



Physicians ACO, LLC v. Computer Sciences Corporation et al

2017 | Cited 0 times | S.D. Texas | July 26, 2017

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION PHYSICIANS ACO, LLC, §

§ § § § § § § Plaintiff, VS. CIVIL ACTION NO. 4:16-CV-1293 COMPUTER SCIENCES CORPORATION, et al, Defendants.

ORDER AND OPINION Reconsideration. (Document No. 23). Defendants Computer Sciences Corporation and CSRA

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23) is denied. Background

negligent misrepresentation, and fraud. (See Document No. 22). Plaintiff now presents

arguments that the Court incorrectly dismissed its breach of contract, negligent claim. (Document No. 23). 1

Standard of Review

59(e) motion, the movant must show at least one of the following: 1) an intervening change in

controlling law; 2) new evidence not previously available; 3) the need to correct a clear or 1 Please refer to the previous opinion for a discussion of the facts. (Document No. 22).

United States District Court Southern District of Texas

ENTERED July 27, 2017 David J. Bradley, Clerk

United States v. Saldivar, No. 2:03-CR-182-2, 2014 WL 357313, at *1 (S.D. Tex. Jan. 31, 2014). Relief under this Rule is *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004) (citations omitted). Discussion Breach of Contract

The Court previously explained that PACO did not state a claim for breach of contract, because it did



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not sufficiently allege that it was an intended third-party beneficiary to the contract. (Document No. 22 at 4-5). The Court stated that:

PACO does not specifically claim to be a party to the contract, but PACO does make allegations suggesting that it believes it has standing to enforce the contract as third-party

to accommodate data sets from each ACO on the d Id. at 10. The Court agrees with Defendants that these allegations are insufficient to allege that PACO was an intended third-party beneficiary to the contract. Neither PACO; the allegations merely state that CSC was aware that PACO would be using the GPRO Portal. As described above, this awareness is not sufficient to suggest third-party beneficiary status, especially considering the high bar to such status in government contracts, and the presumption that PACO is only an incidental beneficiary. Therefore the Court finds that the allegations in the Amended Complaint do not plausibly state a claim for relief against CSC, and should be dismissed. Id. In its Motion for Reconsideration PACO again advances its theory that it was a third-party beneficiaries of the procurement contract between Center for Medicare and Medicaid Services

(CMS) and Defendants to provide the interactive GPRO Portal intended specifically for their use as one of the first cohort of Accountable Care Organizations charged by CMS to use the GPRO Portal to timely lodge required reports Case 4:16-cv-01293 Document 25 Filed in TXSD on 07/26/17 Page 2 of 5 only o

Plaintiff then argues that: On its third-party beneficiary claims, if Texas law were applicable, the Court may dispose of them summarily only, after evidence to evaluate the intention of the parties to the contract. For under Texas law, the fact that a plaintiff entity is not a named or called a beneficiary to the contract is not determinative of whether it is an intended beneficiary of the contract entitled to damages for its non-performance. Rather it is a fact based inquiry. Basic Capital Mgmt., Inc. v. Dynex Commercial, Inc., 348 S.W.3d 894 (Tex. 2011). Id. at 4-5. This argument fails for several reasons. First, the Court already explained that federal -4). Moreover, Plaintiff does not cite any case,

based on either Texas or federal law, which states that discovery is always required to determine Second, while it is true that a third-party beneficiary need not be named in a contract, the Court

Dynex

Commercial status as a third party beneficiary is a matter of law. 348 S.W.3d at 901. For all of these reasons,

Negligent Misrepresentation/Fraud The Court previously explained that:

The statements alleged to be negligent misrepresentations are: (1) C 9 at 12). PACO alleges that these



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same statements also constituted fraud. Id. at 13. Both of these causes of action require that the plaintiff relied on the statement made by

the defendant, but nowhere in the Amended Complaint does PACO allege that it relied on of these statements; without knowledge of the statements it would be impossible for PACO to rely upon them. (Document No. 22 at 6-7). Nowhere in its Motion for Reconsideration does Plaintiff state that it misled but CMS, who relied upon Defendants [sic] false statements that the GPRO Portal

misrepresentation is not required to be made directly to a claimant; an indirect misrepresentation

Admiral Ins.

Co. v. Heath Holdings USA, Inc., No. CIV.A. 3:03-CV-1634G, 2004 WL 1144062, at *4 (N.D. f received and relied upon

claim to be under Federal law of false statements was to deprive Plaintiff of its entitled MSSP payment. This is sufficient proximate cause at

Id. at 5-6. The Court first notes that it is inappropriate for Plaintiff to raise this new argument in a motion for reconsideration. Broyles v. Texas, 643 F. Supp. 2d 894, 897 (S.D.

Tex. 2009) ((citations and internal quotations omitted). However Plaintiff is correct that, according to Bridge

v. Phoenix Bond & Indemnity Co. -party reliance is an element of a common-law fraud claim, there is no general common-law principle holding that a fraudulent misrepresentation can cause legal injury only 553 U.S. 639, 656 (2008) (discussing a RICO claim predicated on mail fraud). However, confusingly, Plaintiff has technically alleged claims of fraud and negligent misrepresentation. Bridge explicitly states that mere fraud claims do - in a negligent misrepresentation claim. Id. Therefore Bridge is not helpful to the causes of action

ognizing that Bridge may allow for a fraudulent misrepresentation claim under federal law, 2

the Court will grant Plaintiff 30 days to amend its complaint. Conclusion

For the reasons stated above the Court hereby o. 23) is DENIED. Plaintiff has 30 days from the entry of this order to amend its complaint. SIGNED at Houston, Texas, this 26th day of July, 2017.

_____ MELINDA HARMON UNITED STATES DISTRICT JUDGE

2 has meaningfully addressed this issue.

