IN THE SUPERIOR COURT OF DOUGLAS COUNTY

STATE OF GEORGIA

MICHAEL MORRELL ET AL

Plaintiff

Versus **CASE NO. 04CV03401**

WELLSTAR HEALTH SYSTEM INC ET AL

Defendant

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS IN PART AND DENYING DEFENDANTS' MOTION TO DISMISS IN PART

The above-styled case has come before the Court on Defendants' Motion to Dismiss. After considering the arguments of the parties and having read and considered the parties' briefs, the Court hereby **GRANTS** Defendants' Motion to Dismiss in part and **DENIES** Defendants' Motion to Dismiss in part.

Findings of Fact

Plaintiffs[1] filed this action on December 1, 2004 alleging that Defendants charge uninsured patients rates that are significantly higher than the rates charged to their insured patients or patients covered by Medicare or Medicaid. (Compl. ¶ 1.) According to Plaintiffs, they each treated at the emergency room of Defendants' hospital ("Wellstar Douglas") in 2004. (Compl. ¶¶ 39, 44.) Plaintiff Michael Morrell treated at the emergency room on two occasions for muscle strain in his chest area. (Compl. ¶ 39.) Although he was employed at the time, Plaintiff Michael Morrell did not have health insurance. (Compl. ¶ 39.) Prior to being treated on June 8, 2004, Plaintiff Michael Morrell signed a form consenting to treatment ("Consent Form") and agreeing to the following:

[1] Plaintiffs seek to maintain this action as a class action on behalf of what they allege to be thousands of class members. At this point in the litigation, however, Plaintiffs have not been granted class action status by the Court. Given the Court's disposition of this Motion to Dismiss, the Court dismisses any claims for class action status made by Plaintiffs. In its

> I have not presented any evidence of insurance coverage to Wellstar Health System for my services today. *I accept full financial responsibility for all charges incurred for services received today.*

(Br. in Supp. of Defs.' Mot. to Dismiss The Class Action Compl., Ex. 1) (emphasis in original). Similarly, Plaintiff William Morrell treated at Wellstar Douglas's emergency room in April 2004 when he was admitted for approximately 24 hours. (Compl. ¶ 44.) Like Plaintiff Michael Morrell, Plaintiff William Morrell was required to sign a Consent Form prior to his being treated at Wellstar Douglas. (Compl. ¶ 45.)

It is Plaintiffs' contention that Defendants charged Plaintiffs inflated rates for medical treatment because neither Plaintiff had insurance at the time of his respective treatment. (Compl. ¶ 43.) Additionally, Plaintiffs maintain that Defendants never informed them that they charge different rates for uninsured patients and, further, that Defendants have falsely represented to Plaintiffs that their charges were uniform, fair, and customary. (Compl. ¶¶ 48-49.)

In their Answer, Defendants have asserted a Counterclaim against Plaintiffs for counts of breach of contract and quantum meruit. Contemporaneously therewith, Defendants filed this Motion to Dismiss to which Plaintiffs have filed a response. After hearing argument on the motion, the Court makes the following findings.

Conclusions of Law

A motion to dismiss for failure to state a claim, filed pursuant to O.C.G.A. § 9-11-12(b)(6), should be granted only when the plaintiff would not be entitled to any relief under the facts as stated by plaintiff in his complaint and the defendant demonstrates that the plaintiff could not introduce evidence that would justify granting the relief sought. Mowell v. Marks, 269 Ga. App. 147, 147, 603 S.E.2d 702, 703 (2004); Lasonde v. Chase Mortg. Co.,

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Order, the Court will address Plaintiffs' claims as being those of Plaintiffs Michael Morrell and William Morrell and not of the proposed class.

259 Ga. App. 772, 774, 577 S.E.2d 822, 824 (2003). The court deciding such a motion must construe all pleadings in the light most favorable to the party who filed them, and all doubts regarding such pleadings are to be resolved in the filing party's favor. Balmer v. Elan Corp., 278 Ga. 227, 227, 599 S.E.2d 158, 160 (2004).

A. Breach of Contract

Plaintiffs admit that, upon admission, they entered into express form contracts with Defendants whereby they agreed to pay what they allege to be unspecified charges as a condition of treatment. (Compl. ¶ 74.) Plaintiffs maintain that Defendants used these "open term" contracts as an "opportunity to price-gouge Plaintiffs . . . by charging them rates that they do not charge any other sub-group of patients." (Compl. ¶ 13.) Plaintiffs further contend that, due to the "open term" nature of the contracts, Defendants breached the implied contractual obligation that Defendants would charge Plaintiffs no more than a fair and reasonable rate for the medical care provided to Plaintiffs. (Compl. ¶¶ 74, 76-77.) Plaintiffs allege that Defendants breached this implied contractual obligation by charging Plaintiffs "inflated and discriminatory rates" for the medical care they received and, thus, Defendants breached the implied duty of good faith and fair dealing. (Compl. ¶¶ 78, 79-80.)

Pursuant to O.C.G.A. § 31-7-11(a), hospitals are required, upon request by the patient, to provide the patient with a written summary of charges[2] for services rendered, including *inter alia*, (1) the daily room rate for a room in the hospital; (2) the charges use of the operating room and use of the recovery room; (3) the charges for specific routine and special tests; and (4) emergency room charges, with an explanation of the categories of services included in the charge. Under Georgia law, "[s]uch written summary of charges

[2] For purposes of this motion, the Court will refer to the charges contained herein as the "standard rate."

shall be composed in a simple clear fashion so as to enable consumers to compare hospital charges and make cost-effective decisions in the purchase of hospital services." O.C.G.A. § 31-7-11(a); Ga. Comp. R. & Regs. r. 290-9-7-.10(e).

Contrary to Plaintiffs' contentions, therefore, the contracts at issue herein were not "open term" contracts nor did these contracts provide for payment of unspecified charges as Plaintiffs have alleged. Rather, because Defendants are required by law to maintain and make available to potential patients upon request a list containing the standard rates for hospital services, it cannot be said that the charges were unspecified or "open term."

Moreover, it cannot be said that Defendants breached the implied contractual obligation to charge no more than a fair and reasonable rate for the medical care provided or that Defendants breached the implied duty of good faith and fair dealing by charging "inflated and discriminatory rates." First, Plaintiffs have not presented this Court with any evidence that Plaintiffs were charged anything other than the standard rate. Additionally, as Defendants have noted, the Consent Form contained no express term providing for a discounted rate or a rate other than the standard rate. The fact that other patients are charged discounted rates or rates other than the standard rate is irrelevant when, pursuant to the express terms of the Consent Form, Plaintiffs agreed to pay the standard rate. It would be improper for this Court to impose an implied term, such as a discounted rate for services, upon Defendants when to do so would be inconsistent with the express terms of the Consent Form. It is well settled under Georgia law that

> the introduction of an implied term into the contract of the parties can only be justified when the implied term is not inconsistent with some express term of the contract and where there arises from the language of the contract itself, and the circumstances under which it was entered into, an inference that it is absolutely necessary to introduce the term to effectuate the intention of the parties.

WirelessMD, Inc. v. Healthcare.com Corp., 271 Ga. App. 461, 610 S.E.2d 352 (2005) (citations, punctuation and emphasis omitted). An "implied term in an agreement exists where it is reasonable and necessary to effect the full purpose of the contract and is so clearly within the contemplation of the parties that they deemed it unnecessary to state." Id. (citations omitted). There is no evidence in this case that Defendants, or Plaintiffs for that matter, intended that Plaintiffs be charged anything less than the standard rate for the medical treatment Plaintiffs received. Instead, the Consent Form indicates an intention to the contrary. This Court is unwilling to rewrite the terms of the Consent Form simply because Plaintiffs are now dissatisfied with the express terms to which they agreed, especially when the express terms are clear and unequivocal. Plaintiffs' claim of breach of contract is without merit.

B. Uniform Deceptive Trade Practices Act

Next, Plaintiffs assert that Defendants violated the Georgia Uniform Deceptive Trade Practices Act ("UDTPA"), O.C.G.A. § 10-1-370, *et seq.*, when they charged Plaintiffs "inflated rates" and rates that are higher than the rates charged to insured patients because Defendants have "charitable, nonprofit, tax exempt status" under Georgia law. (Compl. ¶ 85.) Similarly, Plaintiffs allege that Defendants have violated the UDTPA through their "misleading, confusing, discriminatory, and deceptive pricing practices imposed against uninsured patients." (Compl. ¶ 91.)

Pursuant to O.C.G.A. § 10-1-374(a)(1), the UDTPA does not apply to "[c]onduct in compliance with the orders or rules of or a statute administered by a federal, state, or local governmental agency." As Defendants have noted, there are no reported cases, of which this Court is aware, applying this provision of the UDTPA to hospitals or health care providers. Nevertheless, the Northern District of Georgia has applied a similar exemption

provision in the Fair Business Practices Act, O.C.G.A. § 10-1-390, *et seq.*, in determining that the Georgia General Assembly

> intended that the Georgia FBPA have a restricted application only to the unregulated consumer marketplace and that the FBPA not apply in regulated areas of activity, because regulatory agencies provide protection or the ability to protect against the known evils in the area of the agency's expertise.

Brogden ex rel. Cline v. Nat'l Healthcare Corp., 103 F. Supp.2d 1322, 1336 (N.D.Ga. 2000) (citations and quotations omitted). The same analysis can be applied here. Without a doubt, the health care industry does not go "unregulated." Rather, Medicare and Medicaid are heavily regulated such that Defendants' operations are subject to comprehensive and meticulous scrutiny by the governmental agencies which regulate these programs. This Court surmises that the Medicare and Medicaid regulations offer far greater protection for consumers than the UDTPA provides. Given the exemption set forth in O.C.G.A. § 10-1-374(a)(1) and given the Northern District of Georgia's analysis in Brogden, this Court finds that the UDTPA does not apply to Defendants' conduct as it is clear that such was not intended by the General Assembly. Nevertheless, even if this Court determined that the UDTPA applies in this case, Plaintiffs have not presented any evidence that Defendants misled or deceived the public. Plaintiffs' scant allegations to the contrary are without merit.

C. Unjust Enrichment and Constructive Trust

Next, Plaintiffs maintain that Defendants have been unjustly enriched at Plaintiffs' expense by "charging and collecting inflated and discriminatory rates." (Compl. ¶ 84.) While Plaintiffs are correct that they are entitled to proceed to trial on alternate theories of recovery, Wingate Land & Dev., LLC v. Robert C. Walker, Inc., 252 Ga. App. 818, 821, 558 S.E.2d 13, 16 (2001), Georgia law is clear that "unjust enrichment is an equitable concept and applies when as a matter of fact there is no legal contract." Bonem v. Gold Club of Georgia, Inc., 264 Ga. App. 573, 578-79, 591 S.E.2d 462, 467 (2003) (citations and

quotations omitted) Ades v. Werther, 256 Ga. App. 8, 9-10, 567 S.E.2d 340, 342 (2002). Where, as here, there exists a legal contract, Plaintiffs cannot rely on unjust enrichment as a theory of recovery. See Bonem, 264 Ga. App. at 578-79.

Moreover, unjust enrichment applies only "when the party sought to be charged has been conferred a benefit by the party contending an unjust enrichment which the benefitted party equitably ought to return or compensate for." St. Paul Mercury Ins. Co. v. Meeks, 270 Ga. 136, 137, 508 S.E.2d 646, 648 (1998). Here, the undisputed evidence reflects that Plaintiffs have not paid for the medical services they received from Defendants. (Compl. ¶¶ 43, 47; Ans. ¶¶ 211, 215.) Absent evidence to indicate that Plaintiffs have, in fact, conferred a benefit upon Defendants which, under the principles of equity, should be returned by Defendants, Plaintiffs' claim of unjust enrichment and request for imposition of a constructive trust must be dismissed.

D. Fraud, Constructive Fraud, and Negligent Misrepresentation

Plaintiffs allege that Defendants committed fraud, constructive fraud, and negligent misrepresentation when Defendants falsely represented to Plaintiffs that they would be charged "fair," "reasonable," "just," and/or "customary" rates for services received. Additionally, Plaintiffs claim that Defendants falsely represented to Plaintiffs that Defendants are part of a not-for-profit hospital and are "charity-care" providers. (Compl. ¶¶ 103-32.)

Under Georgia law, to prevail on a claim for fraud, constructive fraud, or negligent misrepresentation, a plaintiff must produce evidence, *inter alia,* that the defendant supplied false information or made a false representation or omission of a material fact. Newitt v. First Union Nat'l Bank, 270 Ga. App. 538, 607 S.E.2d 188 (2004) (citations omitted). In this case, the essence of Plaintiffs' claims for fraud, constructive fraud, and negligent misrepresentation is simply that Plaintiffs were charged amounts greater than the amounts

charged to insured patients who treat at Wellstar Douglas. Plaintiffs have not set forth any allegations that they were charged anything other than the standard rates for the services they received. While attempting to construe the instant pleadings in the light most favorable to Plaintiffs, this Court is hard-pressed to find that the rates charged other patients have any bearing on whether Defendants have committed fraud, constructive fraud, or negligent misrepresentation, and Plaintiffs have not presented this Court with any authority to support such a position. Therefore, because Plaintiffs have not alleged that Defendants made any representations at all regarding the cost of Plaintiffs' medical care and, further, because the only evidence before the Court is that Plaintiffs were, in fact, charged the standard rate for the services they received, Plaintiffs' claims of fraud, constructive fraud, and negligent misrepresentation fail.

E. Breach of Fiduciary Duties

Next, Plaintiffs claim that Defendants, as a "nonprofit charity hospital," owed fiduciary duties to Plaintiffs and, further, that Defendants breached these fiduciary duties by charging Plaintiffs disparate rates. (Compl. ¶¶ 134-36.) As Defendants have noted, however, there exists no supporting authority under Georgia law for the position that nonprofit hospitals owe fiduciary duties to patients by virtue of their nonprofit status. Even if such a duty exists, however, the fact that other classes of patients were charged amounts other than the standard rate is irrelevant in making a determination of whether Defendants breached any duties owed to Plaintiffs. This Court is unwilling to find that a fiduciary duty exists where there exists no Georgia law to support such a position. Plaintiffs' claim of breach of fiduciary duties fails.

F. Negligence and Negligence Per Se

Plaintiffs claim that Defendants committed negligence and negligence per se by charging "disparate, discriminatory, and inflated rates," to Plaintiffs in comparison with

those charged insured patients. (Compl. ¶¶ 139-43.) To set forth a cause of action for negligence under Georgia law, a plaintiff must set forth evidence of (1) a legal duty to conform to a standard of conduct raised by the law for the protection of others against unreasonable risk of harm; (2) a breach of this standard; (3) a legally attributable causal connection between the conduct and the resulting injury; and, (4) some loss or damage flowing to the plaintiff's legally protected interest as a result of the alleged breach of the legal duty. Brown v. All-Tech Inv. Group, Inc., 265 Ga. App. 889, 595 S.E.2d 517 (2003) (citations omitted). Similarly, to set forth a claim for negligence per se, a plaintiff must show that (1) he falls within the class of persons protected, and (2) the harm complained of was the type of harm the statute or regulation was intended to protect against. Wilson v. J&L Melton, Inc., 270 Ga. App. 1, 2, 606 S.E.2d 47, 49 (2004) (citations omitted).

In this case, Plaintiffs have not offered the Court any Georgia law to support their negligence and negligence per se claims as alleged in the Complaint. First, this Court is unaware of any authority suggesting that Defendants owed a legal duty to Plaintiffs with respect to Defendants' charges for the services they rendered. The mere fact that Plaintiffs were charged the standard rate, when other classes of insured patients may have been charged less, is not sufficient to withstand a Motion to Dismiss. Moreover, Plaintiffs' reference to the Hospital Authorities Law, O.C.G.A. § 31-7-70, *et seq.*, lends no support for their claim of negligence per se because, as Defendants have argued, there is no evidence that either Defendant is a hospital authority as defined by that statute.

G. Injunction/Declaratory Judgment

Finally, Plaintiffs move this Court for declaratory and injunctive relief ordering Defendants to cease charging Plaintiffs "inflated and discriminatory" rates for medical care. Based upon the analysis set forth above, this Court finds that Plaintiffs are not entitled to declaratory or injunctive relief.

Conclusion

Recognizing the policy concerns raised in the instant action, this Court is sympathetic to Plaintiffs' position. That being said, however, this Court cannot and is unwilling to ignore the well-settled principles of law espoused by Georgia's appellate courts. Plaintiffs have failed to set forth required elements of their claims and, as such, their claims must be dismissed as a matter of law.

Notwithstanding the foregoing, Plaintiffs can seek a declaratory judgment as to whether the amount of the bills they received is reasonable and necessary for the services they received and consistent with the standard rate which they agreed to pay upon their admission.

SO ORDERED this July 19, 2005.

/s/

DAVID T EMERSON
Judge, Superior Court
Douglas Judicial Circuit
CASE NO: 04CV03401

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