

STATE OF MICHIGAN  
SIXTEENTH JUDICIAL CIRCUIT COURT

MICHIGAN SURGERY SPECIALISTS, P.C.,

Plaintiff/Counter-Defendant,

vs.

Case No. 18-1160-CB

STEVEN T. PLOMARITIS, D.O.,

Defendant/Counter-Plaintiff,

and

STEVEN T. PLOMARITIS, D.O.,

Third-Party Plaintiff,

vs.

SOUTHFIELD REHABILITATION COMPANY, LLC.

Third-Party Defendant.

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OPINION AND ORDER

Third-Party Defendant Southfield Rehabilitation Company, LLC ("Southfield Rehabilitation") moved for partial summary disposition on count II (breach of contract) of the Third-Party Complaint.

I. Factual and Procedural Background

Defendant/Counter-Plaintiff Steven T. Plomaritis, D.O. ("Dr. Plomaritis") filed a third-party Complaint against Southfield Rehabilitation seeking repayment of a loan in the amount of \$400,000 plus interest. Specifically, Dr. Plomaritis alleges that he became a shareholder of Michigan Surgery Specialists, P.C ("Michigan Surgery") in January 2006 and paid at least \$700,000 to buy in to the corporation. According to Dr.

Plomaritis, part of his buy-in to Michigan Surgery included a required \$400,000 loan to Southfield Rehabilitation.<sup>1</sup> The parties both state that they did not reduce the terms of the loan to writing at the time. Southfield Rehabilitation now produces a document relating to the loan titled Demand Promissory Note (“Promissory Note”) dated July 8, 2011 but the Promissory Note does not have a signature from Dr. Plomaritis. Dr. Plomaritis resigned as a shareholder of Michigan Surgery on December 2, 2014. Answer ¶15. Dr. Plomaritis avers that Southfield Rehabilitation has not paid any of the sums owed to him.

By Amended Counterclaim and Third-Party Complaint dated September 28, 2018, Dr. Plomaritis alleges claims against Southfield Rehabilitation for breach of contract (count II), unjust enrichment (count III), and accounting (count III). The Court heard oral argument on the motion for partial summary disposition on March 18, 2019 and took the matter under advisement.

## II. Standard of Review

A motion under MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported

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<sup>1</sup> As of December 22, 2014, Southfield Rehabilitation was a wholly-owned subsidiary of ORH, Inc., which was a wholly-owned subsidiary of Michigan Surgery. Answer ¶18.

by evidence produced at trial. *Id.* at 121. Indeed, “an adverse party may not rest upon the mere allegations or denials of his or her pleadings, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial.” MCR 2.116(G)(4).

### III. Arguments

Southfield Rehabilitation submits that the Promissory Note is unambiguous and should be enforced as written. According to Southfield Rehabilitation, the three conditions before a demand for payment may be made have not occurred. Southfield Rehabilitation reads the phrase, “notwithstanding anything else to the contrary contained herein” permits a harmonious reading of the terms. Without ambiguity, Southfield Rehabilitation concludes, the Court may not hear extrinsic evidence.

Dr. Plomaritis responds that the Promissory Note is a unilateral amendment to an oral agreement that he never signed. Further, Dr. Plomaritis argues that the Promissory Note is facially ambiguous and requires extrinsic evidence to determine the parties’ intent. Specifically, the Promissory Note states that it matures upon issuance and Payee may demand payment at any time which contradicts terms requiring the doctor to leave the practice of medicine and be 65 years of age before making a demand. Dr. Plomaritis maintains that other shareholders understand the terms of their oral agreements to be that shareholders receive repayment of the loans when they leave the company.

### IV. Law and Analysis

#### A. Cross-Complaint Count II, Breach of Contract:

To establish a breach of contract, a plaintiff must prove “(1) that there was a

contract, (2) that the other party breached the contract and, (3) that the party asserting breach of contract suffered damages as a result of the breach.” *Miller-Davis Co v Ahrens Construction, Inc (On Remand)*, 296 Mich App 56, 71; 817 NW2d 609 (2012).

Michigan courts examine the language of contracts according to their “plain and ordinary meaning.” *Miller–Davis Co v Ahrens Const., Inc.*, 495 Mich. 161, 172; 848 NW2d 95 (2014). “Contracts must be construed as a whole, giving effect to all provisions.” *Vill of Edmore v Crystal Automation Sys Inc*, 322 Mich App 244, 263; 911 NW2d 241 (2017) citation omitted. “Courts must avoid interpretations that would render any part of a contract surplusage or nugatory and must also, if possible, seek an interpretation that harmonizes potentially conflicting terms. *Id.* citations omitted.

“Absent an ambiguity or internal inconsistency, contractual interpretation begins and ends with the actual words of a written agreement.” *Universal Underwriters Ins Co v Kneeland*, 464 Mich. 491, 496; 628 NW2d 491 (2001). “If the contractual language is unambiguous, courts must interpret and enforce the contract as written.” *In re Egbert R. Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008). “[A]n unambiguous contractual provision is reflective of the parties’ intent as a matter of law.” *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003).

“A contract is ambiguous when two provisions irreconcilably conflict with each other. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2003). A contract is also ambiguous when its “words may be reasonably understood in different ways.” *Cole v Auto-Owners Ins Co*, 272 Mich App 50, 53; 723 NW2d 922 (2006).

Turning to the present case, the text of the Promissory Note, states in relevant

part,<sup>2</sup>

ON DEMAND, Southfield Rehabilitation Company, a Michigan corporation ("Payor") promises to pay to the order of Steven T. Plomaritis, D.O., ("Payee") at such place as Payee [Dr. Plomaritis] may designate in writing from time to time, the principal sum of Four Hundred Thousand and 00/100 Dollars . . . Upon demand by Payor [Southfield Rehabilitation], the outstanding principal balance and all accrued interest thereon shall accelerate and become due and payable. *Notwithstanding anything else to the contrary contained herein, Payee [Dr. Plomaritis] acknowledges and agrees that demand shall not be made on this Note, under any circumstances, until* (i) a date that is six months after the termination of any credit facility of Payor [Southfield Rehabilitation] with The Huntington National Bank and the payment full of all indebtedness and other obligations of Payor [Southfield Rehabilitation] owing to the Huntington National Bank; (ii) the Payee [Dr. Plomaritis] *has passed his sixty-fifth birthday*; and (iii) the Payee [Dr. Plomaritis] *has retired from the practice of medicine*.

\* \* \*

*This Note is an amendment, restatement and renewal* of that certain that [sic] *undocumented indebtedness*, dated as of February 18, 2004, in the original principal amount of Four Hundred Thousand and 00/100 Dollars (\$400,00.00) made by Payor [Southfield Rehabilitation] in favor of Payee [Dr. Plomaritis],, (the "Existing Indebtedness") as heretofore amended, restated, modified, renewed and/or replaced . . .

\* \* \*

Payor [Southfield Rehabilitation] acknowledges that this Note matures upon issuance, and that Payee [Dr. Plomaritis], *at any time, without notice and with or without reason*, may demand that this Note be *immediately paid in full* . . . It is expressly agreed that Payee [Dr. Plomaritis] may exercise its demand rights under this Note whether or not an Event of Default has occurred or exists. Payee [Dr. Plomaritis], *with or without reason and without notice, may from time to time make demand for partial payments* under this Note and any such demands shall not preclude Payee [Dr. Plomaritis] from demanding at any time that this Note be immediately paid in full.

Southfield Rehabilitation Exhibit A, emphasis added.

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<sup>2</sup> For clarity, the Court inserted the parties' names beside the designated roles of "payor" and "payee" according to the definition assigned by the terms of the Note.

Southfield Rehabilitation's offers the Promissory Note as evidence to support its position that, as a matter of law, Dr. Plomaritis is not entitled to payment of the loan until three conditions are met. However, the Promissory Note bears only the signature of Edward Burke, D.O., President of Southfield Rehabilitation but not Dr. Plomaritis's signature. Southfield Rehabilitation essentially asks the Court to enforce a document that appears to have been unilaterally generated well after the parties entered into an oral agreement. While the Promissory Note evidences, by its own terms, the indebtedness owed to Dr. Plomaritis by Southfield Rehabilitation (which Southfield Rehabilitation does not dispute), it does not establish as a matter of law that Dr. Plomaritis ever agreed to the conditions Southfield Rehabilitation now seeks to enforce against him, or that the Promissory Note even reflects the substance of the oral loan agreement between the parties.

Consequently, the Court need not even reach the question of facial ambiguity. Southfield Rehabilitation has provided no evidence that Dr. Plomaritis ever agreed to the terms of the Promissory Note being asserted against him in the first place. For these reasons, the Court must deny Southfield Rehabilitation's motion for summary disposition.

V. Conclusion

For the reasons set forth above, Southfield Rehabilitation's motion for partial summary disposition is DENIED. Pursuant to MCR 2.602(A)(3), this *Opinion and Order* neither resolves the last pending claim nor closes this case.

IT IS SO ORDERED.

Date: APR 26 2019

Kathryn A. Viviano  
Hon. Kathryn A. Viviano, Circuit Court Judge