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

PYRAMID SOLUTIONS, INC.,

Plaintiff,

Case No. 2024-210081-CB
Hon. Victoria Valentine

v

IDIRECTDOC HEALTH TECHNOLOGY, LLC,

Defendant.

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OPINION AND ORDER REGARDING PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116 (C)(10) AND DEFENDANT'S REQUEST UNDER MCR 2.116(I)(2)

At a session of said Court held on the 19th day of May 2025
in the County of Oakland, State of Michigan
PRESENT: HON. VICTORIA A. VALENTINE

This matter is before the Court on Plaintiff's Motion for Summary Disposition under MCR 2.116(C)(10) to which Defendant filed a Response and a Request for Summary Disposition under MCR 2.116(I)(2) This Court has reviewed the motion, response, and reply and heard oral argument. For the reasons set forth below, Plaintiff's Motion is GRANTED under MCR 2.116(C)(10), and Defendant's Request is DENIED under MCR 2.116(I)(2).

I. OVERVIEW

This case involves a dispute that stems from a Managed Services Agreement (MSA) executed on March 13, 2020, between Plaintiff Pyramid Solutions, Inc. (“Pyramid”) and Defendant iDirectDoc Health Technology, LLC (“iDirectDoc”/"Subscriber").[1] Under the MSA, Pyramid was to provide technology consulting and managed service solutions for iDirectDoc's client, Sunny Glen.[2] This includes providing access to software and hardware. The MSA requires iDirectDoc to pay Pyramid a subscription fee.[3] Payments or amounts more than thirty days past due shall be deemed a material breach.[4] The MSA also provides that “termination of this MSA shall not release Subscriber [iDirectDoc] of its obligation to make payment owed under this MSA.”[5] The Agreement also provided for termination as follows:

> **13. Termination.** Either Party may terminate this Agreement at the end of the latest Subscription period for any reason or no reason upon ninety (90) days prior written notice to the other Party. Either Party may terminate the Agreement for a breach, provided the breaching Party is provided a thirty-day (30) period to cure the breach before termination becomes effective.

Evidently in August 2021, Pyramid shut off the Sunny Glen solution.[6] As a result, on August 30, 2021, iDirectDoc provided its written notice of its 90-day plan to transition away from Pyramid as a vendor.[7] A board meeting was held on September 2, 2021, and two members of Pyramid's management (who are also board members) were present. The

[1] Plaintiff’s MSD Exhibit 1: Managed Services Agreement.
[2] Complaint, ¶ 7.
[3] Plaintiff’s MSD Exhibit 1: Managed Services Agreement ¶4.
[4] Plaintiff’s MSD Exhibit 1: Managed Services Agreement ¶5.
[5] Plaintiff’s MSD Exhibit 1: Managed Services Agreement ¶37.
[6] Defendant’s MSD Brief, p 4.
[7] Defendant’s MSD Brief, p 4 and Exhibit E.

termination and transition proposal were approved by the board that day.[8]

On September 9, 2021, the parties, however, entered into a Settlement Agreement,[9] which, *inter alia*, modified the second sentence of the termination section contained in the MSA to provide:

> **"13. Termination.** Either Party may terminate this Agreement at the end of the latest Subscription period for any reason or no reason upon ninety (90) days prior written notice to the other Party. Either Party may terminate an individual Subscription Form for a breach of obligations under such Subscription Form, provided the breaching Party is provided a thirty (30) day period to cure the breach before termination becomes effective**."**

Importantly, the Settlement Agreement explicitly revoked the prior September 2021 notice of termination:

> **3. Acknowledgment. iDirectDoc hereby revokes its prior communicated termination of the MSA and agrees and acknowledges that the MSA remains in full force and effect, subject only to the modifications described in this Agreement**. iDirectDoc acknowledges that all software developed by Pyramid is the sole and exclusive property of Pyramid, except as listed on the attached Exhibit A. The attached Exhibit A lists all software developed by Pyramid and now owned by iDirectDoc or Sunny Glen.[10]

Apparently, the parties continued to perform under the MSA as modified by the Settlement Agreement until June 30, 2024, when Defendant iDirectDoc provided Pyramid with its written notice of termination. This June 30, 2024, notice unequivocally states, in pertinent part, that termination is effective June 30, 2024, despite explicitly citing to the 90-day notice requirement set forth in the MSA as modified:

> This letter (this "Termination Notice") shall serve as the Company's formal notice that **effective June 30, 2024 (the "Effective Date")** the

[8] Defendant's MSD Brief, p 4.
[9] Defendant's MSD Exhibit B.
[10] Defendant's MSD Exhibit B §3. (Emphasis added).

> Company has elected, and is affirmatively exercising its right(s), to terminate the Agreement pursuant to, and in **accordance with, Section 13 of the Agreement, pursuant to which, the Company may terminate the Agreement "for any reason or no reason upon ninety (90) days written notice to Pyramid.**[11]

Pyramid filed a two-count complaint against iDirectDoc for breach of the Master Services Agreement (MSA) and account stated. Pyramid seeks a judgment in the amount of $179,181.82, representing unpaid invoices for services provided in June through September 2024. In addition to the outstanding balance, Pyramid requests interest, attorneys' fees, and costs, as permitted under the MSA and applicable law.

Pyramid now files this Motion for Summary Disposition pursuant to MCR 2.116(C)(10). It argues that there is no genuine issue of material fact that iDirectDoc breached the MSA by failing to comply with the 90-day notice of termination requirement and by failing to pay the invoices for June, July, August, and September 2024.

iDirectDoc responds and seeks summary disposition in its favor under MCR 2.116(I)(2). iDirectDoc admits that it owes Pyramid for the services rendered in June 2024. However, iDirectDoc disputes owing for the months of July, August, and September 2024, based on its belief that the termination notice was effective on June 20, 2024.

II. 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 (1996). Accordingly, "[i]n evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions,

[11] Plaintiff's MSD Exhibit 5.

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 (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. If the moving party fails to properly support its motion for summary disposition, the nonmoving party has no duty to respond, and the trial court should deny the motion. MCR 2.116(G)(4). See also *Meyer v City of Center Line*, 242 Mich App 560, 575 (2000) (concluding that the trial court erred when it granted an improperly supported motion for summary disposition under MCR 2.116(C)(10)).

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). A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. *El-Khalil*, 504 Mich at 160 (citation omitted). Granting a motion for summary disposition under MCR 2.116(C)(10) is warranted if the substantively admissible evidence shows that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto*, 451 Mich at 362-363.

Pursuant to MCR 2.116(I)(2), "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, court may render judgment in favor of opposing party." "If, after careful review of the evidence, it appears to the trial court that there is no genuine issue of material fact and the opposing party is entitled to judgment as a matter of law, then summary disposition is properly granted under MCR 2.116(I)(2)." *Lockwood v Twp of Ellington,* 323 Mich App 392, 401 (2018).

III. ANALYSIS

1. Interpretation of the Termination Clause of the MSA as modified by the Settlement Agreement, (Section 13), which provides:

> ***13. Termination.*** *Either Party may terminate this Agreement at the end of the latest Subscription period for any reason or no reason upon ninety (90) days prior written notice to the other Party.* Either Party may terminate an individual Subscription Form for a breach of obligations under such Subscription Form, provided the breaching Party is provided a thirty (30) day period to cure the breach before termination becomes effective**.**

The core of the dispute revolves around the interpretation and application of the MSA's termination clause (Section 13) as modified by the Settlement Agreement. Pyramid

contends that this Section is unambiguous--termination requires 90 days' notice *before* the termination date. While iDirectDoc also argues that the language is unambiguous, its interpretation differs. iDirectDoc contends that the termination clause's explicit use of the word *"or"* creates two distinct and independent options for terminating the Agreement: (1) termination at the end of the subscription term for *any reason*, and (2) termination upon 90 days' prior written notice for *no reason*. iDirectDoc argues that the placement of the 90-day notice requirement—immediately following the phrase *"or for no reason"*—indicates that the 90-day notice obligation modifies only the *"no reason"* for termination, not termination *for any reason* at the end of the subscription term.[12]

A court's "goal in contract interpretation is to give effect to the intent of the parties, to be determined first and foremost by the plain and unambiguous language of the contract itself." *Wyandotte Elec Supply Co v Electrical Technology Sys, Inc*, 499 Mich 127, 143- 144 (2016). "[I]t has long been the law in this state that courts are not to rewrite the express terms of contracts." *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 199-200 (2008). See also *Kendzierski v Macomb County*, 503 Mich 296, 311-312 (2019) (emphasis in original) ("A

[12] To counter iDirectDoc's interpretation of the termination clause, Pyramid, in its Reply Brief, relies on the series-qualifier canon as explained by the United States Supreme Court in *Facebook, Inc. v. Duguid*, 592 U.S. 395 (2021). The Court in *Facebook* stated that when there is a "straightforward, parallel construction" involving multiple nouns or verbs, a trailing modifier "normally applies to the entire series." *Id*. at 403 (quoting A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts*, at 147 (2012)). Applying this principle, Pyramid argues that the 90-day prior written notice requirement modifies both forms of termination—whether "for any reason" or "for no reason"—thereby refuting iDirectDoc's claim that it applies only to the latter. The Court finds the facts in *Facebook* distinguishable. First, *Facebook* involved the United Statues Supreme Court's interpretation of a *statue*. Here, the matter involves the interpretation of a *contract* and the parties' intent. Additionally, unlike in *Facebook*, the termination section at issue does not include a comma separating the qualifier, *upon ninety (90) days prior written notice, f*rom the phrase "either Party may terminate this Agreement at the end of the latest Subscription period for any reason or no reason.

fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be enforced as written" and a court "will not create ambiguity where the terms of the contract are clear").

The question of whether contract language is ambiguous is a question of law. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463 (2003). A"). "A contract is unambiguous, even if inartfully worded or clumsily arranged, when it fairly admits of but one interpretation." *McCoig Materials, LLC v Galui Constr, Inc*, 295 Mich App 684, 694 (2012). "Every word, phrase, and clause in a contract must be given effect, and the contract interpretation that would render any part of the contract surplusage or nugatory must be avoided." *Id*.

A contract is ambiguous if there is an irreconcilable conflict between provisions in the contract or "when a term is equally susceptible to more than a single meaning." *Bodnar v St John Providence, Inc*, 327 Mich App 203, 220 (2019) (citation omitted). Under such circumstances, the ambiguous contract language presents a question of fact. *Klapp,* 468 Mich at 469. "[I]f a contract is ambiguous, then extrinsic evidence is admissible to determine the actual intent of the parties." *Shay v Aldrich*, 487 Mich 648, 667 (2010) (quotation marks and citation omitted). See also *Klapp*, 468 Mich at 469 ("In resolving such a question of fact, i.e., the interpretation of a contract whose language is ambiguous, the jury [trier of fact] is to consider relevant extrinsic evidence.)"[13]

[13] iDirectDoc argues that where a contract is ambiguous, it must be construed against the drafter. However, this rule, "contra proferentem," is a tool to be used by the finder of fact in resolving an ambiguous contract "only if all conventional means of contract interpretation, including the consideration of relevant extrinsic evidence, have left the jury unable to determine what the parties intended their contract to mean." *Klapp*, 468 Mich at 471-472. "The rule of contra proferentem is a tool to be used by a finder of fact in resolving an ambiguous contract not a tool to be used by the Court at the summary disposition stage." *Kemp v Allen*, unpublished per curiam opinion of the Court of Appeals, issued June 6, 2017 (Docket No. 330968), p 2 n 2.

Based on a reading of both sentences contained in the termination section,[14] the Court finds that Section 13 is unambiguous. It specifically requires 90-days' prior written notice of termination for *any* reason or *no* reason. To interpret this section as iDirectDoc argues would create an ambiguity. Such an ambiguity would, in effect, render the second sentence of Section 13, which requires a 30-day period relating to breach, meaningless and/or cause an irreconcilable conflict between the two sentences. In other words, while a breach would require a 30-day period to cure, a termination at the end of the latest Subscription period for "any reason" would be effective immediately upon notice. "A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be enforced as written" and a court "will not create ambiguity where the terms of the contract are clear." *Kendzierski v Macomb County*, 503 Mich 296, 311-312 (2019). "A contract is unambiguous, even if inartfully worded or clumsily arranged, when it fairly admits of but one interpretation." *McCoig Materials, LLC v Galui Constr, Inc*, 295 Mich App 684, 694 (2012).

Based on the above, the Court agrees with Pyramid that there is not a question of fact that Section 13 requires 90-days' prior written notice of termination for "any" reason or for "no reason."

2. Payment Obligations (June, July, August, September 2024)

It is undisputed that iDirectDoc failed to pay Pyramid the invoices for June, July, August, and September 2024, totaling $179,181.82. It is also undisputed the June 30, 2024,

[14] "Every word, phrase, and clause in a contract must be given effect, and the contract interpretation that would render any part of the contract surplusage or nugatory must be avoided." *McCoig Materials, LLC v Galui Constr, Inc*, 295 Mich App 684, 694 (2012).

Notice of termination did not provide for 90 days' prior notice, contrary to the requirements set forth in Section 13.[15]

3. Account Stated

Pyramid argues that its complaint attached an affidavit of account, which iDirectDoc did not rebut. Pyramid, therefore, argues that it established prima facie evidence of such indebtedness under MCL 600.2145. The Court agrees with iDirectDoc that the dispute does not concern the amount billed; but rather the effective date of termination under the MSA. iDirectDoc, however, acknowledges, "[i]f Plaintiff is correct, four months are owed. If Defendant is correct, one month is owed."[16] Based on the Court's findings and iDirectDoc's acknowledgment, "four months are owed."

4. Entitlement to Attorneys' Fees

The parties dispute whether Pyramid is entitled to recover its reasonable legal fees and expenses under Section 36 of the MSA, which provides:

> **36. Governing Law; Forum Selection.** This Agreement shall be governed by and construed in accordance with the internal laws of the state of Michigan without regard to conflict competent jurisdiction in Oakland County, Michigan. *Subscriber shall pay Pyramid's expenses,*

[15] The parties' briefs also raise the issue of whether the termination notice dated September 2, 2021, had any legal effect, and if so, whether that notice was subsequently revoked. iDirectDoc claims that a prior written termination notice provided on September 2, 2021, fulfilled the 90-day requirement, which was never effectively revoked. iDirectDoc cites to Terry F. Cooper (iDirectDoc's CEO) deposition where he testified that he believed the company had already provided 90 days' notice of termination back in 2021. (iDirectDoc's Brief, p 11; Mr. Cooper's dep. pp 113-114). Pyramid argues, however, that iDirectDoc's attempt to rely on the September 2, 2021, notice is meritless. Pyramid contends that this notice was explicitly revoked by the subsequent Settlement Agreement, which explicitly provided that "iDirectDoc hereby revokes its prior communicated termination of the MSA and agrees and acknowledges that the MSA remains in full force and effect, subject only to the modifications described in this Agreement." (Pyramid's Exhibit 4). Pyramid also points to Terry Cooper's deposition testimony where he admitted that the Settlement Agreement revoked the September 2, 2021, notice. (Pyramid's Brief, p 10; Cooper dep, p 92). The Court agrees with Pyramid.

[16] Defendant's Brief, p 14.

> *including reasonable attorneys' fees, incurred in enforcing any of Subscriber's payment obligations*.[17]

iDirectDoc contends that Pyramid is not entitled to attorneys' fees. In support, it relies on the following Governing Law section of the *Settlement Agreement*, which it argues eliminated the expense and attorney fee language included in the "Governing Law" section of the MSA:

> 12. **Governing Law.** *This Agreement* will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity, and construction, without regard to any conflict of law provisions.[18]

This section, however, explicitly states that it applies to *this* Agreement—the Settlement Agreement. And, importantly, iDirectDoc's argument overlooks Section 3 of the Settlement Agreement, which expressly states that the MSA remains in full force and effect, except as modified by the Settlement Agreement. The only such modification is set forth in Section 4 of the Settlement Agreement, which pertains to the termination section (Section 13) of the MSA. Sections 3 and 4 of the Settlement Agreement provide as follows:

> **3. Acknowledgment.** ***iDirectDoc hereby revokes its prior communicated termination of the MSA*** **and agrees and acknowledges that the MSA remains in full force and effect, subject only to the modifications described in this Agreement**. iDirectDoc acknowledges that all software developed by Pyramid is the sole and exclusive property of Pyramid, except as listed on the attached Exhibit A. The attached Exhibit A lists all software developed by Pyramid and now owned by iDirectDoc or Sunny Glen.[19]
>
> **4. MSA Amendments.** The Parties agree that Section 13 of the MSA is hereby deleted and replaced as follows:
>
> **"13. Termination.** Either Party may terminate this Agreement at the end of the latest Subscription period for any reason or no

[17] Plaintiff's MSD Exhibit 1 (Emphasis added).
[18] Defendant's MSD Exhibit B.
[19] Defendant's MSD Exhibit B §3. (Emphasis added).

> reason upon ninety (90) days prior written notice to the other Party. Either Party may terminate an individual Subscription Form for a breach of obligations under such Subscription Form, provided the breaching Party is provided a thirty (30) day period to cure the breach before termination becomes effective."

Based on the above, the Court finds that Pyramid is entitled to attorney fees. Section 36 specifically provides that "*Subscriber shall pay Pyramid's expenses, including reasonable attorneys' fees, incurred in enforcing any of Subscriber's payment obligations*."

CONCLUSION

Based upon the foregoing reasons, Pyramid is entitled to Summary Disposition in its favor pursuant to MCR 2.116(C)(10) on its breach of contract count of its Complaint. iDirectDoc breached the MSA by failing to provide 90-days' prior written notice and by failing to pay the invoices for June through September of 2024, which total $179,181.82. Furthermore, under Section 36 of the MSA, Pyramid is entitled to its expenses, including reasonable attorney fees incurred in enforcing any of Subscriber's payment obligations.

WHEREFORE, it is hereby Ordered that:

> Pyramid's Motion for Summary Disposition pursuant to MCR 2.116(C)(10) is GRANTED as to Pyramid's Breach of Contract count.
>
> iDirectDoc's request for relief under MCR 2.116(I)(2) is DENIED.

IT IS FURTHER ORDERED that:

> Within 14 days of the date of this Opinion, Pyramid shall submit to iDirectDoc its request for reasonable attorney fees and expenses pursuant to the factors set forth in *Pirgu v United Services Automobile Association*, 499 Mich 269 (2018). Such a request shall be supported by invoices and an affidavit. iDirectDoc shall have 14 days to object to Pyramid's submission. If the parties cannot resolve the amount of attorney fees and expenses to which Pyramid is entitled, Pyramid shall file a motion and notice of hearing.

This Order DOES NOT resolve the past pending matter and DOES NOT close the case.

IT IS SO ORDERED.

/s/Victoria A. Valentine

DATED: 5/19/25