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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

SHARNJIT PUREWAL et al.,

Plaintiffs and Appellants,

v.

MADERA COMMUNITY HOSPITAL et al.,

Defendants and Respondents.

F039992

(Super. Ct. No. CV 04211)

OPINION

APPEAL from judgments of the Superior Court of Madera County. Thomas L. Bender, Judge.

Charles L. Doerksen for Plaintiffs and Appellants.

Kimble, MacMichael & Upton, D. Tyler Tharpe and Mary Ann Bluhm for Defendant and Respondent Madera Community Hospital.

McCormick, Barstow, Sheppard, Wayte & Carruth, Timothy L. Thompson and Richard A. McLeod for Defendant and Respondent Muhammad Anwar, M.D.

Appellants, Sharnjit Purewal, M.D., Louis Hernandez, M.D., Ranjit Rajpal, M.D., and Satwant Samroa, M.D., challenge the summary judgment granted in favor of respondents, Madera Community Hospital (Hospital) and Muhammad Anwar, M.D., on a complaint that stemmed from an alleged breach of the professional services agreements entered into between appellants and the Hospital. According to appellants, the trial court erred in concluding that they could not prove that the Hospital failed to perform as required by the contracts and that the causes of action alleged against Anwar were time barred.

As discussed below, the trial court correctly analyzed this case. Consequently, the judgment will be affirmed.

BACKGROUND

Appellants are active physician members of the Hospital's medical staff. As such, appellants have certain rights and responsibilities under the Hospital's Medical Staff Bylaws.

The basic responsibilities of an active medical staff member are numerous. Included is the responsibility to participate in any emergency services "on call" panel or consultation panel as may be required by the Medical Executive Committee. Since voting members of the Medical Executive Committee must be active staff members, those who make these "on call" panel decisions are doctors. In contrast, a physician's rights under the bylaws are limited. A physician may apply for admitting privileges; exercise other clinical privileges; attend medical staff meetings and vote on certain matters; and hold any medical staff office for which the member is qualified.

In 1996, the Hospital contracted with the California Department of Corrections (CDC) to provide certain health care services for the inmates of the Central California Women's Facility and the Valley State Prison for Women. Since California law prohibits the Hospital from providing physician services, it entered into written agreements with local physicians, including appellants, during June and July 1996. Such contracts are

potentially lucrative in that the CDC reimburses the doctors who treat inmates at a high rate.

The Hospital and the physicians acknowledged that these professional services agreements were structured “for the convenience of CDC” in that CDC did “not wish to contract with multiple physicians.” To accomplish this goal, the physicians agreed to provide medical professional services both in the Hospital and at the prison facilities as needed by the inmate patients and to appoint the Hospital as their billing agent. In return, the Hospital agreed to transfer the CDC payments, less the Hospital’s fee for billing costs, to the physicians within 30 days of receipt.

It was mutually understood and agreed that the physicians were performing as independent contractors. The Hospital could not control or direct the physicians except that the physicians agreed to perform their “work and functions at all times in strict accordance with currently approved methods and practice in [their] field of medicine and in accordance with the Bylaws of the Medical Staff.” The sole interest of the Hospital was “to assure that professional services rendered in Hospital shall be performed and rendered in a competent, efficient and satisfactory manner.”

Upon executing the professional services agreements, appellants were listed on the prison emergency on-call lists on an equal and non-preferential rotating basis with the other contracting physicians. However, after approximately three months, appellants noticed that they were no longer receiving inmate referrals. Rather, they had been removed from the on-call lists. In early 1997 appellants confronted respondent Anwar about the removal of their names and demanded that they be placed back on these lists. Nevertheless, appellants were not returned to the prison call schedules.

On October 5, 1999, appellants filed a complaint alleging that their exclusion from the prison emergency on-call lists entitled them to recover damages from the Hospital and Anwar. Thereafter, a first amended complaint was filed.

The first amended complaint alleges causes of action for breach of contract and breach of the implied covenant of good faith and fair dealing against the Hospital. With respect to Anwar, the complaint sets forth causes of action for breach of implied contract, interference with contractual relations, interference with prospective economic advantage, and breach of fiduciary duties.

The Hospital and Anwar each moved for summary judgment. The trial court concluded that the Hospital had met its burden of showing that the causes of action alleged against it had no merit and that appellants had failed to demonstrate the existence of a triable issue of material fact. With respect to the alleged breach of contract, the court found that appellants could not prove that the Hospital failed to perform its obligations under the professional services agreements. Moreover, since the Hospital did not breach an express promise in the contract, it could not breach the implied covenant of good faith and fair dealing. Consequently, summary judgment was granted in favor of the Hospital.

Summary judgment was also granted in Anwar's favor. The court found that all causes of action alleged against Anwar accrued in February 1997 and had a two-year limitations period. Since the action was not filed until October 1999, the court concluded that these causes of action were time barred. The court further held that appellants' cause of action for interference with a contractual relationship had no merit because the activities with which Anwar allegedly interfered were not encompassed by the contracts.

DISCUSSION

1. *Standard of Review.*

A defendant who moves for summary judgment under Code of Civil Procedure section 437c,¹ must either negate a necessary element of the plaintiff's cause of action or establish a complete defense to that cause of action. The moving party must demonstrate that a material question of fact requiring examination by the trial court does not exist under

¹ All statutory references are to the Code of Civil Procedure.

any possible hypothesis within the reasonable purview of the allegations of the complaint. Once the moving defendant has satisfied this obligation, the burden shifts to the plaintiff to produce evidence creating a triable issue of material fact. (§ 437c, subd. (o)(2); *Brantley v. Pisaro* (1996) 42 Cal.App.4th 1591, 1594.)

In evaluating the ruling under section 437c, the appellate court must assume the role of the trial court and reassess the merits of the motion. (*Brantley v. Pisaro, supra*, 42 Cal.App.4th at p. 1601.) In carrying out this function, the court applies the same three-step analysis required of the trial court. The appellate court first identifies the issues framed by the pleadings since it is these allegations to which the motion must respond. Second, the court determines whether the moving party's showing has satisfied its burden of proof and justifies a judgment in movant's favor. When a summary judgment motion prima facie justifies a judgment, the third step is to determine whether the opposition demonstrates the existence of a triable, material fact. (*Id.* at p. 1602.)

2. *The Hospital did not fail to perform its obligations under the contracts.*

In their first amended complaint, appellants allege that the Hospital failed to meet its obligations under the professional services agreements with respect to the allocation of work among the contracting physicians. According to appellants, the Hospital breached these agreements when it permitted appellants to be excluded from providing on-call emergency services and outpatient services for prison inmates. Appellants acknowledge that the Hospital did not have a duty under the terms of the written agreements to allocate the work. Nevertheless, appellants argue that the Hospital breached the contracts "by turning a blind-eye" while Anwar "intentionally manipulated the on-call lists to exclude Appellants from the lucrative prison work."

The fundamental goal of contract interpretation is to give effect to the mutual intent of the parties. (*Foster-Gardner, Inc. v. National Union Fire Ins. Co.* (1998) 18 Cal.4th 857, 868.) If possible, such intent must be inferred solely from the contract's written provisions. (*Ibid.*) In other words, the agreement is the writing itself. (*Sunniland Fruit,*

Inc. v. Verni (1991) 233 Cal.App.3d 892, 898.) Only if the contract is uncertain or ambiguous will extrinsic evidence be admissible to explain the parties' agreement. (*Ibid.*) Thus, intent independent of an unambiguous written instrument cannot be shown by parol evidence. (*Ibid.*) If the contract language is clear and explicit, it governs. (*Foster-Gardner, Inc. v. National Union Fire Ins. Co.*, *supra*, 18 Cal.4th at p. 868.)

Here, appellants admit that the Hospital did not agree to allocate the prison work evenly among the contracting physicians. Rather, the Hospital's only obligation under the professional services agreements is to provide billing services. The appellants do not, and cannot, argue that the agreements are ambiguous. Moreover, appellants do not allege that the Hospital failed to provide billing services as promised. Thus, the Hospital did not breach the written terms of its agreements.

Nevertheless, appellants argue that that there existed an implied term in the professional services agreement that was breached by the Hospital. According to appellants, it was understood that inmate referrals would be on an equal and nonpreferential rotation based on the general on-call emergency room responsibilities under the Hospital bylaws. Such a contract term could be manifested in conduct rather than expressed in words. (*Maglica v. Maglica* (1998) 66 Cal.App.4th 442, 445.) However, in this case the Hospital did not engage in the relied on conduct. As noted above, the Hospital does not schedule the on-call coverage for its emergency room. Rather, the bylaws require doctors on the medical staff to prepare the on-call lists. Thus, there is no basis for implying an obligation on the part of the Hospital to assure an equal division of inmate referrals among the contracting physicians.

In sum, there is neither a written nor an implied contract term that was breached by the Hospital. Appellants' subjective intent or understanding cannot create a contract term that otherwise does not exist. Since the Hospital was not obligated under the contract to equally allocate the inmate referrals, the allegation that it "turned a blind-eye" to a third-party's "hijacking of the work that Appellants had contracted for," cannot support a breach

of contract claim. In opposing the Hospital's motion, appellants raised only disputed legal issues, not facts. Thus, on the record before it, the trial court properly found in favor of the Hospital on the breach of contract cause of action.

3. *The Hospital did not breach the covenant of good faith and fair dealing.*

In every contract there exists an implied covenant that neither party will do anything that will have the effect of destroying or injuring the right of the other party to receive the fruits of that contract. (*Kendall v. Ernest Pestana, Inc.* (1985) 40 Cal.3d 488, 500.) However, it is universally recognized that the purposes and express terms of the contract circumscribe the scope of the conduct prohibited by this implied covenant of good faith and fair dealing. (*Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 373.) Under traditional contract principles, the implied covenant is read into contracts “in order to protect the express covenants or promises of the contract, not to protect some general public policy interest not directly tied to the contract's purpose.” (*Ibid.*) Thus, the implied covenant is limited to assuring compliance with the express terms of the contract and cannot be extended to create obligations not contemplated in the contract. (*Racine & Laramie, Ltd. v. Department of Parks and Recreation* (1992) 11 Cal.App.4th 1026, 1032.)

Appellants contend that by turning “a blind-eye” to Anwar's “hijacking” of the work that appellants contracted for, the Hospital breached the implied covenant of good faith and fair dealing. However, as discussed above, appellants cannot show that the Hospital violated a contractual covenant or promise. The Hospital had no obligation to allocate the inmate referrals equally. Thus, the trial court was correct in granting summary judgment on appellants' cause of action for breach of the implied covenant of good faith and fair dealing.

4. *The causes of action alleged against Anwar are time barred.*

The four causes of action directed at Anwar stem from the same conduct. Appellants contend that “in approximately the fall of 1996” Anwar “changed and

manipulated the Emergency Call Lists so that it favored certain of the Contracting Physicians and excluded others, including but not limited to [appellants].” Additionally, appellants allege that “beginning at approximately the same time” Anwar “caused certain of the Contracting Physicians, including [appellants], to be excluded from receiving referrals for Inmates requiring outpatient services.” Based on this conduct, appellants allege causes of action for breach of implied contract, interference with contractual relations, intentional interference with prospective advantage, and breach of fiduciary duties.

The trial court held that the two-year statute of limitations for an “action upon a contract, obligation or liability not founded upon an instrument of writing” applied to the causes of action against Anwar. (§ 339, subd. 1.) The parties do not dispute this finding. Moreover, it is correct. (*Davies v. Krasna* (1975) 14 Cal.3d 502, 516; *Knoell v. Petrovich* (1999) 76 Cal.App.4th 164, 168.)

At issue is when the limitations period began to run. The complaint alleged that appellants were removed from the on-call lists in the fall of 1996. Further, all appellants testified that by February 1997 they discovered that they were no longer receiving referrals. At that time appellants confronted Anwar and demanded to be put back on the list.

The trial court concluded that the causes of action against Anwar accrued by February 1997. However, appellants waited until October 1999, over two years later, to file their complaint. Consequently, the court held that these causes of action were barred by the statute of limitations.

Appellants argue that, while the tortious conduct may have commenced by early 1997, it continued during the term of the professional services agreements. According to appellants, Anwar engaged in a continuous course of wrongful conduct and thus the causes of action did not immediately accrue. Alternatively, appellants contend that each time they were excluded from the on-call rotation, a new cause of action accrued.

However, the conduct at issue was the removal of appellants' names from the on-call list in the fall of 1996. The causes of action against Anwar are based on this act. As discussed above, appellants were not entitled to inmate referrals under the professional services agreements. Accordingly, Anwar's failure to reinstate appellants did not constitute a series of separate wrongs.

Where an injury, although slight, is sustained due to the wrongful act of another, the statute of limitations attaches at once. The running of the statute is not postponed by the fact that the actual or substantial damages do not occur until a later date. (*Bennett v. Shahhal* (1999) 75 Cal.App.4th 384, 391.) Thus, the fact that appellants continued to suffer ill effects from the original act did not transform it into a continuing violation. (*Ward v. Caulk* (9th Cir. 1981) 650 F.2d 1144, 1147.) Therefore, the trial court correctly determined that the limitations period commenced no later than February 1997. Consequently, summary judgment was properly granted in Anwar's favor on the ground that the causes of action against him were time barred.

DISPOSITION

The judgments are affirmed. Costs on appeal are awarded to respondents.

Levy, J.

WE CONCUR:

Buckley, Acting P.J.

Wiseman, J.