STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

COVENANT MEDICAL CENTER, INC.,

Plaintiff,

vs.

REGENCY EMPLOYEE BENEFITS, INC.,

Defendant.
_____/

Case No. 13-10708-CKB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER GRANTING DEFENDANT'S MOTION
FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(8) AND (10)

The Employee Retirement Income Security Act ("ERISA"), 29 USC 1001, *et seq*, contains one of the most comprehensive and confusing preemption schemes ever devised by Congress. Here, Defendant Regency Employee Benefits, Inc. ("Regency") has moved for summary disposition under MCR 2.116(C)(8) and (10) on the theory that the state-law claims advanced by Plaintiff Covenant Medical Center, Inc. ("Covenant") fall prey to ERISA preemption. Because the Court agrees that none of Covenant's claims can survive, the Court must award summary disposition to Regency.

I. Factual Background

"A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint[,]" Maiden v Rozwood, 461 Mich 109, 119 (1999), so the Court must limit itself to the allegations set forth in the complaint when addressing such a request for relief. "'A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint'" and permits the Court to consider "the entire record in the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties." Corley v Detroit Board of Education, 470

Mich 274, 278 (2004). Because Defendant Regency has sought relief on both of these grounds, the Court shall first consider the complaint and then the evidence in the record.

Between September 16, 2011, and October 20, 2011, Plaintiff Covenant provided $310,567 in professional care and treatment to a patient described pseudonymously as number 296268100 and identified throughout this opinion as "John Doe." See Complaint, ¶ 6. Covenant then submitted its bill to a preferred-provider organization ("PPO") called Cofinity, Inc. ("Cofinity"), which re-priced the bill at $237,584, see id., ¶¶ 8-11, and sent the re-priced bill to Defendant Regency in its capacity as third-party administrator ("TPA") of the employee-benefit plan covering John Doe. See id., ¶ 12. In time, Regency sent Covenant $63,644, see id., ¶ 13, which amounted to a reduction of $173,940 from the re-priced bill. See id., ¶ 14. Despite demands from Cofinity and Covenant for additional reimbursement, see id., ¶ 15, Regency refused to tender any more money to Covenant for John Doe's care, see id., ¶ 16, so Covenant filed this lawsuit.

In a four-count complaint, Plaintiff Covenant accuses Defendant Regency of breaching the Network Access Agreement between Cofinity and Regency, violating the Michigan Uniform Trade Practices Act ("MUTPA"), see MCL 500.2006, obtaining an unjust enrichment from Covenant, and refusing to satisfy an account stated. All four of these claims seek precisely the same relief, *i.e.*, the full balance of $173,939.71 remaining on the re-priced bill plus penalty interest under the MUTPA, so Covenant apparently will be content if it recovers on any of its four theories. In response to those four claims, Regency has moved for summary disposition under MCR 2.116(C)(8) and (10), arguing that Covenant's claims are preempted by ERISA and fatally defective as a matter of Michigan law. Accordingly, the Court must decide whether Covenant may proceed against Regency on any of its various claims.

II. Legal Analysis

A motion for summary disposition pursuant to MCR 2.116(C)(8) should be "granted if '[t]he opposing party has failed to state a claim on which relief can be granted.'" State *ex rel* Gurganus v CVS Caremark Corp, 496 Mich 45, 62-63 (2014). In reviewing such a motion, the Court "must accept all factual allegations in the complaint as true," id. at 63, and grant relief only if "the claims alleged are 'so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.'" Maiden, 461 Mich at 119. In contrast, a motion for summary disposition under MCR 2.116(C)(10) should be granted "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." West v General Motors Corp, 469 Mich 177, 183 (2003). Such "[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." Id. Applying these well-understood standards, the Court shall consider each of the claims asserted by Plaintiff Covenant *seriatim*.

A. Breach of Contract.

Plaintiff Covenant regards itself as a third-party beneficiary of the Cofinity Network Access Agreement between Defendant Regency and Cofinity. Under Michigan law, an independent cause of action for third-party beneficiary does not exist. Instead, a Michigan statute grants rights to third-party beneficiaries, see MCL 600.1405, and "a person who qualifies under the third-party beneficiary statute gains the right to sue to enforce the contract" at issue. Shay v Aldrich, 487 Mich 648, 666 (2010). The "contracting parties' 'intent' with regard to third-party beneficiaries is determined solely from the form and meaning of the contract." Id. at 665. Consequently, the Court must turn to the

language of the contract under which Covenant claims third-party beneficiary rights, *i.e.*, the Cofinity Network Access Agreement. See Brief in Support of Defendant's Motion for Summary Disposition, Exhibit D (Cofinity Network Access Agreement).

Cofinity – acting as a PPO – negotiated with health-care providers such as Plaintiff Covenant for discounted prices, and then offered those discounted prices to employee-benefit plans like John Doe's employer's plan. Defendant Regency played the role of third-party administrator of employee-benefit plans. The Cofinity Network Access Agreement governed the relationship between Cofinity and Regency, expressly directing Regency to apply contract rates in dealing with "repriced bills" and "adjudicat[ing] such claims for Covered Services[.]" See Brief in Support of Defendant's Motion for Summary Disposition, Exhibit D (Cofinity Network Access Agreement, § 2.1.2). According to section 4.1.3 of the Cofinity Network Access Agreement, which Covenant claims Regency violated, Cofinity "shall apply the Contract Rates to . . . Participating Provider bills" and "Cofinity will then return the applicable Contract Rates to" Regency, which in turn "will remit payment to Participating Providers at the Contract Rates as conveyed from Cofinity to" Regency. See id., Exhibit D (Cofinity Network Access Agreement, § 4.1.3). In cases where "a Participating Provider disputes a repriced bill," Regency must "conduct a re-evaluation of the bill(s) in question and, upon Cofinity's request, will report the results to Cofinity." Id. As a result, Cofinity oversaw billing at the contract rates both initially and when a dispute with a participating provider arose. Regency had to follow Cofinity's directions in applying the contract rates that Cofinity had negotiated with providers.

In Count One of its complaint, Plaintiff Covenant alleges that Defendant Regency breached a contractual obligation under the Cofinity Network Access Agreement when Regency reduced the re-priced bill for Covenant's services to John Doe from $237,584 to $63,644. See Complaint, ¶ 14.

Significantly, funds disbursed by Regency to Covenant based upon Regency's obligations under the Cofinity Network Access Agreement constitute assets of the employee-benefit plan established by John Doe's employer, By Lo Oil Company ("By Lo"). See Brief in Support of Defendant's Motion for Summary Disposition, Exhibit A (By Lo Oil Company Employee Welfare Benefit plan at 51). Regency, acting on behalf of By Lo and its plan participants, served as an interface with Cofinity in its capacity as a PPO dealing with providers like Covenant, which sought reimbursement for services they provided to plan participants like John Doe. But the existence of two intermediaries – a TPA and a PPO – between the By Lo plan as payer and Covenant as payee for services Covenant rendered to By Lo plan participants cannot alter the basic fact that Covenant's claim for breach of contract is a demand for plan assets. Thus, Regency insists that Covenant's claim is preempted by ERISA.

"The purpose of ERISA is to provide a uniform regulatory regime over employee benefit plans." Aetna Health Inc v Davila, 542 US 200, 208 (2004). Therefore, "ERISA includes expansive pre-emption provisions, which are intended to ensure that employee benefit plan regulation would be 'exclusively a federal concern.'" Id. For example, the preemption provision set forth in 29 USC 1144(a) expressly states that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan[.]" This language seems to preclude the states from enacting laws on the subject of employee benefits, but the United States Supreme Court has given that language an expansive reading by ruling that even common-law causes of action – just like state statutes – may be preempted by 29 USC 1144(a) if they "'relate to' an employee benefit plan." Pilot Life Ins Co v Dedeaux, 481 US 41, 47-48 (1987). Moreover, the United States Supreme Court has given the phrase "relate to" in ERISA-preemption analysis a "'broad common-sense meaning, such that a state law "relate[s] to" a benefit plan "in the normal sense of the phrase, if it has a connection with or reference to such a plan."'" Id. at 47.

The breach-of-contract claim asserted by Plaintiff Covenant in Count One rests upon third-party-beneficiary rights under the Cofinity Network Access Agreement. John Doe's By Lo plan is not a party to that contract; only its TPA, Defendant Regency, is a party to that agreement. But the Court nonetheless concludes that Covenant's breach-of-contract claim "relates to" John Doe's By Lo plan because that common-law cause of action "has a connection with" John Doe's By Lo plan, so the breach-of-contract claim falls prey to ERISA preemption under 29 USC 1144(a). See Pilot Life, 481 US at 47-48. That is, Covenant has demanded reimbursement for "covered services," as required by section 2.1.2 of the Cofinity Network Access Agreement, but that agreement defines the "covered services" as "Services provided by Participating Providers to Covered Individuals that are *reimbursable under the terms of a Plan.*" See Brief in Support of Defendant's Motion for Summary Disposition, Exhibit D (Cofinity Network Access Agreement, § 1.7) (emphasis added). The Court can only determine Covenant's right to reimbursement by consulting the By Lo plan to decide which services billed by Covenant are reimbursable. In the final analysis, Covenant cannot avoid the broad ERISA preemption requirement of 29 USC 1144(a).[1] No matter how Covenant may frame its cause of action for breach of contract against Regency, the Court's analysis of that claim inevitably leads to John Doe's By Lo employee-benefit plan. Therefore, the Court must grant summary disposition to Regency under MCR 2.116(C)(10) on Covenant's breach-of-contract claim.[2]

---

[1] The Court finds Plaintiff Covenant's reliance upon the distinction between reimbursement rates and reimbursable services entirely unavailing in this case. First and foremost, the cases cited by Covenant for that distinction involve field preemption under 29 USC 1132, as opposed to conflict preemption under 29 USC 1144(a). E.g., Memorial Hermann Hospital System v Braidwood Mgmt, Inc, Employee Benefit Plan, No H-12-3453 (SD Texas May 15, 2013) (unpublished order). Second, Defendant Regency purportedly cut Covenant's re-priced bill based upon Regency's understanding of covered services, not because of any reimbursement-rate reduction.

[2] Because the Court has granted summary disposition based on ERISA preemption, dismissal of the breach-of-contract claim must be without prejudice. Plaintiff Covenant may recast that claim as a cause of action under ERISA if it so chooses.

B. Michigan Uniform Trade Practices Act.

Plaintiff Covenant's claim against Defendant Regency under the MUTSA, MCL 500.2001, *et seq*, rests upon the contention that Regency "fail[ed] to timely pay in full for Covenant's medical treatment, within 45 days of receiving the applicable claim," see Complaint, ¶ 31, and seeks penalty interest as well as the outstanding balance of $173,939.71. To be sure, the MUTSA requires that a "clean claim shall be paid within 45 days after receipt of the claim by the health plan." See MCL 500.2006(8)(a). Failure to meet the 45-day deadline results in penalty interest "at a rate of 12% per annum." Id. But "penalty interest under MCL 500.2006 is not available if there existed a reasonable dispute regarding the claim." See Angott v Chubb Group of Ins Cos, 270 Mich App 465, 479-480 (2006). Indeed, the concept of a "clean claim" under MCL 500.2006(8)(a) presupposes "a claim for covered services for an eligible individual." See MCL 500.2006(14)(a)(*iv*). Here, Regency denied a large portion of the re-priced bill because Covenant sought reimbursement for matters that did not constitute "covered services," at least in Regency's estimation. To assess the propriety of Regency's reduction of Covenant's re-priced bill, the Court must review John Doe's By Lo employee-benefit plan to determine which services are "covered" and, thus, reimbursable.[3] Consequently, Covenant's MUTSA claim runs headlong into ERISA preemption pursuant to 29 USC 1144(a) because such an application of MUTSA "relates to" the By Lo plan in that "'it has a connection with'" the plan. See Pilot Life, 481 US at 47. Accordingly, the Court must grant summary disposition to Regency under MCR 2.116(C)(8) and (10) on the MUTSA claim based upon ERISA preemption.

---

[3] As the Court explained in addressing the breach-of-contract claim, Plaintiff Covenant has demanded reimbursement from Defendant Regency for covered services, as contemplated by section 2.1.2 of the Cofinity Network Access Agreement, but that agreement defines "covered services" as "Services provided by Participating Providers to Covered Individuals that are *reimbursable under the terms of a Plan*." See Brief in Support of Defendant's Motion for Summary Disposition, Exhibit D (Cofinity Network Access Agreement, § 1.7) (emphasis added). The MUTSA fortifies the Court's approach to ERISA preemption by referring to "covered services." See MCL 500.2006(14)(a)(*iv*).

C. Unjust Enrichment.

Plaintiff Covenant's unjust-enrichment claim proceeds from the fatally flawed premise that "Covenant conferred a benefit upon Regency." See Complaint, ¶ 36. That assertion fundamentally misapprehends the nature of the relationships among the various actors involved in this dispute. As an initial matter, Covenant conferred a benefit upon John Doe by providing medical services to him. And in the fullness of time, one might argue that Covenant would confer a benefit upon John Doe's By Lo employee-benefit plan if it accepted a substantial reduction in its re-priced bill, and thereby left the plan with more funds than Covenant had originally demanded. But in no way has Covenant conferred a benefit upon Defendant Regency, which merely acted as a TPA for the By Lo employee-benefit plan. Thus, because Covenant cannot demonstrate "the receipt of a benefit by defendant from plaintiff," see Belle Isle Grill Corp v City of Detroit, 256 Mich App 463, 478 (2003), the claim for unjust enrichment fails as a matter of Michigan law.

Beyond the most obvious defect in Plaintiff Covenant's unjust-enrichment claim, the Court can readily identify several other obvious flaws in that cause of action. First, Covenant regards itself as a third-party beneficiary of the Cofinity Network Access Agreement, see Complaint, ¶ 21, which authorizes Covenant to pursue a claim for breach of that contract. See Shay, 487 Mich at 666. But if a contract governs the relationship between Covenant and Defendant Regency with respect to the reimbursement process for Covenant's re-priced bills, Michigan law forecloses Covenant from also seeking recovery on an unjust-enrichment theory. See Belle Isle Grill, 256 Mich App at 478. And beyond that, the Court cannot determine whether Covenant furnished unjust enrichment to Regency without resorting to John Doe's By Lo employee-benefit plan to establish the amount of "covered expenses" for which Covenant is entitled to reimbursement. That, of course, renders the claim for unjust enrichment subject to ERISA preemption under 29 USC 1144(a).

The Court's analysis leads ineluctably to the conclusion that Plaintiff Covenant's claim for unjust enrichment against Defendant Regency should have been left on the cutting-room floor. To be sure, "where there are questions of fact concerning the existence and terms of the contract, a claim for unjust enrichment can be maintained." Fodale v Waste Mgmt of Michigan, Inc, 271 Mich App 11, 36 (2006). But pleading in the alternative cannot save Covenant's unjust-enrichment claim from its other fundamental defects, such as the absence of a benefit to Defendant Regency, or from ERISA preemption under 29 USC 1144(a). Consequently, the Court must award summary disposition under MCR 2.116(C)(8) and (10) to Regency on Covenant's unjust-enrichment claim.

D. Account Stated.

Faced with Defendant Regency's arguments in its motion for summary disposition, Plaintiff Covenant has chosen to abandon its claim for account stated. Our Supreme Court recently explained that "[a]n account stated action is based on 'an agreement, between parties who have had previous transactions of a monetary character, that all the items of the accounts representing such transactions are true and that the balance struck is correct[.]'" Fisher Sand and Gravel Co v Neal A Sweebe, Inc, 494 Mich 543, 554 (2013). Covenant's dispute with Regency presents the antithesis of an account stated because the parties disagree about how much more – if anything – Regency should have to pay Covenant on its re-priced bill. Accordingly, the Court shall permit Covenant to fall on its sword by consenting to the entry of summary disposition in favor of Regency under MCR 2.116(C)(8) and (10) on the account-stated claim.

III. Conclusion

For all of the reasons stated in this opinion, the Court must award summary disposition under MCR 2.116(C)(8) and (10) to Defendant Regency on each of Plaintiff Covenant's four claims. The

Court's ruling seems to bring this case to a conclusion, but the Court shall not designate this opinion and order as the final resolution of the case. Instead, the Court shall schedule a status conference to determine what, if anything, remains to be accomplished before this case is closed.

IT IS SO ORDERED.

Dated: October 28, 2014

HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge