Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **9th day of July, 2020** are as follows:

BY Crichton, J.:

2019-C-01496 MATTHEW A. DEPHILLIPS, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED VS. HOSPITAL SERVICE DISTRICT NO. 1 OF TANGIPAHOA PARISH, DOING BUSINESS AS NORTH OAKS MEDICAL CENTER/NORTH OAKS HEALTH SYSTEM C/W EARNEST WILLIAMS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED VS. HOSPITAL SERVICE DISTRICT NO. 1 OF TANGIPAHOA PARISH D/B/A NORTH OAKS HEALTH SYSTEM AND NORTH OAKS MEDICAL CENTER, AND LOUISIANA HEALTH SERVICE & INDEMNITY COMPANY D/B/A BLUE CROSS BLUE SHIELD OF LOUISIANA (Parish of Tangipahoa)

This matter arises from alleged violations of the Health Care Consumer Billing and Disclosure Protection Act, La. R.S. 22:1871, et seq. ("Balance Billing Act" or "Act"). We granted this writ to resolve the question of whether a patient's claims against a contracted healthcare provider for an alleged violation of La. R.S. 22:1874(A)(1) are delictual in nature. For the reasons set forth below, we affirm the court of appeal, finding plaintiff's claims are delictual in nature and subject to a one-year prescriptive period. AFFIRMED. REMANDED.

Retired Judge James Boddie, Jr., appointed Justice ad hoc, sitting for Justice Clark.

Johnson, C.J., dissents and assigns reasons.
Hughes, J., dissents and assigns reasons.
Genovese, J., dissents and assigns reasons.
Crain, J., additionally concurs and assigns reasons.

07/09/20

SUPREME COURT OF LOUISIANA

No. 2019-C-01496

MATTHEW A. DEPHILLIPS, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

VS.

HOSPITAL SERVICE DISTRICT NO. 1 OF TANGIPAHOA PARISH, DOING BUSINESS AS NORTH OAKS MEDICAL CENTER/NORTH OAKS HEALTH SYSTEM

C/W

EARNEST WILLIAMS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

VS.

HOSPITAL SERVICE DISTRICT NO. 1 OF TANGIPAHOA PARISH D/B/A NORTH OAKS HEALTH SYSTEM AND NORTH OAKS MEDICAL CENTER, AND LOUISIANA HEALTH SERVICE & INDEMNITY COMPANY D/B/A BLUE CROSS BLUE SHIELD OF LOUISIANA

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT, PARISH OF TANGIPAHOA

CRICHTON, J.[*]

This matter arises from alleged violations of the Health Care Consumer Billing and Disclosure Protection Act, La. R.S. 22:1871, *et seq*. ("Balance Billing Act" or "Act"). We granted this writ to resolve the question of whether a patient's claims against a contracted healthcare provider for an alleged violation of La. R.S. 22:1874(A)(1) are delictual in nature. For the reasons set forth below, we affirm the court of appeal, finding plaintiff's claims are delictual in nature and subject to a one-year prescriptive period.

[*] Retired Judge James Boddie, Jr., appointed Justice ad hoc, sitting for Justice Clark.

BACKGROUND

The consolidated lawsuits in this matter were filed by Matthew DePhillips and Earnest Williams, individually and on behalf of putative classes, against Hospital District No. 1 of Tangipahoa Parish d/b/a North Oaks Medical Center/North Oaks Health System ("North Oaks"). Williams' case is the only case before this Court, as it is currently the only appeal taken from a final judgment. *See Williams v. Hosp. Serv. Dist. No. 1 of Tangipahoa Parish*, 18-1386 (La. 12/17/18), 258 So. 3d 584 (per curiam) (granting writ, remanding matter to court of appeal, finding claims of Williams to be final).[1]

On or about February 11, 2011, Williams was injured in a motor vehicle accident. He sought emergency medical treatment from North Oaks. At the time of the accident, Williams was insured under an insurance policy administered by Louisiana Health Service & Indemnity Company d/b/a Blue Cross and Blue Shield of Louisiana ("BCBS"). North Oaks is a contracted healthcare provider with BCBS pursuant to a certain Member Provider Agreement (the "MPA") between North Oaks and BCBS. After Williams' treatment, North Oaks filed a claim with BCBS, and BCBS paid a discounted rate on the claims as provided by the MPA. Thereafter, North Oaks sought to collect from Williams by filing a medical lien against his liability insurance claim for the full and undiscounted charges.[2] In his petition, filed on May 11, 2015, Williams alleged that North Oaks filed this lien despite being a contracted healthcare provider with BCBS and despite its legal and contractual

[1] DePhillips filed a putative class action April 28, 2015. Williams filed a putative class action on May 8, 2015. A class certification hearing has not yet been held.

[2] This Court has not addressed, nor has the Legislature clarified, whether the Balance Billing Act can be harmonized with the lien right afforded providers under La. R.S. 9:4752 or whether such liens are prohibited by the Balance Billing Act. *See Baker v. PHC-Minden, L.P.*, 14-2243 (La. 5/5/15), 167 So. 3d 528, 536 (explaining same); *Anderson v. Ochsner Health System*, 13-2970 (La. 7/1/14), 172 So. 3d 579, 585 n.10 ("The Balance Billing Act was enacted after the Medical Lien Statute; because we are not considering the merits of the case, the interplay between the two statutes is not presently before us."). *See also* La. Atty. Gen. Op. No. 05-0056, 2005 WL 1429238 (May 17, 2005) (finding "no conflict exists between the two statutes").

requirements to accept the insurance as payment in full. Williams sought relief for violations of the Balance Billing Act (La. R.S. 22:1874), breach of contract, and declaratory relief. Williams' petition is silent as to the date of North Oaks' alleged violation of the Act. DePhillips was injured in February 2015 and filed suit in April 2015, and his petition made similar allegations as those set forth in Williams' petition.

North Oaks moved to consolidate the cases, but BCBS removed the *Williams* case to federal court before a hearing on the motion to consolidate. In the *DePhillips* litigation, which remained ongoing in state court, North Oaks filed exceptions of no right of action, no cause of action, and prescription. The trial court denied the exceptions of no right of action for breach of contract and prescription, but granted the North Oaks' exception of no cause of action for claims arising before the effective date of the Balance Billing Act. The court of appeal granted writs in part, finding DePhillips did not have a right of action to assert a claim for breach of the MPA, as he was neither a party nor a third-party beneficiary to that agreement. *DePhillips v. Hospital Service Dist. No. 1 of Tangipahoa Parish*, 15-1589 (La. App. 1 Cir. 3/8/16). The appellate court denied North Oaks' writ application insofar as it related to the trial court's denial of its exception of prescription. *Id*. Meanwhile, the *Williams* case was remanded to state court, at which time the cases were consolidated.

Thereafter, North Oaks reurged its exception of prescription as to both suits, arguing the one-year prescriptive period applied to the Balance Billing Act claims. Plaintiffs opposed the exceptions, arguing the Balance Billing Act claims sound in contract and are subject to a ten-year prescriptive period under La. C.C. art. 3499.

In October 2016, the trial court granted North Oaks' exceptions, finding all claims arising from the Act are subject to a one-year prescriptive period. Thus, the court ruled that Williams' claims "are barred in their entirety by prescription,"

because they were filed over four years after the alleged injury. The trial court stated that it was "extremely difficult for this Court to understand why the plaintiffs, through this act, would not be third party beneficiaries to the contract between the hospital and Blue Cross," but it was "bound by the First Circuit's ruling" in the initial appeal in the DePhillips litigation. As a result, the court found prescription to be governed by the one-year period applicable to delictual claims and dismissed Williams' claims against North Oaks with prejudice.

The court of appeal affirmed the trial court's rationale, finding Williams' claims to be "delictual in nature," and subject to a one-year prescriptive period. *DePhillips v. Hospital Service Dist. No. 1 of Tangipahoa Parish*, 17-1423, p.9 (La. App. 1 Cir. 9/5/19), 285 So. 3d 1122, 1128.[3] The court explained that the proper prescriptive period to be applied in any action depends on the nature of the cause of action, citing *Roger v. Dufrene*, 613 So. 2d 947 (La. 1993). Because Williams' claims derive from a statute—the Balance Billing Act—and not from any contract between Williams and North Oaks, the court reasoned, the claims were delictual in nature and subject to a one-year prescriptive period running from the date his injury or damage was sustained. 17-1423, p. 9, 285 So. 3d at 1128. The First Circuit thus expressly disagreed with an earlier opinion of the Third Circuit, wherein that court applied a ten-year prescriptive period under similar circumstances. *See Vallare v. Ville Platte Medical Center, LLC*, 16-0863 (La. App. 3 Cir. 2/22/17), 214 So. 3d 45, 52, *writ denied*, 17-0498, 17-0513 (La. 5/12/17), 221 So. 3d 73.[4] Finally, the court of appeal remanded for an evidentiary hearing, as it was unable to determine when

[3] The delay between the trial court and court of appeal rulings apparently resulted because the court of appeal in this case previously dismissed an appeal by Williams for lack of jurisdiction, but that appeal was subsequently reinstated by this Court. 17-1425, 17-1426 (La. App. 1 Cir. 7/18/18), 255 So. 3d 1, *writ granted, appeal reinstated by Williams v. Hosp. Serv. Dist. No. 1 of Tangipahoa Parish*, 18-1386 (La. 12/17/18), 258 So. 3d 584.

[4] It is well-established in Louisiana jurisprudence that the denial of a writ has no precedential value. *See*, *e.g.*, *O'Hern v. Dept. of Police*, 13-1416, p.7 (La. 11/8/13), 131 So. 3d 29.

the one-year prescriptive period began to run because there was no evidence introduced at the hearing on the exception of prescription and because Williams' petition is silent as to the date of North Oaks' alleged violation of the Act. *Id.*, 17-1423, p.11, 285 So. 3d at 1129.

We granted the plaintiff's writ to resolve the circuit split and determine the proper prescriptive period for Balance Billing Act claims brought by insured patients against contracted healthcare providers. *DePhillips v. Hospital Service Dist. No. 1 of Tangipahoa Parish*, 19-1496 (La. 12/10/19), 285 So. 3d 484.

DISCUSSION

The Balance Billing Act, La. R.S. 22:1871, *et seq.*, prohibits a contracted healthcare provider from collecting or attempting to collect amounts from an insured patient in excess of the contracted reimbursement rate. The applicable statute provides, in pertinent part:

> A. (1) A contracted health care provider shall be prohibited from discount billing, dual billing, attempting to collect from, or collecting from an enrollee or insured a health insurance issuer liability or any amount in excess of the contracted reimbursement rate for covered health care services.
>
> (2) No contracted health care provider shall bill, attempt to collect from, or collect from an enrollee or insured any amounts other than those representing coinsurance, copayments, deductibles, noncovered or noncontracted health care services, or other amounts identified by the health insurance issuer on an explanation of benefits as an amount for which the enrollee or insured is liable. . . . .

La. R.S. § 22:1874.

Questions of law are reviewed *de novo*, without deference to the legal conclusions of the tribunals below. *Smith v. Citadel Ins. Co*., 19-0052 (La. 10/22/19), 285 So. 3d 1062, 1066-67.[5] Liberative prescription is "a mode of barring of actions

[5] In *Smith*, the Court held that a ten-year prescriptive period applied in a case involving a claim brought by an insured's assignee against an insurer for bad faith, finding the insurer's duty of good faith to be "an outgrowth of the contractual and fiduciary relationship between the insured and the insurer." 19-0052, p.16, 285 So. 3d at 1073. Though plaintiff argues *Smith* supports his position, we find *Smith* to be inapposite, as—for reasons explained below—the claims here do not arise from any contractual provision.

as a result of inaction for a period of time." La. C.C. art. 3447. All personal actions, including actions on a contract, are subject to a liberative prescription period of ten years, unless otherwise provided by legislation. La. C.C. art. 3499. *See also Smith, id*. Yet article 3499 is not the end of the analysis, because "[s]horter prescriptive periods are established in revised C.C. Arts. 3492 through 3498." La. C.C. art. 3499 cmt. (b). Civil Code article 3492 provides that delictual actions are subject to a liberative prescription of one year, running from the day injury or damage is sustained. La. C.C. art. 3492.

The Balance Billing Act does not set forth a prescriptive period. Accordingly, we must examine the nature of the duty breached in order to determine whether the action is "contractual," falling within article 3499, or "delictual," falling within article 3492. *Smith*, 19-0052, p.6, 285 So. 3d at 1067; *Roger v. Dufrene*, 613 So. 2d 947, 948 (La. 1993). "The classic distinction between damages ex contractu and damages ex delicto is that the former flow from the breach of a ***special obligation contractually assumed by the obligor***, whereas the latter flow from the ***violation of a general duty owed to all persons***." *Smith, id.* (citations omitted) (emphasis added). *See also* 6 Saul Litvinoff & Ronald J. Scalise Jr., La. Civ. L. Treatise, Law of Obligations § 5.2 (2d ed. 2019) ("Fault is contractual when it causes a failure to perform an obligation that is conventional in origin, that is, an obligation created by the will of the parties, while fault is delictual when it causes the dereliction of one of those duties imposed upon a party regardless of his will, such as a duty that is the passive side of an obligation created by the law.").

In order to determine the correct prescriptive period applicable to Williams' claims, the proper characterization of the nature of his cause of action is essential. North Oaks argues that the one-year period applies because the claims arise under statute, reasoning that the claim is delictual because there was no "special obligation" contractually assumed by North Oaks, and, instead, the obligation not to

balance bill is a general one created by law. We agree. It is a basic precept of Louisiana law that where an action arises out of "the breach of duty ***as imposed by law***, the damages arose ex delicto, and [are] extinguished by the prescription of ***one*** year." *Lagrone v. Kansas City So. Ry. Co.*, 102 So. 669, 670 (La. 1925) (emphasis in original). *See also Loew's, Inc. v. Don George, Inc.*, 110 So. 2d 553, 557-58 (La. 1959) ("There are, in certain relationships, duties imposed by law, and a failure to perform these obligations is considered as a tort though the relationships themselves may be created by contract encompassing the same subject.") (citation omitted); *Stewart v. Ruston La. Hosp. Co., LLC*, Civ. No. 3:14-83, 2016 WL 1715192 (W.D. La. Apr. 27, 2016) (collecting cases).

There is no dispute here as to whether North Oaks is a "contracted healthcare provider" under the statute—it plainly qualifies as one. *See* La. R.S. 22:1872(6) ("'Contracted health care provider' means a health care provider that has entered into a contract or agreement directly with a health insurance issuer or with a health insurance issuer through a network of providers for the provision of covered health care services."). Pursuant to the Act, a contracted healthcare provider is prohibited from taking certain actions to collect amounts owed to the provider, including discount billing or dual billing a patient to collect amounts allegedly owed to the provider. La. R.S. 22:1874(A)(1)-(4). These duties are owed to "an enrollee or insured," a defined term that means "a person who is enrolled in or insured by a health insurance issuer for health insurance coverage." La. R.S. 22:1872(A)(11). In other words, by the plain language of the Act, this is a duty owed by ***all*** "contracted health care providers" to ***all*** "enrollees or insureds," and is not specific to any individual. It is a general duty imposed by statute and, thus, does not arise from any special obligation owed by North Oaks to Williams. *See Smith*, 19-0052, p.6, 285 So. 3d at 1067. We therefore find the nature of the duty breached is delictual in

nature, and the claims are subject to a one-year prescriptive period. *Roger*, 613 So. 2d at 948.[6]

Several years ago, this Court addressed two Balance Billing Act cases. *Anderson v. Ochsner Health Sys.*, 13-2970 (La. 7/1/14), 172 So. 3d 579; *Emigh v. West Calcasieu Cameron Hosp.*, 13-2985 (La. 7/1/14), 145 So. 3d 369. Though it does not directly answer the question presented here, *Anderson* provides further support for the application of a one-year prescriptive period. In *Anderson*, we held that in addition to the express provisions of the Act allowing the Attorney General to file suit, the Act also created a private right of action allowing the insured patient to file suit against a healthcare provider. 13-2970, p.11, 172 So. 3d at 586. Though *Anderson* did not discuss whether this cause of action arises in tort or contract, in finding the private right of action, *Anderson* cited to Civil Code article 2315(A) (*see* 13-2970, p.9, 172 So. 3d at 584), which this Court has on many occasions termed the "fountainhead" of tort liability in Louisiana. *See*, *e.g.*, *Veazey v. Elmwood Plantation Assocs., Ltd.*, 93-2818, p.9 (La. 11/30/94), 650 So. 2d 712, 717.

Like *Anderson*, *Emigh* does not address the question before us, primarily because it involves a different relationship altogether—a suit by an insured against her insurer. *Emigh*'s reasoning, however, makes clear that plaintiff here is not a third-party beneficiary to any contract such that his claim sounds in contract.[7] In *Emigh*, the Court held an insured patient stated a cause of action against her insurer. In making this finding, the Court focused exclusively on the insurance policy as the

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[6] Plaintiff also argues that the obligation not to balance bill is a "special obligation," because the only consumers protected from balance billing are those who had contracted with the same health insurer with which the contracted provider had also contracted. According to plaintiff, because not all healthcare providers are contracted providers, the obligation was created by the will of the parties. *See* La. R.S. 22:1872(6) (defining a "contracted health care provider" as one that "has entered into a contract or agreement directly with a health insurance issuer. . ."). This argument fails because it ignores that the underlying contracts are not the source of the duty to the insured patient for causes of action under the Act. *See Roger*, 613 So. 2d at 948.

[7] Plaintiff does not argue that he is a third-party beneficiary to any contract that would convert his statutory claim into a contractual one. Nevertheless, we address this argument first, as it was discussed by the trial court here and by the Third Circuit in *Vallare*.

contract that created the insured-insurer relationship—not on the Balance Billing Act.[8] 13-2985, pp.7-8, 145 So. 3d at 374-75. The Court found the insurer breached the insurance contract with the insured, reasoning that the object of the insurance policy was not merely insurance coverage but also a general "economic benefit to the insured" not to bill over and above contracted rates with in-network providers. Thus, when the healthcare provider billed in excess of the rates contracted with the insurer, the cause of action sounded in contract as a *promesse de porte-forte* pursuant to Civil Code art. 1977 ("The object of a contract may be that a third person will incur an obligation or render a performance.").[9] *See* 13-2985, p.8, 145 So. 3d at 375 ("Blue Cross itself entered into the contract with [the insured] and made certain assurances. The fact that Blue Cross could only deliver based on third party performance does not make Blue Cross immune to liability."). In short, the plaintiff stated a cause of action against her insurer because her insurer obligated itself to her, not because the Act imposed a statutory obligation on the contracted healthcare provider.[10]

Examining the law in effect at the time of the enactment of the Balance Billing Act, La. R.S. 22:230.3, further supports our conclusion that the claims here are delictual in nature. This provision was repealed upon the enactment of the Act. *See* 2003 La. Sess. Law Serv. Act 1157 (H.B. 1966) (noting the Act was intended to

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[8] The only reference in *Emigh* to a "cause of action" under the Act is in the sole dissent, which no other justice joined.

[9] Civil Code art. 1977 (Obligation or performance by a third person) states:

> The object of a contract may be that a third person will incur an obligation or render a performance.
>
> The party who promised that obligation or performance is liable for damages if the third person does not bind himself or does not perform.

[10] A federal district court relied upon this rationale to find a one-year prescriptive period in a Balance Billing Act case in *Stewart v. Ruston Louisiana Hospital Co., LLC*, Civ. No. 3:14-0083, 2016 WL 1715192 (W.D. La. Apr. 27, 2016). The court found that the duty of the hospital arises out of the Act itself, and noted that "[d]uties imposed by statute are regarded as arising in tort, rather than contract." *Id.*, at *5. Though the MPA certainly existed between the hospital and the insurer, the court held that the insured lacked privity and/or third-party beneficiary status.

"repeal R.S. 22:230.3, relative to health insurance coverage"). Unlike the Act, this predecessor statute expressly permitted healthcare providers to bill an insured for the balance of a bill for care rendered by the provider and not covered by the patient's health benefits. The Act was designed, in part, to specifically prohibit any such dual billing. La. R.S. 22:1874(A)(1). This makes it clear that plaintiff's action cannot be contractual in nature, as the law unambiguously permitted the type of dual billing before the Balance Billing Act was enacted.[11] Prohibitions on a contracted healthcare provider regarding balance billing therefore derive from the Act and did not exist before the enactment of the Act.

Though the putative class action claims against North Oaks in plaintiff's petition, and the class definition itself, arise from the Balance Billing Act, plaintiff now argues that there is a contract between himself and North Oaks from which his claims arise. Other than a general reference to the fact that a contract "must exist," plaintiff does not point to a specific contract, instead arguing he benefits from a "system of contracts" or a "series of interconnected contracts," even in the absence of the Act.[12] Therefore, he argues that under an implied contract theory or a quasi-contract theory, or both, the Civil Code supports a finding that North Oaks' obligations under the Act are *ex contractu*. Plaintiff asserts that the following Civil Code articles, all of which are subject to a ten-year prescriptive period, apply to the facts as alleged in his petition: duty of good faith (La. C.C. arts. 1759, 1893), intent

[11] Plaintiff argues the legislative history supports him, because as part of the Act, the legislature recognized that a "system of contracts" exists and the statute protects only consumers whose health insurers contracted with the provider. As explained herein, irrespective of the existence of underlying contracts, the source of the duty not to dual bill is statutory. *See* La. R.S. 22:1874(A)(1).

[12] Plaintiff states that a contract must exist because, otherwise, "under what legal theory could the provider collect anything from the patient?" However, he does not identify a specific oral or written contract between himself and North Oaks. In *Vallare*, the Third Circuit noted that the plaintiff did not identify any specific contractual provision that was breached by the provider, but found that there was an "underlying contractual relationship between Vallare as patient and [the] healthcare provider." 16-0863, pp.8-9, 214 So. 3d at 51. Because we ultimately find the source of the duty to be delictual, our decision does not turn on whether a contract for health services was formed between the parties.

of the parties (La. C.C. art. 2045), implied contractual provisions (La. C.C. arts. 2054, 2055), and payment of a thing not owed (La. C.C. art. 2299). Plaintiff's arguments are not persuasive.

As an initial matter, assuming for sake of argument the existence of a contract between plaintiff and North Oaks, plaintiff cannot circumvent the one-year prescriptive period applicable to his claims where the source of the underlying duty is statutory. "The mere fact that the circumstances arose in the context of a contractual relationship does not make the cause of action contractual." *Thomas v. State Employees Group Benefits Prog.*, 05-0392, p.5 (La. App. 1 Cir. 3/24/06), 934 So. 2d 753, 757. *See also Roger*, 613 So. 2d at 948 (citing, *inter alia*, *Kozan v. Comstock*, 270 F.2d 839, 844-45 (5th Cir. 1959 (Wisdom, J.)); *Stewart*, *supra*, 2016 WL 1715192, at *5 ("[T]he existence of a contract between the parties is not determinative."); Ronald J. Scalise, Jr., 6 La. Civ. L. Treatise, Law of Obligations § 16.31 (2d ed. 2019) (where "the contract is not the basis for the wrongdoing party's liability but only the *occasion* for the commission of that party's tort, . . . the outcome of the dispute should be governed by the rules of delictual, rather than contractual, liability"). Thus, courts apply a delictual prescriptive period where, as here, the cause of action is delictual in nature.

Relatedly, plaintiff's arguments regarding the application of the duty of good faith, intent of the parties, and implied provisions are rooted in his claim that an implied contract existed between himself and North Oaks.[13] Irrespective of whether

[13] In *Vallare*, the Third Circuit held that the plaintiff's cause of action involved contractual or quasi-contractual claims, and was therefore subject to a ten-year prescriptive period. 16-0863, p. 9, 214 So. 3d at 51-52. *Vallare* cited *Emigh* for the proposition that a Balance Billing Act cause of action by an insurer against a provider involved "contractual or quasi-contractual obligations." *Id.* It further cited to La. Civil Code article 2054, finding that the contract between the patient and the healthcare provider included an implied contractual provision that the provider would not balance bill its patients covered by a contracted healthcare insurer. *Id.* This reasoning is misplaced, for several reasons. First, *Vallare* does not discuss whether the obligation not to balance bill flows from a special obligation contractually assumed by a healthcare provider or a general obligation imposed by statute. Second, and as discussed above, *Emigh* involved a contract between an insurer and an insured, ***not*** statutorily imposed obligations owed by a contracted medical provider to an insured patient. *See Emigh*, 13-2985, p.7, 145 So. 3d at 374 (an insured "promises to its insureds.

plaintiff can successfully establish the existence of such a contract (*see supra* n.12), he fails to prove either the agreement to any provision not to balance bill or any breach by North Oaks. Even where a contract exists, "unless a specific contract provision is breached, Louisiana courts typically treat the action as a tort." *Richard v. Wal-Mart Stores, Inc.*, 559 F. 3d 341, 345 (5th Cir. 2009); *Stewart*, 2016 WL 1715192, at *5 (same). *See also Thomas*, 05-0392, p.4, 934 So. 2d at 757 (noting an insurer must "expressly assume" an obligation to maintain confidentiality in order for such a contractual duty to arise independently of tort law). Plaintiff makes no allegations of any implied provision not to balance bill to which the parties agreed and offers no evidence to support his claim of an implied provision not to balance bill between himself and North Oaks. *Governor Claiborne Apartments, Inc. v. Attaldo*, 235 So. 2d 574, 577 (1970) ("While assent to a contract may be implied, that implication must be established and cannot be presumed."). Plaintiff's argument that North Oaks violated a duty of good faith owed to him likewise fails, as his argument presumes that any action violating a statute must be *ex contractu* if it violates a duty to perform obligations in good faith. To do so would convert many, if not all, delictual actions into contract claims where the tortfeasor and victim have an underlying contractual relationship—a position that would defeat a court's obligation to look to the source of the duty itself.[14] Ultimately, each of plaintiff's arguments is an attempt to convert North Oaks' statutory duty under the Act into an implied contractual duty. It is apparent that plaintiff merely aims to circumvent the

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. . . coverage and the availability of discounted rates based on the existence of its contract with its contracted providers"). We find *Vallare* misapplied *Emigh* in this context.

[14] Plaintiff also argues that his claim sounds in quasi-contract pursuant to La. C.C. art. 2299 ("A person who has received a payment or a thing not owed to him is bound to restore it to the person from whom he received it."). Plaintiff does not assert that there was any payment made here that was not owed, only that "if" such a payment was made by a patient to a provider, then a quasi-contract claim subject to a ten-year prescriptive period may arise. Such hypothetical facts are not before us here. In any event, for the reasons set forth above, even if plaintiff formed a contract with North Oaks here, the nature of the duty at issue remains delictual.

fact that duties created by statute are delictual. We are not persuaded by plaintiff's Civil Code arguments.[15]

CONCLUSION

For the foregoing reasons, we affirm the court of appeal and find that plaintiff's claims are delictual in nature and subject to a one-year prescriptive period.

As noted by the court of appeal and as explained above, Williams' petition is silent as to the date the alleged violation of the Balance Billing Act by North Oaks occurred. Further, no evidence was introduced at the hearing on the exception of prescription. Accordingly, we also affirm the court of appeal's reversal of the trial court judgment granting North Oaks' exception of prescription and remand to the trial court, solely to determine the date of the alleged violation and conduct proceedings in accordance with this opinion.

AFFIRMED; REMANDED.

[15] Though it is not necessary to reach our conclusion, we also note that many Louisiana consumer protection statutes provide for a one-year prescriptive period. *See* La. R.S. 51:1409(E) (one-year prescriptive period for private right of action under Louisiana Unfair Trade Practice Act); La. R.S. 9:3552(E) (one-year prescriptive period for action under Louisiana Consumer Credit Law). *See also Carriere v. Jackson Hewitt Tax Service*, 750 F.Supp. 2d 694, 706 (E.D. La. 2010) (Vance, J.) (compiling list of Louisiana consumer protection statutes that provide a one-year prescriptive period).

07/09/20

SUPREME COURT OF LOUISIANA

No. 2019-C-01496

MATTHEW A. DEPHILLIPS, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

VS.

HOSPITAL SERVICE DISTRICT NO. 1 OF TANGIPAHOA PARISH, DOING BUSINESS AS NORTH OAKS MEDICAL CENTER/NORTH OAKS HEALTH SYSTEM

C/W

EARNEST WILLIAMS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

VS.

HOSPITAL SERVICE DISTRICT NO. 1 OF TANGIPAHOA PARISH D/B/A NORTH OAKS HEALTH SYSTEM AND NORTH OAKS MEDICAL CENTER, AND LOUISIANA HEALTH SERVICE & INDEMNITY COMPANY D/B/A BLUE CROSS BLUE SHIELD OF LOUISIANA

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT, PARISH OF TANGIPAHOA

JOHNSON, C.J., dissents and assigns reasons.

The Balance Billing Act prohibits a health care provider from collecting or attempting to collect amounts from an insured patient in excess of the contracted insurance rate with the insurer—a practice commonly known as balance billing. Although this prohibition against balance billing is codified in statute, I find a patient's claim against a healthcare provider for violations of the Act sound in contract, not tort, and should be governed by a 10-year prescriptive period.

In *Emigh v. W. Calcasieu Cameron Hosp*., this court considered whether an insured patient can assert a private cause of action against the insurer under La. C.C. art. 1977[1] for a violation of the Balance Billing Act. In holding such a cause of action exists, this court

[1] La. C.C. art. 1977 states: "the object of a contract may be that a third person will incur an obligation or render a performance. The party who promised that obligation or performance is liable for damages if the third person does not bind himself or does not perform."

explained: "This civilian concept known as promesse de porte-fort contemplates a contract in which the object is that a third party will undertake a certain obligation; in the event of non-performance of that obligation by the third party, the promisor becomes liable to the promisee." 13-2985 (La. 7/1/14), 145 So. 3d 369, 374. This court rejected the insurer's argument that the object of the contract is solely to pay for covered health care services. Rather, this court found that the object extends beyond mere payment and includes the object to secure reduced health care costs and tender payment for those negotiated, discounted costs. *Id*. Notably, this court recognized the contractual structure of our healthcare system:

> In this two-contract health care system that affects the majority of health insurance policies in this state, the insurance issuer… promises to its insureds…coverage and the availability of discounted rates based on the existence of its contract with its contracted provider…. The purpose of a health insurance contract and the very reason insureds obligate themselves to the payment of premiums and a restricted choice of in-network providers, is to receive coverage and the benefits of negotiated, reduced health care costs. To narrowly construe the object to mean only payment of covered charges…ignores the raison d'etre of the contract: an economic benefit to the insured.

Id.

In *Smith v. Citadel Ins. Co*., this court recently explained:

> All personal actions, including an action on a contract, are subject to a liberative prescription of ten years, unless otherwise provided by legislation. Delictual actions are subject to a liberative prescription of one year. The nature of the duty breached determines whether the action is in tort or in contract. The classic distinction between damages ex contractu and damages ex delicto is that the former flow from the breach of a special obligation contractually assumed by the obligor, whereas the latter flow from the violation of a general duty owed to all persons.

19-00052 (La. 10/22/19), 285 So. 3d 1062, 1067 (internal citations removed). In my view, the Balance Billing Act unquestionably regulates a series of contractual relationships between health care providers, insured patients, and insurers. The obligations and duties related to balance billing only apply to contracted health care providers and to patients who are contracted with the insurer. The related duty flows from a special obligation contractually assumed by the contracted health care provider, not from a general duty owed to all persons.

The act of balance billing also involves the patient's relationship with the healthcare provider, which encompasses the patient's obligation to pay reasonable treatment charges that arise out of the underlying contractual relationship between the patient and the health provider. *See Vallere v. Ville Platte Medical Center, LLC*, 16-963 (La. App. 3 Cir. 2/22/17), 214 So. 3d 45, 51.

Given the complicated contractual or quasi-contractual arrangement between the insured, insurer, and health care provider relative to billing, I do not find plaintiffs' claims in this case arise purely in tort. The legislature failed to provide for a specific prescriptive period in the Balance Billing Act, thus I would find the claims are governed by the ten-year prescriptive period set forth in La. C.C. art. 3499.[2]

[2] La. C.C. art. 3499 states: "Unless otherwise provided by legislation, a personal action is subject to a liberative prescription of ten years."

07/09/20

SUPREME COURT OF LOUISIANA

No. 2019-C-1496

MATTHEW A. DEPHILLIPS, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

VERSUS

HOSPITAL SERVICE DISTRICT NO. 1 OF TANGIPAHOA PARISH, DOING BUSINESS AS NORTH OAKS MEDICAL CENTER/NORTH OAKS HEALTH SYSTEM

C/W

ERNEST WILLIAMS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

VERSUS

HOSPITAL SERVICE DISTRICT NO. 1 OF TANGIPAHOA PARISH D/B/A NORTH OAKS HEALTH SYSTEM AND NORTH OAKS MEDICAL CENTER, AND LOUISIANA HEALTH SERVICE & INDEMNITY COMPANY D/B/A BLUE CROSS BLUE SHIELD OF LOUISIANA

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT, PARISH OF TANGIPAHOA

HUGHES, J., dissenting.

This matter is before the court on an exception of prescription.

The Constitution provides in Article I, Section 10 that no state shall pass any law impairing the obligation of contracts. Whether the Legislature allows or prohibits balance billing must be seen as subservient to the contracts at issue. If the hospital sues the patient after receiving partial payment from the insurer, the patient can implead the insurer, who can implead the hospital, and the hospital is stuck with the payment agreed to by contract with the insurer.

The contract between the insurer and the hospital is a stipulation pour autri. The primary cause for both parties is the delivery of services to the patient. Take away the patient, and the parties to the contract are both out of work.

Aside from the fact that the statute applies to all persons *with insurance*, rather than "all persons," the same logic applies. Take away the contracts, and the statute in meaningless; without purpose. Take away the statute (the state directive whether balance billing is allowed) and the obligations of the contracts remain, leading to a reasonable fee to be paid by the patient or the insurer to the hospital for services rendered.

I therefore conclude the cause of action in this matter is necessarily contractual in nature, and respectfully dissent.

07/09/20

SUPREME COURT OF LOUISIANA

No. 2019-C-01496

MATTHEW A. DEPHILLIPS, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

VS.

HOSPITAL SERVICE DISTRICT NO. 1 OF TANGIPAHOA PARISH, DOING BUSINESS AS NORTH OAKS MEDICAL CENTER/NORTH OAKS HEALTH SYSTEM

C/W

EARNEST WILLIAMS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

VS.

HOSPITAL SERVICE DISTRICT NO. 1 OF TANGIPAHOA PARISH D/B/A NORTH OAKS HEALTH SYSTEM AND NORTH OAKS MEDICAL CENTER, AND LOUISIANA HEALTH SERVICE & INDEMNITY COMPANY D/B/A BLUE CROSS BLUE SHIELD OF LOUISIANA

On Writ of Certiorari to the Court of Appeal, First Circuit, Parish of Tangipahoa

GENOVESE, J., dissents and assigns the following reasons:

I respectfully dissent from the majority opinion in this matter. The genesis of this cause of action is rooted in contract. There are three separate contracts: (1) the contract between the insured and his/her health insurance carrier; (2) the contract between the health insurance carrier and the hospital; and, (3) the implied contract between the hospital and the insured upon admission for the service rendered. Additionally, the statute does not provide for a specific prescriptive period. Therefore, we must look to La.Civ.Code art. 3499 which provides that "[u]nless otherwise provided by legislation, a personal action is subject to a liberative prescription of ten years" as a default setting. It is also important to note that our jurisprudence requires that a claim of prescription be strictly construed. *Wells v. Zadeck*, 11-1232, pp. 6-7 (La. 3/30/12), 89 So.3d 1145, 1149 (citing *Carter v.*

Haygood, 04-0646 (La. 1/19/05), 892 So.2d 1261; *Bailey v. Khoury*, 04-0620 (La. 1/20/05), 891 So.2d 1268). Thus, I find the ten-year prescriptive period applicable in this matter and would reverse the court of appeal.

SUPREME COURT OF LOUISIANA

No. 2019-C-01496

MATTHEW A. DEPHILLIPS, INDIVIDUALLY, AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

VS.

HOSPITAL SERVICE DISTRICT NO. 1 OF TANGIPAHOA PARISH, DOING BUSINESS AS NORTH OAKS MEDICAL CENTER/NORTH OAKS HEALTH SYSTEM

C/W

EARNEST WILLIAMS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

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On Writ of Certiorari to the Court of Appeal, First Circuit, Parish of Tangipahoa

CRAIN, J., additionally concurs and assigns reasons.

I concur in the majority's holding that plaintiff's claims under the Balance Billing Act are delictual and subject to a one-year prescriptive period. I write separately only to clarify the analytical framework for determining the applicable prescriptive period.

Louisiana Civil Code article 3499 provides, "Unless otherwise provided by legislation, a personal action is subject to a liberative prescription of ten years." A "personal action" is defined in Louisiana Code of Civil Procedure article 422 as "one brought to enforce an obligation against the obligor, personally and independently of the property which he may own, claim, or possess." It is distinguished from a "real action," which is "one brought to enforce rights in, to, or upon immovable property." *Id.* Article 3499 is the default provision for all "personal" actions,

meaning that absent an expression by the legislature that a shorter term will apply, all personal actions prescribe in ten years. The one-year prescriptive period for "delictual" actions provided for in Louisiana Civil Code article 3492 is an exception to Article 3499 designated by the legislature.

Undisputedly, plaintiff's claims under the Act fall within the category of "personal" actions and carry a ten-year prescriptive period unless shortened by law. ("By its wording, Louisiana Civil Code art. 3499 will not apply if a different prescriptive period is provided by legislation." *Cantrell Fence and Supply Co., Inc. v. Allstate Ins. Co.*, 550 So.2d 1306, 1307 (La. App. 1 Cir. 10/11/89)).

The source of the duty determines the categorization of the action. *Smith v. Citadel Ins. Co.*, 19-0052, p. 6 (La. 10/22/19), 285 So.3d 1062, 1067. In categorizing the subject action to determine the applicable prescriptive period, the majority refers to the often used "tort" versus "contract" distinction. However, finding an action is not a tort does not mean it is a contract. Nor does finding an action is not a contract preclude application of a ten-year prescriptive period. There are personal actions that are neither "delictual" nor "contractual." *See e.g.*, La. Code Civ. P. art. 2931 (an action for annulment of a testament is a "personal" action, but neither a tort nor a contract).[1]

Thus, the framework set forth by the legislature for determining an applicable prescriptive period for a personal action is not an "either" "or" selection between a contract or a tort, but is a search for any statute that expressly provides a shorter prescriptive period than ten years provided by Article 3499. This requires a two-part inquiry. First, is the action "personal" or "real"? If the former, the action has a ten-year prescriptive period, "unless otherwise provided by legislation." Second, did the legislature specifically provide a shorter prescriptive period? *See e.g.*, La.

[1] Despite its classification as a "personal" action, the action for annulment has a five-year prescriptive period because the legislature specifically provided for it in Louisiana Civil Code article 3497.

Civ. Code art. 3492 ("Delictual actions are subject to a liberative prescription of one year."). If so, that prescriptive period applies. If not, Article 3499's ten-year default provision applies.

The majority correctly recognizes that the duty not to balance bill is a statutory one, which did not exist before the enactment of the statute. In fact, as pointed out by Justice Crichton, before the Balance Billing Act was enacted there was positive law *allowing* balance billing. You cannot have an implied duty to not balance bill in the face of positive law allowing for it. For the reasons set forth in the majority opinion, I agree the action created by the Act is delictual and carries a one-year prescriptive period.