SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY
COURTHOUSE
GEORGETOWN, DE 19947

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Re: *Kevin J. McCamant, Ph.D. v. APS Healthcare, Inc.*
C.A. No. S07C-08-016-RFS

Submitted: October 23, 2008
Decided: January 30, 2009

Dear Counsel:

This is my decision regarding APS Healthcare, Inc.'s ("APS") Motion to Dismiss. For the reasons set forth herein, the motion is denied.

STATEMENT OF FACTS

Plaintiff Kevin J. McCamant, Ph.D. ("Plaintiff") and his family members and/or dependents have been insured under a Mental Health and Substance Abuse Plan ("the Plan"). The Plan has been in effect at all times relevant to this case, including the period between March 16, 2007 and April 16, 2007. During that period, Plaintiff's son and dependent, Ian McCamant received treatment for substance abuse at the Caron Foundation in Wernersville, PA. Plaintiff was billed for this treatment in the approximate amount of $26,300.

Plaintiff paid the Caron Foundation for the treatment and submitted the claim under the Plan. On March 16, 2007, Plaintiff received a letter stating that residential psychiatric treatment was not a covered benefit under the Plan. On March 28, 2007, Plaintiff received a second letter denying coverage for services rendered at residential treatment centers. Plaintiff appealed this decision and received a letter on June 13, 2007 denying coverage for exceeding the contracted amount and for using a provider that was not authorized. On June 26, 2007, Plaintiff received a letter denying coverage for not seeking preauthorization for the treatment. Plaintiff alleges that the Caron Foundation requested preauthorization for the treatment. Plaintiff appealed this decision and received a letter on January 15, 2008 denying coverage for using non-covered services.

Plaintiff alleges that the Plan was provided by APS. However, APS alleges that the Plan is actually administered by APS Healthcare Bethesda, Inc. ("APS Bethesda"). APS further alleges that it is nothing more than a holding company which holds stock in its subsidiaries, including APS Bethesda. The Plan summary that was received by Plaintiff states that the Plan is administered by APS. The State of Maryland had previously entered into a contract with APS Bethesda to administer the Plan. Correspondence with Plaintiff regarding his claim were sent by APS Bethesda; however, they also directed Plaintiff to initiate appeals by sending requests to APS. Some of these letters were sent from Maryland and some were sent from Delaware. APS is a Delaware corporation. APS Bethesda is an Iowa corporation with its principal place of business in Maryland. APS Bethesda is a subsidiary of its corporate parent, APS.

STANDARD OF REVIEW

The Court must assume all well-pleaded facts or allegations in the complaint as true when evaluating a motion to dismiss under Rule 12(b)(6). *RSS Acquisition, Inc. v. Dart Group Corp.*, 1999 WL 1442009 (Del. Super. 1999) at *2. The Court will not dismiss a claim unless the plaintiff would not be entitled to recover under any circumstances that are susceptible to proof. *Id.* The complaint must be without merit as a matter of fact or law to be dismissed. *Id.* The plaintiff will have every reasonable factual inference drawn in his favor. *Ramunno v. Cawley*, 705 A.2d 1029, 1036 (Del. 1998).

"Dismissal is warranted where the plaintiff has failed to plead facts supporting an element of the claim, or that under no reasonable interpretation of the facts alleged could the complaint state a claim for which relief might be granted." *Hedenberg v. Raber*, 2004 WL 2191164 (Del. Super. 2004) at *1. "Where allegations are merely conclusory, however (*i.e.*, without specific allegations of fact to support them) they may be deemed insufficient to withstand a motion to dismiss." *Lord v. Souder*, 748 A.2d 393, 398 (Del. 2000).

"A motion to dismiss relying upon factual assertions outside the pleadings is considered under Superior Court Rule 56 as a motion for summary judgment." *Venables v. Smith*, 2003 WL 1903779 (Del. Super. 2003) at *2. Summary judgment can only be granted when there is no material issue of fact. *Moore v. Sizemore*, 405 A.2d 679, 680

(Del. 1979). The moving party bears the initial burden of showing that no such issue is present. *Id.* If the moving party is able to meet this burden, it then shifts to the non-moving party to demonstrate a material issue of fact. *Id.* 681. If the non-moving party can show that an issue of material fact is disputed, summary judgment will not be granted. *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962). To meet its burden, the non-moving party may not simply rest on its pleadings; evidence must be provided to show an issue of material fact. *Brandt v. Rokeby Realty Co.*, 2004 WL 2050519 at *4, (Del. Super. Sept. 8, 2004).

DISCUSSION

APS has submitted a motion to dismiss for failure to state a claim on which relief can be granted. In support of its motion, APS has offered an affidavit from its Vice President and Assistant General Counsel, Rosemary A. Finora, as well as other documents, such as a contract between APS Bethesda and the State of Maryland and several letters that were sent to Plaintiff. "A motion to dismiss relying upon factual assertions outside the pleadings is considered under Superior Court Rule 56 as a motion for summary judgment." *Venables* at *2. As a result, this Court will consider APS's motion as a motion for summary judgment.

For the purpose of deciding this motion, this Court must construe the facts in the light most favorable to Plaintiff. *Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995). APS has provided some evidence that Plaintiff's claim is with APS Bethesda, including

affidavits, letters, and a contract with the State of Maryland. Plaintiff has provided some evidence that his claim is with APS, including the Plan summary. APS has moved for dismissal based on its claim that it has no involvement with the Plan and that only APS Bethesda can be sued. The nature of APS and its relation to Plaintiff's claim is currently in dispute between the parties.

APS has argued that incorrectly asserted claims against corporate parents have been dismissed by Delaware courts. Delaware precedent shows that to be true. *Medi-Tec of Egypt Corp. v. Bausch & Lomb Surgical*, 2004 WL 415251 (Del. Ch. 2004) at *7-8. While APS has met its burden of producing evidence that the claim is incorrectly asserted, that burden then shifts to Plaintiff to show a material issue of fact. *Moore* at *681. Plaintiff has produced a Plan summary which names APS and not APS Bethesda as the administrator, as well as correspondences which name APS. From what can be gleaned presently, plaintiff appears to meet his burden to show that the claim was correctly asserted against APS.

APS argues that the case must be dismissed because of the insurance contract between APS Bethesda and the State of Maryland. APS fails to adequately explain its designation as the administrator in the Plan summary, calling it outdated and incorrect. No explanation has been given for why the Plan summary was written incorrectly. The first page of the Plan summary shows that it was written for the year 2007-2008. Given the treatment dates, the claim would not have been filed after this time frame. The contract between APS Bethesda and the State of Maryland was made on April 20, 2006,

well before the Plan summary was issued. Although APS has included a Plan summary for the year 2008-2009 which names APS Bethesda as the administrator, this document was issued well after the period in question. Based on these facts, it is not clear how the Plan summary could be outdated, and APS has offered no evidence to show how that was the case.

Plaintiff has argued that even if APS Bethesda is the corporation liable under the policy, APS could be liable under agency theory. Courts have allowed an agent's apparent authority to bind a party to a contract in the past. *Old Guard Ins. Co. v. Jimmy's Grille, Inc.*, 860 A.2d 811 (Del. Super. 1976). However, liability may only extend to a corporate parent "for the activities of the subsidiary only if the parent dominates those activities." *Grasty v. Michail*, 2004 WL 396388 (Del. Super. 2004) at *2. APS relies on little more than conclusory assertions that it is merely a holding company with no relation to APS Bethesda's activities without detail. More proof will be needed for this Court to rule on that conclusively.

Given the slim and ambiguous state of the record, it is not entirely clear what APS is and whether or not it has been involved with the Plan. As such, it is premature for this Court to grant a motion for summary judgment. *Savor, Inc. v. FMR Corp.*, 2003 WL 21054394 (Del. Super. 2003) at *1 ("Summary judgment is not appropriate when the Court determines that it does not have sufficient facts in the record to enable it to apply the law to the facts before it."). In these instances, courts have allowed for a period of discovery before entertaining any further dispositive motions. *Id.* This Court will have a

clearer picture of the contractual relationships involved in this case after a 120 day period of discovery.

APS also argues that the corporate veil should not be pierced to extend liability to APS. Piercing the corporate veil is a matter of equity, not a matter of law, therefore only the Court of Chancery has the power to do that. *Sonne v. Sacks*, 314 A.2d 194, 197 (Del. 1973). As a result, this Court will not address the issue of piercing the corporate veil.

CONCLUSION

For the foregoing reasons, APS's motion to dismiss is denied. A 120 day period for discovery is hereby ordered. Thereafter, APS may resubmit its motion for summary judgment.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

RFS/cv

cc: Prothonotary