UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

United States v. Applied Pharmacy Consultants, Inc., and Charles Shuster

Applied Pharmacy · No. No. 97-4115WA · Decided July 9, 1999

SUMMARY

The United States sought to recover Medicare payments allegedly exceeding the value of ostomy devices supplied by Applied Pharmacy Consultants, Inc. After the jury rejected the False Claims Act claim, the district court awarded the government $242,622 on an unjust-enrichment theory. The Eighth Circuit held that the existence of a general Medicare-provider contract did not bar unjust-enrichment recovery under these circumstances and affirmed the judgment against Applied and Charles Shuster.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	Richard S. Arnold; Floyd R. Gibson; Hansen
JURISDICTION	Federal
DECIDED	July 9, 1999
DOCKET	No. 97-4115WA
DISPOSITION	affirmed
PROCEDURAL POSTURE	The United States obtained a $242,622 unjust-enrichment judgment after a jury rejected its Civil False Claims Act claim. Applied Pharmacy and Charles Shuster appealed, arguing that the existence of an express contract barred unjust-enrichment recovery and challenging the factual findings and the judgment against Shuster.
STANDARD OF REVIEW	The court reviewed the district court's factual findings for clear error. The legal question concerning the availability of unjust enrichment in the presence of an express contract was reviewed as a matter of law.
PRECEDENTIAL VALUE	Published opinion of the United States Court of Appeals for the Eighth Circuit.
PARTIES	Applied Pharmacy Consultants, Inc., Charles Shuster v. United States of America

TOPICS

unjust enrichment | restitution | contracts | standard of review | appellate procedure

PRACTICE AREAS

contracts | restitution | health law | federal spending | appellate procedure

QUESTIONS PRESENTED

1. Whether the existence of an express contract between Applied Pharmacy and the United States categorically barred recovery under a theory of unjust enrichment.
2. What law governed the interpretation and consequences of the contract and the United States' rights under the nationwide Medicare program.
3. Whether the district court clearly erred in finding that Applied supplied less expensive products than those billed and that the resulting excess payment was $242,622.
4. Whether the appellate court should address the challenge to the judgment against Charles Shuster when that argument was raised for the first time in the appellants' reply brief.

HOLDINGS

1. An express contract does not categorically bar recovery under unjust enrichment. The bar applies when unjust-enrichment recovery would be inconsistent with the contract or would allow recovery of something more or different from what the contract provides; it does not apply where the reason for the rule is absent, including where the contract claim has been abandoned and the unjust-enrichment recovery is substantively equivalent to the contract recovery.
2. Federal law governs the interpretation and consequences of the contract between the United States and Applied and the determination of the United States' rights under the nationwide Medicare program, with Arkansas common law supplying the rule of decision where appropriate.
3. The district court did not clearly err in finding that Applied supplied products different from those billed and that the resulting excess payment was $242,000, resulting in a $242,622 judgment.
4. The court declined to address the challenge to the judgment against Shuster because the argument was not raised until the appellants' reply brief.

KEY QUOTATIONS

> *"The reason for the rule that someone with an express contract is not allowed to proceed on an unjust-enrichment theory, is that such a person has no need of such a proceeding, and, moreover, that such a person should not be allowed by means of such a proceeding to recover anything more or different from what the contract provides for."* (at 8-9)

> *"Here, that reason does not apply, and therefore the rule should not apply."* (at 8-9)

FACTUAL BACKGROUND

Applied Pharmacy was a qualified Medicare provider that supplied durable medical equipment, including ostomy products, to Medicare beneficiaries and billed Medicare for reimbursement. The United States alleged, and the district court found, that Applied supplied less expensive skin-barrier products while billing Medicare under codes for more expensive face-plate products. Medicare paid approximately $242,000 more than the value of the products actually provided.

PROCEDURAL HISTORY

The United States sued Applied Pharmacy and Shuster for Civil False Claims Act violations, breach of contract, payment by mistake of fact, and unjust enrichment based on allegedly incorrect Medicare billing. Before trial, the government voluntarily dismissed the breach-of-contract and payment-by-mistake claims. The jury found for the defendants on the False Claims Act claim, while the parties agreed that the district court would decide the unjust-enrichment claim. The district court found that Applied had supplied less expensive products while billing Medicare for more expensive products and entered judgment for $242,622 against Applied and Shuster jointly and severally.

DISPOSITION

affirmed

CASES CITED

- United States v. Kimbell Foods, Inc., 440 U.S. 715, 726 (1979)
- Donham v. United States, 536 F.2d 765, 769 (8th Cir. 1976), aff'd sub nom. Stencil Aero Engineering Corp. v. United States, 431 U.S. 666 (1977)
- Kamen v. Kemper Financial Services, Inc., 500 U.S. 90, 97-98 (1991)
- Klein v. Arkoma Prod. Co., 73 F.3d 779, 785-86 (8th Cir.), cert. denied, 519 U.S. 816 (1996)
- Friends of Children, Inc. v. Marcus, 46 Ark. App. 57, 61-62, 876 S.W.2d 603, 605-06 (1994)
- Lowell Perkins Agency v. Jacobs, 250 Ark. 952, 469 S.W.2d 89 (1971)
- Maumelle Co. v. Eskola, 315 Ark. 25, 865 S.W.2d 272 (1993)
- Frigillana v. Frigillana, 266 Ark. 296, 584 S.W.2d 30 (1979)
- Moeller v. Theis Realty, Inc., 13 Ark. App. 266, 268-69, 683 S.W.2d 239, 240 (1985)
- Jackson v. Jones, 22 Ark. 158, 162-63 (1860)