IN THE COURT OF APPEALS OF IOWA

No. 6-306 / 05-0744
Filed June 28, 2006

DR. ALAN BRINKMANN, Individually and on behalf of all other physicians similarly situated,
Plaintiff-Appellant,

vs.

ST. PAUL FIRE & MARINE INSURANCE COMPANY,
Defendant-Appellee.

Appeal from the Iowa District Court for Linn County, L. Vern Robinson, Judge.

The plaintiff appeals from the order granting the defendant's motion for summary judgment. **AFFIRMED.**

Larry D. Helvey, James P. Craig, and Brenda K. Wallrichs of Moyer & Bergman, P.L.C., Cedar Rapids, for appellants.

Bradley S. Gelder, Michael P. Malakoff, and Erin M. Brady of Malakoff, Doyle & Finberg, Pittsburgh, Pennsylvania, for appellants.

Terri L. Combs and Chad R. Anderson of Faegre & Benson, L.L.P., Des Moines, for appellee.

Neil J. Dilloff and Cheryl Zak Lardieri of D.L.A. Piper, Rudnick, Gray, Cary U.S., L.L.P., Baltimore, Maryland, for appellee.

Stephen J. Holtman, Cedar Rapids, for appellee.

Heard by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

VOGEL, P.J.

The plaintiff in this class action suit appeals from the district court order granting the defendant's motion for summary judgment. We affirm.

Background Facts and Proceedings.

On December 12, 2001, St. Paul Fire & Marine Insurance Company (St. Paul), notified the Iowa Insurance Commissioner that it was seeking to sell its medical malpractice business and that it would no longer be writing such policies. Accordingly, St. Paul informed its insureds that it would not renew their policies. Dr. Alan Brinkmann, who had purchased medical malpractice insurance through St. Paul for over twenty years and had purchased his final policy on August 1, 2001, was informed that his policy would expire on August 1, 2002.

The policy of Brinkmann, representative of the class of plaintiffs, was a "claims made" policy whereby claims that accrued and were reported to St. Paul during the policy period were covered. However claims that accrued during the policy period but that were reported after the policy expired were not covered. To protect against this situation, St. Paul gave Brinkmann the option to purchase additional coverage, termed an "Optional Reporting Endorsement" or "tail coverage," which extends the time in which to report claims beyond the term of the policy. For no additional premium, St. Paul's policy provided "Death, Disability and Retirement" (DDR) coverage if the insured (a) died, (b) became disabled, or (c) retired during the policy period.

The annual premium charged by St. Paul included a separate component funding its tail coverage. Of this premium component, a portion funded coverage during the current policy year, while a portion pre-funded coverage to be extended in future policy years. This method, recommended by the National Association of Insurance Commissioners (NAIC) and known as "level funding," calls for an insurer to charge premiums higher than those necessary to fund DDR coverage for only the current policy year.[1] NAIC also recommends that the additional premiums, which pre-fund future DDR coverage, be held in reserve and classified as an "unearned" premium reserve.

In 2001, St. Paul held $47,670,628 in its extended loss and expense reserve. Of that portion, $2,406,370 was held to pre-fund DDR coverage for Iowa policy holders. When St. Paul decided to exit the medical malpractice field, this of course reduced both its liability to provide future DDR coverage and the reserves necessary to fund DDR coverage in future years. St. Paul's non-renewals, according to Brinkmann, "generated a huge windfall profit for itself."

On November 20, 2003, Dr. Alan Brinkmann[2], as representative of a class of similarly situated Iowa physicians, filed a class action petition against St. Paul. The petition alleged each class member had purchased medical malpractice insurance policies through St. Paul. Brinkmann did not claim breach of contract but rather that the company was unjustly enriched when it did not renew its medical malpractice policies as they expired, and did not refund the portion of the premium attributable to pre-funded DDR coverage. During discovery, Brinkmann gathered information that following St. Paul's non-renewals, its extended loss and reserve report decreased by nearly $33,000,000, which St. Paul admitted

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[1] There is no evidence that this level funding internal accounting procedure was in any way made an explicit part of the policy, nor that it was relied upon or even known by Dr. Brinkmann when he purchased the policy.

[2] Dr. Donald Linder originally was a named plaintiff, but was subsequently dismissed because he had voluntarily cancelled his policy in September 2001.

was in part attributable to its decision to discontinue renewing medical malpractice policies.

The case was removed to federal court and later remanded to the Iowa District Court, after it was determined the jurisdictional threshold was uncertain. On October 6, 2004, St. Paul filed a motion to dismiss or, in the alternative, a motion for summary judgment. It argued, in pertinent part that, lacking any basis on which to bring a breach of contract claim, Brinkmann impermissibly attempted to circumvent the clear and unambiguous contractual language by bringing an unjust enrichment claim. The court granted the motion for summary judgment, concluding the unjust enrichment claim is barred by the existence of the parties' express contract. Brinkmann appeals from this ruling.

Scope and Standards of Review.

We review a ruling on a motion for summary judgment for correction of errors at law. Iowa R. App. P. 6.4. Summary judgment is appropriate under Iowa Rule of Civil Procedure 1.981 only when no genuine issue of material fact exists and the moving party is entitled to a judgment as a matter of law. *City of West Branch v. Miller,* 546 N.W.2d 598, 600 (Iowa 1996). We examine the record before the district court to decide whether a genuine issue of material fact exists and whether the court correctly applied the law. *Gerst v. Marshall,* 549 N.W.2d 810, 811-12 (Iowa 1996). In doing so, we view the facts in the light most favorable to the party opposing the motion for summary judgment. *Id.*

Unjust Enrichment.

The court granted summary judgment essentially on two separate, yet related, grounds. First, it held that the parties' express contract governs this dispute and bars the unjust enrichment claim as a matter of law. *Chariton Feed & Grain, Inc. v. Harder,* 369 N.W.2d 777, 791 (Iowa 1985). Second, it ruled that the express language of the policy plainly made Brinkmann ineligible for DDR coverage. On appeal, Brinkmann contends the policy does not bar the unjust enrichment claim. He posits that the policy does not cover the specific instance of the disposition of "unearned" premiums upon across-the-board non-renewal by St. Paul, and is thus subject to an unjust enrichment claim.

The doctrine of unjust enrichment is based on the principle that a party should not be unjustly enriched at the expense of another or receive property or benefits without paying just compensation. *Credit Bureau Enters., Inc. v. Pelo,* 608 N.W.2d 20, 25 (Iowa 2000). Although it is referred to as a quasi-contract theory, the doctrine of unjust enrichment is equitable, not contractual, in nature. *See Iowa Waste Sys., Inc. v. Buchanan County,* 617 N.W.2d 23, 29 (Iowa Ct. App. 2000). The doctrine of unjust enrichment serves as a ground for the remedy of restitution. *See Smith v. Harrison,* 325 N.W.2d 92, 94 (Iowa 1982). It has application in cases arising from contracts, torts or other predicate wrongs, and may serve as an independent ground for restitution in the absence of mistake, wrongdoing, or breach of contract. *Id.*

One asserting a claim of unjust enrichment must establish three propositions: (1) defendant was enriched by the receipt of a benefit, (2) the enrichment was at the expense of the plaintiff, and (3) it is unjust to allow the defendant to retain the benefit under the circumstances. *State v. Unisys,* 637 N.W.2d 142, 154-55 (Iowa 2001). However, a plaintiff cannot recover on an implied contract or unjust enrichment when the alleged damages arise from a matter covered by an express written contract. *Chariton Feed & Grain,* 369 N.W.2d at 791. Thus, generally the existence of a contract precludes the application of the doctrine of unjust enrichment, *Smith v. Harrison,* 325 N.W.2d 92, 94 (Iowa 1982) (citing 66 Am. Jur. 2d *Restitution and Implied Contracts* § 6, at 949 (1973)), but there may be an implied contract on a point not covered by an express one. *Olberding Constr. Co. v. Ruden*, 243 N.W.2d 872, 875 (Iowa 1976).

The insurance policy in question here provides both for cancellation and non-renewal of a contract. By the terms of the policy, a cancellation occurs when either St. Paul or the insured terminates the policy before the end of the policy period. Conversely, a non-renewal occurs when either party chooses to not renew at the end of the policy period. In this case, we are dealing with the non-renewal of the plaintiffs' medical malpractice policies.

As noted previously, the policy clearly provides St. Paul the prerogative of non-renewal, an option it chose to exercise. Under the policy, an insured is only entitled to tail coverage with no additional premium upon the occurrence of one of three conditions: death, total disability, or retirement within the policy year. Admittedly, Brinkmann satisfied none of those conditions. Nor does he dispute St. Paul's right of non-renewal. In examining an insurance policy, we will not "write a new contract of insurance between the parties" where there is no ambiguity. *Stover v. State Farm Mutual Ins. Co.*, 189 N.W.2d 588, 591 (Iowa 1971). We avoid straining the words and phrases of the policy "to impose liability that was not intended and was not purchased." *State Farm Auto Insurance Co. v. Malcolm*, 259 N.W.2d 833, 835 (Iowa 1977).

While the policy does address the disposition of unearned premiums upon cancellation, it does not expressly detail the treatment of the premiums on the event of non-renewal. As the district court noted, Brinkmann argues the same approach requiring refund upon cancellation by one party should be applied to the non-renewal situation. Like the district court, we disagree. A non-renewal necessarily occurs at the end of the policy period, and the policy clearly stated St. Paul retained the right to non-renew the policy. Thus, the insured has received all the coverage for which he bargained. In other words, the insured contracted for a certain period of coverage and received full coverage for that term. We further agree with St. Paul's position because, regardless of whether St. Paul's internal accounting terminology deemed something "unearned," the contract was fully performed, provided Brinkmann with full risk coverage, including the potential for "tail" coverage, had a triggering event occurred during the term of the policy. It expired and coverage ended, according to its agreed upon terms. Therefore, there are no "unearned" premiums in the non-renewal context. Finally, we find significant Brinkmann's position that had St. Paul simply decided to not renew his policy alone, he would have no cause of action. He is unable to provide any authority for the proposition that a class of plaintiffs may maintain a cause of action that would not have been viable had it been brought by its individual members.

Conclusion.

It appears to us Brinkmann is simply seeking a benefit, or a guaranteed refund of payments, that clearly is outside of the policy, unless it is judicially rewritten. We decline to supply additional terms. Accordingly, because we agree with the district court that an integrated insurance policy governing the full breadth of the parties' relationship exists, there can be no recovery under a claim of unjust enrichment. *See Bethea v. St. Paul Guardian Ins. Co.*, 376 F.3d 399, 408 (5^{th} Cir. 2004) (concluding Louisiana law barred plaintiffs' unjust enrichment claim after St. Paul chose to exit the medical malpractice business). The order granting summary judgment to St. Paul is therefore affirmed.

AFFIRMED.