Renal Treatment Centers West Incorporated v. Allegiant Healthcare West LLC

2021 | Cited 0 times | D. Arizona | September 17, 2021

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Renal Treatment Centers West Incorporated,

Plaintiff, v. Allegiant Healthcare West LLC,

Defendant.

No. CV-20-01437-PHX-GMS ORDER

Motion to Withdraw and/or Amend Admissions (Doc. 49). For the following reasons, denied.

BACKGROUND skilled nursing facilities with necessary non-physician personnel, including registered

nurses and patient care technicians, for certain in-patient and out-patient services. 53 at 2.) Defendant operates nursing homes in Mesa and Phoenix. In 2017, Defendant

a second

would supply Defendant personnel, supplies, and equipment at its Mesa and Phoenix -fifth day of the month

4.) Defendant admits that it did not pay the invoices related to either agreement, (Doc. 50 at 4), arguing instead that both agreements are invalid or unenforceable. (Doc. 56 at 4.) Plaintiff served its initial discovery requests, including the requests for admission at February 1, 2021, but Plaintiff granted a two-week extension to February 15. Defendant

did not meet the deadline, citing ongoing settlement negotiations and the COVID-19 pandemic. (Doc. 50 at 9 requests were deemed admitted pursuant to Federal Rule of Civil Procedure 36(b).

id not (Doc. 56 at 2 n.2.)

DISCUSSION I. Legal Standard

When a party fails to make a timely response to a request for admission, the requests are deemed admitted. Fed. R. C rule is conclusively established unless the court, on motion, permits the admission to be

the court is not persuaded that it would prejudice the requesting party in maintaining or

Id. However, a court may, in its discretion, decline to grant such a motion even if both factors are present. Conlon v. United States, 474 F.3d party has met the two-pronged test of Rule 36(b), the district court may consider other

factors, including whether the moving party can show good cause for the delay and whether Id.

II. Analysis Here, Plaintiff has offered no evidence of prejudice. Therefore, only the first prong of the Rule 36(b) test and the discretionary factors are at issue.

A. Promote the Presentation of the Merits would practically eliminate any Hadley v. United

States, 45 F.3d 1345, 1348 (9th Cir. 1995). The relevant question is whether the admission resolves an ultimate issue that precludes the need for any future determination on the merits. Hadley, 45 F.3d at 1348 (holding that the first prong was satisfied because the Conlon, 474 F.3d at 622 (holding that the first prong was satisfied because the admission admitted the lack of causation in a tort case); see also Sonoda v. Cabrera, 255 F.3d 1035, 1039 40 (9th Supermarket Energy Techs.,

LLC v. Supermarket Energy Sols., Inc., No. CV-10-2288-PHX-SMM, 2013 WL 12107468, at *3 (D. Ariz. Jan. 9, 2013), does not show otherwise. Although Supermarket does have prong of the analysis, 1

the merits are more properly analyzed as a discretionary factor. See Conlon, 474 F.3d at 625. In this case, Plaintiff alleges a breach of contract claim against Defendant. (Doc. 53 at 2.) The elements of a breach of contract claim are (1) the existence of a contract; (2) breach; and (3) resulting damages. First Am. Title. Ins. Co. v. Johnson Bank, 239 Ariz. validity of both contracts specifically, that the contracts were invalid or unenforceable

due to mutual mistake or illegality/impossibility. (Doc. 56 at 4.) The first two of the three

hat the Amended Acute Services Agreement is a valid and enforceable 1 Supermarket Energy Techs., LLC, 2013 WL 12107468, at *3.

breach (Doc. 53 at 12 n.6.) This admission forecloses any argument that Defendant was

discharged from performing due to a breach by Plaintiff. Considering Defendant has admitted and will not withdraw Services Agreement and . . . it did not pay the invoices related to the Dialysis Services

(Doc. 50 at 4.) Plaintiff and Defendant had valid and enforceable contracts; Defendant failed to pay on those contracts; and Plaintiff suffered damages as a result of the nonpayment. If the admissions are not withdrawn, any presentation of the merits of the

B. Discretionary Factors Because Plaintiff does not claim prejudice, Defendant has satisfied Rule 36(b) two-prong test. However, even if the two-prong test is satisfied, the Court may still deny

discretionary factors. Conlon, 474 F.3d at 625. The discretionary factors include (1) whether the moving party can show good cause for the delay and (2) whether the moving party appears to have a strong case on the merits. Id.

1. Good Cause Defendant has not shown equests. Defendant was well aware of the discovery deadline because

it referenced the deadline in a court filing only the week before. (Doc. 30.) Although

Plaintiff flatly rejected any such notion by refusing to grant an open extension of the deadline to focus on settlement. (Doc. 34-2 at 13, 23.) Additionally, in its scheduling order, this Court quite clearly informed the parties that it did not consider settlement

schedule mediation does not constitute good cause, unless discovery is substantially

(emphasis added).) 2 Because Defendant can show no reason for its failure to meet the deadline other than a reason this Court has already stated it would reject Defendant cannot show good cause to withdraw its admissions. 3

2. Strength of the Case on the Merits Defendant asserts that the Dialysis Services Agreement is unenforceable because of mutual mistake. (Doc. 50 10 11.) It also contends that both agreements are unenforceable (Doc. 56 at 9.) The Court considers each defense in turn.

a. Mutual Mistake Mutual mistake of the parties to a written contract makes that contract voidable. State ex rel. Herman v. Mestas, 12 Ariz. App. 289, 295, 469 P.2d 855, 861 (1970) burden of proving a mutual mistake of law is on the party seeking to avoid the contract and

Gill v. Kreutzberg, 24 Ariz. App. 207, 209, the parties made a mistake about a basic assumption on

which they made the contract, (2) the mistake had a material effect on the exchange of performances, and (3) the party seeking avoidance does Hall v. Elected Offs. Ret. Plan, 241 Ariz. 33, 41 42, 383 P.3d 1107, 1115 16 (2016).

Here, Defendant argues that both it and Plaintiff mistakenly believed that Defendant was the proper party to the contract. (Doc. 56 at 8.) Instead, Defendant argues, Allegiant Healthcare of Phoenix, LLC is the owner of Allegiant Healthcare of Phoenix and thus 2 Although the Court was referring to the deadlines in the Scheduling Order, it appears that - ordered deadlines. (Doc. 56 at 6.) While this Motion was pending, Defendant also filed a at 2.) 3 Moreover, the COVID- delay. Defendant does not explain how the pandemic affected discovery other than citing its vaccination efforts in early 2021. (Doc. 50 at 10); (Doc. 56 at 7 8.) attempts to settle this action were not hindered by the pandemic, and Defendant itself ad ow (Doc. 50 at 10.) Therefore, the Court does not find this reason persuasive.

should be responsible for services provided to Allegiant Healthcare of Phoenix. (Doc. 56 at 8.) But Defendant does not show how this alleged mistake satisfies the three-part test for mutual mistake. There is no evidence that the identity of the contracting party was a Defendant has not shown that the mistake had a material effect on the exchange of performances. Notably, Defendant itself has admitted that it did not substantially perform. 4

Therefore, even if Defendant were to have future discovery in this case, it would not have a strong case on the merits.

b. Illegality

1800 Ocotillo, LLC v. WLB Grp., Inc., 219 Ariz. 200, 202, 196 In determining whether a provision is unenforceable, courts balance the interest in enforcing the provision against the public policy interest that opposes enforcement. Id. The principal question is whether nforcement of the term would be injurious to the public welfare. Id.

Here, Allegiant alleges that the agreements violated 42 C.F.R. § 413.210. That provision states,

Except as noted in § 413.174(f), items and services furnished on or after January 1, 2011, under section 1881(b)(14)(A) of the Act and as identified in § 413.217 of this part, are paid under the ESRD [End-Stage Renal Disease] prospective payment system described in § 413.215 through § 413.235 of this part.

(a) Qualifications for payment. To qualify for payment, ESRD facilities must meet the conditions for coverage in part 494 of this chapter.

4 In addition to failing to meet the three-pa assumed it was the owner of Allegiant Healthcare of Phoenix is dubious. If, as Defendant contends, the two entities are separately operated and

controlled, (Doc. 53-12 at 2), it makes little sense that Defendant would think itself responsible for Allegiant Healthcare of Phoenix a belief,

(b) Payment for items and services. CMS [Centers for Medicare & Medicaid Services] will not pay any entity or supplier other than the ESRD facility for covered items and services furnished to a Medicare beneficiary. The ESRD facility must furnish all covered items and services defined in § 413.217 of this part either directly or under arrangements. 42 C.F.R. § 413.210 (2021). Essentially, Defendant contends that because it is a nursing home, it is not an ESRD facility, and cannot bill Medicaid for dialysis under § 413.210. However, Defendant fails to articulate why its inability to bill Medicare makes the agreements illegal. Although Plaintiff, as the ESRD facility, could have billed Medicare for the services provided, it was not mandated to do so, and, in fact, it was forbidden to do so through the very language of the agreements. 5

acceptance of the contracts despite not being able to bill Medicare to recoup its costs was likely a poor business decision but a poor business decision does not make a contract illegal. for illegality weighs against granting the Motion to Withdraw. c. Impossibility

the performance of a contract is rendered impossible, the party failing to perform is Mobile Home Ests., Inc. v. Levitt Mobile Home Sys., Inc., 118 Ariz. 219, 222, 575 P.2d 1245, 1248 (1978) (quoting Garner v. Ellingson, 18 Ariz. App. 181, 182, 501 P.2d 22, 23 (1972) rendered impossible of performance by a supervening event not reasonably fore Id.

42 C.F.R. § 413.210 became effective on January 1, 2011. Defendant entered into the Amended Acute Services Agreement in 2017 and the Dialysis Services Agreement in 2018. (Doc. 53 at 3 4.) The regulation was already in effect and thus completely foreseeable when Defendant entered these agreements. Therefore, Defendan impossibility is weak.

5 or collect from any patient or third-party payor any fee or charge -1 at 21); (Doc. 50-2 at 31).

C. Whether the Discretionary Factors Weigh Against Granting the Motion Although Defendant meets the two-part test for withdrawal, this Court will exercise its discretion and deny motion. Defendant has a history of failing to comply with deadlines. Aside from missing the discovery deadline at issue, which had already been extended, Defendant also missed two other deadlines. First, Defendant did not provide Plaintiff with its initial disclosure statement until March 25, 2021 well after the November 20, 2020 deadline, which was itself subject to an extension. (Doc. 24 at 1); (Doc. 53 at 6.) Second, Defendant failed to have an attorney enter an appearance before (Doc. 26 at 2); (Doc. 29); (Doc. 34-1 at 3.) In addition to the three missed deadlines, during the Scheduling Conference on November 20, 2020, this Court ordered Defendant to set forth with specificity its alleged defenses in the initial disclosure statement. When Plaintiff received initial disclosure statement 125 days late no explanation of the defenses was included. (Doc. 53-3.) Moreover, after the filing of this Motion, the parties twice represented to the Court that this case was settled, (Doc. 58);

(Doc. 60), and based on those representations, the Court granted an extension of time, (Doc. 61). 6

Despite these representations, nearly three and half months later, the parties still have not settled. (Doc. 72); (Doc. 76). Finally, Plaintiff contends, and Defendant does not appear to contest, that Defendant has produced only seven pages of original discovery to Plaintiff throughout the entirety of this litigation. 7

(Doc. 53 at 9); (Doc. 53-7 at 1 105); (Doc. 53-8 at 1 7.) The Court finds the discretionary factors controlling and that Defendant has not acted in good faith.

CONCLUSION

against granting its motion. Accordingly, its Motion to Withdraw Admissions is denied. 6 The Court also granted an extension after Defendant belatedly hired new counsel. (Doc. 47); (Doc. 48); (Doc. 26.) 7 It appears that Defendant merely re-numbered and re- disclosure as part of its own.

IT IS THEREFORE ORDERED Admissions (Doc. 49) is DENIED.

Dated this 17th day of September, 2021.