

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

REBEKAH GATTI,
Plaintiff,

v.

GRANGER MEDICAL CLINIC, P.C.,
Defendant.

**MEMORANDUM DECISION AND
ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF’S
MOTION FOR SUMMARY
JUDGMENT (DOC. NO. 57) AND
GRANTING DEFENDANT’S MOTION
FOR SUMMARY JUDGMENT (DOC.
NO. 60)**

Case No. 2:19-cv-00028-DAO

Magistrate Judge Daphne A. Oberg

Plaintiff Rebekah Gatti brought this action against her former employer, Defendant Granger Medical Clinic, P.C. (“Granger”), asserting a claim for retaliation under the False Claims Act, 31 U.S.C. §§ 3729–3733. (Compl. ¶¶ 17–24, Doc. No. 1.) Ms. Gatti alleges she was unlawfully terminated in retaliation for reporting fraudulent billing practices and threatening to file a *qui tam* action against Granger. (*Id.* ¶ 19.) Granger filed counterclaims against Ms. Gatti for breach of contract, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, violation of Utah’s Uniform Trade Secrets Act, Utah Code Ann. § 13-24-1, *et seq.*, and injunctive relief. (Am. Answer and Countercl. ¶¶ 26–64, Doc. No. 49.)

Before the court are Ms. Gatti’s motion for summary judgment on Granger’s counterclaims (“Gatti MSJ,” Doc. No. 57) and Granger’s motion for summary judgment on Ms. Gatti’s retaliation claim (“Granger MSJ,” Doc. No. 60). The court held a hearing on these motions on September 28, 2020. (Doc. No. 90.)

Having considered the parties' briefing and arguments at the hearing, the court¹ GRANTS Granger's motion for summary judgment (Doc. No. 60) and enters summary judgment in favor of Granger on Ms. Gatti's claim of retaliation under the False Claims Act. The court GRANTS IN PART AND DENIES IN PART Ms. Gatti's motion for summary judgment on Granger's counterclaims (Doc. No. 57). The court GRANTS the motion and enters summary judgment in favor of Ms. Gatti on Granger's counterclaims of breach of contract, breach of the implied covenant of good faith and fair dealing, and breach of fiduciary duty, and on its counterclaim for damages under Utah's Uniform Trade Secrets Act. The court DENIES the motion with respect to Granger's claim for injunctive relief under Utah's Uniform Trade Secrets Act.

SUMMARY JUDGMENT STANDARD

Courts grant summary judgment only where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A fact is 'material' if, under the governing law, it could have an effect on the outcome of the lawsuit. A dispute over a material fact is 'genuine' if a rational jury could find in favor of the nonmoving party on the evidence presented." *Tabor v. Hilti, Inc.*, 703 F.3d 1206, 1215 (10th Cir. 2013) (internal quotation marks omitted). In evaluating a motion for summary judgment, the court views "the facts in the light most favorable to the nonmovant and draw[s] all reasonable inferences in the nonmovant's favor." *Jones v. Norton*, 809 F.3d 564, 573 (10th Cir. 2015). But, "where the non moving party will bear the burden of proof at trial on a dispositive issue that party must go beyond the pleadings and designate specific facts so as to make a

¹ The parties consent to proceed before a magistrate judge in accordance with 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73. (Doc. No. 27.)

showing sufficient to establish the existence of an element essential to that party's case in order to survive summary judgment." *McKnight v. Kimberly Clark Corp.*, 149 F.3d 1125, 1128 (10th Cir. 1998) (internal quotation marks omitted).

DISCUSSION

I. GRANGER'S MOTION FOR SUMMARY JUDGMENT (DOC. NO. 60)

Granger moves for summary judgment on Ms. Gatti's claim of retaliation under the False Claims Act, arguing Ms. Gatti cannot present evidence sufficient to create a triable issue of fact as to this claim. (Granger MSJ 2–3, Doc. No. 60.)

A. Relevant Facts

Ms. Gatti began full time employment with Granger as a coding auditor on December 3, 2014. (Granger MSJ, Undisputed Material Facts ("Facts") ¶ 1, Doc. No. 60; Ex. A to Granger MSJ, Dep. of Rebekah Gatti ("Gatti Dep.") 46:1–4, 46:14–16, Doc. No. 64-1.) As a coding auditor, Ms. Gatti was responsible for review, analysis, and improvement of medical billing codes entered by Granger medical providers. (Granger MSJ, Facts ¶ 2, Doc. No. 60; Gatti Dep. 46: 21–47:25, Doc. No. 64-1.)

In February 2015, Ms. Gatti was promoted to coding manager. (Gatti Dep. 58:15–20, Doc. No. 64-1.) As coding manager, in addition to her prior duties, she was also responsible for supervising the coding team, identifying and correcting coding errors, educating the coding team and medical providers, and ensuring Granger submitted the right codes to insurance companies, Medicare, and Medicaid. (Gatti Dep. 58:24–59:10, 62:9–20, 65:11–17, Doc. No. 64-1; Ex. B to Granger MSJ, Dep. of David Tanner ("Tanner Dep.") 225:2–16, Doc. No. 64-2.)

Ms. Gatti's Report Regarding Dr. Vogeler's Billing

In late 2016, Granger purchased the family medicine practice of Dr. Douglas Vogeler. (Pl.'s Resp. and Mem. in Opp'n to Def.'s Mot. for Summ. J. (Sealed) ("Opp'n to Granger MSJ"), Statement of Additional Material Facts ("Add'l Facts") ¶ 1, Doc. No. 75; App. to Opp'n to Granger MSJ, Decl. of Rebekah Gatti ("Gatti Decl.") ¶ 5, Doc. No. 75-1 at 5.) Ms. Gatti quickly came to believe Dr. Vogeler and his staff were committing Medicare fraud by overcoding patient encounters and performing unnecessary procedures. (Opp'n to Granger MSJ, Add'l Facts ¶ 1, Doc. No. 75; Gatti Decl. ¶ 5, Doc. No. 75-1 at 5.) Ms. Gatti attempted, on many occasions, to raise her concerns directly with Dr. Vogeler and his medical assistant, Whitney Miller. (Opp'n to Granger MSJ, Add'l Facts ¶ 2, Doc. No. 75; Gatti Decl. ¶ 6, Doc. No. 75-1 at 5–6.) Her attempts included various training and counseling sessions between October 2016 and March 2017. (Opp'n to Granger MSJ, Add'l Facts ¶ 2, Doc. No. 75; Gatti Decl. ¶ 6, Doc. No. 75-1 at 5–6.)

According to Ms. Gatti, these training and counseling sessions did not stop Dr. Vogeler's overbilling. (Gatti Decl. ¶ 7, Doc. No. 75-1 at 6.) On May 17, 2017, Ms. Gatti raised the issue in an email to her supervisor, Granger Chief Financial Officer Jeff Davis, reporting the following "[c]ompliance concerns regarding Dr. Vogeler's billing":

1. Billing levels of service higher than what the documentation supports (using CMS coding guidelines). If the provider is using time as a factor (counseling and coordination of care criteria), he is not noting time in the record.
2. Billing an additional level of service with a preventive visit to Select Health when the documentation doesn't support their criteria for a separately identifiable E/M.
3. Billing preventive services when the documentation doesn't support that preventive services were rendered, in particular the necessary elements for Annual Wellness Visits. (Medicare)
4. Billing for the IPPE (Welcome to Medicare) without documentation of the necessary elements for this service.

5. Billing Medicare for routine EKG's without the note indicating medical necessity.
6. Billing Medicare for non-covered services (e.g. Tdap)
7. Billing for procedures without corresponding procedure note.

(*Id.*; App. to Opp'n to Granger MSJ, Email from Rebekah Gatti to Jeff Davis (May 17, 2017), Doc. No. 75-1 at 38.)

Granger's Response to Ms. Gatti's Report

Meanwhile, in the spring of 2017, Dr. Vogeler began attempting to have Ms. Gatti removed from reviewing his coding and billing. (Opp'n to Granger MSJ, Add'l Facts ¶ 3, Doc. No. 75.) On April 18, Dr. Vogeler emailed Granger's then-Chief Executive Officer David Tanner to complain that Ms. Gatti "continues to write off a lot of things at first rejection instead of resubmitting." (Opp'n to Granger MSJ, Add'l Facts ¶ 3, Doc. No. 75; App. to Opp'n to Granger MSJ, Email from Douglas Vogeler to David Tanner (Apr. 18, 2017), Doc. No. 75-1 at 35.) On May 2, he again emailed Mr. Tanner to complain:

Billing is getting worse and so many mistakes are being made, written off, downcoded or passed on to pat[i]ents despite us resubmitting corrections to Rebekah She is costing me thousands and is holding up billings. I will no longer put up with Rebekah's obstructions, so give me someone else who is on the side of the doctor and not the insurance company.

(Opp'n to Granger MSJ, Add'l Facts ¶ 3, Doc. No. 75; App. to Opp'n to Granger MSJ, Email from Douglas Vogeler to David Tanner (May 2, 2017), Doc. No. 75-1 at 37.)

On June 19, 2017, Ms. Gatti received an e-mail from her supervisor, Jeff Davis, stating: "Still working on a plan for this . . . but for now—stop working on Vogeler or Moore claims." (App. to Opp'n to Granger MSJ, Email from Jeff Davis to Rebekah Gatti (June 19, 2017), Doc. No. 75-1 at 40.) According to Ms. Gatti, after she received this email, she had no further interaction with Dr. Vogeler or his staff, which prevented her from performing her job duties

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