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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1174**

Washington International Insurance Company,
Plaintiff,

vs.

Hannaya Health Care Inc., et al., defendants and third-party plaintiffs,
Appellants,

vs.

State of Minnesota, third-party defendant,
Respondent.

**Filed March 16, 2020
Affirmed
Slieter, Judge**

Hennepin County District Court
File No. 27-CV-18-9223

Daniel L. M. Kennedy, Kennedy & Cain PLLC, Minneapolis, Minnesota (for appellants)

Keith Ellison, Attorney General, Drew Bredeson, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Florey, Judge; and Slieter,
Judge.

UNPUBLISHED OPINION

SLIETER, Judge

Appellants challenge the dismissal of their claims for breach of contract and unjust enrichment, arguing that the district court erred by determining that: (1) appellants failed to identify a contractual agreement breached by respondent; (2) the doctrine of unjust enrichment does not apply; and (3) the claims were asserted against the wrong party. Because the district court correctly concluded that no contract existed to be breached and the doctrine of unjust enrichment does not apply, we affirm.

FACTS

Appellant Ahmed Abdi Jama is the owner of appellant Hannaya Health Care Inc. which, when operational, employed personal-care attendants (PCAs). In 2012, Hannaya obtained a \$50,000 surety bond issued by Washington International Insurance Company, as required by Minn. Stat. § 256B.0659, subd. 21(2) (2018).¹ Jama has agreed to indemnify Hannaya's obligations pursuant to the terms of the bond.

In February 2015, the Minnesota Department of Human Services (DHS) Surveillance and Integrity Review Section (SIRS) sent Hannaya a notice of agency action. In the notice, SIRS informed Hannaya that Hannaya received overpayments totaling \$92,847.53 for periods when it did not have a supervising qualified professional overseeing the PCAs, and also for PCA services that Hannaya billed for but did not provide. In July

¹ While section 256B.0659, subdivision 21(2), has been amended twice since 2012, neither amendment is relevant to the present matter. 2013 Minn. Laws ch. 108, art 5, § 11 at 136; 2014 Minn. Laws ch. 291, art. 10, § 3, at 148.

2015, DHS sent Hannaya notice that DHS was withdrawing the February 2015 notice of agency action, and instead would begin withholding all Minnesota Health Care Program payments due to a credible allegation of fraud.

In January 2016, the state filed a criminal complaint against Hannaya, charging it with ten counts of theft by false representation. In the criminal complaint, the state alleged that Hannaya fraudulently obtained \$31,956.35. DHS requested restitution in the criminal matter in the amount of \$112,708.35. Pursuant to a plea agreement, Hannaya pleaded guilty to two counts of theft by false representation, and the state dismissed the remaining eight counts. Hannaya also agreed to pay \$31,956.35 in restitution. The district court sentenced Hannaya in accordance with the terms of the plea agreement and ordered Hannaya to pay restitution in the amount of \$31,956.35 to the Minnesota Medicaid Fraud Control Unit, within five years.

In December 2016, DHS submitted a claim on Hannaya's bond to Washington International in the amount of \$41,928.76. Washington International paid the amount demanded against Hannaya's bond, and initiated the present action against Hannaya and Jama for breach of their obligations to indemnify Washington International in accordance with the terms of the bond. Hannaya and Jama filed an answer and a third-party complaint against the state alleging breach of contract and unjust enrichment. The district court granted Washington International summary judgment against Hannaya and Jama in the principal amount of \$41,928.76 plus \$5,100.38 in interest.

Following the grant of summary judgment to Washington International, the state moved to dismiss Hannaya and Jama's third-party complaint for failing to state claims for

which relief may be granted pursuant to Minn. R. Civ. P. 12.02(e). The district court granted the state's motion and dismissed Hannaya and Jama's third-party complaint. This appeal follows.

D E C I S I O N

Appellants assert that the district court erred by dismissing their complaint for failing to state claims for which relief may be granted. We review whether a complaint sets forth a legally sufficient claim for relief *de novo*, accepting the facts alleged in the complaint as true and construing all reasonable inferences in favor of the nonmoving party. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014).

Breach of Contract

Appellants argue that the state breached the restitution order imposed as part of the criminal sentence against Hannaya by collecting additional civil damages against their bond. "In order to state a claim for breach of contract, the plaintiff must show (1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the contract by defendant." *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011). The district court found that appellants failed to identify the existence of a contract between themselves and the state, and dismissed their claim.

Appellants argue that because DHS sought to recover on the bond under the same theory of liability for which they were sentenced, any additional recovery violated the terms of their plea agreement. However, appellants' third-party complaint does not allege the existence of a specific contract that the state breached nor, therefore, any specific

contractual provision. Instead, the third party complaint states that “DHS has made an improper claim against the [s]urety [b]ond and has received payment on that claim.”

The district court asked appellants three times during argument on the state’s motion: “Is there anything in the record that shows. . . the plea agreement was that the [s]tate and all of its entities and actors therein were providing a release from any civil claim for recovery or relief against the defendants?” Each time in response to the district court’s questioning, appellants failed to identify any such term in the plea agreement. Instead, they repeatedly argued that their agreement to pay restitution should have extinguished any additional liability, but could not identify any contract that required such a result.

In addition to appellants’ failure to identify a contract breached by the state, the terms of the bond provide that if Hannaya “violate[s] Minnesota Statutes, Chapter 256B, or any rules made by the commissioner or other legal obligations arising out of [its] conduct as a PCA agency, the [c]ommissioner of [DHS] shall have, *in addition to all other legal remedies*, a right of action on this bond.” (Emphasis added.) Because appellants did not allege a specific agreement that the state violated by collecting on the bond, and because the terms of the bond provide for recovery thereon independent of all other legal remedies, the district court did not err by dismissing appellants’ claim for breach of contract for failing to state a claim pursuant to Minn. R. Civ. P. 12.02(e).

Unjust Enrichment

Appellants next argue that the district court erred by dismissing their claim for unjust enrichment because it would be inequitable to allow the state to recover against the bond for the same damages that appellants were ordered to pay criminal restitution. “To

establish an unjust enrichment claim, the claimant must show that the defendant has knowingly received or obtained something of value for which the defendant in equity and good conscience should pay.” *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 838 (Minn. 2012) (quotation omitted). Unjust enrichment is a form of quasi-contract and therefore does not apply when an enforceable contract is applicable. *Id.* A plaintiff must show that the defendant was illegally or unlawfully enriched. *Id.*

Hannaya pleaded guilty to two counts of theft by false representation for the periods that it submitted claims for PCA services without having a supervising qualified professional. Minn. Stat. § 256B.0659, subd. 14(a) (2018), requires all PCAs to be supervised by a qualified professional. As set forth above, by the express terms of the bond, if Hannaya violates chapter 256B, the commissioner of DHS has a right to collect on the bond, in addition to all other available remedies. Therefore, the state’s recovery against the bond was in accordance with the terms of a valid agreement and the equitable doctrine of unjust enrichment does not apply. *Id.* On this basis, the district court did not err by dismissing appellant’s cause of action for unjust enrichment for failing to state a claim pursuant to Minn. R. Civ. P. 12.02(e).

Proper Party

Because we affirm the district court’s dismissal of all of the claims in appellants’ third-party complaint, we do not reach the issue of whether appellants incorrectly named the State of Minnesota as third-party defendant.

Affirmed.