

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT**

Founders Pavilion, Inc. v. Pavilion Operations, LLC

2021 NY Slip Op 01657 (N.Y. Ct. App. 2021) · No. 1009 CA 20-00498 · Decided March 19, 2021

SUMMARY

The New York Appellate Division, Fourth Department, held that a settlement payment arising from Medicaid rate appeals belonged entirely to the plaintiff under the parties' asset purchase agreement. The court also held that issues concerning liability for Medicaid overpayments identified in an audit presented a question of fact because the agreement's provision concerning liability resulting from a party's acts or omissions was ambiguous. The order and judgment was modified to deny summary judgment concerning the audit liability and the release and allocation of escrow funds, and was otherwise affirmed.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Carni, J.P.; Lindley, J.; Curran, J.; Winslow, J.; DeJoseph, J.
JURISDICTION	New York
DECIDED	March 19, 2021
DOCKET	1009 CA 20-00498
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order and judgment that granted in part plaintiff's motion for summary judgment and denied defendant's cross motion for summary judgment in an action involving ownership of Medicaid settlement proceeds and liability for Medicaid audit overpayments.
STANDARD OF REVIEW	De novo review of summary judgment; the movant must establish that the construction it favors is the only construction that can fairly be placed on the contract, and summary judgment is unavailable where a material factual issue remains.
PRECEDENTIAL VALUE	published appellate opinion
PARTIES	Pavilion Operations, LLC v. Founders Pavilion, Inc.

TOPICS

contract interpretation

contracts

commercial litigation

health law

appellate procedure

PRACTICE AREAS

contracts

health law

commercial litigation

appellate procedure

QUESTIONS PRESENTED

1. Whether the asset purchase agreement and universal Medicaid settlement agreement unambiguously entitled plaintiff to the entire settlement amount allocated to the facility.
2. Whether summary judgment was proper on the parties' respective liability for the amount owed under the OMIG audit and on release and allocation of the escrow funds.
3. Whether the asset purchase agreement's provision concerning overpayments caused by a party's acts or omissions barred defendant's claim that plaintiff was liable for the entire audit amount.

HOLDINGS

1. The universal settlement agreement and asset purchase agreement unambiguously entitled Founders Pavilion to the entire amount received by the facility under the Medicaid settlement because the proceeds arose from pre-sale rate appeals and services rendered while plaintiff owned the facility.
2. Summary judgment was improper on the parties' liability for the OMIG audit amount and on release and allocation of the escrow funds because the agreement was ambiguous as to whether plaintiff's pre-sale cost-report submissions constituted acts or omissions causing the overpayments, and the parties' extrinsic evidence did not establish either side's construction as the only reasonable one.

KEY QUOTATIONS

"[A] written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms" ([*1])

"there is a question of fact with respect to whether the liability for such overpayments nevertheless resulted from plaintiff's 'acts or omissions,' thus rendering plaintiff liable for the entire audit amount" ([*3])

FACTUAL BACKGROUND

Founders Pavilion sold a skilled nursing facility to Pavilion Operations under an asset purchase agreement allocating assets, liabilities, and responsibility for overpayments or audit liabilities. The agreement treated certain post-sale Medicaid-rate-appeal proceeds arising from pre-sale services as excluded assets retained by Founders Pavilion. A later state-wide Medicaid settlement allocated more than \$644,000 to the facility, while an Office of the Medicaid Inspector General audit found approximately \$165,000 in overpayments attributable to services provided during both parties' periods of operation. Founders Pavilion had placed \$1 million of the purchase price in escrow pending resolution of the audit.

PROCEDURAL HISTORY

Founders Pavilion commenced an action seeking declaratory relief, damages for breach of contract, and damages for breach of the implied duty of good faith and fair dealing. Supreme Court, Steuben County, granted plaintiff summary judgment determining that plaintiff was entitled to the Medicaid settlement proceeds and related relief, and denied defendant's cross motion. The Appellate Division modified the order and judgment by denying summary judgment on liability for the OMIG audit amount and vacating the declaration concerning release and allocation of escrow funds, and otherwise affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The order and judgment was modified to deny plaintiff's summary judgment motion on liability for the OMIG audit amount and release and allocation of the escrow funds, and to vacate the declaration concerning release and allocation of the escrow funds. The matter remains subject to resolution of the factual issue concerning responsibility for the audit overpayments.

CASES CITED

- Auburn Custom Millwork, Inc. v Schmidt & Schmidt, Inc., 148 AD3d 1527 [4th Dept 2017]
- Skanska USA Bldg. Inc. v Atlantic Yards B2 Owner, LLC, 31 NY3d 1002 [2018], rearg denied 31 NY3d 1141 [2018]
- Tomhannock, LLC v Roustabout Resources, LLC, 33 NY3d 1080 [2019]
- Maven Tech., LLC v Vasile, 147 AD3d 1377 [4th Dept 2017]
- Ellington v EMI Music, Inc., 24 NY3d 239, 244 [2014]
- Matter of Shore Winds, LLC v Zucker, 179 AD3d 1208, 1210 [3d Dept 2020], lv denied 35 NY3d 914 [2020]
- Ames v County of Monroe, 162 AD3d 1724, 1726-1727 [4th Dept 2018]
- Romilly v RMF Prods., LLC, 106 AD3d 1465, 1466 [4th Dept 2013]
- Morales v Asarese Matters Community Ctr. [appeal No. 2], 103 AD3d 1262, 1264 [4th Dept 2013], lv dismissed 21 NY3d 1033 [2013]
- Kibler v Gillard Constr., Inc., 53 AD3d 1040, 1042 [4th Dept 2008]