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IN THE COUNTY COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

TERLEP CHIROPRACTIC, P.A.,
a/a/o MARK KUNDRAT,

Plaintiff,

vs.

CASE NO: 10-006194-SC

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

_____ /

**ORDER GRANTING DEFENDANT'S MOTION FOR
FULL AND FINAL SUMMARY JUDGMENT AND DENYING
PLAINTIFF'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT/
MOTION TO STRIKE DEFENDANT'S AFFIRMATIVE DEFENSE OF
LACK OF STANDING TO BRING CAUSE OF ACTION**

THIS MATTER, having come before the Court on November 15, 2013 for hearing on Defendant's Motion for Full and Final Summary Judgment and Plaintiff's Cross-motion for Partial Summary Judgment/Motion to Strike Defendant's Affirmative Defense of Lack of Standing and after reviewing the motions, the record, the applicable law, and heard after hearing argument of counsel for the parties finds as follows:

FACTUAL BACKGROUND

On or about July 9, 2009, Mark Kundrat was allegedly involved in a motor vehicle accident. Terlep Chiropractic, P.A. provided medical services and/or medical equipment to Mr. Kundrat for treatment of injuries allegedly sustained in said accident. Mr. Kundrat signed a "Financial Policy & Consent Form" as a condition of receiving treatment at Plaintiff's facility. Plaintiff asserts that this "Financial Policy & Consent Form" assigns it the right to receive payment from Defendant for treatment rendered to Mr. Kundrat and assigns it the right to bring a cause of action against Defendant for any alleged failure to pay for said treatment. On November 22, 2010, Plaintiff, as assignee of Mark Kundrat, filed a Complaint for breach of contract against Defendant alleging failure to pay applicable PIP and/or MedPay benefits. In response, Defendant filed an Answer and Affirmative Defenses, asserting lack of the requisite standing to bring the cause of action. Defendant's Motion for Full and Final Summary Judgment and Plaintiff's Cross-motion for Partial Summary Judgment/Motion to Strike Defendant's Affirmative Defense of Lack of Standing to Bring Cause of Action followed thereafter and were called for hearing on November 15, 2013.

ANALYSIS AND DISCUSSION

The Court finds that the document attached to Plaintiff's Complaint titled "Financial Policy & Consent

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Form” and, more specifically, the subheading in said attached document titled “Assignment of Benefits” does not contain any language conveying to the Plaintiff the right to bring any and all causes of action against Defendant. The document states in pertinent part as follows:

“ASSIGNMENT OF BENEFITS: By your signature below, you hereby assign payment directly to the physician(s) accepting this assignment of medical benefits applicable and otherwise payable to you but not to exceed this physician’s regular charges. You understand that you are financially responsible for charges not covered by this assignment or for any and all charges which the insurance carrier declines to pay. It is further agreed that any credit or balance resulting from payment of insurance or other sources may be applied to any other accounts owed to said physician(s) by you or your family.”

Although the above-referenced paragraph is titled an “Assignment of Benefits,” the clear and unambiguous language of the paragraph only serves to direct payment by the insurance company to the medical provider. There is no language in the document conveying any and all rights, including the right to bring any and all causes of action. “At one time, only the insured or the medical provider ‘owns’ the cause of action against the insurer for PIP benefits.” *Progressive Express Insurance Company v. McGrath*, 913 So.2d 1281, 1285 (Fla. 2d DCA 2005); *See also Oglesby v. State Farm Mutual Automobile Insurance Company*, 781 So.2d 469 (Fla. 4th DCA 2001). Because the language in the instant case does not convey a full assignment of any and all benefits *and* rights under the policy, the Plaintiff in this matter does not have standing to bring the subject cause of action against Defendant. *See Abby Chiropractic Center a/a/o Linda Leonard v. Progressive Express Insurance Company*, 11 Fla. L. Weekly Supp. 50b (Hillsborough County Ct., November 14, 2003); *V.R. Massage & Therapy Center a/a/o Mauricio Rodriguez v. State Farm Mutual Automobile Insurance Company*, 17 Fla. L. Weekly Supp. 1117a (Hillsborough County Ct., April 14, 2010); *Advanced 3-D Diagnostic a/a/o Ziky Jeannestin v. State Farm Fire and Casualty Company*, 20 Fla. L. Weekly Supp. 1082a (Orange County Ct., July 23, 2013); and *St. Joseph’s Hospital a/a/o Elizabeth Vocke v. Select Insurance Company*, 20 Fla. L. Weekly Supp. 1093a (Hillsborough County Ct., June 10, 2013).

Plaintiff argues that Defendant does not have standing to challenge the assignment of benefits in this matter because it lacks privity to the contract. However, this argument is misplaced. Here, Defendant is not challenging the agreement between Plaintiff and the insured. Rather, Defendant is only raising the issue of whether that agreement was properly characterized as an assignment of benefits that included the right to bring any and all causes of action against the insurer for breach of contract.

Additionally, Plaintiff cites to *Gainesville MRI Center a/a/o Karen Olaciregui v. Express Insurance Company*, 10 Fla. L. Weekly Supp. 573a (Fla. 6th Cir, June 9, 2003) and *Central Imaging Services, Inc. v. Progressive Express Insurance Company*, 12 Fla. L. Weekly Supp. 520a (Fla. 6th Cir., October 6, 2004) in arguing that Plaintiff had standing to bring the subject cause of action based on equitable assignment. However, this Court notes that both of the aforementioned cases involved documents that contained various inconsistencies and ambiguities regarding assignment of the right to bring any and all causes of action, thereby creating issues of fact regarding the validity of the Plaintiff’s standing on that issue and precluding judgment on the pleadings and/or dismissal. As previously mentioned, the document at issue in this case is clear and unambiguous. It contains no language whatsoever regarding conveyance of any and all rights, including the right to bring a cause of action against the insurer for breach of contract.

Finally, Plaintiff argues that it is the real party at interest in the litigation and that entry of final judgment against it in this proceeding would deny it a remedy at law to recover monies it alleges are owed to it by Defendant. However, this Court notes that the document entitled “Financial Policy & Consent Form”

specifically provides that the insured is "financially responsible for charges not covered by this assignment or for any and all charges which the insurance carrier declines to pay." As such, the Plaintiff's remedy is against Mr. Kundrat for charges not paid by Defendant and it is Mr. Kundrat that 'owns' any cause of action against his insurer at present. *Oglesby v. State Farm Mutual Automobile Insurance Company*, 781 So.2d 469 (Fla. 4th DCA 2001).

Accordingly, it is hereby:

ORDERED AND ADJUDGED

1. That Defendant's Motion for Full and Final Summary Judgment is GRANTED and
2. Plaintiff's Cross-motion for Partial Summary Judgment/Motion to Strike Defendant's Affirmative Defense of Lack of Standing to Bring Cause of Action is DENIED as moot.

FINAL JUDGMENT

The Court enters Final Judgment in favor of the Defendant and Plaintiff, TEREP CHIROPRACTIC, P.A. shall take nothing by this action and the Defendant, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY shall go hence without day.

This Court reserves jurisdiction to consider any applicable claims for reasonable attorneys' fees and costs, if any.

DONE and ORDERED in Pinellas County, Florida this _____ day of _____, 2013.

ORIGINAL SIGNED

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JOHN CARASSAS

HONORABLE JOHN CARASSAS,
COUNTY COURT JUDGE

Copies to:

Edwin V. Valen, for Defendant
Lindsay Porak, for Plaintiff