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CAREPOINT HEALTH MANAGEMENT ASSOCIATES, LLC and MCCABE AMBULANCE SERVICES, INC., Plaintiff(s), vs. JERSEY CITY MEDICAL CENTER, Defendant(s).	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: HUDSON COUNTY Docket No.: HUD-L-2599-22 CIVIL ACTION *Oral Argument is Requested*

MEMORANDUM OF LAW IN SUPPORT OF JERSEY CITY MEDICAL CENTER'S MOTION TO DISMISS

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POINT I

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PRELIMINARY STATEMENT

This matter arises from a 2016 settlement agreement relating to ambulance services provided by Jersey City Medical Center ("JCMC") in the City of Jersey City. That settlement agreement was executed among plaintiffs CarePoint Management Associates, LLC ("CarePoint") and McCabe Ambulance Services, Inc. ("McCabe"), as well as defendant, Jersey City Medical Center ("JCMC"), and the City of Jersey City. In their Complaint, however, the named plaintiffs seek to pursue not only contract-related claims for themselves, but many millions of dollars in non-contract damages that allegedly were incurred not by plaintiffs, but by three separate and distinct hospitals that are already pursuing those damages on their own behalves in a pending federal action. Thus, to say the least, it appears that CarePoint's claims here, where it is not the real party in interest, represents a blatant abuse of process. Accordingly, defendant JCMC hereby moves: (1) to dismiss the tort and antitrust claims asserted in Counts Three, Four and Five of the Complaint pursuant to R. 4:26-1 and strike paragraphs 41-82 of the Complaint as the named plaintiffs are not the real parties in interest, and (2) to dismiss Counts One and Two of the Complaint, as the settlement agreement at issue precludes plaintiffs' requested relief and damages.

First, CarePoint is not the real party in interest in this litigation. In Counts Three, Four and Five of their Complaint, the named plaintiffs, CarePoint and McCabe, purport to seek non-contract damages that were supposedly incurred by three non-parties, Christ Hospital ("Christ"), Bayonne Medical Center ("BMC") and Hoboken University Medical Center ("HUMC") (collectively "the Hospitals"). In order to pursue claims for damages, under New Jersey Court Rule 4:26-1, each named plaintiff must be the "real party in interest." Indeed, this matter of standing is the threshold issue that must be demonstrated by plaintiffs before they are permitted to proceed with their various claims. Cherokee LCP Land, LLC v. City of Linden Plan. Bd., 234 N.J. 403, 414 (2018); Watkins v. Resorts Int'l Hotel & Casino, 124 N.J. 398, 417 (1991). Thus, the Complaint raises an

obvious question: Who is plaintiff, "CarePoint Management Associates, LLC", and on what legal basis may it assert claims for alleged tort and antitrust damages, including treble damages, on behalf of non-parties Christ, BMC and Hoboken? The simple answer is there is no such legal basis. According to various publicly-filed documents, including documents filed on behalf of the Hospitals themselves, CarePoint is nothing more than a third-party management company that neither owns nor operates any of the Hospitals. CarePoint's improper claims form the bulk of the damages alleged in the Complaint. By plaintiffs' own admissions in paragraphs 56, 64, 67, 68, 69, 70 of the Complaint, the damages allegedly incurred, if any, were exclusively incurred by non-parties Christ, BMC and HUMC, respectively, not CarePoint. (Exh. J[1] ¶¶ 56, 64, 67, 68, 69, 70). Accordingly, Counts Three, Four and Five of the Complaint must be dismissed pursuant to R. 4:26-1, as neither CarePoint nor McCabe is the real party in interest on any of these claims.[2]

Next, CarePoint and McCabe were parties to the 2016 settlement agreement that is in issue in Counts One and Two of the Complaint. (Exh. H). To the extent plaintiffs seek damages pursuant to the 2016 settlement agreement, that agreement expired by its own terms on December 31, 2019. (Id.). Thus, to the extent plaintiffs' alleged damages were incurred after December 31, 2019, those damages are precluded as the settlement agreement expired. Additionally, plaintiffs' claim for damages is precluded by the terms of the settlement agreement that limited plaintiffs' remedy. For these reasons, the entirety of the Complaint must be dismissed.

[1] All exhibits referenced herein are annexed to the accompany Certification of Lauren F. Iannaccone, Esq.

[2] To the extent there could be any doubt that the named plaintiffs here are not the real parties in interest, such doubts are dispelled by a federal court action recently brought by the Hospitals themselves in the United States District Court for the District of New Jersey (the "Federal Action"). There, the acknowledged real parties in interest, i.e., Christ, BMC and HUMC hospitals, currently are pursuing the very same antitrust damages alleged here. (Exhs. A and B). In fact, as set forth in the Statement of Facts, *infra*, in the original complaint in the Federal Action the Hospitals' factual allegations concerning JCMC's ambulance services in Jersey City were virtually identical to the allegations here. (*C.f.* Exhs. A and J).

STATEMENT OF FACTS

A. Facts Relating to Counts Three (Tortious Interference With Prospective Economic Advantage), Four (Monopolization in Violation of the New Jersey Antitrust Act) and Five (Attempted Monopolization in Violation of the New Jersey Antitrust Act)

Plaintiffs' claims arise from defendant JCMC's alleged "redirecting, diverting or steering patients" away from CarePoint facilities." (Exh. J ¶ 33). In Counts Three, Four and Five of the Complaint, plaintiffs assert claims for tortious interference with prospective economic advantage, monopolization, and attempted monopolization, respectively. On closer examination, however, plaintiffs conspicuously seek damages for losses allegedly incurred, not by CarePoint, but by the three non-party Hospitals. Specifically, the Complaint alleges that, between 2019 and 2022, Christ Hospital incurred more than $150 million in damages, (Exh. J ¶¶ 48, 56, and 68); Bayonne Medical Center incurred more than $40 million in damages, (id. ¶¶ 64 and 69); and Hoboken University Medical Center incurred more than $21 million in damages. (Id. ¶ 67).

Importantly, each of the non-party Hospitals that allegedly incurred damages is owned and operated by a separate and distinct limited liability company, none of which is a plaintiff in this action. According to the Hospitals' own filings with the New Jersey Department of Health ("DOH"), Christ is the operating name for "Hudson Hospital Opco LLC". (Exh. D, at 1). BMC is the operating name for "IJKG Opco LLC." (Id.). HUMC is the operating name for "HUMC Opco LLC." (Id.).[3] Similarly, according to organizational charts that the Hospitals supplied to DOH, none of the Hospitals is directly or indirectly owned by either plaintiff in this matter. (Id.). Thus, in the words of counsel for the three Hospitals, "CarePoint Health Management Associates, LLC and CarePoint Health Captive Assurance Company Management Assoc, LLC … are [n]either direct [n]or indirect owners of the Hospitals . . .." (emphasis added) (Exh. C at 2).

[3] In their complaint in the Federal Action, the Hospitals confirm that each of them is a separate and distinct limited liability company. (Exh. B).

Contrary to plaintiffs' factual assertion in paragraph 6 of the Complaint, plaintiffs CarePoint and McCabe also are not the operators of any of the non-party Hospitals. (Exh. J at ¶ 6). In fact, in correspondence issued by the DOH within the last 90 days, DOH confirms that Hudson Hospital Opco, LLC, not plaintiff CarePoint, "is the licensed operator of Christ Hospital", (Exh. F), IJKG Opco, LLC "is the licensed operator of BMC", (Exh. G), and HUMC Opco, LLC "is the licensed operator of Hoboken." (Exh. H).[4]

B. Facts Relating to CarePoint's and McCabe's Contract-Related Claims (Count 1: Breach of Contract; Count 2 Breach of the Covenant of Good Faith and Fair Dealing)

JCMC is a "[h]ospital facility located in the City of Jersey City, and is currently owned and operated by RWJBarnabas Health." (Exh. J at ¶ 8). In June 2014, Jersey City issued a request for bids to provide Basic Life Support ("BLS") ambulance services in Jersey City. (Exh. J at ¶¶ 9, 15). The contract was awarded to JCMC. (Exh. J at ¶ 15). McCabe filed a lawsuit under HUD-L-5182-14 ("the McCabe Action"), seeking to nullify the award of the contract to JCMC and to require Jersey City to rebid the contract. (Exh. J at ¶ 18). Thereafter, although CarePoint was not a party to the McCabe Action, it joined McCabe, JCMC and the City of Jersey City ("the City") in entering a settlement agreement ("the Settlement Agreement") effective July 1, 2016. (Exh. J at ¶ 19). The terms of the Settlement Agreement provided for a "grid protocol" that separated Jersey City into separate geographic zones. Under the grid protocol, subject to several exceptions, JCMC's ambulances were generally to transport BLS patients to a medical facility for that particular zone. (Exh. H at ¶1.a). The grid protocol, however, did not apply to transports involving "Level 2 trauma, sexual assault, physician directive, where the patient chooses otherwise, or where JCMC's EMS

[4] Incredibly, in the Federal Action, the Hospitals themselves are already pursuing antitrust damages against JCMC's affiliate, RWJBarnabas Health. The damages alleged in that action include some of the same damages alleged here, i.e., damages supposedly incurred, not by CarePoint, but by the separate and distinct Hospitals, Christ, BMC and HUMC. (Exhs. A, B).

destination software chooses otherwise." (Id.). In such situations, irrespective of the location where those patients were picked up, JCMC's ambulances could permissibly transport them to JCMC. (Id.).

The Settlement Agreement contained other provisions that insulated JCMC from a claim for breach of the Settlement Agreement. First, so long as JCMC complied with the grid protocol in at least 90% of the transports, JCMC would "be deemed to be compliant with [the Settlement] Agreement." (Id. at ¶ 5a). Second, prior to JCMC being subject to a claim for breach of contract, it was entitled to notice and an opportunity to cure the alleged breach. (Id., at. ¶ 5c). Third, the Settlement Agreement limited the parties' remedies in the event of a breach: they could terminate the Settlement Agreement, or they could pursue an action "to enforce" the terms of the Settlement Agreement. (Id. at ¶¶ 5c, 9). McCabe and CarePoint does not allege that it took either of these actions.

C. The Federal Action

The claims in this action mirror those brought in the Federal Action. That complaint was brought against RWJ Barnabas Health, Inc. ("RWJ"). The original federal complaint alleged, among other things, that "[J]CMC has misused its position as CJC's ambulance provider to steer underinsured patients to Christ Hospital and steer patients insured by private insurers to JCMC." (Exh. A at ¶ 94). This is a component of a larger narrative in the Federal Action that RWJ conspired with others to "destroy competition and to monopolize the provision of general acute care hospital services and related health care services in northern New Jersey" (Id. at ¶ 1). RWJ allegedly "targeted Hudson County, New Jersey, to the detriment of CarePoint" and to "force CarePoint into insolvency through this (1) force a shutdown" Christ Hospital, Bayonne Medical Center and Hackensack University Medical Center. (Id. at ¶¶ 1, 2). As in this case, the gravamen of this

Federal Complaint is that RWJ was "intentionally steer[ing] patients away from Bayonne Medical and towards RWJ facilities." (Id. at ¶ 65).

There can be no dispute that the damages alleged by the Hospitals in the Federal Action are the same as those that CarePoint and McCabe are seeking here on behalf of the three Hospitals:

Federal Court Complaint	**The Complaint in this Action**
"In September 2013, the City of Jersey City, New Jersey ("CJC") issued a request for bid proposals to provide ambulance services to residents of Jersey City. Ultimately, CJC awarded the ambulance contract on November 12, 2014 to JCMC." (Exh A. at ¶ 84).	"In September 2013, the City of Jersey City, New Jersey ('CJC') issued a request for bid proposals (the "Initial RFP"), wherein CJC sought proposals for a contract (the "BLS Contract") to provide for Basic Life Support Emergency Ambulance Services (the "BLS Services") to residents of Jersey City." (Complaint ¶ 9). "CJC awarded JCMC the BLS Contract on November 12, 2014." (Exh. J ¶ 15).
"On December 8, 2014, the losing applicant, McCabe, an affiliate of CarePoint, commenced a lawsuit against CJC and JCMC. McCabe asserted, among other things, that the City had improperly and unlawfully awarded the ambulance contract to JCMC." (Exh A. at ¶ 85)	"On December 8, 2014, McCabe commenced an action in this Court against the CJC and JCMC … In the McCabe Action, McCabe asserted, among other things, that: … (iv) CJC improperly awarded the BLS Contract to JCMC." (Exh. J ¶¶ 16, 17).
On July 1, 2016, CarePoint, McCabe, JCMC, and CJC (collectively, the "Settlement Parties") entered into a Settlement Agreement resolving the claims asserted in the McCabe Action. (Exh A. at ¶ 86).	"On July 1, 2016, CarePoint, McCabe, JCMC, and CJC (collectively, the "Settlement Parties") entered into a Settlement Agreement resolving the claims asserted in the McCabe Action." (Exh. J ¶ 19)
"Under the Settlement Agreement, JCMC agreed, among other things, to provide	"Under the Settlement Agreement, JCMC agreed, among other things, to provide

ambulance transports pursuant to a grid-based protocol (the "Grid Protocol"). The purpose of the Grid Protocol was to identify the closest appropriate facility for all Emergency Medical Services ("EMS") patient transports originating within Jersey City." (Exh A. at ¶ 87).	ambulance transports for BLS Services, as well as Advanced Life Saving Services to Jersey City, pursuant to a grid-based protocol (the "Grid Protocol"). The purpose of the Grid Protocol was to identify the closest appropriate facility for all Emergency Medical Services ('EMS') patient transports originating within Jersey City." (Exh. J ¶ 20)
"Upon information and belief, and as set forth below, JCMC has misused its position as CJC's ambulance provider to steer underinsured and uninsured patients to Christ Hospital and steer patients insured by private insurers to JCMC." (Exh A. at ¶ 94).	"Upon information and belief, and as set forth below, JCMC is misusing its position as CJC's ambulance provider to steer underinsured and uninsured patients to Christ and steer patients insured by private insurers to JCMC." (Exh. J ¶ 28).
"Upon information and belief, JCMC EMS personnel have been maliciously, knowingly and intentionally redirecting, diverting or steering EMS patient transports away from CarePoint facilities and toward JCMC, even where a CarePoint facility is the closest facility geographically." (Exh A. at ¶ 98).	"Upon information and belief, and despite this clearly articulated requirement, JCMC EMS personnel have been maliciously, knowingly and intentionally redirecting, diverting or steering EMS patient transports away from CarePoint facilities and toward JCMC, even where a CarePoint facility is the closest facility geographically." (Exh. J ¶ 36).
"As a result of JCMC's patient redirecting, diverting and/or steering, CarePoint has suffered significant losses for three inter-related reasons. First, CarePoint suffered a loss in revenue from the decrease in EMS transports to CarePoint facilities when patients were steered away from CarePoint to RWJ." (Exh A. at ¶¶ 99-100).	"As a result of JCMC's patient steering, Plaintiffs have suffered a significant continuing loss in revenue arising from a decrease in overall EMS transports to CarePoint facilities, as well as a decrease in any subsequent required emergency or in-patient care." (Exh. J ¶ 37).

Indeed, in an apparent effort to conceal the fact that the real parties in interest (the Hospitals) are already pursuing their claims in the Federal Action, the above factual allegations were omitted from the subsequent versions of the Federal Action Complaint. However, this does not cure the issue as the Hospitals are nevertheless still pursuing the very same facts.

D. The Settlement Agreement Expired

The BLS Contract between Jersey City and Jersey City Medical Center for ambulance services ran for five years (a three-year initial term with two-one year extensions). (Exh. I). The contract period began January 1, 2015 and it expired on December 31, 2019. (Id.). The Settlement Agreement among Jersey City, JCMC, CarePoint and McCabe provided that the Settlement Agreement would remain in force solely during the period of the underlying BLS contract. (Exh. H). Thus, to the extent plaintiffs seek damages for breach of contract, they are limited to the period that the contract was in force, i.e., until December 31, 2019. Their breach of contract claims thus must be dismissed to the extent they claim any damages beyond December 31, 2019.

E. The Remedies Under the Settlement Agreement Are Expressly Limited

The Settlement Agreement specifically provides that CarePoint's singular remedy was enforcement of the contract, or injunctive relief, not monetary damages.

> "[n]othing contained in this Section 9, or this Agreement, shall be construed to prevent any of the Parties from: (i) instituting a legal proceeding to enforce the terms of this Agreement; or (ii) asserting claims against each other arising out of third-party claims for professional liability or violations of employment laws. The Parties expressly intend and agree that the release contained herein shall not preclude any party from seeking to enforce the terms of this Agreement.

(Exh. H). Plaintiffs also could have terminated the agreement (Id. at ¶¶ 5c, 9). New Jersey courts have routinely enforced limitation of damages clauses. Foont-Freedenfeld Corp. v. Electro-Protective Corp., 126 N.J. Super. 254 (App. Div. 1973), aff'd o.b., 64 N.J. 197 (1974). Here,

plaintiffs' claim for breach of contract and breach of the covenant of good faith and fair dealing are precluded by the very contract at issue. Plaintiffs' sole remedies were to enforce or terminate the now-expired contract.

Against this factual background, defendant JCMC seeks dismissal of all claims set forth in the Complaint.

LEGAL ARGUMENT

POINT I

COUNTS THREE, FOUR AND FIVE OF THE COMPLAINT MUST BE DISMISSED PURSUANT TO R. 4:26-1, AS PLAINTIFFS CAREPOINT HEALTH MANAGEMENT ASSOCIATES LLC AND MCCABE AMBULANCE SERVICES, INC. ARE NOT THE REAL PARTIES IN INTEREST.

In a transparent and improper effort to avoid dismissal of Counts Three, Four and Five of the Complaint, plaintiffs CarePoint and McCabe falsely assert in the Complaint that CarePoint "owns and operates" the three Hospitals at issue, Christ, BMC and HUMC. (Exh. J ¶ 6). As demonstrated in multiple public filings, however, it is overwhelmingly demonstrated that Christ is owned and operated by Hudson Hospital Opco LLC, that Bayonne is owned and operated by IJKG Opco LLC, and that HUMC is owned and operated by HUMC Opco LLC. (Exh. D, at Attachment 1). While each of the Hospitals has a trade name that includes "CarePoint", none of the Hospitals is owned or operated by plaintiff CarePoint or McCabe. (Exhs. F, G. H); (Exh. C) ("CarePoint Health Management Associates, LLC and CarePoint Health Captive Assurance Company, LLC [none of these entities are either direct or indirect owners of the hospitals.]") (brackets in original). In fact, it appears from the Hospitals' organizational charts that the Hospitals own McCabe, not the other way around. (Id.).

Furthermore, there is an implicit concession in the Federal Action, as each of the aforementioned Hospital owners are specifically named as plaintiffs and are pursuing the Antitrust claims in their own names in the Federal Action. (Exhs. A, B) (identifying the plaintiffs as Hudson Hospital Opco LLC d/b/a CarePoint Health-Christ Hospital; IKGK Opco LLC d/b/a CarePoint Health Bayonne Medical Center, and HUMC Opco LLC d/b/a CarePoint Health-Hoboken University Medical Center). CarePoint Health Management Associates LLC and McCabe are not

the real parties in interest here, and they have no right to pursue antitrust and tort damages that the three Hospitals are already pursuing in their own names in the active Federal Action.

R. 4:5-1(b)(2), in pertinent part, provides:

> Each party shall include with the first pleading a certification as to whether the matter in controversy is the subject of any other action pending in any court, . . . or whether any other action or arbitration proceeding is contemplated; and, if so, the certification shall identify such actions and all parties thereto. Further, each party shall disclose in the certification the names of any non-party who should be joined in the action pursuant to R. 4:28. … If a party fails to comply with its obligations under this rule, the court may impose an appropriate sanction including dismissal of a successive action against a party whose existence was not disclosed or the imposition on the noncomplying party of litigation expenses that could have been avoided by compliance with this rule.

Inasmuch as CarePoint and the Hospitals are joint plaintiffs in the Federal Action, CarePoint also is well aware that the Hospitals are the real plaintiffs in this action. CarePoint, whose Complaint in this Court was filed less than one month prior to initiation of the Federal Action, certainly was aware that it was not the real party in interest at the time it filed the Federal Action with co-plaintiffs, the Hospitals. As a result of plaintiffs' failure to disclose the real parties in interest, JCMC has incurred many thousands of dollars in unnecessary counsel fees. Accordingly, plaintiffs should be sanctioned, as their failure to comply with R. 4:5-1(b)(2) was inexcusable. Having addressed these issues, we now turn to plaintiffs' lack of standing.

Courts will not entertain matters in which plaintiffs do not have sufficient legal standing. In re Quinlan, 70 N.J. 10, 34 cert. denied, 429 U.S. 922 (1976); Al Walker, Inc. v. Borough of Stanhope, 23 N.J. 657, 660 (1957). "Standing, however, is not automatic, and a litigant usually has no standing to assert the rights of a third party." In re Six Month Extension of N.J.A.C. 5:91-1 et seq., 372 N.J. Super. 61, 85 (App. Div. 2004) (citing Spinnaker Condo. Corp. v. Zoning Bd. of City of Sea Isle City, 357 N.J. Super. 105, 111 (App.Div.), certif. denied, 176 N.J. 280 (2003)). In

order to qualify as a plaintiff with legal standing to pursue a civil action, the named plaintiff must be "the real party in interest." R. 4:26-1. If the real party in interest is not before the Court, the named plaintiff's claims are not justiciable. See Deutsche Bank Nat. Trust v. Russo, 429 N.J. Super. 209, 220-21 (App. Div. 1996). Indeed, the issue of standing is the threshold issue that must be demonstrated by plaintiffs before they are permitted to proceed with their various claims. Cherokee LCP Land, LLC v. City of Linden Plan. Bd., 234 N.J. 403, 414 (2018); Watkins v. Resorts Int'l Hotel & Casino, 124 N.J. 398, 417 (1991). New Jersey law does not recognize any distinction between the concepts of standing and real party in interest. N.J. Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402, 412-13 (App. Div. 1997). Rule 4:26-1 specifically provides: "Every action may be prosecuted in the name of the real party in interest."

Here, neither CarePoint nor McCabe is the real party in interest to pursue the tort and antitrust claims alleged in Counts Three, Four and Five on behalf of the Hospitals. Rather, Christ, BMC and HUMC are the real parties in interest and they are already pursuing the claims in their own names and on their own behalves in the Federal Action.[5] (Exhs. A and B). Accordingly, plaintiffs' Count Three (Tortious Interference With Prospective Economic Advantage), Four (Monopolization in Violation of the New Jersey Antitrust Act) and Five (Attempted Monopolization in Violation of the New Jersey Antitrust Act), must be dismissed as plaintiff does not have standing to pursue these claims.

[5] Thus, even if the real parties in interest were plaintiffs here, their claims would be subject to dismissal under the entire controversy doctrine as the Hospitals are pursuing the same claims in the Federal Action. The entire controversy doctrine "embodies the principle that the adjudication of a legal controversy should occur in one litigation in only one court." Cogdell ex rel. Cogdell v. Hosp. Ctr. at Orange, 116 N.J. 7, 15 (1989). Rule 4:30A provides that "[n]on joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine."

For these same reasons, paragraphs 41-82 of the Complaint must be dismissed. New Jersey Court Rule 4:6-2(b), "[o]n the court's or a party's motion, the court may either (1) dismiss any pleading that is, overall, scandalous, impertinent, or, considering the nature of the cause of action, abusive of the court or another person; or (2) strike any such part of a pleading or any part thereof that is immaterial or redundant." Here, paragraphs 41-82 are irrelevant to the claims at issue in this case as, as discussed *supra*, CarePoint does not have standing to assert claims for damages on behalf of the Hospitals. Thus, these allegations are immaterial, redundant, and misleading and therefore must be stricken.

POINT II

PLAINTIFF SEEKS A REMEDY IN THIS LAWSUIT THAT IS UNAVAILABLE AND PROHIBITED BY THE TERMS OF THE CONTRACT

The Settlement Agreement limits CarePoint's remedy to petitioning the Court to "enforce the terms of the Agreement," or to terminate the agreement. (Exh. H at ¶¶ 5c, 9). It reads that, [n]othing contained in this Section 9, or this Agreement, shall be construed to prevent any of the Parties from: (i) instituting a legal proceeding to enforce the terms of this Agreement; or (ii) asserting claims against each other arising out of third-party claims for professional liability or violations of employment laws. The Parties expressly intend and agree that the release contained herein shall not preclude any party from seeking to enforce the terms of this Agreement.

(Exh. H ¶ 9). It also reads that if JCMC does not comply with the terms of the Settlement Agreement, that JCMC must be provided with "notice and a reasonable opportunity to cure," and if the alleged noncompliance is not cured, in the event of a material breach, the BLS Contract could be terminated. (Id. at ¶ 5c).

New Jersey courts have routinely enforced limitation of damages clauses. Foont-Freedenfeld Corp. v. Electro-Protective Corp., 126 N.J. Super. 254 (App. Div. 1973), aff'd o.b., 64

N.J. 197 (1974). Here, plaintiffs' claim for breach of contract and breach of the covenant of good faith and fair dealing are precluded by the very contract at issue. The contract does not permit damages. Plaintiffs' sole remedies was to pursue an action "to enforce" the terms of the Settlement Agreement, (Exh. H ¶ 9), or to terminate the Settlement Agreement only after having provided notice to JCMC of the alleged material breach and providing JCMC with a "reasonably opportunity to cure." (Exh. H ¶ 5c). First, plaintiffs did not file an enforcement action, provide JCMC with notice of an alleged breach while the Settlement Agreement was in effect, or terminate the contract. Second, it is too late for plaintiffs to do so now as, the Settlement Agreement has expired. CarePoint and McCabe agreed that the Settlement Agreement would remain in force solely during the period of the underlying BLS contract. (Exh. H ¶ 1a) ("the Grid protocol will be utilized for the duration of the BLS Contract [including extensions thereto]…."). As the Settlement Agreement expired in December 31, 2019, plaintiffs are out of time, and waived, any right to initiate an action to enforce its terms.

Additionally, and alternatively, to the extent plaintiffs seek damages for breach of contract, they are limited to the period that the contract was in force, i.e., until December 31, 2019. Plaintiffs' breach of contract claims thus must be dismissed to the extent they claim any damages beyond December 31, 2019.

CONCLUSION

For the reasons asserted herein, plaintiffs' Complaint must be dismissed.

CONNELL FOLEY LLP
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BY: */s/: John P. Lacey*
John P. Lacey

DATE: June 2, 2023