

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION— CIVIL

DOCKETED

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WEST
PACIFIC REGISTRATION

CLINLOGIX, LLC	:	July Term, 2010
	:	
<i>Plaintiff</i>	:	Case No. 01930
	:	
v.	:	
	:	
NUMODA CORPORATION	:	
	:	
<i>Defendant</i>	:	Commerce Program
	:	
v.	:	
	:	
TAIMED BIOLOGICS, INC. and TAIMED BIOLOGIC USA, INC.	:	Control Nos.
	:	11110254, 11110255
<i>Additional Defendants</i>	:	

ORDER

AND NOW, this 24th day of February, 2012, upon consideration of the Motion for Summary Judgment and Motion for Leave to Amend Complaint of Plaintiff, Clinlogix, LLC, the Responses in Opposition of Defendant Numoda Corporation, the respective memoranda of law, and all other matter of record, it is **Ordered** as follows:

I. The Motion for Summary Judgment of Plaintiff Clinlogix, LLC is **Granted-in-part and Denied-in-part**. The issues for trial will be limited to the following:

- a) whether Plaintiff Clinlogix, LLC received pre-payment from Defendant Numoda Corporation, in the amount of \$132,707.72, for work which Clinlogix was allegedly contracted to perform on behalf of Numoda, but which Clinlogix allegedly did not perform before conclusion of the study known as Protocol TBM—202;

Clinlogix, Llc Vs Numod-ORDOP

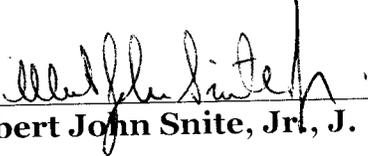


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b) whether Clinlogix overbilled Numoda, if at all, through any of the 2010 unpaid invoices issued by Clinlogix to Numoda.

- II. The Counterclaim of Defendant Numoda Corporation, asserting the claims of breach-of-contract and unjust enrichment, is **Dismissed**;
- III. The Motion for Leave to Amend Complaint filed by Plaintiff Clinlogix is **Denied**.

By The Court,



Albert John Snite, Jr., J.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION— CIVIL**

CLINLOGIX, LLC	:	July Term, 2010
<i>Plaintiff</i>	:	Case No. 01930
v.	:	
NUMODA CORPORATION	:	
<i>Defendant</i>	:	
v.	:	Commerce Program
TAIMED BIOLOGICS, INC. and TAIMED BIOLOGIC USA, INC.	:	Control Nos.
<i>Additional Defendants</i>	:	11110254, 11110255

OPINION

Before the Court are the Motion for Summary Judgment and Motion for Leave to Amend Complaint, filed by Plaintiff/Counterclaim Defendant Clinlogix, LLC. For the reasons below, the Motion for Summary Judgment is denied-in-part and granted-in-part. The Motion for leave to Amend Complaint is denied.

Background

Plaintiff, Clinlogix, LLC (“Clinlogix,”) is a Pennsylvania company that provides clinical testing of new drugs. When a pharmaceutical house develops a drug requiring approval from the U.S. Food and Drug Administration, companies such as Clinlogix are hired to conduct tests upon the new drug. Defendant, Numoda Corporation (“Numoda,”) a Delaware corporation, manages clinical trial tests conducted by companies such as Clinlogix.

Numoda was engaged by TaiMed Biologics, Inc. (“TaiMed,”) to manage a clinical

trial designed to test a new anti HIV drug. The clinical trial was named “Protocol TMB—202.” Under the terms of the TaiMed—Numoda engagement, Numoda was entitled to sub-contract parts of the work to other parties.

On 24 September 2008, Numoda and Clinlogix signed a “Letter of Intent” paving the way to a sub-contracting agreement. The Letter of Intent stated:

The parties agree that, while they are negotiating a Master Agreement and Related Project Agreement ... Numoda requests ... and Clinlogix[] agrees to, perform work on ... activities relating to the Project.¹

On 28 October 2008, Numoda and Clinlogix signed a “Master Agreement” which stated in pertinent part:

5.0 Payment of Fees and Expenses.
Clinlogix and Numoda shall jointly develop a budget and payment schedule ... for each Project.... Each Budget shall state separately Professional Fees and pass-through expenses.

* * *

Unless otherwise agreed, Clinlogix will invoice Numoda for the Professional Fees and pass-through expenses incurred in performing services....

* * *

Numoda reserves the right to review Clinlogix’s previously paid invoice within sixty (60) days of payment and, if Numoda determines that Clinlogix was over-paid, Numoda will request for refund in writing....²

On 28 October and 14 November 2008, Clinlogix and Numoda respectively executed a Project Agreement for Protocol TMB—202 (the “Project Agreement.”) The Project Agreement stated:

Numoda reserves the right to review CLINLOGIX [*sic*] previously paid invoices within sixty (60) days of payment

¹ Letter of Intent, Exhibit A to the Motion for Summary Judgment of Clinlogix.

² Master Agreement, ¶ 5.0, Exhibit B to the Motion for Summary Judgment of Clinlogix.

and if Numoda determines that CLINLOGIX was overpaid, Numoda will request a refund in writing. CLINLOGIX has 30 days to review those requests and refund Numoda.³

Clinlogix began performance under the agreements, and submitted its invoices to Numoda. Throughout 2009, Numoda paid the invoices issued by Clinlogix for a total amount of \$2,488,549.⁴ In 2010, Clinlogix submitted, and Numoda received, the following ten invoices representing services rendered and teleconferencing and travel costs incurred by Clinlogix during the TMB—202 clinical trial for the year 2010:

Date	Invoice #	Amount
2/18/2010 ⁵	2010-0035	63,054.20
2/28/2010 ⁶	2010-0043	1,056.37
2/28/2010 ⁷	2010-0042	4,268.67
3/17/2010 ⁸	2010-0063	78,246.59
3/31/2010 ⁹	2010-0081	359.52
3/31/2010 ¹⁰	2010-0080	4,559.87
3/31/2010 ¹¹	2010-0087	82,706.81
4/30/2010 ¹²	2010-0103	299.38
4/30/2010 ¹³	2010-0104	7,469.74
5/27/2010 ¹⁴	2010-0129	85,759.37
	Total	\$327,780.52

On 19 July 2010, Clinlogix filed the instant action against Numoda. In the Complaint, Clinlogix asserts the claims of breach-of-contract and accounts-stated. In essence, the complaint asserts that Numoda breached its agreements with Clinlogix by

³ Project Agreement for Protocol TMB—202, Payment Schedule, Exhibit E to the Motion for Summary Judgment of Clinlogix.

⁴ Admission of Numoda in its Response in Opposition to the Motion for Summary Judgment of Clinlogix, ¶ 19.

⁵ Exhibit G, pp. 38-39, Motion for Summary Judgment of Clinlogix.

⁶ Exhibit I, *id.*

⁷ Exhibit J, *id.*

⁸ Exhibit G, *id.*

⁹ Exhibit K, *id.*

¹⁰ Exhibit L, *id.*

¹¹ Exhibit G, *id.*

¹² Exhibit M, *id.*

¹³ Exhibit N, *id.*

¹⁴ Exhibit G, *id.*

failing to pay the invoices issued in 2010 for an amount of \$327,780.¹⁵ On 11 August 2010, Numoda filed an Answer and Counterclaim to the Complaint of Clinlogix, subsequently followed by an Amended Answer, New Matter and Counterclaim. In the New Matter, Numoda asserted a number of affirmative defenses, including entitlement to setoff, failure of Clinlogix to comply with the scope of the written agreements, and breach of the agreements. Numoda also asserted several counterclaims against Clinlogix. Of such claims, only breach-of-contract and unjust enrichment survived the preliminary objections filed by Clinlogix.

On 3 September 2010, Numoda joined TaiMed Biologic, Inc. and TaiMed Biologic USA, Inc. as additional defendants (the “TaiMed Additional Defendants.”) Subsequently, the Joinder Complaint was amended. However, on 7 November 2011, the parties stipulated that the TaiMed Additional Defendants should be dismissed from the instant action. The Court issued an Order consistent with the stipulation of the parties.

Discussion

Summary judgment is properly granted when an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action . . . which in a jury trial would require the issues to be submitted to a jury.... [T]he motion for summary judgment encompasses two concepts: (1) the absence of a dispute as to any material fact and (2) the absence of evidence sufficient to permit a jury to find a fact essential to the cause of action or defense.

In summary judgment cases, review of the record must be conducted in the light most favorable to the non-moving party, and all doubts regarding the existence of a genuine issue of material fact must be resolved against the moving party. Failure of a non-moving party to adduce sufficient evidence on an issue essential to its case and on

¹⁵ Complaint, ¶ 37.

which it bears the burden of proof such that a jury could return a verdict in its favor establishes the entitlement of the moving party to judgment as a matter of law.¹⁶

I. **Numoda may not maintain against Clinlogix the claims of breach-of-contract and unjust enrichment asserted in its Amended Counterclaim.**

In its First Amended Answer with New Matter and Counterclaim, Numoda asserts against Clinlogix the claims of breach-of-contract and unjust enrichment. As to the claim of breach-of-contract, Numoda states that “Clinlogix breached the Clinlogix—Numoda Agreements by charging Numoda for services significantly in excess of the amounts agreed upon ... without ... Numoda’s prior written approval.”¹⁷ Numoda asserts that the “total cost of over-charged services for which Numoda has paid Clinlogix is in excess of \$327,000.” As to the claim of unjust enrichment, Numoda asserts that: “in the event ... Clinlogix did not breach the Clinlogix—Numoda Agreements ... Clinlogix has been unjustly enriched as a result of payments it received from Numoda for services ... not properly authorized.”¹⁸

To determine whether Numoda may maintain the claim of breach-of-contract in its Counterclaim, this Court turns to the language of the Master Agreement and Project Agreement executed by Numoda and Clinlogix. In Pennsylvania—

The task of interpreting a contract is generally performed by a court rather than by a jury. The goal of that task is ... to ascertain the intent of the parties as manifested by the language of the written instrument. Where a provision ... is ambiguous ... the ... provision is to be construed ... against the drafter of the agreement. Where, however, the language of the contract is clear and unambiguous, a court is required

¹⁶ Young v. DOT, 560 Pa. 373, 375-76; 744 A.2d 1276, 1277 (Pa. 2000).

¹⁷ Amended Counterclaim, ¶ 27.

¹⁸ Amended Counterclaim, ¶ 39.

to give effect to that language.¹⁹

The pertinent provisions of the Master Agreement and Project Agreement state:

Numoda reserves the right to review Clinlogix's previously paid invoices within sixty (60) days of payment, and, if Numoda determines that Clinlogix was over-paid, Numoda will request for refund in writing. Clinlogix has 30 days to review those requests and refund Numoda.²⁰

Numoda reserves the right to review CLINLOGIX [*sic*] previously paid invoices within sixty (60) days of payment and if Numoda determines that CLINLOGIX was overpaid, Numoda will request a refund in writing. Clinlogix has 30 days to review those requests and refund Numoda.²¹

The language above is clear and unambiguous: the right of Numoda to challenge allegedly overpaid invoices expired as soon as Numoda failed to challenge such invoices within sixty days of payment. The language above is nothing more than a limitation upon Numoda's right to subsequently challenge overpayment. Numoda agreed contractually to be bound by the limitation,²² and has provided no evidence that it challenged, within sixty days of payment, any invoices of Clinlogix. Numoda's right to challenge any overpaid invoices has expired, and Numoda may not maintain the claim of breach-of-contract asserted in its Counterclaim.

Similarly, Numoda may not maintain the claim of unjust enrichment because "the quasi-contractual doctrine of unjust enrichment is inapplicable when the

¹⁹ Standard Venetian Blind Co. v. American Empire Ins. Co., 503 Pa. 300, 304-305; 469 A.2d 563, 566 (Pa. 1983).

²⁰ Master Agreement, ¶ 5.0, Exhibit B to the Motion for Summary Judgment of Clinlogix (emphasis supplied).

²¹ Project Agreement for Protocol TMB—202, Payment Schedule, Exhibit E to the Motion for Summary Judgment of Clinlogix (emphasis supplied).

²² "Contracting parties are normally bound by their agreements, without regard to whether the terms thereof were read and fully understood." Samuel-Bassett v. Kia Motors Am., Inc., 2011 Pa. LEXIS 2896 (Pa. Dec. 2, 2011).

relationship between parties is founded on a written agreement or express contract.”²³

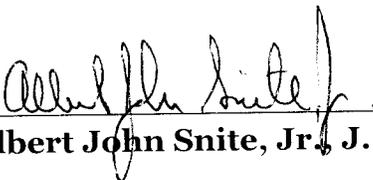
In this case, the relationship between Numoda and Clinlogix is clearly founded upon written contracts, and Numoda’s claim of unjust enrichment may not be maintained.²⁴

For the reasons above, the Motion for Summary Judgment of Clinlogix is granted-in-part and denied-in-part. The issues to be tried will be limited to:

- a) whether Plaintiff Clinlogix, LLC received pre-payment from Defendant Numoda Corporation, in the amount of \$132,707.72, for work which Clinlogix was allegedly contracted to perform on behalf of Numoda, but which Clinlogix allegedly did not perform before conclusion of the study known as Protocol TBM—202²⁵; and,
- b) whether Clinlogix overbilled Numoda, if at all, through any of the 2010 unpaid invoices issued by Clinlogix to Numoda.

The Motion for Summary Judgment is otherwise granted and the Counterclaim of Numoda is dismissed in its entirety.

By The Court,



Albert John Snite, Jr., J.

²³ Braun v. Wal-Mart Stores, Inc., 24 A.3d 875, 896 (Pa. Super. 2011).

²⁴ Plaintiff’s Motion for Leave to Amend Complaint, as to add the claim of unjust enrichment, is denied on the same grounds.

²⁵ Defendant Numoda still has the opportunity at trial to demonstrate that the \$132,707.72 should be characterized as a “pre-payment” as opposed to an “overpayment.” If in fact this sum is found at trial to be an “overpayment,” Numoda’s right to recover this amount, or set it off against any amounts possibly owed to Clinlogix, will be dismissed.