UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 17- 24633-CIV-WILLIAMS

VIP UNIVERSAL MEDICAL INSURANCE GROUP, LTD.,

Plaintiff,

vs.

BF&M LIFE INSURANCE COMPANY, LTD., and INTERNATIONAL REINSURANCE MANAGERS LLC

Defendants.
_____ /

ORDER

THIS MATTER is before the Court on a motion to dismiss filed by defendant International Reinsurance Managers LLC ("IRM") (DE 10), to which Plaintiff, VIP Universal Medical Insurance Group, Ltd. did not file a response.[1] For the reasons set forth below, the motion (DE 10) is **GRANTED.**

I. BACKGROUND

Plaintiff filed this action asserting a claim of breach of contract against Defendants. The Complaint alleges that Plaintiff entered into an excess reinsurer agreement with defendant BF&M Life Insurance Company, Ltd., (BF&M), by which BF&M agreed to reinsure Plaintiff for medical claims in excess of $200,000. (DE 1 ¶ 7). After the

[1] The Court notes that on March 2, 2018, Plaintiff's counsel emailed to chambers a "Proposed Agreed Order on Defendant, International Reinsurance Managers, LLC Motion to Dismiss," without copying Defendants' counsel. The Court then emailed Plaintiff's counsel three times, asking them to confirm that the proposed order was, in fact, agreed upon with Defendants and requiring them to resubmit the proposed order copying Defendants' counsel. Despite the Court's numerous requests, Plaintiff's counsel failed to respond. The Court reminds the Parties that failure to comply with Court orders may result in sanctions including monetary penalties and dismissal of claims.

agreement was in place, Plaintiff submitted a claim for reinsurance reimbursement for $139,000, which related to a payment made by Plaintiff to a patient for $339,000, (DE 1 ¶ 10) and BF&M refused to pay Plaintiff for that claim (DE 1 ¶ 11). According to the complaint, IRM was BF&M's agent during all relevant times and the reinsurance claim submitted to BF&M was submitted through IRM. (DE 1 ¶ 6, 10). Additionally, Plaintiff alleges that "IRM, acting in concert with and on behalf of BF&M, has directed the non-payment" of the claim for medical expenses. (DE 1 ¶ 21). On these facts, Plaintiff advances one cause of action for breach of contract against both defendants.

II. LEGAL STANDARD

To survive a Rule 12(b)(6) motion to dismiss, a plaintiff must plead sufficient facts to state a claim that is "plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Court's consideration is limited to the allegations presented. *See GSW, Inc. v. Long Cty.*, 999 F.2d 1508, 1510 (11th Cir. 1993). All factual allegations are accepted as true and all reasonable inferences are drawn in the plaintiff's favor. *See Speaker v. U.S. Dep't of Health & Human Servs. Ctrs. for Disease Control & Prevention*, 623 F.3d 1371, 1379 (11th Cir. 2010); *see also Roberts v. Fla. Power & Light Co.*, 146 F.3d 1305, 1307 (11th Cir. 1998). Nevertheless, while a plaintiff need not provide "detailed factual allegations," the allegations must consist of more than "a formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555 (internal citations and quotations omitted). "[C]onclusory allegations, unwarranted factual deductions or legal conclusions masquerading as facts will not prevent dismissal.'" *Davila v. Delta Air Lines, Inc.*, 326 F.3d 1183, 1185 (11th Cir. 2003). The "[f]actual allegations must be enough to raise a

right of relief above the speculative level." *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1295 (11th Cir. 2007) (quoting *Twombly*, 550 U.S. at 545).

III. DISCUSSION

IRM moves to dismiss arguing that it cannot be held liable for breach of contract, where it is not a party to that contract. It is well settled, that "[u]nder Florida law, an agent is not liable for a disclosed principal's obligations under a contract that the agent negotiated or executed on behalf of the principal." *Johnson v. Wellborn*, 418 F. App'x 809, 816 (11th Cir. 2011). Although an agent may be held liable where "circumstances show[ ] that personal responsibility was intended to be incurred," courts will not find that an agent is liable unless there is an express agreement establishing the agent's liability. *Validsa, Inc. v. PDVSA Servs., Inc.*, 424 F. App'x 862, 874 (11th Cir. 2011). Specifically in the insurance context, "an agent for a disclosed insurer is not liable to the insured on the insurance contract." *First Auto. Serv. Corp., N.M. v. First Colonial Ins. Co.*, No. 3:07CV682J32TEM, 2008 WL 816973, at *5 (M.D. Fla. Mar. 25, 2008).

Here, Plaintiff alleges that IRM acted as an agent and "directed" the non-payment of the claim for medical expenses. But even taking these allegations as true, they do not state a claim for breach of contract against IRM. Plaintiff has only alleged that IRM acted as an agent, and nothing in the contract between Plaintiff and BF&M establishes that IRM would be liable to Plaintiff as an agent of the reinsurer. In short, IRM, as agent to reinsurer BF&M, is not a proper party in Plaintiff's breach of contract claim because it is not a party to the contract.

IV. CONCLUSION

For the reasons set forth above, IRM's motion (DE 10) is **GRANTED.** Plaintiff shall have 20 days from the date of this Order to file an amended complaint.

DONE AND ORDERED in chambers in Miami, Florida, this 18 day of July 2018.

KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE