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<b>Celtic Med., P.C. v Liberty Mut. Ins. Co.</b>
2006 NY Slip Op 50825(U)
Decided on May 9, 2006
Nassau District Court
Marber, J.
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Decided on May 9, 2006

**Nassau District Court**

<p><b>Celtic Medical, P.C., a/a/o Sharob Hunter, Plaintiff,</b></p> <p><b>against</b></p> <p><b>Liberty Mutual Insurance Company, Defendant.</b></p>
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27730/02

Randy Sue Marber, J.

Defendant moves, pursuant to CPLR §3212, for an order granting summary judgment dismissing plaintiff's complaint for its willful failure to comply with a discovery stipulation. No opposition is submitted by plaintiff.

A review of the moving papers shows that this action was commenced by a summons and complaint in July, 2002 for unpaid medical bills submitted to defendant no-fault carrier on behalf of its assignor in the amount of \$3,389.72. An Answer was interposed in August, 2002, together with various discovery demands including a Demand for Verified Bill of Particulars and Combined Demands. Plaintiff failed to respond to defendant's demands, and on or about June 9, 2005 defendant moved pursuant to CPLR §3126 for an Order of Preclusion against plaintiff. On July 27, 2005 defendant withdrew its motion and plaintiff agreed, in a stipulation, to respond to defendant's discovery demands within sixty (60) days or be precluded from offering evidence at trial. Plaintiff failed to so respond with said sixty (60) days and defendant brought the within motion.

As stated in *Tepper v. Tannenbaum*, 83 AD2d 551, 441 NYS2d 470 (1st Dept 1981):

Parties by their stipulations may in many ways make the law for any legal proceedings to which they are parties, which not only binds them, but which the courts are bound to enforce...and all such stipulations not unreasonable, not against good morals or sound public policy, have been and will be enforced (*Matter of New York, Lackawanna & Western R.R. Co.*, 98 NY 447, 453; see, also, *Morse v. Morse Dry Dock & Repair Co.*, 249 AD 764; 2A [\*2]Weinstein-Korn-Miller, NY Civ Prac, par 2104.02).

The stipulation in this case is not an unreasonable one. Nothing contained therein contravenes good morals or sound public policy.

A review of the Notice for Discovery and Inspection reveals that defendant sought from plaintiff:

1. A copy of the assignment of benefits executed by the assignor.
2. A copy of the invoices submitted by plaintiff to the defendant for services and/or supplies provided to the assignor.

3. A copy of the letter(s) of medical necessity for the services and/or supplies provided to the assignor.

4. A copy of the medical chart for the assignor.

While a copy of the assignment of benefits executed by plaintiff's assignor was annexed to plaintiff's summons and complaint, none of the additional documents demanded were provided. Inasmuch as plaintiff has agreed to be precluded from offering evidence at trial concerning same, without such documents, it will be unable to make out its *prima facie* case.

The Court finds that the plaintiff has failed to produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which it rests its claim.

Accordingly, based on the foregoing and plaintiff's failure to oppose this motion, defendant's motion is granted and the within action is dismissed.

So Ordered:

Dated: May 9, 2006 DISTRICT COURT JUDGE

CC: Baker, Sanders, Barshay, Grossman, Fass, Muhlstock & Neuwirth, P.C.

Troy & Troy, P.C.