

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JOHN HAYES, LARRY P. BEIDELMAN, JOHN  
A. HILGENDORF, THEODORE A.  
LUGHEZANI, CHARLES E. MANN, BRUCE C.  
ROBERTS, PETER M. ROGGENBAUM,  
FRANCIS L. SYLVESTER, PAUL E. VAN  
HARTESVELDT, and STEVE N. YARDLEY,

Plaintiffs-Appellants,

v

LACEY & JONES, L.L.P.,

Defendant-Appellee.

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UNPUBLISHED

May 25, 2010

No. 289702

Wayne Circuit Court

LC No. 07-710941-CK

Before: SAAD, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

Plaintiffs appeal by right the final judgment of December 12, 2008. They specifically appeal the trial court's May 16, 2008 order granting summary disposition under MCR 2.116(C)(10) to defendant on their claim for breach of contract. Because defendant did not breach the partnership agreement when it stopped paying for plaintiffs' health care coverage, we affirm.

**I. BASIC FACTS**

Plaintiffs are retired partners in defendant, a law firm. Each plaintiff, while an active partner, signed a partnership agreement that included a provision substantively similar to Paragraph 12(c) in the January 2005 partnership agreement. Paragraph 12(c) reads:

In the event a fully vested Class A partner<sup>[1]</sup> retires because of age or illness the firm shall continue to provide to the retiring partner the following benefits:

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<sup>1</sup> It is undisputed that plaintiffs were Class A partners.

(i) Medical and hospital insurance for the Partner and his/her spouse during the Partner's lifetime up to age 65. Thereafter, the firm agrees to reimburse the retiring partner for Medicare premiums incurred by Partner and spouse; in addition, complementary coverage provided by the firm's group health insurance carrier (or similar coverage selected by the retiring Partner and spouse at equal or less cost) will be paid during retiring Partner's lifetime; coverage for the spouse following retired Partner's death shall extend until the spouse's death or remarriage. Such coverage is afforded only to the spouse at the time of the Partner's retirement. For any member of the firm who becomes a Class A Partner after 12/31/04, that Partner or surviving spouse must contribute 50% of the premium for the medical coverage provided[;]

(ii) Premium for life insurance, subject to the terms and conditions of the firm's insurance policy;

(iii) State bar dues during the Partner's active practice of law; and

(iv) The benefits provided in sub-paragraph[s] (c)(i), (ii) and (iii) shall be payable to the extent and for as long as these benefits are continued by the partnership for the remaining partners.

(v) For purposes of this section, it is presumed that any Class A Partner who, except for illness, leaves before the age of 55 shall be considered withdrawing from the Partnership and thus not be eligible for benefits. A retirement at age 55 or older shall entitle such Class A [Partner] to benefits noted in subparagraphs (c)(i), (ii) and (iii).

Defendant has a group health plan with Blue Cross Blue Shield (BCBS), and it paid for health care coverage for its active and retired partners. However, in August 2006, defendant's management committee voted for defendant, as of November 2006, to stop paying for coverage for all its partners. Each partner, active or retired, was given the option of continuing to participate in defendant's group health plan with BCBS at his or her own expense.

Plaintiffs sued defendant for breach of contract, claiming that defendant was without cause or justification to unilaterally terminate their vested right to have defendant pay for their health care coverage. The trial court granted defendant's motion for summary disposition under MCR 2.116(C)(10). It held that defendant did not breach the partnership agreement because, pursuant to the plain language of section (iv) of Paragraph 12(c), defendant was not required to pay for plaintiffs' health care coverage after it stopped paying for coverage for the active partners.

## II. STANDARD OF REVIEW

We review de novo a trial court's decision on a motion for summary disposition. *Helms v LeMieux*, 286 Mich App 381, 386; \_\_\_ NW2d \_\_\_ (2009). Summary disposition is appropriate under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." We also review de novo the interpretation

of a contract. *Grand Trunk Western R, Inc v Auto Warehousing Co*, 262 Mich App 345, 350; 686 NW2d 756 (2004).

### III. ANALYSIS

Plaintiffs argue that the trial court erred in interpreting the plain language of section (iv) of Paragraph 12(c). According to plaintiffs, defendant was required to pay for their health care coverage as long as it made health care coverage available to the active partners.<sup>2</sup> We disagree.

“A partnership agreement is a contract.” *City Nat’l Bank of Detroit v Westland Towers Apartments*, 107 Mich App 213, 224; 309 NW2d 209 (1981), vacated in part on other grounds 413 Mich 937 (1982) and rev’d in part on other grounds 413 Mich 938 (1982). A contract is to be enforced according to its terms. *Reicher v SET Enterprises, Inc*, 283 Mich App 657, 664; 770 NW2d 902 (2009). If a contract’s terms are unambiguous, the contract must be enforced as written. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 503; 741 NW2d 539 (2007). A contract is to be read as a whole, giving harmonious effect to each word and phrase. *Holmes v Holmes*, 281 Mich App 575, 596; 760 NW2d 300 (2008).

Section (iv) of Paragraph 12(c) provides that “[t]he benefits provided in sub-paragraph[s] (c)(i), (ii) and (iii) shall be payable to the extent and for as long as these benefits are continued by the partnership for the remaining partners.” Plaintiffs contend that because section (iv) does not reference how the active partners’ health care coverage is to be paid, section (iv) requires defendant to pay for their health care coverage as long as defendant makes coverage available to the active partners. Defendant contends that section (iv) permits it to stop paying for plaintiffs’ health care coverage if it stops paying for coverage for the active partners. The fact that there is a disagreement on the interpretation of section (iv) does not by itself render the section ambiguous. *Helms*, 286 Mich App at 387. A contract is ambiguous when two provisions irreconcilably conflict or when a term is equally susceptible to more than a single meaning. *Coates*, 276 Mich App at 503. A contract is not ambiguous if it fairly admits of but one interpretation. *Holmes*, 281 Mich App at 594.

Defendant’s interpretation of section (iv) of Paragraph 12(c) is correct. The introduction sentence of Paragraph 12(c) states that, upon the retirement of a Class A partner due to age or illness, defendant “shall continue to provide” the retiring partner with certain benefits. The phrase “shall continue to provide” means that the benefits that defendant promised to provide to the partner upon retirement were provided to the partner when he or she was an active partner. The promised benefits are listed in sections (i), (ii), and (iii) of Paragraph 12(c). In section (i), defendant promised to provide “[m]edical and hospital insurance” for the partner until he or she reached the age of 65. Once the retired partner reached the age of 65, defendant would

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<sup>2</sup> Because plaintiffs acknowledge that their right to receive health care coverage paid for by defendant could under certain circumstances be terminated by defendant, the pertinent issue is not whether their right to receive coverage was a “vested” right. Rather, the pertinent issue is the interpretation of section (iv), which sets forth when defendant may stop paying for plaintiffs’ health care coverage.

reimburse the partner for Medicare premiums and would pay for complementary coverage provided by its insurance carrier. In section (ii), defendant promised to pay the premium for the partner's life insurance. In section (iii), defendant promised to pay the partner's state bar dues. The three benefits that defendant promised to provide its retired partners are monetary benefits, the payment of premiums and dues. Section (iv) states that defendant only needs to provide the three benefits to its retired partners "for as long as *these benefits* are continued by the partnership for the remaining partners" (emphasis added). The term "these benefits" refer to the benefits that a partner received while an active partner and would continue to receive upon retirement. Regarding health care coverage, the benefit was not the availability of health care coverage; the benefit was health care coverage paid for by defendant. Accordingly, pursuant to the plain language of Paragraph 12(c), once defendant stopped paying for the health care coverage for the active partners, defendant was no longer required to pay for plaintiffs' health care coverage.

We reject plaintiffs' argument that section (v) of Paragraph 12(c) provides a "vested right" to the benefits described in sections (i), (ii), and (iii), not limited by section (iv), to partners who retire at age 55 or older and that section (iv) only applies to those partners who retire due to illness before reaching 55 years of age. Paragraph 12(c) applies to partners who "retire[] because of age or illness." Section (v) sets forth the age—55 years—at which a partner may leave defendant and be considered retired, entitling the partner to the benefits listed in sections (i), (ii), and (iii). If a partner leaves before the age of 55, except for illness, the partner has withdrawn, but if the partner leaves at age 55 or older, the partner is retired and entitled to benefits.

Because Paragraph 12(c) is not ambiguous, the trial court correctly concluded that it was prohibited from considering parol evidence to determine the meaning of section (iv). *Reed v Reed*, 265 Mich App 131, 148; 693 NW2d 825 (2005). In addition, contrary to plaintiffs' assertion, the trial court did not consider the "context" in which Paragraph 12(c) was executed to determine the meaning of section (iv). In its opinion, the trial court wrote, "The intent of the provision is clear from the language used and the context in which it is used." The trial court was simply stating that, based on the context in which section (iv) is used in Paragraph 12(c), the meaning of the section is clear. This was not improper. "[U]nder the doctrine of *noscitur a sociis*, a word or phrase is given meaning by its context or setting." *Bloomfield Estates Improvement Ass'n, Inc v City of Birmingham*, 479 Mich 206, 215; 737 NW2d 670 (2007) (quotations omitted).

According to Lawrence Kozaruk, defendant's managing partner, after defendant stopped paying for the health care coverage of its partners in November 2006, any partner, active or retired, who wanted to continue to receive health care coverage through defendant's group plan with BCBS, was required to write monthly checks for payment of coverage. Plaintiffs presented no evidence to dispute Kozaruk's averment. Thus, the evidence presented to the trial court established that the condition in Paragraph 12(c) for when defendant could stop paying for health care coverage for plaintiffs was met. Defendant no longer paid for health care coverage for the active partners.

Plaintiffs argue, however, that because defendant is a partnership, meaning that the income and liabilities of defendant belong to the active partners, the active partners have always paid for their own health care coverage. They claim that the active partners have been unaffected by the change in payment for coverage. We reject plaintiff's argument, because

plaintiffs fail to support with any record evidence their claim that the active partners have not suffered any financial detriment from defendant's decision not to pay for its partners' health care coverage.<sup>3</sup> The claim is nothing more than speculation and conjecture, which is insufficient to withstand a motion for summary disposition. *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993).

Affirmed.

/s/ Henry William Saad

/s/ Joel P. Hoekstra

/s/ Deborah A. Servitto

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<sup>3</sup> We also note that plaintiffs' argument fails to recognize that defendant is a limited liability partnership.