

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

<b>DELIA FELICIANO</b>	:	<b>CIVIL ACTION</b>
<b>Plaintiff</b>	:	
	:	
v.	:	<b>NO. 04-CV-04177</b>
	:	
<b>THOMAS JEFFERSON</b>	:	
<b>UNIVERSITY HOSPITAL, et. al</b>	:	
	:	
<b>Defendants</b>	:	

Stengel, J.

September 28, 2005

**MEMORANDUM AND ORDER**

This action is nearly identical to the related case of Hutt v. Albert Einstein Medical Center, No. 04-CV-03440, and more than 30 other lawsuits filed throughout the country's federal courts.<sup>1</sup> These complaints filed on behalf of uninsured and indigent patients assert, *inter alia*, that private non-profit hospitals are required by federal and state law to provide "mutually affordable medical care" to patients without regard to their ability to pay. Every district court presented with the federal claims raised in the Complaint has uniformly granted the defendant's motion to dismiss. Defendants Thomas Jefferson University Hospital and Thomas Jefferson Health System, Inc. (collectively "Defendants") moved to dismiss Plaintiff's Complaint pursuant to Federal Rule 12(b)(6).

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<sup>1</sup>See, e.g., Amato v. UPMC, 371 F. Supp. 2d 752 (W.D. Pa. 2005); Kizzire v. Baptist Health System, Inc., 343 F. Supp. 2d 1074 (N.D. Ala. 2004); Cargile v. Baylor Health Care System, No. 3:04-CV-1365-B (N.D. Tex. Aug. 10, 2005); Kolari v. New York-Presbyterian Hosp., 04-CIV-5733LAP, 2005 WL 710452 (S.D.N.Y. March 29, 2005); Darr v. Sutter Health, 04-CIV-02624, 2004 WL 2873068 (N.D. Cal. Nov. 30, 2004). Particularly persuasive are the Amato and Kolari decisions.

Defendants have demonstrated that, like in Hutt and the other actions filed throughout the country, Plaintiff's claims have no basis in federal law. I will grant Defendants' motion as to Plaintiff's federal law claims and decline to exercise supplemental jurisdiction over Plaintiff's state law claims for the reasons described infra.

## **I. BACKGROUND**

Defendants are part of a private non-profit hospital system based in Philadelphia, Pennsylvania. Compl. ¶ 2, 5. Plaintiff Delia Feliciano is an uninsured individual residing in Philadelphia, Pennsylvania. Id. at ¶¶ 50, 61. Plaintiff received medical treatment at Defendants' hospital on two separate occasions and Defendants obtained a judgment by default for \$15,205.61 against Plaintiff when she failed to pay her medical fees. Id. at 20-21. The gravamen of the Complaint is that Defendants are registered as tax-exempt charitable entities under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3). Plaintiff alleges that due to Defendants' tax-exempt status under the Internal Revenue Code ("IRC"), Defendants entered into an express or implied contract with the United States, the Commonwealth of Pennsylvania, and local government bodies and agreed to provide affordable medical care to all hospital patients, to abstain from "humiliating" debt collection practices, and to prevent any private entities from deriving a profit from Defendants' healthcare operations. Id. at ¶ 8.

Plaintiff contends that Defendants have breached their obligations to Plaintiff and the purported class<sup>2</sup> as charitable and tax-exempt entities by: (1) charging excessive medical fees that significantly exceed those charged to insured patients or patients covered by the federal Medicare or Medicaid programs, (2) charging excessive medical fees that exceed Defendants' actual costs of providing the medical services, (3) using improper debt collection practices, and (4) allowing nonprofit entities to earn a profit from the use of Defendants' tax-exempt hospitals. Compl. at ¶ 10.

Plaintiff originally filed this class action lawsuit in the Court of Common Pleas of Philadelphia County, Pennsylvania on August 17, 2004. On September 2, 2004 Defendants removed the case to this Court pursuant to 28 U.S.C. §§ 1331 and 1441. The Complaint alleges claims of: (1) third-party breach of contract, (2) breach of contract, (3) breach of the duty of good faith and fair dealing, (4) breach of a public charitable trust, (5) violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 PA. STAT. § 201-1, (6) violation of the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd, (7) unjust enrichment, (8) civil conspiracy, and (9) injunctive and declaratory relief.

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<sup>2</sup>Plaintiff brings this action on behalf of a class consisting of "all uninsured patients of [Defendants] from July 7, 1994 to July 7, 2004, who were charged an amount for medical care in excess of the amount charged to Defendants' insured patients, and/or were aggressively pursued for such debt through the alleged collection efforts and lawsuits." Compl. ¶ 23.

The Complaint seeks monetary damages, injunctive and declaratory relief, and a constructive trust to be imposed on Defendants': (1) federal, state, and local tax exemption savings, (2) profits obtained from uninsured patients, and (3) net assets and revenues in an amount sufficient to provide "mutually affordable medical care" to Plaintiff and the entire purported class. Compl. ¶ 84. The allegations raised in this case are nearly identical to those asserted in a wave of recently filed cases across the United States. On October 19, 2004, the Judicial Panel on Multidistrict Litigation denied a motion to consolidate these cases for coordinated pretrial proceedings. See In re Not-For-Profit Hosps./Uninsured Patients Litig., 341 F. Supp. 2d 1354, 1355-56 (J.P.M.L. Oct. 19, 2004).

## **II. Standard for a Motion to Dismiss**

A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted examines the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). A federal court may grant a motion to dismiss only where "it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." Carino v. Stefan, 376 F.3d 156, 159 (3d Cir. 2004) (quoting Conley, 355 U.S. at 45-46). In determining whether to grant a motion to dismiss, a federal court must construe the

complaint liberally, accept all factual allegations in the complaint as true, and draw all reasonable inferences in favor of the plaintiff. Id. See also D.P. Enters. v. Bucks County Cmty. Coll., 725 F.2d 943, 944 (3d Cir. 1984).

The Federal Rules of Civil Procedure do not require a plaintiff to plead in detail all of the facts upon which he bases his claim. Conley, 355 U.S. at 47. Rather, the Rules require a "short and plain statement" of the claim that will give the defendant fair notice of the plaintiff's claim and the grounds upon which it rests. Id. A plaintiff, however, must plead specific factual allegations. Neither "bald assertions" nor "vague and conclusory allegations" are accepted as true. See Morse v. Lower Merion School Dist., 132 F.3d 902, 906 (3d Cir. 1997); Sterling v. Southeastern Pennsylvania Transp. Auth., 897 F. Supp. 893 (E.D. Pa. 1995). Accordingly, "a court should not grant a motion to dismiss 'unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Conley, 355 U.S. at 45-46; Graves v. Lowery, 117 F.3d 723, 726 (3d Cir. 1997).

### **III. DISCUSSION**

#### **A. Plaintiff's Federal Law Claims**

##### **1. The Third-Party Beneficiary of a "Government Contract" Claim**

Plaintiff claims that she is a third-party beneficiary to a contract between Defendants and the United States government, the Commonwealth of Pennsylvania, and local government entities based on Defendants' tax-exempt status under 26 U.S.C.

§ 501(c)(3). Compl. ¶ 38-39. Under this "contract," the United States government allegedly granted Defendants tax-exempt status in exchange for their agreement to meet a number of specific obligations.<sup>3</sup> Plaintiff claims that Defendants have breached this contract and that she did not receive the intended benefit of the agreement. Id. at ¶ 39. Plaintiff's claim fails for several reasons.

As an initial matter, the IRC prevents Plaintiff from enforcing any section of the IRC without the authorization of the Secretary of the Treasury and the United States Attorney General. The IRC provides that "[n]o civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Secretary authorizes . . . the proceedings and the Attorney General . . . directs that the action be commenced." 26 U.S.C. § 7401.

Even if Plaintiff could bring her third-party breach of contract claim under the IRC, section 501(c)(3) does not create a contract as Plaintiff alleges. In Nat'l R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe Ry. Co., 470 U.S. 451 (1985), the Supreme Court held:

[A]bsent some clear indication that the legislature intends to bind itself contractually, the presumption is that "a law is not intended to create private contractual or vested rights . . . ." This well-established presumption is

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<sup>3</sup>In particular, the Complaint alleges that by accepting tax-exempt status, Defendants agreed: (1) to operate exclusively for charitable purposes, (2) to provide emergency room medical care to Plaintiff and the class Plaintiff seeks to represent without regard to their ability to pay, (3) to provide affordable medical care to Plaintiff and the purported class, (4) not to pursue outstanding medical debts from Plaintiff and the class by engaging in "aggressive, abusive, and humiliating collection practices," and (5) not to produce profits for other entities. Compl. ¶ 36.

grounded in the elementary proposition that the principal function of a legislature is not to make contracts, but to make laws that establish the policy of the state.

Nat'l R.R. Passenger Corp., 470 U.S. at 466. See also Thompson v. Thompson, 484 U.S. 174, 179 (1988) (stating that Congress's intent in enacting a statute is always the "focal point" for determining whether a statute provides a private right of action).

In this case, the language of IRC section 501 does not indicate that Congress intended to create contract rights for United States citizens. Instead, the statute merely identifies a number of organizations which are exempt from federal income taxes and identifies the requirements these organizations must meet. See 26 U.S.C. §§ 501(a)-501(c). Other courts have refused to find that the IRC provides private contractual rights. See, e.g., McLaughlin v. Comm'r of IRS, 832 F.2d 986, 987 (7th Cir. 1987) ("[t]he notion that the [IRC] is contractual or otherwise consensual in nature is not only utterly without foundation but . . . has been repeatedly rejected by the courts"). See also Demes v. United States, 52 Fed. Cl. 365, 369 (Cl. Ct. 2002) (holding that plaintiffs who alleged they were third-party beneficiaries of a government obligation created by the IRC failed to state a claim upon which relief could be granted). As noted by the Western District of Pennsylvania in Amato v. UPMC, 371 F. Supp. 2d 752, 755-56 (W.D. Pa. 2005), the Supreme Court has long declined to accept the argument that a tax exemption creates a

contract. See Stanislaus County v. San Joaquin & King's River Canal & Irrigation Co., 192 U.S. 201, 210 (state statute exempting lands from taxation did not create a contract with private party).

Even if Plaintiff could establish that a contract created under section 501(c)(3) exists, she still could not recover the relief she seeks. A third-party beneficiary generally has no more rights under a contract than the party who contracted on her behalf. See United Steelworkers of Am., AFL-CIO-CLC v. Rawson, 495 U.S. 362, 375 (1990); Miller v. Allstate Ins. Co., 763 A.2d 401, 405 n.1 (Pa. Super. Ct. 2000) ("[u]nder Pennsylvania law, a third-party beneficiary's rights and limitations in a contract are the same as those of the original contracting parties").

In this case, Plaintiff seeks, *inter alia*, monetary damages and a constructive trust to be imposed on Defendants' tax exemption savings. The only right of the United States (the party allegedly contracting on behalf of Plaintiff) under the purported section 501(c)(3) contract would be to assess and collect federal taxes from Defendants if they failed to comply with the terms of the tax exemption. See 26 U.S.C. §§ 4958, 6201, 6212-13; see also Kolari v. New York-Presbyterian Hosp., 04-CIV-5733LAP, 2005 WL 710452 (S.D.N.Y. March 29, 2005). Thus, even as a third-party beneficiary to a section 501(c)(3) contract Plaintiff could not obtain relief.



Plaintiff attempts to bolster her argument that section 501(c)(3) creates a contract by analogizing that statute to the Hill-Burton Act, codified at 42 U.S.C. § 291. Pl. Memo. in Opp. at 9-10. The Hill-Burton Act is a government program that awarded building or renovation funds to hospitals who served indigent patients. See 42 U.S.C. § 291.

Plaintiff argues that because some courts have construed the Hill-Burton Act as creating a contract between the government and hospitals, section 501(c)(3) should create a similar contract. Pls. Memo. in Opp. at 291.

Plaintiff's analogy fails upon closer scrutiny. As noted in Lorens v. Catholic Health Care Partners, 356 F. Supp. 2d 827, 832 (N.D. Ohio 2005), the Hill-Burton Act differs substantially from section 501(c)(3) for a number of reasons:

The Hill-Burton Act provided direct funds to hospitals; 501(c)(3) provides tax exemptions. The Hill-Burton Act required applicants to sign a "Memorandum of Agreement" containing express contractual language; 501(c)(3) recognition is accorded by the IRS with no such contractual agreement. See Euresti v. Stenner, 458 F.2d 1115, Appx. (10th Cir. 1972). The Hill-Burton Act provided funds for organizations performing specific, pre-negotiated purposes; 501(c)(3) provides tax exemptions to organizations for multiple permissible purposes. Hill-Burton provided for a private cause of action to enforce the Act, see 42 U.S.C. § 300s-6; 501(c)(3) only permits the IRS or the organization seeking tax exemption to challenge a determination on 501(c)(3) eligibility. See 26 U.S.C. § 7428(a). Therefore, while the Hill-Burton Act created a contract by virtue of its conditional government grants, 26 U.S.C. 501(c)(3) [does] not create such a contract.

Lorens, 356 F. Supp. 2d at 832. Plaintiff's analogy to the Hill-Burton Act fails for the reasons described in Lorens. There is simply no legal support for the view that section

501(c)(3) creates a contractual relationship between Defendants and the United States government of which Plaintiff is a third-party beneficiary. Accordingly, this Court grants Defendants' motion as to the third-party beneficiary claim.

## **2. The Breach of Public Charitable Trust Claim**

Plaintiff claims that: (1) Defendants created a public charitable trust "to provide mutually affordable medical care to their uninsured patients" by accepting tax-exempt status under 26 U.S.C. § 501(c)(3), (2) Plaintiff and the purported class are the intended beneficiaries of the public trust, and (3) Defendants have breached their trust obligations. Compl. ¶¶ 53-55. Plaintiff's charitable trust claim is dismissed by this Court for the reasons discussed in the following section.

First, section 501(c)(3) does not create a private right of action for third-party claims. "Private rights of action to enforce federal law must be created by Congress." Alexander v. Sandoval, 532 U.S. 275, 286 (2001). No private cause of action exists unless a statute indicates Congress's intent to create one. Id. at 286-87. In cases such as this, the courts may not create a private cause of action when the statute displays no such Congressional intent.

Plaintiff contends that section 501(c)(3) creates an implied public charitable trust despite the lack of any such language in the statute or any indications of Congressional intent. She argues that language in Simon v. E. Kentucky Welfare Rights, 426 U.S. 26 (1976), supports her claim that section 501(c)(3) creates a public charitable trust. Pls.

Memo. in Opp. at 25. Specifically, Plaintiff notes that the Supreme Court cited Internal Revenue Service ("IRS") Rev. Rul. 56-185 (1956), and stated that the ruling "established the position of the IRS that the term 'charitable' in its legal sense and as used in [section] 501(c)(3) of the Code contemplates an implied trust constituted for some public benefit." Simon, 426 U.S. at 29.

Plaintiff's reading of the Simon decision as supporting the creation of a public charitable trust by Defendants simply accepting tax-exempt status under section 501(c)(3) is misguided. As noted by the Amato court, Rev. Rul. 56-185 does not "evinced the creation of a charitable trust to which [Plaintiff is the] intended beneficiary." Amato, 371 F. Supp. 2d at 757. Instead, the revenue ruling merely contains IRS policy regarding an organization's qualification for tax-exempt status under section 501(c)(3). Id. Indeed, the first sentence of Rev. Rul. 56-185 states that it contains "[c]riteria or tests to be met in determining whether a hospital qualifies for exemption from Federal income tax." Rev. Rul. 56-185 (1956). Thus, Plaintiff has no claim for the creation of an implied public charitable trust under Rev. Rul. 56-185.

Second, Plaintiff has failed to allege that Defendants manifested any intent to create a charitable trust. As provided in the Restatement (Second) of Trusts: "[a] charitable trust is created only if the settlor properly manifests an intention to create a charitable trust." RESTATEMENT (SECOND) OF TRUSTS § 351. In this case, Defendants would be the settlors of any public charitable trust created by accepting tax-exempt status

under section 501(c)(3). The Complaint does not allege any facts stating or inferring that Defendants intended to create a charitable trust when they accepted tax-exempt status under the IRC. As a result, Plaintiff's claim fails.

Finally, even if this Court were to find that a public charitable trust had been established by section 501(c)(3), Plaintiff lacks standing to enforce her claim. The Restatement (Second) of Trusts provides in pertinent part: "[a] suit can be maintained for the enforcement of a charitable trust by the Attorney General or other public officer, or by a co-trustee, or by a person who has a special interest in the enforcement of the charitable trust." RESTATEMENT (SECOND) OF TRUSTS § 391. See also RESTATEMENT (SECOND) OF TRUSTS § 391 comment (d) ("[t]he mere fact that . . . members of the public . . . benefit from enforcement of the trust is not a sufficient ground to entitle them to sue"); Valley Forge Historical Soc'y v. Washington Mem'l Chapel, 426 A.2d 1123, 1127 (Pa. 1981) ("[a] person whose only interest in compelling a charitable organization to perform a duty . . . to the public is that interest held in common with other members of the public cannot compel the performance of a duty owed by the organization to the public").

In this case, Plaintiff alleges that the class she hopes to represent contains "thousands of individuals and therefore is so numerous that joinder is impracticable." Compl. ¶ 26. Plaintiff herself has therefore alleged that she shares her breach of public charitable trust claim with so many other persons that she has no interest distinct from other members of the public. Consequently, Plaintiff's claim fails because she lacks

standing to sue. Amato, 371 F. Supp. 2d at 758. Plaintiff has failed to sufficiently allege a breach of public charitable trust, and this Court grants Defendants' Motion to Dismiss to the extent the claim is based on federal law.

### **3. The EMTALA Claim**

Plaintiff alleges that Defendants violated the Emergency Medical Treatment and Active Labor Act ("EMTALA") by requiring uninsured patients to personally guarantee full payment before providing medical service. Compl. ¶ 68. The EMTALA generally requires participating hospitals to provide emergency treatment for all patients in certain situations and to follow particular procedures when providing that treatment. See 42 U.S.C. § 1395dd. Following the trend with the identical cases filed in other district courts, Plaintiff fails to specify which subsection of the EMTALA Defendants have violated. See, e.g., Amato, 371 F. Supp. 2d at 758. Plaintiff's claim appears to most closely correspond to 42 U.S.C. § 1395dd(h), which provides in pertinent part: "[a] participating hospital may not delay provision of an appropriate medical screening examination . . . or . . . medical examination and treatment . . . in order to inquire about the individual's method of payment or insurance status." 42 U.S.C. § 1395dd(h).

The EMTALA does not prevent a hospital from inquiring into a patient's ability to pay for medical care so long as any inquiry does not delay the screening or treatment.

The Department of Health and Human Services has promulgated regulations allowing such an inquiry:

Hospitals may follow reasonable registration processes for individuals for whom examination or treatment is required by this section, including asking whether an individual is insured and, if so, what that insurance is, as long as that inquiry does not delay screening or treatment. Reasonable registration processes may not unduly discourage individuals from remaining for further evaluation.

42 C.F.R. § 489.24(d)(4)(iv).

In this case, Plaintiff has not alleged that Defendants' inquiry into her ability to pay has delayed or discouraged her from receiving medical treatment. See Compl. ¶ 68. Instead, Plaintiff broadly alleges that Defendants inquired about her ability to pay and required her to sign a form contract agreeing to pay for her medical care in full—both of which constitute reasonable registration processes as allowed by the regulation. Id. Accordingly, this Court dismisses Plaintiff's EMTALA claim.

## **B. Plaintiff's State Law Claims**

The Supreme Court has indicated that "[i]n the usual case in which all federal-law claims are eliminated before trial, the balance of the factors to be considered under the [supplemental] jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law

claims." Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1998). Thus, in the absence of a viable federal claim, this Court declines to exercise supplemental jurisdiction over Plaintiff's state law claims.<sup>4</sup> 28 U.S.C. § 1367(c)(3); United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966); Amato, 371 F. Supp. 2d at 759.

#### **IV. CONCLUSION**

For the reasons described above, I grant Defendants' Motion to Dismiss. An appropriate order follows.

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<sup>4</sup>Specifically, this Court declines to exercise supplemental jurisdiction over Plaintiff's state law claims for: (1) breach of contract, (2) breach of the duty of good faith and fair dealing, (3) violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, (4) unjust enrichment, (5) civil conspiracy, and (6) injunctive and declaratory relief.

**ORDER**

**AND NOW**, this        day of September, 2005, upon consideration of Defendants' Motion to Dismiss (Doc. No. 2) and all responses thereto, it is hereby **ORDERED** that the motion is **GRANTED**. The Clerk of Court shall mark this case closed for all purposes.

**BY THE COURT:**

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**LAWRENCE F. STENGEL, J.**