

Rudden v Utopia Home Care Inc.
2024 NY Slip Op 35477(U)
April 12, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 616527/2022
Judge: Vincent J. Martorana
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Short Form Order

INDEX No: 616527/2022

Supreme Court of the State of New York
IAS Part 23 - County of Suffolk

PRESENT: Hon. Vincent J. Martorana

WENDY RUDDEN,

Plaintiff,

- against-

UTOPIA HOME CARE INC.,

Defendant.

ORIG. RETURN DATE: 01/25/24

ADJOURNED DATE:

MOTION SEQ. NO.: 001 - MD

PLTF'S/PET'S ATTY:

Law Office of John F. Vodopia, Esq.

191 New York Avenue

Huntington, New York 11743

DEFT'S/RESP'S ATTY:

Ahern & Ahern, Attorneys &

Counselors at Law, PLLC

One Main Street

Kings Park, New York 11754

Upon efiled documents numbered 19-41; it is

ORDERED that Defendant's motion seeking summary judgment is denied with leave to renew upon substantial completion of discovery; it is further

ORDERED that the parties shall appear for a compliance conference before the court on **May 16, 2024 at 9:30 a.m., in person**, at 1 Court Street, Room 148-A, Riverhead New York 11901.

Plaintiff alleges that she is the personal guarantor of home care services provided to her mother, Dorothy Hunter ("Hunter"). Although Hunter possessed a Medicaid benefit card and was eligible for Medicaid coverage, Plaintiff Wendy Rudden ("Rudden") alleges that Defendant required her to pay in advance for her mother's care, knowing that Medicaid would not reimburse her, and then Defendant failed and refused to seek payment from Medicaid. Plaintiff seeks reimbursement in the amount of \$31,321.75, "liquidated damages" in the amount of \$5,000, reimbursement for the cost of a Medicaid consultant in the amount of \$1,500.00, plus costs, disbursements and "attorney's fees, if applicable." The services at issue were rendered between November 9, 2018 and January 14, 2019. Issue has been joined and Defendant now seeks summary judgment.

Defendant offers an affidavit of Diane Martinez ("Martinez"), President of Defendant. Martinez asserts that Plaintiff is not properly a party to the within action because the Service Agreement ("Agreement") at issue was executed solely by Dorothy Hunter on November 9, 2018. Martinez further states that Hunter was approved for Medicaid on November 2, 2018 and that

Wendy Rudden v Utopia Home Care Inc.
Hon. Vincent J. Martorana

Index No.: 616527/2022

Page 2

Plaintiff had no part of the application process and was not aware that Hunter had been approved for Medicaid. Defendant attests that all of the documents and applications involving Hunter indicated that she was a private pay client, including the service agreement, and that the service agreement was signed by Hunter's daughter, Carol Lyn Schlim Thomason ("Thomason"), as guarantor, not by Rudden (who is also Hunter's daughter). Martinez states that Defendant was never provided with any Medicaid information and they had no responsibility to attempt to seek payment from Medicaid. Additionally, it is asserted that the deposit was paid by Thomason, rather than Rudden, and that since Hunter was a private pay client whose account was paid in full, seeking payment from Medicaid would be fraud. Plaintiff previously sought reimbursement from Medicaid but Medicaid issued a ruling that, as the services were rendered after Medicaid approval and issuance of a benefits card, Medicaid rules prohibited reimbursement.

Defendant provides a copy of the Admission Consent/Service Agreement which shows that Thomason authorized a credit card deposit. It appears that Thomason signed under "Credit Card Deposit Authorization," although Plaintiff disputes this. Next to this section is the heading "Guarantor of Medical & Financial Responsibility." Beneath such heading is a signature line for "Client or Responsible Party/Relationship to Client," which bears an illegible signature, and lines for printed name and relationship which indicate "Wendy Rudden" and "dtr." Defendant claims that Rudden did not sign as Responsible Party and that "The only place that Wendy Rudden's name appears on the service agreement is "Print Name: Wendy Rudden and relationship dtr."

Plaintiff attests that when she first arranged for care, she met with Julie Ahern Jennings ("Jennings") of Defendant on November 6, 2018. At that meeting, which took place at St Johnland Nursing Home, Plaintiff avers that she told Ms. Jennings that Hunter had received her Medicaid CBIC card on November 2, 2018. Plaintiff further states that when the agreement was signed, a nurse named B. Weiss was sent by Defendant to meet with Plaintiff at Hunter's former home. It is asserted that Weiss had Plaintiff sign as guarantor and they called Plaintiff's sister in Arizona to provide a credit card for the deposit. Thompson was not present and did not sign any of the forms. Plaintiff attests that Weiss lead her to believe that she had to pay up front in case Medicaid did not pay. She states that she believed she could submit the bills to Medicaid, that Weiss checked the "private pay" box, and that no one explained what "private pay" meant. Plaintiff alleges that Jennings helped her apply for a NYS Universal Assessment, that the MLTC Universal Assessment was approved in November 2018, indicating that Hunter qualified for home Medicaid services, that Jennings directed her to set up an overage trust account for managed long term care with a company she knew, and that Plaintiff informed Defendant on November 17, 2018 that Hunter had been approved for universal assessment. Plaintiff asserts that both Jennings and Weiss knew that Hunter had Medicaid.

Plaintiff asserts that Defendant's representatives lead her to believe she had to pay up front and that she would receive reimbursement from Medicaid. She alleges that Defendant knew that she could not receive direct reimbursement but Plaintiff did not. Plaintiff submitted requests for reimbursement to Medicaid and was denied. She hired a Medicaid consultant to represent her and to investigate the issue. Plaintiff claims that Mr. Vitali at Defendant told Plaintiff's Medicaid consultant that Defendant would bill Medicaid, but when Plaintiff tried to follow up, Mr. Vitali would not take her calls. The Medicaid denial was ultimately appealed and hearings were held on June 2, 2020, March 17, 2021, April 16, 2021, May 21, 2021, June 30, 2021, and August 10, 2021. Plaintiff sent correspondence to Defendant requesting that Defendant seek reimbursement from

Wendy Rudden v Utopia Home Care Inc.
Hon. Vincent J. Martorana

Index No.: 616527/2022
Page 3

Medicaid, but Defendant has not responded. Plaintiff speculates that Defendant's actions may be motivated by the self-pay rate being higher than the Medicaid rate, but there is no evidence in the record to support this.

Plaintiff asserts that discovery is needed with respect to Defendant's representatives and what transpired in their interactions with Plaintiff. Plaintiff further argues that Defendant's motion should be denied because there is disagreement as to many assertions of fact, and that the Martinez affidavit is not persuasive to establish that Defendant had no obligation to seek payment from Medicaid. Plaintiff also states that Defendant's motion for summary judgment should be denied and that summary judgment should be granted to her instead.

A party moving for summary judgment "must make 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" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324, 508 NYS2d 923 [1986]). Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316 [1985]). If the moving party produces the requisite evidence, the burden then shifts to the nonmoving party to establish the existence of material issues of fact which require a trial of the action (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 942 NYS2d 13 [2012]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595 [1980]). Mere conclusions or unsubstantiated allegations are insufficient to raise a triable issue (see *O'Brien v Port Auth. of N.Y. & N.J.*, 29 NY3d 27, 52 NYS3d 68 [2017]). The opposing party must "produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Stonehill Capital Mgmt., LLC v. Bank of the West.*, 28 NY3d 439, 448, 45 NYS3d 864 [2016])(quoting *Alvarez v Prospect Hosp.*, 68 NY2d at 324, 508 NYS2d 923, 501 NE2d 572). In deciding the motion, the Court must view all evidence in the light most favorable to the nonmoving party (*Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339, 937 NYS2d 157 [2011]). On a motion for summary judgment the court is not to determine credibility, but whether there exists a factual issue (*S.J. Capelin Associates v Globe Mfg. Corp.*, 34 NY2d 338, 357 NYS2d 478 [1974]). However, the court must also determine whether the factual issues presented are genuine or unsubstantiated (*Prunty v Keltie's Bum Steer*, 163 AD2d 595, 559 NYS2d 354 [2d Dept 1990]). If the issue claimed to exist is not genuine but is feigned or speculative and there is nothing to be tried, then summary judgment should be granted (*Prunty v Keltie's Bum Steer*, *supra*, citing *Glick & Dolleck v Tri-Pac Export Corp.*, 22 NY2d 439, 293 NYS2d 93 [1968]; *O'Brien v Port Auth. of N.Y. & N.J.*, 29 NY3d 27, 52 NYS3d 68 [2017]; *Columbus Trust Co. v Campolo*, 110 AD2d 616, 487 NYS2d 105 [2d Dept 1985], *affd.*, 66 NY2d 701, 496 NYS2d 425).

Pursuant to CPLR §3212(f), summary judgment may be precluded under circumstances where discovery is incomplete; however, the discovery sought must be more than a fishing expedition. It may not be predicated upon speculative hope that evidence supporting a theory may be uncovered (*Greenberg v McLaughlin*, 242 AD2d 603, 604, 662 NYS2d 100, 101 [2d Dept 1997]; *Zarzona v. City of New York*, 208 AD2d 920, 920, 617 NYS2d 534, 535 2d Dept 1994]; *Price v. Cty. of Suffolk*, 303 AD2d 571, 756 NYS2d 758 [2d Dept 2003]). A mere hope that further discovery will uncover some helpful fact is insufficient to deny summary judgment as premature; there must be a real basis for the assertion that such discovery is necessary (*Zarzona v. City of New York*, 208 AD2d 920, 617 NYS2d 534 [2d Dept 1994]; *Greenberg v McLaughlin*, 242 AD2d 603, 662 NYS2d 100, 101 [2d Dept 1997]; *Price v. Cty. of Suffolk*, 303 AD2d 571, 756 NYS2d 758, 759

Wendy Rudden v Utopia Home Care Inc.
Hon. Vincent J. Martorana

Index No.: 616527/2022
Page 4

[2d Dept 2003]).

Here, Plaintiff has raised issues in her defense that necessitate discovery. Plaintiff should be given the opportunity to conduct such discovery prior to the Court's consideration of whether or not summary judgment is appropriate (*Valdivia v. Consol. Resistance Co. of Am.*, 54 AD3d 753, 755, 863 NYS2d 720 [2d Dept 2008]; *Harvey v. Nealis*, 61 AD3d 935, 936, 877 NYS2d 459, 460 [2d Dept. 2009]; *Churaman v. C&B Elec., Plumbing & Heating, Inc.*, 142 AD3d 485, 486–87, 35 NYS3d 716, 718 [2d Dept. 2016]; *Magee v. Cty. of Suffolk*, 14 AD3d 664, 664–65, 789 NYS2d 289 [2d Dept 2005]; *Gruenfeld v. City of New Rochelle*, 72 AD3d 1025, 1026, 900 NYS2d 144 [2d Dept. 2010]). Accordingly, Defendant's summary judgment motion is denied as premature. Defendant may seek to renew its motion upon substantial completion of discovery. Plaintiff's request that she be granted summary judgment is denied without prejudice to future motion at the appropriate time.

Dated: April 12, 2024
Riverhead, New York



VINCENT J. MARTORANA, J.S.C.

CHECK ONE: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION