

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT**

ONE CARE LTD, LLC,

Plaintiff,

v

**DIVERSIFIED REHAB SERVICES, LLC,
d/b/a GREENFIELD REHAB AND
NURSING CENTER, PINAL PATEL
and NAYANA SHAH,**

**Case No. 20-180835-CB
Hon. Michael Warren**

Defendants,

and

**DIVERSIFIED REHAB SERVICES, LLC,
d/b/a GREENFIELD REHAB AND
NURSING CENTER and PINAL PATEL,**

Greenfield and Patel,

v

VAIRA ALJAJAWI,

**Aljajawi/
Counter-Plaintiff,**

v

**DIVERSIFIED REHAB SERVICES, LLC,
d/b/a GREENFIELD REHAB AND
NURSING CENTER, PINAL PATEL and
RAJ PATEL,**

Counter-Defendants.

FINDINGS OF FACT & CONCLUSIONS OF LAW

**At a session of said Court, held in the
County of Oakland, State of Michigan
February 28, 2022**

PRESENT: HON. MICHAEL WARREN

OPINION

I Overview

The present cause of action arises out of an arbitration award issued on April 13, 2020 in favor of One Care LTC, LLC (“One Care”) against Diversified Rehab Services, LLC d/b/a Greenfield Rehab and Nursing Center (“Greenfield”) in the amount of \$558,456.51 after a dispute arose regarding provisions of a Pharmacy Services Agreement dated August 1, 2017 (the “Pharmacy Services Agreement”). The Pharmacy Services Agreement was negotiated, entered, and executed on Greenfield’s behalf by Vaira Aljajawi as a Member, employee, and administrator of Greenfield.

On or about August 31, 2018, Aljajawi sold her 45% membership interest in Greenfield to Pinal Patel (unless otherwise indicated, “Patel”). The transaction was memorialized by a Membership Interest Purchase Agreement dated August 31, 2018 (the “Purchase Agreement”). Independently, Greenfield and Aljajawi entered a Severance and Release Agreement also dated August 31, 2018 (the “Severance Agreement”). Greenfield and Patel allege that Aljajawi has breached the Purchase Agreement and the

Severance Agreement by failing to indemnify them from the One Care arbitration award, including reimbursement of their attorney fees, costs, and other legal expenses. In particular, Greenfield and Patel allege Breach of Contract, Fraudulent Inducement, and Declaratory and Injunctive Relief. In her own Counter-Claim, Aljajawi alleges Breach of Contract against Greenfield and Pinal Patel and Rajan Patel asserting that she is owed \$111,041.71 pursuant to the Severance Agreement.

FINDINGS OF FACT

The Court makes the following General Findings of Fact regarding the credibility, demeanor, veracity, vocal tone and expression, tonality, and honesty of the witnesses and the exhibits before it by clear and convincing evidence (unless otherwise indicated):

A The Purchase Agreement and the Severance Agreement

Aljajawi and Patel entered the Purchase Agreement. On the signature page of the Purchase Agreement, Greenfield signed it (emphasis in original) “SOLELY WITH RESPECT TO SECTIONS 6.2 AND 6.3 AND 6.5.” Section 6.2 involves a Mutual Release, Section 6.3 involves a Mutual Non-Disparagement provision, and Section 6.5 involves a Loan Repayment. Greenfield is never mentioned in the Purchase Agreement except at the signature block and its accompanying verbiage.

Article VII of the Purchase Agreement governs indemnification between Aljajawi and Patel and states in pertinent part as follows:

Section 7.01 Survival of Representations and Covenants. All representations, warranties, covenants and agreements contained in this Agreement and all related rights to indemnification shall survive the Closing.

Section 7.02 Indemnification By [Aljajawi]. Subject to the other terms and conditions of this Article VI, [Aljajawi] shall defend, indemnify and hold harmless [Patel] and her affiliates from and against:

(a) all claims, judgments, damages, liabilities, settlements, losses, costs and expenses, including attorneys' fees and disbursements (a "Loss"), arising from or relating to any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement or any document to be delivered by this Agreement; or

(b) any Loss arising from or relating to any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement or any document to be delivered under this Agreement.

* * *

Section 7.04 Indemnification Procedures. Whenever any claim shall arise from indemnification under this Agreement, the party entitled to indemnification (the "Indemnified Party") shall promptly provide written notice of such claim to the other party (the "Indemnifying Party"). In connection with any claim giving rise to indemnity under this Agreement resulting from or arising out of any Action by a person or entity who is not a party to this Agreement, the Indemnifying Party, at its sole cost and expense and upon written notice to the Indemnified Party, may assume the defense of any such action with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party shall be entitled to participate in the defense of any such Action, with its counsel and at its own cost and expense. If the Indemnifying Party does not assume the defense of any such Action the Indemnified Party may, but shall not be obligated to, defend against such Action in such manner as it may deem appropriate, including, but not limited to, settling such Action, after giving notice of it to the Indemnifying Party, on such terms as the Indemnified Party may deem appropriate and no action taken by the Indemnifying Party in accordance with such defense and settlement shall relieve the Indemnifying Party of its indemnification obligations in this Agreement provided with respect to any

damages resulting therefrom. The Indemnifying Party shall not settle any Action without the Indemnified Party's prior written consent (which consent shall not be unreasonably withheld or delayed).

Section 8.08, entitled "No Third-Party Beneficiaries," provides: "Except as provided in Article VI, this Agreement is for the sole benefit of the parties and their respective successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement."

Section 8.13 provides that "In the event of litigation of any kind arising out of this Agreement, the prevailing party shall be entitled to reimbursement of all attorney fees and costs."

The parties to the Purchase Agreement never negotiated or discussed the meaning of the word "affiliate" in Section 7.02 and the term is not a defined term in the Purchase Agreement. No one at the time the Purchase Agreement was executed understood that "affiliate" in Section 7.02 meant Greenfield.

Greenfield and Aljajawi entered into the Severance Agreement dated August 31, 2018. Section 2 of the Severance Agreement identifies the terms of the Severance Payment:

2. **Severance Payment.** In consideration of the obligations set forth in this Agreement, after having been fully executed by the parties, and subject to the time periods set forth in Sections 5 and 6 below, [Greenfield] will pay to [Aljajawi] the gross amount of \$275,000 (the "Severance Payment"),

minus any amount required to satisfy [Greenfield's] income, employment, or other tax withholding obligations under United States federal, state, or local law. The Severance Payment will be paid in these installment payments:

(a) a \$70,000 lump sum payment on the later of the Closing Date (as defined in section 1.3 of the Membership Interest Purchase Agreement between [Aljajawi] as Seller and Pinal Patel as Buyer) and the expiration of the Revocation Period provided [Aljajawi] has not revoked acceptance of this Agreement; and

(b) the balance of \$205,000 will be paid in twenty-four (24) substantially equal monthly payments commencing on the first day of the second full month following the Closing Date.

[Aljajawi] agrees and acknowledges that, prior to entering into this Agreement, [Greenfield] was not under any existing oral or written obligation whatsoever to pay her the Severance Payment.

Greenfield ceased making installment payments in August 2019 and the amount unpaid to Aljajawi under the Severance Agreement is \$111,041.71.

The Severance Agreement further provides as follows:

14. **Prior Agreements.** [Aljajawi] represents and warrants that she has not, as an employee of [Greenfield] or in any other capacity, entered into any agreement, contract, commitment, undertaking, understanding, or other obligation on behalf of [Greenfield] except in the ordinary course of business and pursuant to due and proper authorization. She has disclosed to [Greenfield] in the ordinary course all of her dealings on behalf of [Greenfield] such that there are no agreements, contracts, commitments, undertakings, understandings, or other obligations of [Greenfield] entered into by her on behalf of [Greenfield] which have not been truly, accurately, and completely revealed to [Greenfield].

Section 18(i) of the Severance Agreement provides (emphasis in original): **“In the event of litigation of any kind arising out of this Agreement, the prevailing party shall be entitled reimbursement of all the attorney fees and costs.”**

Rajan Patel and Pinal Patel each signed the Severance Agreement as guarantors of the obligations of Greenfield.

At the time the Severance Agreement was executed, Aljajawi believed that the regulatory binders maintained at Greenfield contained all the agreements, contracts, commitments, undertakings and other obligations Greenfield entered into by her on behalf of Greenfield (collectively, the “Greenfield Commitments”). Before and after the closing of the Severance Agreement, when asked about the Greenfield Commitments, she consistently referred to the regulatory binders as possessing the final version of the agreement and that whatever was in the binder would be correct. In the end, one key contract in the regulatory binder was determined by the arbitrator to possess a forged signature page and forged terms. However, the Plaintiffs have failed to show by a preponderance of the evidence that Aljajawi was responsible for the forgery or knew about it, or that the forgery even happened before consummation of the Severance Agreement.

The parties to the Purchase Agreement and Severance Agreement were sophisticated enough to understand that each company entity was a distinct legal person under the law.

B
The One Care Arbitration

During the summer of 2017, One Care and Aljajawi (on behalf of Greenfield) began negotiating the terms of the Pharmacy Services Agreement. The parties began performing on or about August 1, 2017, but signature pages were not exchanged until approximately eight months later. Aljajawi kept hard copies of contracts in a three-ring binder in her Greenfield office where it remained after she left her employment.¹

On or about October 2, 2018, Greenfield terminated One Care. There is no credible evidence that Greenfield contacted Aljajawi prior to terminating the contractual relationship.

During February 2019, One Care filed a Demand for Arbitration pursuant to the dispute resolution provision of the Pharmacy Services Agreement dated August 1, 2017. On August 12, 2019, Greenfield and Patel requested that Aljajawi defend and indemnify them pursuant to Section 7 of the Purchase Agreement. Aljajawi ignored the request.

The material issues in the arbitration were (1) which written pharmacy services agreement, if any, controlled the parties' business relationship, (2) what were the terms of the parties' agreement with respect to early termination of the contractual relationship, (3) if Greenfield terminated the contractual relationship early, what are the damages, if

¹ During her deposition, Aljajawi admitted that she did not know what Pharmacy Services Agreement was in the contract binder. [Aljajawi Deposition, pp 133-134.]

any, (4) did One Care engage in conduct that caused damages to Greenfield due to alleged improper billing practices, and (5) did One Care engage in improper billing or illegal conduct such that One Care would be deemed the first breaching party, giving rise to set offs against any damages awarded to One Care and/or elimination of liability of Greenfield to One Care for early contractual termination?

Although there was some interest with both parties in settling the arbitration, that vanished once Aljawawi testified at a deposition on June 28, 2019 that the One Care agreement was actually for a three year term - One Care knew it had a commanding position and refused to negotiate further.

The Final Award dated April 6, 2020 reflects, in part, as follows:

The undisputed evidence from witnesses for both [One Care] and [Greenfield] revealed that at the time they negotiated their agreement, [Greenfield] wanted only a one year agreement and [One Care] wanted a three year agreement. At no time did [One Care] ever send any document to [Greenfield] containing a one year term. At no time did [Greenfield] send back a version of the agreement containing a one year term. The final version of the contract exchanged (sent from [One Care] to [Greenfield]) contained revisions to pricing and census as requested by [Greenfield] after it received the first proposed agreement from [One Care]. These requests were accepted by [One Care], who then sent a final version of the agreement via e mail. This version again contained a three year term, a 120 day (not 90 days) cancellation notice provision, and the [Greenfield's] requested changes to pricing and census.

The parties began transacting business in August 2017. Eight months later, [Greenfield's] administrator sent two signature pages to [One Care] to sign as it was only then discovered that the parties had not signed their agreement. [One Care's] representative signed the requisite pages and returned them to [Greenfield].

In the fall of 2018, [Greenfield] determined it would terminate its business relationship with [One Care] and gave notice, thinking it was a one year contract with a 90 day advance notice termination provision. [Greenfield] relied on a signed version of the agreement it claimed was contained in its regulatory binders maintained at its business premises. The parties both admit this version was never exchanged between them and [Greenfield's] own administrator could provide no explanation as to who made such changes or how such changes were made to the document. [One Care] advised [Greenfield] it was relying on an incorrect version of the parties' signed agreement.

The evidence is undisputed that [One Care] was clear in telling [Greenfield] that a one year contract was not acceptable. This occurred on more than one occasion prior to [One Care] sending the final version of the agreement containing [Greenfield's] other requested changes to [Greenfield] in July 2017. Further, [One Care] produced evidence from a forensic handwriting analyst that the signature on the version of the agreement contained in [Greenfield's] binder contained a forgery of [One Care's] representative signature. [One Care] admitted that its version of the agreement contained the signature of Mr. Pierre Boutros.

The Arbitrator finds the parties entered into a three year contract containing a 120 day termination clause and pricing consistent with [Greenfield's] request. Given the conduct of the parties at the time of negotiating their agreement, their subsequent conduct, the use of the pricing schedules as agreed, and their 13-14 month business relationship, the Arbitrator is not persuaded by [Greenfield's] argument that there was no written agreement between the parties upon which they conducted their business.

The term of the parties' agreement would have ended July 31, 2020. As a result, [Greenfield] terminated the agreement early.

Patel was not a party in the arbitration and is not liable under the Arbitration Award.

On April 7, 2020, Greenfield and Patel again requested indemnification from Aljajawi for the Loss as defined in the Purchase Agreement, including reimbursement of

attorneys' fees, costs and other legal expenses incurred in connect with the arbitration (collectively, the "Arbitration Award") under Section 7 of the Purchase Agreement. When Aljajawi failed to respond, this lawsuit ensued, and Aljajawi countered that Greenfield breached the Severance Agreement.

CONCLUSIONS OF LAW

I The Arguments

Greenfield and Patel allege that Aljajawi misrepresented to Greenfield that the Pharmacy Services Agreement between One Care and Greenfield was a one-year agreement, which in turn, led to Greenfield prematurely terminating the agreement. Greenfield and Patel argue that Aljajawi must indemnify them for the Arbitration Award because Aljajawi's misrepresentation about the term of the One Care and Greenfield agreement violated the Section 14 of the Purchase Agreement and Greenfield and Patel should be indemnified under Section 7.02 of the Purchase Agreement.

Aljajawi argues that because the Arbitration Award was solely against Greenfield, she has no duty to indemnify either Greenfield or Patel because Section 7.02 of the Purchase Agreement does not require Aljajawi to indemnify Greenfield. Moreover, Aljajawi claims that Greenfield breached the Severance Agreement (guaranteed by Raj and Pinal Patel) by failing to pay \$111,041.71 due and owing and is entitled to

reimbursement of her attorney fees under Section 8.13 of the Purchase Agreement and Section 18(i) of the Severance Agreement.

II The Law of Breach of Contract

A claim for breach of contract lies when the following elements are established: “(1) parties competent to contract; (2) a proper subject matter; (3) legal consideration; (4) mutuality of agreement; and (5) mutuality of obligation.” *Thomas v Leja*, 187 Mich App 418, 422 (1991). The cardinal rule when interpreting contracts is to ascertain and give effect to the intention of the parties. *Zurich Ins Co v CCR & Co*, (on rehearing), 226 Mich App 599, 603 (1997); *MSI Construction Managers, Inc v Corvo Iron Works, Inc*, 208 Mich App 340, 343 (1995). When interpreting a contract, the court must ascertain the intent of the parties by evaluating the language of the contract in accordance with its plain and ordinary meaning. *Phillips v Homer*, 480 Mich 19, 24 (2008). If the language of the contract is clear and unambiguous, it must be enforced as written. *Terrien v Zwit*, 469 Mich 41, 51-52 (2003); *Rory v Cont’l Ins Co*, 473 Mich 457, 468 (2005) (internal footnotes and quotation marks omitted) (“A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be enforced as written. Courts enforce contracts according to their unambiguous terms because doing so respects the freedom of individuals freely to arrange their affairs via contract”); *Phillips*, 480 Mich at 24; *Coates v Bastian Bros, Inc*, 276 Mich App 498, 512 n 7 (2007).

In general, indemnification is an equitable doctrine that shifts the entire burden of judgment from the tortfeasor who had been compelled to pay, to another whose active negligence is the primary cause of the harm. *St Luke's Hosp v Giertz*, 458 Mich 448, 453 (1998). The rationale behind indemnification is that "liability should fall on the party best situated to adopt preventative measures." *Swindlehurst v Resistance Welder Corp*, 110 Mich App 693, 698 (1981). An express contract of indemnity arises when one party promises to secure another party against loss. *Fischback-Natkin Company v Power Process Piping, Inc*, 157 Mich App 448, 452 (1987). "Where parties have expressly contracted with respect to the duty to indemnify, the extent of the duty must be determined from the language of the contract." *Grand Trunk WR, Inc v Auto Warehousing Co*, 262 Mich App 345, 353 (2004).

III Patel and Greenfield's Claims Against Aljajawi

As noted, Section 7 of the Purchase Agreement provides:

Section 7.01 Survival of Representations and Covenants. All representations, warranties, covenants and agreements contained in this Agreement and all related rights to indemnification shall survive the Closing.

Section 7.02 Indemnification By Seller. Subject to the other terms and conditions of this Article VI, [Aljajawi] shall defend, indemnify and hold harmless [Patel] and her affiliates from and against:

(a) all claims, judgments, damages, liabilities, settlements, losses, costs and expenses, including attorneys' fees and disbursements (a "Loss"), arising from or relating to any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement or any document to be delivered by this Agreement; or

(b) any Loss arising from or relating to any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement or any document to be delivered under this Agreement.

Patel was not a party to the arbitration or the Arbitration Award - only Greenfield. The lynchpin to the Plaintiffs' case is that Greenfield is an "affiliate" of Patel under Section 7.02 of the Indemnification Agreement. This argument falls for several reasons. First, examining the Purchase Agreement, Greenfield was actually a signatory of the Purchase Agreement - but only for three sections - not including Section 7.02. If Greenfield was intended to be included in the "affiliate" language, a logical conclusion is that it would have also signed (and in fact, desired to sign) the Purchase Agreement with respect to Section 7.02 so that it could directly claim such indemnification rights (as opposed to having to rely upon Patel to assert such rights). There is no credible evidence that any party or Greenfield believed that Greenfield was somehow protected by Section 7.02 despite the signatory block indicating otherwise. Viewing the Purchase Agreement as a whole, required under basic rules of contract construction, see, e.g., *Kyocera Corp v Hemlock Semiconductor, LLC*, 313 Mich App 437, 447 (2015), Greenfield is not an affiliate. Second, since it is not a defined term, one should examine the plain meaning of the text as defined by common dictionaries, *Hastings Mutual Insurance v Safety King, Inc*, 286 Mich App 287, 297 (2009), and the plain meaning of "affiliate" does not include the relationship that existed between Patel and Greenfield. See, e.g., dictionary.com ("a branch

organization; *Commerce*. a branch organization. b a subsidiary”);² The American Heritage Dictionary of the English language (“A person, organization, or establishment associated with another as a subordinate, subsidiary, or member: *network affiliates*”).³ Third, there is no extrinsic evidence to support the Plaintiffs’ position. No one negotiated or even discussed the meaning of the term. There was no credible testimony offered to suggest that the parties understood that an “affiliate” of Patel would include Greenfield. Fourth, under the law, Greenfield is a separate legal person - how Patel would be an affiliate is a mystery. If the provision was intending to include owners, officers, or similar status, using the word “affiliate” is an unusual way to convey such meaning. The parties to the Purchase Agreement and Severance Agreement were sophisticated enough to understand that each company entity was a distinct legal person under the law. There is no credible evidence that the parties understood that the word “affiliate” was intended to include owners, officers, or other similar status. Fifth, Section 8.08 specifically disclaims any third party beneficiaries - thereby defeating any indirect or implied method for Patel or Greenfield to be considered an affiliate.

The Plaintiffs protest that “affiliate” must mean *something* and so it must include Greenfield. Whether it means something or not, the Plaintiffs have failed to show that it means *Greenfield*. Simply put, the Plaintiffs have failed to meet their burden that “affiliate” included Greenfield.

² <https://www.dictionary.com/browse/affiliate>

³ <https://www.ahdictionary.com/word/search.html?q=affiliate&submit.x=28&submit.y=34>

In light of the foregoing, the claims against Aljajawi fail.

Furthermore, as the prevailing party under litigation arising from the Purchase Agreement, pursuant to Section 8.13 of the Purchase Agreement, Aljajawi is entitled to the reimbursement of “all attorney fees and costs.”

IV Aljajawi’s Claims against Greenfield (and the Patels as Guarantors)

As revealed by the Findings of Fact, Greenfield failed to pay Aljajawi \$111,041.71 pursuant to the Severance Agreement. In essence, Greenfield’s defense to this claim is the now dismissed claim against Aljajawi. There is no defense standing.

Furthermore, as the prevailing party under litigation arising from the Severance Agreement, pursuant to Section 18(i) of the Severance Agreement (emphasis in original), Aljajawi is entitled to the reimbursement of “**all attorney fees and costs.**”

JUDGMENT

In light of the foregoing Findings of Fact and Conclusions of Law, (1) all claims against Vaira Aljajawi are hereby DISMISSED, (2) a Judgment in the amount of \$111,041.71 plus statutory interest is hereby assessed in favor of Vaira Aljajawi against Greenfield, with Pinal Patel and Raj Patel as guarantors, (3) all attorney fees and costs incurred by Vaira Aljajawi in these proceedings are hereby AWARDED and assessed against Greenfield, with Pinal Patel and Raj Patel as guarantors, which attorney fees and

costs shall be treated as a post-Judgment matter (with a subsequent judgment if necessary) and shall be fixed by stipulation or upon Motion.

