

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

STAFFMORE, LLC,	:	July Term 2012
	:	
Plaintiff,	:	
	:	
v.	:	No. 2694
	:	
ASSESSMENT & TREATMENT	:	
ALTERNATIVES, INC.,	:	COMMERCE PROGRAM
	:	
Defendant,	:	
	:	
v.	:	Control No. 14031746
	:	
STAFFMORE LLC,	:	
	:	
Counterclaim Defendant,	:	
	:	
v.	:	
JORDAN WEISMAN, KIM THOMAS and	:	
PHILADELPHIA MENTAL HEALTH CENTER,	:	
Third Party Defendants.	:	

DOCKETED

SEP 9 - 2014

C. HART
CIVIL ADMINISTRATION

ORDER

AND NOW, this 8th day of September, 2014, upon consideration of Assessment and Treatment Alternatives, Inc.'s and Staffmore LLC's Partial Motions for Summary Judgment to count I of the complaint and count I of Assessment and Treatment Alternatives, Inc.'s counterclaim and all responses in opposition, it hereby is **ORDERED** as follows:

1. Assessment and Treatment Alternatives, Inc.'s Motion for Partial Summary Judgment to count I (breach of contract) in Staffmore, LLC's complaint is **denied**.
2. Assessment and Treatment Alternatives, Inc.'s Motion for Partial Summary Judgment to count I (breach of contract) in its counterclaim is **denied**.
3. Staffmore, LLC's Motion for Partial Summary Judgment to count I (breach of Contract) in its complaint is **granted**.
4. Staffmore, LLC's Motion for Partial Summary Judgment to count I (breach of contract) in Assessment and Treatment Alternatives, Inc's counterclaim is **granted**.

An assessment of damages hearing shall be scheduled by the court.

Staffmore Llc Vs Assess-ORDOP



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5. As it pertains to the remaining aspects of Staffmore, LLC's motion for summary judgment to Assessment and Treatment Alternatives, Inc's remaining counterclaims against Staffmore, LLC, the motion is held under advisement until the pending Motion for Sanctions is argued and decided.

BY THE COURT,



PATRICIA A. McINERNEY, J.

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	v.	:
JORDAN WEISMAN, KIM THOMAS and	:	
PHILADELPHIA MENTAL HEALTH CENTER,	:	
	Third Party Defendants.	:

OPINION

This action was commenced by plaintiff Staffmore, LLC (“Staffmore”) against defendant Assessment & Treatment Alternatives, Inc. (“ATA”) alleging breach of contract and unjust enrichment. ATA filed a counterclaim against Staffmore for breach of contract as well as claims for tortious interference with contract, conversion, civil conspiracy and unjust enrichment. ATA also filed a third party joinder complaint against Dr. Jordan Weisman (“Weisman”), Kim Thomas (“Thomas”) and Philadelphia Mental Health Center (“PMHC”) alleging claims for breach of the duty of loyalty, conversion, tortious interference with contract, civil conspiracy and unjust enrichment. In response, Weisman filed a counterclaim against ATA under the Stored Communications Act, 18 Pa. C. S. § 5747 for unlawful access to stored electronic communications.¹ Presently before the court are cross motions for summary judgment on Staffmore’s breach of contract claim against ATA and ATA’s breach of contract claim against Staffmore. Additionally, Staffmore also argues it is entitled to summary judgment on the

¹ In a separate order dated August, 2014, the court denied ATA’s Motion for Summary Judgment.

remaining counterclaims. This opinion solely addresses the breach of contract claim between Staffmore, LLC and ATA. The remaining ATA counterclaims against Staffmore as well as the joinder complaint claims against Weisman, Thomas and PHMC are being held under advisement pending resolution of ATA's motion for sanctions.

Staffmore is a behavioral health agency which supplied independent contractor behavioral health clinicians to ATA, a behavioral health service provider from 2007 to May of 2012. For years, ATA employed clinicians directly to provide behavioral health services. At a certain point, ATA utilized a mix of employees and independent contractors. The clinicians fall under several categories: Mobile Therapists (MTs), Therapeutic Support Services (TSSes) or Behavioral Specialist Consultants (BSCs). In addition, ATA used staffing services such as Staffmore, Staffing Plus and Clearpoint.

In 2011, Weisman, as Executive Director and Vice President of the Board of Directors, began discussing with Staffmore the movement of all ATA's behavioral health staff, the MTs, BSCs, and the TSSs, to Staffmore. In November, 2011, ATA entered into a contract, the Staffing Contract, with Staffmore whereby Staffmore would supply ATA with the majority of ATA's behavioral health staff. The Staffing Contract, an integrated contract, provides in part as follows:

- I. Staffmore, LLC Responsibilities
 - A. Staffmore, LLC will maintain professional liability insurance to cover services provided by Staffmore, LLC, its employees and independent contractors.
 - B. Staffmore, LLC will use its best effort to provide ATA Inc. with Behavioral Specialist Consultant, Mobile Therapist, and Therapeutic Support Staff (BSC, MT and TSS) candidates, upon request. These candidates will meet the necessary qualifications for the positions and all regulations and requirements set by law.

- C. ATA Inc. is under no obligation to accept any candidate identified by Staffmore, LLC for a BSC, MT and TSS position. If ATA Inc. determines a candidate to be unqualified, Staffmore, LLC will use its best efforts to submit a new candidate.
- D. Chosen BSC, MT AND TSS will be instructed to work under the supervision of ATA Inc. ATA Inc. acknowledges the right of Staffmore, LLC to dismiss any BSC, MT and TSS and to replace said BSC, MT and TSS with another BSC, MT and TSS that is acceptable to ATA Inc.

II. ATA Inc. Responsibilities

- A. ATA, Inc. will provide BSC, MT and TSS with appropriate and adequate orientation, instruction, administrative, and clinical supervision that is necessary to enable the BSC, MT AND TSS to perform assignment...
- C. ATA Inc. agrees to pay Staffmore LLC within forty-five (45) days of Staffmore, LLC invoice date. Each invoice will be paid in full by bank guaranteed check or certified check only.
- D. Staffmore, LLC will assess 5% per month late fees and penalties in the event that the invoice is not paid within forty-five (45) days. Staffmore, LLC has the option to terminate contract of ATA, Inc. and remove any BSC, MT and TSS from service if invoice is not paid within forty-five (45) days. If collection becomes necessary ATA Inc. will pay all fees incurred in the collection of moneys owed.

III. Additional Provisions

- A. Staffmore, LLC hereby agrees to indemnify and hold harmless ATA Inc. from any loss, damage, or cost or liability (including attorney fees) arising from or related to any act or failure to act of BSC, MT and TSS to the extent such act was at the direction of Staffmore, LLC or the negligence or willful misconduct of BSC, MT AND TSS (sic)
- B. ATA, Inc. hereby agrees to indemnify and hold harmless Staffmore LLC from any loss, damage, cost or liability including reasonable attorney's fees arising from or related to any act or failure to act of BSC, MT and TSS to the extent such act was at the direction of ATA, Inc. or in compliance with a treatment plan adopted, approved or furnished by ATA, Inc.

- C. With the exception of the TSS, BSC and MT who moved from ATA to Staffmore during the month of November 2011, the following applies: Except with the express written permission of Staffmore, LLC, ATA Inc. may not hire, recruit or attempt to hire or recruit for employment in any related business venture, for twelve (12) months subsequent to the last date on which the BSC, MT and TSS is performing services for ATA Inc. If ATA Inc. does hire BSC, MT and TSS, ATA Inc. will pay Staffmore, LLC in accordance to the attached Staffing Term Sheet. Those Staff from November 2011 may be offered a FT salaried job or STS position by ATA without Staffmore being due a fee, within 30 days written notice given to Staffmore.

- D. BSC, MT and TSS will present encounter forms as timesheets as stated in the Summary Processes as decided between Staffmore, LLC and ATA Inc. It is understood that ATA Inc. representative's signature on timesheet verifies hours worked, appropriate paperwork completed and authorizes Staffmore LLC to pay BSC, MT and TSS and bill ATA Inc. for total hours on timesheet....²

In early spring 2012, ATA stopped paying Staffmore as required under the Staffing Contract. On May 18, 2012, ATA informed Staffmore that certain items on its invoice 1033 were not clean claims³ because service provision or documentation problems existed with each item listed.⁴ Specifically, ATA informed Staffmore that the TSSes were working without receiving and/or documenting the required Behavior Specialist supervision and the BSCs failed to provide or submit documentation of supervision of TSSes under their supervision, failed to submit appropriate treatment plans or failed to attend supervision with a licensed psychologist. ATA informed Staffmore that as soon as each problem was corrected it would notify Staffmore

² Exhibit "B" to Staffmore's Motion for Partial Summary Judgment.

³Title 40 Pa. Stat. Ann. § 991.2102 defines a "clean claim" as payment for a health care service which has no defect or impropriety. A defect or impropriety shall include lack of required substantiating documentation or a particular circumstance requiring special treatment which prevents timely payment from being made on the claim. The term shall not include a claim from a health care provider who is under investigation for fraud or abuse regarding that claim.

⁴ Exhibit "G" to Staffmore's Motion for Partial Summary Judgment.

to submit a new invoice. ATA issued similar letters regarding invoices 1042, 1058 and 1073 on May 25, 2012, June 8, 2012 and June 22, 2012 respectively.⁵

On May 20, 2012, Staffmore made a decision to stop providing services to ATA under the Staffing Contract as a result of ATA's failure to make payments and wrote to its staff to inform them to stop working with their assigned ATA clients. The email informed the staff that as of Monday, May 21, 2012, Staffmore was not authorizing them to provide services to any clients that they were working with through ATA. Staffmore further informed the staff that it had a contract with ATA that stated that ATA may not contact the staff with Staffmore directly for services until twelve months from May 21, 2012.⁶

On the same day, May 21, 2012, ATA emailed the independent contractors working on its cases and informed them that the email sent by Staffmore only applies to those who never worked for ATA before going to Staffmore. ATA informed the contractors that if they worked for ATA before going to Staffmore the staff could continue working the cases and ATA will pay them directly.⁷

On July 7, 2012, Staffmore sued ATA for breach of contract. In response, ATA filed an answer and counterclaim against Staffmore alleging breach of contract, conversion, tortious interference with contract, civil conspiracy and unjust enrichment. Additionally, ATA sought an accounting.

⁵ *Ibid.*

⁶ Exhibit "N" to Staffmore's Motion for Partial Summary Judgment.

⁷ Exhibit "O" to Staffmore's Motion for Partial Summary Judgment.

DISCUSSION

It is settled that “the intent of the parties to a written contract is contained in the writing itself.”⁸ As a threshold inquiry, the court must determine whether the language of the contract is ambiguous.⁹ A contract is ambiguous when the contract language is indefinite and reasonably susceptible to more than one meaning. However, the “ambiguity” must appear on the face of the contract itself, and not be “created” by evidence offered by the parties.¹⁰ A contract is not “ambiguous” simply because the parties present different interpretations of the language.¹¹

Where the contract language is clear, the court is limited to a review of the expressed terms and may not consider extrinsic or parol evidence. Following the “plain meaning” rule, the court is bound to interpret the terms as manifestly expressed in the contract, rather than as silently intended by a party.¹² Therefore, this court may as a matter of law, determine whether the contract at issue is ambiguous by reviewing the terms of the Staffing Contract.

The Staffing Contract contains a full and complete expression of the rights and obligations of the parties and supersedes all other agreements, written and oral.¹³ Pursuant to the terms of the Staffing Contract, Staffmore is required to provide staff to ATA and invoice ATA for payment. ATA is required to pay. ATA did not pay as required by the Staffing Contract and is in breach of said contract.

⁸ *Tuthill v. Tuthill*, 763 A.2d 417, 420 (Pa.Super.Ct.2000)

⁹ *Hutchison v. Sunbeam Coal Corp.*, 513 Pa. 192, 200–01, 519 A.2d 385, 390 (1986).

¹⁰ *Commonwealth of Pa. v. Brozzetti*, 684 A.2d 658, 663 (Pa.Comm.w.Ct.1996).

¹¹ *Riccio v. American Republic Ins. Co.*, 453 Pa.Super. 364, 377, 683 A.2d 1226 (1996).

¹² *Stewart v. McChesney*, 498 Pa. 45, 49, 444 A.2d 659, 661 (1982).

¹³ ATA argues that the Staffing Contract is not a fully integrated contract since the Summary Process was never executed by both parties. ATA’s argument fails since characterization of the Staffing Contract as integrated is not conditioned upon the execution of Summary Processes. The integration clause stands independently from the Summary Process. See, Exhibit “B”- Section III (K).

ATA in defense of its non-payment argues that Staffmore did not supply ATA with the documentation necessary to submit “clean claims” to insurers. The Staffing Contract, however, is devoid of any reference to “clean claims” or any obligation for Staffmore to submit any documentation to ATA regarding such claims. In attempt to shift the responsibility of documentation for “clean claims” to Staffmore, ATA relies upon Section I (B) of the Staffing Contract particularly the phrase “all regulations and requirements set by law”. However, a review of this particular phrase in proper context clearly and unambiguously demonstrates that “all regulations and requirements set by law” refers specifically to the qualifications of the BSCs, MTs and TSSes as candidates considered by Staffmore for assignment to ATA and not to any document requirements for “clean claims”.

ATA argues that the claims are not clean because the TSSes were not properly supervised and the BSCs failed to provide or submit documentation of supervision of TSSes under their supervision, failed to submit appropriate treatment plans or failed to attend supervision with a licensed psychologist. This court may not ignore the clear and unambiguous language of the Staffing Contract which places upon ATA the responsibility to provide BSCs, MTs and TSSes with “appropriate and adequate orientation, instruction, administrative and clinical supervision” necessary for the BSCs, MTs and TSSes to perform their assignment. If the documentation was lacking it was due to the failure of ATA, not Staffmore, to provide the appropriate and adequate orientation, instruction and clinical supervision to the TSSes and BSCs. Hence, ATA’s reliance upon the indemnification provision of the Staffing Contract, Section III (A) and the Joinder Agreement, is misplaced.

First, any indemnification by Staffmore per the Staffing Contract is exclusively for any failure to act by the BSCs, MTs and TSSes at Staffmore’s direction or the negligence or willful

misconduct of BSCs, MTs and TSSes, not the negligence or willful misconduct of ATA. Similarly, the Joinder Agreement signed on May 12, 2011 by Staffmore warranting that Staffmore reviewed the terms of the Provider Agreement for 2011 and agreed to be bound by said agreement, also provided that Staffmore will only be liable for its own acts. The Joinder Agreement specifically states “Notwithstanding the foregoing, Subcontractor [Staffmore] shall only be liable for Subcontractor’s [Staffmore’s] own acts or omissions and not for any failure or acts of Provider [ATA]”.¹⁴ Consequently, since the court has concluded that ATA was responsible for the appropriate and adequate orientation, instruction and clinical supervision to the TSSes and BSCs and that the failure of ATA to provide same was the cause of the “unclean claim”, Staffmore may not be held liable for breach of any contract for the failure to provide ATA with the necessary documentation to submit “clean claims”.

CONCLUSION

Based on the forgoing, Assessment and Treatment Alternatives, Inc.’s Motion for Partial Summary Judgment to count I (breach of contract) in Staffmore, LLC’s complaint is **denied**. Assessment and Treatment Alternatives, Inc.’s Motion for Partial Summary Judgment to count I (breach of contract) in its counterclaim is **denied**. Staffmore, LLC’s Motion for Partial Summary Judgment to count I (breach of Contract) in its complaint is **granted**. Staffmore, LLC’s Motion for Partial Summary Judgment to count I (breach of contract) in Assessment and Treatment Alternatives, Inc’s counterclaim is **granted**. An assessment of damages hearing shall be scheduled by the court. As it pertains to the remaining aspects of Staffmore, LLC’s motion for

¹⁴ Exhibit “8” to ATA’s Motion for Partial Summary Judgment.

summary judgment to Assessment and Treatment Alternatives, Inc's remaining counterclaims, the motion is held under advisement until the pending Motion for Sanctions is argued and decided.

BY THE COURT,



PATRICIA A. McINERNEY, J.