[Cite as *Benefit Options Agency, Inc. v. Med. Mut. of Ohio*, 2010-Ohio-4495.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94245

BENEFIT OPTIONS AGENCY, INC., ET AL.

PLAINTIFFS-APPELLANTS

vs.

MEDICAL MUTUAL OF OHIO, ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Common Pleas Court
Case No. CV-684793

BEFORE: Sweeney, J., Kilbane, P.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: September 23, 2010

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JAMES J. SWEENEY, J.:

{¶ 1} Plaintiffs-appellants, Benefit Options Agency, Inc., and Mark Sharnsky ("plaintiffs"), appeal the trial court's granting summary judgment to defendants-appellees, Medical Mutual of Ohio ("Medical Mutual") and Neace & Associates Insurance Agency of Ohio, Inc. ("Neace") (collectively "defendants"), in this breach of contract case. After reviewing the facts of the case and pertinent law, we affirm.

{¶ 2} In 2005, Neace contracted with the city of Chillicothe, Ohio ("the City"), to act as the City's insurance agent for employee benefits. Effective January 1, 2008, the City changed its group health insurance company to Medical Mutual. The agreement with Medical Mutual listed Neace as the City's agent of record and noted that "[t]he first contract year is the period between Jan 1 and Dec 31," of 2008. As a result of placing the City's health insurance plan with Medical Mutual, Neace received a lump sum of $50,000 plus $8,255 monthly in commissions.

{¶ 3} In June 2008, the City terminated its contract with Neace and notified Medical Mutual in writing that plaintiffs were the City's new "Agent of Record effective June 2, 2008."

{¶ 4} The relationship between Medical Mutual and an insurance agent, or "Producer," is governed by an Ohio Insurance Producer Agreement ("the global Agreement"). Medical Mutual had a global Agreement with Neace and separate, identical global Agreements with plaintiffs. Under the heading "Commissions," Section 1.F of the global Agreement states as follows:

{¶ 5} "[Medical Mutual] will honor a Producer of Record letter from the group designating the Producer to receive commissions for the group if that Producer has been appointed by [Medical Mutual], or if [Medical Mutual] agrees to prospectively appoint the Producer. Producer of Record changes will not be accepted on any new group during the first twelve (12) months following the group's effective date of coverage. After the initial twelve-month (12) period, Producer of Record changes will be accepted, and commissions shall be paid to the Producer pursuant to Producer of Record designation."[1]

{¶ 6} On June 24, 2008, Medical Mutual sent letters to plaintiffs and the City stating that Medical Mutual received the City's request to change its insurance agent of record to plaintiffs, and that, "[t]his change will occur effective January 1, 2009, upon receipt of your single case agreement specifying applicable commission."[2] Per the City's request, plaintiffs began, and Neace stopped, servicing the City's account with Medical Mutual in June 2008. However, per section 1.F of the global Agreement, Medical Mutual continued to pay Neace the $8,255 monthly commission through December of 2008. Plaintiffs were not paid for servicing the City's account from June through December 2008.

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[1]The "group" in this case is the city of Chillicothe, and the "Producer" refers to the insurance agent, i.e., Neace or plaintiffs.

[2]This quote is in the letters to both plaintiffs. In the letter to the City, however, the wording is slightly different: "The above named producer [Mark Sharnsky] will be eligible for monthly commissions starting from the effective date of change. This change will occur effective January 1, 2009."

{¶ 7} On February 13, 2009, plaintiffs filed suit against defendants, alleging breach of contract and unjust enrichment based on the unpaid commissions. On November 3, 2009, the court granted summary judgment to both defendants. In its journal entry, the court stated in pertinent part:

{¶ 8} "Plaintiffs were specifically informed by Medical Mutual in June 2008 that they would not be compensated for services rendered in 2008. Nor can plaintiffs argue they are treated unjustly here. They are simply held to the bargain that they reached with Medical Mutual. The Producer Agreements unambiguously provide that the originating Producer of Record is entitled to commissions for the first twelve (12) months after a new group's effective date."

{¶ 9} The court further reasoned that plaintiffs' unjust enrichment claim failed, stating the following:

{¶ 10} "First, an equitable action for unjust enrichment will not lie when the subject of the claim is governed by an express contract. Second, there is no evidence that plaintiffs conferred a benefit upon Neace. Medical Mutual conferred the benefit upon Neace by paying the commission."

{¶ 11} Plaintiffs appeal, raising two assignments of error for our review, which we will address together.

{¶ 12} "I. The trial court committed prejudicial error in granting summary judgment dismissing plaintiffs' claim against defendant Medical Mutual of Ohio.

{¶ 13} "II. The trial court committed prejudicial error in granting summary judgment dismissing plaintiffs' claim against defendant Neace * * *."

{¶ 14} Appellate review of summary judgment is de novo. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105, 671 N.E.2d 241. The Ohio Supreme Court stated the appropriate test in *Zivich v. Mentor Soccer Club* (1998), 82 Ohio St.3d 367, 369-370, 696 N.E.2d 201, as follows:

{¶ 15} "Pursuant to Civ.R. 56, summary judgment is appropriate when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have the evidence construed most strongly in his favor. *Horton v. Harwick Chem. Corp.* (1995), 73 Ohio St.3d 679, 653 N.E.2d 1196, paragraph three of the syllabus. The party moving for summary judgment bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264, 273-274."

{¶ 16} Additionally, the "construction of a written contract is a matter of law" that appellate courts review de novo. *Saunders v. Mortensen*, 101 Ohio St.3d 86, 2004-Ohio-24, 801 N.E.2d 452, ¶9. Ohio courts "presume that the intent of the parties to a contract is within the language used in the written instrument. If [courts] are able to determine the intent of the parties from the plain language of the agreement, then there is no need to interpret the contract." Id.

{¶ 17} In the instant case, plaintiffs argue that "[i]t is undisputed that Benefit Options Agency, not Neace * * * was the recognized agent of record for the City

of Chillicothe from June 2008 through the end of the year." However, there is no evidence in the record to support this contention. The plain language of Section 1.F of the global Agreement supports the opposite conclusion — that Neace remained the agent of record — in that agent of record changes would not be accepted during the first 12 months of a new group's coverage.

{¶ 18} Additionally, should this contractual language be deemed ambiguous, other evidence in the record supports the trial court's conclusion that Medical Mutual did not breach its contracts with plaintiffs. First, the June 24, 2008 letters from Medical Mutual to plaintiffs and the City expressly state that the agent change will be effective January 1, 2009.

{¶ 19} Second, Sharnsky's deposition testimony reflects that he knew that he and Benefit would not be paid a commission on the City's account until January 1, 2009. Sharnsky testified that in June 2008, he had lunch with three Medical Mutual representatives and discussed taking over the City's account. The discussion included acknowledgment that Medical Mutual was bound by Section 1.F of the global Agreement to pay commission to Neace for the remainder of the year. Nonetheless, plaintiffs agreed to service the City's healthcare plan with Medical Mutual starting in June 2008, knowing that they would receive no commission until 2009.

{¶ 20} Third, Medical Mutual's representative testified in deposition that Neace — and not plaintiffs — was the agent of record eligible for commission on the City's account for the entire year of 2008. Medical Mutual's representative

further testified that insurance agents put a lot of time and effort into bringing in new business, and Medical Mutual's policy "guarantees a minimum 12-month commission for bringing business to the organization. It's earned as of the effective date, it's administratively paid out over 12 months, but we view commissions as earned when it's sold and it's paid out over 12 months for that minimum commission commitment when a new case is brought on for that effort and work performed."

{¶ 21} Finally, Medical Mutual and Neace executed a Single Case Agent Agreement that specifically governed only the City's account and listed Neace as the agent of record from January 1 through December 31, 2008. It states in pertinent part as follows: "On the first renewal date of this Agreement, or on any anniversary date thereafter, the group may, at its own discretion, execute an Agent of Record Letter designating a new Agent to receive commissions for the group." This provision is consistent with Section 1.F of the global Agreement. There is no evidence of such an agreement between Medical Mutual and plaintiffs regarding the agent of record for the City's account.

{¶ 22} Accordingly, there are no genuine issues of material fact regarding the contract and defendants are entitled to judgment as a matter of law on plaintiffs' breach of contract claim.

{¶ 23} We now turn to plaintiffs' unjust enrichment claim. To succeed, plaintiffs must show that: (1) they conferred a benefit on defendants; (2) defendants knew of the benefit; and (3) defendants' retention of the benefit

without payment would be unjust under the circumstances. *Johnson v. Microsoft Corp*., 106 Ohio St.3d 278, 2005-Ohio-4985, 834 N.E.2d 791, ¶20. In other words, for an unjust enrichment claim to arise, defendants must have unfairly benefitted from plaintiffs' services.

{¶ 24} This Court has repeatedly held that when "there is a valid, enforceable contract * * * the doctrine of unjust enrichment is not applicable." *F&L Center Co., Ltd. v. H. Goodman, Inc*., Cuyahoga App. No. 83503, 2004-Ohio-5856, ¶16. See, also, *Hunting Valley Builders, Inc. v. Women's Fed. Sav. Bank* (Aug. 23, 1990), Cuyahoga App. No. 57439 (holding that "courts of this State have refused to find unjust enrichment in cases where the parties have acted pursuant to the terms of a contract, and where there has been no showing of fraud or bad faith").

{¶ 25} More specifically, Ohio courts have held that "unjust enrichment will not lie when the subject matter of that claim is covered by an express contract or a contract implied in fact." *Ryan v. Rival Mfg. Co.* (Dec. 16, 1981), Hamilton App. No. C-810032. The subject matter in *Ryan* was unpaid commissions, and the court affirmed granting summary judgment in favor of the defendants on the unjust enrichment claim because whether the commissions were due was covered under the parties' employment agreement.

{¶ 26} In the instant case, plaintiffs argue that because they did not have a contractual relationship with Neace, their claim for unjust enrichment against Neace should not be barred. However, the lack of contract between plaintiffs

and Neace is immaterial to the legal analysis at hand. It is the relationship between plaintiffs and Medical Mutual; specifically, Section 1.F of the global Agreement that bars recovery of the commissions based on unjust enrichment. Specifically, the global Agreement between plaintiffs and Medical Mutual states that plaintiffs have no right to a commission on a new account of which they are not the agent of record, during the first 12 months of the account's coverage. Plaintiffs agreed to service the City's account with Medical Mutual for seven months, knowing, not only that their work would be uncompensated, but that Neace would continue to receive the commission.

{¶ 27} Accordingly, Assignments of Error I and II are overruled and the trial court's granting summary judgment to defendants is affirmed.

Judgment affirmed.

It is ordered that appellees recover from appellants their costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES J. SWEENEY, JUDGE

MARY EILEEN KILBANE, P.J., and

FRANK D. CELEBREZZE, JR., J., CONCUR