STATE OF MICHIGAN

COURT OF APPEALS

COUNTY OF BAY, Plaintiff-Appellee,	UNPUBLISHED December 17, 2013
v	No. 307447 Bay Circuit Court
BLUE CROSS BLUE SHIELD, Defendant-Appellant.	LC No. 09-003940-CL

Before: MURPHY, C.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order entering a jury verdict for plaintiff, which included findings that defendant breached its contract with plaintiff, converted plaintiff's money, and fraudulently concealed plaintiff's claims, and that plaintiff did not know or should not have known that it had a possible claim against defendant before December 8, 2007. For the reasons set forth in this opinion, we reverse the decision of the trial court and remand for entry of an order granting defendant's motion for summary disposition.

This case is one of a series involving defendant and various entities, all of which have contracted with defendant to administer their self-insured health-care plans. Specifically at issue here is whether defendant concealed various business charges, referred to collectively as "access fees," or if plaintiff knew or should have known that the access fees continued to be billed and that it had agreed to pay the fees when it agreed to enter the contract.

Plaintiff's complaint contained two counts alleging breach of contract as well as additional counts alleging breach of fiduciary duty, conversion (including an allegation of fraudulent concealment and an allegation that treble damages under MCL 600.2919a should be awarded), fraudulent inducement, and innocent misrepresentation. Plaintiffs' general allegations are based on the theory that the parties had not agreed on a price for the access fee and that defendant simply added it without identifying it, making the access fee a hidden charge of which plaintiff was unaware.

The case was presented to a jury in Bay County. Judgment was entered against defendant, on April 30, 2011, as follows: (1) on the breach of contract claim, $497,267 plus case evaluation sanctions of $105,817 and interest of $26,748 for a total of $629,832; (2) on the conversion claim, $262,306 plus case evaluation sanctions of $105,817 and interest of $11,633 for a total of $379,756; and (3) on the statutory conversion claim (i.e., treble damages pursuant to

MCL 600.2919a), $704,883 ($234,961 times three) plus statutory attorney fees of $131,056 and interest of $37,073 for a total of $873,012. The trial court ordered that plaintiff was entitled to recover either the amount under (1) or (2), but not both, plus the amount under (3), plus $10,315 for attorney fees from May 1, 2011 to the date of judgment. This appeal ensued.

Roughly a year following the jury verdict, this Court addressed the contractual language here at issue. In *Calhoun Co v Blue Cross Blue Shield of Michigan*, 297 Mich App 1, 15-16; 824 NW2d 202 (2012), we held that the contractual language, in all material respects identical to the language in this case, is unambiguous as a matter of law, and that outcome controls this case. Thus, the issue becomes whether *Calhoun Co* is controlling.

Plaintiff asserts that this Court in *Calhoun Co* relied on admissions of counsel in reaching its conclusion, but the words used in the opinion disprove that theory. This Court expressly identified its methodology in phrases such as "In reviewing the contract terms," "we first look to the language of the parties' agreement," and "Turning to the contract itself," and it repeatedly quoted and pointed to "the language of the ASC" when ascertaining the meaning of the contract's provision. *Calhoun Co*, 297 Mich App at 15-18. In a footnote, this Court noted, "Plaintiff's counsel admitted to the trial court . . . that defendant does 'have a methodology." *Id*. at 19 n 11. But it is apparent from reading the opinion that this supposed admission was not instrumental or necessary for this Court to reach its conclusion.[1]

Our examination of this Court's opinion in *Calhoun Co* leads us to a different conclusion than the one proposed by plaintiff. In *Calhoun Co*, 297 Mich App at 15-16 this Court held:

> In reviewing the contract terms agreed to by the parties, we reach several *legal conclusions*. First, the parties agreed to all the terms of the ASC and Schedule A, so there is no question that they intended to enter into a binding contract[.] This conclusion applies with equal force to the more discrete question of agreement to the access fee. Contrary to plaintiff's argument, *the language of the ASC expressly provided for the collection of additional fees* beyond the administrative charge and stop-loss coverage. Plaintiff's contractual obligations are listed under article III of the ASC, the final provision of which states: "The Provider Network Fee, contingency, and any cost transfer subsidies or surcharges ordered by the State Insurance Commissioner as authorized pursuant to 1980 P.A. 350 will be reflected in the hospital claims cost contained in Amounts Billed."
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> According to this unnumbered provision, the parties agreed that plaintiff would be charged for additional fees beyond the administrative charge and stop-loss coverage, and that those fees would be reflected in the hospital claims cost contained in "Amounts Billed." The term "Amounts Billed" was broadly defined in the ASC as the amount owed in accordance with defendant's "standard

[1] It is clear that the *Calhoun Co* Court concluded that the contract had a method for calculating the access fee, and was only parenthetically noting in the footnote that this was admitted by the plaintiff's counsel.

> operating procedures." *Thus, the agreed-upon terms of the ASC allowed for the collection of the access fee, the means for collection, and the process through which it could be determined.* [*Calhoun Co*, 297 Mich App at 15-16 (emphasis added; quotation marks for quotations from cases and citations omitted; alteration by *Calhoun Co* Court).]

Thus, this Court reached several legal conclusions about the contract: the parties agreed to enter a binding contract, the ASC included a provision that allowed defendant to collect fees in addition to the administrative charge and stop-loss coverage, article III of the ASC provides that those additional fees will be included in the "Amounts Billed," and the term "Amounts Billed" was defined in the ASC as the amount owed as calculated by defendant's standard operating procedures.[2] *Id.* This Court also stated that Schedule A "has since at least January 2007 reflected the parties' agreement that the access fee covered three specific costs or charges and would be retained by defendant as a part of the overall savings realized by plaintiff." *Id.* at 16.

Moreover, the lack of a specific dollar figure for the fee did not render it indefinite or unenforceable: "It is simply not enough to say that the fee agreed to is not binding because no specific dollar figure was placed in the contract. As reflected above, the answer instead comes from looking at the *entire* agreement and determining its *full* substance in order to enforce the parties' intentions." *Calhoun Co*, 297 Mich App at 18-19 (emphasis in original). The "Development of Access Fee Factors" illustrated that an objective formula was used, entirely consistent with the contract, and the plaintiff presumably could have asked for that to be produced. *Id.*

These findings are directly applicable to the contract in the present case. This Court and the Michigan Supreme Court have consistently construed unambiguous language in one contract in the same way it was construed in an earlier case involving identical language. See, e.g., *Heniser v Frankenmuth Mut Ins*, 449 Mich 155, 171; 534 NW2d 502 (1995); *Wells Fargo Bank, NA v Cherryland Mall Ltd Partnership*, 295 Mich App 99, 128; 812 NW2d 799 (2011); *Westfield Ins Co v Ken's Serv*, 295 Mich App 610, 617-618; 815 NW2d 786 (2012); *Tenneco Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 468-417; 761 NW2d 846 (2008). Because this Court in *Calhoun Co* instructs that the language is unambiguous, there is no need to look beyond the four corners of the document to ascertain its meaning. *Shay v Aldrich*, 487 Mich 648, 659; 790 NW2d 629 (2010).

Because we conclude that the trial court's judgment must be reversed and summary disposition entered in favor of defendant, defendant's remaining issues are moot, and we decline to address them.

[2] Specifically, the ASC's definition reads: "'Amounts Billed' means the amount the Group owes in accordance with BCBSM's standard operating procedures for payment of Enrollees' claims."

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No costs are awarded to either party. MCR 7.219(A).

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello