

Community Care Physicians, P.C. v Van Ness
2024 NY Slip Op 35425(U)
April 8, 2024
Supreme Court, Albany County
Docket Number: Index No. 910061-23
Judge: Daniel C. Lynch
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

COMMUNITY CARE PHYSICIANS, P.C.,

Plaintiff,

-against-

LUCY VAN NESS,

Defendant.

DECISION AND ORDER

Index No.: 910061-23

RJI No.:

APPEARANCES: Linda L. Donovan, Esq.
Ordd Law, LLP
Attorneys for Plaintiff
19 Executive Park Drive
Clifton Park, New York 12065

Lucy Van Ness
265 Old Loudon Road
Latham, New York 12110

LYNCH, J.:

This litigation arises out of defendant's failure to pay medical bills owed to plaintiff for services rendered between August 2021 and November 2022. Defendant failed to file a formal answer, but did apparently send a letter to plaintiff asserting that she had no outstanding bills with plaintiff for the period at issue. Plaintiff now moves for summary judgment, seeking a judgment against defendant in the sum of \$1,034.64 with interest from November 11, 2022, plus the costs and disbursements of this action. Defendant opposed plaintiff's motion, claiming that she did not receive notice of the amounts owed.

"Summary judgment is a drastic remedy" (*Vega v. Restani Const. Corp.*, 18 NY3d 499, 503 [2012] [internal quotation marks, brackets and citation omitted]; *accord Grant v Temple*, 216 AD3d 1351, 1352 [3d Dept 2023]), to be granted only when the party moving for summary

judgment “make[s] a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; accord *Reese v Raymond Corp.*, 202 AD3d 1304, 1306 [3d Dept 2022]). If the movant makes such a showing, “the burden shifts to the nonmovant to raise a triable issue of fact, again through the submission of competent evidence. The evidence must be viewed in the light most favorable to the nonmovant, and that party must be given the benefit of every favorable inference” (*Parris-Kofi v Redneck, Inc.*, 204 AD3d 1180, 1181 [3d Dept 2022]; see *Durr v Capital Dist. Transp. Auth.*, 198 AD3d 1238, 1240 [3d Dept 2021]).

“[T]o establish a cause of action for breach of contract, a party must establish the existence of a contract, the party's own performance under the contract, the other party's breach of its contractual obligations, and damages resulting from the breach” (*EDW Drywall Constr., LLC v U.W. Marx, Inc.*, 186 AD3d 1720, 1722 [3d Dept 2020] [internal quotation marks and citation omitted]; accord *Radiation Oncology Servs. of Cent. N.Y., P.C. v Our Lady of Lourdes Mem. Hosp., Inc.*, 221 AD3d 1324, 1326 [3d Dept 2023]).

The Court finds that plaintiff established its prima facie entitlement to summary judgment. Account invoices submitted in support of plaintiff's motion show that plaintiff billed defendant for medical services provided to defendant and a third party, Kaleb Cummings, for whom defendant was listed as the responsible party. These services were provided on August 25, 2021, November 4, 2021 and November 11, 2022. An affidavit submitted by Terri Boomhower, plaintiff's Director of Network Relations, indicates that plaintiff billed defendant's health insurance provider, but that defendant's insurance did not cover all of the costs, leaving defendant

personally responsible for an outstanding balance of \$1,034.64. Boomhower also stated that bills were sent to defendant's address. This evidence is sufficient to establish that plaintiff provided services to defendant and defendant failed to pay plaintiff for those services, causing plaintiff to suffer \$1,034.64 in damages from defendant's breach (*see Seton Health at Schuyler Ridge Residential Health Care v Dziuba*, 127 AD3d 1297, 1298-1299 [3d Dept 2015]; *Education Plus, Inc. v Glasser*, 112 AD3d 1125, 1125-1126 [3d Dept 2013]).

The Court further finds that defendant failed to raise a genuine issue of material fact. Defendant claims that she was unaware of any outstanding bills for the period between August 25, 2021 and November 11, 2022, but the account invoices and Boomhower's affidavit indicate that services were rendered to defendant and that defendant failed to pay for the portion of those services not covered by her insurance. Even construing the facts in the light most favorable to defendant and accepting her claim as true does not change the fact that defendant owed plaintiff money for services rendered and failed to pay it – whether she had subjective knowledge of her debt does not change the objective fact that she owes money for services rendered. Furthermore, in her response to plaintiff's motion, defendant actually admitted to owing debts for two of the three service dates. Defendant's "general denials and conclusory allegations in opposition" to plaintiff's motion are insufficient to raise a genuine issue of material fact, and so plaintiff is entitled to summary judgment (*George S. May Intl. Co. v Thirsty Moose, Inc.*, 19 AD3d 721, 722 [3d Dept 2005]; *see Seton Health at Schuyler Ridge Residential Health Care v Dziuba*, 127 AD3d at 1299-1300; *Education Plus, Inc. v Glasser*, 112 AD3d at 1126).

Any remaining arguments not specifically addressed herein have been considered and found to be lacking in merit or need not be reached in light of this determination.

Accordingly, it is hereby

ORDERED, that plaintiff's motion for summary judgment is granted; and it is further

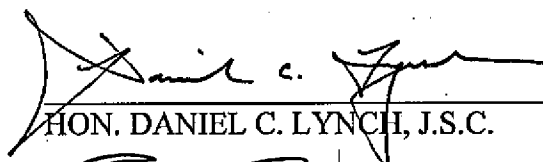
ORDERED, that plaintiff is granted judgment against defendant in the sum of \$1,034.64 with interest from November 11, 2022, plus the costs and disbursements of this action.

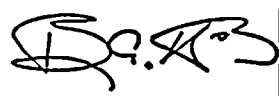
This memorandum constitutes the Decision and Order of the Court. The original Decision and Order is being uploaded to the NYSCEF system for filing and entry by the Columbia County Clerk. The signing of this Decision and Order and uploading to the NYSCEF system shall not constitute filing, entry, service, or notice of entry under CPLR 2220 and § 202.5-b(h)(2) of the Uniform Rules for the New York State Trial Courts. Counsel is not relieved from the applicable provisions of those rules with respect to service and notice of entry of the Decision and Order.

SO ORDERED.

ENTER.

Dated: April 8, 2024
Albany, New York



HON. DANIEL C. LYNCH, J.S.C.
 04/09/2024

PAPERS CONSIDERED:

1. Notice of Motion for Summary Judgment dated January 25, 2024, together with the Affirmation in Support of Linda L. Donovan, Esq. and attached Exhibits A and B, as well as the Statement of Material Facts and attached Exhibit 1.
2. Answer of Defendant Lucy Van Ness, dated February 23, 2024.
3. Affirmation in Reply of Linda L. Donovan, Esq., dated March 6, 2024, and attach Exhibit A.

To:

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