

STATE OF MICHIGAN
COURT OF APPEALS

BLUE CROSS BLUE SHIELD OF MICHIGAN,
Plaintiff-Appellant,

UNPUBLISHED
February 19, 2013

v

CITY OF SAGINAW,

Defendant-Appellee.

No. 306533
Saginaw Circuit Court
LC No. 11-012130-CZ

Before: K. F. KELLY, P.J., and MARKEY and FORT HOOD, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting defendant's motion for summary disposition. We affirm.

I. FACTS

Plaintiff entered into an arrangement with defendant under which plaintiff would administer the self-insurance program defendant established for its employees in exchange for certain fees. The general terms and conditions of the parties' agreement are set forth in an administrative services contract (ASC) executed in 2006, and the fees defendant is to pay plaintiff are detailed in both the ASC and on a form entitled "Schedule A."

Among the fees listed in the ASC are an administrative charge, stop-loss premiums, and a group conversion fee. The ASC also provides that a "Provider Network Fee" will be reflected "in the hospital claims cost contained in Amounts Billed." Schedule A not only provides calculations for administrative and stop-loss fees, but also states that "hospital claims cost will reflect certain charges for provider network access . . . as appropriate."

In 2009, in a companion case, defendant filed suit against plaintiff for breach of the ASC. In the companion case, defendant alleged that plaintiff had been charging defendant network access fees by adding those fees to their hospital bills, and that those fees were hidden from

defendant because they were portrayed as legitimate hospital charges.¹ Defendant further alleged that plaintiff had initially made these access fees 6.75 percent of hospital claims, but that the percentage had increased to over 18 percent of hospital claims at times, and that at the time of the lawsuit, the fees were 13.5 percent of hospital claims. Defendant further alleged that the language of the ASC did not authorize plaintiff to collect the access fees, and the collection of those fees was a breach of contract. Specifically, the complaint read as follows:

Plaintiffs did not agree to pay Defendant an ASC Access Fee or other fee other than an Administrative Fee and Stop Loss Coverage. To the extent that the Master Contract or Schedule A make reference to charges for “provider network access, contingency and other subsidies as appropriate,” that language is so vague, uncertain or ambiguous that an enforceable contract does not exist regarding that fee. None of the contract documents contain a price, amount or method to calculate the price or amount of the ASC Access Fee, which is an essential term to the creation of an enforceable contract on this issue.

In response, plaintiff argued that the access fees were provided for in the ASC and Schedule A, and that the fees were disclosed to, not hidden from, defendant. During discovery in the 2009 companion case, plaintiff also moved to add a counterclaim for quantum meruit and “return of consideration.” Following oral arguments, the trial court in the companion case denied plaintiff’s motion.

Thereafter, plaintiff filed the instant action against defendant, once again alleging quantum meruit and return of consideration. Under the first theory, plaintiff argued that if there was no enforceable language allowing plaintiff to retain the access fees, then plaintiff is entitled to recover damages for the reasonable value of defendant’s access to plaintiff’s healthcare network. Under the second theory, plaintiff argued that if they were required to return the access fees to defendant, then defendant must return to plaintiff the value of defendant’s access to plaintiff’s healthcare network. Defendant responded with a motion for summary disposition which was heard before the circuit court.

At the hearing, defendant argued that there is no cause of action in Michigan for “return of consideration,” that the presence of an express written agreement between the parties precluded any form of equitable relief, and that other courts had already rejected plaintiff’s exact arguments in ten previous cases. In response, plaintiff argued that if there were no agreement as to the amount of the access fees, then there is no enforceable contract between the parties, and plaintiff is entitled to equitable relief. At the conclusion of the hearing, the circuit court granted

¹ According to defendant, defendant was unaware of these charges until Oakland County filed suit against plaintiff over the charging of access fees.

defendant's motion for summary disposition, finding that there was no issue of material fact and that plaintiff had failed to state a claim upon which relief could be granted. Plaintiff appealed.

II. STANDARD OF REVIEW

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the complaint." *Id.* at 119. The motion may be granted only when the claims alleged "are 'so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.'" *Id.* (citation omitted).

"A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *Id.* at 120. Summary disposition under this rule is appropriate when the documentary evidence viewed in the light most favorable to the nonmoving party establishes there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Id.* "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).

III. ANALYSIS

First, plaintiff argues that the trial court erred by dismissing plaintiff's claim for quantum meruit. We disagree.

Recovery under a theory of quantum meruit or unjust enrichment is available upon a showing of "(1) the receipt of a benefit by the defendant from plaintiff and (2) an inequality resulting to the plaintiff because of the retention of the benefit by the defendant." *Morris Pumps v Cenerline Piping, Inc*, 273 Mich App 187, 195; 729 NW2d 898 (2006). When parties agree that a contract exists between them but disagree as to its terms, quantum meruit is inapplicable. *Id.* at 194, 199; *Miller v Macey Co*, 263 Mich 484, 488; 248 NW 879 (1933). Here, a written contract exists between plaintiff and defendant, but the parties disagree as to the contract's terms with regard to access fees. As such, plaintiff's claim for quantum meruit was inapplicable, and the trial court was correct to dismiss it.

Plaintiff seeks to counter the existence of the contract by alleging that there is no price term for the access fees in the contract; consequently, the contract is unenforceable and equitable relief such as quantum meruit applies. Plaintiff's argument, however, misses the point. In the 2009 companion case, defendant asserted that the written contract covers the fees to be paid to plaintiff, and that the contract does not contain language authorizing plaintiff to charge the access fees that plaintiff collected from defendant. Defendant is not claiming that the contract is unenforceable. Defendant agrees the contract is enforceable but asserts that there is no enforceable language in the contract permitting plaintiff to charge the access fees that plaintiff collected from defendant. The core question of the 2009 case is whether the contract permits plaintiff's collection of access fees. This is a question of law, not equity, to be determined by examining the terms of the parties' written agreement.

Second, plaintiff argues that the trial court erred by dismissing plaintiff's claim for "return of consideration." We again disagree. While return of consideration is an equitable

remedy, there appears to be no authority supporting return of consideration as a separate cognizable cause of action. When pleading return of consideration as a cause of action, plaintiff did not include any basis for the remedy. The complaint simply asserted that if plaintiff should lose in the 2009 companion case, equity demanded defendant return the consideration plaintiff tendered. By asserting its desired remedy as a cause of action, plaintiff failed to state a claim on which relief could be granted. As such, the trial court was correct to dismiss plaintiff's cause of action.

We affirm. As the prevailing party, defendant may tax costs pursuant to MCR 7.219.

/s/ Kirsten Frank Kelly

/s/ Jane E. Markey

/s/ Karen M. Fort Hood