

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP4200219

Jo Ann Blackwell, et al

Mary Black Health System, LLC et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Honorable J. Mark Hayes II

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : Please see the Information Below.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
	N/A	N/A
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 4th day of September, 2020 and a copy mailed first class or placed in the appropriate attorney's box on this 4th day of September, 2020 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas A. Killoren Jr., Ryan Frederick McCarty,

Katon Edwards Dawson Jr., James Lynn Werner

Marghretta Hagood Shisko, John S. Simmons,

John Belton White, Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)**ATTORNEY(S) FOR THE DEFENDANT(S)****CLERK OF COURT****Court Reporter:**

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This matter came before the Court on various SCRPC Rule 12(b)(6) motions and a motion to stay and compel arbitration. After receiving the arguments, reviewing the materials submitted, and applying the required respective standards of review to the information presently before the Court, the motions cannot be granted. Even though the present decision predominantly is a denial under SCRPC Rule 12(b)(6) and, thus, decides no issue on its merits, the following observations are made in an effort to assist the parties in moving forward.

Plaintiffs present this case as a putative class action, pursuant to SCRPC Rule 23. Plaintiffs bring this action against Mary Black Memorial Hospital (a local hospital in Spartanburg), as well as the two entities that Plaintiffs allege are responsible for the hospital's billing of patients and filing of liens, Community Health Systems Professional Services Corporation (CHSPSC) and Professional Account Services. The class, which has not yet been certified, is currently defined as;

"All individuals who, since January 20, 2014, received any type of healthcare treatment from any entity located in South Carolina that is owned or affiliated with Defendants, while being covered by valid health insurance, and whose medical bills resulting from that treatment were not submitted to their health insurance carrier for potential payment."

The allegations are that Defendants regularly refused to submit medical bills to patients' health insurance carriers and instead sought payment directly from the patients themselves. This was done despite the hospital's contracts with health insurance carriers to accept discounted payments from the insurance

providers in full satisfaction of their patients' debt. By circumventing their agreements with the insurance providers, it is alleged, that the hospital system attempted to optimize the amount of payment received for their services, as the hospital system could collect more from their patients if they were able to avoid their patients' health insurance providers.

The three named Plaintiffs in this action are Jo Ann Blackwell; Michelene Brooks; and Samuel Herbert Owens. Plaintiff Blackwell was injured as the result of being struck by an automobile on December 19, 2013, and Plaintiff Blackwell was a patient of Mary Black Memorial Hospital from December 27, 2013 until January 3, 2014. Plaintiff Blackwell received medical treatment at Mary Black for injuries associated with the accident. Plaintiff Brooks was injured in an automobile collision on February 26, 2016. Following the collision, on February 28, 2016, Plaintiff Brooks presented to Mary Black Memorial Hospital where she received medical treatment for injuries associated with the accident. Plaintiff Owens was injured in an automobile collision on October 9, 2015. Immediately following the collision, Plaintiff Owens was transported to Mary Black Health System Emergency Department via private vehicle, where he received medical treatment for injuries associated with the accident.

Generally, each of these Plaintiffs were treated at Mary Black Hospital as a result of and because of their accidents. Their medical bills were not sent to their respective insurance provider, despite, allegedly, each having valid health insurance. After each Plaintiff was billed for their treatment, Defendants placed a third-party lien against their personal injury recovery.

As to Defendants' claim that the present litigation should be stayed and the Plaintiff should be ordered to arbitration because the claim for monetary relief may rely upon the agreed negotiated price arising from the Hospital Services Agreement with Cigna and/or MedCost, LLC Agreement. The Court disagrees with that assertion. The Court has reviewed the Cigna "Hospital Services Agreement" (originally dated 2006) and the "MedCost Hospital Agreement" (originally dated 1991). The enforcement of an arbitration agreement is contractual in nature and for an arbitration provision to be enforceable by this Court; the provision must apply to the parties. The terms of either of the Agreements do not obligate the Plaintiff (Owens) to mandatory arbitration. The Court could not find an arbitration provision in the MedCost agreement and the arbitration provision in the Cigna Agreement (appears to not be mandatory as the word "may" is used) does not apply to the Plaintiff as the Plaintiff is not a "party" to the agreement. In accordance to the terms of the agreement, the Plaintiff is, at best, a "participant" under the agreement's terms but not a "party". Section 6.2 is the Dispute Resolution part of the agreement, which contains the arbitration language. As previously stated, any decision concerning arbitration appears discretionary and not mandatory (see section 6.2.1). Section 6.2.2 sets forth procedural details related to the arbitration "if" a party opted to initiate such proceeding. Buried within the section 6.2.2 is a sentence that appears to make arbitration the exclusive remedy. Nevertheless, section 6.2.2 goes on to be read that the arbitration provision does not apply to third parties and does not apply to "class" matters. As previously stated, the Plaintiff is not a "party" to the agreement and its provisions are not enforceable as binding on the Plaintiff. Plaintiff also raised the issue that the Cigna Agreement had expired. Even though the agreement was for a three (3) terms, it contained a year-to-year renewal. Based on the information provided to this Court, no decision could be made that the agreement was or was not in effect. If the effective date(s) of the agreement(s) is material to merit based decision, further discovery is needed. Therefore, this Court concludes that a SCRCF Rule 12 (b) analysis does not afford any of the Defendant to a stay based on the provisions of either of these agreements. This Court review analysis at his stage of these agreements was limited to the arbitration issue. Any other consideration of the agreements goes beyond a SCRCF Rule 12(b)(6) analysis.

The remaining SCRCF Rule 12(b) (6) arguments offered by the Defendants related to the pleadings. With a SCRCF Rule 12(b)(6) review, the question for the court is whether in a light most favorable to the Plaintiff, and with every doubt resolved in Plaintiff's behalf, the allegations set forth on the face of the complaint state any valid claim for relief. A court cannot sustain a 12(b)(6) motion if the facts alleged and inferences reasonably drawn therefrom would entitle the Plaintiffs to any relief on any theory of the case. Applying the 12 (b)(6) standard of review, the allegation in the amended complaint, and considering the arguments, the motion to dismiss cannot be granted. Again, the Court makes the following observation in an effort to assist the parties in moving forward.

The Court agrees with the Plaintiffs that the Amended Complaint states sufficient allegations against both CHSPSC and Professional Account services, stating that there is no prohibition on pleading facts in the way that they have done here, by referring to the Defendants collectively. Further, this Court agrees that the Amended Complaint provides sufficient notice to all Defendants of the allegations being made against them. Viewing the amended complaint as a whole, the Plaintiffs have alleged sufficient facts to state a claim for tortious interference with contractual relationship. Plaintiff theory being that the allegations in the Amended Complaint can be reasonably construed to mean that Defendants' conduct resulted in a breach of the patients' contracts with their insurers because Plaintiffs alleged they paid premiums and did not have their hospital bills paid by their insurers.

On a SCRCF Rule 12(b) (6) motion, this Court agrees that the Plaintiffs' argues claims do not fail as a matter of law under the Medicare Act. Again, Plaintiffs' theory and the factual presentation is that this Court would have to go outside the amended complaint to rule that the Defendants' were required to seek payment from any applicable liability coverage prior to seeking or obtaining payment from Medicare, it presumes facts not alleged in the Amended Complaint, in that it presumes that the at-fault driver in automobile accidents had a valid insurance policy from which to collect. Thus, Defendants' argument relies on facts outside of the pleadings. If the issue of insurance is material to a merit based decision, the issue should be developed in discovery.

Again, under a SCRCF Rule 12(b)(6) analysis, this Court is bound to accept Plaintiffs' theories of liability to the facts offered in the Amended Complaint. Therefore, this Court, at this stage, cannot accept the voluntary payment doctrine as a defense. Under a 12(b) (6) analysis, this decision is reasonable given the assertion that payments made by the Plaintiffs were not voluntary, as the Plaintiffs only settled with Mary Black after the hospital asserted unlawful liens against them. Plaintiffs strongly assert that payments made as a result of extortion are not considered voluntary.

Once again, under a SCRCF Rule 12(b)(6) analysis, this Court cannot dismiss the Plaintiffs' theory of unjust enrichment. When viewing the Amended Complaint in a light most favorable to the pleader, a reasonable factual conclusion with theory can be that the Defendants were unjustly enriched and it would be inequitable to allow them to retain the benefits of their wrongful billing practices while attempting to collect a higher amount from Plaintiffs.

This Court opinion is that any statute of limitation issue fails at this time because of its relatedness to the original filing of the complaint. Factually, the issue may or may not be significant at a future time.

Thank you all for continued cooperation and attention.



Spartanburg Common Pleas

Case Caption: Jo Ann Blackwell , plaintiff, et al VS Mary Black Health System, Llc
, defendant, et al
Case Number: 2017CP4200219
Type: Order/Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132