

SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION, PART 46, SUFFOLK COUNTY

COPY

Present: HON. EMILY PINES
J. S. C.

Original Motion Date: 02-29-2010
Motion Submit Date: 06-08-2010
Motion Sequence .: 001 MOTD

[] FINAL DISP
[x] NON - FINAL DISP

STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY,

Plaintiff,

-against-

SOCORRO C. VINCNTE, M.D. PC , SOCORRO C.
VINCENTE MD, dba VILLAGE MEDICAL AND REHAB,
TURNPIKE MEDICAL, PC TURNPIKE MEDICAL PC
dba PATCHOGUE MEDICAL AND REHAB SUFFOLK
WIDE MEDICAL GROUP PC., ISLAND WIDE
MEDICAL HEALTH SERVICES, PC., SUFFOLK AVE
MEDICAL PC PATCHOGUE MEDICAL SERVICES PC,
HUNTINGTON MEDICAL SERVICES, PC,
HEMPSTEAD MEDICAL CARE PC, THREE VILLAGE
MEDICAL PC., TRI - V MEDICAL PC., BRENTWOOD
MEDICAL PLAZA PC, HEMPSTEAD MEDICAL PLAZA,
PC., HUNTINGTON MEDICAL PLAZA PC,
PATCHOGUE MEDICAL PLAZA, PC, SOCORRO C.
VICENTE, MD, JOSEPH PEREZ MD, MEDSTAR
MANAGEMENT LLC, STELLAR MANAGEMENT, LLC,
WORLDWIDE MANAGEMENT, LLC., REGIONAL
MEDICAL MARKETING, INC, JOSEPH MUSTAZZA,
GREGORY BONASERA AND DAVID M. TUBENS,

Defendants.
_____X

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ORDERED, that the motion (motion sequence number 001) by plaintiff for a preliminary injunction is denied in its entirety; and it is further

ORDERED, that the temporary restraining orders contained in the Order to Show Cause (MOLIA,

J.) dated February 2, 2010 are hereby vacated and of no further force and effect; and it is further

ORDERED, that a status conference is scheduled for September 20, 2010 at 9:30 a.m. before the undersigned.

Plaintiff commenced this action against all defendants by the filing of a Summons and Verified Complaint on December 21, 2009. Plaintiff seeks a declaratory judgment that certain of the defendants, professional medical corporations, are not entitled to payment for no-fault medical benefits provided as they are improperly formed professional corporations. Plaintiff also seeks a declaratory judgment that defendants are not entitled to collect no-fault benefits because certain health services provided were rendered by independent contractors, and not employees of the professional corporation. Finally, plaintiff seeks damages against defendants based upon a theory of unjust enrichment.

The dispute centers around a series of professional corporations formed, owned and operated by two doctors, defendants Socorro C. Vicente (“Vicente”) and Joseph Perez (“Perez”). The gravamen of plaintiff’s complaint is that Vicente and Perez formed these corporations as shams or “fronts” for the non-doctor defendants, including Joseph Mustazza (“Mustazza”), Gregory Bonasera (“Bonasera”) and David Tubens (“Tubens”), to allow them to render chiropractor services and receive no-fault benefit payments from plaintiff. Plaintiff argues that such arrangement was illegal, violated the proscription against medical professionals entering into fee-splitting arrangements with non-doctors and bars defendants’ recovery of no-fault benefit payments. Plaintiff further claims that defendants are barred from recovering for services provided by independent contractors. Defendants through the various corporate entities, have commenced numerous actions against plaintiff seeking recovery of amounts allegedly due and owing for services rendered to patients covered by plaintiff’s no-fault benefits.

By Order to Show Cause (MOLIA, J.) dated February 2, 2010, pending the hearing and determination of this action, (1) defendants Village Medical and Rehab, Turnpike Medical, P.C., and Suffolk Wide Medical Group, P.C. were enjoined and restrained from filing and/or instituting against plaintiff any new actions, arbitrations or other proceedings seeking reimbursement for no-fault benefits; (2) all currently pending actions, arbitrations or other proceedings instituted by defendants Village Medical and Rehab, Turnpike Medical, P.C., and Suffolk Wide Medical Group, P.C. seeking reimbursement for

no-fault benefits were stayed; and (3) defendants Village Medical and Rehab, Turnpike Medical, P.C., and Suffolk Wide Medical Group, P.C. were enjoined from submitting to plaintiff any bills, claims and/or other charges for no-fault benefits. Plaintiff now seeks an Order, *inter alia*, pending the determination of this action, enjoining the professional corporations from filing and/or instituting against plaintiff any new actions, arbitrations or proceedings seeking reimbursement for no-fault benefits, staying all currently pending actions, arbitrations or other proceedings by any of the professional corporation defendants against plaintiff seeking reimbursement for no-fault benefits, and enjoining the professional corporation defendants from submitting to plaintiff any bills, claims and/or other charges for no-fault benefits.

Plaintiff alleges that although the defendants are professional medical corporations, they are actually owned and controlled by chiropractors who are not licensed to practice medicine and thus are not entitled to collect benefits pursuant to 11 NYCRR §65-3.16(a)(12). Moreover, plaintiff asserts that most of the service for which the defendants seek payment were performed by independent contractors, rendering them ineligible to collect benefits pursuant to 11 NYCRR §65-3.11(a). Plaintiff states that defendants have commenced 96 no-fault collection actions against plaintiff which are pending in the New York City Civil Courts and Suffolk County District Courts. Plaintiff argues that a stay of these proceedings would promote judicial economy and avoid inconsistent outcomes.

In sum, plaintiffs claim that the defendants Mustazza, Bonasera and Tubens (non-doctors) paid Vincente and Perez for the use of their names and licenses to form the professional corporation defendants. Plaintiffs assert that Vincente and Perez do not really own or operate these professional medical corporations but rather, the management company defendants, Medstar Management, LLC (“Medstar”), Stellar Management, LLC (“Stellar”), Worldwide Management, LLC (“Worldwide”) and Regional Medical Marketing, Inc. (“Regional”) were created by Mustazza, Bonasera and Tubens as a mechanism by which they could exercise dominion and control over the professional medical corporations. Thus, plaintiff argues that these “fraudulently licensed medical corporations” are not entitled to receive reimbursement of assigned no-fault benefits because BCL §1503(b) and Education Law §6530 prohibits non-physicians from owing professional medical corporations. Additionally, plaintiff claims that most, if not all of the services rendered were performed by independent contractors and not employees of the professional medical corporations, and bars recovery by defendants.

In support of its motion for preliminary injunctive relief, plaintiff relies heavily on the August 18, 2005 examination under oath (“EUO”) testimony of Perez, which was continued on September 22, 2005. Plaintiff characterizes the Perez testimony as “limited”, although even a cursory review shows that it was almost 200 pages. Nevertheless, plaintiff claims that Perez’s EUO demonstrates that Perez was unable to testify as to which professional corporations were doing business under assumed names, the terms of the business agreements, the locations of certain practices and the names of key employees. This, according to plaintiff, bolsters its claim that Mustazza, Bonasera and Tubens, licensed chiropractors and not medical doctors, were actually in control of the professional medical corporations. Additionally, plaintiff claims that certain bank records demonstrate that Mustazza, Bonasera and Tubens received a disproportionate share of the professional corporations’ revenue, evidencing their true ownership of these entities. Finally, plaintiff believes that the defendants created successor corporations in order to elude investigation by plaintiff.

With regard to the independent contractors, plaintiff argues that Perez admitted that the professional corporations used independent contractors to provide services, thus rendering them ineligible to collect no-fault benefit payments.

Based on the foregoing, plaintiff urges the Court to grant its motion for preliminary injunctive relief.

The Court has received three sets of opposition papers to the plaintiff’s motion for a preliminary injunction from the following defendants: (1) Vicente, Socorro C. Vicente, M.D., P.C., Socorro C. Vicente, M.D., P.C. d/b/a Village Medical and Rehab, Tri-V Medical, P.C. and Three Village Medical, P.C. (collectively referred to as the “Vicente opposition” or “Vicente defendants”); (2) Medstar Management, LLC (“Medstar”), Stellar Management, LLC (“Stellar”), Worldwide Management, LLC (“Worldwide”), Regional Medical Marketing, Inc. (“Regional”), Mustazza, Bonasera and Tubens (collectively referred to as the “management opposition” or “management defendants”); and (3) Perez, Turnpike Medical, P.C. d/b/a Patchogue Medical & Rehab, Suffolk Wide Medical Group, P.C., Island Wide Medical Health Services, P.C., Suffolk Ave Medical P.C., Patchogue Medical Services, P.C., Huntington Medical Services P.C., Hempstead Medical Care, P.C., Brentwood Medical Plaza, P.C., Hempstead Plaza, P.C., Huntington Medical Plaza, P.C., and Patchogue Medical Plaza, P.C. (collectively

referred to as the “Perez opposition” or “Perez defendants”).

In the Vicente opposition, these defendants explain that Vincente has been licensed to practice medicine since 1969, formed Socorro C. Vicente, M.D., P.C., in or about 1980 and hired Medstar in or about 2000 to assist in the opening and administration of this facility. According to Vicente, Medstar was responsible for the administration of the facility, including billing and collection, and she would focus on practicing medicine. Although Medstar was authorized to deposit funds in Vicente’s account, only Vicente had signatory and withdrawal authority. Subsequently, Vicente formed Turnpike and also hired Medstar to run this facility. In 2001, Vicente formed a partnership with Perez, they opened several facilities and hired management companies to perform the administrative tasks for the facilities. According to Vicente, in or about 2006, she and Perez had a “falling out” and decided to split up the corporations. Vicente formed Three Village, P.C. and Tri-V Medical, P.C.

Vicente argues that plaintiff’s claims against the Vicente defendants are speculative and conclusory and the motion for a preliminary injunction must be denied. Vicente notes that she has always maintained the same tax identification number, which obviously she would not have done if she was conspiring against plaintiff and that the successor corporations were formed when she and Perez split up to prevent the co-mingling of funds. Moreover, Vicente attaches copies of the management agreements demonstrating that Medstar received a fixed monthly payment, regardless of revenue, as well as fair market evaluations by financial auditors concluding that the compensation was reasonable. Thus, the Vicente defendants argue that plaintiff’s claims regarding the fraudulent incorporation of the professional medical corporations is without merit and the request for a preliminary injunction must be denied.

Likewise, the Vicente defendants argue that there are questions of fact regarding the use of the physical therapists at the facilities that preclude granting the preliminary injunction as plaintiff has failed to demonstrate a likelihood of success on the merits on this issue. Although Vicente admits certain physical therapists were employed through an employment agency, they were only treating her patients and there is a question as to whether they are considered employees or independent contractors. Vicente also argues that plaintiff cannot establish irreparable injury because it has ceased paying the no-fault benefits and that the equities do not weigh in plaintiff’s favor as it has waited four (4) years to commence the within action.

The Perez defendants also oppose the motion and essentially mirrors the opposition of the Vicente defendants regarding the history of the relationship between Vicente and Perez and the formation of the professional medical corporations. Perez also explains that certain of the Perez defendants, specifically, Brentwood Medical Plaza, P.C., Huntington Medical Plaza, P.C., Hempstead Medical Plaza, P.C., and Patchogue Medical Plaza, P.C., do not have any connection with any of the management defendants, but rather these Perez defendants utilize solely employees to handle the administration of the facilities. Additionally, Perez argues that plaintiff has failed to set forth any allegations of wrongdoing with regard to any entity formed after September 2005, that is, Suffolk Ave Medical P.C., Patchogue Medical Services, P.C., Three Village Medical P.C., Tri-V Medical, P.C., Brentwood Medical Plaza, P.C., Hempstead Medical Plaza, P.C., Huntington Medical Plaza, P.C., and Patchogue Medical Plaza, P.C.

Contrary to the claims of plaintiff, the Perez defendants claim that Perez explained at the EUO the establishment and operation of the professional corporations and the relationship with the chiropractors and physical therapists. Moreover, the transcript reveals that Perez offered plaintiff a copy of his curriculum vitae which set forth the information regarding the corporate entities and locations. Perez argues that plaintiff has attempted to offer only an incomplete record which is insufficient to support its motion for a preliminary injunction. Additionally, the Perez defendants note that the purpose of the EUO is to examine specific claims submitted, but despite more than seven hours of testimony, plaintiff failed to inquire about any such claims. Perez did testify however that he and Vicente were the sole signatories on the corporate accounts and had full control of both the clinical and financial aspects of the corporations. The Perez defendants argue that plaintiff has failed to demonstrate a likelihood of success on the merits, irreparable injury or a balancing of the equities in its favor and the motion must be denied in its entirety.

Finally, the management defendants submit opposition to the plaintiff's motion, including affidavits by Mustazza, Bonasera and Tubens. These defendants argue that plaintiff has failed to provide any evidence to substantiate its claim that the physicians "sold their licenses" to the management defendants. Specifically, the management defendants note the existence of detailed management agreements governing the parties' respective relationship, the doctors full time practice of medicine at the various locations and the expenses incurred by the management companies in the performance of their duties pursuant to the agreements. The physicians signed the checks paid to the management companies and fair market evaluations were conducted of the agreements. These defendants further argue that the

existence of the written management agreements which set forth a fixed fee has been found to diminish the likelihood of the existence of an improper professional corporation ownership or control. They emphasize that only Vicente and Perez signed each check dispersed on the corporate accounts and only Vicente and Perez had authority to withdraw funds. Thus, they claim plaintiff has failed to meet test for entitlement to a preliminary injunction and the motion must be denied in its entirety.

Plaintiff submits an affirmation in reply to each of defendant's opposition papers. Plaintiff reiterates its claims that the professional medical corporations were improperly formed as they were really just "fronts" for the chiropractors and that defendants were not entitled to reimbursement for services rendered by independent contractors. Plaintiff argues that it meets the test for a preliminary injunction and the motion should be granted in its entirety.

It is well settled that "a party seeking the drastic remedy of a preliminary injunction must establish a clear right to that relief under the law and the undisputed facts upon the moving papers. The burden of proof is on the movant to demonstrate a likelihood of success on the merits, the prospect of irreparable injury if the relief is withheld, and a balancing of the equities in the movant's favor." ***Gagnon Bus Company, Inc. v. Vallo Transportation, Ltd.***, 13 A.D.3d 334, 786 N.Y.S.2d 107 (2d Dept. 2004). ***See also, South Amherst, Ltd. v. H.B. Singer, LLC.***, 13 A.D.3d 515, 786 N.Y.S.2d 573 (2d Dept. 2004). The purpose of a preliminary injunction is to preserve the status quo and to prevent the dissipation of property, which might make a judgment ineffectual. ***Alexandru v. Pappas***, 68 A.D.3d 690, 890 N.Y.S.2d 593 (2d Dept. 2009). However, the Courts have repeatedly held that where the facts are in sharp dispute, plaintiff cannot establish the elements required and a preliminary injunction should not be granted. ***Digestive Liver Disease, P.C. v. Patel***, 18 A.D.3d 423, 793 N.Y.S.2d 773 (2d Dept. 2005). ***See also, Related Properties v. Town Board of Town/Village of Harrison***, 22 A.D.3d 587, 802 N.Y.S.2d 221 (2d Dept. 2005); ***Pearlgreen Corp., v. Yau Chi Chu***, 8 A.D.3d 460, 778 N.Y.S.2d 516 (2d Dept. 2004); ***MacIntyre v. Metropolitan Life Insurance Co.***, 221 A.D.2d 602, 634 N.Y.S.2d 180 (2d Dept. 1995).

In this case, the Court finds that plaintiff has failed to demonstrate entitlement to the relief it seeks. The Court cannot recall a case where the facts have been so sharply disputed on a motion for preliminary injunctive relief. While plaintiff ascribed nefarious and albeit illegal motives to Vicente and Perez in the formation of the various professional corporations, defendants paint a far different picture. Defendants submissions reflect that Vicente was a practicing physician for more than thirty years and formed a

partnership with Perez, which while initially successful, ultimately did not endure. The management defendants, who entered into written agreements with the doctors served a function and provided vital services to the ongoing professional medical corporations. These management companies, and their principals, did not have check writing authority or the ability to withdraw funds from the corporate accounts. It appears clear that the doctors wanted to practice medicine and treat patients and delegated the administrative tasks to others, pursuant to written agreements, for which they paid a fee. Moreover, it is not clear at this point whether the physical therapists who treated patients at defendants' facilities were employees or independent contractors. Thus, at this juncture, plaintiff has not established a likelihood of success on the merits of this action, and the motion for a preliminary injunction and stay of all proceedings by defendants seeking reimbursement for no-fault benefits, is denied. The temporary restraining Orders contained in the February 2, 2010 Order to Show Cause are hereby vacated and of no further force and effect.

This constitutes the ***DECISION*** and ***ORDER*** of the Court.

Dated: August 18, 2010
Riverhead, New York



EMILY PINES
J. S. C.

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