

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

In Re: P.A. PLYMOUTH, INC.,
Debtor.

Chapter 11
Case No. 03-03350

P.A. PLYMOUTH, INC., BY AND THROUGH
THE JUNIOR SECURED CREDITORS OF P.A.
PLYMOUTH, INC.,
Plaintiff,

v.

Adversary Proceeding
No. 07-07032

BENEFIT PLAN ADMINISTRATORS, INC.,
Defendant.

DECISION AND ORDER

At Roanoke in said District this 27th day of September, 2007:

The parties are before the court on the defendant's motion to dismiss the plaintiff's complaint. The court has considered the parties' memoranda in support of and in opposition to the defendant's motion to dismiss as well as oral arguments held on September 11, 2007. For the reasons stated in this Decision and Order, the defendant's motion to dismiss is granted.

BACKGROUND

On August 5, 2003, P.A. Plymouth, Inc. ("Plymouth") filed a voluntary petition

under Chapter 11 of the United States Bankruptcy Code. This court subsequently confirmed Plymouth's First Amended Plan of Liquidation on June 3, 2005. Under the terms of this plan, the right to prosecute certain claims and causes of action on Plymouth's behalf (including the claim at issue) was assigned to Plymouth's Junior Secured Creditors ("Creditors").

On March 30, 2007, the Creditors filed an adversary proceeding against the defendant, Benefit Plan Administrators ("BPA"), to recover damages resulting from an alleged breach of contract in BPA's administration of Plymouth's employee insurance program. The Creditors claim that pursuant to a signed "Third Party Administration Agreement" between Plymouth and BPA ("The TPA Contract"), BPA was required to process claims with Plymouth's "stop loss insurer," Standard Life and Accident Insurance Company. The Creditors posit in their complaint that BPA breached the TPA Contract by failing to properly administer certain claims, which resulted in the denial of \$406,000 in employee claims by the "stop loss insurer."

BPA filed this motion to dismiss for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure, as incorporated by Bankruptcy Rule 7012(b).¹ In support of the motion to dismiss, BPA argues that the four corners of the TPA Contract,

¹Federal Rule of Civil Procedure 12(b)(6) states that, "[e]very defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: ... (6) failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).

under which the Creditors are claiming the breach, make no mention of a duty to process claims with a “stop loss insurer.” BPA further argues that nowhere in the TPA Contract could the court infer such a duty. The conclusion which BPA advocates is that if it had no contractual duty to process claims with a stop loss insurer, it cannot be held liable for breach of contract under any contractual provision which would give rise to liability.²

DISCUSSION

A Rule 12(b)(6) motion should be granted only if, “after accepting all well-pleaded allegations in the plaintiff’s complaint as true and drawing all reasonable factual inferences from those facts in the plaintiff’s favor, it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief.” Edwards v. City of Goldsboro, 178 F.3d 231, 244 (4th Cir. 1999) (internal quotations and citations omitted). Rule 10(c) of the Federal Rules of Civil Procedure states that “[a] copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.” Fed. R. Civ. P. 10(c). Additionally, where there is conflict between the bare allegations of the complaint and an exhibit attached to the complaint, the exhibit prevails.

² Article IV of the TPA Contract, entitled “Indemnification,” states that BPA

shall indemnify and hold Plan Sponsor [Plymouth] harmless of and for any and all claims, demands, actions or causes of actions for liability, loss or damage, including costs and reasonable attorney’s fees, arising out of or related to any act or omission by TPA involving gross negligence or willful misconduct with regards to TPA’s duties under this agreement.

Fayetteville Investors v. Commercial Builders, Inc., 936 F.2d 1462, 1465 (4th Cir. 1991).

In their complaint, the Creditors claim that BPA breached the TPA Contract by improperly administering claims of Plymouth's employees with the "stop loss insurer," Standard Life. In order to succeed under a cause of action for breach of contract in Virginia, it must be shown that there existed "(1) a legal obligation of a defendant to a plaintiff, (2) a violation or breach of that obligation, and (3) a consequential injury or damage to the plaintiff." Hamlet v. Hayes, 641 S.E.2d 115, 117 (Va. 2007). The Creditors base the existence of BPA's legal obligation to Plymouth solely on the TPA Contract which was attached in the Creditors' Complaint. At the time Plymouth and BPA entered into the TPA Contract, Plymouth's employee health insurance program was fully self-insured.³ There is no evidence in the written document to suggest that either parties even contemplated retaining stop loss reinsurance in the future. Upon review of the TPA Contract, the court finds no reference to the processing of claims with a "stop loss insurer," nor does the court find the contract in any way ambiguous as to the extent of BPA's duties.

³ As part of the complaint, the plaintiff attached both the TPA Contract as well as the Excess Loss Reinsurance Treaty that Plymouth entered into with Standard Life and Accident Insurance Company. The Excess Loss Reinsurance Treaty initially took effect exactly two years after the TPA Contract initially took effect. The TPA Contract contemplated that all funding for the employee health plan would come directly from the Plan Sponsor, Plymouth.

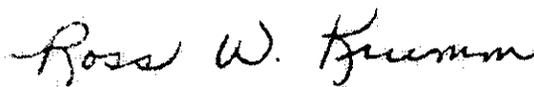
CONCLUSION

Even viewing all allegations and factual inferences in favor of the plaintiff, it does not appear that the plaintiff can prove any set of facts in support of its claim. The TPA Contract on which the plaintiff solely relies makes no mention of the obligation the plaintiff claims the defendant breached. Furthermore, the court fails to see any ambiguity in the defendant's duties under the TPA Contract. For the reasons stated above, it is

ORDERED:

That the defendant's motion to dismiss the complaint, pursuant to FRCP 12(b)(6) is GRANTED. As a result, defendant's motion for more definite statement is dismissed without prejudice as being moot. The plaintiff is granted 30 days within which to file an amended complaint. Otherwise, this adversary proceeding will be dismissed with prejudice without further notice or hearing.

Copies of this order are directed to be sent to counsel for the Plaintiff, Stephen W. Milo, Esq., Wharton, Aldhizer & Weaver, PLC, 125 S. Augusta St., Suite 2000, Staunton, Virginia 24401; and counsel for the Defendant, Patrick T. Fennell, Esq., Magee, Foster, Goldstein & Sayers, P.C., Post Office Box 404, Roanoke, Virginia 24003-0404.



Ross W. Krumm
U. S. Bankruptcy Judge