

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RAYMOND A. SEMENTE, D.C., P.C.,

Plaintiff,

- against -

EMPIRE HEALTHCHOICE ASSURANCE, INC.,
d/b/a EMPIRE BLUE CROSS BLUE SHIELD,
VERIZON COMMUNICATIONS, INC.,
VERIZON ADVANCED DATA INC., VERIZON
AVENUE CORP., VERIZON CORPORATE
SERVICES CORP., VERIZON NEW YORK INC.,
VERIZON NEW ENGLAND INC., VERIZON
SERVICES CORP., EMPIRE CITY SUBWAY
COMPANY (LIMITED), COUNTY OF SUFFOLK,
SUFFOLK COUNTY LABOR/MANAGEMENT
COMMITTEE and THE EMPLOYEE MEDICAL
HEALTH PLAN OF SUFFOLK COUNTY,

Defendants.
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MEMORANDUM AND ORDER

2:14-cv-5823 (DRH) (SIL)

APPEARANCES

For Plaintiff:

THE LAW OFFICES OF HAROLD J. LEVY, P.C.
823 Anderson Avenue
Fort Lee, New Jersey 07024
By: Harold J. Levy, Esq.

For Defendants / Cross Claimants:

SUFFOLK COUNTY ATTORNEY
100 Veterans Memorial Highway
P.O. Box 6100
Hauppauge, New York 11788-0099
By: Hope Senzer Gabor, Esq.

For Cross Defendant:

FOLEY & LARDNER
90 Park Avenue
New York, New York 10016
By: Robert A. Scher, Esq.
Rachel E. Kramer, Esq.

HURLEY, Senior District Judge:

INTRODUCTION

In an Order dated March 16, 2020, (the “Order” or “SJ Order” [DE 120]¹), the Court denied Plaintiff Raymond A. Semente, D.C., P.C.’s motion for summary judgment and dismissed the case for lack of standing.² Presently before the Court is Plaintiff’s motion for reconsideration and reargument pursuant to Federal Rule of Civil Procedure 54(b) and Local Civil Rule 6.3 for the United States District Courts for the Southern and Eastern Districts of New York. [DE 122].

Plaintiff is not asking the Court to examine any new legal issues or arguments. Rather, it is requesting that the Court reconsider its decision because the Court misconstrued relevant authority in light of the evidence. Accordingly, the motion is procedurally sound and reconsideration is GRANTED. For the reasons set forth below, however, the Court adheres to its earlier determination which DISMISSED the case for lack of standing.

BACKGROUND

The Court assumes familiarity with its full recitation of relevant facts as set forth in the Order. (*See* SJ Order at 3–4). Below are the facts pertinent to reconsideration, an overview of the Order to be reconsidered, and the interim filings between the Order and this reconsideration decision.

¹ The Order was published at *Robert A. Semente, D.C., P.C. v. Empire Healthchoice Assurance, Inc.*, 444 F. Supp. 3d 451 (E.D.N.Y. 2020).

² Unless otherwise noted, capitalized terms used but not defined herein shall have the respective meanings set forth in the SJ Order.

I. Factual Background

Plaintiff is a chiropractic practice that services patients with healthcare insurance plans sponsored by Suffolk or the Verizon, both of which Empire administers. (SJ Order at 3; Pl. 56.1 Stmt. ¶¶ 4–7 [DE 115-32]). Plaintiff is an out-of-network provider under the plans. (SJ Order at 3). The plans each contain an anti-assignment provision which reads:

Note: Assignment of benefits to a non-network provider is not permitted.

(SJ Order at 3; Pl. Reply 56.1 Stmt. ¶ 84 [DE 118-1]). Nevertheless, Plaintiff has its patients make two contractual assignments of rights under their plans.

One assignment, titled “Assignment of Health Plan Benefits and Rights and ERISA Representative Designation,” grants Plaintiff its patients’ benefits:

I hereby assign directly to Raymond A. Semente D.C.³ all rights to payment and benefits and all legal and other health plan, ERISA plan, or insurance contract rights that I (or my child, spouse, or minor dependent) may have or had under my/our applicable health plan(s) or health insurance policy(ies) for past, current, or future services rendered. This assignment includes, but is not limited to, a designation . . . to pursue any and all remedies to which I/we may be entitled, including the use of legal action against the health plan or insurer or in response to legal action by any such health plan or insurer. This assignment and designation remains in effect unless revoked in writing, and a photocopy is to be considered as valid and enforceable as the original.

I understand and agree that (regardless of whatever health insurance or medical benefits I have), I am ultimately responsible to pay Raymond A. Semente D.C. the balance on my account for any professional services rendered and for any supplies, tests, or any Chiropractic services provided.

³ Dr. Raymond A. Semente, D.C. “is the owner and sole shareholder of Plaintiff.” (Pl. 56.1 Stmt. ¶ 2).

(Ex. I at Suffolk-831 [DE 117-9] to Decl. of Rachel Kramer (“Kramer Decl.”) [DE 117]; Ex. 1 at Suffolk-2131 to Empire Letter in Resp. to Order to Show Cause (“Empire OTSC Resp.”) [DE 130]; *see* Tr. of Dep. of Raymond Semente, D.C. at 137:8–138:11 (“Semente Dep.”), Ex. 3 [DE 115-6] to Decl. of Harold J. Levy (“Levy Decl.”) [DE 115-2]). In this decision, the Court refers to these as the “benefits assignments.”

The other assignment, titled “Assignment of Causes of Action and Right to Pursue Litigation on Behalf Health Plan Employee Members and Dependents,” grants Plaintiff the right to prosecute lawsuits “on [its patients] behalf” should Defendants deny, either in full or in part, reimbursement for the chiropractic and related medical services provided:

I hereby assign to Dr. Raymond A. Semente, D.C., P.C. any and all legal causes of action and the right to commence and pursue a lawsuit on my behalf and/or on behalf of the employee member and/or all covered persons or dependents under the group health plan issued by the County of Suffolk, New York to pursue payment to me or the employee member for health plan claims that have been denied or partially unpaid by the health plan and/or its administrator, Empire Blue Cross Blue Shield, for services rendered to me and/or my dependents or the covered employee under the health plan. I hereby authorize such lawsuit to be commenced and pursued against the County of Suffolk and/or any of its subdivisions and/or the Employee Medical Health Plan of Suffolk County and Empire Blue Cross Blue Shield.

(Ex. K [DE 116-12] to Decl. of Hope Senzer Gabor (“Gabor Decl.”) [DE 116-1]; Pl.’s Mem. of Law in Supp. of its Mot. for Recons. and Reargument at 1–2 (“Pl. Recons.”) [DE 122-1] (quoting Compl. ¶ 84 [DE 115-4]); *see* SJ Order at 3–4). In this decision, the Court refers to these as the “litigation assignments.”

Since October 2013, Defendants have allegedly refused to render payment for treatments from Plaintiff. (Pl.’s Opening Mem. in Supp. of its Mot. of Summ. J. at 1–

2 (“Pl. Mem.”) [DE 115-33]; *see also* Order Granting in Part and Denying in Part Defs.’ Mot. to Dismiss at 2–4 (“MTD Order”) [DE 48].⁴ Plaintiff purports to sue “on behalf of his patients to recover money (benefits) due to its patients but wrongfully withheld by Empire and Suffolk.” (Pl. Recons. at 1 (emphasis removed)).

II. The Summary Judgment Order

Plaintiff moved for summary judgment on January 28, 2019. [DE 115]. Before it could decide the motion, the Court was asked “to issue an order indicating that [the Court] will handle this case to its conclusion should [a] settlement [between Plaintiff, Empire, and Verizon] come about, rather than dismiss what would then be a solely state-based action, without prejudice to it being pursued in a state court.” (*Id.*; *see also* [DE 103, 106, 107, 108]). On May 31, 2019, the Court declined this request for “an advisory opinion on hypothetical facts.” [DE 110 at 4].

Even so, Plaintiff, Empire, and Verizon settled their dispute. (SJ Order at 2). With the federal claims dismissed, the sole basis for the Court’s subject-matter jurisdiction was (and remains) its exercise of supplemental jurisdiction over the New York state contract law claims against Suffolk.⁵

The Summary Judgment Order began by re-examining Plaintiff’s standing. (SJ Order at 8–9). Previously, the Court had held that the plans’ anti-assignment

⁴ The Order on the Motion to Dismiss was published at *Robert A. Semente, D.C., P.C. v. Empire Healthchoice Assurance, Inc.*, 147 F. Supp. 3d 117 (E.D.N.Y. 2015).

⁵ Plaintiff’s surviving breach of contract claim against Suffolk implicates Suffolk’s crossclaim against Empire; Empire remains in the case as a third-party defendant. (SJ Order at 2 n.1).

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