

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CGB OCCUPATIONAL THERAPY, INC.,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	
RHA/PENNSYLVANIA NURSING HOMES,	:	
INC., et al.,	:	
Defendants	:	No. 00-4918

Newcomer, S.J. February , 2002

M E M O R A N D U M

Presently before the Court is Defendants Sunrise Assisted Living, Inc. ("SALI") and Sunrise Assisted Living Management, Inc.'s ("SALMI") Motion to Dismiss.

BACKGROUND

Plaintiff CGB Occupational Therapy, Inc., d/b/a CGB Rehab, Inc., ("CGB") a Pennsylvania corporation, is a provider of rehabilitation services for long term care and assisted living facilities. Initially, the defendants in this action consisted of the following parties: (1) Sunrise Assisted Living, Inc. ("Sunrise"), which manages skilled nursing and assisted living facilities; (2) Symphony Health Services, Inc. ("Symphony"), which provides physical, occupational and speech therapy rehabilitation services in skilled nursing facilities; (3) RHA/Pennsylvania Nursing Homes, Inc., d/b/a Prospect Park

Rehabilitation Center, Prospect Park Rehabilitation Center, Prospect Park Heath and Rehabilitation Residence, ("Prospect"), which operates as a skilled nursing facility in Prospect Park, Pennsylvania; (3) RHA/Pennsylvania Nursing Homes, Inc., d/b/a Pembroke Nursing and Rehabilitation Center and Pembroke Nursing Rehabilitation Residence, and f/k/a West Chester Arms Nursing and Rehabilitation Center, ("Pembroke"), which operates as a skilled nursing facility in Prospect Park, Pennsylvania; and, (4) RHA Health Services Inc., ("RHA"), which provides management services to skilled nursing and assisted living facilities.

Since the commencement of this action, plaintiff has settled its claims against the RHA Defendants. In addition, Defendant Symphony filed for bankruptcy, causing plaintiff's claims against Defendant Symphony to be stayed under the automatic stay provisions of the Bankruptcy Code. Therefore, this Court chooses to outline only those facts relevant to plaintiff's claims against Defendant Sunrise Assisted Living, Inc. and Sunrise Assisted Living Management Inc., as they are the facts pertinent to motion to dismiss currently before the Court.

The relevant events of the Complaint date back to January 1, 1995. It was at that time Plaintiff CGB and Defendant Pembroke, then known as West Chester Arms Nursing and

Rehabilitation Center, entered into an agreement wherein CGB agreed to provide physical, occupational, and speech therapy services for Pembroke ("Pembroke Agreement"). On October 7, 1996, Plaintiff CGB and Defendant Prospect entered into a similar agreement ("Prospect Agreement"). Within both the Pembroke and Prospect Agreements was a provision indicating that in the event either of the respective Agreements was terminated, Pembroke and Prospect would not, for a period of twelve months, employ or contract with any physical, occupational, or speech therapist who was then working for or had been employed, within the past twelve months, by Plaintiff CGB to perform physical, occupational, or speech therapy.

On June 30, 1998, Defendants Prospect and Pembroke sent termination notices to CGB, giving 90 days notice to be effective September 30, 1998. Plaintiff alleges that on July 31, 1998, Marjorie Tomes, Administrator of Prospect and employee of Sunrise, called all CGB therapists, assistants, and aides into her office and told them that as of September 30, 1998, CGB would no longer provide services at Prospect Park and Pembroke. She further stated that Symphony would take over as of October 1, 1998. Plaintiff also alleges that at this same meeting, Ms. Tomes asked the CGB therapists, assistants, and aides whether any

of them wished to work for Symphony. Ms. Tomes allegedly took down the names of those who did. Plaintiff also avers that Symphony contacted the therapists, assistants and aides at both the Pembroke and Prospect Park facilities, urging them to remain at their respective facilities and work for Symphony.

On August 3, 1998, plaintiff's attorney sent a letter to Ms. Tomes, advising her that "My information is that you personally approached CGB's therapists and engaged in a dialog with them, or groups of them, in which you appear to have interfered tortiously with the contractual relationship between CGB and those therapists. . . . Were this matter to go into litigation as, for example, a suit against you personally and Sunrise, your employer, for tortious interference with contract, one of the areas CGB would investigate in its discovery is whether Sunrise, or even you personally, stood to benefit financially from that tortious interference with contract." Ms. Tomes then allegedly reported this letter to Defendants RHA, Sunrise, and Symphony. On September 16, 1998, plaintiff's attorney sent a letter to Symphony addressing, inter alia, Tomes' solicitation of plaintiff's employees.

As of September 30, 1998, plaintiff's staff was not permitted to continue working at either the Pembroke or the

Prospect facilities. Thereafter, Defendant Symphony hired, according to plaintiff, at least three CGB therapists and one aide, for which plaintiff was paid no fee.

On September 28, 2000, plaintiff brought this action alleging the following four counts: 1) breach of contract against Defendants Prospect and Pembroke; 2) monies due for rental equipment against Pembroke; 3) tortious interference against Defendants Sunrise, Symphony, and RHA; and 4) conversion of Medicare monies due plaintiff against RHA, Pembroke, and Prospect. On February 2, 2001, Defendant Sunrise filed an Answer to plaintiff's Complaint, and on February 16, 2001 Defendant Sunrise amended its answer. On April 21, 2001, Defendant Sunrise filed a motion for leave to file a Second Amended Answer. This motion was granted as uncontested, and Defendant Sunrise filed its Second Amended Answer on May 18, 2001. Pursuant to a Motion to Dismiss on behalf of Defendant Sunrise Assisted Living, Inc., this Court ruled that the plaintiff violated the statute of limitations for a tortious interference with a contract claim and subsequently dismissed the plaintiff's case on August 10, 2001. Pursuant to a motion to reconsider, the Court reversed the dismissal and allowed plaintiff to amend its complaint. Through its Amended Complaint plaintiff added defendant Sunrise Assisted

Living Management, Inc. to the present suit. Presently before the Court is defendants Sunrise Assisted Living, Inc. ("SALI") and Sunrise Assisted Living Management, Inc.'s ("SALMI") Motion to Dismiss.

DISCUSSION

I. LEGAL STANDARD FOR DISMISSAL UNDER RULE 12

Federal Rule of Civil Procedure 12(b)(6) indicates that a party moving for dismissal has the burden of proving that no claim has been stated for which relief can be granted. Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991). A complaint should only be dismissed if based on those pleadings, "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). In making such an assessment, the Court must take all pleadings in the complaint as true and view them in the light most favorable to the non-moving party. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

II. DEFENDANTS' POINTS FOR DISMISSAL

A. Breach of Contract Claim

In its Amended Complaint, Plaintiff CGB alleges that Defendants SALI and SALMI are liable for the breach of the CGB - RHA contract. Pennsylvania law holds that breach by a third-party agent is possible when that third-party agent has assumed liability for such a breach. Revere Press, Inc. v. Blumberg, 431 Pa. 370 (1968); B & L Asphalt Industries, Inc. v. Fusco, 753 A.2d 264, 270 (Pa. Super. 2000). Plaintiff alleges that Defendants SALI and SALMI assumed such liability while managing nursing home facilities for RHA. Plaintiff's Amended Complaint, Paragraph 43. Plaintiff CGB has properly plead those elements necessary to prevail on a third-party breach of contract claim. Thus, viewing the allegations in a light most favorable to the plaintiff, it is apparent that plaintiff alleges a claim for which relief may be granted. Defendants' motion to dismiss fails here.

B. Tortious Interference with Contract Claim

Defendants argue plaintiff's Amended Complaint insufficiently pleads the elements of a tortious interference with a contract claim. In doing so, defendants focus not on whether each of the elements to such a claim have been plead, but whether plaintiff is able to plead each of the elements based on the evidence known by the defendants at this point. While the

Court need not remind movants they filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), it would appear as though the Court should remind movants of the difference between such a motion and a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. Essentially, the former focuses strictly on the pleadings while the latter encompasses the validity of a claim by examining the evidence as presented. The defendants have argued this motion as if it were a Rule 56 motion as opposed to a motion Rule 12(b)(6). Apparently, defendants misinterpret the language of 12(b)(6) (“...upon which relief might be granted”) to mean whether plaintiff will ultimately be successful with such a claim. Instead, this rule asks the Court to assess whether a claim is sufficiently pleaded (whether relief might be granted), assuming that all allegations in the pleadings are true.

Contrary to defendants’ understanding, this is not a time to argue validity but rather a time to assess whether the pleadings offer sufficient enough allegations to proceed. Despite this confusion, it is clear that the standards necessary for dismissal under Rule 12(b)(6) are not met here. Plaintiff has sufficiently plead each element of a tortious interference with a contract claim. Thus, defendants’ motion to dismiss for

failure to properly plead a tortious interference claim is denied.

C. Piercing the Corporate Veil Claim

Here, defendants argue that plaintiff has not sufficiently laid out the allegations for a piercing the corporate veil claim. Once again, defendants offer additional argument as to the validity and chances for success under such a claim. These arguments are not helpful in assessing whether a plaintiff has met the standards to proceed under a Rule 12(b)(6) motion. The plaintiff properly pleads the elements necessary to succeed in a claim to pierce the corporate veil. Therefore, defendants' motion is denied. In addition, it is unclear why defendants have requested this Court to instruct plaintiff to plead this section with more definitiveness. Plaintiff appears to have alleged this claim as clearly as possible given the amount of discovery which has taken place at this point. Therefore, defendants' Motion to Dismiss under Rule 12(e) is denied as well.

AN APPROPRIATE ORDER WILL FOLLOW.

Clarence C. Newcomer, S.J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CGB OCCUPATIONAL THERAPY, INC.,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	
RHA/PENNSYLVANIA NURSING HOMES,	:	
INC., et al.,	:	
Defendants	:	No. 00-4918

O R D E R

AND NOW, this day of February, 2002, upon
consideration of defendants' Motion to Dismiss, it is hereby
ORDERED that said motion is DENIED.

AND IT IS SO ORDERED.

Clarence C. Newcomer, S.J.