At a term of Supreme Court of the State of New York held in and for the County of Oneida at the Oneida County Courthouse, 200 Elizabeth Street, Utica, New York on the 30th day of July, 2020.

PRESENT: HON. BERNADETTE T. CLARK, J.S.C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONEIDA

ST. ELIZABETH MEDICAL CENTER,

Plaintiff,

Vs.

DECISION AND ORDER
Index No.: EFCA2019-001166
RJI No.: 32-20-0165

CLIFFORD B. SOULTS, MD
COMPUTERSHARE TRUST COMPANY, N.A.,

Defendants.

APPEARANCES:

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Clark, J.

Procedural History

Before the Court is a Motion for Summary Judgment filed by Plaintiff, St. Elizabeth Hospital Medical Center (hereinafter, SEMC) and a Cross-Motion for Summary Judgment filed by Defendant, Clifford B. Soults, MD (hereinafter, Dr. Soults). Considered on the Motion for Summary Judgment by Plaintiff were an Attorney Affirmation; Memorandum of Law in Support of Motion, filed on February 26, 2020; Defendant, Dr. Soults Notice of Cross-Motion for Summary Judgment and Affirmation filed on May 27, 2020; Memorandum of Law in Opposition to Cross-Motion and in further support of Motion by Plaintiff's Attorney, filed on July 23, 2020; and Memorandum of Law in Reply by Defendants Attorney, filed on July 29, 2020. Both parties in this action sought a Declaratory Judgment to the demutualization proceeds from MLMIC. Oral argument was held on July 30, 2020 and the Court reserved decision.

Facts

This action arose from a dispute over who is entitled to specific, identifiable funds currently being held in escrow by Defendant, Computershare Trust Company (hereinafter, Computershare). The escrowed funds are the proceeds of the demutualization of Medical Liability Mutual Insurance Company (hereinafter, MLMIC). Dr. Soults was employed by SEMC and executed an employment contract. Pursuant to his employment contract SEMC was required to provide professional medical liability insurance on an annual basis. There is no dispute that both parties performed under the contract. SEMC chose MLMIC to provide liability insurance and paid the annual premium. Dr. Soults was the insured/policy holder. Pursuant to a written designation made by Dr. Soults, SEMC became the policy administrator. SEMC was the

policy administrator and Dr. Soults became the policy holder, pursuant to the liability policy. There is no dispute that SEMC selected MLMIC as the insurance carrier, negotiated the policies served as the policy administrator and paid all of the insurance premiums.

As a mutual insurance company, MLMIC is organized, maintained and operated as a non-stock corporation for its members who are the policy holders. The declaration pages for the relevant time periods show Dr. Soults is the policyholder as the insured and SEMC as the policy administrator. As the designated policy administrator, pursuant to the policy MLMIC designation form executed by Dr. Soults, SEMC received dividends on this policy when declared by the Board of Directors of MLMIC.

On July 15, 2016 MLMIC's Board of Directors approved a sale to National Indemnity Company. As a result, MLMIC was required by New York State Insurance Law §7307 to file an application with the Department of Financial Services for permission to demutualize and convert to a stock corporation. Thereafter, on June 22, 2018, MLMIC published its Plan of Conversion (hereinafter POC) through a Policyholder Information Statement (hereinafter, PIS). These documents established that the conversion would provide *eligible policy holders or their designees* with cash consideration (See POC, NYSCEF Doc. No. 22) Once the cash amount was paid to the policyholder as its designee the policyholder's membership rights would be extinguished.

On January 14, 2019, DFS issued a Decision Order that: 1) eligible policyholders are entitled to receive the demutualization proceeds; 2) policy administrators who were not designated as a designee could still dispute the policyholders' right to the demutualization proceeds; and 3) dispute resolution mechanisms were in place for that purpose. Dr. Soults did

not sign a MLMIC consent form or an assignment agreement designating SEMC to receive the demutualization proceeds.[1]

Analysis

SEMC pressed *two* distinct theories upon which they are seeking Summary Judgment on their Declaratory Judgment action. The first theory is unjust enrichment and the second is based upon contract law.

With regard to SEMC's claim for unjust enrichment, SEMC argued that a party may recover for unjust enrichment if it pleads and proves that a Defendant was enriched at its expense and that it would be against equity and good conscience to permit the Defendant to retain what is sought to be recovered. SEMC claimed that these elements are satisfied "if Dr. Soults is permitted to obtain the MLMIC demutualization proceeds attributable to a policy that SEMC bought and paid for, Dr. Soults will be enriched at the Medical Center's expense. As a matter of Law, that enrichment would be unjust." Plaintiff's M.O.L., pg. 9.

Second, SEMC, argued that the Court should "construe Dr. Soults employment agreement" according to the objective evidence that the parties would have intended SEMC to receive any demutualization proceeds had the parties considered the issue. SEMC asserted that the Court should "fill in the gap" left because the demutualization was not anticipated at the time the contract was executed. SEMC argued further that Dr. Soults' intent was demonstrated when the hospital received the dividends from MLMIC and that the demutualization proceeds, also a membership right, would have been treated in the same fashion.

[1] During oral argument, Counsel for Plaintiff stated that other physicians' employees /policyholders have executed a designation in favor of SEMC.

First, with regard to the contract theory, while it is true that neither party anticipated the demutualization of MLMIC at the time the contract was executed, the Court is not persuaded that "objective evidence of the parties' intent overwhelmingly supports SEMC's claim that the parties would have intended it to receive the demutualization proceeds." Plaintiff's M.O.L. p. 8.

Dr. Soults, in his Cross-Motion for Summary Judgment, argued that he is the insured/policyholder and as the owner of the policy is entitled to all of the membership rights. In addition, Dr. Soults claimed that New York Insurance Law §7307(e)(3), the language of the policy, §6.3(f) of the POC Order all support his claim that the demutualization proceeds be paid to him as the policyholder. Dr. Soults also argued that the DFS Decision/Order dated January 14, 2019 provided that the *policyholders* are the persons entitled to the demutualization proceeds *unless* the insured has affirmatively designated it to receive the proceeds. Dr. Soults stated that the record revealed that MLMIC had specific forms for the purpose of allowing insureds to designate another entity to receive the demutualization proceeds. It is undisputed that Dr. Soults did not sign or make any such designation or waiver with regard to the demutualization proceeds[2]. In this Court's view, and contrary to SEMC'S argument, the fact that Plaintiff was designated in writing by Dr. Soults to allow SEMC to be the policy administrator, the policy administrator; pay the premiums and use any dividends to offset premium costs, has no bearing on the fact that Dr. Soults is the policyholder entitled to the demutualization proceeds.

The documentary evidence clearly established that the only way for the demutualization proceeds to be paid to the policy administrator is if the policyholder designates in writing that another entity, such as the Policy Administrator, is to receive those now escrowed funds.

[2] The record reveals that Dr. Soults did sign a designation form naming SEMC policy administrator which also entitled them to dividends allowing MVHS to keep any dividends to offset premiums.

According to this record, Dr. Soults was asked by SEMC to sign over a portion of the demutualization proceeds and he has steadfastly refused to do so. This procedure, outlined in the documentary evidence presented here makes it very clear that the policyholder, Dr. Soults, has the *option* of signing over the demutualization proceeds however he is not mandated to do so. In fact, this record demonstrates that SEMC has already approached and received written assignments from several of its physician/employees transferring the demutualization proceeds to SEMC/MVHS. Thus, SEMC was fully aware that the demutualization proceeds belong to the policyholder/physician and that obtaining their written assignment is the only way it can secure these funds, *unless* they demonstrate a right to these proceeds. Moreover, the POC stated that the cash distribution would be made to the policyholder unless he or she "Affirmatively" designated a Policy Administrator to receive such amount on his or her behalf. Such is not the case here. Dr. Soults has refused SEMC's request to designate the hospital to receive the demutualization proceeds.

SEMC urges this Court to disregard the holding in *Maple-Gate Anesthesiologists, PC v. Nasrin,* 182 AD 3d 984 (4th Dept. 2020), because that case only considered a claim for unjust enrichment. However, Dr. Soults urges that the *Maple-Gate* case is not only binding authority on this Court, it was decided on virtually identical facts. Dr. Soults argued that *Maple-Gate* considered the claim of unjust enrichment, as well as the contractual issues including the claim that they were entitled to demutualization proceeds since they were policy administrators and paid the premium for the MLMIC policy. Dr. Soults also responded that there is no factual distinction between the *Maple-Gate* case and the instant case and that it is binding authority on this Court.

Dr. Soults further urged this Court to follow the rationale in *Schooch v. Lake Champlain OB-GYN, PC,* NY Slip OP 03444 (3rd Dept. 2020) because it supports his claim for the demutualization proceeds. In *Schooch,* the Court held that:

> **"[D]efendants designation as policy administrator gave it no greater right to the cash consideration and Plaintiff did not explicitly assign that right to Defendant and declined to do so. (See *Maple-Gate v. Nasrin* , 182 AD 3d 984 (4th Dept. 2020). Although the conversion plan gives a policy administrator the right to object if it believes that it has a legal right to the cash consideration, *the right to object carries no rights in and of itself,* to the consideration and the objector must prove its claimed legal right thereto. Defendant has failed to provide any proof in that regard, as it has not demonstrated that Plaintiff assigned it that right through a designation form or *contractual arrangement* (emphasis added)." *See Id.***

This Court agrees with the decision in *Schooch,* that the objector (here, SEMC) must *prove* its claimed legal right. However, SEMC has failed to demonstrate that Dr. Soults assigned his rights either through the designation form or through a distinct contractual arrangement. SEMC argues that neither *Maple-Gate* nor *Schooch* are determinative in this case. Instead, SEMC urges this Court to use its "gap-filling powers" to look at what the parties "would have intended given the nature of the relationship and given all of the other terms of the employment agreements and what we know about them." See Plaintiff's M.O.L., p. 7. SEMC claimed that the parties would have given these demutualization proceeds to the hospital if they had considered it when the employment contracts were drafted. The only proof offered by SEMC to support this claim was that the physicians assigned their membership right to receive policy dividends in a form required by MLMIC. SEMC argued that the evidence of the parties' intent, that the hospital should receive the proceeds of the demutualization, emanated from the hospital's right to receive all of the dividends. When asked during oral argument whether the doctors were given a form to sign allowing the hospital to obtain the policy dividends, Counsel for SEMC replied, "no, there is

nothing in the record about that. I think it just happened and it happened without any objection from anybody, you know to this day." Tr. Oral Argument, 16, lines 2-5.

However, this apparent misstatement by Plaintiff counsel was corrected by counsel for Dr. Soults who responded that:

> **"I want to direct the Court's attention to Plaintiff (SEMC), Exhibit 18 ....it is signed by both the physician, as the insured and the policy administrator on behalf of the hospital and... the physician designates a policy administrator...and it stated that dividends if declared will be credited to the policy and policy administrator on record as of the date declared by the Board of Directors." P 28-29.**

Consequently, this Court is convinced that the mere fact that the hospital *received* dividends is of no moment as it relates to the distribution of demutualization proceeds. Contrary to SEMC's belief, the fact is that SEMC did not have the "right" to receive the dividends, the "right" belonged to Dr. Soults. In the Court's view, the fact that the physician, as the insured and policyholder, is the *member* and as such controls the membership rights is critical. There is no doubt that Dr. Soults, as the member and policyholder, made his own determination to: 1) designate the hospital as policyholder and 2) allowed the hospital to use any dividends to offset the premium cost. The decision maker, in a mutual insurance company, is the individual member. The members have the "right" to vote and receive dividends or assign the dividends to be used to reduce the premium. Likewise, the member has the "right" to decide whether to assign its share of the demutualization proceeds to the policyholder or to decide not to assign their share and keep the proceeds of demutualization. The record here reflects that many members did choose to assign their share of the proceeds to SEMC by signing the designation form when asked by SEMC. A close examination of Plaintiff SEMC's Exhibit 18 is illuminating. First, Exhibit 18 is a MLMIC form entitled:

> **"Policy Administrator – Designation and/or change, provides in relevant party: 1) you are your own Policy Administrator, unless you designate another party; 2) the policy administrator is the agent for all insureds (physicians)…for the paying of premium, requesting changes in the policy…and for receiving dividends and any return premiums when due…; 3) the election of Policy Administrator can only be changed by the insured; 4) dividends, if declared, will be credited to the Policy and Policy Administrator on record as of the date declared by the Board of Directors."**

Exhibit 18 lists the name of the Insured as each specific physician, here Dr. Soults. The hospital is designated as the Policy Administrator and then Exhibit 18 is signed by the physician under "signature of MLMIC Insured" as well as a hospital representative, here SEMC. However, despite Counsel for SEMC's argument, the dividends went to the hospital because the insured/physicians *specifically allowed the dividends to* go to SEMC, that is precisely what their own Exhibit 18 clearly provides. Counsel for SEMC argued that dividends were a membership right and yet were retained by the hospital which demonstrates that *if* the parties considered the possibility of demutualization those proceeds should likewise flow directly to the hospital, here SEMC.

The Court strongly disagrees with this conclusion. Dr. Soults, as a member, had the absolute right to choose and to change the Policy Administrator at all times. More importantly, by executing the MLMIC form, Dr. Soults *allowed* the declared dividends to go to SEMC to off-set the premium cost. However, it is critical to note that the membership "right" to assign the dividends and/or demutualization proceeds was not expressly dealt with in the parties' employment contract. Since the contract was silent, SEMC is urging the Court to "fill in the gaps", directing the demutualization proceeds to SEMC.

There is no question that the dividends were assigned in writing by Dr. Soults to SEMC. In accordance with their Exhibit 18, SEMC received and applied those dividends to premium

costs without any objection. SEMC has acknowledged that their contract with Dr. Soults is silent on the payment of dividends and demutualization proceeds…which begs the question, why is SEMC now objecting to the efficacy of a written assignment for demutualization proceeds executed by Dr. Soults when the *identical* procedure was acceptable to SEMC when the dividends were used to reduce their premium costs.

As a result, in this Court's view, the parties' intent with regard to its' membership rights for the insured is clear. The insured, as a member, had the exclusive authority and control over what rights, if any, it assigned to the Policy Administrator. Simply stated, each insured/physicians is able to decide for herself on himself who obtains the demutualization proceeds. Here, SEMC stated that many physician/insureds signed the MLMIC form assigning the proceeds to SEMC…that was *their* absolute right as a member. By the same logic-the "holdouts", as SEMC referred to those members who did not sign the form, had an absolute right to keep the demutualization proceeds.

Nonetheless, SEMC urges the Court to "fill in the gaps" of the parties' employment contract allowing the proceeds to flow to SEMC. This Court strenuously disagrees with that option. SEMC has failed to prove that it should obtain the demutualization proceeds. The attempt by SEMC to bootstrap the assignment of dividends to the distribution of demutualization proceeds is unavailing and unconvincing. As opined above, MLMIC had distinct procedures and separate forms in place for each of these exact circumstances. Dr. Soults had the absolute authority to exercise his rights under these two separate and distinct circumstances. Clearly, the form first signed by the physician/members *could* have been drafted to allow the physician/members to assign all future membership decisions and "rights" to the policy administrator…however, that was not the case here. Therefore, the Court declines SEMC's

invitation to "fill in the gaps" in the parties' employment contract. In this Court's opinion SEMC's actual request is for the Court to rewrite and transform the parties' employment contract. It is beyond well-settled that courts are powerless to rewrite a contract to make it more reasonable or advantageous to one of the parties. *White v. Continental Casualty Co. 9 N.Y.3d 264, (2007).* Moreover, it is the plain text of the agreement which the Court of Appeals says is the best source of the parties intent *Goldman v. White*, 11 N.Y.3d 173, (2008). Based upon the record here, this Court cannot nor will not take such a drastic measure to rewrite the parties' contract.

This Court also agrees with the rationale and holdings in *Maple-Gate* and *Schooch,* that there is no viable claim for unjust enrichment under these circumstances. The *Maple-Gate* trial Court concluded that "[m]ere enrichment is not enough to warrant liability and an allegation that the Defendants received benefits, standing alone, is insufficient to establish the cause of action. Critical is that the enrichment be unjust." *Maple-Gate Anesthesiologists, P.C. v. Nasrin*, 63 Misc 3d 703 (Sup. Ct. Erie Co. 2019) aff'd *Maple-Gate Anesthesiologists, P.C. v. Nasrin,* 2020 N.Y. App. Div Lexis 2521, 2020 N.Y. Slip Op 02389 (4th Dep't, April 24 2020).

Moreover, the Court reasoned in *Schooch* that there was no unjust enrichment because "neither party here bargained for the demutualization proceeds…neither party actually paid for them, because membership interests in a mutual insurance company are not paid for by policy premiums; such rights are acquired….at no cost but rather as an incident of the structure of mutual insurance policies.," through operation of law and the company's charter and by laws. *Schooch v. Lake Champlain Ob-gyn, P.C.,* NYS 3d (2020) N.Y. Slip Op 03444. (3d Dep't May 20, 2020). Thus, SEMC is not the victim of an unjust enrichment in favor of Dr. Soults. Dr. Soults' decision to keep the demutualization proceeds was and is his and his alone.

Therefore, Plaintiff's Motion for Summary Judgment action seeking a Declaratory Judgment is denied in its entirety. Defendant, Dr. Soults Cross-Motion for Summary Judgment is granted, and it is declared that Defendant, Dr. Soults is entitled to the entire proceeds relative to his MLMIC policy. Computershare is directed to release the escrow funds to Dr. Soults.

Accordingly, it is,

ORDERED, ADJUDGED and DECLARED, that Plaintiff's Motion for Summary Judgment seeking a declaratory judgment is DENIED it its entirety, and it is further

ORDERED, ADJUDGED and DECLARED, that Defendant, Dr. Soults Motion for Summary Judgment seeking a declaratory judgment entitling him to the entire demutualization proceeds relative to his MLMIC policy which are held in escrow by Computershare is hereby GRANTED; and it is further

ORDERED, ADJUDGED and DECLARED, that Defendant Computershare release the demutualization proceeds held in escrow to Dr. Soults.

Dated:
September 2nd, 2020
Utica, New York.

ENTER

Bernadette T. Clark
Hon. Bernadette T. Clark, J.S.C.

jsc