UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:22-cv-04045-CAS-E	Date	November 22, 2022
Title	DEDICATO TREATMENT CENTER, INC. v. IEC GROUP, INC.		

Present: The Honorable	CHRISTINA A. SNYDER	
CATHERINE JEANG	Not Present	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
N/A	N/A

Proceedings: DEFENDANT'S MOTION TO DISMISS THE COMPLAINT (Dkt. 17, filed on OCTOBER 11, 2022)

I. INTRODUCTION

On June 13, 2022, plaintiff Dedicato Treatment Center, Inc. ("Dedicato") filed suit against IEC Group, Inc., dba AmeriBen ("AmeriBen"). Dkt. 1 ("Compl."). Defendant is a third party administrator ("TPA") for the Salt River Pima Maricopa Indian Community Self-Funded Health Plan (the "Plan"), that provides healthcare to members of the Salt River Pima-Maricopa Indian Community (the "Indian Community"), a sovereign nation under United States law. Id. ¶¶ 7–8. Plaintiff provided treatment services to a member of the Plan, did not receive full payment for the rendered services, and has brought the following claims against defendant in its capacity as the TPA of the Plan: (1) fraud – intentional misrepresentation; (2) fraudulent concealment; (3) negligent misrepresentation; (4) declaratory relief that defendant violated California Health and Safety Code Section 1378.1; and (5) violations of California Business and Professions Code Section 17200, *et seq.* ("Unfair Competition Law" or "UCL"). See id. at pp 14–22.

On October 11, 2022, defendant filed a motion to dismiss plaintiff's complaint. Dkt. 17 ("Mot."). On October 24, 2022, plaintiff filed its opposition. Dkt. 18 ("Opp."). On October 31, 2022, defendant filed a reply. Dkt. 19 ("Reply").

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On November 21, 2022, the Court held a hearing. Having carefully considered the parties' arguments and submissions, the Court finds and concludes as follows.

II. BACKGROUND

Plaintiff Dedicato is a treatment center based in Sierra Madre, California, that provides substance abuse treatment services to patients. Compl. ¶¶ 1–4. AmeriBen is an Idaho corporation that contracted to serve as the third-party administrator for the Indian Plan. Id. ¶¶ 4, 13–14. Plaintiff alleges in its complaint that because the Plan is an "arm of the Tribe," the Plan, like the Indian Community that maintains it, enjoys tribal sovereign immunity from lawsuit. Id. ¶¶ 9–11 (citing Allen v. Gold Country Casino, 464 F.3d 1044, 1046 (9th Cir. 2006)). Plaintiff alleges that the Plan has not waived its sovereign immunity status. See generally id.

On September 25, 2019, a patient (referred to as "A.N." in the complaint) sought treatment for substance abuse from plaintiff. Id. ¶ 15. Plaintiff asked whether A.N. was covered under any health insurance policy that would cover substance abuse treatment. Id. ¶ 16. A.N. presented a card ("Medical ID Card") listing the name of the Plan and the contact information for AmeriBen, to which out-of-network providers are directed to contact in order to provide approval of contemplated treatment or services. Id. On reviewing the information contained on the patient's Medical ID Card, Dedicato provided a copy of it to its billing agent, Vertex Healthcare Services, Inc. ("Vertex") to confirm the patient's eligibility for treatment under the Plan and to obtain certification for treatment.

Plaintiff alleges that on or about September 25, 2019, a Vertex representative spoke with an AmeriBen representative to confirm that it met all requirements for coverage. Id. ¶ 21. Plaintiff specifically alleges that although defendant had advised that no additional pre-certification would be necessary, "in an abundance of caution, Dedicato sought, and obtained, AmeriBen's authorization before proceeding with further treatment. Dedicato wanted to specifically ensure that AmeriBen agreed with the treatment recommended for the Patient and that AmeriBen would agree to pay for that treatment after Dedicato provided it." Id. ¶ 23.

Plaintiff alleges that from September to November 2019, Vertex requested on behalf of plaintiff, and AmeriBen approved, five series of ten-day hospitalization periods

for the patient's treatment. Id. ¶¶24–29. Plaintiff sent defendant two invoices for services rendered, and on or about November 1, 2019, and January 3, 2020, defendant partially paid each respective invoice. Id. ¶¶ 30–32.

Plaintiff subsequently alleges that from September to December 2020, Vertex requested on behalf of plaintiff, and AmeriBen approved, ten further periods of treatment for the patient. Id. ¶¶ 33–36. Plaintiff sent defendant seven invoices in connection with these services, and defendant continued to only partially pay the invoices. Id. ¶¶37–38.

Plaintiff alleges that from January to February 2021, Vertex requested on behalf of plaintiff, and AmeriBen approved, a final series of treatment periods for the patient. Id. ¶¶ 39–41. According to plaintiff, it sent another subsequent six invoices for services rendered during that period and defendant again only partially paid the fees. Id. ¶¶43–44.

According to plaintiff, [t]hroughout this time Vertex representatives spoke with AmeriBen representatives who indicated that more payments would be coming." Id. ¶ 44. Plaintiff maintains that "AmeriBen, in fact, sent more payments, but for only a fraction of the amounts billed." Id.

In sum, plaintiff alleges that defendant has only paid $72,264.88 out of $508,000. Id. ¶ 48.

III. LEGAL STANDARD

Rule 12(b)(7) permits a court to dismiss an action for failure to join a party whose presence is needed for just adjudication under Rule 19. See Confederated Tribes of Chehalis Indian Reservation v. Lujan, 928 F.2d 1496, 1498 (9th Cir. 1991). Rule 19 "sets forth considerations to guide a district court's determination whether a particular party should be joined in a suit if possible, referred to as a 'necessary party,' and, if so, whether, if the party cannot be joined, the suit should be dismissed because the absent party is indispensable." Disabled Rights Action Comm. v. Las Vegas Events, Inc., 375 F.3d 861, 878 (9th Cir. 2004) (citations omitted).

The Ninth Circuit has held that a party may be "necessary" pursuant to Rule 19 in either of two ways. Id. at 879. First, under Rule 19(a)(1), a party is necessary if

complete relief cannot be granted in its absence. Id. "In conducting the Rule 19(a)(1) analysis, the court asks whether the absence of the party would preclude the district court from fashioning meaningful relief as between the parties." Id. Second, a party is necessary pursuant to Rule 19(a)(2), if the district court determines that "the absent party's participation is necessary to protect its legally cognizable interests or to protect other parties from a substantial risk of incurring multiple or inconsistent obligations because of those interests." Id. at 880. Such a legally cognizable interest must be more than a financial stake in the outcome of the litigation. Makah Indian Tribe v. Verity, 910 F.2d 555, 558 (9th Cir. 1990). "[T]here is no precise formula for determining whether a particular nonparty should be joined under Rule 19(a) . . . . The determination is heavily influenced by the facts and circumstances of each case." N. Alaska Envtl. Ctr. v. Hodel, 803 F.2d 466, 468 (9th Cir. 1986). Finally, the moving party bears the burden of proving that joinder is necessary. Makah Indian Tribe, 910 F.2d at 558. Once the court determines that a party should be joined, the court must determine whether joinder is feasible. Fed. R. Civ. P. 19(a)–(b).

If a necessary party cannot be joined, the court must consider the following factors in deciding whether to dismiss the action because the party is indispensable:

> (1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties; (2) the extent to which any prejudice could be lessened or avoided by: (A) protective provisions in the judgment; (B) shaping the relief; or (C) other measures; (3) whether a judgment rendered in the person's absence would be adequate; and (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

Fed. R. Civ. P. 19(b). However, such factors are not dispositive. Instead, in the context of a particular case, "the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Id.

As a general rule, leave to amend a complaint which has been dismissed should be freely granted. Fed. R. Civ. P. 15(a). However, leave to amend may be denied when "the court determines that the allegation of other facts consistent with the challenged pleading

could not possibly cure the deficiency." Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986).

IV. DISCUSSION

A. Failure to join an indispensable party

1. Whether the Indian Community should be joined

Defendant argues that the Indian Community is a necessary party to the action, because "Plaintiff's claims . . . inescapably center around the Indian Plan's alleged failure to pay Plaintiff's full billed charges for the services rendered to the Indian plan's member."[1] Opp. at 20. Defendant analogizes this lawsuit to an action dismissed by the District of Arizona in LDFS LLC v. IEC Group Incorporated. No. CV-17-08046-PCT-JJT, 2017 WL 3215556 (D. Ariz. July 28, 2017). There, plaintiff LDFS, a dialysis center, sued AmeriBen in its capacity as a TPA of the Tuba City Regional Healthcare Corporation ("TCRHCC"), owned by the Navajo Nation. Id. at *1. The plaintiff there brought breach of contract claims against AmeriBen for representing that it would pay the plaintiff for the services it rendered to a patient of the healthcare plan. Id. Like in this case, Ameriben in LDFS filed excerpts of its TPA agreement which stated that "AmeriBen has no responsibility for any funding of Plan benefits . . . [and] that TCRHCC will be bound by the terms of the agreements between any third-party service providers or vendors that directly contract with AmeriBen." Id. The court in LDFS found TCRHCC to be a necessary party because "any agreement to pay for LDFS for such

[1] The parties are inconsistent in their briefing as to whether the specific party to be joined is the Plan itself, or the Indian Community that created the Plan and is the contracting party with AmeriBen in its capacity as TPA of the Plan. Compare, e.g., Reply at 10 ("The Indian Tribe is a necessary and indispensable party to this action.") with id. at 12 ("failure to join a necessary and indispensable party, i.e., the Indian Plan . . ."). However, because the Plan is an "arm of the Tribe," as discussed above, and enjoys sovereign immunity like the Indian Community, the analysis and conclusion in this section are applicable to both the Plan and the Indian Community. Allen v. Gold Country Casino, 464 F.3d at 1046.

services is authorized and controlled by the TPA Agreement between AmeriBen and TCRHCC." Id. at *2.

Here, AmeriBen has filed the third-party administrative services agreement between it and the Indian Community on the basis that this Court may consider documents incorporated by reference in a complaint. See Dkt. 17-2 at 1 (citing Lee v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001)) ("a court may consider exhibits submitted with or alleged in the complaint")). Similar to the agreement in LDFS, the agreement between AmeriBen and the Indian Community contains provisions establishing that—"subject to the review and direction of the [Indian Community]" and "[b]ased strictly on information provided by the [Indian Community]"—"AmeriBen will . . . confirm eligibility of participants to receive payments under the Plan [and] provide claimants and their health care providers with information concerning Plan eligibility and benefits provisions." Id. The agreement similarly provides that AmeriBen "has no discretionary authority or control over the management or disposition of Plan assets" and "no responsibility for any funding of Plan benefits." Id. Rather, the agreement requires the Indian Community to "ensure that the account contains sufficient funds at all times for the continuous and timely payment of benefit claims processed by AmeriBen." Id.

In opposition, plaintiff first argues that, notwithstanding that the Indian Community "contracted with AmeriBen to administer claims for healthcare benefits under the Plan" and that "AmeriBen has no responsibility for any funding of Plan benefits," plaintiff is not suing defendant to recover healthcare benefits under the Plan, but instead "suing AmeriBen for lying about the Plan." Opp. at 21. Therefore, to the extent that plaintiff alleges claims against an agent for the agent's own tortious conduct, see id. at 20 (citing Restatement (Third) of Agency, § 7.01 Agent's Liability to Third Party), plaintiff contends that there is no need to join the Plan because the Court can award all relief obtainable for Dedicato against AmeriBen, id. Plaintiff claims that its fraud damages—either "out-of-pocket" or "benefit-of-the-bargain" measure damages—reflect the reasonableness of plaintiff's billed fees and do not "bear[] any relation to benefits allowed under the Plan, or to AmeriBen's relationship with the [Indian] Community." Id. at 21. Additionally, plaintiff argues that AmeriBen cannot claim that the Plan's absence from this litigation would impair the relief that may be granted to plaintiff and against defendant, stating that "whatever financial or indemnity arrangement

exists between AmeriBen and the Community concerning AmeriBen's liability . . . is irrelevant." Id. at 22.

Although plaintiff claims that LDFS is inapposite because the court there only addressed breach of contract claims and "never addressed AmeriBen's separate tort liability for any misrepresentations made to the provider, as Dedicato does here," Opp. at 22 n. 4, the Court finds that plaintiff's fraud claims here are not materially distinguishable from the claims brought in LDFS.[2] In particular, for its fraudulent and negligent misrepresentation claims, Dedicato alleges that AmeriBen made three representations: (1) that the Plan had waived sovereign immunity and would allow Dedicato to pursue claims against it; (2) that the Plan had authorized Dedicato to provide for each of the treatment courses requested; and (3) that the Plan would pay Dedicato its normal or reasonable fee for its services rendered. Compl. ¶¶ 51, 70. Plaintiff accordingly alleges that all three representations were false and that "AmeriBen knew the [r]epresentations were false when [it] made them to Dedicato." Id. ¶¶ 52, 71. Additionally, as to the fraudulent concealment claim, plaintiff alleges that AmeriBen "intentionally failed to disclose to Dedicato that the Indian Plan had not waived 'Sovereign Immunity'. . ." Id. ¶ 62.

The Court finds the court's analysis in LDFS to be a relevant framework to assess whether the Indian Community is a necessary party. Just as in LDFS, here the "gravamen" of plaintiff's claim, whether pleaded as breach of contract or fraud, "is the alleged failure to pay [Dedicato] for certain [] treatment costs." LDFS, 2017 WL

[2] Moreover, although not raised in the parties' briefing, it appears to the Court that plaintiff's tort claims against AmeriBen might be barred by California's economic loss rule. "A person may not ordinarily recover in tort for the breach of duties that merely restate contractual obligations." Expedited Packages, LLC v. Beavex Inc., No. 15-cv-00721-MMM-AGRx, 2015 WL 13357436, at *2 (C.D. Cal. Sept. 10, 2015) (internal quotation marks and citation omitted); see Bristol SL Holdings, Inc. v. Cigna Health Life Ins. Co., No. 19-cv-00709-AG-ADSx, 2020 WL 2027955, at *5 (C.D. Cal. Jan. 6, 2020) ("Put simply, Bristol alleges Cigna promised to reimburse Sure Haven and failed to do it. That's not enough for tort damages."), rev'd and remanded on other grounds sub nom. Bristol SL Holdings, Inc. v. Cigna Health & Life Ins. Co., 22 F.4th 1086 (9th Cir. 2022), cited in Opp. at 9.

3215556, at *2. There, the court found that "the question of whether payment should be made necessarily involves" the healthcare plan. Id. Additionally, to the extent that plaintiff alleges defendant has made partial payments, "[e]ven if AmeriBen [paid the invoices], [the Indian Community], as account holder, is a necessary party" to plaintiff's claims. Id. at *3. Accordingly, the Court concludes that the Indian Community is a necessary party to this action.

2. Whether it is feasible to join the Indian Community

Both parties agree that that it is not "feasible" to join the Indian Community, because as a tribal entity it is not a citizen of any state and would thereby destroy the diversity jurisdiction that forms the basis for this suit. Mot. at 20; Opp. at 23; see also LDFS, 2017 WL 3215556, at *3 ("As the Ninth Circuit has found, Indian tribes and their entities are not state citizens . . . . Consequently, presence of a tribal entity destroys diversity jurisdiction.") (citing Am. Vantage Cos., Inc. v. Table Mtn. Rancheria, 292 F.3d 1091, 1095 (9th Cir. 2002)).

The Court concludes on this basis that it is not feasible to join the Indian Community.

3. Whether the case can proceed without the Indian Community as a party to the suit

Similar to the inquiry as to whether the Indian Community is a necessary party, defendant again relies on LDFS. There, the court determined that there was a significant likelihood of prejudice to AmeriBen because it would have to separately enforce its rights under the TPA agreement with TCRHCC. 2017 WL 3215556, at * 3. Additionally, the court concluded that a judgment rendered in TCRHCC's absence would be inadequate and that no relief could be shaped to lessen prejudice because the "claims in LDFS's Complaint center around . . . benefit payments that can only be authorized by TCRHCC." Id. Finally, the court concluded that alternative forums existed in state or tribal courts to adjudicate LDFS's claims. Id. at *4.

In opposition, plaintiff argues that whatever relief is ordered on Dedicato's claims will "not risk adversely affecting the Community's interests, even if the Community

claims sovereign immunity from suit." Opp. at 23. Plaintiff additionally contends that "the potential existence of another forum does not, in and of itself, outweigh a plaintiff's right to the forum of his or her choice." Id. (quoting Local 670, United Rubber Workers v. Int'l Union, United Rubber Workers, 822 F.2d 613, 622 (6th Cir. 1987)).

The Court concludes that this action cannot proceed without the Indian Community. As in LDFS, defendant AmeriBen, in accordance with its TPA agreement with the Indian Community, appears to "bear[] no responsibility for payment or authorization of benefits and is entitled to indemnification by" the Indian Community. 2017 WL 3215556, at *3. Thus, there is a significant likelihood of prejudice. Id. This factor, along with the fact that plaintiff does have an "alternative forum of either state or tribal court," id. at *4, weighs heavily in favor of dismissal. The other two factors—the extent to which any prejudice could be lessened by shaping the relief or whether a judgment rendered in the person's absence would be adequate—also weigh in favor of dismissal.[3] See id. at *3 (finding that "the only way relief can be shaped to lessen the prejudice against AmeriBen would be if TCRHCC became a Defendant in the suit" and that "LDFS has no remedy without TCRHCC").

Because the Court has found pursuant to Rule 19 that the Indian Community is an indispensable party and cannot be joined, plaintiff's suit must be dismissed under Rule 12(b)(7).

[3] Additionally, to the extent that plaintiff alleges that the Indian Community and Plan have not waived sovereign immunity (which the Court does not decide at this juncture), the Ninth Circuit has repeatedly explained, "[T]here is a 'wall of circuit authority' in favor of dismissing actions in which a necessary party cannot be joined due to tribal sovereign immunity—'virtually all the cases to consider the question appear to dismiss under Rule 19, regardless of whether [an alternative] remedy is available, if the absent parties are Indian tribes invested with sovereign immunity.' " Dine Citizens Against Ruining Our Env't v. Bureau of Indian Affs., 932 F.3d 843, 857 (9th Cir. 2019) (alteration in original) (quoting White v. Univ. of Cal., 765 F.3d 1010, 1028 (9th Cir. 2014)).

B. Failure to State a Claim

Defendant also moves to dismiss all of plaintiff's claims pursuant to Rule 12(b)(6) for failure to state a claim. Because the Court has determined that it lacks jurisdiction over plaintiff's claims and must dismiss the case for the reasons set forth above, it declines to decide whether plaintiff's claims should be dismissed on this separate basis.

V. CONCLUSION

In accordance with the foregoing, the Court **GRANTS** defendant's motion to dismiss plaintiff's complaint without prejudice. Plaintiff is hereby directed to file an amended complaint no later than December 13, 2022.

IT IS SO ORDERED.

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Initials of Preparer KMH