

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JULIO DEJESUS,)
)
Plaintiff,)
)
v.) C.A. No. 05C-04-093 MMJ
)
RICHARDS PAVING, INC., a)
Delaware corporation and)
AMERICAN INTERSTATE, INC., a)
foreign corporation,)
)
Defendants.

MEMORANDUM OPINION

Submitted: August 13, 2006
Decided: September 21, 2006

Upon Plaintiff's Motion for Summary Judgment

DENIED

Vivian L. Rapposelli, Esquire, Rapposelli, Castro & Gonzales, Wilmington,
Delaware, Attorney for Plaintiff

Timothy A. Casey, Esquire, Keri L. Morris, Esquire, Marshall, Dennehey, Warner,
Coleman & Goggin, Wilmington, Delaware, Attorneys for Defendants

JOHNSTON, J.

Plaintiff Julio DeJesus filled a Motion for Summary Judgment, seeking dismissal of the case.

FACTUAL SUMMARY

The following facts are set forth in the light most favorable to Defendants Richards Paving, Inc., and Interstate American, Inc., as the non-moving parties.

On June 16, 2004, Julio DeJesus sustained a work-related injury while employed by Defendant, Richards Paving, Inc. (“Employer”). Plaintiff was pinned between a rolling machine and a guard rail. He sustained injuries and was transported by ambulance to a hospital. The medical bills from the hospital totaled \$881,275.

On September 23, 2004, the parties entered into a State of Delaware Office of Workers’ Compensation Agreement as to Compensation, for temporary total disability and for medical expenses. The agreement was approved by the Industrial Accident Board (“IAB”) on October 1, 2004. The agreement does not specify the amount of medical expenses or bills that are required to be paid as a result of the agreement.

Upon receipt of the medical bill from the hospital, Employer’s workers’ compensation carrier (Defendant American Interstate, Inc. (“Carrier”)) submitted the bill to Mednet, a medical bill review provider. Mednet recommended payment in the amount of \$239,899.41.

On November 1, 2004, Carrier made a payment to the hospital in the amount of \$239,899.41. On November 17, 2004, the hospital made an application to the Commonwealth of Pennsylvania Bureau of Workers' Compensation ("PA Bureau") for a fee review. On March 4, 2005, the PA Bureau returned the application for lack of jurisdiction, stating that it was a Delaware claim.

On April 8, 2005, Plaintiff filed a Complaint in the Superior Court for the outstanding balance of the hospital bill and for all remedies permitted pursuant to the Delaware Wage Payment and Collection Act and *Huffman v. C.C. Oliphant & Son, Inc.*¹ On May 19, 2005, Defendants filed an Answer to the Complaint with Affirmative Defenses.

SUMMARY JUDGMENT STANDARD

This Court will grant summary judgment only when no material issues of fact exist. The moving party bears the burden of establishing the non-existence of material issues of fact.² Once the moving party meets its burden, the burden shifts to the non-moving party to establish the existence of material issues of fact.³ Where the moving party produces an affidavit or other evidence sufficient under

¹432 A.2d 1209 (Del. 1981).

² *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

³*Id.* at 681.

Superior Court Civil Rule 56 in support of its motion and the burden shifts, then the non-moving party may not rest on its own pleadings, but must provide evidence showing a genuine issue of material fact for trial.⁴ If, after discovery, the non-moving party cannot make a sufficient showing of the existence of an essential element of the case, summary judgment must be granted.⁵ A court deciding a summary judgment motion must identify disputed factual issues whose resolution is necessary to decide the case, but the court must not decide those issues.⁶ The Court must evaluate the facts in the light most favorable to the non-moving party.⁷ Summary judgment will not be granted under circumstances where the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.⁸

⁴Super. Ct. Civ. R. 56(e); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

⁵ *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991), *cert. denied*, 504 U.S. 912 (1992); *Celotex Corp. v. Catrett*, *supra*.

⁶*Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99 (Del. 1992).

⁷ *Id.*

⁸*Ebersole v. Lowengrub*, 180 A.2d 467, 468-69 (Del. 1962).

ANALYSIS

The Court must consider whether Plaintiff is entitled to summary judgment as a matter of law. If there exist any genuine issues of material fact, summary judgment must be denied.

The reasonableness of medical expenses is a question of fact. The threshold issue is what the parties agreed would be covered by Employer's Carrier. The finder of fact must determine whether the parties contemplated that a specific bill would be paid. Even if a specific bill was not mentioned in the Agreement as to Compensation, there remains the issue of whether that bill was in existence during the relevant time period and whether the parties understood that the bill was covered.

Other factual questions include: the sequence of events of the demand for payment and partial payment; whether sufficient notice was provided to Plaintiff of a dispute as to the reasonableness of the medical bills; whether Plaintiff was on notice of challenges to reasonableness within the time frame contemplated by 19 *Del C.* § 2346; and whether Carrier had a reasonable, good faith basis to believe that its payment of \$239,899.41 satisfied its obligation.

As the parties were informed during oral argument, the Court is concerned with the conduct of the Carrier's former counsel. Former counsel failed to

respond to requests for payment from Plaintiff's counsel. It also appears that the Carrier failed to pay the medical bills within 30 day, without disputing the bills as required.

CONCLUSION

Viewing the facts in the light most favorable to the non-moving party, the Court finds that genuine issues of material fact exist that must be resolved by the finder of fact. **THEREFORE, Plaintiff's Motion for Summary Judgment is hereby DENIED.**

IT IS SO ORDERED.

The Honorable Mary M. Johnston

oc: Prothonotary