

**Short Form Order**

**NEW YORK SUPREME COURT -QUEENS COUNTY**

**PRESENT: ORIN R. KITZES**

**PART 17**

**Justice**

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**HEALTHNET SYSTEMS CONSULTING, INC.,**

**Plaintiff,**

**-against-**

**Index No.: 305/09**

**Motion Date: 7/22/09**

**Motion Cal. No.: 26**

**BROOKLYN-QUEENS HEALTHCARE, INC.  
d/b/a BROOKLYN QUEENS HEALTHCARE  
NEW YORK, CARITAS HEALTH CARE, INC.,  
MARY IMMACULATE HOSPITAL, ST.  
JOHN’S QUEENS MEDICAL CENTER and  
WYCKOFF HEIGHTS MEDICAL CENTER,  
Defendants.**

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The following papers numbered 1 to 16 read on this motion by plaintiff for an order pursuant to CPLR § 3212 granting summary judgment in its favor in the amount of \$593,486 against defendants, Brooklyn-Queens Healthcare, Inc. d/b/a Brooklyn Queens Healthcare New York (hereinafter, “BQHC”) and Wyckoff Heights Medical Center (hereinafter, “Wyckoff”).

**PAPERS  
NUMBERED**

Notice of Motion-Affirmation-Exhibits.....	1-4
Affirmation in Opposition-Exhibits.....	5-7
Counter-Statement of Disputed Facts.....	8
Affidavit.....	9
Affirmation-Exhibit.....	10-11
Memorandum of Law.....	12-13
Affirmation in Further Support-Exhibits.....	14-16

Upon the foregoing papers it is ordered that the motion by plaintiff for an order pursuant to CPLR § 3212 granting summary judgment in its favor in the amount of \$593,486 against defendants, Brooklyn-Queens Healthcare, Inc. d/b/a Brooklyn Queens Healthcare New York (hereinafter, “BQHC”) and Wyckoff Heights Medical Center (hereinafter, “Wyckoff”) based upon BQHC’s breach of contract to pay for health care consulting services provided by plaintiff to defendants for certain hospital entities, which defendants own and control is denied, for the following reasons:

According to the complaint, plaintiff is a company which provides consulting services as well as information and technology assistance to health care providers, including the installation,

implementation and maintenance of software used by healthcare providers to support their operations. BQHC is the parent company for two hospital organizations, Wyckoff and Caritas, Caritas operates Mary Immaculate and St. John's Hospital. On or about August 3, 2007, HealthNet provided a consulting proposal to BQHC for an information technology assessment of defendants. On or about May 8, 2008, HealthNet was retained by BQHC on behalf of all defendants and entered into an agreement (hereinafter, the "Agreement"), to provide certain consulting services (hereinafter, the "Services") for the St. Vincent's Migration, Meditech 5.6 Upgrade, Meditech Blood Bank implementation and Meditech Common Platform (hereinafter, the "Projects"). Thereafter, pursuant to the Agreement, HealthNet provided the services to defendants including, among other things the St. Vincent's Invision Cutover, the Meditech 5.6 Upgrade, the Meditech Blood Bank Implementation, and the Meditech Common Platform. HealthNet duly performed the services pursuant to the Agreement and such performance was duly accepted by defendants. HealthNet submitted statements of account to defendants for the cost of the Services rendered. Defendants did not object to the invoices but the invoices remain unpaid and the amount due and owing HealthNet for the Services is \$593,487.00. Although HealthNet demanded payment for the Services, including on December 29, 2008, but defendants have failed and refused to pay.

Thereafter, plaintiff brought the instant action alleging four causes of action for breach of contract, account stated, work, labor services and materials, and unjust enrichment resulting from, *inter alia*, defendants' breach of a consulting services' contract between the parties for the provision of consulting services by defendants. Plaintiff is seeking judgment in the amount of \$593,487.00 plus interest, attorney's fees, and the costs and disbursements of this action. Plaintiff now seeks summary judgment on these claims. Plaintiff has pointed out that, on February 6, 2009, Caritas Health Care, Inc. (and its related entities: Caritas Anesthesia Services, P.C., Caritas Cardiology Services, P.C., Caritas Emergency Medical Services, P.C., Caritas Family Health Services, P.C., Caritas Medical Services, P.C., Caritas OB/GYN Services, P.C., Caritas Pediatric Services, P.C. and Caritas Radiology Services, P.C. - collectively "Caritas"), filed a Chapter 11 Bankruptcy petition. Based upon the bankruptcy there is a stay in effect as to Caritas, Mary Immaculate and St. John's Hospital and plaintiff's motion does not seek relief against these defendants. Defendants BQHC and Wyckoff opposes the motion.

It is axiomatic that the Summary Judgment remedy is drastic and harsh and should be used sparingly. The motion is granted only when a party establishes, on papers alone, that there are no material issues and the facts presented require judgment in its favor. It must also be clear that the other side's papers do not suggest any issue exists. Moreover, on this motion, the court's duty is not to resolve issues of fact or determine matters of credibility but merely to determine whether such issues exist. *See*, [Barr v. County of Albany, 50 NY2d 247 \(1980\)](#); [Miceli v. Purex, 84 AD2d 562 \(2d Dept. 1981\)](#); [Bronson v. March, 127 AD2d 810 \(2d Dept. 1987\)](#). Finally, as stated by the court in [Daliendo v. Johnson, 147 AD2d 312, 317 \(2d Dept. 1989\)](#), "Where the court entertains

any doubt as to whether a triable issue of fact exists, summary judgment should be denied.

Plaintiff has submitted, *inter alia*, the Letter of Agreement, various invoices, and the affidavit of Clifton K. Jay, President of plaintiff Healthnet. Plaintiff claims that this evidence shows the parties entered into a written contract on May 8, 2008 and plaintiff performed its obligations under this Agreement. Defendants accepted these services but refused to pay plaintiff as required by the Agreement. Plaintiff also claims that it has shown it submitted invoices to defendants and defendants have not objected to these invoices nor made payment on these invoices. Plaintiff also claims that it has shown it provided services to defendants at defendants' request; the services were accepted; and defendants have not paid for these services. Finally, plaintiff claims that it provided services to defendants, at their request and for their benefit and defendants have refused to pay for these services. As such, they have been unjustly enriched at plaintiff's expense. Accordingly, plaintiff claims it is entitled to summary judgment on its breach of contract, account stated, quantum meruit, and unjust enrichment claims.

In opposition, defendants have submitted, *inter alia*, the August 13, 2007 Administrative Services Agreement between BQHC, Wyckoff, Caritas Health Care, Inc, and FTI Cambio, LLC, the affirmation of Claire Mullaly, In-House Counsel for Caritas Health Care, Inc. and Wyckoff, and an affidavit of Jebashini Jesurasa, Vice President and Chief Information Officer for Wyckoff. Based on this evidence, defendants claim that, BQHC is a New York not-for-profit corporation that is the sole corporate member of Wyckoff and Caritas. It elects the Trustees of both the Wyckoff and Caritas corporations and does not own or operate either the Wyckoff and Caritas corporations or its hospitals. BQHC is not a healthcare provider and does not possess an Article 28 license. Wyckoff is also a not-for-profit corporation, but it has an Article 28 license. Only a corporation licensed under Article 28 has the ability to operate a hospital and to implement programs and policies to accomplish the hospital's goals.

Based on this evidence, defendants claim that on May 8, 2008, a Consulting Letter of Agreement was sent by Plaintiff HealthNet to Paul Goldberg at FTI Healthcare. According to Mullally, the Letter was prepared by Clifton Jay, President of plaintiff and apparently signed by Paul Goldberg, an employee of FTI, as CFO. It seems that FTI is a Maryland Limited Liability Company providing consulting services to the health care industry. FTI was retained by BQHC, Wyckoff and Caritas to provide certain consulting and administrative services pursuant to an agreement entered into on August 13, 2007. Neither Goldberg nor BQHC itself was authorized to enter into the Consulting Letter Agreement for services at Caritas or Wyckoff. BQHC had no such authority because it did not and legally could not operate any hospitals. Furthermore, based on the Administrative Services Agreement and Mullally's statement, Paul Goldberg was a "special employee", specifically a CFO. As such, his duties were limited and did not include having the authority without Board approval to "enter into. . . contact with outside consultants on behalf of Wyckoff." Consequently, the Letter Agreement is the type of contract Goldberg was specifically

prohibited from entering into on behalf of Wyckoff and BQHC.

According to Jesurasa, FTI hired HealthNet to develop and perform certain information technology projects for Caritas and its hospitals, Mary Immaculate Hospital and St. John's Queens Medical Center. FTI requested the Services for the exclusive benefit of the Caritas Hospitals and only the Caritas Hospitals implemented the systems developed by HealthNet. No services were ever performed for the benefit of BQHC or Wyckoff or requested by BQHC or Wyckoff. FTI issued invoices for the Services allegedly performed and because the work by HealthNet was only performed for Caritas, the invoices should have been sent to Caritas, at Caritas' address. Defendants argue that to the extent that plaintiff may have a claim against Caritas, HealthNet is in the wrong forum. Caritas is in bankruptcy in the United States Bankruptcy Court Eastern District of New York, *In re Caritas Health Care, Inc. et al.*, No. 09-40901 (Bankr. E.D.N.Y. Feb. 6, 2009) and plaintiff's remedy is to file a proof of claim there.

The court finds that defendants have submitted sufficient evidence to raise issues of fact that prevent the granting of this motion. In particular, regarding the breach of contract claim, there are issues of fact as to whether BQHC and Wyckoff are parties to the Consulting Agreement and were in privity of contract with the Plaintiff. It is well-established that only an entity that is a party to a contract may be liable for a breach of contract. *See, HDR, Inc. v. International Aircraft Parts, Inc.*, 257 A.D.2d 603, 604 (2d Dep't 1999) Moreover, there are issues of fact if BQHC could be a party to any such agreement pursuant to New York's statutory and regulatory scheme governing the operation of hospitals, only if a corporation is licensed under Article 28 it will have the ability to operate a hospital and to implement programs and policies to accomplish the hospital's goals. Furthermore, Goldberg signed the Consulting Ltr. as CFO, without specifying whether he was acting as the CFO of BQHC, Caritas or Wyckoff. Thus, a question of fact exists at least as to whether Goldberg had the authority or apparent authority to bind BQHC and Wyckoff on a contract. Finally, there are issues of fact as to whether BQHC and Wyckoff received any benefits from this agreement.

Regarding the account stated cause of action, there are issues of fact that prevent the granting of this branch of the motion. "The rule that an account which has been rendered and to which no objection has been made within a reasonable time should be regarded as admitted by the party charged as prima facie correct assumes that there exists some indebtedness owing between the party or an express agreement between the parties to treat the statement as an account stated." *Gurney, Becker & Bourne, Inc. v. Benderson Development Co., Inc.*, 47 N.Y.2d 995, 996 (1979). As the Court of Appeals held in *Gurney*, "an account stated cannot be made the instrument to create liability when none exists." *Id.* Here, there are issues of fact as to whether an underlying contract between HealthNet and BQHC and Wyckoff exists. As noted above, the contract that HealthNet relies on is with FTI, not with BQHC or Wyckoff. Moreover, the purported

beneficiaries of the contract were the hospitals owned and operated by Caritas.

Regarding the quantum meruit claim for work, labor services and materials, and the unjust enrichment cause of action, there are issue of fact that prevent the granting of this branch of the motion. An action for quantum meruit is based upon on a quasi contract, in the absence of an express agreement, and is not really a contract at all, but rather a legal obligation imposed in order to prevent a party's unjust enrichment. [Parsa v State of New York, 64 NY2d 143, 148 \(1984.\)](#) See also, [Candrea v. Ultra Kote Applied Tech., Ltd., 44 A.D.3d 601 \(2d Dep't 2007\)](#) In order to make out a claim in quantum meruit, plaintiff must establish (1) the performance of the services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation, and (4) the reasonable value of the services. Id. To prevail on a claim of unjust enrichment, a plaintiff must establish that the defendant benefitted at the plaintiff's expense and that equity and good conscience require restitution. Recovery for unjust enrichment is barred by a valid and enforceable contract. [Whitman Realty Group, Inc. v. Galano, 41 A.D.3d 590\(2d Dep't 2007\)](#) Whether a party had a reasonable expectation of compensation is a matter for the trier of fact to determine.

Here, it is disputed that Healthnet performed the services for BQHC and Wyckoff and whether BQHC and Wyckoff received any benefit from Healthnet's services. Defendants have submitted sufficient evidence to show that the services allegedly performed by plaintiff and described in the Consulting Letter did not involve BQHC or Wyckoff's systems. Instead, the services were performed for the exclusive benefit of Caritas and the Caritas Hospitals and implemented by those entities to support their operations. Consequently, this Court cannot find, as a matter of law that plaintiff has established the elements for the quantum meruit and unjust enrichment causes of action.

Based on the above, the motion by plaintiff for summary judgment is denied in its entirety.

**Dated: July 27, 2009**

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**ORIN R. KITZES, J.S.C.**