SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** **PART** **11M**

Justice

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NYU LANGONE HOSPITALS,

Plaintiff,

- v -

ALWAYS HOME CARE, INC.,

Defendant.

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INDEX NO. 650813/2023

MOTION DATE 05/13/2024

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 60, 61, 62

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Upon the foregoing documents, plaintiff's motion to amend the caption/pleadings is granted and defendant's cross-motion is denied.

Background

This action arises out of a dispute over payments made for the medical treatment of an insured member. In 2021 Plaintiff NYU Langone Hospitals ("NYU") gave medical treatment to V.G., an insured member receiving coverage from Defendant Always Home Care, Inc. ("Home Care"). Prior to rendering services to V.G., NYU spoke to Allied Benefit Systems, Inc. ("Allied") regarding the benefits available. Allied, allegedly on behalf of Home Care, told NYU that the benefits to be paid were in-network benefits for the participating provider organization Private Healthcare System, Inc ("PHCS"). After V.G. received medical treatment, NYU submitted a claim in the amount of $185,776.67 for these services to Allied, who made a payment in the amount of $15,800.14.

There followed a dispute between the parties over the applicable rate for the services, in the course of which Medical Audit & Review Solutions, Inc. ("MARS"), contacted NYU,

allegedly on behalf of Allied and Home Care, in an attempt to resolve the dispute. This led to an agreement between NYU and MARS that the amount due was $ 130,043.66 (the "March Agreement"). NYU alleges that they signed and returned the March Agreement, and that they have not been paid any additional amount towards their claim.

NYU filed a complaint on February 13, 2023, alleging breach of contract against that Home Care based on the March Agreement. Home Care moved to dismiss the complaint on the grounds that the Court lacked personal jurisdiction over Home Care and, in the alternative, that there was no breach of contract as no contract existed between NYU and Home Care. This motion was denied June 21, 2023.

NYU brings the present motion asking leave to amend the complaint, adding Allied Benefits System, Inc. ("Allied") as a party defendant and to assert additional causes of action against Home Care. Those additional causes are claims for breach of contract by Allied as well as Home Care based both on the parties' original contracts with the PHCS network and breach of the subsequent March Agreement, for account stated, promissory estoppel, and for misrepresentation and/or fraud. NYU also seeks leave to amend the caption to name Home Care by its legal name (Attentive Home Care Agency, Inc) in addition to its doing-business-as name of Always Home Care, Inc.

Home Care opposes the motion on the grounds that the motion is untimely, and that amendment would be futile as there is allegedly no contract between the parties and therefore no breach of contract claim can succeed. Home Care also cross-moves to dismiss the complaint for failure to state a cause of action pursuant to CPLR § 3211(a)(7).

Standard of Review

Under CPLR § 3025(b), a "party may amend [their] pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court . . . [which] shall be freely given upon such terms as may be just." Leave to amend should be freely given when the claims are "not palpably insufficient or devoid of merit" and there is no prejudice to the opposing party. *Leyton v. Siegel*, 212 A.D.3d 521, 523. If a complaint is amended as proposed and still cannot survive a motion to dismiss, the proposed amendment should not be granted. *Scott v. Bell Atl. Corp*, 282 A.D.2d 180, 185.

A party may move for a judgment from the court dismissing causes of action asserted against them based on, among other reasons, the fact that the pleading fails to state a cause of action. CPLR § 3211(a)(7). It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211(a)(7), "the pleading is to be liberally construed, accepting all the facts alleged in the pleading to be true and according the plaintiff the benefit of every possible inference." *Avgush v. Town of Yorktown*, 303 A.D.2d 340 (2d Dept. 2003). But dismissal of the complaint is warranted "if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." *Connaughton v. Chipotle Mexican Grill, Inc*, 29 N.Y.3d 137, 142 (2017).

Discussion

As is shown below, leave should be given here for plaintiff to amend the caption/pleadings to add Allied as a party to the proceedings and to assert the new causes against Allied and Home Care. Furthermore, Home Care's cross-motion to dismiss the complaint fails because plaintiff's complaint, with the benefit of all favorable inferences, does state a valid cause of action.

I: The Motion to Amend the Caption/Pleadings is Not Palpably Insufficient and Therefore Should be Granted

NYU moves to amend the original complaint to add Allied as a party defendant to the action, under the theory that Allied is Home Care's agent, and to assert new claims. These new claims are against Allied and Home Care for breach of the original contract under the PHCS network as well as for breach of the March Agreement, and against Allied and Home Care for account stated, promissory estoppel, and misrepresentation/fraud. Because Home Care does not oppose the motion to amend the caption to include Home Care's legal name and d/b/a name, and because this is a correction of a misnomer that does not prejudice any defendant, this portion of the motion to amend are granted.

Home Care opposes the addition of Allied and the new causes of action on the grounds that NYU has not established any contractual relationship between NYU and "the parties nor any of the other entities referenced in their papers." Home Care also contends that amending the complaint as NYU requests would prejudice them because they "would be required to respond to causes of action that were never disclosed previously and were not properly adjudicated through this motion" and that "by repeatedly referencing a contract that seemingly does not exist and certainly has not been exchanged, the Plaintiff is forcing the Defendant to speculate as to not only the exact nature of the purported breach but, also, the possible defense to such claims."

Here, the proposed amendments are clearly not "palpably insufficient or devoid of merit" and the claim of prejudice to Home Care fails. The addition of Allied as a party defendant cannot prejudice *Home Care,* who has been a party defendant since the start of the litigation. Prejudice in this context requires "some indication that the defendant has been hindered in the preparation of his case." *Kocourek v. Booz Allen Hamilton Inc.*, 85 A.D.3d 502, 504 – 05. There is no

prejudice when, as is the case here, the defendant "had notice of the claim from the inception and should not have to change their strategy in any significant way to defend the new claim." *Id.*

Nor is it a meritless addition when throughout the original complaint Allied was referred to as Home Care's agent. Furthermore, Allied allegedly made a payment to NYU on behalf of Home Care, and NYU has provided communications between NYU and Allied regarding medical treatments made to a patient insured by Home Care. Allied is clearly involved in the underlying dispute and the relationship between Home Care, Allied, and NYU is relevant to the present litigation.

When moving to amend, the movant does not need to "establish the merit of proposed new allegations, but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit." *MBIA Ins. Corp. v. Greystone & Co., Inc.*, 74 A.D.3d 499, 500 (1st Dept. 2010). NYU has added a party that was mentioned repeatedly in the original complaint as the defendant's agent and asserted new claims based on the original two allegations of breach of contract. Home Care opposes these additions largely on the grounds that they are insufficient because NYU has failed to establish a contractual relationship that could give rise to the two alleged breaches. NYU, however, has alleged that there was a contractual or quasi-contractual relationship between the parties and has submitted exhibits to support its claim. This is a sufficient showing of merit to justify amending the complaint. Home Care's contractual argument further fails for reasons that will be explored below when addressing the cross-motion to dismiss.

II: Defendant Fails to Meet Their Burden on the Cross-Motion to Dismiss

Home Care cross-moves to dismiss the complaint in its entirety on the grounds that NYU has not provided a written agreement for their breach of contract claims. They argue that all of

NYU's claims sound in contract law, and that NYU has not established a contractual relationship between the parties, and that therefore all of NYU's claims fail. The standard of review, as laid out above, requires the Court to take all of NYU's facts that are alleged and not flatly contradicted by documentary evidence as true and to draw all favorable inferences in NYU's favor before determining if NYU has pled an enforceable right to recovery. Under this standard and the law of the case, Home Care's arguments to dismiss fail.

At the outset, it is noted that Home Care has previously made a motion to dismiss for failure to plead a breach of contract. This Court, in entering a decision on that motion, noted that "the complaint both sets forth a quasi-contractual claim that defendant failed to pay plaintiff for services rendered to defendant's insured, and establishes the breach of a written agreement between the parties." While here Home Care attempts again to argue that there is no contractual relationship between the parties, the Court has already held that NYU's complaint alleges a contractual relationship, *both written and in quasi-contract*, sufficient to survive a motion to dismiss. Amending the complaint to further clarify the alleged relationship between Allied and Home Care and the roles that both parties played in the alleged breaches of contract does not change the Court's previous findings or the law of the case.

Furthermore, it is clear that the pleadings suffice to survive a motion to dismiss for failure to plead a breach of contract. A plaintiff is allowed to pursue claims in both contract and quasi-contract, "especially where defendant denied the very existence of a contract between the parties." *Frank v. Sobel*, 38 A.D.3d 229 (1st Dept. 2007); *see also M/A-Com, Inc. v. State*, 78 A.D.3d 1293, 1294 (3rd Dept. 2010). Home Care's argument that NYU failed to attach the written agreement giving rise to the breach of contract claim fails in part because a party is not required to attach a copy of a contract in order to survive a motion to dismiss. *See First Class*

Concrete Corp. v. Rosenblum, 167 A.D.3d 989, 990 (2nd Dept. 2018). NYU's complaint, both the original and the amended, alleges facts that support an inference of an agent-principal relationship between Home Care and Allied and that Allied negotiated payment for medical bills incurred by a patient insured by Home Care. NYU alleges facts that support an inference that Home Care had incurred liability for the said medical bills and that there was an agreement purporting to settle the dispute over the rate. Under the standard of review for a motion to dismiss and the law of the case, NYU has adequately pled causes of action stemming from an alleged breach of contract.

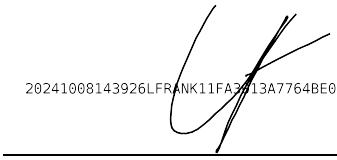
The Court has reviewed Home Care's remaining contentions and finds them unavailing. Accordingly, it is hereby

ORDERED that the plaintiff's motion for leave to amend the complaint herein is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon Attentive Home Care Agency, Inc., d/b/a Always Home Care upon service of a copy of this order with notice of entry thereof, and upon Allied Benefits Systems, Inc. pursuant to the CPLR; and it is further

ORDERED that the defendants shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that the Clerk of the Court shall amend the caption of this action accordingly; and it is further

ADJUDGED that Defendant Attentive Home Care Agency, Inc., d/b/a Always Home Care, Inc.'s cross-motion to dismiss the complaint is denied.



10/8/2024
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
	X	GRANTED	DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE