: Index No. 156369/2020

Judge: Dakota D. Ramseur

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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. DAKOTA D. RAMSEUR PART 34M

Justice

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MANHATTAN TELECOMMUNICATIONS CORPORATION
A/K/A METTEL

MetTel,

- v -

COORDINATED BEHAVIORAL CARE, INC.,

CBC.

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INDEX NO. 156369/2020

MOTION DATE 11/15/2023

MOTION SEQ. NO. 009

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 009) 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192

were read on this motion to/for JUDGMENT - SUMMARY.

On July 23, 2020, plaintiff Manhattan Telecommunications Corporation d/b/a MetTel (hereinafter, "MetTel") commenced this breach of contract action against defendant Coordinated Behavioral Care Inc. ("CBC"), alleging that CBC failed to pay a March 23, 2020 invoice of \$31,365.45 for telephone services it provided. MetTel asserts causes of action for breach of contract, an account stated, and for attorneys' fees. In this motion sequence (009), CBC moves for summary dismissal of MetTel's verified complaint in its entirety pursuant to CPLR §3212. MetTel opposes. For the following reasons, the motion is denied.

BACKGROUND

On September 1, 2017, MetTel and CBC executed a written "Master Service Agreement" according to which MetTel was to provide CBC with telecommunications services for a 36-month period "unless a shorter term is specified on the attachments." (NYSCEF doc. no. 170 at ¶ 1, master service agreement.) The attachment, entitled "MetTel Communications Solution," specified, rather than a 36-month contract, a 24-month term for telecommunication services, which began on September 1, 2017. (NYSCEF doc. no. 171, attachment.) According to paragraph two of this Master Service Agreement, entitled "automatic renewal," the initial two-year service term would automatically be extended on a month-to-month basis at MetTel's then standard term rates until there was a cancellation from either party in writing upon a thirty-day notice. (NYSCEF doc. no. 170.)

From September 2017 through March 2019, CBC used MetTel's services without issue. According to Senior Vice President of Finance for CBC, Alvin Sinckler, on April 1, 2019, CBC first informed MetTel that it wished to cancel MetTel's telecommunication services immediately. (Id at. ¶ 21).

On April 17, 2019, CBC sent a letter to MetTel, providing written notice of its intent to cancel. (*Id.* at ¶ 22; NYSCEF doc. no. 181, Donald's notice of cancellation.) CBC then sent out two additional emails, one dated May 10, 2019, and the other dated June 21, 2019, as follow-ups to confirm that MetTel had accepted its cancellation notice. (*Id.* at ¶¶ 23-24, *id.* at exhibit 5, exhibit 6.) In response to the June 21, 2019 Letter, MetTel's Manager of Customer Service, John Blair, responded, "please consider that CBC is no longer a customer of MetTel." (NYSCEF do. no. 173, Blair email dated 6/21/19.) In this email, Blair further requested his colleague Angela Thomas (who was CC'd) to review the data associated with the contract and submit a credit request of \$2,046.56 to his supervisor. (*Id.*) On July 23, 2019, CBC sent another email confirming the agreement's termination. (NYSCEF do. no. 43, email dated 7/23/19.) In this email, CBC represented that it considered the Agreement terminated as of April 1, 2019, and requested that MetTel close its account, issue a credit, and cease sending invoices for past services. (*Id.*) Shortly thereafter, Blair responded to Sinckler, stating that MetTel had received its email and was currently working on a credit for CBC. (NYSCEF do. no. 44 and 45, responsive emails.) Approximately eleven months later, on March 23, 2020, MetTel sent a "Final Bill" to CBC for \$31,365.45. (NYSCEF do. no. 2, invoice.) The invoice did not summarize the services being charged for or show that a credit request had been granted. (*Id.*)

After CBC did not pay the invoice, MetTel commenced this action on July 23, 2020, seeking to recover the \$31,365.45 under both breach-of-contract and account-stated theories. (NYSCEF do. no. 1 ¶¶ 13 and 17, complaint, first and second causes of action.) After CBC joined issue by filing its Answer with Counterclaims, MetTel moved for summary judgment under CPLR 3212 as to its own claims and to dismiss CBC's counterclaims under CPLR 3211 (a) (7). (NYSCEF doc. no. 22, notice of motion (MS 002).) With respect to its claims, MetTel specifically moved for summary judgment based on the 2017 Master Service Agreement *alone*—not on the parties' previous 2015 Master Service Agreement. (*See* NYSCEF doc. no. 23 at ¶¶ 7-8, MetTel counsel's affidavit ["On September 1, 2017, CBC sought to purchase telecommunications services from MetTel... A copy of the duly executed MetTel-CBC contract... is attached hereto at *Exhibit 5*"; *id.* at ¶ 18-20 ["CBC executed the agreement for telecommunications services. MetTel duly present to the CBC for the services used by CBC. CBC accepted the invoices without objection"]; NYSCEF doc. no. 24, memo of law in support ["MetTel attached to the Verified Complaint an invoice setting for the date of sale and agreed upon price of the telecommunication services supplied to CBC"].) By Decision and Order dated March 22, 2021, this Court (King, J.) denied MetTel's motion for summary judgment on its breach-of-contract and account-stated claims but granted the branch of MetTel's motion to dismiss CBC's counterclaims. (NYSCEF doc. no. 88, Decision and Order.)

Thereafter, on November 15, 2023, CBC filed the current Notice of Motion for summary judgment under CPLR § 3212. (NYSCEF doc. no. 166, notice of motion.)

## DISCUSSION

Under CPLR § 3212, a proponent moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any triable issue of fact. (*Junger v. John V. Dinan Assocs., Inc.*, NY

Slip Op 06232, 2 [2nd Dept 2018]); *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324, 501 NE2d 572, 508 NYS2d 923 [1986]. Once the moving party establishes their entitlement for a summary judgment motion, the burden shifts to the opposing party to raise a triable issue of fact. (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].) Since summary judgment is an extreme remedy, the Court must draw all reasonable inferences in favor of the non-moving party. (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012].) Where there is doubt as to the existence of material facts or where different conclusions can reasonably be drawn from the evidence, summary judgment should be denied. (*Santos v Temco Serv. Indus.*, 295 AD2d 218, 218-219 [1st Dept 2002].)

#### *First Cause of Action for Breach of Contract*

To recover damages for a breach of contract, MetTel must demonstrate (i) the existence of a contract, (ii) its performance under the contract, (iii) CBC's breach, and (iv) damages resulting from said breach. (*All. Nat'l Ins. Co. v. Hagler*, 219 A.D.3d 1393, 5 [2nd Dept. 2023].) Where the terms of a contract are clear and unambiguous, the intent of the parties must be found within the four corners of the contract, giving practical interpretation to the language employed and reading the contract as a whole. (*Ellington v EMI Music, Inc.*, 24 NY3d 239, 244 [2014].) A contract is unambiguous if on its face it is reasonably susceptible to only one meaning. (*Banco Espirito Santo, S.A. v ConcessionAria Do Rodoanel Oeste S.A.*, 100 AD3d 100, 106 [1st Dept 2012].)

Here, CBC has demonstrated that the 2017 Agreement is unambiguous and clear on its face: paragraph 1 established the initial service term to be three years “unless a shorter term is specified on the attachments,” the attachment specified a two-year initial service term, and paragraph 2 provided that the initial service term would automatically be extended on a month-to-month basis until canceled in writing upon thirty days notice. (NYSCEF doc. no. 180.) CBC further demonstrated that it complied with paragraph 2 by submitting the April 17, May 10, and June 21, 2019 letters that informed MetTel of its intent to cancel—all of which were communicated to MetTel more than 30 days in advance of the Agreement's two-year August 31, 2019, automatic renewal date. (NYSCEF doc. no. 181; NYSCEF doc. no. 172 at exhibits 5 and 6.) Blair confirmed as much when he responded that CBC was no longer a customer as of June 21, 2019. (NYSCEF doc. no. 173.)

In opposition, MetTel contends that there remain issues of fact precluding summary judgment since CBC “was still bound by the automatic renewal of the *May 2015* [Master Service Agreement] with the Additional Service Term ending on May 17, 2020.” The Court agrees. While the 2017 Agreement contains a merger/integration clause stating that “[t]his Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other representations, understandings, or agreements that are not expressed herein, whether oral or written,” (NYSCEF doc. no. 180 at ¶ 13), CBC has not demonstrated that the subject matter of the 2015 and 2017 Master Service Agreements are identical. The attachment to the 2017 Agreement indicates that the contract was for “50Mb Ethernet DIA” at a monthly recurring cost of \$1,269. In contrast, the attachment to the 2015 Agreement does not reference this product but rather appears to be for “MetTel SIP-Trunking Solution” at a monthly recurring of \$1,571.56. (*Compare* NYSCEF doc. no. 180 at 4 *with* NYSCEF doc. no. 179 at 4.)

Further, MetTel submits Angela Thomas’ affidavit, in which she avers that the \$31,365.45 invoice was owed for services under both the 2015 and 2017 Master Service Agreements. (NYSCEF doc. no. 178 at ¶¶8-18, Thomas affidavit.) She further notes that the May 2015 Agreement’s initial service term began in May 2015, lasted for two years, contained 12-month automatic renewal periods (as opposed to month-to-month renewals in the 2017 Agreement), and, thus, because CBC only communicated its intent to cancel services in April 2019, had already missed the contract’s 90-day period to avoid the automatic renewal. (*Id.*, NYSCEF doc. no. 179 at paragraph 2.) Thomas’ interpretation of the 2015 Agreement—as one that operated parallel to the 2017 Agreement—is corroborated by CBC’s Lindsay Donald’s April 2019 email, in which he acknowledged that “We [CBC] missed the 90-day window to terminate prior to auto renewal on 5/17/19 [i.e., the May 2015 Agreement].” Put differently, not only does MetTel provide testimony that the 2015 and 2017 Agreements were operating concurrently, but it also submitted corroborative evidence in the form of a CBC employee who appears to acknowledge CBC’s failure to cancel prior to the 2015 Agreement’s automated renewal period. Accordingly, MetTel has demonstrated issues of fact precluding summary judgment.

*Second Cause of Action for an Account Stated*

CBC raises nearly identical arguments supporting summary judgment on MetTel’s account stated cause of action. In arguing that an account stated cannot be used as an instrument to create liability when none otherwise existed, CBC asserts that the “undisputed facts demonstrate that prior to MetTel’s alleged rendition of its statement to CBC demanding payment, the Agreement between the parties had expired on its own terms and was not renewed.” (NYSCEF doc. no. 174 at 13, memo of law in support.) As the Court found above, MetTel has sufficiently raised issues of fact as to whether the 2015 or 2017 contract governs the invoice at issue for its account stated cause of action.


Accordingly, for the foregoing reasons, it is hereby

ORDERED that defendant Coordinated Behavioral Car Inc’s motion for summary judgment pursuant to CPLR 3212 is denied; and it is further,

ORDERED that counsel for plaintiff Manhattan Telecommunications Corporation shall serve a copy of this order, along with notice of entry on all parties within ten (10) days of entry.

This constitutes the Decision and Order of the Court.

7/29/2024  
DATE

  
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DAKOTA D. RAMSEUR, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE