

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART XXXVI SUFFOLK COUNTY

COPY

PRESENT:

HON. PAUL J. BAISLEY, JR., J.S.C.

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STATE FARM MUTUAL AUTOMOBILE INS. CO.,

Plaintiff,

-against-

CITY WIDE SOCIAL WORK & PSYCHOLOGICAL SERVICES, P.L.L.C., ALLSTATE SOCIAL WORK & PSYCHOLOGICAL SERVICES, P.L.L.C., MARVIN WEINER, PhD, HEATHER DAWSON, PhD and VLADIMIR GRINBERG,

Defendants.
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INDEX NO.: 41383/2010
MOTION DATE: 3/3/2011
MOTION NO.: 001 MD

PLAINTIFF'S ATTORNEY:
McDONNELL & ADELS, PLLC
401 Franklin Avenue
Garden City, New York 11530

DEFENDANTS' ATTORNEY:
GARY TSIRELMAN, P.C.
65 Jay Street, Third Floor
Brooklyn, New York 11201

Upon the following papers numbered 1 to 27 read on this motion to dismiss complaint; Notice of Motion/ Order to Show Cause and supporting papers 1-6; ~~Notice of Cross Motion and supporting papers~~ ___; Answering Affidavits and supporting papers 7-19; Replying Affidavits and supporting papers 20-27; Other ___; (and after hearing counsel in support and opposed to the motion) it is,

ORDERED that the pre-answer motion (motion sequence no. 001) of defendants Allstate Social Work & Psychological Services, PLLC, City Wide Social Work & Psychological Services, PLLC and Vladimir Grinberg for an order pursuant to CPLR §3211(a)(1) and (7) dismissing the complaint is denied.

Plaintiff's complaint in this action asserts causes of action for a declaratory judgment and for unjust enrichment. Plaintiff's claims arise out of its allegation that Allstate Social Work & Psychological Services, PLLC ("Allstate") and City Wide Social Work & Psychological Services, PLLC ("City Wide") are professional limited liability companies improperly formed in violation of New York law and are thus not entitled to no-fault reimbursement monies from State Farm Mutual Automobile Insurance Company ("State Farm") in accordance with regulations of the Superintendent of Insurance (11 NYCRR §65-3.16(a)(12)). In its complaint, plaintiff alleges that the defendant companies were operated in violation of Limited Liability Company Law §§1203 and 1204 in that defendant Vladimir Grinberg, who is not a licensed psychologist, actually owns, operates, manages, controls and supervises the operations of Allstate and City Wide, which are nominally co-owned with Grinberg by defendants Heather Dawson, Ph.D. and Marvin Weiner, Ph.D. Although the latter are licensed psychologists, they assertedly exercise no genuine ownership, supervision or control of the psychological services provided by Allstate and City Wide personnel and merely serve as "fronts" for the companies. Plaintiff further alleges that although Grinberg is a licensed social worker, no social work services are provided by either Allstate or City Wide.

Plaintiff's complaint reflects its claim that defendants participated in an unlawful scheme to fraudulently obtain no-fault benefits in violation of the Limited Liability Companies Law,

Education Law and Insurance Law. As such, construing plaintiff's complaint in the light most favorable to plaintiff and accepting all the allegations as true, and according plaintiff all favorable inferences (*Leon v Martinez*, 84 NY2d 83 [1994]), the complaint plainly states causes of action for both a declaratory judgment and unjust enrichment against defendants Allstate Social Work & Psychological Services, PLLC, City Wide Social Work & Psychological Services, PLLC and Vladimir Grinberg (see, *State Farm Mutual Auto. Ins. Co. v Mallela*, 4 NY3d 313 [2005]). In light of the foregoing, the motion to dismiss is denied.

Dated: August 2, 2011

PAUL J. RAISLEY, JR.
J.S.C.

 FINAL DISPOSITION X NON-FINAL DISPOSITION