

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Riverside Radiology Associates, Inc.,	:	
Plaintiff-Appellant,	:	
v.	:	
Comprehensive Medical Data Management, LLC,	:	No. 10AP-1026 (C.P.C. No. 06CVH-07-9598)
Defendant-Appellee, Third-Party Plaintiff,	:	(REGULAR CALENDAR)
v.	:	
Riverside Methodist Hospital,	:	
Third-Party Defendant.	:	

D E C I S I O N

Rendered on November 22, 2011

Taft, Stettinius & Hollister LLP, and Michael A. Byers, for appellant.

Reminger Co., L.P.A., Michael Romanello, and Paul N. Garinger; Schottenstein Zox & Dunn Co., LPA, Stephen R. Kleinman, and Thomas A. Pampush, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} This is an appeal by plaintiff-appellant, Riverside Radiology Associates, Inc., from a grant of summary judgment entered by the Franklin County Court of Common

Pleas in favor of defendant-appellee, Comprehensive Medical Data Management, LLC ("CMDM").

{¶2} Appellant is a medical practice comprised of a group of sub-specialized, board-certified radiologists; the group provides diagnostic and interventional services through the interpretation of CT scans, MRI scans, nuclear screening, and other diagnostic modalities. CMDM is a company that provides billing, collection, and information services to radiologists. On July 26, 2006, appellant filed a complaint against CMDM, alleging that the parties had entered into a billing and collection service agreement ("agreement"), and that CMDM breached Section 1.01(b) of the agreement by failing to prepare and transmit billing statements for all professional services rendered by appellant during the period of July 1, 2001 through June 30, 2005. It was further alleged that CMDM breached the agreement by failing to collect upon billing statements rendered on behalf of appellant, and by failing to follow-up with respect to delinquent accounts.

{¶3} On November 24, 2009, CMDM filed a motion for summary judgment. In its accompanying memorandum in support, CMDM argued that it fully complied with (and exceeded) the standard of performance set forth under the agreement. Appellant filed a memorandum in opposition to CMDM's motion for summary judgment. On October 26, 2010, the trial court filed a decision and entry granting CMDM's motion for summary judgment, holding that CMDM did not breach the agreement because it exceeded the standard of performance defined in Section 2 of the agreement.

{¶4} On appeal, appellant sets forth the following single assignment of error for this court's review:

THE TRIAL COURT ERRED IN GRANTING DEFENDANT-APPELLEE'S MOTION FOR SUMMARY JUDGMENT.

{¶5} Pursuant to Civ.R. 56(C), "summary judgment shall be granted when the filings in the action, including depositions and affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." This court's review of a trial court's decision granting summary judgment is de novo. *Bonacorsi v. Wheeling & Lake Erie Ry. Co.*, 95 Ohio St.3d 314, 2002-Ohio-2220, ¶24.

{¶6} On appeal, appellant challenges the trial court's interpretation of the agreement entered into between the parties. At issue are several provisions of the agreement, including Section 1.01 pertaining to "Billing and Collection Services," which states as follows:

(a) CMDM shall establish and maintain a patient billing and collection system for all the professional medical services (the "Professional Services") performed by "Group."

(b) CMDM shall prepare and transmit all statements for the Professional Services within ten (10) days after the date of the procedure or patient's date of discharge, whichever is later, so long as patient name and address information is available to CMDM within that time.

(c) CMDM shall receive and deposit collections and perform all other functions normally handled by a billing, collection and management service including, but not limited to, the services set forth on Exhibit A attached hereto and made a part hereof.

{¶7} Section 1.02(c) states in part: "CMDM is responsible for reporting all monthly billing information, including, but not limited to patients, party billed, amounts billed, Adjusted Cash Receipts (as defined in Section 4.01) detailing the adjustments

made to calculate the Adjusted Cash Receipts, and the computation of compensation due to CMDM."

{¶8} Section 2 of the agreement addresses "standard of performance." Section 2(a) states as follows: "CMDM agrees to use its best efforts to produce a 90% or better collection rate measured by gross fees billed and determined in accordance with the method of calculation as set forth in Exhibit B attached hereto and made a part hereof."

{¶9} One of the documents before the trial court on summary judgment included an exhibit titled "Summary of unbilled procedure detail," covering a 22-month period from August 1, 2003 through May 31, 2005. The summary, prepared by appellant, listed the purported total number of procedures not billed by CMDM during that period as 18,863, resulting in total gross dollars not billed in the amount of \$2,131,686, and total lost revenue of \$767,789.65. In its motion for summary judgment, CMDM argued that, even accepting as true appellant's allegations that it did not bill for those procedures, appellant could still not demonstrate a breach of contract on the basis that CMDM met the 90 percent threshold collection rate for gross charges under Section 2 of the agreement.

{¶10} Appellant argues that the plain and ordinary meaning of Section 1.01 is that CMDM "shall" bill for "all" professional medical services performed by appellant. According to appellant, nothing within the four corners of the agreement established that the parties intended appellant to forego compensation for any of the procedures its physicians performed, much less nearly 19,000 procedures. Appellant contends that CMDM's promise to bill for all procedures under Section 1.01 of the agreement, and its promise to use best efforts to obtain a 90 percent or better collection rate under Section 2, constitute separate and independent covenants.

{¶11} In granting summary judgment in favor of CMDM, the trial court accepted appellant's argument that CMDM failed to bill for 18,863 procedures, but the court agreed with CMDM that its purported failure to bill for those procedures did not constitute a breach of the agreement. Specifically, the court determined that CMDM's performance "is measured by an Adjusted Collection Percentage of 90% or better, not by whether CMDM actually billed for all professional services." The trial court noted that, even after CMDM's failure to bill for \$2,131,686 in professional services is accounted for, CMDM still achieved a 92 percent adjusted collection percentage, which was higher than the 90 percent standard set forth in Section 2.

{¶12} In construing the terms of a contract, courts should "give effect, if possible, to every provision therein contained, and if one construction of a doubtful condition written in a contract would make that condition meaningless, and it is possible to give it another construction that would give it meaning and purpose, then the latter construction must obtain." *Farmers Natl. Bank v. Delaware Ins. Co.* (1911), 83 Ohio St. 309, syllabus. Further, " '[c]ommon words appearing in a written instrument will be given their ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly evidenced from the face or overall contents of the instrument.' " *Aultman Hosp. Assn. v. Community Mut. Ins. Co.* (1989), 46 Ohio St.3d 51, 54, quoting *Alexander v. Buckeye Pipe Line Co.* (1978), 53 Ohio St.2d 241, paragraph two of the syllabus.

{¶13} Upon review, we agree with appellant that the trial court's interpretation of the agreement fails to give meaning to the plain language of Section 1.01 that CMDM shall bill for "all" professional services performed by appellant, and we further agree that such an interpretation is problematic. As observed by appellant, under the trial court's

construction, CMDM could presumably have stopped billing whenever a 90 percent collection rate was assured, leaving appellant uncompensated for any further services its physicians performed during the term of the agreement. Appellant further notes that CMDM was designated "the sole provider of billing services" under Section 6.01 of the agreement, thus precluding appellant from engaging another firm to bill for nearly 19,000 procedures purportedly never billed by CMDM.

{¶14} While the "best efforts" provision of Section 2 addresses collection matters, and recognizes that some accounts will be uncollectible (despite best efforts to do so), appellant's complaint did not allege that CMDM breached the agreement by failing to use its best efforts to produce a 90 percent or better collection rate with respect to "gross fees billed." Rather, appellant alleged that CMDM did not bill at all for more than 18,000 procedures performed by appellant's physicians. We note that, in addition to CMDM's promise under Section 1.01 to bill for all professional services performed by the group, Section 1.01(c) references Exhibit A, which lists numerous other functions CMDM agreed to perform, including various specific tasks encompassing more than simply collection matters. In considering the agreement as a whole, and favoring a construction that does not render some portions meaningless or ineffective, we agree with appellant that CMDM's performance under Section 2(a) of the agreement did not alter its obligation, under Section 1.01(b), to "prepare and transmit all statements" for the professional medical services performed by appellant.

{¶15} Accordingly, genuine issues of material fact remain with respect to appellant's breach of contract claim, and we sustain appellant's assignment of error.

{¶16} Based upon the foregoing, appellant's single assignment of error is sustained, the judgment of the Franklin County Court of Common Pleas is reversed, and this matter is remanded to the trial court for further proceedings in accordance with law, consistent with this decision.

Judgment reversed and cause remanded.

FRENCH and TYACK, JJ., concur.
