At a term of the IAS Part of the Supreme Court of the State of New York, held in and for the County of Orange located at 285 Main Street, Goshen, New York 10924 on the 7th day of October, 2019.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, on all parties.

GHVHS MEDICAL GROUP, P.C.,

PLAINTIFF,

-AGAINST-

GILLY ARTHURS, MEDICAL LIABILITY MUTUAL INSURANCE COMPANY and COMPUTERSHARE TRUST COMPANY, N.A.,

DEFENDANTS.

DECISION AND ORDER
Index No. EF001609-2019
Motion date: 8/2/19
Motion #2

VAZQUEZ-DOLES, J.S.C.

The following papers numbered 1 - 15 were read on Plaintiff's motion for partial summary judgment on the first and eighth causes of action, or in the alternative its fifth and eighth causes of action;

Notice of Motion/Affirmation of Mitchell Berns Esq./Exhibits A - F/
Affidavit of Joseph Anesi/Exhibits A - E/Memorandum of Law ..... 1 - 15

Plaintiff commenced this action to determine its right to receive monies from the sale and demutualization of Defendant Medical Liability Mutual Insurance Company, (hereinafter MLMIC). MLMIC demutualized the insurance company with the approval of the NYS Department of Insurance, and sold their company to Berkshire Hathaway. As part of the plan which was approved by the NYS Department of Insurance, each "Eligible Policyholder" or its "Designee" were to receive a payment reflecting its pro rata share of the cash consideration, allocated according to the amount of the premium paid on the policy. In this case, Gilly Arthurs was the "eligible policy holder" entitled to receive approximately $4,744.00. The money is currently being held in escrow by Computershare. Plaintiff alleges that they are entitled to the money as they have paid all the premiums on behalf of Arthurs, have been the administrator of

the medical malpractice insurance policy and the sole recipient of any dividends.[1] Plaintiff further alleges that many other doctors and nurse practioners agreed to assign their rights to Plaintiff, but Arthurs refused because of a dispute about money owed on her final paycheck. Plaintiff seeks relief of a declaratory judgment which finds Plaintiff is the rightful recipient of the funds as they have paid all the premiums for the insurance policy, without contributions from Arthurs. Plaintiff argues in the alternative that Arthurs will be unjustly enriched if she is declared to be the recipient.

Defendant, Gilly Arthurs, has not filed a response to this motion sequence number 2, but in her pro-se response to motion sequence number 1, she states that Plaintiff owes her money for accrued time and has refused to pay because she breached the employment contract. The letter also indicates that she would assign her rights if Plaintiff paid her the $9,887.50 which she alleges is owed from leave accrual.

Defendant, MLMIC and Computershare have not filed any opposition papers to this motion either.

DISCUSSION:

The pertinent undisputed facts in the case show that an employment contract was signed between Plaintiff and Arthurs in May of 2016. The employment contract specifically stated that Plaintiff "...will maintain professional liability insurance on behalf of each party at its sole cost and expense." (Employment Contract Pg 5). The contract is silent as to demutualization and acquisition with future profits. The plan for demutualization and acquisition was approved by the NYS Department of Insurance on September 6, 2018, thus the parties were unaware that this future event would occur when they signed the employment contract.

[1]Although Plaintiff makes this claim regarding dividends, there is no evidence submitted to support that dividends were actually distributed by MLMIC prior to the sale and demutualiztion.

Since the written contract between the parties does not specifically address the issue of who should receive the profits of the sale, the Court is faced with the question of who is the proper recipient of those funds. Plaintiff argues that they should receive the profits as they were the 'administrators" of the policy and that it would be inequitable to allow Defendant Arthurs to be unjustly enriched when she did not pay for or administer the malpractice insurance.

Under a plain reading of the insurance law, which addresses reorganization of a mutual insurer, Arthurs is clearly the policy holder. New York Insurance Law §7312 states in part, "Policyholder" means a person, as determined by the records of a mutual life insurer, who is deemed to be the "policyholder" of a policy or annuity contract...". Gilly Arthurs is the named policyholder. The Plan which was approved by the Department of Insurance, allows for the policyholder to assign its rights to the profit. In this case, Arthurs refused to assign her rights, thus a plain reading of the contract and law would result in Arthurs receiving any profit from the demutualization and acquisition.

However, Plaintiff argues that this result would be unjust as they have paid the cost of the policy since the inception and have been noted as the policy administrator. To prevail on a theory of unjust enrichment, the Court must consider "...whether it is against equity and good conscience to permit the defendant to retain what is sought to be recovered ". *Betz v Blatt,* 160 AD3d 696, 701 [2d Dept 2018] (citing *Goel v. Ramachandran*, 111 A.D.3d 783, 791, 975 N.Y.S.2d 428, quoting *Paramount Film Distrib. Corp. v. State of New York*, 30 N.Y.2d 415, 421, 334 N.Y.S.2d 388, 285 N.E.2d 695."). A court should "...look to see if a benefit has been conferred on the defendant under mistake of fact or law, if the benefit still remains with the defendant, if there has been otherwise a change of position by the defendant, and whether the defendant's conduct was tortious or fraudulent. (citations omitted)". *Betz v Blatt,* 160 AD3d 696,

701 [2d Dept 2018]. When considering the above test, there are no allegations of fraud or tortious conduct. Moreover there was no mistake of fact or law if the benefit remains with Defendant as neither party was even aware of this benefit at the time the employment contract was signed. The benefit still remains with the Defendant as the Department of Insurance considered Plaintiff's claims during the demutualization process and did not change the language of what constitutes an "eligible policyholder", when Plaintiff and others made objections at the public hearing.

Accordingly, upon a review of the foregoing papers, and case law addressing this issue around the State of New York, and considering the specific facts of this case, it is hereby

ORDERED, ADJUDGED and DECREED that Plaintiff's motion for partial summary judgment on the first and eighth causes of action is denied. This Court declares that the "eligible policy holder" is Gilly Arthurs and she is entitled to $4,774.00 as her share of the sale and demutualization as determined by the Plan. The Plan approved by the Department of Insurance allowed for the Policy Holder to assign the benefits, but Defendant, Arthurs chose not to do so. The employment contract required Plaintiff to pay all the premiums of the medical malpractice insurance held by MLMIC, but it did not bargain in the agreement for who should receive any monies which might flow should there be a demutualization and sale, and it is further

ORDERED, ADJUDGED and DECREED that Plaintiff's motion for a finding of unjust enrichment is also denied. There has been no unjust enrichment because Plaintiff agreed to pay the premiums as part of the employment agreement offered to Dr. Arthurs. "To prevail on a claim of unjust enrichment, a party must show that (1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered" (citing *Goel v. Ramachandran*, 111 A.D.3d 783, 791, 975 N.Y.S.2d 428 [internal quotation marks omitted])." *FoxStone Group, LLC v Calvary*

Pentecostal Church, Inc., 173 AD3d 978, 981 [2d Dept 2019]. While Dr. Arthurs may be enriched by receiving this profit, she is not being enriched at the expense of the Plaintiff. Plaintiff fully expected to pay all the insurance premiums, without repayment, as part of the compensation to Defendant, when the employment contract was signed. No one anticipated that MLMIC would be demutualized with a profit paid to the policyholders. Therefore Defendant's enrichment is not at Plaintiff's expense, but rather an unforeseen benefit of the bargain, and it is further

ORDERED that Defendants, MLMIC and Computershare take all steps necessary to transfer the payment now being held in escrow, to Gilly Arthurs within 30 days of the posting of this notice to NYSCEF.

Counsel is directed to serve Defendants with a copy of this Order within 30 days of the date of this decision.

The foregoing constitutes the Decision and Order of the Court.

Dated: October 7, 2019
Goshen, New York

ENTER,

Hon. Maria S. Vazquez-Doles, J.S.C.

To: Counsel of record via NYSCEF.

Gilly Arthurs, NP
29 Grandview Terrace
Chester, New York 10918