THE LAKES TREATMENT CENTER, INC. v. BLUE CROSS OF CALIFORNIA

Case No. 23CV46918

DEFENDANT'S MOTIONS TO COMPEL ARBITRATION AND THREE MOTIONS TO SEAL EXHIBITS TO FACILITY AGREEMENT; PLAINTIFF'S MOTIONS FOR ATTORNEY FEES AND PRELIMINARY INJUNCTION

Plaintiff The Lakes Treatment Center, Inc. ("plaintiff") and Defendant Blue Cross of California dba Anthem Blue Cross ("defendant") entered into a Mental Health Participating Hospital/Facility Agreement ("Agreement"), under which plaintiff became a participating mental health and substance abuse provider in the defendant's network. Plaintiff alleges that defendant improperly terminated the agreement and therefore plaintiff's participating provider status.

Defendant has moved for an order compelling all claims to arbitration and stay court proceedings under the Federal Arbitration Act ("FAA") and the terms of the arbitration clause of the parties' agreement. Defendant makes three separate Motions to Seal concerning exhibits in pleadings.

Motions to Seal
Defendant brings three separate motions to seal Exhibits A and B to the Declaration of Michael Piellucci as confidential and proprietary business information. These same documents were included as exhibits in multiple other pleadings.

Under California Rules of Court, rules 2.550 and 2.551, a court may, upon application or motion by a party, seal documents, exhibits, or any other thing filed or lodged with the court if the following elements are satisfied: (1) there exists an overriding interest that overcomes the right of public access to the record; (2) the overriding interest supports sealing the record; (3) a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) the proposed sealing is narrowly tailored; and (5) no less restrictive means exist to achieve the overriding interest. (CRC 2.550(d)(1)-(5); *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal. 4th 1178, 1217-18 (1999).) Upon the showing of specific facts supporting these elements, this Court has the authority to place under seal those documents warranting protection from public review. (CRC 2.550(d) and (e).)

Courts may seal records that contain confidential and proprietary business information. (See *Universal City Studios, Inc. v Sup. Ct*. (2003) 110 Cal. App. 4th 1273, 1283, 1286 (confidential matters relating to business operations of the defendant ordinarily warrants

sealing of records); *Huffy Corp. v. Sup. Ct*. (2003) 112 Cal. App. 4th 97, 107 ("documents which are not trade secrets may nonetheless be subject to sealing").) These cases support a balancing of disclosure and sealing. In the present case, the court finds the presence of an agreement between the parties does not reveal proprietary business strategies and procedures, although the rate of service documents may. Simply reciting the standard required for sealing outlined in CRC 2.550 is insufficient for the court to make the requisite findings.

The moving papers do not establish any overriding interest in sealing the Agreement or Amendment 1. Nor can blanket sealing be defined as a narrowly tailored or less restrictive means to achieve the overriding interest. However, the cases cited by both parties do support finding that revealing the pricing and reimbursement for services is an overriding interest supporting the sealing of the Rate of Service schedule.

Further support is afforded by the plaintiffs' non-opposition to the Motion to Seal. The court is entitled, but not required, to consider that lack of opposition to be an admission the motion is meritorious. (*Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410.) However, the Court must consider the inherent merits of even unopposed motions.

Request for Injunction

Plaintiff initially filed a Complaint against defendant and applied *ex parte* for a Temporary Restraining Order (TRO). Defendant agreed to terms requested in the TRO.

As the court intends to grant defendant's Motion to Compel Arbitration (and noting the parties' declarations expressing that plaintiff will remain a participating provider in defendant's network up through May 15, 2024) the Court finds no immediate irreparable harm so no need to issue a preliminary injunction at this time. The court it will be conferring jurisdiction to the arbitrator(s) and plaintiff may renew the Request for Injunction in that forum.

Motion for Attorney Fees

To recover for attorney fees under the catalyst theory, a plaintiff must establish that: "(1) the lawsuit was a catalyst motivating the defendants to provide the primary relief sought; (2) that the lawsuit had merit and achieved its catalytic effect by threat of victory, not by dint of nuisance and threat of expense . . . ; and, (3) that the plaintiffs reasonably attempted to settle the litigation prior to filing the lawsuit." (*Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608 (2004).)

Graham *v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553 concluded: "the catalyst theory should not be abolished but clarified. In order to be eligible for attorney fees under [Code of Civil Procedure] section 1021.5, a plaintiff must not only be a catalyst to defendant's changed behavior, but the lawsuit must have some merit, … and the

plaintiff must have engaged in a reasonable attempt to settle its dispute with the defendant prior to litigation." (Graham, supra, 34 Cal.4th at pp. 560–561.)

Tipton-Whittingham v. City of Los Angeles (2004) 34 Cal.4th 604 (decided the same day as Graham) further clarifies the catalyst theory of recovery, holding that "[a]ttorney fees may not be obtained, generally speaking, by merely causing the acceleration of the issuance of government regulations or remedial measures, when the process of issuing those regulations or undertaking those measures was ongoing at the time the litigation was filed. When a government agency is given discretion as to the timing of performing some action, the fact that a lawsuit may accelerate that performance does not by itself establish eligibility for attorney fees." (Tipton, supra, 34 Cal.4th at p. 609.)

In the current matter, defendant has extended of the inclusion of the plaintiff in its network of providers during the pendency of litigation; however, there is no evidence of ongoing changes to the defendant's behavior or ultimate resolution in plaintiff's favor to support the catalyst theory in this matter. The causal connection for the catalyst theory remains unestablished in plaintiff's supporting papers**.**

Motion to Compel Arbitration

The Federal Arbitration Act, 9 U.S.C. §§ 1, et seq. (the "FAA") applies to any "contract evidencing a transaction involving commerce." 9 U.S.C. § 2. The United States Supreme Court has broadly interpreted the FAA's application, stating that the FAA is a "body of substantive law enforceable in both state and federal courts." (*Perry v. Thomas*, 482 U.S. 483, 489 (1987) (citing *Southland Corp. v. Keating* (1984) 465 U.S. 1, 11–12).) Here, the agreement signed by the parties expressly provide that the FAA governs their terms and that they evidence a transaction involving commerce. Accordingly, the FAA governs the arbitration process here. (See *Rodriguez v. Am. Techs., Inc*. (2006) 136 Cal. App. 4th 1110, 1116.) The Agreement between the parties contains an arbitration clause at Section 11.2 that any dispute shall be arbitrated under under the Commercial Rules of the American Arbitration Association.

California precedent similarly has a "strong public policy in favor of arbitration." (*Larkin v. Williams, Woolley, Cogswell, Nakazawa & Russell* (1999) 76 Cal. App. 4th 227, 229; see *United Trans. Union, AFL CIO v. Southern Cal. Rapid Transit Dist*. (1992) 7 Cal. App. 4th 804, 808; *Evenskaas v. California Transit, Inc.* (2022) 81 Cal. App. 5th 285.)

The requests to seal the Agreement and Amendment 1 to Agreement are **DENIED,** and the request to seal the Rate of Service schedule is **GRANTED.**

Plaintiff's Motions for Preliminary Injunction and Request for Attorney's Fees are **DENIED,** without prejudice of their renewal in arbitration proceedings.

Defendant's Motion to Compel Arbitration and Stay Trial proceedings is **GRANTED.**

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff and Defendant to submit formal orders to their respective motions pursuant to Rule of Court 3.1312 in conformity with this ruling.

RIGUERO v. MENDEZ

23CV46995

DEFENDANT'S MOTION TO SET ASIDE DEFAULT

Plaintiff's complaint seeks to remove the executor of the Estate of Rachel Gloria Mendez and recover memorial and funeral expenses.

The Complaint was filed October 16, 2023, service was accomplished October 25, 2023, and default was entered November 27, 2023. Defendant's Motion to Set Aside Default was filed on November 29, 2023.

California Code of Civil Procedure ("CCP") Section 473.5 authorizes the court to set aside a default or default judgment on such terms as may be just and to allow the defendant to defend the action on a finding that the defendant's motion to set aside the default or default judgment was made within the period permitted by CCP § 473.5(a), and that defendant's lack of actual notice of the action in time to defend was not caused by his or her avoidance of service of summons or inexcusable neglect.

An evaluation of an attorney's neglect under CCP § 473 involves a consideration of the reasonableness of the defaulting attorney's conduct (see *Dockter* v. *City of Santa Ana* (1968) 261 Cal.App.2nd 69, 75) *and* of the conduct of the attorney taking the default (e.g., *Smith* v. *Los Angeles Bookbinders Union* (1955) 133 Cal.App.2nd 486, 500). The law looks with disfavor upon a party who, regardless of the merits of his case, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary. Thus, the "quiet speed" of a plaintiff's counsel in seeking a default has been deemed a sufficient ground for setting aside a default under CCP § 473. (*Robinson v. Varela* (1977) 67 Cal.App.3rd 611, 616-7.)

Furthermore, plaintiff's non-opposition provides additional support to grant the motion. The court is entitled, but not required, to consider ack of opposition to be an admission the motion is meritorious. (*Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410.)

Based on the foregoing, defendant's Motion to Set Aside Default is **GRANTED**.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendant to submit a formal order pursuant to Rule of Court 3.1312 in conformity with this ruling.