

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 14-3097

**GREGORY S. MARKANTONE, DPM, PC.,
AND GREGORY S. MARKANTONE,**

Appellants,

v.

PODIATRIC BILLING SPECIALISTS, LLC,

Appellee.

On Appeal from United States District Court for the
Western District of Pennsylvania
Hon. Lisa P. Lenihan
No. 2:14-cv-215

APPENDIX VOLUME III (A76-A78)

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Defendant Podiatric Billing Specialists, LLC's
Motion to Dismiss A76-A78

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GREGORY S. MARKANTONE, DPM.,	:	Civil Division
PC., and GREGORY S. MARKANTONE,	:	
	:	2:14-cv-00215-LPL
Plaintiffs,	:	
	:	
vs.	:	
	:	
PODIATRIC BILLING SPECIALISTS,	:	
LLC,	:	
	:	
Defendant.	:	
	:	

DEFENDANT PODIATRIC BILLING SPECIALISTS, LLC’S MOTION TO DISMISS

Defendant The Podiatric Billing Specialists, LLC (incorrectly identified in the Complaint as Podiatric Billing Specialists, LLC) (“Podiatric”), by and through its undersigned counsel, hereby moves to dismiss the copyright infringement claim alleged in the Complaint dated February 13, 2014 (the “Complaint”) (Doc. No. 1). As set forth in further detail in Podiatric’s supporting memorandum filed contemporaneously herewith, Plaintiff has failed to state a cognizable copyright infringement claim against Podiatric. Accordingly, pursuant to Federal Rule of Civil Procedure 12(b)(6), Podiatric respectfully requests this Court to dismiss the copyright infringement claim against Podiatric with prejudice. Because the parties are not diverse, upon dismissal of the federal question presented by the copyright claim, this Court would lack jurisdiction over the pendent state law claims. Accordingly, Podiatric respectfully requests dismissal of the Complaint in its entirety.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
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	:	2:14-cv-00215-LPL
Plaintiffs,	:	
	:	
vs.	:	
	:	
PODIATRIC BILLING SPECIALISTS,	:	
LLC,	:	
	:	
Defendant.	:	
	:	

ORDER

AND NOW, upon consideration of Defendant Podiatric Billing Specialists, LLC's Motion to Dismiss, said Motion is GRANTED. Count VI of Plaintiff's Complaint for copyright infringement is dismissed with prejudice. The remaining state law claims are dismissed, because this Court lacks subject matter jurisdiction over the state law claims where the parties do not satisfy the requirements for diversity jurisdiction. Thus, the Complaint is dismissed in its entirety, with prejudice.

BY THE COURT:

Lisa Pupo Lenihan
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ***Appendix Volume III*** was served on counsel of record via electronic filing and United States first class mail this 13th day of November 2014, as follows:

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