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Truetox Labs., LLC v Healthfirst PHSP, Inc.
2020 NY Slip Op 50900(U)
Decided on August 6, 2020
Supreme Court, New York County
Borrok, J.
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Decided on August 6, 2020

Supreme Court, New York County

Truetox Laboratories, LLC, Plaintiff,

against

Healthfirst PHSP, Inc., Defendant.

655111/2019

For Plaintiff, Barclay Damon LLP, 80 State Street, Albany, NY 12207

For Defendants, Sher Tremonte LLP, 90 Broad Street, 23rd Floor, New York, NY 10004

Andrew Borrok, J.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25 were read on this motion to/for

DISMISSAL.

Upon the foregoing documents, Healthfirst PHSP, Inc., Healthfirst Health Plan, Inc., and Healthfirst Insurance Company, Inc.'s (collectively, the **Defendants**) motion to dismiss pursuant to CPLR §§ 3211 (a)(1) and (a)(7) is denied with respect to the cause of action for breach of the implied covenant of good faith and fair dealing (second cause of action) and granted with respect to the causes of action for a declaratory judgment (fourth cause of action), violation of General Business Law § 340 (fifth cause of action), and tortious interference with business relations (sixth cause of action).

The Relevant Facts and Circumstances

Truetox Laboratories, LLC (the **Plaintiff**) is a licensed clinical toxicology laboratory that provides drug-testing services (NYSCEF Doc. No. 2, ¶¶ 14-15). The Defendants are health insurance companies that provide benefits to more than 1.2 million members in downstate New York (*id.*, ¶¶ 6-10).

Reference is made to a Healthfirst Participating Provider Agreement (the **Agreement**; NYSCEF Doc. No. 3), dated March 1, 2016, by and between the Plaintiff and Defendants, pursuant to which the Defendants agreed to reimburse the Plaintiff for the provision of drug testing services. The Agreement required the Defendants to pay for electronic claims within 30 days of receipt and paper claims within 45 days of receipt pursuant to NY Insurance Law § 3224-a (*id.*, Exhibit 2.2.1[c], § C.1). The Agreement also provided that compensation was subject to the billing requirements set forth in the Provider Manual, which required the return of rejected claims with reasons for the purported rejection and permitted the Plaintiff to resubmit certain claims within specific timeframes (*id.*, Exhibit 4.1; NYSCEF Doc. No. 2, ¶ 81).

The Defendants paid for all claims submitted by the Plaintiff in 2016 and 2017 (NYSCEF Doc. No. 2, ¶ 25). However, payment disputes arose after August 2018 when the Defendants contracted with Verscend Technologies, LLC (**Verscend**) to audit the Plaintiff's claims (*id.*, ¶¶ 26-27). The Plaintiff alleges that the audit imposed onerous demands for the timely production [*2]of medical records and additional clinical documents from the

Plaintiff's clients for each claim submitted (*id.*, ¶¶ 28-29). The Plaintiff further alleges that the audit's significant burdens caused one of its service providers, Argus, to terminate their business relationship with the Plaintiff on April 26, 2019, although they had worked amicably together from August 2016 to August 2018 (*id.*, ¶¶ 63-68).

The Plaintiff claims that the Defendants did not pay for claims submitted from August 1, 2018 to June 10, 2019, which claims total $681,126.84 (*id.*, ¶ 42). The Plaintiff alleges that multiple attempts to resolve payment disputes were "frustrated by Defendants' shell-game with respect to its reasons for non-payment of claim reimbursements" (*id.*, ¶¶ 55-56). By way of example, the Defendants initially referred to record keeping requirements for Medicare claims, but after the Plaintiff advised that the claims submitted were for Medicaid claims instead of Medicare claims, the Defendants then asserted that separate guidelines were applicable (*id.*). Further, from October 2018 to July 2019, the Defendants provided additional reasons for denying payment: (i) the Plaintiff's services were not medically necessary, (ii) one of the Plaintiff's providers was under investigation, (iii) the Plaintiff was under investigation for submitting claims for nonexistent patients, and (iv) the Plaintiff improperly billed for presumptive and definitive testing of samples (*id.*). The Plaintiffs also allege that they have not been paid for additional claims submitted after June 10, 2019 (*id.*, ¶¶ 46-47).

On September 5, 2019, the Plaintiff filed its Complaint alleging claims for: (i) breach of contract, (i) breach of the covenant of good faith and fair dealing, (iii) violation of NY Insurance Law § 3224-a, (iv) a declaratory judgment, (v) violation of General Business Law § 340, and (vi) tortious interference with business relationships (the **Complaint**; NYSCEF Doc. No. 2). The Defendants filed the instant motion to dismiss all but the breach of contract and the Insurance Law § 3224-a claims.

Shortly after this action was commenced, the Defendants notified the Plaintiff by letter (the **2019 Letter**; NYSCEF Doc. No. 23), dated November 1, 2019, that the Agreement would not be renewed as of January 1, 2020. However, the Defendants rescinded the 2019 Letter on January 3, 2020 (the **2020 Letter**; NYSCEF Doc. No. 24) because the 2019 Letter did not comply with the relevant notice requirements in the Agreement. The 2020 Letter also advised the Plaintiff that the Agreement would be terminated without cause effective April 6, 2020 (*id.*).

Discussion

On a motion to dismiss, the pleadings are to be afforded a liberal construction and the facts as alleged in the complaint are accepted as true (*Leon v Martinez*, 84 NY2d 83, 87 [1994]). Under CPLR § 3211 (a)(1), the court may dismiss a cause of action where the documentary evidence conclusively establishes a defense to the claims as a matter of law (*id.*, 88). Dismissal under CPLR § 3211 (a)(7) requires the court to assess whether the proponent of the pleading has a cause of action and not whether he has stated one (*id.*).

Breach of Covenant of Good Faith and Fair Dealing (the Second Cause of Action)

The Defendants argue that the second cause of action for breach of the covenant of good [*3]faith and fair dealing should be dismissed as duplicative of the first cause of action for breach of contract. In its opposition papers, the Plaintiff argues that its claim for breach of the implied covenant is not duplicative because it relies on additional facts beyond its breach of contract claim.

The obligation of good faith and fair dealing implicit in every contract requires that "neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract" (*Dalton v Education Testing Serv.*, 87 NY2d 384, 389 [1995], citing *Kirke La Shelle Co. v Paul Armstrong Co.*, 263 NY 79, 87 [1933]). In other words, the law implies "in every contract a promise of good faith and fair dealing that is breached when a party acts in a manner that — although not expressly forbidden by any contractual provision — would deprive the other party of receiving the benefits under their agreement" (*Sorenson v Bridge Capital Corp.*, 52 AD3d 265 [1st Dept 2008]).

Here, in sum and substance, the Plaintiff alleges that the Defendants' breached the implied covenant by not only imposing an onerous audit, but also by providing inconsistent reasons for their denial of payment, all as a pretextual to avoid payments to which the Plaintiff was entitled. Ss described above, when one reason to deny payment did not hold ground, the Defendants allegedly fabricated new reasons to deny payment (NYSCEF Doc. No. 2, ¶¶ 55-56).

At the pleadings stage, this is sufficient to make out a claim for breach of the implied covenant of good faith and fair dealing (*see 511 West 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 153-55 [2002]; *Forman v Guardian Life Ins. Co. of Am.*, 76 AD3d 886, 888 [1st Dept 2010]). Inasmuch as the Defendants argue that this claim must be dismissed as duplicative because it seeks identical damages, the argument fails. The Plaintiff is entitled to plead this claim in the alternative at this juncture. Accordingly, the branch of the motion to dismiss the breach of the implied covenant cause of action is denied.

Declaratory Judgment (the Fourth Cause of Action)

The purpose of a declaratory judgment is to stabilize a dispute over present or prospective obligations, but a declaratory judgment should not be employed in the absence of a justiciable controversy (*Walsh v Andorn, 33 NY2d 503, 507-508 [1974], citing James v. Alderton Dock Yards*, 256 NY 298, 305 [1931]). A justiciable controversy requires a "real dispute between adverse parties, involving substantial legal interests, for which a declaration of rights will have some practical effect" (*Downe v Rothman*, 215 AD2d 716, 717 [2d Dept 1995]).

The Plaintiff seeks a declaratory judgment that the Defendants must observe their duties under the Agreement, timely process claims, and adhere to payment submission timeframes outlined under NY Insurance Law § 3224-a (NYSCEF Doc. No. 2, ¶ 117). However, the declaratory relief sought is duplicative of the breach of contract claim, which would ultimately resolve the parties' dispute over payment for the Plaintiff's services under the Agreement (*see Apple Records, Inc. v Capitol Records, Inc.*, 137 AD2d 50, 54 [1st Dept 1988] [declaratory judgment unnecessary where plaintiff seeks declaration of same rights that are determined by breach of contract claim]).

In addition, the Defendants also advised in the 2020 Letter that the Agreement would be terminated without cause effective April 6, 2020. Inasmuch as the Plaintiff claims that it should be permitted to seek a declaratory judgment because the parties' relationship could continue if the Plaintiff exercised its right to contest the termination at a hearing (NYSCEF Doc. No. 3, §§ 8.1, 8.4), this claim is not ripe as the Plaintiff has not done so. Accordingly, dismissal of the fourth cause of action for a declaratory judgment is granted without prejudice.

Violation of General Business Law § 340 (the Fifth Cause of Action)

General Business Law § 340, also known as the Donnelly Act, is modeled after the Sherman Act and sets forth New York antitrust law (*State v Mobil Oil Corp.*, 38 NY2d 460, 463 [1976]). To state a claim under General Business Law § 340, a plaintiff must (1) identify the relevant product market, (2) describe the nature and effect of the purported conspiracy, (3) allege how the economic impact of that conspiracy is to restrain trade in the market in question, and (4) show a conspiracy or reciprocal relationship between two or more entities (*Creative Trading Co. v Larkin-Pluznick-Larkin, Inc.*, 136 AD2d 461, 462 [1st Dept 1988]).

The Defendants argue that the fifth cause of action should be dismissed because the Complaint fails to allege: (i) a relevant product market, (ii) a conspiracy or reciprocal relationship, and (iii) that any conspiracy resulted in a restraint of trade. In their opposition papers, the Plaintiff argues that it has sufficiently pled each required element of their claim.

Relevant Product Market

A relevant product market includes all products that are "reasonably interchangeable," and the alleged market must be plausible (*Cont. Guest Servs. Corp. v Intl. Bus Servs., Inc.*, 92 AD3d 570, 572 [1st Dept 2012]). Products are reasonably interchangeable when there is sufficient cross-elasticity of demand, i.e., where a slight price increase of one product would result in consumers switching to another product (*Todd v Exxon Corp.*, 275 F3d 191, 201 [2d Cir 2001]).

The Defendants rely on *City of NY v Group Health Inc.*, 649 F3d 151 [2d Cir 2011] for the proposition that a relevant market cannot be constrained by the preferences of a single purchaser. In that case, the City of New York (the **City**) brought a Donnelly Act claim to challenge the merger of two defendant insurance carriers that had offered the least expensive plans under the City's health benefits program (*id.* at 153-154). The Second Circuit affirmed the district court's summary judgment dismissal of the action on the basis that the market definition, as alleged, was legally deficient (*id.* at 153). Although the City attempted to define the relevant market as one for low-cost municipal health benefits that the City included in its health benefits program, this definition was rejected by the Second Circuit because the

purported market did not account for other insurance providers who competed for the City's business, as well as the general health insurance market for other large employers in the area (*id.* at 156). In other words, the City's alleged market was insufficient because it was defined solely by the City's preferences and failed to encompass all interchangeable substitute products available in the wider insurance market.

The Plaintiff claims that the relevant product market "is the market for clinical laboratory services within the Healthfirst network [which] encompasses all of Healthfirst's 1.2 million members and its thousands of participating medical providers that outsource clinical laboratory testing" (NYSCEF Doc. No. 2, ¶ 120; NYSCEF Doc. No. 21 at 14). Similar to the *City of NY*, however, the Plaintiff's alleged product market is insufficient because it consists of a market for a single purchaser and the Plaintiff provides no reason why laboratory services that currently fall within the Defendants' network are not interchangeable with laboratories that service other healthcare insurers in the same region (*see City of NY*, 649 F 3d at 156). Put another way, the Plaintiff's narrow focus fails to account for any interchangeable products — i.e. laboratory services — that could be secured outside of the Defendants' existing network.

Inasmuch as the Plaintiff argues that *City of NY* is inapplicable because it involved a motion for summary judgment and this case concerns a motion to dismiss, this argument is unavailing because both the district court and Second Circuit determined that the market definition, as alleged in the City's complaint, was deficient.

Having reviewed the Plaintiff's other arguments, the court finds them unavailing. The cases relied upon by the Plaintiff are inapposite because both *Caithness Long Is. II, LLC v SEG Long Is. LLC*, 2019 US Dist LEXIS 174866 [ED NY 2019] and *Mahmud v Kaugmann*, 454 F Supp 2d 150 [SD NY 2006] involved broader markets that were not limited to the preference of a sole purchaser. In *Caithness*, the relevant market was for capacity and energy generation producers generally (2019 US Dist LEXIS 174866 at *14). In *Mahmud*, the market for "cardiology, oncology and gastroenterology services" was also sufficiently broad (454 F Supp 2d at 160). By contrast, here, the Plaintiff alleges a specific market for clinical laboratory service that is constrained by the Defendants' network, which is simply under-inclusive and too narrow (*see also Mooney v AXA Advisors, LLC*, 19 F Supp 3d 486 [SD NY 2014] [holding that the alleged labor market for current and former representatives of defendant insurance company was insufficient because the alleged market did not account for the existence of other insurance agents that were not affiliated with the defendant]).

Putting that aside, and even if the Plaintiff had identified a relevant product market, the Plaintiff's claim also fails because the Plaintiff does not adequately allege the requisite element of conspiracy to make out this claim.

Conspiracy

The Plaintiff also fails to state a claim for a violation of General Business Law § 304 because the Complaint contains only conclusory allegations that the Plaintiff was involved in a conspiracy and/or that this conspiracy resulted in a restraint of trade. Although the Plaintiff identifies Quest and Labcorp as alleged co-conspirators who helped to shrink the number of clinical laboratory service providers in the Defendants' network, the Plaintiff fails to provide any factual basis regarding when such a conspiracy arose and/or how these parties worked together to withhold payment from the Plaintiff with the aim of eliminating competition (NYSCEF Doc. No. 2, ¶¶ 71-77, 118-127). In addition, the Plaintiff fails to allege how the purported conspiracy resulted in a restraint of trade across the relevant market as opposed to an individual loss arising from the Defendants' non-payment (*see Lopresti v Mass. Mut. Life Ins. Co.*, 5 Misc 3d 1006[A] [*4][Sup Ct 2004], *affd* 30 AD3d 474 [2d Dept 2006] [rejecting alleged conspiracy involving fourteen insurance provider defendants where hospital defendant decided to eliminate insurance products sold by plaintiff, which only resulted in loss of commissions by the one plaintiff competitor]). Accordingly, the branch of the Defendants' motion to dismiss the fifth cause of action for the violation of General Business Law § 340 is granted.

Sixth Cause of Action (Tortious Interference with Business Relations)

A party may assert two types of claims for tortious interference. One involves inducing breach of a binding agreement, known as tortious interference with contract. The other involves interference with nonbinding economic relations, which is described as tortious interference with existing or prospective economic/business/contractual relations.

To establish a claim of tortious interference with contract, a plaintiff must demonstrate (1) the existence of a valid contract with a third party, (2) defendant's knowledge of that

contract, (3) defendant's intentional and improper procuring of a breach, and (4) damages (*AREP Fifty-Seventh, LLC v PMGP Assoc., L.P.*, 115 AD3d 402, 402 [1st Dept 2014]).

The elements of a claim for tortious interference with business relations are that: (1) plaintiff had a business relationship with a third party, (2) defendant knew of that relationship and intentionally interfered with it, (3) defendant acted solely out of malice or used improper or illegal means amounting to a crime or independent tort, and (4) defendant's interference caused injury to the plaintiff's relationship with the third party (*Amaranth LLC v J.P. Morgan Chase & Co.*, 71 AD3d 40, 47 [1st Dept 2009]). Unlike a claim for tortious interference with contract, interference with a nonbinding relationship requires a plaintiff to demonstrate more culpable conduct by a defendant, i.e., conduct that amounts to a crime, an independent tort, or other wrongful means (*Carvel Corp. v Noonan*, 3 NY3d 182, 190 [2004] ["[c]onduct that is not criminal or tortious will generally be 'lawful' and thus insufficiently 'culpable' to create liability for interference with prospective contracts or other nonbinding economic relations, citing *Guard-Life Corp. v S. Parker Hardware Mfg. Corp.*, 50 NY2d 183, 191 [1980] [wrongful means include "physical violence, fraud or misrepresentation, civil suits and criminal prosecutions, and some degrees of economic pressure"]).

Here, the Plaintiff alleges that the Defendants knew of its business relationship with Argus and that the "Defendants acted intentionally and improperly by initiating the PPR Audit for the sole purpose of harassing and delaying payments owed to Truetox" (NYSCEF Doc. No. 2, ¶ 135). However, these allegations do not give rise to an inference that the audits either constituted culpable conduct by the Defendants, or that the audits were used for the sole purpose of harming the Plaintiff's business relations with Argus, especially when the Defendants had an absolute right to demand medical records for inspection pursuant to the Agreement (NYSCEF Doc. No. 3, Exhibit 2.2.1 (B)(D)(1); *see Carvel*, *supra)*. In fact, the Plaintiff's other allegations in the Complaint are that the audits were pretextual to avoid payment — i.e., that the audits were necessarily ***not*** for the sole purpose of harming the Plaintiff's business relationship with Argus.

To the extent that the Plaintiff argues that it may have a claim for tortious interference with contract, this argument also cannot be sustained because the Complaint alleges that the Plaintiff entered into an agreement with Argus without an expiration date (NYSCEF Doc. No. 2, ¶¶ 65, 129). As such, the Plaintiff's alleged agreement with Argus was terminable at will and liability for interference with a contract terminable at will falls within a claim for

interference with prospective contractual relations (*see Guard-Life Corp.*, 50 NY2d at 191-192; *American Preferred Prescription, Inc. v. Health Mgmt.*, 252 AD2d 414, 417 [1st Dept 1998] [concluding that agreement for an indefinite term was terminable at will by either party and could not support a claim for tortious interference with contract]). Thus, the facts as alleged in the Complaint do not support the existence of a claim for tortious interference with contract or with a prospective business relationship.

Accordingly, the branch of the Defendants' motion to dismiss the sixth cause of action is granted.

Accordingly, it is

ORDERED that the Defendants' motion to dismiss is denied with respect to the cause of action for breach of the implied covenant of good faith and fair dealing (second cause of action) and granted with respect to the causes of action for a declaratory judgment (fourth cause of action), violation of General Business Law § 340 (fifth cause of action), and tortious interference with business relations (sixth cause of action); and it is further

ORDERED that the Defendants shall file an answer within 20 days of this decision and order.

8/6/2020SIG

ANDREW BORROK, J.S.C.

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