

Alleon Capital Partners, LLC v Choudhry

2023 NY Slip Op 34753(U)

February 3, 2023

Supreme Court, Nassau County

Docket Number: Index No. 610648-18

Judge: Jerome C. Murphy

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SUPREME COURT: STATE OF NEW YORK
COUNTY OF NASSAU

PRESENT:

HON. JEROME C. MURPHY,
Justice.

ALLEON CAPITAL PARTNERS, LLC AND
ACP ALLFAMILY UNIVERSAL, LLC,

Plaintiffs,

- against -

SHERYAR CHOUDHRY, TANGENT EHR, LLC,
AMSAC, INC a/k/a AMSAC HEALTHCARE
CONSULTANTS, MANUEL A FARESCAL,
ALL FAMILY MEDICAL, P.C., and
UNIVERSAL MEDICAL, P.C.,

Defendants.

TRIAL/IAS PART 5

Index No.: 610648-18
Motion Date: 11-14-22
Sequence No.: 008 & 009

DECISION AND ORDER

XXX

The following papers have been read on this motion:

Motion Sequence 008 [NYSCEF 167-240]

Amended Notice of Motion, Affirmation, Memorandum of Law in Support and Exhibits.....1

Memorandum of Law in Opposition.....2

Affirmation in Opposition.....3

Memorandum of Law in Reply.....4

Motion Sequence 009 [NYSCEF 221-241]

Notice of Motion, Memorandum of Law..... 1

Statement of Material Facts, Affirmation and Exhibits..... 2

Affirmation in Opposition..... 3

PRELIMINARY STATEMENT

In Motion Sequence 008, defendants, Sheryar Choudhry, Tangent EHR, LLC, AMSAC, Inc a/k/a AMSAC Healthcare Consultants, bring this application for an Order: (a.) Pursuant to and in accordance with CPLR §3212 to dismiss, in its entirety, the Plaintiff's Summons and

Complaint (and any related Amended Complaint) in the above captioned action against Defendants Choudhry, Tangent and Choudhry, and directing that summary judgment be entered in favor of said moving Defendants and against the Plaintiffs, upon the ground that the subject Complaint(s) has/have no merit and fails to state a cause of action against said Defendants based upon the fact; (i) that such Defendants are not liable, as a matter of law, to the Plaintiffs for any breache(s) of contract(s) and/or related accounting in this matter and/or (ii) based upon the fact the subject Loan Documents and IAMA were not made and entered into by and between Plaintiffs and Defendants Choudhry and Tangent, and, thus, no privity of contract(s) exists between any of said parties; (b) In the alternative, pursuant to and in accordance with CPLR §3212 to dismiss, in its entirety, the Plaintiff's Summons and Complaint (and any related Amended Complaint) in the above captioned action against Defendant Choudhry, and directing that summary judgment be entered in favor of said Complaint(s) has/have no merit and fail(s) to state a cause of action against said Defendant based upon the fact that such Defendant is not liable, as a matter of law, to the Plaintiffs under the doctrine of "alter ego" for any breach of contract and/or accounting in this matter; (c) In the alternative, pursuant to and in accordance with CPLR §3212 to dismiss, in its entirety, the Plaintiff's Summons and Complaint (and any related Amended Complaint) in the above captioned action against Defendant Tangent, and directing that summary judgment be entered in favor of said moving Defendant Tangent and against the Plaintiffs, upon the ground that the subject Complaint(s) has/have no merit and fails to state a cause of action against said Defendant Tangent based upon the fact that such Defendant is not liable, as a matter of law, to the Plaintiffs under any of the stringent common law exceptions to the no "successor liability" general rule for any breach of contract and/or accounting in this matter; and for such other further relief as this Court deems just, proper and equitable. Opposition has been submitted.

In Motion Sequence 009, Plaintiff moves for an Order (i) granting summary judgment in favor of Plaintiffs as to the First Cause of Action (Breach of Contract); (ii) a money judgment in the amount of \$716,115.24 representing the amount collected on the Receivables prior to November 22, 2013, plus attorneys' fees, costs and expenses, and prejudgment interest; (iii) a money judgment in the amount of \$2,200,000.00 representing the amount due and owing on the

Receivables to be collected post-November 22, 2013, plus attorneys' fees, costs and expenses, and prejudgment interest; (iv) alternatively, a money judgment in the amount of \$2,916,115.24 (representing \$716,115.24 damages pre-maturity date and \$2,200,000.00 damages due and owing as of the maturity date) plus attorneys' fees, costs and expenses, and prejudgment interest (v) a finding that Tangent Systems is the successor in interest of AMSAC and is liable for all damages attributable to AMSAC (as detailed in the accompanying papers); (vi) a finding that Choudhry is the late ego of AMSAC and Tangent System and is liable for all damages attributable to AMSAC or Tangent Systems; (vii) and award of pre-judgment and post-judgment interest; (viii) an award of expenses and attorneys' fees; and (ix) for such other relief as this Court deems just and proper.

BACKGROUND

Upon the foregoing e-filed documents, the motion interposed by defendants, Sheryar Choudhry, Tangent EHR, LLC, Amsac, Inc. a/k/a Amsac Healthcare Consultants, and Tangent Systems Corp. [hereinafter the Choudhry defendants], for an order pursuant to CPLR 3212 granting summary judgment dismissing the within amended complaint (Sequence #008) and the cross motion interposed by the plaintiffs, Alleon Capital Partners, LLC and ACP Allfamily Universal, LLC, for an order pursuant to CPLR 3212 granting summary judgment as to the First cause of action sounding in breach of contract, together with related relief (Sequence #009), are determined as set forth hereinafter.

On December 22, 2010, plaintiff, Alleon Capital Partners, LLC [hereinafter Alleon] entered into a Loan and Security Agreement [hereinafter the Loan Agreement] with defendants, Universal Medical, P.C. and All Family Medical, P.C., the principal of which is defendant, Manuel A. Farescal [hereinafter collectively the Farescal defendants] (NYSCEF Doc. No. 210). In accordance with the terms of the Loan Agreement, Alleon loaned the Farescal defendants the sum of \$2,782,259.27 which was collateralized by medical receivables owing thereto (*id.*). The Maturity Date for the loan was specifically designated as November 23, 2013 (*id.*). On December 22, 2010, pursuant to an Irrevocable Account Management Agreement [hereinafter IAMA], defendant, Amsac Inc. a/k/a Amsac Healthcare Consultants [hereinafter Amsac] was retained as the "Billing Company" to collect the receivables due under the Loan Agreement. Under the IAMA, beginning on the Effective Date of December 22, 2010 and continuing until the Maturity

Date of November 23, 2013, Amsac, as the Billing Company, was required to deliver to the Collection Agent the proceeds generated from the medical receivables which would then “be deposited into the attorney escrow account established by the Collection Agent” (NYSCEF Doc. No. 212). Within the ambit of the IAMA, the law firm of Rubin & Licatesi, P.C., was engaged as the Collection Agent which was obligated thereunder to “hold, administer, and account for” the receivables delivered by Amsac (*id.*).

In August 2018, the plaintiffs commenced the underlying action asserting claims predicated upon breach of contract, fraud, fraudulent concealment and for an accounting (NYSCEF Doc. No. 1). By Order entered on September 16, 2019, in addition to dismissing those causes of action alleging fraud and fraudulent concealment, the Court held that Alleon lacked the requisite standing to maintain the within action having assigned the relevant promissory note to plaintiff, ACP Allfamily Universal, LLC [hereinafter ACP] (NYSCEF Doc. No. 183). Thereafter, by Order entered on April 15, 2022, this Court granted leave to amend the within complaint so as to add Tangent Systems Corp. as a party defendant (NYSCEF Doc. No. 198). As presently constituted, the underlying complaint asserts two causes of action against all named defendants for breach of contract and an accounting wherein the plaintiff seeks to pierce the corporate veil relative to the Choudhry defendants alleging that defendant, Sheryar Choudhry, as owner of Tangent EHR, LLC, Amsac and Tangent Systems Corp., “exercised dominion and control” over said entities and deliberately orchestrated with the Farescal defendants “the breach of . . . [the Loan Agreement], fraud and theft of at least \$2,400,000” (NYSCEF Doc. No. 200). The parties now move for summary judgment as outlined above.

In moving herein, the Choudhry defendants assert that even assuming the circumstances sub judice were sufficient such that this Court were compelled to invoke its equitable power and disregard the corporate form, inasmuch as there was no breach of contract they cannot be held liable to the plaintiff (Defendants’ Memorandum of Law at pp. 2-8,20). In opposing the defendants’ application and in support of its cross motion, ACP asserts that Choudhry blatantly violated the terms and conditions of the IAMA and the Loan Agreement by unilaterally electing to cease delivery to the Collection Agent of any proceeds from the Receivables generated after the Maturity Date of November 23, 2013 (Plaintiff’s Memorandum of Law at pp. 9-14,18-20). In

so asserting, the plaintiff relies with specificity upon that portion of the deposition testimony of defendant, Sheryar Choudhry, wherein he stated he “never would have directed any funds other than what my company was to in the duration of the contract” (*id.* at p.3).

A party moving for summary judgment bears the initial burden of demonstrating prima facie entitlement to judgment as a matter of law by proffering proof, in admissible form, which establishes the absence of material issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). However, once the proponent of the motion establishes a prima facie showing, the burden shifts to the opposing party to come forth with admissible proof to establish triable issues of fact, the existence of which precludes summary judgment and necessitates a trial of the action (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]).

Of particular relevance herein, “[t]o recover damages for breach of contract, plaintiffs must demonstrate ‘the existence of a contract, [their] performance pursuant to that contract, the defendants’ breach of their obligations pursuant to the contract, and damages resulting from that breach’” (*De Guaman v Am. Hope Group*, 163 AD3d 915, 917 [2d Dept 2018] quoting *Elisa Dreier Reporting Corp. v Global NAPs Networks, Inc.*, 84 AD3d 122, 127 [2d Dept 2011]). “The fundamental, neutral precept of contract interpretation is that agreements are construed in accord with the parties’ intent” (*Maser Consulting, P.A. v Viola Park Realty, LLC*, 91 AD3d 836, 836 [2d Dept 2012] quoting *Greenfield v Philles Records*, 98 NY2d 562, 569 [2002]). Where, the contract in issue “is clear and unambiguous on its face, the intent of the parties must be gleaned from within the four corners of the instrument, and not from extrinsic evidence” (*Rainbow v Swisher*, 72 NY2d 106, 109 [1988]). “The construction and interpretation of an unambiguous written contract is an issue of law within the province of the court” (*Maser Consulting, P.A. v Viola Park Realty, LLC, supra* at 837 quoting *Franklin Apt. Assoc., Inc. v Westbrook Tenants Corp.*, 43 AD3d 860, 861 [2d Dept 2007] and its “role is limited to interpretation and enforcement of the terms agreed to by the parties, and the court may not rewrite the contract or impose additional terms which the parties failed to insert” (*id.* at 837 quoting *131 Heartland Blvd. Corp. v C.J. Jon Corp.*, 82 AD3d 1188, 1189 [2d Dept 2011]). Moreover, where, as here, “a contract was negotiated between sophisticated, counseled business people negotiating at arm’s length, courts should be especially reluctant to interpret an agreement

as impliedly stating something which the parties' specifically did not include" (*Donohue v Cuomo*, 38 NY3d 1, 12 [2022] quoting *2138747 Ontario, Inc. v Samsung C&T Corp.*, 31 NY3d 372, 381 [2018] [internal quotation marks and citation omitted]).

Here, the only contract to which any of the appearing, as well as the moving, defendants were a party is the IAMA executed by Choudhry in his capacity of CEO of Asmac. As referenced above, under the terms thereof Asmac was obligated to "ensure delivery to the Collection Agent the proceeds from the Receivables dollars" commencing "on the Effective Date and continuing until the Maturity Date." The parties herein do not dispute that the term "Effective Date" refers to December 22, 2010 and that "Maturity Date" refers to November 23, 2013. Thus, contrary to the plaintiff's assertions, the deposition testimony of defendant, Sheryar Choudhry, is not prima facie evidence of a breach but rather that Asmac discharged its sole obligation under the only contract to which it was a party, to wit: the IAMA (*De Guaman v Am. Hope Group, supra* at 917; *Zuckerman v City of New York, supra* at 562). Additionally, the contract interpretation urged by the plaintiff is unavailing (*Maser Consulting, P.A. v Viola Park Realty, LLC, supra* at 837). With respect thereto, the plaintiff has argued that as the governing provisions of the Loan Agreement referable to repayment were reiterated and incorporated into the IAMA and as the loan was not repaid by the Farescal defendants, this Court, consistent with the Loan Agreement, must read the IAMA to mean that all proceeds from the Receivables - including those generated post Maturity Date - should have been delivered by Asmac to the Collection Agent until such time that the indebtedness had been satisfied. However, to interpret the Farescal defendants' default under the Loan Agreement as a condition triggering a temporal expansion of Asmac's duty under the IAMA beyond the Maturity Date would require this Court to utterly disregard the plain meaning ascribed thereto by the parties and to infuse such term with a connotation not contemplated thereby (*id.*). The parties to the IAMA did not in any respect include a provision whereby Asmac's ultimate discharge of its duty thereunder was somehow inextricably tethered to the satisfaction by the Farescal defendants of their indebtedness incurred under the Loan Agreement (*id.*; *Donohue v Cuomo, supra* at 12).

Based upon the foregoing, it is hereby

ORDERED, that based upon the admissible evidence before the court, the motion interposed by all of the appearing defendants, Sheryar Choudhry, Tangent EHR, LLC, Amsac, Inc. a/k/a Amsac Healthcare Consultants, and Tangent Systems Corp., for an order pursuant to CPLR 3212 granting summary judgment dismissing the within amended complaint, is hereby GRANTED (Sequence #008); and it is further

ORDERED, that the cross motion interposed by the plaintiffs, Alleon Capital Partners, LLC and ACP Allfamily Universal, LLC, for an order pursuant to CPLR 3212 granting summary judgment as to the First cause of action sounding in breach of contract, together with related relief, is hereby DENIED (Sequence #009).

In view of the Court's Decision and Order, the upcoming conference and trial are now cancelled.

To the extent that relief has not been granted, it is expressly denied.

This constitutes the Decision and Order of the Court.

Dated: Mineola, New York
February 3, 2023

ENTER:


JEROME C. MURPHY, J.S.C.

ENTERED

Feb 06 2023

NASSAU COUNTY
COUNTY CLERK'S OFFICE