Northeast Plastic Surgery PLLC v Anthem Blue Cross Blue Shield
2025 NY Slip Op 34717(U)
December 4, 2025
Supreme Court, New York County
Docket Number: Index No. 653799/2024
Judge: Judy H. Kim
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JUDY H. KIM** **PART** **04**

Justice

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NORTHEAST PLASTIC SURGERY PLLC,

Plaintiff,

-against-

ANTHEM BLUE CROSS BLUE SHIELD, f/k/a Empire Blue Cross Blue Shield,

Defendant.

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INDEX NO. 653799/2024

MOTION DATE

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33

were read on this motion to DISMISS.

Upon the foregoing documents, defendant's motion, pursuant to CPLR 3211(a)(7), to dismiss the complaint is granted.

FACTUAL BACKGROUND

The following factual recitation is adapted from plaintiff's complaint and taken as true for purposes of this motion. Plaintiff Northeast Plastic Surgery PLLC ("Northeast") is a medical provider specializing in plastic surgery (NYSCEF Doc No. 1, complaint at ¶1). Northeast's owner and principal, Shareef Jandali, M.D., performed four surgical treatments on an infant patient to correct "bilateral congenital ear conformities" (*id.* at ¶¶5-6). The infant patient was a beneficiary of an employer-based health plan (the "Plan") for which defendant Anthem Blue Cross Blue Shield served as claims administrator (*id.* at ¶7). As an "out-of-network provider," Northeast did not have a network contract with Anthem to determine a reimbursement rate for this treatment (*id.* at ¶8). However, "[d]ue to the unique circumstances of [the infant patient's] situation," Anthem granted

Northeast an "in-network exception," also known as a "gap exception," in which it agreed to extend coverage for plaintiff's out-of-network service "in a manner which limits the patients' cost-sharing liability to the amount that would apply, if the patient had received an in-network treatment" (*id.* at ¶¶10-11).

Dr. Jandali performed the surgical treatments on January 25, 2021, January 31, 2021, February 7, 2021, and February 14, 2021 (*id.* at ¶¶6, 12, 15, 22, 28). Northeast submitted medical bills for these surgical treatments to Anthem totaling $230,750.00 (*id.* at ¶¶13, 18, 24, 30). Anthem issued payment to Northeast totaling $19,706.26 (*id.* at ¶36). Northeast now asserts that after Anthem granted the in-network exception, it "had an obligation to process" plaintiff's claims in a way that the patient would incur "no greater cost-sharing than if the treatment was performed by a network provider" and was therefore "obligated to either pay [Northeast's] billed charge, or negotiate an agreeable rate" but instead paid plaintiff less than it would have paid an in-network provider (*id.* at ¶¶16, 21, 27, 33-35). Northeast appealed this underpayment but did not receive a response to its appeal (*id.* at ¶¶38-39). As a result, Northeast commenced this action asserting a claim for promissory estoppel, on the grounds that Anthem made a "clear and definite promise" that the surgical treatments performed "would be covered pursuant to an in-network exception" and that Northeast detrimentally relied on this in-network exception "as a promise of full payment" in performing medical treatments on the patient, but did not receive full payment (*id.* at ¶¶40, 44-49).

Anthem now moves to dismiss the complaint on two grounds. Anthem argues that the complaint fails to state a claim for promissory estoppel insofar as it does not allege a clear and unambiguous promise to pay the full amount plaintiff billed or plaintiff's detrimental reliance on any such promise and that, in any event, Northeast is precluded from bringing this claim by the

express preemption clause of the Employee Retirement Income Security Act, 29 USC §1001 *et seq.* ("ERISA").

In opposition, Northeast maintains that it has alleged a clear and unambiguous promise by referencing the specific authorization number provided by Anthem and its detrimental reliance on this promise through allegations that it subsequently performed the treatments surgical treatments (NYSCEF Doc No. 26, memo of law in opposition, at 12-13). Northeast also argues that its claim is not preempted under ERISA because Anthem's promise created "an independent legal duty, not intertwined with the Plan" and that preemption "would deprive [Northeast] of a remedy to enforce the promises made" inasmuch as the Plan's anti-assignment clause prevents Northeast from bringing a claim under ERISA (*id.* at 7, 10).

DISCUSSION

On a motion to dismiss pursuant to CPLR 3211(a)(7), the pleading is afforded a liberal construction, where the facts as alleged in the complaint are accepted as true and the plaintiff is accorded the benefit of every possible favorable inference (*Leon v Martinez*, 84 NY2d 83, 87 [1994]). The Court must "determine only whether the facts as alleged fit within any cognizable legal theory . . . the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one" (*id.* at 87-88).

Plaintiff has not stated a claim for promissory estoppel. "The elements of promissory estoppel are a clear and unambiguous promise, reasonable and foreseeable reliance by the party to whom the promise is made, and an injury sustained in reliance on that promise" (*Odonata Ltd. v Baja 137 LLC*, 206 AD3d 567, 569 [1st Dept 2022]). Plaintiff has failed to allege a clear and unambiguous promise that Anthem would pay it the full amount billed. Its allegation that Anthem granted plaintiff an in-network exception, pursuant to which Anthem would pay plaintiff in

conformity with the rates set in the Plan, is insufficient to do so (*Northeast Plastic Surgery Pllc v Aetna Life Ins. Co.*, 2025 WL 2888735 [Sup Ct, NY County 2025] citing *Underhill Holdings, LLC v Travelsuite, Inc.*, 137 AD3d 533, 534 [1st Dept 2016]).

In any event, Northeast's claim is preempted by ERISA, which "supersede[s] any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" (ERISA § 514; 29 USC § 1144[a]). A law "relates to" an employee benefit plan "if it has a connection with or reference to such a plan" (*Shaw v Delta Air Lines, Inc.*, 163 US 85, 96-97 [1983]). Accordingly, ERISA "preempts those [claims] that seek to rectify a wrongful denial of benefits promised under ERISA-regulated plans, and do not attempt to remedy any violation of a legal duty independent of ERISA" (*Paneccasio v Unisource Worldwide, Inc.*, 532 F3d 101, 114 [2d Cir 2008] quoting *Aetna Health Inc. v Davila*, 542 US 200, 214 [2004]). Here, plaintiff's claim is preempted because "[t]he heart of the plaintiff's cause[] of action involves whether the payments … received were less than payments mandated under the terms of the employee welfare benefit plan between patient and employer" (*Jeffrey Farkas, M.D., LLC v United Healthcare Ins. Co.*, 2025 NY Slip Op 30838[U], 3 [Sup Ct, Kings County 2025] citing, *inter alia*, *Pilot Life Ins. Co. v Dedeaux*, 481 US 41 [1987]). In other words, because plaintiff seeks payment as, effectively, an in-network provider, "[t]he only way to determine whether [p]laintiff's claims were administered properly is to review the terms of the governing ERISA Plan" (*Norman Maurice Rowe, MD, MHA, LLC v Oxford Health Ins. Co., Inc*, 2022 NY Slip Op 34442[U], 2 [Sup Ct, Queens County 2022] citing, *inter alia*, *Pirro v Nat'l Grid*, 590 F. App'x 19, 22 [2d Cir. 2014]).

McCulloch Orthopaedic Surgical Services, PLLC v Aetna Inc., 857 F3d 141, 148 (2d Cir 2017), relied upon by plaintiff in opposition, is inapposite. *McCulloch* "concerned complete preemption under [s]ection 502" of ERISA rather than the express preemption under section 514

at issue here (*Cooperman v Empire HealthChoice HMO, Inc.*, 2025 WL 950675, *17, 2025 U.S. Dist. LEXIS 58515, *50 [SDNY March 28, 2025, 1:24-CV-00866 (JLR)]) and "[did] not implicate the actual coverage terms of the health care plan or require a determination as to whether those terms were properly applied … " (*McCulloch*, 857 F3d at 149). Finally, whether Northeast is precluded by the Plan's anti-assignment provision from pursuing an ERISA claim in Federal court is "not relevant in determining whether [the] instant cause[] of action [is] preempted by ERISA" (*Bialy v Honeywell Intern. Inc.*, 49 AD3d 1328, 1330 [4th Dept 2008] [internal citations omitted]).

Accordingly, it is

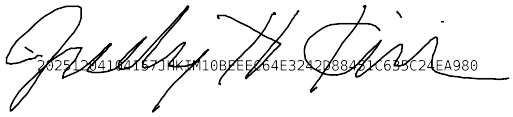
ORDERED that defendant's motion to dismiss is granted and this action is hereby dismissed; and it is further

ORDERED that defendant shall, within twenty days of entry of the date of this decision and order, serve a copy of same with notice of entry upon plaintiff and the Clerk of the Court; and it is further

ORDERED that service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website); and it is further

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the decision and order of the Court.



12/4/2025
DATE

HON. JUDY H. KIM, J.S.C.

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