

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

**RSV MEDICAL, PLLC,**  
Plaintiff/Counter-Defendant,

**Case No. 2025-219400-CB  
Hon. Victoria A. Valentine**

v.

**TRANSCEND COMPANY, INC.,**  
Defendant/Counter-Plaintiff,

---

**OPINION AND ORDER REGARDING PLAINTIFF’S MOTION FOR PARTIAL  
SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10) AS TO DEFENDANT’S  
COUNTERCLAIM FOR BREACH OF CONTRACT**

At a session of said Court held on  
the 5th day of May 2026  
in the County of Oakland, State of Michigan  
PRESENT: HON. VICTORIA A. VALENTINE

This matter is before the Court on Plaintiff’s Motion for Partial Summary Disposition under MCR 2.116(C)(10). This Court has reviewed the pleadings as well as the motion, response and reply. Additionally, oral argument was held on the Motion.

*FACTUAL OVERVIEW*

The parties entered into a Business Administration and Support Services Agreement on March 21, 2024 (the “BASSA”). Under the BASSA, Transcend Company, Inc. (“Transcend”) agreed to provide non-clinical administrative support services to RSV Medical, PLLC (“RSV”). In connection with the BASSA, the parties also entered into a HIPPA Business Associate Agreement (“BAA”), which agreement is incorporated into the BASSA. RSV’s First Amended Complaint (not at issue in this Motion) alleges a variety of claims, including breaches by Transcend relating to fees and use of protected health information. Transcend filed an Answer and Counter Complaint against RSV. Transcend’s Counter Complaint alleges that RSV violated Section 8.2.2 of the BASSA and

breached its obligations of implied covenant of good faith and fair dealing. Transcend also alleges that RSV's conduct breached obligations intertwined with and governed by the BAA, but did not articulate these obligations or the breach in the Counter Complaint.

#### *STANDARD OF REVIEW*

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim or defense. See, e.g., MCR 2.116(G)(3)(b); *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). "In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999); MCR 2.116(C)(10); MCR 2.116(G)(4); *Quinto*, 451 Mich at 358. The moving party "must specifically identify the issues" as to which it "believes there is no genuine issue" of material fact and support its position as provided in MCR 2.116. MCR 2.116(G)(4).

Under Michigan law, the moving party may satisfy its burden of production under MCR 2.116(C)(10) by demonstrating to the court that the non-moving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. *Quinto*, 451 Mich at 361. If the moving party properly supports its motion, the burden "then shifts to the opposing party to establish that a genuine issue of disputed fact exists." *Id.* at 362.

In all cases, MCR 2.116(G)(4) squarely places the burden on the parties, not the trial court, to support their positions. A reviewing court may not employ a standard citing mere possibility or promise in granting or denying the motion. *Maiden*, 461 Mich at 121-120 (citations omitted), and may not weigh credibility or resolve a material factual dispute in deciding the motion. *Skinner v Square D Co*, 445 Mich 153, 161 (1994). Rather, summary disposition

pursuant to MCR 2.116(C)(10) is appropriate if, and only if, the evidence, viewed most favorably to the non-moving party fails to establish any genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362, citing MCR 2.116(C)(10) and (G)(4); *Maiden*, 461 Mich at 119-120 (1999).

### *ANALYSIS*

#### **Allegations**

Transcend relies exclusively on Section 8.2.2 of the BASSA for its claims. Section 8.2.2 requires a 60-day notice of any breaches and the opportunity to cure. Transcend argues that any termination also requires a 120-day transition period under Section 8.5. Failure to provide notice and provide time for transition, as alleged by Transcend, were breaches of the BASSA.

In response, RSV argues that it terminated the contract under Section 8.2.3, which does not require any notice and allows for immediate termination at RSV's sole discretion. Section 8.2.3 indicates:

8.2.3. immediately in the event that (i) Transcend or any of its shareholders, directors or officers engage in conduct that would be harmful to the professional medical reputation of Provider or Dr. Veyna, (ii) Transcend commits any act or omission involving a violation of ethical norms related to the practice of medicine including, without limitation, actions involving directing any medical, professional, and ethical aspects of the Practice or any acts or omissions involving fraud, embezzlement, theft, or misappropriation of funds or assets relating to the Practice or this Agreement), or (iii) termination is necessary, in the good faith belief of Provider, to preserve Provider's or Dr. Veyna's licensure or accreditation or to prevent exposing Provider or Dr. Veyna to civil or criminal penalties or to comply with applicable state or federal laws and regulations, with determination in each case of Section 8.2.3 (i), (ii) and (iii) determined at Provider's sole discretion.

BASSA, Exhibit 1 to Counter Complaint, p 9, § 8.2.3.

RSV argues that the right to immediate termination of the BASSA was in RSV's sole discretion. RSV further argues that termination under Section 8.2 is specifically excluded from the 120-day transition period required under 8.5, so that termination under either 8.2.2 or 8.2.3 did not require the transition period under 8.5.

Transcend argues that, because a demand letter issued prior to litigation listed violations under Sections 8.2.1, 8.2.2, and 8.2.3, there is an ambiguity as to the basis for termination and whether the 60-day notice period found in 8.2.2 was required. The letter (Exhibit 2 to RSV's Brief) indicates specific breaches under specific sections of the BASSA. RSV informed Transcend that immediate termination was necessary due to improper accessing of HIPPA information and potential exposure to penalties.

### **Law on Breach of Contract**

There is no dispute there are contracts between the parties and allegations that RSV has breached the contracts. The question lies in interpretation of those contracts and whether there are questions of fact

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; 576 NW2d 392 (1997). "In interpreting a contract, it is a court's obligation to determine the intent of the parties by examining the language of the contract according to its plain and ordinary meaning." *Phillips v Homer (In re Egbert R. Smith Trust)*, 480 Mich 19, 24; 745 NW2d 754 (2008). Courts "must also give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory." *Klapp v United Ins Group Agency Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003). Courts may not strain to find ambiguity and must read contracts to avoid an absurd or unreasonable result. *Scott v Farmers Ins Exchange*, 266 Mich

App 557, 561; 702 NW2d 681 (2005); *Miller v Van Kampen*, 154 Mich App 165, 168; 397 NW2d 253 (1986). Ultimately, courts must strive to enforce the agreement intended by the parties.

Whether contract language is ambiguous is a preliminary question of law. *UAW-GM Human Resource Center v KSL Rec Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998) (citation omitted). A contract is unambiguous when it fairly admits of but one interpretation. *Holmes v Holmes*, 281 Mich App 575, 594; 760 NW2d 300 (2008). If the language of the contract is clear and unambiguous, it must be enforced as written. *Smith Trust*, 480 Mich at 24.

### **Good Faith in Sole Discretion Clause**

Transcend's claims ask this Court to interpret Section 8.2.2 in a vacuum. In its Response, Transcend also argues that immediate termination under Section 8.2.3 was not exercised in good faith, resulting in a breach for failure to give notice.

Transcend relies upon *Burkhardt v City Nat'l Bank of Detroit*, 57 Mich App 649; 226 NW2d 678 (1975) and *Pemberton v Dharmani*, 207 Mich App 522; 525 NW2d 497 (1994) to support its position that RSV's sole discretion must be exercised in good faith. In *Pemberton*, the applicable statute provided partial immunity where a doctor has a good-faith belief that a life-threatening situation exists. The doctor provided an affidavit indicating he believed there was a life-threatening emergency in progress. The court found that the plaintiffs "did not counter the doctor's affidavit with contrary statements or any other documentation. In the absence of a question of fact . . . the trial court properly granted summary disposition in his favor." *Id.*, 207 Mich App at 529.

In this matter, Dr. Venya provided an Affidavit indicating he determined that a continuing business relationship would be harmful to his professional medical reputation and his licensure, and he indicated that he believed terminating the agreement prevented further exposure and/or

criminal penalties (Plaintiff's Brief, Exhibit 22). Transcend's Counter-Affidavit simply indicates the facts are not true.

Although Transcend's Brief provides alternative reasons for the items described as termination under 8.2.3(i) and (ii) without evidentiary support, Transcend's only argument against Dr. Venya's good-faith belief that termination under (iii) was valid is that there was "no evidence of any governmental investigation, enforcement action, or disciplinary proceeding" (Defendant's Response, p 11). Transcend does not argue that the doctor operated in bad faith, nor does it provide any evidence to contradict RSV's assertions. Section 8.2.3 specifically indicates that it allows for immediate termination "to prevent exposure" to any civil or criminal penalties (Section 8.2.3(ii)). Allowing for termination to prevent exposure would necessarily require action prior to an investigation, action or proceeding. Dr. Venya's Affidavit supports this reason for immediate termination. Transcend provided nothing to contradict that position.

#### **Ambiguity in Sections 8.2.2 and 8.2.3, and Section 8.5**

Transcend argues that the demand letters issued prior to termination rely upon Sections 8.2.1, 8.2.2 and 8.2.3, creating ambiguity as to which provision led to the termination and whether notice was required. The demand letter at issue (Plaintiff's Brief, Exhibit 2) does breakdown violations under particular sections, including reasons for immediate termination under Section 8.2.3. RSV argues that, although certain complaints may have fallen under Section 8.2.2, Section 8.2.3 allows immediate termination in RSV's sole discretion for those three distinct issues.

Section 8.2's heading is "Termination by Provider" and begins with "Provider may terminate this Agreement as follows." There are three sections under this heading: 8.2.1, 8.2.2, and 8.2.3. Transcend does not explain how violations under both 8.2.2 and 8.2.3 would prevent immediate termination under 8.2.3. There is nothing in Section 8.2.3 that permits a partial

termination relating only to the breach alleged. Transcend argues that allowing termination under Section 8.2.3 for the violations at issue would render Section 8.2.2 meaningless; however, Transcend fails to develop this argument. Section 8.2.3 limits immediate termination to three distinct issues. Any one of those issues can be a basis for immediate termination of the entire agreement, based upon the use of “or” in the sentence. Having additional issues outside of the reasons under Section 8.2.3 would not prevent immediate termination under the clear language of the BASSA.

Transcend also argues that the failure to provide for a transition period under 8.5 was a further breach of the BASSA. However, Section 8.5 specifically indicates that it does not apply to termination under Section 8.2. So even if the termination was under 8.2.2, as Transcend argues it should have been, Section 8.5 would not apply. Transcend argues that unless this Court deems the termination proper under 8.2.3, RSV’s failure to provide notice under Section 8.2.2 would constitute a breach.

### **Discovery is Not Complete**

Transcend argues that discovery is not complete, and therefore the Motion is premature. A Motion under (C)(10) is proper where discovery does not stand a fair chance of uncovering factual support for the Defendants’ position. *See Village of Diamondale v Grable*, 240 Mich App 553, 564-65 (2000). “If a party opposes a motion for summary disposition on the ground that discovery is incomplete, the party must at least assert that a dispute does indeed exist and support that allegation by some independent evidence.” *Id.* at 567, quoting *Bellows v Delaware McDonald’s Corp*, 206 Mich App 555 (1994).

Transcend does not argue that Dr. Venya operated in bad faith, but rather, only argues that whether he operated in good faith is a question of fact. It is only a question of fact where

there is some independent evidence to support that a dispute exists. Transcend provides no such evidence.

ORDER

IT IS HEREBY ORDERED that Plaintiff's Motion for Partial Summary Disposition under MCR 2.116(C)(10) is GRANTED and Defendant's Counter Complaint is dismissed.

IT IS SO ORDERED.

THIS IS NOT A FINAL ORDER AND DOES NOT CLOSE THE CASE.

The seal of the Michigan Business Court is circular, featuring a central figure holding a scale and a sword, surrounded by the text "SEAL OF THE MICHIGAN BUSINESS COURT".  
/s/Victoria A. Valentine

---

HON. VICTORIA A. VALENTINE  
BUSINESS COURT JUDGE

Dated: 5/5/26