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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-947

Filed 2 July 2024

Mecklenburg County, No. 21 CVS 20262

MICANDRIA DARROUX, on behalf of herself and others similarly situated, Plaintiff,

v.

NOVANT HEALTH, INC. d/b/a NOVANT HEALTH PRESBYTERIAN MEDICAL CENTER, and DOES 1 through 25, inclusive, Defendants.

Appeal by Plaintiff from order entered 14 March 2023 by Judge W. Robert Bell in Mecklenburg County Superior Court. Heard in the Court of Appeals 28 May 2024.

Higgins Benjamin, PLLC, by John F. Bloss, for Plaintiff-Appellant.

McGuire Woods, LLP, by T. Richmond McPherson, III, and Bradley R. Kutrow, and Vanden G. Nibert, for Defendants-Appellees.

GRIFFIN, Judge.

Plaintiff Micandria Darroux appeals from the trial court's order granting Defendants' motion to dismiss after concluding Plaintiff failed to state a claim upon which relief could be granted. Plaintiff argues the trial court erred in granting the motion to dismiss as her claims for breach of contract, and declaratory judgment and injunctive relief, were proper given Defendants billed Plaintiff for a "facility fee"

surcharge not included within the contract and of which Plaintiff had no notice otherwise. We hold the trial court did not err.

I. Factual and Procedural Background

On 16 January 2021, Plaintiff sought emergency care services from Defendants. Before receiving care in the ER, Plaintiff was required to sign Defendants' standard consent form ("contract"). Plaintiff signed the contract, consenting to liability for financial costs incurred during her visit to the ER. After leaving the ER, Plaintiff received a bill which included an approximately \$2,001 charge identified as "HC ED VISIT LEVEL 4 W/PROC" ("facility fee").

On 16 December 2021, Plaintiff filed a complaint against Defendants claiming breach of contract, and declaratory judgment and injunctive relief. On 15 September 2022, Defendants filed a motion to dismiss under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure for failure to state a claim. On 21 October 2022, Plaintiff filed a response. On 4 November 2022, Plaintiff filed an amended complaint ("complaint"). On 11 November 2022, Defendants filed a reply in support of their motion to dismiss.

On 10 February 2023, Defendants' motion to dismiss came on for hearing before Judge Bell in Mecklenburg County Superior Court. On 14 March 2023, the trial court entered an order granting Defendants' 12(b)(6) motion, thereby dismissing Plaintiff's claims for breach of contract, and declaratory judgment and injunctive relief.

II. Analysis

Plaintiff argues the trial court erred in granting the motion to dismiss as her claims for breach of contract, and declaratory judgment and injunctive relief, were proper given Defendants billed Plaintiff for a “facility fee” surcharge not included within the contract and of which Plaintiff had no notice otherwise. We disagree.

We review the trial court’s order dismissing an action pursuant to our North Carolina Rules of Civil Procedure, Rule 12(b)(6), de novo. *Krawiec v. Manly*, 370 N.C. 602, 606, 811 S.E.2d 542, 546 (2018). Dismissal under Rule 12(b)(6) is proper where the plaintiff’s complaint, viewed in the light most favorable to the plaintiff, “fail[s] to state a claim upon which relief can be granted.” N.C. R. Civ. P. 12(b)(6). Thus, we must determine whether the allegations, taken as true, “are sufficient to state a claim upon which relief may be granted under some legal theory.” *Shelton v. Duke Univ. Health Sys. Inc.*, 179 N.C. App. 120, 122, 633 S.E.2d 113, 115 (2006) (internal marks and citation omitted). Our Court has previously determined a complaint fails in this manner where: “(1) the complaint on its face reveals that no law supports the plaintiff’s claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff’s claim.” *Wood v. Guilford Cnty.*, 355 N.C. 161, 166, 558 S.E.2d 490, 494 (2002) (citation omitted).

A. Breach of Contract

Plaintiff contends the trial court erred in dismissing her breach of contract

claim as she was overbilled for services not included within the terms of the contract she signed in the ER and of which she had no notice otherwise.

A valid contract requires mutual assent between the parties to the contract as to the terms of the contract. *See Walker v. Goodson Farms, Inc.*, 90 N.C. App. 478, 486, 369 S.E.2d 122, 126 (1988); *see also Chappell v. Roth*, 353 N.C. 690, 692, 548 S.E.2d 499, 500 (2001) (citations omitted). Thus, “to be binding, the terms of a contract must be definite and certain or capable of being made so[.]” *Elliott v. Duke Univ., Inc.*, 66 N.C. App. 590, 596, 311 S.E.2d 632, 636 (1984). Where questions arise concerning a party’s assent to a contract, the Court “must [] examine the written instrument to ascertain the intention of the parties.” *Mosely v. WAM, Inc.*, 167 N.C. App. 594, 598–99, 606 S.E.2d 140, 143 (2004) (citing *Routh v. Snap-On Tools Corp.*, 108 N.C. App. 268, 273, 423 S.E.2d 791, 795 (1992)). Intent in a contract

may be manifested or conveyed either expressly or impliedly, and it is fundamental that that which is plainly or necessarily implied in the language of a contract is as much a part of it as that which is expressed. If it can be plainly seen from all the provisions of the instrument taken together that the obligation in question was within the contemplation of the parties when making their contract or is necessary to carry their intention into effect, the law will imply the obligation and enforce it. The policy of the law is to supply in contracts what is presumed to have been inadvertently omitted or to have been deemed perfectly obvious by the parties, the parties being supposed to have made those stipulations which as honest, fair, and just men they ought to have made.

Shelton v. Duke Univ. Health Sys. Inc., 179 N.C. App. 120, 124, 633 S.E.2d 113, 116

(2006) (internal marks and citation omitted).

Upon arriving at the Defendants' ER, Plaintiff signed a contract which stated, in relevant part: "I agree to pay for all medical services provided. I understand that I may need to call my insurance company to see if they will approve and pay for the medical care. . . . I agree to pay whatever amount is not covered."

Plaintiff contends this contract in no way provided her with notice of Defendants' intent to assess facility fees. We must therefore ascertain whether the contract Plaintiff signed contained sufficient definite language so as to allow a meeting of the minds on the price term. *See Shelton*, 179 N.C. App. at 123, 633 S.E.2d at 115 (citing *Elliott*, 66 N.C. App. at 596, 311 S.E.2d at 636).

Our Court addressed a similar issue in *Shelton v. Duke University Health System*. In *Shelton*, the plaintiff appealed from the trial court's order dismissing her breach of contract claim under Rule 12(b)(6). *Id.* at 120, 633 S.E.2d at 115. The Plaintiff argued that although she contracted to pay the "regular rates" of the hospital, the defendant breached the contract as the rates charged were unreasonable. *Id.* at 123, 633 S.E.2d at 115. In her complaint, the plaintiff alleged the defendant's rates existed on its charge master, but she was not given access to the charge master before she signed the contract. *Id.* The plaintiff failed, however, to allege she attempted to ascertain what the defendant's "regular rates" were, or that she requested access to its charge master and was denied. *Id.* For this reason, the Court, relying on its prior opinion in *Elliott v. Duke University, Inc.*, stated: "the

price term of the regular rates and terms of the [h]ospital at the time of [the plaintiff's] discharge [were] definite and certain or capable of being made so.” *Id.* at 125, 633 S.E.2d at 116 (internal marks, citations, and emphasis omitted). Thus, the Court held “the rates of services contained in the charge master were necessarily implied in the contract signed by [the] plaintiff.” *Id.* (internal marks omitted). The Court further held the trial court properly dismissed the plaintiff’s claim because her complaint failed to allege a claim for breach of contract where there was no allegation that the rates within the charge master were not sufficiently definite, or that she was charged rates different than those within the charge master. *Id.*

Plaintiff contends the instant case is “poles apart” from the Court’s opinion in *Shelton* because, unlike the plaintiff in *Shelton*, she alleged Defendants’ facility fee was not a “medical service” rather than simply alleging the facility fee was unreasonable. Plaintiff seemingly argues this Court must analyze whether Defendants’ facility fee can be assessed as a “medical service.” However, Plaintiff fails to recognize the plain language of the contract she signed stated not only that she would pay for “all medical services,” but that she would pay “whatever amount [was] not covered” by her insurance. Further, although Plaintiff contends she was not notified of the facility fees or of Defendants’ intent to assess such fees, she, like the plaintiff in *Shelton*, failed to allege in her complaint that she attempted to ascertain what “medical services” or “any amount” included, or that she would have been denied access to such information had she requested it.

We recognize Plaintiff's complaint, unlike the plaintiff's complaint in *Shelton*, did not contain allegations which explicitly used the term "charge master." However, despite Plaintiff having avoided using the term "charge master," the trial court was not precluded from considering Defendants' charge master in ruling on the 12(b)(6) motion.

Our Courts have long recognized, in ruling on a Rule 12(b)(6) motion, the trial court "may properly consider documents which are the subject of a plaintiff's complaint and to which the complaint specifically refers even though they are presented by the defendant." *Oberlin Capital, L.P. v. Slavin*, 147 N.C. App. 52, 60, 554 S.E.2d 840, 847 (2001) (citing *Robertson v. Boyd*, 88 N.C. App. 437, 441, 363 S.E.2d 672, 675 (1988)). Further, the court "can reject allegations that are contradicted by the documents attached, specifically referred to, or incorporated by reference in the complaint[,]" or the answers and motions to dismiss of the defendants. *Moch v. A.M. Pappas & Assocs., LLC*, 251 N.C. App. 198, 206, 794 S.E.2d 898, 903 (2016) (citation omitted); *see also Robertson*, 88 N.C. App. at 441, 363 S.E.2d at 675; *Coley v. North Carolina Nat'l Bank*, 41 N.C. App. 121, 126, 254 S.E.2d 217, 220 (1979) ("Certainly the plaintiffs cannot complain of surprise when the trial court desires to familiarize itself with the instrument upon which the plaintiffs are suing because the plaintiffs have failed to reproduce or incorporate by reference the particular instrument in its entirety in the complaint.").

While not in certain terms, Plaintiff did reference the charge master in Paragraph 19 of her complaint where she expressly stated she and similarly situated individuals were “assessed a Visitation Fee for their emergency room visit designated with a CPT Code of 99281, 99282, 99283, 99284, 99285, or 99291[.]” These CPT Codes are or were specifically contained within Defendants’ charge master at the time of Plaintiff’s visit and corresponded with certain facility fees for which patients were billed upon visiting the ER. Further, Defendants attached the relevant portion of the charge master to its motion to dismiss, which served as their response to Plaintiff’s complaint. Given the fact that both Plaintiff and Defendant incorporated the charge master in their pleadings, the trial court did not err where it considered the charge master in ruling on the 12(b)(6) motion.

Because Plaintiff contracted to pay “all medical services,” as well as “whatever amount [was] not covered” by her insurance, and because Defendants’ charge master, which contained a standard list of itemized fees and corresponding charges, was published online at the time of Plaintiff’s visit, we hold the terms within the contract were capable of being made definite and were therefore implied in the contract Plaintiff signed.

The trial court did not err in dismissing Plaintiff’s breach of contract claim.¹

¹ Plaintiff further argues the federal Emergency Medical Treatment and Active Labor Act does not prohibit hospitals from providing cost information to ER patients. However, we need not address this contention for the purposes of this appeal, as we hold the price terms within the contract, which

B. Declaratory Judgment and Injunctive Relief

Plaintiff contends that because her breach of contract claim was valid, the trial court erred in dismissing her claims for declaratory judgment and injunctive relief. As discussed above in section II.A., the trial court did not err in dismissing Plaintiff's breach of contract claim. Thus, the trial court did not err in dismissing Plaintiff's claims for declaratory judgment and injunctive relief.

AFFIRMED.

Judges FLOOD and THOMPSON concur.

Report per Rule 30(e).

included the facility fees, were capable of being made definite and were therefore implied in the contract Plaintiff signed.