STATE OF MICHIGAN

COURT OF APPEALS

MARK SINDLER, Plaintiff/Counter Defendant-Appellee,	UNPUBLISHED March 31, 2009
V FARMERS INSURANCE EXCHANGE, Defendant/Counter Plaintiff-Appellant.	No. 282678 Delta Circuit Court LC No. 06-018710-NO

Before: Donofrio, P.J., and K. F. Kelly and Beckering, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's order denying its motion for summary disposition under MCR 2.116(C)(10). We reverse. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts and Procedural Background

On October 21, 1986, twenty-six-year-old plaintiff was riding his uninsured motorcycle when a car driven by Janet Schingick struck him. Plaintiff sustained serious injuries to his left leg that required numerous surgeries and other on-going medical treatment. To date, he continues to have poor circulation, severe nerve damage, and is permanently disabled.

Schingick's car was insured under a no-fault policy issued by defendant's predecessor, Maryland Casualty Company (Maryland Casualty). Schingick's policy provided $200,000 coverage for bodily injury as well as the statutorily mandated coverage for personal protection insurance (PIP)[1] benefits. Plaintiff initiated two claims arising from the accident – a first-party no-fault PIP benefits claim, and a third party, bodily injury (tort) claim against Schingick.

Plaintiff's attorney, Gene Potack, negotiated a settlement of the tort claim against Schingick for $170,000. Because Potack was concerned that the settlement might operate to bar

[1] While MCL 500.3101 *et seq*., uses the phrase "personal protection insurance benefits," these benefits are commonly known as "PIP" benefits. See *Allen v State Farm Mut Auto Ins Co*, 268 Mich App 342, 343 n 1; 708 NW2d 131 (2005).

plaintiff's future claims for no-fault benefits from Maryland Casualty, he wanted any release to clarify that any settlement of the tort claim would not affect plaintiff's claim for no-fault PIP benefits for his medical care. Potack insisted upon language in the release "which clearly and unequivocally states that in consideration of the settlement" plaintiff "will continue to be eligible for Michigan No-Fault Act medical benefits, in addition to other personal protection insurance benefits available pursuant to the Michigan Motor Vehicle No-Fault Insurance Act."

Maryland Casualty's attorney, Fred Geissler, drafted a release of claims agreement with language (release) to address Potack's concerns. Geissler sent the release to Potack on April 18, 1989, with a cover letter stating that plaintiff "will still be entitled to claim Michigan no-fault PIP benefits from Maryland Casualty." The letter acknowledged that Maryland Casualty insured Schingick under a standard Michigan no-fault insurance policy in effect at the time of the accident. The letter confirmed that Maryland Casualty would not seek reimbursement for no-fault benefits already paid to plaintiff, and that claims for future benefits will be handled "in accordance with the law." Geissler's letter summarized: "I trust this relieves any concern you may have regarding future no-fault claims. In short, the company will handle them as required under the law, and will not deny that they had an insurance policy covering the Schingicks at the time of the accident."

On April 19, 1989, plaintiff and Schingick executed the release and settled the tort claim. The release agreement provided:

> KNOW ALL MEN BY THESE PRESENTS that MARK ALLEN SINDLER and JANETTTE SINDLER, in consideration of the sum of ONE HUNDRED SEVENTY THOUSAND and no/100 ($170,000.00) DOLLARS to them in hand paid by CONRAD A. SCHINGICK and PATRICIA R. SCHINGICK and MARYLAND CASUALTY COMPANY, receipt of which is hereby acknowledged, do by these presents acquit and discharge said CONRAD A. SCHINGICK and PATRICIA R. SCHINGICK and MARYLAND CASUALTY COMPANY and all other parties, corporations or individuals who are alleged to be responsible, all of the above to include their agents, employees, servants and insurers, (all of the above hereinafter referred to as "Releasees"), of and from any and all actions, causes of action, liens, judgments, executions, debts, dues, claims, sums of money, contracts, warranties, torts and demands of every kind and nature, whatsoever, which they may have against said Releasees, including claims which they now have or which they may in the future have, which in any way arise out of or are alleged to have arisen out of an alleged accident which took place on or about October 21, 1986 at or near M-35 (North Shore Drive) and 43rd Avenue in Menominee, MI, except claims for personal protection insurance benefits (Michigan "No-Fault" benefits) under MCL 500.3107.
>
> It is understood and agreed that this is a full and final release of all claims of any kind and nature whatsoever, *except claims for personal protection insurance benefits (Michigan "No-Fault" benefits) under MCL 500.3107*, and it releases claims that are known and unknown, suspected and unsuspected.

> It is further understood that this settlement is the settlement of a disputed matter in which liability is not admitted and is expressly denied. [Emphasis added.]

Pursuant to Schingick's no-fault policy, plaintiff continued to receive PIP benefits. However, on June 14, 2006, defendant notified plaintiff that he would not be entitled to any further PIP benefits because plaintiff did not have insurance on his motorcycle at the time of the accident. The letter from defendant's representative relied upon MCL 500.3103, which requires the owner of a motorcycle to have insurance, and MCL 500.3113(b), which precludes a person from collecting personal protection benefits for bodily injury if he did not carry the required insurance at the time of the accident.

Plaintiff sued defendant for breach of contract. Defendant counterclaimed for reimbursement for money it had paid in no-fault benefits over the preceding six years on a theory of unjust enrichment.

Relying on the terms of the release, defendant moved for summary disposition on plaintiff's breach of contract claim as well as its counter-claim for reimbursement. In response, plaintiff asserted that a condition of the settlement of the tort claim against Schingick was Maryland Casualty's promise to continue paying no-fault benefits. Plaintiff relied on Geissler's April 18, 1989 letter, and argued that he was promised ongoing PIP benefits for his medical care. He further asserted that had he been told that his medical benefits would not be continued, he would not have settled the tort claim for less than the $200,000 policy limit.

The trial court denied the motion stating:

> This comes in under (C)(10), so there must be no dispute as to material facts. And I can tell you as I look through here, there are disputes on material facts.
>
> As far as a suggestion that there is no evidence that there was a promise, I don't know what the trier of fact would make of it, but seventeen years of payment after the time that there was no promise, would suggest that perhaps to a reasonable trier of fact that that is evidence of the promise.
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> Also, as I viewed this and looked at everything, I'm satisfied there are genuine issues as to material facts.
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> * * *
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> And as I look at everything else – Mr. Potack's letters and everything else – letters and everything else – I'm left with a clear belief now that a – there are genuine issues as to extremely important material fact; and, therefore, the Court is going to deny the motion for summary disposition.

The trial court also found a question of fact as to defendant's restitution claim.

We granted defendant's application for leave to appeal.

II. Standards of Review

This Court reviews de novo a trial court's decision on a motion for summary disposition to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118-119; 597 NW2d 817 (1999). The proper interpretation of a contract is also a question of law that this Court reviews de novo. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). "The primary goal in interpreting contracts is to determine and enforce the parties' intent." *Old Kent Bank v Sobczaqk*, 243 Mich App 57, 62; 620 NW2d 663 (2000). "Whether extrinsic evidence should be used in contract interpretation is a question of law that this Court reviews de novo." *In re Kramek Estate*, 268 Mich App 565, 573; 710 NW2d 753 (2005).

Whether a claim for unjust enrichment can be maintained is a question of law, which this Court reviews de novo. *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 193; 729 NW2d 898 (2006).

III. Breach of Contract

Defendant argues that it was entitled to summary disposition on plaintiff's breach of contract claim. Plaintiff acknowledges that because his motorcycle was uninsured at the time of the accident, he is not entitled to PIP benefits under the no-fault act.[2] Instead, plaintiff contends that the release contractually obligates defendant to continue paying PIP benefits. We disagree and hold that the trial court erred in denying defendant's motion for summary judgment.

"We read contracts as a whole and accord their terms their plain and ordinary meaning." *Scott v Farmers Ins Exch*, 266 Mich App 557, 561; 702 NW2d 681 (2005). "[U]nambiguous contracts . . . are to be enforced as written unless a contractual provision violates law or public policy." *Rory v Continental Ins Co*, 473 Mich 457, 491; 703 NW2d 23 (2005). A court must construe a contract in its entirety and attempt to apply the plain language of the agreement if possible. *Perry v Sied*, 461 Mich 680, 689; 611 NW2d 516 (2000); *Meagher v Wayne State University*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997). And, in *Gortney v Norfolk & Western R Co*, 216 Mich App 535, 540-541; 549 NW2d 612 (1996), this Court observed:

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[2] Under Michigan's no-fault act, "[t]he owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance." *Iqbal v Bristol West Ins Group*, 278 Mich App 31, 37; 748 NW2d 574 (2008); MCL 500.3101(1). MCL 500.3103 requires the owner of a motorcycle to "provide security against loss resulting from liability imposed by law for property damage, bodily injury, or death suffered by a person arising out of the ownership, maintenance, or use of that motorcycle." The current version of MCL 500.3113(b), which took effect three months before plaintiff's accident, provides that a person is not entitled to be paid personal protection benefits for bodily injury "if at the time of the accident . . . the person was the owner or registrant of a motor vehicle *or motorcycle* involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect." (Emphasis added.) Maryland Casualty and plaintiff were unaware of the amendment adding the term "motorcycle" to MCL 500.3113(b) at the time the release was executed.

> The scope of a release is controlled by the intent of the parties as it is expressed in the release. If the text in the release is unambiguous, we must ascertain the parties' intentions from the plain, ordinary meaning of the language of the release. The fact that the parties dispute the meaning of a release does not, in itself, establish an ambiguity. A contract is ambiguous only if its language is reasonably susceptible to more than one interpretation. If the terms of the release are unambiguous, contradictory inferences become "subjective, and irrelevant," and the legal effect of the language is a question of law to be resolved summarily.

Plaintiff fails to identify any ambiguity in the release and we perceive none. The plain language of the release does not permit an interpretation that the settlement of the tort claim created an obligation on the part of defendant to forever pay PIP benefits. The agreement released all claims arising from the accident "except for claims for personal protection insurance benefits (Michigan 'No-Fault' benefits) under MCL 500.3107." While the release certainly provides that plaintiff is not barred from making a claim for no-fault first-party benefits, it does not guarantee that such benefits would be paid. Plaintiff concedes he does not qualify for benefits under the no-fault act. The exclusion of claims for PIP benefits from the scope of the release did not create an affirmative duty on the part of defendant to continue to pay benefits to plaintiff after the discovery that plaintiff did not qualify for them.

Plaintiff's reliance on correspondence between Potack, Maryland Casualty, and Grissler is unavailing. Extrinsic evidence cannot create a question of fact where the release is unambiguous. *Hamade v Sunoco, Inc (R & M)*, 271 Mich App 145, 166; 721 NW2d 233 (2006) ("Parole evidence of contract negotiations, or of prior or contemporaneous agreements that contradict or vary the written contract, is not admissible to vary the terms of a contract which is clear and unambiguous.")

The plain language of the release does not create an affirmative duty on the part of defendant to pay PIP benefits indefinitely. Defendant was entitled to summary disposition on plaintiff's breach of contract claim.

IV. Restitution

Defendant also argues that it was entitled to summary disposition on its restitution claim. We disagree.

Defendant's action to recover insurance payments made in error is equitable in nature. *Michigan Educ Employees Mut Ins Co v Morris*, 460 Mich 180, 200-201; 596 NW2d 142 (1999) (*MEEMIC*). Restitution is an equitable remedy that is appropriate when a person has been unjustly enriched at the expense of another. *Kammer Asphalt Paving Co v East China Twp Schools*, 443 Mich 176, 185-186; 504 NW2d 635 (1993). Unjust enrichment consists of (1) the receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to the plaintiff because of the defendant's retention of that benefit. *Sweet Air Investment, Inc v Kenney*, 275 Mich App 492, 504; 739 NW2d 656 (2007). "[T]he law will imply a contract to prevent unjust enrichment only if the defendant has been unjustly or inequitably enriched at the plaintiff's expense." *Morris Pumps*, *supra* at 195. "[N]ot all enrichment is necessarily unjust in nature." *Id*. at 196. "A mistake of either law or fact will entitle a party to restitution unless it is

inequitable or inexpedient for restitution to be granted." *Hofmann v Auto Club Ins Ass'n*, 162 Mich App 424, 429; 413 NW2d 455 (1987).

In order to establish a right to reimbursement, a defendant must show the receipt of a benefit by plaintiff, which benefit it is inequitable that plaintiff retain. *MEEMIC, supra* at 198. However, "[i]f the recipient of such a benefit has relied to his detriment on it, [defendant] would be estopped from demanding reimbursement." *Id*. The burden of establishing detrimental reliance is on the party opposing the restitution claim. *Id*. at 198-199.[3]

Here, defendant argues that plaintiff failed to demonstrate a change of position or detrimental reliance as a consequence of having received the mistaken payments. We disagree. Plaintiff testified at his deposition that since the accident, he has been in constant contact with claims representatives of defendant and its predecessors regarding payments and issues involving his on-going medical treatment, clearly relying on defendant to provide PIP benefits in obtaining on-going medical treatment. He did not seek alternative medical coverage and is unaware of any other medical coverage available to him.

Moreover, he further testified that had he known he would not have been entitled to on-going PIP coverage, he would not have settled his third-party claim for less than the policy limits. Plaintiff's attorney informed Maryland Casualty that plaintiff would pursue a bad faith and excess coverage claim, and did not pursue such a claim when the tort claim was resolved. Defendant did not counter this evidence in the trial court and does not present contradictory evidence on appeal. To the contrary, the claims adjuster assigned to plaintiff's claim confirmed in his deposition that plaintiff conditioned any settlement on the understanding, albeit mistakenly, that he would continue to be entitled to PIP benefits. Clearly, plaintiff's action in altering his position in the mistaken belief that PIP benefits would continue precludes liability on defendant's restitution claim and it would be inequitable for defendant to recover monies it expended on third-party medical treatment for plaintiff's injuries.

On this record, defendant was not entitled to summary disposition on its counterclaim; rather, plaintiff is entitled to summary disposition pursuant to MCR 2.116(I)(2) ("If it appears to the court that the opposing party . . . is entitled to judgment, the court may render judgment in favor of opposing party.").

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[3] In *MEEMIC*, *supra*, our Supreme Court addressed an insurer's action to recover an overpayment of insurance benefits. The Court remanded "for evidentiary hearings and a determination whether the insurer was equitably entitled to any reimbursement of the overpayments on a theory of unjust enrichment, and if so, the amount of reimbursement due." *Id.* at 199. The Court instructed the trial court to consider a wide range of factors, and "all relevant circumstances," such as the timing of the insurer's notice to the insured regarding a change in the payment of benefits and "any detrimental reliance" by the insured. *Id*.

Reversed.

/s/ Pat M. Donofrio
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering