STATE OF MICHIGAN

COURT OF APPEALS

MAPLE MANOR REHABILITATION CENTER, LLC, MAPLE MANOR NEURO CENTER, INC., JOSE S. EVANGELISTA III, M.D., PC, LIVONIA DIAGNOSTIC CENTER, PC, A. PETER EVANGELISTA, M.D., PC, ADVANCED WOUND CARE AND HYPERBARIC MEDICINE OF MICHIGAN, INC., and SAVE MORE PHARMACY,

Plaintiffs-Appellees,

v

GREAT LAKES PAPER STOCK CORPORATION,

Defendant-Third-Party Plaintiff-Appellant,

and

TRENT KUKAN and ALICIA KUKAN,

Third-Party Defendants-Appellees.

UNPUBLISHED
December 28, 2021

No. 356258
Wayne Circuit Court
LC No. 19-016745-NO

Before: BOONSTRA, P.J., and GLEICHER and LETICA, JJ.

PER CURIAM.

Defendant, Great Lakes Paper Stock Corporation (Great Lakes), appeals by leave granted[1] the trial court's opinion and order denying its motions for summary disposition as to plaintiffs'

[1] *Maple Manor Rehab Ctr LLC v Great Lakes Paper Stock Corp*, unpublished order of the Court of Appeals, entered April 28, 2021 (Docket No. 356258).

complaint against it and its own third-party complaint against the Kukans. We reverse in part, vacate in part, and remand for proceedings consistent with this opinion.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case arises from a March 30, 2017 accident in which third-party defendant Trent Kukan (Kukan) sustained serious injuries after he was hit by an excavator at a recycling plant owned by Great Lakes. Following a lengthy period of hospitalization, Kukan received treatment from Maple Manor Rehabilitation Center, LLC, Maple Manor Neuro Center, Inc., Jose S. Evangelista III, M.D., PC, Livonia Diagnostic Center, PC, A. Peter Evangelista, M.D., PC, Advanced Wound Care and Hyperbaric Medicine of Michigan, Inc., and Save More Pharmacy (plaintiffs).

On April 25, 2017, Kukan and his wife, Alicia Kukan (collectively "the Kukans"), filed a three-count complaint against Great Lakes and State Farm Mutual Automobile Insurance Company (State Farm), their no-fault insurer. This case was designated Case No. 17-006288-NO. The Kukans alleged claims of negligence and loss of consortium against Great Lakes and sought personal-protection-insurance (PIP) benefits from State Farm. On June 1, 2017, shortly after filing suit against Great Lakes and State Farm, Kukan assigned to plaintiffs[2] his rights to payment for services provided by plaintiffs to which Kukan was entitled under the no-fault act, MCL 500.3101 *et seq*. However, in the then-pending litigation filed by the Kukans, State Farm moved for summary disposition, alleging that the excavator that struck Kukan did not constitute a motor vehicle for purposes of the no-fault act. The trial court granted State Farm's motion for summary disposition.

The Kukans and Great Lakes proceeded to facilitative mediation. On September 11, 2018, the Kukans and counsel for Great Lakes executed a settlement agreement wherein Great Lakes agreed to pay "$599,000, inclusive of liens, interest, costs, and attorney fees as total settlement of all claims . . . arising out of the March 30, 2017 incident." On September 24, 2018, the Kukans also signed a release in favor of Great Lakes, which released and discharged Great Lakes from "any and all" claims related to the March 30, 2017 incident. Additionally, this release included an indemnity clause and a "save harmless" clause. As a result of the settlement agreement and release, a stipulated order of dismissal with prejudice was entered on September 25, 2018, in Case No. 17-006288-NO.

[2] Plaintiff, Save More Pharmacy, was not expressly delineated as a party to the assignment. Three additional entities were identified in the assignment that were not named as plaintiffs: Maple Manor Rehab Center of Novi, Inc., Maple Manor of Wayne, LLC, and Avanti Home Health Care, PLLC. There is no allegation or indication that Save More Pharmacy conducted business as one of these entities. Although Save More Pharmacy was listed in the caption as a plaintiff, the allegations in the complaint did not contain any factual identification or information pertaining to the pharmacy. Consequently, Save More Pharmacy should have been dismissed by the trial court because there was no record evidence that it received an assignment from Kukan.

On December 12, 2019, over a year after the Kukans and Great Lakes settled the underlying litigation, plaintiffs filed a three-count complaint against Great Lakes, alleging negligence, unjust enrichment or quantum meruit, and entitlement to declaratory judgment. Plaintiffs identified themselves as assignees of Kukan and asserted that Great Lakes breached its duties to maintain its premises in a safe condition because Kukan was injured by an excavator negligently operated by a Great Lakes employee. In essence, plaintiffs sought recovery from Great Lakes for the care and treatment they provided to Kukan because their medical bills were unpaid.

On January 8, 2020, Great Lakes filed a notice of nonparty at fault that identified the Kukans as the parties liable to plaintiffs in light of the settlement agreement and release. On March 12, 2020, Great Lakes moved for leave to file a third-party complaint against the Kukans. The trial court granted the motion. Consequently, Great Lakes filed a third-party complaint against the Kukans, alleging a single count of breach of contract arising out of their failure to indemnify or defend Great Lakes against plaintiffs' claims. Thus, plaintiffs filed a tort and declaratory action seeking to hold Great Lakes responsible for the medical services that they provided to Kukan, and they claimed to acquire the right to pursue the litigation through the assignment. In turn, Great Lakes sought to avoid any monetary liability by filing the third-party complaint contending the Kukans were responsible to indemnify Great Lakes for any judgment obtained by plaintiffs and to reimburse Great Lakes for the costs associated with defending plaintiffs' litigation. Great Lakes submitted that the settlement agreement and release provided the basis for the breach of contract action against the Kukans and that it notified the Kukans, through counsel, of its request for indemnity and a defense.

Great Lakes moved for summary disposition of plaintiffs' complaint, asserting that plaintiffs did not have standing to sue. It further alleged that the Kukans released Great Lakes of any and all claims related to the March 30, 2017 incident, and therefore, the Kukans were liable to plaintiffs for the outstanding medical bills. Great Lakes also moved for summary disposition of the third-party complaint, submitting that the Kukans violated the release by failing to hold harmless and indemnify Great Lakes. After a hearing, the trial court entered an opinion and order denying Great Lakes's motions for summary disposition. The trial court rejected the contention that plaintiffs lacked standing. It concluded that Kukan assigned his claims to plaintiffs, and therefore, he had "no ability to settle, negotiate or release" plaintiffs' medical bills. Additionally, because Kukan's assignment of his claims to plaintiffs preceded the execution of the release and plaintiffs' bills were not part of the settlement agreement, the trial court determined that Kukan did not breach the release. From these rulings, Great Lakes appealed.

II. STANDARDS OF REVIEW

This Court reviews de novo a trial court's decision to grant or deny a motion for summary disposition. *Tinsley v Yatooma*, 333 Mich App 257, 261; 964 NW2d 45 (2020). Whether a party has standing is a legal question this Court also reviews de novo. *Barclae v Zarb*, 300 Mich App 455, 467; 834 NW2d 100 (2013). A motion for summary disposition premised on the doctrine of standing as a defense may be proper under MCR 2.116(C)(8) or MCR 2.116(C)(10) dependent on the pleadings or other circumstances of the case. *Le Gassick v Univ of Mich Regents*, 330 Mich App 487, 494 n 2; 948 NW2d 452 (2019).

MCR 2.116(C)(7) allows for summary disposition because of release. *Clay v Doe*, 311 Mich App 359, 362; 876 NW2d 248 (2015). When reviewing a motion for summary disposition premised on MCR 2.116(C)(7), this Court examines the affidavits, depositions, admissions and other documentary evidence to determine whether the moving party is entitled to summary disposition. See MCR 2.116(G)(5); *Margaris v Genesee Co*, 324 Mich App 111, 115; 919 NW2d 659 (2018). The evidence is viewed in the light most favorable to the nonmoving party. *Margaris*, 324 Mich App at 115.

Summary disposition is appropriate under MCR 2.116(C)(10) where there is "no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). When reviewing a motion for summary disposition challenged under MCR 2.116(C)(10), the court considers the affidavits, pleadings, depositions, admissions, and other admissible documentary evidence then filed in the action or submitted by the parties. MCR 2.116(G)(4), (G)(5); *Puetz v Spectrum Health Hosps*, 324 Mich App 51, 68; 919 NW2d 439 (2018). When the parties present documentary evidence outside the pleadings, we treat the motion as having been granted pursuant to MCR 2.116(C)(10). *Le Gassick*, 330 Mich App at 494 n 2.

III. STANDING

Great Lakes contends the trial court erroneously denied summary disposition by concluding that the assignment from Kukan to plaintiffs conferred standing upon plaintiffs, thereby allowing them to sue Great Lakes. We agree.

"[T]he term 'standing' generally refers to the right of a plaintiff initially to invoke the power of a trial court to adjudicate a claimed injury." *Olsen v Jude & Reed, LLC*, 325 Mich App 170, 180; 924 NW2d 889 (2018), citing *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 290; 715 NW2d 846 (2006). The "purpose of the standing doctrine is to assess whether a litigant's interest in the issue is sufficient to ensure sincere and vigorous advocacy." *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 355; 792 NW2d 686 (2010) (quotation marks and citation omitted). Accordingly, "the standing inquiry focuses on whether a litigant is a proper party to request adjudication of a particular issue and not whether the issue itself is justiciable." *Id.* (quotation marks and citation omitted). Under the standing doctrine,

> [o]ne cannot rightfully invoke the jurisdiction of the court to enforce private rights, or maintain a civil action for the enforcement of such rights, unless one has in an individual or representative capacity some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy. [*Bowie v Arder*, 441 Mich 23, 42-43; 490 NW2d 568 (1992) (citation omitted).]

An action must be prosecuted in the name of the real party in interest. MCR 2.201(B). To satisfy MCR 2.201(B), a party must be vested with a right of action in a given claim, but the beneficial interest may be with another. *Barclae*, 300 Mich App at 483. "Both the doctrine of standing and the included real-party-in-interest rule are prudential limitations on a litigant's ability to raise the legal rights of another." *Pontiac Police & Fire Retiree Prefunded Group Health & Ins Trust Bd of Trustees v City of Pontiac*, 309 Mich App 611, 621-622; 873 NW2d 783 (2015). "But plaintiffs

must assert their own legal rights and cannot rest their claims to relief on the rights or interests of third parties." *Id*. at 622.

An assignment is defined as "[a] transfer or setting over of property, or of some right or interest therein, from one person to another, and unless in some way qualified, it is properly the transfer of one's whole interest in an estate, or chattel, or other thing. It is the act by which one person transfers to another, or causes to vest in another, his right of property or interest therein." *Allardyce v Dart*, 291 Mich 642, 644-645; 289 NW 281 (1939) (citation omitted). "Under general contract law, rights can be assigned unless the assignment is clearly restricted." *Jawad A Shah, MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182, 197; 920 NW2d 148 (2018) (quotation marks and citation omitted). The goal of contractual interpretation is to honor the parties' intent, which is determined by the plain and unambiguous language of the contract. *Kendzierski v Macomb Co*, 503 Mich 296, 311; 931 NW2d 604 (2019) (citation omitted). Accordingly, "[i]f the contractual language is unambiguous, courts must interpret and enforce the contract as written, because an unambiguous contract reflects the parties' intent as a matter of law." *Id*. "This Court may not 'read into the contract terms not agreed upon by the parties.' " *VHS Huron Valley Sinai Hosp v Sentinel Ins Co*, 322 Mich App 707, 719; 916 NW2d 218 (2018). "A written agreement assigning a subject matter must manifest the assignor's intent to transfer the subject matter clearly and unconditionally to the assignee." *Burkhardt v Bailey*, 260 Mich App 636, 655; 680 NW2d 453 (2004).

The assignment executed between Kukan and plaintiffs contained a heading and opening paragraph expressly stating that the assignment was limited to no-fault insurance benefits, stating in pertinent part:

> MICHIGAN MOTOR VEHICLE NO-FAULT INSURANCE LAW
>
> ASSIGNMENT OF RIGHTS FORM
>
> I, Trent Kukan ("Assignor") hereby assigns to Maple Manor Rehab Center of Novi, Inc., Maple Manor Rehabilitation Center, LLC, Maple Manor of Wayne LLC, Maple Manor Neuro Center Inc., A. Peter Evangelista, M.D., P.C., Jose B. Evangelista, III, M.D., P.C., Advanced Wound Care and Hyperbaric Medicine of Michigan, P.C., Livonia Diagnostic Center, P.C., Avanti Home Health Care, PLLC, ("Assignees") all rights, privileges and remedies to payment for health care services, products, or accommodations ("services") provided by Assignees to Assignor is or may be entitled to under chapter 31 of the Insurance Code (MCL 500.3101 et seq.) the No-Fault Act.

In light of the plain language of the assignment, the trial court erroneously concluded the assignment from Kukan to plaintiffs conferred standing upon plaintiffs, thereby allowing them to sue Great Lakes. As noted, the title of the assignment and the opening paragraph expressly confined the assignment to the application of Michigan's no-fault insurance law and even referenced the statutory citation. Thus, the plain language of the assignment established that Kukan only assigned his "rights, privileges and remedies" for services provided by plaintiffs to which he was entitled under the no-fault act, i.e., PIP benefits.

Nonetheless, plaintiffs submit that they are entitled to pursue their claims against Great Lakes because the assignment further states: "Assignor hereby certifies that Assignor has incurred charges for services provided by the Assignees for which the rights, privileges and remedies for payment are hereby assigned." However, under the rules of contract construction, "general provisions of a contract will yield to specific provisions." *Haefele v Meijer, Inc*, 165 Mich App 485, 498; 418 NW2d 900 (1987) citing 2 Restatements Contracts, 2d, section 203(c), p 93. Consequently, the reference to incurred charges is nonetheless still limited to claims assigned under the no-fault act. Thus, Kukan only assigned his rights to a potential recovery of PIP benefits from his no-fault insurer, State Farm. Therefore, this Court may not, as plaintiffs and the Kukans request, " 'read into the contract terms not agreed upon by the parties.' " *VHS Huron Valley Sinai Hosp*, 322 Mich App at 719. Accordingly, given that the assignment was plainly limited to claims under the no-fault act, the trial court erroneously found that Kukan assigned *all* of his legal rights to plaintiffs—including under tort and equitable theories. See *Burkhardt*, 260 Mich App at 655. As a result, plaintiffs lacked standing and the trial court erred in denying Great Lakes's motion for summary disposition under MCR 2.116(C)(10).[3]

IV. HOLD HARMLESS AND INDEMNITY

Great Lakes next submits the trial court erroneously concluded that the assignment from Kukan to plaintiffs precluded the Kukans from holding harmless and indemnifying Great Lakes. Because the trial court relied on the assignment without addressing the terms of the release and the settlement agreement, we vacate the trial court's denial of this motion for summary disposition and remand for further proceedings consistent with this opinion.[4]

"The existence and interpretation of a contract are questions of law reviewed de novo." *Clark v Progressive Ins Co*, 309 Mich App 387, 394; 872 NW2d 730 (2015) (citation omitted). "A valid contract requires five elements: (1) parties competent to contract, (2) a proper subject matter, (3) legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation." *AFT Mich v Michigan*, 497 Mich 197, 235; 866 NW2d 782 (2015). "A party asserting a breach of contract must establish by a preponderance of the evidence that (1) there was a contract (2) which the other party breached (3) thereby resulting in damages to the party claiming breach." *Miller-Davis Co v Ahrens Constr, Inc*, 495 Mich 161, 177-178; 848 NW2d 95 (2014). Causation of damages is essential to support a breach of contract claim, including an action for indemnity. *Id*.

Although the existence and interpretation of a contract generally present questions of law, *Clark*, 309 Mich App at 394, application of disputed facts to the law present proper questions for the jury or trier of fact. *White v Taylor Distrib Co, Inc*, 482 Mich 136, 142; 753 NW2d 591 (2008). Furthermore, the occurrence of a default or breach of contract presents a question of fact. See

[3] In light of our conclusion that the assignment was limited to Kukan's no-fault claims, we need not address Great Lakes's contention that the settlement agreement and release also prohibited plaintiffs' claims.

[4] The trial court did not address the duty to defend or indemnify because it concluded that the assignment of the claims prior to the execution of the release demonstrated that the Kukans did not breach this agreement.

Detroit v Porath, 271 Mich 42, 54-55; 260 NW 114 (1935); *State-William Partnership v Gale*, 169 Mich App 170, 176; 425 NW2d 756 (1988).

As an initial matter, we note that Great Lakes requests recovery for both indemnification and a duty to defend in its third-party complaint claim for breach of contract. However, indemnification is generally "an equitable doctrine that shifts the entire burden of judgment from one tortfeasor who has been compelled to pay it, to another whose active negligence is the primary cause of the harm." *St Luke's Hosp v Giertz*, 458 Mich 448, 453; 581 NW2d 665 (1998). In light of our conclusion that plaintiffs do not have standing to pursue the claim against Great Lakes, they cannot obtain a judgment against Great Lakes. Accordingly, Great Lakes will not be held accountable to plaintiffs, and therefore, cannot obtain a recovery for indemnification from the Kukans. Thus, the issue of indemnification is moot. *City of Jackson v Thompson-McCully Co, LLC*, 239 Mich App 482, 493; 608 NW2d 531 (2000) ("An issue is moot if an event has occurred that renders it impossible for the court, if it should decide in favor of the party, to grant relief.").

In addition to the request for indemnification, Great Lakes also requested under the "duty to defend" costs and attorney fees.[5] The release[6] that accompanied the settlement agreement provided in relevant part:

> **IT IS FURTHER AGREED** that in the event the parties herein released may be liable, by way of contribution, indemnity or otherwise, to any other parties as a result of these released claims, that the execution of this agreement shall operate as a satisfaction of claims against such other parties to the extent that such other parties are or may be entitled to recover, by way of contribution, indemnity or otherwise, from the parties released.
>
> **IT IS FURTHER AGREED** that the undersigned agree to satisfy, indemnify and save harmless the parties herein released from all liens, claims or demands, costs or expense arising out of the injuries or damages sustained by them.

[5] At oral argument, counsel for Great Lakes confirmed that it intended to pursue its breach of contract claim regarding the duty-to-defend against the Kukans even if it succeeded in obtaining dismissal of plaintiffs' complaint on appeal.

[6] The release also specified that the settlement "shall be kept confidential as to the settlement itself, the amount of the settlement and the conditions of the settlement, except as may be necessary for the purposes of terminating this litigation[.]" Great Lakes attached the settlement agreement and the release to the notice of nonparty at fault as well as to the motion for leave to file the third-party complaint. There is no indication that Great Lakes sought to file these documents under seal or requested a waiver of the confidentiality provision. However, because the Kukans failed to challenge this disclosure or allege a breach of the terms of the release by Great Lakes, we delineate the terms of the release as necessary to resolve the issues raised on appeal.

The trial court did not examine the terms of the release and determine whether a duty to defend[7] on the part of the Kukans was triggered by plaintiffs' filing of this litigation. Rather, the trial court concluded that Kukan's *assignment* of his right to recovery to plaintiffs left Kukan without the ability to settle, negotiate, or release plaintiffs' outstanding bills for medical services. Accordingly, the trial court found that Kukan did not breach the terms of the release. However, as discussed, *supra*, we concluded that plaintiffs were not assigned the right to pursue monetary recovery for the medical services to Kukan from Great Lakes. Rather, the assignment granted to plaintiffs was limited to pursuing a claim for benefits under the no-fault act. Thus, the trial court never examined the terms of the release independent of the claimed assignment to address whether a duty to defend was invoked. This Court serves as an error correcting court, *Burns v Detroit (On Remand)*, 253 Mich App 608, 615; 660 NW2d 85 (2002), and the trial court should render a ruling[8] in the first instance particularly in light of our narrowing of the issues, see *Apex Labs Int'l Inc v Detroit*, 331 Mich App 1, 10; 951 NW2d 45 (2020). Accordingly, we vacate the trial court's denial of Great Lakes's motion for summary disposition against the Kukans on Great Lakes's third-party complaint and remand for proceedings consistent with this opinion.

Reversed with regard to the denial of Great Lakes's motion for summary disposition of plaintiffs' complaint, vacated with regard to the denial of Great Lakes's motion for summary disposition of its third-party complaint, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark T. Boonstra
/s/ Elizabeth L. Gleicher
/s/ Anica Letica

[7] In its brief on appeal, Great Lakes submits that the Kukans have a "duty to defend." Although the release addresses indemnity, it does not contain express language identifying a "duty to defend." We presume Great Lakes is relying on the release terms that the Kukans agreed to "save harmless" from "all liens, claims or demands, costs or expense arising out of the injuries or damage sustained by them" to support the claimed duty to defend. However, we need not interpret this language in disposing of this appeal.

[8] We note that Great Lakes contends that the duty to defend solely present an issue of contract interpretation, and therefore, issues of law. However, Great Lakes raised a claim of breach of contract against the Kukans. The application of the facts to the law and the occurrence of a default may present issues for the jury or trier of fact. *White*, 482 Mich at 142; *Detroit*, 271 Mich at 54-55. Moreover, plaintiffs' filing of the litigation alone did not demonstrate that the Kukans were in breach of the release. Great Lakes did not meet its burden with admissible documentary evidence that it gave notice of plaintiffs' filing of the litigation to the Kukans and that they refused to provide a defense. See *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999); *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).