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HONORABLE WILLIAM L. HOLT

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re ASTRIA HEALTH, et al.,[1] Debtor.	Case No. 19-01189-WHL11
YAKIMA HMA, LLC and YAKIMA HMA PHYSICIAN MANAGEMENT, LLC, Plaintiffs, v. SHC MEDICAL CENTER – YAKIMA and SHC MEDICAL CENTER – TOPPENISH, Defendants.	Adv. No.: 20-80018-WLH PLAINTIFFS' RESPONSE TO DEFENDANTS' RULE 12(b)(6) MOTION TO DISMISS

[1] The Debtors, along with their case numbers, are as follows: Astria Health (19-01189-11), Glacier Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings, LLC (19-01194-11), Oxbow Summit, LLC (19-01195-11), SHC Holdco, LLC (19-01196-11), SHC Medical Center-Toppenish (19-01190-11), SHC Medical Center-Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-11), Sunnyside Community Hospital Home Medical Supply, LLC (19-01197-11), Sunnyside Home Health (19-01198-11), Sunnyside Professional Services, LLC (19-01199-11), Yakima Home Care Holdings, LLC (19-01201-11), and Yakima HMA Home Health, LLC (19-01200-11).

Plaintiffs, Yakima HMA, LLC and Yakima HMA Physician Management, LLC (together, "Plaintiffs"), hereby respond in opposition to the Motion filed by Defendants/Debtors SHC Medical Center – Yakima and SHC Medical Center – Toppenish to dismiss pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure.

STANDARD OF REVIEW

In considering a Rule 12(b)(6) motion to dismiss, a court is to accept as true all factual allegations in the complaint and construe them in the light most favorable to the plaintiff as the non-moving party. See Nayab v. Capital One Bank (USA), N.A., 942 F.3d 480, 487 (9th Cir. 2019). To survive a motion to dismiss, the claim must be plausible on its face. See id. The Court may only consider matters within the pleadings on a Rule 12(b)(6) motion; otherwise, the motion must be treated as a summary judgment motion pursuant to Rule 56. See Fed. R. Civ. P. 12(d).

FACTUAL ALLEGATIONS OF THE COMPLAINT

The Complaint alleges that the parties entered into a December 2016 asset purchase agreement relating to two hospitals. (See Compl. at ¶ 8.) Under the asset purchase agreement, Plaintiffs sold certain assets to the Defendants, but certain other assets (the "Excluded Assets") were retained by the Plaintiffs and not sold to the Defendants. (See Compl. at ¶¶ 10, 11, 22.)

Among the Excluded Assets were amounts payable to the Plaintiffs. (See Compl. at ¶¶ 12, 13, 15.) The Defendants agreed to remit to the Plaintiffs all receipts of these amounts. (See Compl. at ¶¶ 14, 16, 23.)

Defendants received at least $287,167 constituting Excluded Assets belonging to the Plaintiffs that must be remitted pursuant to the asset purchase agreement. (See Compl. at ¶¶ 17, 18, 21, 24, 25.)

ARGUMENT

The Court must deny the Defendants' Motion. The factual allegations in the Complaint, construed in the light most favorable to the Plaintiffs, state a plausible claim for relief. The Defendants seek to argue a defense through their Rule 12(b)(6) motion. This is an improper use of the Rule. The defense the Defendants asserts through the Motion is more appropriate for summary judgment or trial, not a Rule 12(b)(6) Motion.

The Complaint asserts a plausible claim against the Defendants. The Complaint clearly alleges that Defendants received at least $287,167 constituting Excluded Assets that belong to the Plaintiffs. The parties' asset purchase agreement expressly defines these funds as Excluded Assets. (See Compl. at ¶ 13.) The asset purchase agreement is attached as an exhibit to the Complaint and, thus, may be considered on a Rule 12(b)(6) motion. See Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012) ("When reviewing a motion to dismiss, we consider only allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." (internal quotation marks omitted)).

Under the asset purchase agreement, the Defendants agreed to promptly remit to Plaintiffs all Excluded Assets received. (See Compl. at ¶ 16 ("Buyers [i.e. Defendants] shall remit any receipts of funds relating to the Seller [i.e. Plaintiffs] Cost Reports promptly after receipt by Buyers . . .") (quoting Asset Purchase Agreement at ¶ 10.8).) The asset purchase agreement further provides that the Plaintiffs "shall retain all rights

to the Seller [i.e. Plaintiffs] Cost Reports including any amounts receivable or payable in respect of such reports or reserves relating to such reports." (See Compl. at ¶ 16.) The funds Defendants received, totaling at least $287,167, thus, belonged to the Plaintiffs, not the Defendants. Defendants agreed to promptly remit such funds to the Plaintiffs, and Plaintiffs have stated a plausible claim against the Defendants for the funds in this adversary proceeding.

Defendants mischaracterize Plaintiffs' claims as being for "turnover." (See Motion at 3.) However, in the bankruptcy context, "turnover" is an action by the trustee under 11 U.S.C. § 542 to recover certain property for the benefit of the bankruptcy estate. This adversary proceeding, obviously, was not brought by the trustee, is not to recover property for the benefit of the bankruptcy estate and is not brought pursuant to Section 542.

Additionally, without citing any authority, Defendants suggest that Plaintiffs are required to allege that Defendants currently have possession of the funds at issue. (See Motion at 3.) Defendants' failure to cite any authority for this proposition is telling. Rather than an action for turnover, the instant adversary proceeding is brought pursuant to the parties' contract. The obligations of the Defendants' under that contract are discussed above. Defendants' obligations are more akin to a bailment, which "arises generally when personality is delivered to another for some particular purpose with an express or implied contract to redeliver when the purpose has been fulfilled." Freeman v. Metro Transmission, Inc., 533 P.2d 130, 132 (Wash. Ct. App. 1975). (See also Asset Purchase Agreement at ¶ 12.6 (Washington choice of law).) Defendants have not cited any authority requiring a plaintiff to plead that a bailee or one under a contractual duty

to remit property still has possession of the property at the time of the action. Defendants' failure to cite any source of law imposing such a heightened pleading requirement likely results from the fact that knowledge of the whereabouts of a bailor/plaintiff's property is uniquely situated with the bailee/defendant. Imposing the unsupported heightened pleading requirement suggested by Defendants would virtually eliminate bailment actions because a bailor/plaintiff would rarely know the whereabouts of the property the bailee/defendant previously held, particularly when the property is a fund balance rather than tangible property. Moreover, imposing the Defendants' proposed pleading requirement would create a perverse incentive for bailees to hide a bailor's property so the bailor could not meet the Defendants' heightened pleading requirement.

In addition, Defendants conduct here could be characterized as conversion, which is "the act of willfully interfering with any chattel, without lawful justification, whereby any person entitled thereto is deprived of the possession of it." Consulting Overseas Mgmt., Ltd. v. Shtikel, 18 P.3d 1144, 1147 (Wash. Ct. App. 2001). Money may be the subject of conversion if the party charged with conversion had an obligation to return the money to the party claiming it. See id. Here, Defendants contractually agreed to return to Plaintiffs the funds they received, totaling at least $287,167. Like a bailment theory, Defendants have not cited any authority requiring a plaintiff to plead that a defendant in a conversion action still has possession of the property at the time of the action.

Defendants assert a defense that they no longer have possession of the Excluded Assets. (Motion at 2, fn. 2.) In the same sentence, Defendants admit that this defense

is irrelevant for purposes of the Motion. (See id.) Defendants' admission of the irrelevance of their defense on a motion to dismiss prompts the question: why did Defendants raise a defense they admit is irrelevant to a Rule 12(b)(6) motion? The Court cannot consider matters outside the pleadings, including the Defendants' irrelevant defense, without converting a Rule 12(b)(6) motion to a Rule 56 summary judgment motion. See Fed. R. Civ. P. 12(d). The Court should not permit Defendants to introduce matters outside the pleadings. Plaintiffs have not had an opportunity through discovery, as allowed by Federal Rules of Civil Procedure 26-37, to test Defendants' defense and obtain evidence relevant to the defense. After discovery, the Court will have the opportunity to consider Plaintiffs' claims and Defendants' defense either at trial or on summary judgment.

WHEREFORE, Plaintiffs, Yakima HMA, LLC and Yakima HMA Physician Management, LLC, respectfully request that the Court deny Defendants' Rule 12(b)(6) Motion to Dismiss, award Plaintiffs their attorney's fees for responding to the Motion and grant Plaintiffs such other and further relief as is just and appropriate.

DATED this 21st day of September, 2020

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