

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:) Chapter 11
)
APF Co., et. al.,) Case No. 98-1596 (PJW)
) Jointly Administered
Debtors.)
_____)
)
JOSEPH A. PARDO, Trustee of)
FPA Creditor Trust and PLAN)
ADMINISTRATOR for APF Co.,)
et al.,)
)
Plaintiffs,)
)
v.) Adv. Proc. No. 00-854
)
HORIZON HEALTHCARE PLAN HOLDING)
COMPANY, INC., f/k/a MEDIGROUP,)
INC. and MEDIGROUP OF NEW)
JERSEY, INC.,)
)
Defendants.)

MEMORANDUM OPINION

Gregg M. Galardi
Grenville R. Day
Skadden, Arps, Slate, Meagher
& Flom LLP
One Rodney Square
P.O. Box 636
Wilmington, DE 19899

John Wm. Butler, Jr.
J. Eric Ivester
Skadden, Arps, Slate, Meagher
& Flom (Illinois)
333 West Wacker Drive
Suite 2100
Chicago, Illinois 60606

Attorneys for the Plan
Administrator

Dated: October 15, 2004

Jason C. Powell
Ferry, Joseph & Pearce, P.A.
824 Market Street, Suite 904
P.O. Box 1351
Wilmington, DE 19899

Attorney for Trustee

Martin L. Borosko
Stacey L. Meisel
Becker Meisel LLC
Eisenhower Plaza II
354 Eisenhower Parkway
Suite 2800
Livingston, NJ 07039

Attorneys for Horizon Blue
Cross & Blue Shield

WALSH, J. 

This opinion is with respect to the cross-motions (Doc. ## 14 and 19, respectively) of Joseph A. Pardo, Trustee of the FPA Creditor Trust and the Plan Administrator for APF Co. (the "Plaintiffs") and Horizon Healthcare Plan Holding Co., Inc. f/k/a Medigroup, Inc. and Medigroup of New Jersey, Inc. (collectively, "Horizon") for partial summary judgment. For the reasons set forth below, both motions will be denied.

BACKGROUND

APF Co. f/k/a FPA Medical Management ("FPA") was a national physician practice management company which acquired, organized and managed primary care physician practices that contracted with health maintenance organizations and health insurance plans. It provided medical care services to capitated managed care enrollees and fee-for-service patients and also provided physician management services to hospital emergency departments and like facilities. FPA Medical Group of New Jersey, Inc. ("FPA New Jersey") was an affiliate of FPA. According to Plaintiffs, FPA New Jersey provided medical services to approximately 80,000 individuals within the State of New Jersey, including approximately 33,000 Horizon enrollees.

Horizon provides health care services to enrollees of its health maintenance plans living in New Jersey. In addition to its previous name Medigroup, Inc., Horizon was formerly known as HMO

Blue Cross and Blue Shield of New Jersey.

On January 21, 1995, FPA New Jersey entered into a medical services agreement with Horizon (as amended, the "Services Agreement"). Under the Services Agreement, FPA New Jersey was to provide medical services to Horizon's enrollees in return for Horizon's payment of a monthly fee ("Capitation Payment") to FPA New Jersey.

Prior to filing bankruptcy, FPA and some of its affiliates fell behind in their payment of obligations to health care providers who were rendering services to managed care enrollees. Consequently, in July 1998, Horizon withheld from FPA New Jersey an amount equal to the entire Capitation Payment due FPA New Jersey for that month. Horizon provided FPA New Jersey with notice of the withholding in a letter dated July 17, 1998. According to Plaintiffs, in so doing, Horizon withheld at least \$1,059,223.26 otherwise payable to FPA New Jersey for the month of July (the "Transfer"). In its letter, Horizon explained that it withheld the Transfer in order to reimburse Horizon for payments it had made directly to third-party healthcare providers.

On August 3, 1998, FPA New Jersey, together with affiliated debtors, filed voluntary petitions for relief¹ under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101

¹
FPA and its other affiliates filed for voluntary chapter 11 relief during the period beginning July 19, 1998 and ending August 7, 1998.

et. seq. (the "Bankruptcy Code").² On August 20, 1998, the Court entered an order³ ("Payor Order") which, inter alia, prohibited non-debtor HMOs and insurers ("Payors") from withholding offsetting post-petition payments due the Debtors and which prohibited the Payors from making direct post-petition payments to health care providers.

On May 26, 1999, the Court entered an order confirming the Debtors' Modified Second Amended Joint Plan of Reorganization. The Plaintiffs in this proceeding are the Trustee of the FPA Creditor Trust established by the Plan and the Plan Administrator of the Plan.

Plaintiffs commenced this adversary proceeding on July 18, 2000. The initial complaint pursued eight different causes of action but, by order dated August 31, 2001, the Court granted Horizon's motion to dismiss counts one through five. The instant motions are with respect to counts six and eight of the complaint that seek to avoid the Transfer as a preference pursuant to § 547(b) or an insufficiency claim pursuant to § 553(b).

Plaintiffs argue that partial summary judgment is appropriate and the Transfer should be avoided and recovered

2

Individual sections of the Bankruptcy Code will be cited herein as "§ ____".

3

The August 20, 1998 order modifies and supersedes a prior payor order entered on July 21, 1998 and docketed on July 30, 1998.

pursuant to §§ 547 and 550 and that Horizon's claims against FPA New Jersey should be disallowed. In response, Horizon filed a cross-motion for partial summary judgment arguing that the preference claim should be dismissed because Horizon provided new value to FPA New Jersey pursuant to § 547(c)(4) in an amount that exceeded the value of the Transfer. In addition, Horizon argues that the insufficiency claim should be dismissed because Plaintiffs cannot assert in one argument that the setoff is invalid and in another that it is valid.⁴

DISCUSSION

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c).⁵ The moving party bears the initial responsibility of proving that no genuine issue of material fact is in dispute. See Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265

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In light of the Court's ruling on the preference claim and the decision in Pardo v. Pacificare of Tex., Inc. (In re APF Co.), 264 B.R. 344, 357 (Bankr. D.Del. 2001), the Court need not address whether the alternative relief requested by the second count survives.

5

Federal Rule of Civil Procedure 56(c) is applicable to contested matters in bankruptcy pursuant to Federal Rules of Bankruptcy Procedure 9014 and 7056.

(1986). Once the moving party has met this burden, the non-moving party "must set forth specific facts showing that there is a genuine issue for trial." First Nat'l Bank of Ariz. v. Cities Serv. Co., 391 U.S. 253, 288, 88 S.Ct. 1575, 1592, 20 L.Ed.2d 569 (1968) (quoting Fed.R.Civ.P. 56(e)). In ruling on a motion for summary judgment, the Court must view the evidence in the light most favorable to the nonmoving party, and must make all inferences in favor thereof. See, e.g., Anderson v. Liberty Lobby Inc., 477 U.S. 242, 255, 106 S.Ct. 2505, 2513, 91 L.Ed.2d 202 (1986).

Horizon argues that the Transfer is not avoidable because it provided FPA New Jersey with new value pursuant to § 547(c)(4).⁶ In order to protect the Transfer on the basis of new value provided to FPA New Jersey, Horizon "has the burden of proving the nonavoidability" of the Transfer pursuant to § 547(c)(4). 11 U.S.C. § 547(g). The Third Circuit Court of Appeals, in New York City Shoes, Inc. v. Bentley Int'l, set forth three requirements

⁶Section 547(c)(4) provides:

(c) The trustee may not avoid under this section a transfer--
 (4) to or for the benefit of a creditor, to the extent that, after such transfer, such creditor gave new value to or for the benefit of the debtor--

(A) not secured by an otherwise unavoidable security interest; and
 (B) on account of which new value the debtor did not make an otherwise unavoidable transfer to or for the benefit of such creditor;

11 U.S.C. § 547(c)(4).

under § 547(c)(4) for a transfer to be excepted from avoidance: (1) the transfer must be otherwise voidable as a preference under § 547(b); (2) "new value" must be advanced after the preferential transfer and it must be unsecured; and (3) the creditor must not have been fully compensated by the debtor as of the date the debtor filed the bankruptcy petition. In re New York City Shoes, Inc., 880 F.2d 679, 680 (3d Cir. 1989); In re Contempri Homes, 269 B.R. 124, 130 (Bankr. M.D.Pa. 2001) (citing id.). If the creditor satisfies these elements, a setoff is permitted in the amount of the new value and the recoverable amount is reduced. See Ross v. Phila. Housing Auth. (In re Ross), No. 97-0063, 1997 WL 331830, at *4 (Bankr. E.D.Pa. June 10, 1997) (citing N.Y. City Shoes, 880 F.2d at 680).

As in Claybrook v. Pizza Hut, Inc. (In re Discovery Zone, Inc.), 300 B.R. 856 (Bankr. D. Del. 2003), the only issue here is whether Horizon in fact advanced new value to FPA New Jersey. In Discovery Zone I observed: "If the transfer is within this exception, it was made in exchange for new value and the new value augments the estate in the same proportion as the value of the transfer; therefore the estate does not suffer any injury." Discovery Zone, 300 B.R. at 860 (citation omitted). In determining whether new value was advanced in Discovery Zone, I favored an objective determination that focuses on "whether new value was actually conveyed" and not "the creditor's intention to convey new

value." Id. (citations omitted).

In the case before me, the factual record must be developed before I can ascertain what new value, if any, was actually conveyed. Horizon asserts that it advanced new value to FPA New Jersey by directly paying healthcare providers who would have otherwise had claims against FPA New Jersey. However, there are insufficient facts before the Court demonstrating who actually received these payments, when the payments were received and what claims, if any, those recipients had against FPA New Jersey. Information about the recipients is the key in valuing Horizon's actions based on the new value defense. Therefore, there remains a genuine issue of material fact that must be resolved.

CONCLUSION

For the above stated reasons, the Court denies summary judgment with respect to the preference claim. Of course, the parties may conduct appropriate discovery to develop the facts regarding payments made to healthcare providers.

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ORDER

For the reasons stated in the Court's memorandum opinion of this date, the cross-motions (Doc. ## 14 and 19) of Plaintiffs and Defendants for partial summary judgment are DENIED.


Peter J. Walsh
United States Bankruptcy Judge

Dated: October 15, 2004