

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

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SOUTHEAST MICHIGAN SURGICAL  
HOSPITAL, LLC,

Plaintiff-Appellant,

v

FARM BUREAU MUTUAL INSURANCE  
COMPANY OF MICHIGAN,

Defendant-Appellee.

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UNPUBLISHED  
November 19, 2020

No. 351298  
Oakland Circuit Court  
LC No. 2018-169193-CZ

Before: BOONSTRA, P.J., and CAVANAGH and BORRELLO, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court’s order concluding that plaintiff was not the real party in interest and granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10). For the reasons set forth in this opinion, we affirm.

**I. BACKGROUND**

This case arises out of plaintiff’s attempt to seek reimbursement under the no-fault act, MCL 500.3101 *et seq.*, from defendant for medical services plaintiff provided to Samuel Wright.

Plaintiff initiated this action on October 15, 2018. In its complaint, plaintiff alleged that it had provided medical services to Wright since March 14, 2018, for injuries stemming from an automobile accident. Plaintiff further averred that Wright assigned his right to obtain payment for those medical services to plaintiff. Plaintiff also alleged that defendant was the highest priority insurer responsible for paying for the services plaintiff provided and that defendant had refused to pay the no-fault benefits at issue. Plaintiff attached to its complaint the “Right of Reimbursement and Assignment Agreement” (assignment agreement) that purportedly assigned plaintiff the right

to pursue reimbursement from any insurer for the services plaintiff provided to Wright. Plaintiff is the only business entity named in this assignment as the assignee.<sup>1</sup>

On December 14, 2018, plaintiff was sold. Before the sale, Surgery Partners, Inc., was the majority owner of plaintiff, with a 98.7% share. The remaining 1.3% of plaintiff was owned by two individual doctors. The sale became effective on December 15, 2018.

On February 27, 2019, Jeffrey Poulsen was deposed by defendant as plaintiff's designated representative on issues involving billing procedures and charges. Poulsen testified that since January 23, 2019, he had been working as an independent contractor for Surgery Partners. Before that date, Poulsen had been the chief financial officer for plaintiff. In his former role as chief financial officer, he was responsible for the billing office, among other things. Poulsen testified that the account receivable based on services provided to Wright on March 14, 2018, was owned by Surgery Partners and was not owned by plaintiff. Poulsen explained that because plaintiff was "majority owned by Surgery Partners at the time of this date of service, it has always been the property of Surgery Partners and is maintained as the property of Surgery Partners." He further testified that after selling plaintiff, Surgery Partners retained ownership of all accounts receivable stemming from services provided before December 15, 2018. According to Poulsen, plaintiff was sold to Insight Institute of Neurosurgery and Neuroscience (IINN), which itself consisted of "multiple organizations." Poulsen testified that IINN did not have any interest in the charges at issue in the instant case stemming from the services provided to Wright in March 2018.

Defendant moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiff lacked standing to pursue the case or was not the real party in interest. Citing Poulsen's deposition testimony, defendant claimed the account receivable at issue belonged to solely to Surgery Partners and that plaintiff did not have any interest in the account receivable at issue.

In response, plaintiff argued that it had standing to pursue its cause of action and was the real party in interest because it had obtained the right to the money due for the services it provided to Wright through a valid assignment signed by Wright. Plaintiff further argued that it had obtained the right to pursue claims that pre-existed the aforementioned sale of plaintiff by way of a June 13, 2019 acknowledgment of the membership purchase agreement. Plaintiff attached a copy of this acknowledgment to its response to the summary disposition motion. The acknowledgment provided as follows:

#### ACKNOWLEDGEMENT

THIS ACKNOWLEDGEMENT (this "Acknowledgement") is made and entered into effective as of June 13, 2019 (the "Effective Date"), by and among NSH Michigan, Inc., a Michigan corporation ("Seller"), and JSCE Holdings, LLC, a Michigan limited liability company and IINN Holdings, Inc., a Michigan corporation (each, a "Buyer" and together, the "Buyers"), and Southeast Michigan Surgical Hospital, LLC, a Michigan limited liability company (the "Hospital")

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<sup>1</sup> This document does not contain any reference, for any purpose, to any business entities other than plaintiff.

Each of Seller, Buyers, and the Hospital may be referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

WHEREAS, the Parties entered into that certain Membership Interest Purchase Agreement, dated effective December 14, 2018 (the “Agreement”), for purchase and sale of Seller’s equity in the Hospital to the Buyers; and

WHEREAS, Hospital claims and accounts receivable existing prior to December 14, 2018 (the “Pre-existing Claims”) were not otherwise included in the Agreement and the Seller continues to pursue such claims and accounts receivable on its behalf, whether directly as the Seller or through the Company; and

WHEREAS, the Parties desire to prepare this Acknowledgement for purposes of clarifying to third parties that Seller has the right to pursue such Pre-Existing Claims either directly or in the name of the Hospital,

NOW THEREFORE, the parties agree as follows:

1. The above referenced recitals are true and correct and are incorporated as though fully set forth herein.

2. The Parties acknowledge that the Seller has the right to continue to pursue such Pre-Existing Claims directly and/or in the name of the Hospital with the Seller being solely entitled to the proceeds of such Pre-Existing Claims.

IN WITNESS WHEREOF, the parties have executed this Acknowledgement as of the Effective Date.

Defendant, in reply, argued that plaintiff had failed to dispute Poulsen’s deposition testimony that Surgery Partners owned the right to collect the charge at issue for services provided to Wright. Defendant additionally argued that the acknowledgment submitted by plaintiff was irrelevant because it did not become effective until June 13, 2019, after the instant lawsuit was filed.

The trial court granted defendant’s motion for summary disposition, determining that plaintiff was not the real party in interest “[a]t the time the lawsuit was filed.” The trial court reasoned that Poulsen had testified that the claim at issue belonged to Surgery Partners, that the acknowledgment submitted by plaintiff did not alter Poulsen’s testimony on that matter, and that the acknowledgment “was made several months after the instant lawsuit was filed.” The trial court denied plaintiff’s subsequent motion for reconsideration. This appeal followed.

## II. STANDARD OF REVIEW

The standard of review applicable to summary disposition motions under MCR 2.116(C)(10) is well settled:

Appellate review of the grant or denial of a summary-disposition motion is de novo, and the court views the evidence in the light most favorable to the party opposing the motion. *Maiden v Rozwood*, 461 Mich 109, 118, 120; 597 NW2d 817 (1999). Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ. [*West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).]

Additionally, this Court reviews de novo, as a question of law, whether an individual is the real party in interest. *In re Beatrice Rottenberg Living Trust*, 300 Mich App 339, 354; 833 NW2d 384 (2013).

### III. ANALYSIS

Plaintiff argues that the trial court erred by ruling that it was not the real party in interest and granting summary disposition in favor of defendant on that basis.<sup>2</sup>

Both MCL 600.2041 and MCR 2.201(B) require legal actions to be “prosecuted in the name of the real party in interest.”<sup>3</sup> “The real party in interest is one who is vested with the right of action as to a particular claim, or, stated otherwise, is the party who under the substantive law in question owns the claim asserted.” *Pontiac Police & Fire Retiree Prefunded Group Health & Ins Trust Bd of Trustees v Pontiac No 2*, 309 Mich App 611, 622; 873 NW2d 783 (2015). “[T]he real-party-in-interest rule is essentially a prudential limitation on a litigant’s ability to raise the legal rights of another.” *In re Beatrice Rottenberg Living Trust*, 300 Mich App at 355.

In this case, plaintiff relies on the assignment from Wright and the acknowledgment of the membership purchase agreement to establish plaintiff’s status as a real party in interest. “[A]n assignee of a cause of action becomes the real party in interest with respect to that cause of action, inasmuch as the assignment vests in the assignee all rights previously held by the assignor.” *Cannon Twp v Rockford Pub Sch*, 311 Mich App 403, 412; 875 NW2d 242 (2015). Plaintiff further

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<sup>2</sup> The parties also refer to the issue as one of standing. “Both the doctrine of standing and the included real-party-in-interest rule are prudential limitations on a litigant’s ability to raise the legal rights of another.” *Pontiac Police & Fire Retiree Prefunded Group Health & Ins Trust Bd of Trustees v Pontiac No 2*, 309 Mich App 611, 621-622; 873 NW2d 783 (2015). However, considering that the trial court’s ruling was specifically based on its determination that plaintiff was not the real party in interest and that plaintiff’s appellate arguments focus on the real-party-in-interest rule, we understand the narrow issue before this Court to be whether the trial court erred by dismissing this action on the ground that plaintiff was not the real party in interest. We therefore focus our analysis accordingly.

<sup>3</sup> Because plaintiff does not claim to fall within any of the special qualifying circumstances described in the statute and court rule, they are not applicable in this case.

argues that even if Surgery Partners also possessed an interest in the account receivable stemming from the services provided to Wright and his assignment of rights, this merely creates a joinder issue rather than a real-party-in-interest issue. Plaintiff relies on *Rite-Way Refuse Disposal, Inc v Vanderploeg*, 161 Mich App 274, 278; 409 NW2d 804 (1987), in which this Court stated:

The real party in interest rule is concerned only with the power of the plaintiff before the court to bring suit upon the claim stated. Whether additional parties also have an interest, such that their joinder is required or the plaintiff is prohibited from proceeding without them, is not a question of real party in interest, but of necessary joinder of parties under MCR 2.205. [Quotation marks and citation omitted.]

However, in the instant case, plaintiff does not point to any record evidence contradicting Poulsen’s testimony that when the claim was assigned by Wright to plaintiff, the claim was actually owned by Surgery Partners as the majority owner of plaintiff.<sup>4</sup> Notably, Poulsen was plaintiff’s designated representative on issues of billing procedures and charges, and he was plaintiff’s chief financial officer at the time that the services were provided to Wright. The undisputed record evidence therefore shows that the claim to the account receivable based on the services provided to Wright was immediately owned in full by Surgery Partners, and plaintiff has not presented any evidence to demonstrate that it ever actually owned any interest in this account receivable. “Under Michigan law, parent and subsidiary corporations are presumed to be separate and distinct entities absent some abuse of the corporate form.” *Bodnar v St John Providence, Inc*, 327 Mich App 203, 229-230; 933 NW2d 363 (2019).

Additionally, the acknowledgment of the membership purchase agreement that plaintiff relies on does not mention Surgery Partners and only lists NSH Michigan, Inc., as the seller, but plaintiff has also not presented any evidence that NSH Michigan (rather than Surgery Partners) ever possessed an ownership interest in the account receivable at issue. Even accepting for the sake of argument plaintiff’s assertion that NSH Michigan was owned by Surgery Partners, plaintiff still has not produced any evidence contradicting Poulsen’s testimony that the account receivable at issue was at all times owned in full by Surgery Partners. Thus, despite plaintiff’s contention that the acknowledgment document demonstrates that plaintiff retained the right to pursue the claim at issue as one that arose before the December 15, 2018 sale and did not transfer to the new owners under the sale, there was no evidence of an actual interest for plaintiff to retain with respect to the account receivable at issue. Simply stated, plaintiff could not “retain” an ownership interest it never possessed.

Accordingly, plaintiff failed to demonstrate a genuine issue of material fact that it had any vested right of action regarding the claim at issue and plaintiff has not shown that the trial court

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<sup>4</sup> Although Poulsen did not provide further explanation on how this arrangement operated to immediately vest ownership of the assigned claim in Surgery Partners, it is nonetheless the only evidence presented on this point. Plaintiff has not provided any evidence to demonstrate that this assertion was false or inaccurate, nor has plaintiff provided evidence that assignments were treated differently than Poulsen indicated. Thus, we accept this fact as undisputed for purposes of our review.

erred by granting defendant's summary disposition motion on the ground that plaintiff was not the real party in interest. *Pontiac Police & Fire*, 309 Mich App at 622.

Affirmed. Defendant having prevailed may tax costs. MCR 7.219.

/s/ Mark T. Boonstra

/s/ Mark J. Cavanagh

/s/ Stephen L. Borrello