

**Healthcare Servs. Group, Inc. v Allegiant Healthcare
E., LLC**

2024 NY Slip Op 34192(U)

November 25, 2024

Supreme Court, New York County

Docket Number: Index No. 650015/2023

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

HEALTHCARE SERVICES GROUP, INC.,

Plaintiff,

- v -

ALLEGIANT HEALTHCARE EAST, LLC, ALLEGIANT
HEALTHCARE WEST, LLC, ALLEGIANT HEALTHCARE AL,
LLC

Defendants.

-----X

INDEX NO. 650015/2023

MOTION DATE 11/21/2024

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 110, 111, 112, 113, 114, 115, 116, 117

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Defendants' motion to amend their answer to add counterclaims is denied.

Background

In this breach of contract action, plaintiff contends that it entered into various agreements with defendants in which plaintiff was to provide dining and housekeeping services for certain facilities owned by defendants. It claims that it is owed more than \$500,000 in total from these agreements.

Defendants previously moved to amend, but the Court denied that motion on the ground that defendants failed to provide a red-lined version of the proposed amended pleading and they did not provide substantive detail about the new allegations (NYSCEF Doc. No. 101). That decision was issued on August 28, 2024.

More than a month after that motion was denied and in advance of a conference scheduled in October 2024, plaintiff uploaded a letter advising the Court that discovery was

complete. Defendants did not upload anything to dispute that characterization. Therefore, because all discovery was complete, the Court directed that a note of issue be filed. Plaintiff filed a note of issue on October 17, 2024.

On November 5, 2024, defendants filed this, a second motion to amend their answer (although defendants do not seek to strike the note of issue). They contend that plaintiff engaged in systematic overbilling in an effort to siphon money from defendants. Defendants argue that “Subsequent to filing the complaint, the parties engaged in preliminary discovery and it was during this time that Defendants discovery [sic] the acts and omissions that substantiate the claims set forth in their amended pleadings” (NYSCEF Doc. No. 111 at 7).

In opposition, plaintiff insists that it has already filed a note of issue and that permitting amendment at this late date would be highly prejudicial. Plaintiff also demands legal fees on the ground that defendants are engaging in contemptuous litigation tactics by making an identical motion months after the previous one was denied.

Defendants did not offer a reply.

Discussion

The Court denies the motion. As an initial matter, the Court observes that defendants did not bother to offer a reply to plaintiff’s prejudice arguments. Plaintiff observes that this is a post-note of issue case. Curiously, defendants did not seek to strike the note of issue despite the fact that their proposed amended answer contains counterclaims that, presumably, plaintiff will want to explore in discovery. That puts plaintiff in a difficult position if the Court were to grant this motion. Should plaintiff be forced to file a motion to strike its own note of issue? Or be forced go to trial without having the right to explore discovery about defendant’s counterclaims?

Defendants also appears to mischaracterize the status of this case. They contend in the moving papers that “It is also clear that the amendment sought by Defendants results in no prejudice to the Plaintiff, as there has been no substantive discovery conducted between the parties, including document production, interrogatories, and depositions” (NYSCEF Doc. No. 111 at 7). But defendants wholly ignored the fact that plaintiff has already filed a note of issue and the deadline to file a motion to strike the note of issue has now expired. Defendants did not even address the filing of the note of issue in their papers.

Moreover, defendants do not explain why they waited until now to make the instant motion. Instead, they only offered vague assertions that they recently learned about the basis for their new allegations. In fact, in the affirmation in support, defendants assert that “Defendants have recently learned in the course of discovery that there have been significant damages and losses attributable to the acts and/or omissions of Plaintiff” (NYSCEF Doc. No. 112, ¶ 5). But no other details are included about precisely when they learned these new alleged facts.

While the Court recognizes that motions to amend pleadings are liberally allowed, the circumstances of the instant motion compel the Court to deny defendants’ application. Defendants seek leave to amend and add a plethora of new allegations against plaintiff in a post-note case despite the fact that they do not seek to strike the note of issue. And defendants do not address why they waited so long to make a second motion for leave to amend after the first motion was denied or why they waited until after the note of issue was filed to bring this application. And, shockingly, they offer absolutely no substantive arguments or examples to substantiate the merits of their proposed pleading. It is unclear whether ignoring all of these issues are mere oversights or some sort of gamesmanship by defendants. The fact is that plaintiff

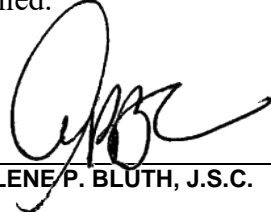
highlighted the prejudice in its opposition and defendants did not bother to submit a reply to rebut these arguments.

The Court denies plaintiff's request for legal fees as plaintiff did not cross-move for such relief.

Accordingly, it is hereby

ORDERED that defendants' motion for leave to amend is denied.

11/25/2024
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE