

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

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

Original Motion Date: 02-29-2010
Motion Submit Date: 06-08-2010
Motion Sequence : 002 MOTD
003 MOTD
004 MD

FILED

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HEALTH AGENCY CLERK
SUFFOLK COUNTY CLERK

[] FINAL DISP
[x] NON - FINAL DISP

STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY,

Plaintiff,

-against-

SOCORRO C. VINCENTE, 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

Attorney for Plaintiff

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Attorney for Defendants

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ORDERED, that the motion (motion sequence number 002) by plaintiff to dismiss
the Vincente Counter claims is granted in part and denied in part; and it is further

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ORDERED, that the motion (motion sequence number 003) by plaintiff to dismiss the Perez counterclaims is granted to the extent set forth; and it is further

ORDERED, that the cross-motion (motion sequence number 004) by Perez to dismiss all claims against him is denied.

In this litigation between an insurer, on the one hand, and two doctors, their various professional corporations and several management companies on the other, Plaintiff moves to dismiss the Counterclaims of several of the Defendants. By Notice of Motion (motion sequence number 002) Plaintiff seeks dismissal of the First, Second Third and Fourth Counterclaims of Defendants Socorro C Vicente, MD, PC, Socorro C Vicente, MD PC d/b/a Village Medical and Rehab, Socorro C Vicente MD, Three Village Medical, PC and Tri-V Medical PC (collectively, the Vicente Defendants). By Notice of Motion (motion sequence number 003), Plaintiff moves to dismiss the Counterclaims of Defendants Joseph Perez, MD, Island Wide Medical Health Services, PC, Suffolk Ave Medical, PC, Patchogue Medical Services, PC, Huntington Medical Services, PC, Brentwood Medical Plaza, PC, Hempstead Medical Plaza, PC, Huntington Medical Plaza, PC, and Patchogue Medical Plaza, PC (collectively the Perez Defendants). Those Defendants oppose Plaintiffs' motions. In addition, Defendant Joseph Perez, MD cross moves (motion sequence number 004) to dismiss all of Plaintiff's claims against him personally.

The gravamen of Plaintiff, State Farm's complaint against the various Defendants arises from their method of managing their businesses. According to State Farm, the two physicians, Vicente and Perez are permitting the named Defendant managers (Mustazza, Bonasera and Tubens) to run the real business of the PC Defendants. The individual managers, through management companies (Defendants Medstar Management LLC, Stellar Management LLC, Worldwide Management LLC and Regional Medical Marketing

Inc), none of which are licensed to practice medicine, are, according to State Farm, the true owners and operators of the PCs, which are utilizing the two doctors as mere fronts in violation of state law. Plaintiff also asserts that various non physician independent contractors are really providing the medical services for which it is billed as opposed to employees of the physician PC's. The Plaintiff has moved for Preliminary Injunctive relief, which is determined in a separate and accompanying Decision of this Court.

The Vicente Counterclaims which form the basis for State Farm's first motion to dismiss seek a Declaratory Judgment that the named PC's have been lawfully and properly incorporated and that State Farm is obligated to reimburse them for properly and timely presented medical treatment rendered by such Defendants to patients covered by State Farm's automobile insurance policies. In the Second Counterclaim all of the Vicente Defendants seek monies due and owing for treatment of patients covered by State Farm's automobile insurance policies from January 2001 until the present. The Third Counterclaim seeks monies due and owing Three Village Medical PC, which was assigned certain of the Defendants' claims; and the Fourth Counterclaim makes the same claim on behalf of Tri-V Medical.

Plaintiff asserts that the pleadings lack sufficient facts to state a claim for Declaratory Judgment and that such is merely duplicative of Plaintiff's identical claim for the same. State Farm also asserts that the remaining Counterclaims are all barred since they have been asserted in the Civil Courts and District Courts of this State and are, therefore, subject to dismissal under CPLR § 3211 (a)(4). In addition, State Farm states that the bulk of the Vicente Defendants lack standing to assert the Second Counterclaim since it deals solely with payment for services rendered by Socorro Vicente MD PC. In opposition, the Vicente Defendants allege 1) that Vicente is a duly licensed physician in the State of New York; 2) that the three Vicente PC's were formed by Vicente, MD

properly ; 3) that Vicente MD properly rendered medical treatment to patients entitled to No-Fault benefits, who were insured by State Farm at the time of the patients' treatment ; and 4) that the Vicente PC's properly filed such claims for medical services at the time of treatment. With regard to the claims by the Vicente Defendants for payment of monies due and owing, such Defendants allege that they have many claims that have as yet not been asserted in the lower courts due to State Farm's continuing refusal to pay for the same. With regard to the standing issue, the Vicente Defendants assert that , as the sole owner thereof, Vicente MD is suing on behalf of the various Vicente PC's.

State Farm's motion to dismiss the Perez Counterclaims rests essentially on CPLR § 3211 (a)(7) grounds. Thus, Plaintiff argues that the claim for tortious interference with economic advantage requires a showing that the accused party intentionally interferes with a relationship with a third party, solely out of malice. Since the Counterclaim fails to allege that State Farm's acts were directed at any third parties or were motivated solely by malice, it must fail. With regard to the Perez counterclaim brought pursuant to GBL § 349, there is no assertion that the challenged act was consumer-oriented; or that it was misleading in a material way. Nor, according to State Farm, is there any evidence presented of the requirements to make out a claim for prima facie tort, requiring intentional infliction of harm, without excuse or justification, resulting in special damages, by an act that is otherwise lawful. As none of the above are met, Plaintiff argues that all of the Perez Counterclaims should be dismissed. In opposition, Dr. Perez submits an affidavit setting forth that a contractual relationship does in fact exist between him and his patients requiring payment for services should the insurer deny coverage; that State Farm is aware of such; and that State Farm's deliberate acts herein clearly interfere with the Perez Defendants' ability to be remunerated for services rendered. With regard to the GBL § 349 claims, the Perez Defendants assert that the practices of State Farm are deceptive and designed to deny or delay reimbursement to consumers, and, thus, under current case law,

state a claim for a violation thereof. The Perez Defendants withdraw their Third Counterclaim for Prima Facie Tort.

With regard to the cross-motion by the Perez Defendant, such is brought on behalf of Perez, sued personally, on the ground that State Farm fails to allege sufficient fraud to pierce the corporate veil of the various corporate Defendants. In response, Plaintiff asserts that it has alleged that the owner of the PC's has abused the privilege of utilizing the corporate form in order to perpetrate a wrong against the Plaintiff and that such is a legally cognizable claim against the shareholder.

MOTION TO DISMISS

In considering a motion to dismiss a pleading under CPLR § 3211 (a)(7), the Court must afford the pleading a liberal construction, accept all the allegations contained therein as true, and provide the pleading party with every possible favorable inference. **AG Capital Funding Partners, LP v State Bank & Trust Co**, 5 NY 3d 582, 808 NYS 2d 573, 842 NE 2d 471 (2005); **Peckler v Great Insurance Plan of Greater New York**, 67 AD 3d 758, 888 NYS 2d 196, (2d Dep't 2009). In making such determination, the Court, inter alia, must decide whether the alleged facts fit within any cognizable cause of action. **Leon v Martinez**, 84 NY 2d 83, 614 NYS 2d 972, 638 NE 2d 511 (1994); **Micro Technology International Inc v Artech Information Systems LLC**, 62 AD 3d 764, 883 NYS 2d 710 (2d Dep't 2009).

A Court maintains broad discretion in determining a motion brought pursuant to ~~CPLR § 3211 (a)(4) to dismiss an action, on the basis of another action pending, where~~ there exists substantial identity of the parties and the causes of action in the disparate lawsuits. **See, Montalvo v Air Dock Systems**, 37 AD 3d 567, 830 NYS 2d 255 (2d Dep't

2007).

DECLARATORY JUDGMENT

Pursuant to CPLR § 3001, the court . . . “(m)ay render a declaratory judgment . . . as to the rights and other legal relations of the parties to a justiciable controversy”. To so find, there must exist a real dispute between adverse parties, involving substantial legal interests for which a declaration of rights will have some practical effect. **See, Chanos v Madac, LLC**, 74 AD 3d 1007, 903 NYS 2d 506 (2d Dep’t 2010). The Vicente Defendants have clearly set forth a basis for declaratory judgment based on their allegations that they have been properly formed, practice medicine in accordance with State law, and are entitled to reimbursement from the Plaintiff for properly submitted claims. The fact that Plaintiff has submitted a similar claim, seeking an opposite result in its complaint, does not preclude the Vicente Defendants from seeking the same.

TORTIOUS INTERFERENCE WITH ECONOMIC RELATIONS

As stated by the Court of Appeals, to state a cause of action for tortious interference with business relations or economic advantage, the conduct of the accused must be aimed at a third party and not at the adverse party itself. **Carvel Corporation v Noonan**, 3 NY 3d 182, 785 NYS 2d 359, 818 NE 2d 1100 (2004). A review of the counterclaim itself reveals that the Perez Defendants are essentially asserting that the conduct of State Farm, in accusing them of fraudulent incorporation and improper business practices, is aimed at the Defendants and not at third parties. While there is no dispute that Plaintiff is clearly aware that the Defendants herein treat patients, who have contractual obligations with the Defendants, the gravamen of the complaint is aimed at the Defendants based on Plaintiff’s allegations of various violations of state law and regulations.

GENERAL BUSINESS LAW § 349

A cause of action under General Business law § 349 must set forth 1) that the adverse party's act was consumer oriented; 2) that it was significantly misleading; and 3) that the claimant suffered resulting injury. **Stulman v Chemical Bank**, 95 NY 2d 24, 709 NYS 2d 892 (2000). As with the prior Cause of Action, the gravamen of the Perez Counterclaim is that State Farm's actions in barring all of that party's no fault claims, is aimed at the Perez and Vicente entities and not at the general consumer. The fact that the parties hereto have a dispute regarding whether the Defendants were properly incorporated, properly run, and whether Plaintiff has an obligation to consider their claims is not directed to the consuming public at large; but, rather, at the Defendants themselves. The case simply does not lend itself to a claim under General Business law § 349. See, **Blue Cross and Blue Shield of NJ v Philip Morris USA Inc.** 3 NY 3d 200, 785 NYS 2d 399, 818 NE 2d 1140 (2004).

CLAIMS AGAINST PEREZ

With regard to the specific claims ledged by State Farm against Dr Perez, they are set forth based upon allegations that he, along with others, fraudulently formed the corporations, in order to do business in violation of State laws and regulations. Such claims do not seek, as that Defendant suggests, to pierce the corporate veil; rather, they state a cause of action based upon his alleged individual actions. See, **Hyland Meat Co, Inc. v Tsagarakis**, 202 Ad 2d 552, 609 NYS 2d 625 (2d Dep't 1994).

OTHER ACTIONS

With regard to the actions pending in Civil and District Courts throughout the State,

to the extent that the Court has now lifted the TRO in its companion Decision denying Plaintiff's motion for a Preliminary Injunction, such actions may not be pursued here and such counterclaims are, therefore, dismissed pursuant to CPLR § 3211 (a)(4). With regard to any other actions which may have accrued thereafter, but were subject to the Court's prior stay, such will be referred to the next conference before the Court scheduled on September 20, 2010 at 11 o'clock a.m.

Accordingly, the Plaintiff's motion to dismiss the Vicente Counterclaim for Declaratory Judgment is denied; Plaintiff's motion to dismiss the Second, Third and Fourth Counterclaims of the Vicente Defendant's is granted to the extent that such actions have been brought in other courts and is otherwise referred to a conference before this Court; Plaintiff's motion to dismiss the Perez Counterclaims for tortious interference with economic advantage and under GBL § 349 is granted; and the cross-motion of Perez to dismiss the Plaintiff's complaint against him as an individual is denied.

The attorneys are directed to appear in this part for a conference on September 20, 2010 at 11 o'clock a.m. before the undersigned.

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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