STATE OF NORTH CAROLINA DURHAM COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 22 CVS 3957
BLUE CROSS AND BLUE SHIELD OF NORTH CAROLINA, Plaintiff, v. MH MASTER HOLDINGS, LLLP; MH MISSION HOSPITAL McDOWELL, LLLP; ANC HEALTHCARE, INC. f/k/a MISSION HEALTH SYSTEM, INC.; and ANC McDOWELL HOSPITAL, INC. f/k/a THE McDOWELL HOSPITAL, INC., Defendants.	**ORDER AND OPINION ON DEFENDANTS' MOTION TO DISMISS**[1]

1. **THIS MATTER** is before the Court upon Defendants MH Master Holdings, LLLP, MH Mission Hospital McDowell, LLLP, ANC Healthcare, Inc., and ANC McDowell Hospital's (together, "Defendants") Motion to Dismiss (the "Motion").[2]

2. After considering the Motion, the parties' briefs in support of and in opposition to the Motion, the relevant pleadings, and the arguments of counsel at the hearing on the Motion, the Court hereby **GRANTS** the Motion and **DISMISSES** this action with prejudice.

[1] Recognizing that this Order and Opinion cites and discusses information that the parties maintain should remain filed under seal in this action, and out of an abundance of caution, the Court initially elected to file this Order and Opinion under seal on 4 April 2023. The Court then permitted the parties an opportunity to advise whether the Order and Opinion contained confidential information that either side contended should be redacted from a public version of the document. On 13 April 2023, the parties advised the Court that no redactions are necessary. Accordingly, the Court removes the "filed under seal" designation and files this Order and Opinion, without redactions, as a matter of public record.

[2] (ECF No. 18.)

Ellis & Winters LLP, by, Thomas H. Segars, Luke J. Farley, and Christopher Rhodes for Plaintiff Blue Cross and Blue Shield of North Carolina.

Faegre Drinker Biddle & Reath, LLP, by Justin O. Kay and Ian Thresher, and Bradley Arant Boult Cummings LLP, by Dana C. Lumsden and Hanna E. Eickmeier, for Defendants MH Master Holdings, LLLP, MH Mission Hospital McDowell, LLLP, ANC Healthcare, Inc., and ANC McDowell Hospital, Inc.

Bledsoe, Chief Judge.

I.

FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

3. The Court does not make findings of fact on a motion to dismiss under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure (the "Rule(s)"). Rather, the Court recites the allegations asserted and documents referenced in Plaintiffs' Complaint that are relevant to the Court's determination of the Motion.

4. This case arises from disputes over health insurance reimbursements. In 2017, Plaintiff Blue Cross & Blue Shield of North Carolina ("Blue Cross" or "Plaintiff") entered into a Network Participation Agreement (the "NPA") with The McDowell Hospital, Inc. ("McDowell"), located in Marion, North Carolina.[3] Under the NPA, Blue Cross agreed to pay McDowell for healthcare services that McDowell

[3] (Compl. ¶ 2, ECF No. 3; Mem. Law Supp. Defs. MH Master Holdings LLLP; MH Mission Hospital McDowell, LLLP; ANC Healthcare, Inc.; ANC McDowell Hospital, Inc,'s Mot. Dismiss 1 [hereinafter "Br. Supp."], ECF No. 19; Br. Supp. Ex. A, Network Participation Agreement [hereinafter "NPA"], ECF No. 19.1.) When a complaint specifically refers to a contract at issue, the Court may consider the contract without converting a Rule 12 motion into a motion for summary judgment, even if the contract is actually produced by the defendant. *See Oberlin Cap., LP v. Slavin*, 147 N.C. App. 52, 60 (2001). The Court therefore can and does consider the NPA in its decision on the Motion.

provided to Blue Cross benefit plan members.[4] The NPA permits Blue Cross to request a refund for any overpayment, and requires McDowell to promptly remit payment to Blue Cross for any such overpayments.[5] In addition to other remedies, the NPA also permits Blue Cross to recover overpayment by offset against future amounts payable to McDowell,[6] and states that neither party may recover an over- or under-payment from the other any later than two years after the payment in question is made.[7]

5. In August 2018, McDowell's then-owners negotiated an agreement with MH Master Holdings, LLLP ("MH"), under which MH agreed to acquire McDowell.[8] Blue Cross consented to the assignment of the NPA to MH in 2018.[9]

6. In 2018 and 2019, McDowell submitted certain claims to Blue Cross for payment, but these claims were misprocessed, resulting in Blue Cross overpaying on these claims by approximately $3.1 million.[10] The NPA ordinarily permitted (but did not require) Blue Cross to recover any overpaid claims by offsetting the overpaid

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[4] (Compl ¶ 2.)

[5] (Compl. ¶ 24.)

[6] (Compl. ¶ 24.)

[7] (Br. Supp. 7; NPA § 4.7.)

[8] (Compl. ¶ 27.)

[9] (Compl. ¶¶ 29–30.) This sale has obscured which defendant entity should be responsible for refunding the $3.1 million. (*See* Compl. ¶ 39.)

[10] (Compl. ¶¶ 32–35.)

amount against future claims.[11] However, Blue Cross could not pursue this remedy with the particular claims at issue through no fault of its own due to McDowell's sale to MH.[12]

7. Blue Cross requested a refund from McDowell after learning of the overpayments. To facilitate refund negotiations, the parties entered into a tolling agreement (the "Tolling Agreement") that purported to remove the period between 29 December 2021 and 28 October 2022 from the calculation of any statute of limitations-based defenses to Blue Cross's claims.[13] By its express terms, the Tolling Agreement did not revive claims that were time-barred as of 29 December 2021.[14]

8. Defendants did not refund the alleged overpayments, and Blue Cross therefore filed the above-captioned action on 28 October 2022.[15] Because of the uncertainty over which Defendant is actually responsible for reimbursing Blue Cross under the NPA,[16] Blue Cross's Complaint asserts claims against two distinct groups of Defendants: the "HCA Defendants"[17] and the "ANC Defendants."[18] Plaintiff pleads

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[11] (Compl. ¶ 36.)

[12] (*See* Compl. ¶ 36.)

[13] (*See* Br. Supp. 13; *see generally* Br. Supp. Ex. B, Tolling Agreement [hereinafter "Tolling Agreement"], ECF No. 19.2.)

[14] (Tolling Agreement 2 ¶ 3.)

[15] (Compl.)

[16] (*See* Compl. ¶ 39.)

[17] Defendants MH Master Holdings, LLLP and MH Mission Hospital McDowell, LLLP. (*See* Compl. ¶ 12.)

[18] Defendants ANC Healthcare, Inc. and ANC McDowell Hospital, Inc. (*See* Compl. ¶ 16.)

claims for breach of contract and breach of the covenant of good faith and fair dealing against the HCA Defendants,[19] and it pleads the same in the alternative against the ANC Defendants.[20] Plaintiff also pleads claims of unjust enrichment and conversion against both groups of Defendants,[21] and requests that a constructive trust be imposed on both groups of Defendants.[22]

9. Defendants moved to dismiss the Complaint on 6 February 2023.[23] The Court received briefing on the Motion and held a hearing on 21 March 2023, at which all parties were represented by counsel (the "Hearing"). The Motion is now ripe for decision.

II.

LEGAL STANDARD

10. When deciding whether to dismiss for failure to state a claim under Rule 12(b)(6), the Court considers "whether the allegations of the complaint, if treated as true, are sufficient to state a claim upon which relief can be granted under some legal theory." *Corwin v. British Am. Tobacco PLC*, 371 N.C. 605, 615 (2018) (quoting *CommScope Credit Union v. Butler & Burke, LLP*, 369 N.C. 48, 51 (2016)).

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[19] (Compl. ¶¶ 43–54.)

[20] (*See* Compl. ¶¶ 55–68.)

[21] (Compl. ¶¶ 69–86.)

[22] (Compl. ¶¶ 87–89.)

[23] (Mot. Dismiss.)

11. "[D]ismissal pursuant to Rule 12(b)(6) is proper when '(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.' " *Id.* (quoting *Wood v. Guilford Cnty.*, 355 N.C. 161, 166 (2002)).

12. Under Rule 12(b)(6), "the complaint is construed liberally, viewing the allegations as true and in the light most favorable to the non-moving party, and the claim is not dismissed unless it appears beyond doubt that the plaintiff could prove no set of facts in support of his claim which would entitle him to relief." *Krawiec v. Manly*, 370 N.C. 602, 618 (2018) (cleaned up). While "the well-pleaded material allegations of the complaint are taken as true[,] conclusions of law or unwarranted deductions of fact are not admitted." *Azure Dolphin, LLC v. Barton*, 371 N.C. 579, 599 (2018) (quoting *Arnesen v. Rivers Edge Golf Club & Plantation, Inc.*, 368 N.C. 440, 448 (2015)).

III.

ANALYSIS

13. The Motion presents three related issues for the Court's consideration. First, the parties dispute whether the NPA's terms impose a two-year statute of limitations on the parties' NPA-related claims.[24] The parties then clash over whether, if not, Plaintiff should be judicially estopped from advancing its current

[24] (Br. Supp. 6–12; Mem. Law Opp'n Defs.' Mot. Dismiss 7–10 [hereinafter "Br. Opp'n"], ECF No. 36.)

interpretation of the contract,[25] and whether North Carolina's general statute of limitations on contract claims forecloses this lawsuit.[26]

14. After careful review, the Court concludes that the NPA clearly and unambiguously imposes a valid, contractual statute of limitations which bars Plaintiff's claims. The Court thus resolves the Motion on that basis and need not reach the latter two questions.

15. "The intention of the parties is the controlling guide to [contract] interpretation," *Duke v. Mut. Life Ins. Co.*, 286 N.C. 244, 247 (1974), and thus "[i]nterpreting a contract requires the court to examine the language of the contract itself for indications of the parties' intent at the moment of execution." *State v. Philip Morris USA Inc.*, 359 N.C. 763, 773 (2005). If a contract's language is unambiguous, its meaning, and therefore the parties' intent, is a question of law for the Court. *Lane v. Scarborough*, 284 N.C. 407, 410 (1973). As a result, when contractual language is clear, the Court must enforce the contract as written. *See, e.g.*, *Morrell v. Hardin Creek, Inc.*, 371 N.C. 672, 686 (2018); *Woods v. Nationwide Mut. Ins. Co.*, 295 N.C. 500, 506 (1978).

16. The issues presented by the Motion revolve around Section 4.7 of the NPA ("Section 4.7"), so the Court reproduces that passage in its entirety:

> "[McDowell] agrees[s] that in the event of any overpayment, duplicate payment, or other payment by [Blue Cross] in excess of the member's benefits payable according to the member's benefit plan ("Overpayment"), [McDowell] will promptly remit payment to [Blue Cross]. *In addition to other remedies*, if within forty-five (45) days of a

[25] (Br. Supp. 12–13; Br. Opp'n 10–13.)

[26] (Br. Supp. 14–16; Br. Opp'n 13–16.)

> request for a refund by [Blue Cross], the requested refund has not been made and [McDowell] ha[s] not appealed the Overpayment, [Blue Cross] may recover this amount by offset of future amounts payable to [McDowell]. *Neither party may recover overpayments or underpayments made to the other party any later than two (2) years after the date of the original claim payment unless there is reasonable belief on behalf of the party demanding the overpayment of fraud or other intentional misconduct by the party from whom the demand is made.* In the event of any incorrect recoupment or offset by [Blue Cross], [Blue Cross] agree[s] to use best efforts to promptly remit payment to [McDowell] within forty-five (45) days of a request for refund by [McDowell].[27]

17. It is well-established that "the parties to a contract . . . may fix a given time, shorter than that allowed by the general statute of limitations, within which suit for breach of the contract shall be brought." *Holmes & Dawson v. E. Carolina Ry.*, 186 N.C. 58, 63 (1923); *see also, e.g.*, *Horne-Wilson, Inc. v. Nat'l Sur. Co.*, 202 N.C. 73, 74–75 (1932); *Morgan v. Lexington Furniture Indus.*, 2006 N.C. App. LEXIS 2469, at *5 (N.C. Ct. App. Dec. 19, 2006); *Provectus Biopharmaceuticals, Inc. v. RSM US LLP*, 2018 NCBC LEXIS 101, at *13 (N.C. Super. Ct. Sept. 28, 2018).

18. Our courts have upheld contractually abridged statutes of limitations as short as six and nine months and which proportionally eliminated much or even most of the statutory limitations window. *See Turning Point Indus. v. Global Furniture, Inc.*, 183 N.C. App. 119, 123–26 (2007) (upholding a contractual term that shortened limitations period from one year to nine months); *Morgan*, 2006 N.C. App. LEXIS 2469, at *6–9 (upholding a contractual term that shortened limitations period from three years to six months).

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[27] (NPA § 4.7 (emphasis added).) The Court has altered references to "you," "we," and "us" to the parties' names to which these pronouns refer, as defined elsewhere in the contract. (*See* NPA 1.)

19. The language of Section 4.7 establishes just such a contractual statute of limitations of two years, unless a reasonable suspicion of fraud or intentional misconduct is shown. Plaintiff, however, has not alleged any fraud or other intentional misconduct.[28] Nor can the Court conclude that shortening a three-year statute of limitations to two years is unreasonable; the remaining window of time is longer than other periods that North Carolina courts have approved, in both absolute terms and as a proportion of the original period. *Cf. Global Furniture*, 183 N.C. App. at 123–26; *Morgan*, 2006 N.C. App. LEXIS 2469, at *6–9.

20. After careful review, the Court agrees with Defendants that "there are no [ ] reasonable interpretations of [Section 4.7] other than [as] an agreed upon time during which the parties may recover overpayments or underpayments."[29] And because the language of the contract is "clear and only one reasonable interpretation exists," this Court "must enforce the contract as written." *Woods*, 295 N.C. at 506. In short, the Court concludes that the NPA unambiguously provides that in the absence of fraud, neither party may recover an over- or under-payment under the contract any later than two years after the payment. Blue Cross made the payments at issue in 2018 and 2019,[30] does not allege any fraud, and filed this action on 28 October 2022.[31] Thus, all the payments at issue were made more than two years before Blue Cross

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[28] (*See generally* Compl.)

[29] (Br. Supp. 8.)

[30] (Compl. ¶¶ 32–35.)

[31] (*See* Compl 18.)

filed suit, and so the plain and unambiguous language of Section 4.7 bars Blue Cross's attempt to recover them.

21. Blue Cross labors valiantly to overcome the plain language of the NPA, but its arguments are unavailing.

22. First, Blue Cross contends that the NPA does not contemplate a situation in which the self-help, offset remedy is unavailable, as was the case here, and is therefore ambiguous *as applied*.[32] As Blue Cross's counsel acknowledged at the Hearing, however, the distinction between facial and as-applied analysis is generally applicable to constitutional claims, *see, e.g.*, *State v. Grady*, 372 N.C. 509, 522 (2019), not contract claims. But even if an argument of contractual "as-applied ambiguity" is cognizable under North Carolina law, Plaintiff's contention still fails.

23. Plaintiff argues that Section 4.7 necessarily assumes that offset is possible, so that the whole provision effectively becomes meaningless and ceases to function if offset is impossible.[33] But Section 4.7 expressly contemplates "other remedies" in addition to offset, and no part of Section 4.7 *requires* a party to attempt offset before it may pursue other remedies.[34] In other words, the NPA's language is still clear, and its structure for recovery of overpayments still functions, regardless of whether offset is possible under a given set of circumstances.

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[32] (Br. Opp'n 7–8.)

[33] (*See* Br. Supp. 7.)

[34] (*See* NPA § 4.7 (stating that the offset remedy exists "[i]n addition to other remedies").)

24. Indeed, the NPA explicitly contemplates litigation as another remedy.[35] Plaintiff argues that if offset is impossible, Defendant's reading of Section 4.7 leaves Blue Cross with no other remedies,[36] but nothing in the NPA prevented Blue Cross from pursuing *any other* remedy of its choice, including litigation, within the two-year contractual statute of limitations.

25. Moreover, both parties to this contract are large, sophisticated businesses; if they had wished to draft their contract to *require* offset, to provide a more or less stringent statute of limitations, to require additional negotiating concessions for that limitation, or to provide any other remedial structure, they could have easily done so. *See, e.g.*, *Novant Health, Inc. v. Aetna U.S. Healthcare of the Carolinas, Inc.*, 2001 NCBC LEXIS 1, at *20 (N.C. Super. Ct. Mar. 8, 2001). Indeed, Blue Cross has not pleaded facts showing that Defendants used their "bargaining position [or] sophistication" to impose a contractual term on "the reluctant or unwitting." *In re Key Equip, Fin. Inc.*, 371 S.W.3d 296, 302 (Tex. App. 2012); *see also Blaylock Grading Co., LLP v. Smith*, 189 N.C. App. 508, 512 (2008) (concluding that a contractual provision was not void as against public policy because, among other reasons, "[the entities were] sophisticated, professional parties who conducted business at arms' length").

26. In sum, contrary to Blue Cross's argument, Section 4.7 creates an unambiguous contractual statute of limitations whether the offset remedy exists in

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[35] (*See* NPA § 6.7 (setting North Carolina as the venue for any litigation arising from the NPA).)

[36] (*See* Br. Opp'n 7.)

particular circumstances or not, and the existence of the offset remedy was not so integral a component of the NPA that the contract cannot function or becomes meaningless where offset is unavailable. The Court therefore rejects Plaintiff's argument that the NPA is ambiguous under these circumstances. *State v. Philip Morris USA, Inc.*, 363 N.C. 623, 641 (2009) ("A contract term is ambiguous only when, in the opinion of the court, the language of the contract is fairly and reasonably susceptible to either of the constructions for which the parties contend." (cleaned up)); *Wachovia Bank Nat'l Ass'n v. Superior Constr. Corp.*, 213 N.C. App. 341, 349 (2011) ("The trial court's determination of whether the language in a contract is ambiguous is a question of law." (cleaned up)).

27. Second, Blue Cross argues that this Court's decision in *Frye Reg'l Med. Ctr., Inc. v. Blue Cross Blue Shield of N.C., Inc.*, 2020 NCBC LEXIS 51 (N.C. Super. Ct. Apr. 17, 2020), compels the conclusion that Section 4.7 is ambiguous. *Frye* dealt with a materially identical NPA between Blue Cross and another hospital, which included the same language shortening the statute of limitations.[37] In *Frye*, Blue Cross argued Defendants' position here: that the NPA unambiguously abridged the statute of limitations to two years. *See id.* at *24–25. The *Frye* Court disagreed, *see id.* at *26–27, and Blue Cross now argues that *Frye's* logic compels the conclusion it now proposes.[38] However, the Court is unpersuaded by Blue Cross's reliance on *Frye*, and

[37] The portion of *Frye* that includes the relevant language was filed under seal by the Court. However, Blue Cross refers to the pertinent language of the *Frye* contract as "this exact language (from a similar NPA)." (*See* Br. Opp'n 5.)

[38] (Br. Opp'n 5–6.)

concludes that Blue Cross advanced the correct interpretation of the NPA's language in that case.

28. More specifically, the *Frye* court held that a contract clause that shortens a statute of limitations must explicitly refer to the filing of lawsuits in court, after noting several cases in which North Carolina's appellate courts have upheld shortened limitations periods that included explicit references to court action. *Id.* at *25–26. However, none of the cases cited in *Frye* for this point actually held that such language was required[39] and do not demonstrate that an explicit reference to court action is a *necessary* condition for the enforcement of a contractual statute of limitations. *Cf. Morgan*, 2006 N.C. App. LEXIS 2469, at *2, *6–9 (enforcing an arbitration provision that shortened the statute of limitations but which did not contain an express reference to waiver of the right to initiate court action). Cases from other jurisdictions are in accord.[40]

29. Thus, Blue Cross cannot surmount the plain and unambiguous language of Section 4.7. That clause creates a contractual statute of limitations of which this suit runs afoul. Because the Court concludes that Defendants' interpretation of the NPA

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[39] *See Beard v. Sovereign Lodge, W.O.W.*, 184 N.C. 154, 157 (1922); *Global Furniture, Inc.*, 183 N.C. App. at 123–24; *Beachcrete, Inc. v. Water St. Ctr. Assocs., LLC*, 172 N.C. App. 156, 160–61 (2005); *Sanghrajka v. Family Fare, LLC*, 2019 N.C. App. LEXIS 60, at *9–12 (N.C. Ct. App. Feb. 5, 2019).

[40] *See, e.g*, *Ludwig v. Equitable Life Assurance Soc'y of the U.S.*, 978 F. Supp. 1379, 1381–82 (D. Kan. 1997) (rejecting argument that lack of express reference to court action rendered an arbitration agreement unenforceable); *Hays Grp., Inc. v. Biege*, 222 Ore. App. 347, 349–51 (2008) (to similar effect); *Garcia v. Wayne Homes*, 2002 Ohio App. LEXIS 1917, at *42 (Ohio Ct. App. Apr. 19, 2002) (same); *cf. Gastelu v. Martin*, 2015 N.J. Super. Unpub. LEXIS 1639, at *10–11, *16 n.4 (N.J. Super. Ct. App. Div. July 9, 2015) (noting that while New Jersey law requires a clear reference to waiver of a judicial forum to enforce an arbitration clause of a *consumer* contract, this rule does not apply to *commercial* contracts).

is correct in this respect, it grants the Motion on that basis and need not reach the remaining issues presented by the Motion.[41]

IV.

CONCLUSION

30. **WHEREFORE**, for the foregoing reasons, the Court hereby **GRANTS** the Motion and **DISMISSES** Plaintiff's Complaint **with prejudice**.

SO ORDERED, this the 4th day of April, 2023.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge

[41] (*See* Br. Supp. 14 (advancing an argument based on the default, statutory statute of limitations as an alternative in the event the Court rejects Defendants' interpretation of Section 4.7).)