

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MEI SERVICES, INC.,	:	
	:	
Plaintiff,	:	CIVIL ACTION NO.
	:	
vs.	:	1:20-CV-2424-CC
	:	
CARDINAL HEALTH 110, LLC	:	
	:	
Defendant.	:	

OPINION AND ORDER

This matter is before the Court on Defendant Cardinal Health 110, LLC's Motion to Dismiss MEI Services, Inc.'s First Amended Complaint (the "Motion to Dismiss") [Doc. No. 13] and Defendant Cardinal Health 110, LLC's Motion for Rule 11 Sanctions (the "Motion for Sanctions") [Doc. No. 17]. For the reasons stated below, the Court **GRANTS** the Motion to Dismiss and **DENIES** the Motion for Sanctions.

I. BACKGROUND

A. Facts

Plaintiff MEI Services, Inc. ("Plaintiff" or "MEI") is a pharmacy company that provides a broad array of services including pharmacy consulting, wholesale distribution, and pharmacy benefit management. (Pl. MEI Services, Inc.'s First Am. Compl. ("First Am. Compl.") ¶ 3.) Defendant Cardinal Health 110, LLC

(“Defendant” or “Cardinal Health”) is a multi-national health services company. (Id. ¶ 4.) As a pharmacy company, MEI has engaged in considerable business with Defendant Cardinal Health, including the purchase of significant amounts of prescription drugs. (Id. ¶ 5 & First Am. Compl., Ex. 7 ¶¶ R1-R2.)

On or about December 27, 2016,¹ MEI sold the assets of one of its stores to CVS Pharmacy (“CVS”) pursuant to an Asset Purchase and Sale Agreement the “APA”). (First Am. Compl. ¶ 6 & First Am. Compl., Ex. 1.) Pursuant to the APA, \$340,000 of the sale proceeds were to be kept by CVS as a holdback (the “Holdback”) to ensure that MEI complied with certain indemnification provisions in the APA. (First Am. Compl. ¶ 7.) To the extent the indemnification provision was not triggered, the APA originally called for CVS to return fifty percent (50%) of the Holdback to MEI after eighteen (18) months and the remaining fifty percent (50%) after thirty-six (36) months. (Id. ¶ 8.)

Prior to the closing, MEI had negotiations with both Cardinal Health and Live Oak Bank Company (“Live Oak”). (Id. ¶ 9.) Both Cardinal Health and Live Oak were secured creditors of MEI and, as such, both would have to release liens in connection with the closing. (Id.) Accordingly, it was agreed that MEI would

¹ The First Amended Complaint alleges that APA occurred on or about December 27, 2017, but based on the exhibits attached to the First Amended Complaint in support of that allegation, it appears that the date in paragraph 6 of the First Amended Complaint is a typographical error.

assign the Holdback funds to Cardinal Health and Live Oak. (Id. ¶ 10.) On February 7, 2017, Cardinal Health sent correspondence to CVS confirming this agreement. (Id. ¶ 11 & First Am. Compl., Ex. 1.)

Pursuant to correspondence dated August 6, 2018, which slightly modified what was set forth in the prior correspondence, the Holdback funds were to be split equally (\$170,000.00 each, made in two installments) between Live Oak and Cardinal Health. (First Am. Compl. ¶ 12 & First Am. Compl., Ex. 2.) MEI and Cardinal Health specifically agreed on the usage and treatment of the Holdback funds. (First Am. Compl. ¶ 13.) Under the agreement, Cardinal Health agreed to use any Holdback funds received from CVS exclusively to pay any outstanding notes or trade accounts between MEI and Cardinal Health. (Id. ¶ 14.) It was also agreed that to the extent MEI was not indebted to Cardinal Health on any notes or trade accounts, Cardinal Health would return the Holdback funds to MEI. (Id. ¶ 15.)

In accordance with the above, on August 9, 2019, CVS sent the first installment of the Holdback to Cardinal Health in the amount of \$85,000.00. (Id. ¶ 16.) After discussing the matter, MEI requested that Cardinal Health apply the \$85,000.00 as a credit to a trade account operated by an MEI affiliate. (Id. ¶ 17.) Cardinal Health agreed and the credit was applied without incident. (Id. ¶ 18.)

In a separate transaction, in or about May 2018, MEI-affiliate Buckhead Pharmaceutical Association (“Buckhead”), which signed its initial Cardinal Health agreement contemporaneous with MEI’s initial agreement contemporaneous with MEI’s initial agreement, sold its assets. (First Am. Compl., Ex. 7 ¶¶ R3 & R8.) Following that sale, MEI-affiliate Buckhead incurred a debt on its account with Cardinal Health in the amount of \$69,511.65. (Id. ¶ R8.) Mr. Bogachek, Buckhead, and MEI all refused to pay the debt. (Id.)

In February of 2020, MEI requested that CVS release the second – and final – \$85,000.00 payment. (First Am. Compl. ¶ 19.) Pursuant to the above request, CVS paid the remaining \$85,000.00 to Cardinal Health. (Id. ¶ 20.) At the time of the payment, MEI and Cardinal Health were engaged in considerable business and MEI was indebted to Cardinal Health on a certain trade account in an amount in excess of \$85,000.00. (Id. ¶ 21.) Accordingly, it was understood by both parties that Cardinal Health would simply apply the \$85,000.00 as a credit to MEI’s account. (Id. ¶ 22.) This was consistent both with the initial agreement and also with the course of dealing established with the payment of the initial Holdback funds. (Id. ¶ 23.)

In fact, the above was confirmed in writing by Cardinal Health. (Id. ¶ 24.) Specifically, on February 24, 2020, Cardinal Health confirmed the above credit in an internal email that was specifically forwarded to MEI. (Id. & First Am. Compl.,

Ex. 3.) Not only did Cardinal Health confirm the credit in writing, Cardinal Health also apparently applied the credit at one point. (First Am. Compl. ¶ 25.) Although Cardinal Health applied the credit, they inadvertently applied it to an MEI account that was inactive (thus providing no benefit). (Id. ¶ 26.) As a result, MEI requested that it be applied to the correct account. (Id.) Cardinal Health complied with the request for a brief time. (Id.)

Around this time, MEI's principal, Michael Bogachek, began to have a number of other business disputes with Cardinal Health unrelated to the Holdback. (Id. ¶ 27.) In March of 2020, MEI learned that Cardinal Health had reversed course, retracted the credit, and was now refusing to pay the \$85,000 to MEI or apply it as a credit to MEI at all. (Id. ¶ 28.) Cardinal Health instead issued instructions applying the Holdback amount to the trade account of MEI-affiliate Buckhead. (First Am. Compl., Ex. 6.)

On March 23, 2020, counsel for MEI demanded the return of the \$85,000.00. (First Am. Compl. ¶ 30 & First Am. Compl., Ex. 5.) MEI disputed Cardinal Health's right to apply the Holdback to the Buckhead account. (First Am. Compl., Ex. 5 and Ex. 7 ¶ R7.) MEI and Mr. Bogachek threatened class litigation on behalf of MEI and its affiliates, having nothing to do with the Holdback. (First Am. Compl., Ex. 5 & Ex. 7 ¶ R6.)

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