THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

APRIA HEALTHCARE, INC.,	:	February Term, 2000
Plaintiff	:	
	:	No. 289
v.	:	
	:	Commerce Case Program
TENET HEALTHSYSTEM, INC., et al.,	:	
Defendants	:	Control No. 120774

MEMORANDUM OPINION

Defendants Tenet HeathSystem Philadelphia, Inc., Tenet Home Services, L.L.C., Tenet Medical Equipment Services, L.L.C. and Tenet of Pennsylvania Home Medical Services have filed preliminary objections ("Objections") to the complaint ("Complaint") of Plaintiff Apria Healthcare, Inc. ("Apria"). For the reasons set forth in this Opinion, the Court is issuing a contemporaneous order ("Order") overruling the Objections.

BACKGROUND

Glasrock Home Health Care, Inc. ("Glasrock") and GHS Home Medical Services, Inc. ("GHS") entered into a subcontract agreement ("Subcontract") in 1992. Under the Subcontract, Glasrock was to provide medical equipment ("Equipment") and services ("Services") to GHS patients. In December 1994, Glasrock and GHS agreed to allow Apria to assume Glasrock's rights and obligations under the Subcontract.[1]

[1] At the time, Apria was known as Homedco, Inc.

Sometime after January 1, 1996, Allegheny Medical Services ("Allegheny") assumed GHS's rights and obligations under the Subcontract. When Allegheny decided to begin using another medical service and equipment provider, Apria and Allegheny negotiated an agreement for terminating the Subcontract and transitioning Allegheny patients to alternate service and equipment providers ("Transition Agreement"). Under the Transition Agreement, Apria agreed to honor its then-current rates through February 28, 1998, after which rates would increase to twenty-five percent of Apria's branch retail pricing. In addition, the Transition Agreement required Allegheny to purchase all Equipment still in use by its patients.

In August 1998, prior to the consummation of the Transition Agreement and the purchase of the Equipment, Allegheny filed for bankruptcy under Chapter 11 of the Bankruptcy Code.[2] Apria continued to provide the Equipment and Services and received appropriate compensation for benefits provided through November 10, 1998.[3] When the Defendants purchased Allegheny's assets on November 11, 1998, they continued to make use of the Equipment and Services and allegedly promised to compensate Apria. However, Apria contends that the Defendants have refused to transfer patients using the Equipment and Services ("Patients") to alternate service providers or to return the Equipment. In addition, it is asserted that the Defendants have not compensated Apria for the Equipment and Services provided after November 11, 1998, although they have continued to bill the

[2] 11 U.S.C.A. §§ 1101-1174.

[3] In a stipulation agreed to by Apria and the bankruptcy trustee for Allegheny on December 21, 1999, all of Apria's administrative claims against Allegheny that were outstanding as of November 10, 1998 were deemed satisfied.

Patients' health insurance carriers and to retain payments which allegedly are owed to Apria ("Payments").

The Defendants filed a notice of removal on July 18, 2000, thereby attempting to remove this matter to federal court. In an order dated September 12, 2000 ("Remand Order"), Chief Judge James T. Giles of the United States District Court for the Eastern District of Pennsylvania remanded the matter to the Court of Common Pleas because the Defendants' removal was made in an untimely manner.

After the remand and protracted discovery, Apria filed the Complaint, which alleges causes of action for conversion, promissory estoppel, quantum meruit, unjust enrichment and a constructive trust. In response, the Defendants have filed the Objections, which assert legal insufficiency and inadequate specificity for four of the counts, failure to attach a necessary writing and lack of subject matter jurisdiction.

DISCUSSION

Each of the Objections is without merit and is denied accordingly.

I. Specificity and Legal Sufficiency

To determine if a pleading meets Pennsylvania's specificity requirements, a court must ascertain whether the allegations are "sufficiently specific so as to enable [a] defendant to prepare [its] defense." Smith v. Wagner, 403 Pa. Super. 316, 319, 588 A.2d 1308, 1310 (1991) (citation omitted). See also In re The Barnes Found., 443 Pa. Super. 369, 381, 661 A.2d 889, 895 (1995) ("a pleading should . . . fully summariz[e] the material facts, and as a minimum, a pleader must set forth concisely the facts upon which [a] cause of action is based").

When a court is presented with preliminary objections based on legal insufficiency,

> [I]t is essential that the face of the complaint indicate that its claims may not be sustained and that the law will not permit recovery. If there is any doubt, it should be resolved by the overruling of the demurrer. Put simply, the question presented by demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible.

Bailey v. Storlazzi, 729 A.2d 1206, 1211 (Pa. Super. Ct. 1999). For the purposes of reviewing the legal sufficiency of a complaint, "all well-pleaded material, factual averments and all inferences fairly deducible therefrom" are presumed to be true. Tucker v. Philadelphia Daily News, 757 A.2d 938, 941-42 (Pa. Super. Ct. 2000).

A. Conversion

Pennsylvania law defines conversion as "the deprivation of another's right of property in, or use or possession of, a chattel, without the owner's consent and without lawful justification." Brinich v. Jencka, 757 A.2d 388, 403 (Pa. Super. Ct. 2000) (citation omitted). Among the ways a person may incur liability for conversion is by "[u]nreasonably withholding possession from one who has the right to it." Martin v. National Sur. Corp., 437 Pa. 159, 165, 262 A.2d 672, 675 (1970) (citing Prosser, Torts § 15 (2d ed. 1955). In reviewing a claim for conversion, a court must focus not on a defendant's intent to commit a wrong, but rather its intent to exercise control over the chattel in question. McKeeman v. CoreStates Bank, N.A., 751 A.2d 655, 659 n.3 (Pa. Super. Ct. 2000).

Here, the Complaint alleges that the Equipment is Apria's property and that Apria cannot remove the Equipment without the Defendants' cooperation, as the failure to provide replacement equipment would endanger Patients' lives. Complaint at ¶¶ 14, 20, 30-31. In the Court's view, the Defendants' intentional non-cooperation and effective control over the Equipment constitutes an unreasonable withholding of possession. Moreover, Apria specifies the Equipment retained by

Allegheny when the Defendants purchased its assets, as well as the number of Patients using the Equipment. Complaint at ¶ 15. Because the Complaint is sufficiently specific to allow the Defendants to prepare a defense and supports a claim for conversion, the Objections to Count I are overruled.[4]

B. Unjust Enrichment and Quantum Meruit

The elements of a claim for unjust enrichment are "benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value." Wiernik v. PHH U.S. Mortgage Corp., 736 A.2d 616, 622 (Pa. Super. Ct. 1999), app. denied, 561 Pa. 700, 751 A.2d 193 (2000). Similarly, an action based on the quasi-contract doctrine of quantum meruit requires that "one person has been unjustly enriched at the expense of another," and thus cannot be sustained without satisfying the elements of unjust enrichment. Mitchell v. Moore, 729 A.2d 1200, 1202 n.2 (Pa. Super. Ct. 1999) (citation omitted).

The Complaint alleges facts to sustain claims for unjust enrichment and quantum meruit. Apria has conferred benefits on the Defendants by providing the Equipment and Services, a fact that the Defendants were aware of and presumably appreciated. Complaint at ¶¶ 43, 45. If the allegations in the Complaint are correct, allowing the Defendants to retain the benefits of the Equipment and Services without compensating Apria may be inequitable. In addition, the Defendants should have little difficulty

[4] Because the Defendants' alleged appropriation of the Equipment constitutes a basis for Apria's conversion claim, the Court need not address whether Apria's assertions regarding the Payments give rise to a claim for conversion.

preparing a defense based on the Complaint's assertions. Thus, Counts III and IV are adequate and sufficiently specific to support Apria's unjust enrichment and quantum meruit claims.

The same can be said for Apria's demand for damages under these two counts. Special damages,[5] such as damages in quantum meruit and for unjust enrichment, must be specifically stated. Pa. R. Civ. P. 1019(f). See also Pulli v. Warren Nat'l Bank, 488 Pa. 194, 197, 412 A.2d 464, 465 (1979) ("[d]amages in quantum meruit for the reasonable value of services must be specially pleaded"); Harkins v. Zamichieli, 266 Pa. Super. 401, 408, 405 A.2d 495, 499 (1979) (implying that a failure to plead damages for an unjust enrichment claim specifically would be grounds for objection). Generally, damages are pled with adequate specificity where they "give the general details of the services rendered, the results accomplished, and the valuation of the total services." Goodrich Amram 2d § 1019(f):9. A request for a more specific pleading of damages "will be denied where the details of items of special damages, pleaded generally, are readily obtainable by discovery." Commonwealth ex rel. Milk Mktg. Bd. v. Sunnybrook Dairies, Inc., 29 Pa. Commw. 210, 214, 370 A.2d 765, 768 (1977). See also Foster v. Health Market, Inc., 146 Pa. Commw. 156, 161-62, 604 A.2d 1198, 1201 (1992) (rejecting objection asserting insufficient specificity where amount of damages could be obtained through discovery).

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[5] Special damages are "those which are not the usual and ordinary consequences of the wrong done, but which depend upon special circumstances." Parsons Trading Co. v. Dohan, 312 Pa. 464, 468, 167 A. 310, 312 (1933). Because there is no indication that damages arising from conversion qualify as special damages, the Court has not addressed this issue in the context of Apria's conversion claim. See Bank of Landisburg v. Burruss, 362 Pa. Super. 317, 328, 524 A.2d 896, 902 (1987) ("[t]he measure of damages for conversion is the market value of the converted property at the time and place of conversion").

Apria has described the Services generally and has demanded restitution in "an amount to be determined but which, in no event, should be less than the reasonable value of the equipment, products and services provided to [the Patients] by Apria." Complaint at ¶ 47. While Apria has not estimated the exact value of the Services and Equipment, their value may be estimated during the discovery process by examining Apria's branch retail and other pricing schedules. As a result, Apria's request for damages is sufficiently specific, and the Objections asserting otherwise are overruled.

C. Constructive Trust

Establishing a constructive trust is an equitable remedy that is applied "when a person holding title to property is subject to an equitable duty to convey it to another on the ground he would be unjustly enriched if he were permitted to retain it." DeMarchis v. D'Amico, 432 Pa. Super. 152, 166, 637 A.2d 1029, 1036 (1994) (citing Yohe v. Yohe, 466 Pa. 405, 411, 353 A.2d 417, 421 (1976)). A court's focus in determining whether a constructive trust must be established is the existence of unjust enrichment:

> Generally, an equitable duty to convey property arises only in the presence of fraud, duress, undue influence, mistake or abuse of a confidential relationship. There is, however, no rigid standard for determining whether the facts of a particular case require a court of equity to impose a constructive trust; the test is merely whether unjust enrichment can be avoided.

Koffman v. Smith, 453 Pa. Super. 15, 32, 682 A.2d 1282, 1291 (1996) (citations omitted). See also Hercules v. Jones, 415 Pa. Super. 449, 458, 609 A.2d 837, 841 (1992) ("[t]he controlling factor in determining whether a constructive trust should be imposed is whether it is necessary to prevent unjust enrichment"). As noted supra, the facts alleged in the Complaint are that the Defendants have been

unjustly enriched, subjecting them to an equitable duty to compensate Apria. This supports Apria's claim for a constructive trust, and the Objections thereto are overruled.

II. Failure to Attach a Writing

The Defendants next claim that the references in the Complaint to the Subcontract and Transition Agreement require Apria to attach a copy of each of these documents to the Complaint. Apria's failure to do so, they assert, dictates that the Complaint be dismissed.

If a claim set forth in a complaint is based on a writing, a plaintiff must attach a copy of the writing to the complaint. Pa. R. Civ. P. 1019(h). Here, the Plaintiffs' claims are equitable in nature and are not based on either the Subcontract or the Transition Agreement. The focus of each count in the Complaint is not the Defendants' obligations arising under the Subcontract or Transition Agreement but rather the Defendants' alleged appropriation of the Equipment and Apria's uncompensated conferral of benefits on the Defendants. Cf. DeGenova v. Ansel, 382 Pa. Super. 213, 220, 555 A.2d 147, 150 (1988) (where plaintiff's claims were brought in tort, he had no obligation to attach a copy of his insurance agreement to his complaint). Because its claims are not predicated on a writing, Apria has no obligation to attach documents to the Complaint.

III. Subject Matter Jurisdiction

Last, the Defendants claim that the Court does not have subject matter jurisdiction over this dispute. Under 28 U.S.C.A. § 1334(e), the district court hearing a bankruptcy matter has "exclusive jurisdiction of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate." However, federal courts have "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C.A.

§ 1334(b) (emphasis added). Thus, state courts have concurrent jurisdiction over civil matters related to bankruptcy and the debtor's estate. See In re Brady, Tex., Mun. Gas. Corp., 936 F.2d 212, 218 (5th Cir. 1991) ("the only aspect of the bankruptcy proceeding over which the district courts and their bankruptcy units have exclusive jurisdiction is the bankruptcy petition itself. In other matters arising in or related to title 11 cases, unless the Code provides otherwise, state courts have concurrent jurisdiction . . . ."); In Re Mazzocone, 183 B.R. 402, 421 (Bankr. E.D. Pa. 1995) ("[b]ecause a bankruptcy court is often not the proper forum in which to adjudicate non-bankruptcy issues, litigation of such issues is frequently best left to the state courts").

The Defendants have failed to persuade the Court that the bankruptcy court has concurrent, let alone exclusive, over this matter. If property in dispute does not belong to the bankruptcy estate, the dispute generally is beyond the limits of a bankruptcy court's subject matter jurisdiction. In re Gallucci, 931 F.2d 738, 742 (11th Cir. 1991). See also In re Bill Cullen Elec. Contr. Co., 160 B.R. 581, 583 (Bankr. N.D. Ill. 1993) (citing numerous cases to support the conclusion that a bankruptcy court "has no jurisdiction over a dispute for property in which the estate asserts no interest"). This is so even where the disputed property was once a part of the bankruptcy estate. In re Edwards, 962 F.2d 641, 643 (7th Cir. 1992). See also In re Lemco Gypsum, Inc., 910 F.2 784, 789 (11th Cir. 1990) ("once property is sold, further disputes have nothing to do with the debtor's estate").[6]

[6] In Lackawanna County v. Patton, 283 Pa. Super. 169, 423 A.2d 1042 (1980), the Pennsylvania Superior Court concluded that disputed property that was once part of a bankruptcy estate could grant a bankruptcy court exclusive jurisdiction under specific circumstances. 283 Pa. Super. at 173, 423 A.2d at 1044. However, Lackawanna County was decided before 28 U.S.C.A. 1334 was amended to limit federal courts' exclusive jurisdiction in bankruptcy matters. See P.L. 98-353, July 10, 1984, 98 Stat. 333 (adding 28 U.S.C.A. 1334(b)).

Here, the Complaint alleges that the Equipment never belonged to Allegheny, and the bankruptcy court's order authorizing the sale of Allegheny's assets appears to indicate that Allegheny's interests in the Equipment, the Subcontract and the Transition Agreement have been transferred out of the estate to the Defendants.[7] Consequently, the rights and property in dispute are not part of the Allegheny bankruptcy estate, and the Defendants have presented no grounds for its argument that the Court does not have subject matter jurisdiction.

CONCLUSION

The claims set forth in the Complaint are both legally sufficient and adequately specific. In addition, the Plaintiffs have no obligation to attach the Subcontract or the Transition Agreement to the Complaint, and the Court has subject matter jurisdiction over this case. As a result, the Objections are overruled.

BY THE COURT:

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JOHN W. HERRON, J.

Date: February 12, 2001

[7] In the Remand Order, Judge Giles stated that this matter was related to a dispute between Apria and a business that the Defendants had purchased from Allegheny.

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v.	:	
	:	Commerce Case Program
TENET HEALTHSYSTEM, INC., et al.,	:	
Defendants	:	Control No. 120774

ORDER

AND NOW, this 12th day of February, 2001, upon consideration of the Preliminary Objections of Defendants Tenet HeathSystem Philadelphia, Inc., Tenet Home Services, L.L.C., Tenet Medical Equipment Services, L.L.C. and Tenet of Pennsylvania Home Medical Services to the Complaint of Plaintiff Apria Healthcare, Inc. and Plaintiff's response thereto, and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED that the Objections are OVERRULED. The Defendants are directed to file an answer within twenty days of the date of entry of this Order.

BY THE COURT:

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JOHN W. HERRON, J.