

Albany Med. Ctr. Hosp. v Korlamanda
2024 NY Slip Op 35405(U)
March 13, 2024
Supreme Court, Albany County
Docket Number: Index No. 907105-23
Judge: David A. Weinstein
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

ALBANY MEDICAL CENTER HOSPITAL,

Plaintiff,

-against-

KISHORE KORLAMANDA,

Defendant.

DECISION AND ORDER

Index No.: 907105-23

IAS Judge: David A. Weinstein

Appearances:

Ordd Law, LLP
Attorneys for Plaintiff
By: Melissa M. Tobrocke, Esq.
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James J. Brearton, Esq.
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David A. Weinstein, J.:

This case was commenced by summons and verified complaint filed with the Albany County Clerk on July 28, 2023. In the complaint, plaintiff Albany Medical Center Hospital (the “Hospital”) alleges that “[f]rom July 26, 2022 to July 27, 2022, the plaintiff, at the express or implied request of the defendant, rendered hospital and/or medical services to the defendant, or individuals for whom the defendant is financially responsible” (Complaint ¶ 3). The complaint further states that plaintiff sent defendant “numerous billing statements” and “correspondence” demanding payment in the total sum of \$7,303.83, and defendant refused to pay (*id.* ¶¶ 4-5).

Defendant served a verified answer, asserting general denials to the allegations and several affirmative defenses (Answer ¶¶ 1-2). Plaintiff has now moved for summary judgment, arguing that the balance demanded in the complaint is an accurate accounting of the costs associated with the medical services rendered on defendant’s behalf (Affidavit of Linda L.

Donovan, Esq., dated November 30, 2023 ["Donovan Aff"] ¶ 17). Defendant has cross moved for summary judgment dismissing the claim, or in the alternative for discovery.

In support of its motion, the Hospital provides a sworn Statement of Material Facts from its Assistant Vice President of Finance, Karen Mein.¹ According to Mein, she prepared the Statement based on her personal knowledge and from the Hospital's "business records," which were made in the regular course of business (Statement of Material Facts of Karen Mein, sworn to on November 27, 2023 ["Statement"] ¶ 1). Mein also states that from July 26 to 27, 2022, the Hospital "rendered hospital and medical services to Defendant" (*id.* ¶ 3). To support this assertion, plaintiff provides two signed agreements. The first is a "General Consent" for the examination and treatment of Adhvik Korlamanda, which appears to be signed by this person's parent or legal guardian on July 26, 2022, although the parent's name is not printed or otherwise revealed on this document (Statement ¶ 3, Ex 1). The Consent says nothing about the signatory's financial obligations.

Also annexed is a "Financial Agreement," dated July 26, 2022, which reads as follows:

"Assignment of Benefits: I acknowledge that Albany Medical Center is providing care and treatment to Korlamanda, Adhvik and I, Kahyaaml. Gopisetty as guarantor, agree to pay all amount owed for such care and treatment to the full extent permitted by law" (*id.*, Ex 1).

The Financial Agreement bears an illegible signature in a space marked "patient/legal guardian or representative" (*id.*). Defendant's name is not otherwise set forth anywhere on the Financial Agreement (*id.*). An itemized billing statement for the Hospital's treatment and care for Adhvik Korlamanda, dated September 6, 2022, is also annexed, identifying the guarantor as "Kishore Korlamanda," who resides in Slingerlands, New York, and reflecting certain payments on the bill made by "UnitedHealthcare Ins" (Statement, Ex 1). This document is not signed by anyone.

Mein further avers that the billing rates charged by plaintiff are the Hospital's "posted rates" which she alleges "are based upon Plaintiff's total operating expenses and include no element of profit" and are "commensurate with the rates charged by other hospitals in the area for similar services" (Statement ¶ 4). The rates for the treatment at issue, however, were not

¹ Although plaintiff has not submitted an affidavit in support of its motion, this statement is sworn to in front of a notary public, and thus I treat it as the equivalent of such.

provided with the motion papers, nor did Mein explain how she determined that the plaintiff's rates were similar to that of other hospitals. Mein also states that the defendant's bills are correct, each itemized medical service was "necessarily supplied to defendant" and, in her opinion, the amount charged was "reasonable" (*id.* ¶ 5).

Mein states that "Defendant provided Plaintiff with UnitedHealthcare health insurance information," (*id.* ¶ 6), but for this proposition she cites only to the exhibit, which nowhere indicates that this is the case.² Mein also claims that defendant's insurance was billed for such services, but it paid for only a portion of the care provided and advised that the balance was "Defendant's personal responsibility" pursuant to the policy with United Health Care Insurance (*id.* ¶ 6). To support this claim, plaintiff attached to the Statement a copy of the defendant's internal Explanation of Benefits ("EOB") paid by United Healthcare Insurance Company for Adhvik Korlamanda's care at the Hospital (*id.*, Ex 1). This document, however, does not reference defendant or anyone else who might be responsible for further payment (*id.*). Mein also claims that the Hospital generated bills and sent them to defendant (*id.* ¶ 7), but no documentary evidence of such is provided in the motion papers, except for the single September 6 billing statement.

In his opposition and cross motion, defendant provides an affirmation of counsel, noting that no evidence that the Hospital communicated with defendant about the alleged outstanding balance owed has ever been produced, aside from the single billing statement (Affirmation of James J. Brearton, Esq., dated January 2, 2024 ["Brearton Aff"] ¶¶ 2-5). Further, defendant points out that the "Financial Agreement" relied on by plaintiff to establish a contractual relationship (Statement, Ex 1) references a guarantor by the name of "Gopisetty Kahyaaml," who is not the defendant in this action (*id.* ¶ 3). Finally, counsel asserts that the bill is barred as a "surprise bill," citing various provisions of federal and state law without elaboration as to how they apply here (*see generally* Memorandum of Law).

In further support of the cross-motion, defendant submitted his own affidavit, to which he attaches a spreadsheet he prepared that he claims supports the argument that the Hospital's charges for services are exorbitant in comparison with other medical facilities (Affidavit of Kishore Korlamanda, sworn to on January 3, 2024 ["Korlamanda Aff"] ¶ 1, Ex A).

² The fact that UnitedHealthcare was billed for or paid for the services does not demonstrate that this was done on behalf of defendant or at his request, or that defendant agreed to pay the balance.

In opposition to the cross-motion, plaintiff contends that discovery was stayed with the filing of its motion for summary judgment (Affirmation in Opposition to Cross-Motion of Linda L. Donovan, Esq., dated January 8, 2024 ["Opp Aff"] ¶ 5). Thus, the Hospital argues that it was not obligated to respond to any of the pending discovery requests served by defendant (*id.*). Plaintiff also notes that the defendant has not submitted any admissible evidence indicating that he is unable to communicate in the English language, nor has he denied that he requested and his child received the Hospital services at issue (*id.* ¶¶ 3, 6).

In a reply submission, Korlamanda provides a second affidavit in which he asserts that plaintiff failed to provide the Court with any evidence that he agreed to "pay the 'surprise' hospital bill" (Affidavit of Kishore Kolamanda, sworn to on January 24, 2024 ["Reply Aff"] ¶ 1). Defendant avers that he "never agreed to pay the bill" (*id.* ¶ 2). Since this was the first time defendant had specifically made this assertion, by letter I allowed the Hospital to make a sur-reply in response (Ltr of Ct, dated mar 8, 2024, citing *Park Country Club of Buffalo, Inc. v Tower Ins. Co. of N.Y.*, 68 AD3d 1772, 1774 [4th Dept 2017] and *Citimortgage, Inc. v Espinal*, 134 AD3d 876, 879 [2d Dept 2015]). Plaintiff submitted a further affirmation of counsel, which states in relevant part as follows:

"At the time of service of Defendant's minor child, Defendant provided Plaintiff with UnitedHealthcare health insurance information. Defendant's insurance was billed by the Plaintiff and the balance that remains owed to Plaintiff is the Defendant's deductible. Defendant has a contract with UnitedHealthcare and chose that insurance company. As such, there is a portion of the cost that is the Defendant's responsibility. Therefore, Defendant was directly billed for the unpaid balance. The Defendant's deductible has nothing to do with the amount charged for the services, but has everything to do with the Defendant's contractual obligation to pay deductibles. Defendant agreed to be billed directly for full or partial payment. Please see attached as Exhibit 'A' and incorporated herein by reference a true and correct copy of the financial agreement signed by the Defendant. Within the financial agreement, the defendant agrees to remain responsible for any unpaid amounts to the Plaintiff" (Sur-Reply of Melissa M. Tobrocke, Esq., dated March 12, 2024).

Appended to the sur-reply is the aforementioned Financial Agreement identifying one Gopisetty Kahyaaml as guarantor of payment.

Discussion

To obtain summary judgment, a movant must establish its position "sufficiently to warrant the court as a matter of law in directing judgment" in its favor (*Friends of Animals, Inc. v*

Associated Fur Mfrs., 46 NY2d 1065, 1067 [1979], quoting CPLR 3212[b]); The proponent of a summary judgment motion must initially make a prima facie showing of entitlement to judgment as a matter of law, by tendering sufficient evidence to eliminate any genuine material issues of fact from the case (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The failure to make such a showing mandates denial of the motion, regardless of the sufficiency of the opposing papers (see *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). If a prima facie showing is made, the burden shifts to the party opposing the motion for summary judgment to come forward with evidentiary proof in admissible form to establish the existence of material issues of fact which require a trial (see *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). However, unsubstantiated assertions or speculations in an affirmation are insufficient to overcome summary judgment (*Alvarez*, 68 NY2d at 327).

I note initially that “[a]lthough [t]he foundation for admission of a business record usually is provided by the testimony of the custodian, the author or some other witness familiar with the practices and procedures of the particular business it is the business record itself, not the foundational affidavit, that serves as proof of the matter asserted” (see *Bank of N.Y. Mellon v Gordon*, 171 AD3d 197, 205 [2d Dept 2019] [citation and internal quotation marks omitted]). Thus, “[e]vidence of the contents of business records is admissible only where the records themselves are introduced” (*id.* at 205-206 [citations omitted]).

In other words, an affidavit making an assertion based on the affiant’s review of unidentified business records is itself of no probative value, although it may be used to present such records to the Court under the business record exception to the hearsay rule, and the question then is whether those records are sufficient to support the movant’s summary judgment burden (see *id.* at 208-209 [“to the extent that [the affiant’s] purported knowledge . . . was based upon her review of unidentified business records . . . her affidavit constituted inadmissible hearsay and lacked probative value”]). Here, Mein avers that her information is based both on a review of the business records and her personal knowledge (Statement ¶ 1). As to the key question of whether defendant agreed to pay for Adhvik Korlamanda’s care, she points only to the attached records. This does not make a prima facie case on plaintiff’s causes of action.

In its complaint, the Hospital appears to assert causes of action for breach of contract and account stated (Complaint ¶¶ 7-8). Under New York law, “[a]n account stated is an agreement express or implied, between the parties to an account based upon prior transactions between them

with respect to the correctness of account items and a specific balance due” (*Lavalle v Coholan Family, LLC*, 167 AD3d 1444, 1444 [4th Dept 2018] [internal quotations omitted]). In the absence of an express contract as to the specific balance due, “[a]n agreement may be implied where a defendant retains bills without objecting to them within a reasonable period of time, or makes partial payment on the account” (*id.*; see also *EPF International Limited v Lacey Fashions, Inc.* 170 AD3d 575, 575 [1st Dept 2019] [plaintiff made out prima facie case by establishing that it prepared and sent invoices to defendant; he made partial payments and did not object to the invoices in a timely fashion]; *Costopoulos v DeCoursey*, 151 AD3d 1452, 1453 [3d Dept 2017] [prima facie case for account stated established with copies of agreement, monthly unpaid invoices sent to client and copies of e-mail correspondence between parties], *lv denied* 30 NY3d 906 [2017]).

Here, the Hospital has provided a copy of only one billing statement, dated September 6, 2023, that is addressed to Korlamanda, and has provide no evidence of a contractual relationship with defendant. Although plaintiff indicates that it “repeatedly” requested payment, it has presented no business records or other admissible evidence showing this. The “Financial Agreement” relied on by the Hospital lists the guarantor for the payment of the medical services at issue as “Gopisetty Kahyaaml,” not Korlamanda (Statement, Ex 1). The “General Consent” also does not mention defendant – although it is signed in a space for the patient’s parent – and does not impose on the signing party any financial obligation.

Although the Hospital claims to have received partial payment for the services rendered from the United Healthcare Insurance Company, there is no evidence in the record before me that such insurance was that of the defendant. While Mein states that defendant “provided Plaintiff with UnitedHealthcare health insurance information,” she cites for that “Exhibit I,” which references a different named party (Statement ¶ 6). And although the billing statement attached thereto, indicates that “Kishore Korlamanda” is the guarantor (Statement, Ex 1), this reflects nothing more than the hospital’s assertion that he is the responsible party, and does not reflect any contractual agreement.

In the absence of sufficient evidence to establish a prima facie case for a contractual relationship or account stated with defendant, I find that plaintiff has failed to meet its burden for summary judgment (see *Zeldin v Larose*, 223 AD3d 858 [2d Dept Jan 24, 2024] [“conclusory affidavit or an affidavit by an individual without personal knowledge of the facts does not

establish the proponent's prima facie burden"]; *see also Palisades Collection Co., LLC v Velazquez*, 27 Misc 3d 132[A], *1 [Sup Ct App Term 1st Dept 2010] [conclusory affidavit of plaintiff's account specialist and selected billing statements was insufficient to establish prima facie case of account stated]]. Not to put too fine a point on it, but plaintiff has not presented any document actually bearing defendant's name, in which he has agreed to pay anything.

As for the cross-motion, the additional cognizable evidence presented by the two affidavits signed by Korlamanda does not establish his entitlement to summary judgment. Both talk about "the bill," without seeking to address whether he made any promise of payment in regard to paying for the care received by Adhvik Korlamanda.³

To sum up, plaintiff premises its entire case on an agreement that is signed in the name of someone other than the defendant, but continues to insist without explanation that defendant must be bound by it. It notes that the bill reflects payment by United Healthcare, but presents no admissible evidence that this is defendant's carrier. For his part, defendant says nothing about the matter at the heart of the case: whether or not he agreed to pay for the medical care at issue.

As the oft-quoted language goes, the movant's burden on summary judgment is "a heavy one" (*Jacobsen v. New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014]). If the parties want to meet that burden, they are going to have to do better than this.

In light of the foregoing, it is

ORDERED that plaintiff's summary judgment motion is denied; and it is further

ORDERED defendant's cross-motion is denied, except that their application for discovery is properly addressed at this stage by a schedule set at a conference between the parties; and it is further

ORDERED that counsel for the parties shall appear at a virtual Teams conference on March 21, 2024 at 2:00 p.m. to set a schedule for any outstanding discovery.

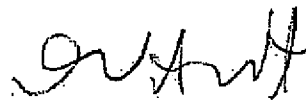
This constitutes the Decision & Order of the Court. This Decision & Order is being electronically filed with the County Clerk. The signing of this Decision and Order and filing with the County Clerk shall not constitute notice of entry under CPLR 5513, and counsel is not relieved from the applicable provisions of that Rule respecting to filing and service of Notice of

³ A review of the various laws cited by defendant's counsel gives no insight as to why they might apply here.

Entry.

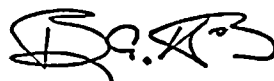
ENTER.

Dated: Albany, New York
March 13, 2024.



David A. Weinstein
Acting Supreme Court Justice

Papers Considered:



03/14/2024

1. Notice of motion and Affidavit of Linda L. Donovan, Esq., dated November 30, 2023, with Exhibits annexed thereto, along with Statement of Material Facts of Karen Mein, sworn to on November 27, 2023, with Exhibits annexed thereto.
2. Notice of Cross-Motion for summary judgment and discovery and Affirmation of James J. Brearton, Esq., dated January 2, 2024, supported by Affidavit of Kishore Korlamanda, sworn to on January 3, 2024, with Exhibit A annexed thereto, along with Memorandum of Law, dated January 3, 2024.
3. Affidavit in Opposition to Cross-Motion of Linda L. Donovan, Esq., dated January 8, 2024.
4. Affidavit of Kishore Korlamanda, sworn to on January 24, 2024.