Circuit Court for Howard County
Case No.: 13-C-14-099343 CN

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1871

September Term, 2015

EFEM E. IMOKE

v.

BELLOR, LEICHTLING, SAWAY, SCHNEIDER, P.C. d/b/a COLUMBIA MEDICAL PRACTICE

Meredith,
Nazarian,
Leahy,

JJ.

Opinion by Meredith, J.

Filed: August 20, 2018

Dr. Efem Imoke, appellant, filed a complaint in the Circuit Court for Howard County against his former employer, Drs. Bellor, Leichtling, Saway & Schneider, P.C., doing business as Columbia Medical Practice ("CMP"), appellee. After the circuit court entered summary judgment in favor of CMP, Dr. Imoke appealed.

QUESTIONS PRESENTED

In his brief, Dr. Imoke presented three questions for our review, which we have condensed as follows: Did the Circuit Court for Howard County properly grant summary judgment in favor of CMP on Counts 1-3?[1]

We conclude that the circuit court did not err in granting summary judgment in favor of CMP, and we will affirm.

FACTS AND PROCEDURAL HISTORY

Dr. Imoke is a general surgeon. CMP is a corporation that provides medical services in Howard County.

In 2009, Dr. Imoke practiced as a sole proprietor, and owned, through a company not a party to this litigation, Universal Surgery Center ("USC"), a freestanding outpatient surgery center. Dr. Imoke explained at his deposition that a surgeon in solo private practice

[1] Appellant's questions presented, as set forth in his brief, are:

1. Did CMP Breach Its Contract With Dr. Imoke? If so, What Are His Damages?
2. Did CMP Violate Section 3-502 of The Labor and Employment Article of The Annotated Code of Maryland?
3. Did CMP Violate Section 3-505 of the Labor and Employment Article of The Annotated Code of Maryland?

is dependent on referrals from primary care physicians, and, because CMP had a "large, successful, wonderful" practice, he wanted to be affiliated with it. Discussions between Dr. Imoke and representatives of CMP culminated in the execution of an Employment Agreement ("the Agreement") on September 30, 2009. The Agreement and its attached "Exhibit A" contained several provisions regarding termination and compensation that are at issue in this case.

The Agreement began by stating: "The initial term of employment shall be for one (1) year beginning on the Effective Date as set forth above and shall continue until termination occurs pursuant to Section 9 of this Agreement."

Section 4, captioned "Compensation," provided, at subpart (a):

> Employer [CMP] shall compensate Employee [Dr. Imoke] based on the rate as set forth in Exhibit A, unless a different amount is approved by the Board of Directors or such compensation is otherwise adjusted in accordance with the terms of this Agreement. Compensation under this Agreement shall commence with the Effective Date as set forth above. Said compensation shall be determined and reviewed from time to time by Employer's Board of Directors. . . .

Subpart (b) of Section 4, captioned "Bonus," provided:

> Bonuses may be paid to the Employee from time to time using productivity and quality based methodology developed and adopted by the Board of Directors.

Section 5, captioned "Medical Practice of Employer," provided at subpart (d):

> Fees. Employer shall have exclusive authority to establish the fees, or a procedure for establishing the fees, to be charged Patients. All sums paid to Employee or Employer by or on behalf of any Patient shall be the sole property of Employer. All sums received by Employee or Employer for all activities related to the practice of medicine while scheduled by the Employer for patient care, including but not limited to lecturing; teaching; conducting

research; consulting or writing treatises, books, or articles; and providing information or testifying in connection with actual or potential legal actions shall be and remain the property of Employer. Said sums shall be included in Employer's income and deposited in Employer's name in such checking account or accounts as Employer may from time to time designate. Notwithstanding the foregoing, Employee may accept token gifts in appreciation of services rendered, under circumstances and in such amounts as may be customary, without accounting to Employer for said gifts.

Section 9, captioned "Termination," provided:

(a) Without Cause. Employment pursuant to this Agreement may be terminated by either party for any reason, without cause, upon one hundred and eighty (180) days prior written notice to the other party after an initial one (1) year term from the Effective Date of this Agreement.

(b) With Cause. Employment pursuant to this Agreement may be terminated by the Employer without notice at any time upon any of the occurrences listed below, the existence of which shall be determined by the Employer's Board of Directors in its sole discretion unless otherwise specified:

(1) Employee's legal disqualification to practice medicine in the State or expulsion or suspension by the final action of any professional organization as a result of professional misconduct;

(2) gross incompetence, gross negligence, willful misconduct, or breach of a material fiduciary duty by Employee;

(3) conviction of a felony crime of moral turpitude or commission of a natural act of embezzlement or fraud against Employer by Employee;

(4) Employee's total incapacity, whether mental or physical, to discharge his or her duties hereunder in the normal course of business lasting for an uninterrupted period of at least twelve months or a total of at least eighteen months in any twenty-four month period, to be determined by the procedure described in Section 8(c) of this Agreement;

(5) substantial dependence by Employee on any addictive or mind-altering substance, including but not limited to alcohol, amphetamines, barbiturates, or other drugs, in a manner that materially impairs Employee's ability to perform his duties under this Agreement [ ];

(6) failure to provide information and take actions on a timely basis which is required to obtain or maintain payer credentialing;

(7) any material breach by Employee of a material term of this Agreement;

(8) the cessation of the conduct of business by the Employer; or

(9) the death of the Employee.

In the event of termination pursuant to this Section 9(b), Employee shall receive compensation and benefits only through the date of termination, in accordance with paragraph 4.

In the event that Employer provides Employee with notice of termination based on subparagraphs (6) or (7) above, the Agreement shall not terminate in the event that Employee cures such breaches to Employer's reasonable satisfaction within thirty (30) calendar days of Employee's receipt of the notice of breach.

The Agreement concluded with a paragraph providing, in pertinent part: "This Agreement contains the entire agreement of the parties and supersedes all prior oral and written agreements of the parties. Neither party shall be bound in any manner related to employment by promises or representations other than those set forth in this Agreement."

Attached to the Agreement as Exhibit A was a compensation and benefits schedule for Dr. Imoke. It provided, in relevant part:

1. Employee Compensation

(a) Base compensation for Year 1 shall be Three Hundred and Fifty Three Thousand [dollars] ($353,000) for a full-time-equivalent

hours of 2,080 per year to be paid on a bi-weekly basis at a rate of $13,576.92 per pay period.

(b) Minimum Time Commitment shall be Forty (40.0) hours per week of scheduled clinical hours per week.

(c) Performance of on-call duties shall be considered as paid under the Base Compensation.

(d) The base compensation level is not an income guarantee. It shall be subject to monthly review and if the profit and loss for the reporting period falls below breakeven adjusted for subsequent pay periods.

(e) Employee shall be eligible for payment of a productivity bonus as a percentage of the surplus as reported on the year-end profit and loss report for surgical services performed by Employee based on the schedule shown below. Any bonus will be paid within ninety days of the end of the accounting year.

    (i) Collections up to $1,025,000 = 25% of the surplus

    (ii) Collections between $1,025,001 and $1,125,000 = 50% of the incremental surplus

    (iii) Collections greater than $1,125,000 = 75% of the incremental surplus

(f) Employer shall withhold Maryland ("State") and Federal income taxes, social security taxes, and such other and similar payroll deductions from the salary of Employee as the laws now or hereafter in force may from time to time require.

(g) Employee shall have the right to retain payments for being on-call for hospital emergency departments and for hospital administrative duties.

Dr. Imoke testified at his deposition in this litigation that "the first year was great," but he eventually began to feel that he was not getting the volume of referrals that he had expected, and was suffering financially as a result. He testified that the arrangement with CMP "started coming apart when the preferred institution became Howard County [General Hospital] for outpatient surgery," instead of his own facility, USC. Dr. Imoke had "several communications" with CMP about this issue, but remained dissatisfied.

Accordingly, on August 26, 2011, Dr. Imoke sent the following termination notice to CMP via e-mail:

> Dear Drs. Saway and Leichtling,
>
> As you well know, it has been an extremely difficult eight month period for me. Our mutually beneficial relationship was predicated on the fact that CMP patients requiring surgery would be done at Universal Surgical Center where possible. Due to patient concerns it was mutually agreed upon that [surgery upon CMP's] patients would be done at Howard County General Hospital. This move was also designed by political reasons, as CMP seeks to improve its foothold with Howard County General Hospital. This change alone has led to a reduction of my overall income by well over $200,000. This change was not unilateral on the part of CMP. It was our hope that the move would lead to several benefits including financial as we continued our relationship with Howard County General Hospital. From a surgical point of view the financial benefits have not come to fruition.
>
> In December, I was advised that due to the performance of the surgery department my bonus would be in the neighborhood of $100,000. I was also advised that CMP would be able to increase my salary by a substantial amount. I believe in the neighborhood of between [$]70[000] and $90,000. This has been followed by numerous meetings. The end result was a check issued to me --- total amount between [$]12[000] and $20,000. A significant difference. To the best of my recollection the outstanding amount ($17,000) owed by USA [*i.e.*, Efem E. Imoke, M.D., P.A., d/b/a USA, the entity through which Dr. Imoke conducted his medical practice] was deducted as part of that computation.
>
> Yesterday I was handed a letter by DeWayne [Oberlander, CMP's CEO] (I believe you have a copy of that letter.) Needless to say with my superficial knowledge of accounting and mathematics it is not possible to comprehend the numbers in his final analysis. Suffice it to say that I am ready to move on.
>
> **Hence my decision to agree to waive the 180 days notice, and actually terminate employment effective September 1st, 2011 as opposed to the October 1st, 2011**. This will of course decrease the financial burden (by implication) I seem to continue to create on CMP. Keep in mind that CMP has not spent one penny of its money to make up for any financial deficiencies by the Department of surgery. On the contrary CMP has

financially benefitted from this relationship --- to the tune of $100,000 or so. Current records show a surplus. The issue of the $17,000 supposedly owed by USA needs to be resolved. Was it factored into the final analysis prior to issuing the check a couple of months ago?

It is my intention for USA to assume all billing responsibilities effective September 1st, 2011. As such CMP will not have the added burden of billing for my patients. It is my hope that the collections be turned over to USA so financial obligations can be met or be used to continue to pay USA expenses. The fine details can be ironed out. This allows [me a] ready source of income come September the 1st to meet my obligations.

Regards clinical interactions with respect to [CMP's] patients, we can effectively stop utilizing [CMP's] personnel to register our patients and [CMP's] patients referred to the Department of surgery. At this point it is my intention to continue providing services to [CMP's] patients as discussed *i.e*. utilizing primarily Howard County General Hospital for surgery and endoscopy. Discussions with respect to alternative arrangements will take place if and when that becomes necessary.

An agreement for the utilization of space will also have to be worked out. It is my hope that this agreement takes effect September 1st. I have no objection to utilizing the E M R in the interest of CMP and its patients. This, if agreeable can be factored into the monthly payments. The payment details can be sorted out during the period of transition. I believe the accounts receivables attributable to USA will be more than enough to cover all expenses incurred during the month of September. It is my hope that the accounts receivables for USA be turned over with immediate effect. It is also my hope that payments attributable to USA be utilized to meet the obligations of USA or effectively handed over to USA.

It would be remiss to end this letter without addressing my clinical relationship with my colleagues at CMP. It has been a remarkably exhilarating experience, probably the most fulfilling of my entire career. It is my hope that this relationship will continue, with the same level of intensity and respect that has existed. It is my intention to continue serving your patients the only way I know how --- with care, compassion and the utmost respect.

Efem

(Emphasis added.)

After Dr. Imoke sent the e-mail dated August 26, 2011, Dr. Imoke and representatives of CMP engaged in negotiations about Dr. Imoke's separation from CMP.

On September 1, 2011, Mr. Oberlander, acting on behalf of CMP as its Chief Executive Officer, sent Dr. Imoke a letter constituting "formal notice that the Employment Agreement . . . between [CMP] and yourself dated September 30, 2009 will terminate effective October 1, 2011. Your compensation for your final pay check will be based on September 30, 2011 as your last day of employment." Mr. Oberlander asked Dr. Imoke to sign in the space provided at the bottom of the letter to confirm his agreement "that both parties to the Agreement are waiving the one hundred eighty (180) day notice of without cause termination required under Section 9(a) of the Agreement." Dr. Imoke did not sign the letter.

The next document in the record reflecting transition communications is an e-mail dated September 6, 2011, 9:49 a.m., from Dr. Imoke's billing manager (Carol Cwik) to Mr. Oberlander, informing him that she had "some recent bills from last week that have not been sent for August," but she had been instructed by Dr. Imoke that morning "to hold any charges that I have not billed until an understanding has been reached. [Dr. Imoke] would like to meet to discuss those matters hopefully more sooner [sic] than later. He has also asked that the issue of rent be worked out today."

Also on September 6, 2011, at 10:54 a.m., Dr. Imoke sent an e-mail to: Dr. William Saway (CMP's President), Dr. David Leichtling (CMP's Treasurer), and Mr. Oberlander (CMP's CEO). In that e-mail, Dr. Imoke wrote: "As we proceed with the transition, it

might be prudent to meet to address clinical issues with respect to CMP patients. Particularly with respect to Howard County General Hospital. In the meantime, unless otherwise instructed, I will continue the management processes already in place."

Mr. Oberlander responded by e-mail on September 6, 2011, at 11:15 a.m., with "a summary of key transition issues," stating:

> The following summarizes the discussions to date and proposed actions regarding key transition issues from the current [Agreement] to status as an independent consultant.
>
> 1. **Employment Agreement**: In order to officially [proceed] with transition the letter of agreement for early termination needs to be completed. **Action**: Sign and provide a copy of the agreement to CMP.
>
> 2. **USA Collections due CMP**: We have discussed the $17,000 on several occasions. For the purposes of a common understanding, this was the accumulated sum collected by USA for the first 4 months of 2011 which was due to CMP under your employment agreement. I believe the amount is greater now but have stopped tracking. **Decision:** The Executive Committee has agreed that you can retain the collections to assist with meeting the financial needs of USA.
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> 3. **Surgery Department Operating Expenses**: CMP currently prepares monthly P[rofit] & L[oss] and compensation reconciliation reports. The bookkeeper is preparing a report on expense and outstanding invoices for review. This should be straight forward since a large portion of expenses are paid as reimbursements to USA, you or your real estate holding company. The major staffing costs are the prepaid employee health benefits expenses and unused PTO. **Proposal:** As [of] the effective date of the termination, you will assume full responsibility for all expenses including those currently invoiced by USA and other vendors.
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> 4. **A/R Management-Net Collections**: Under the current insurance participation agreements, remittance payments are made to the CMP bank lock box. **Proposal**: CMP will manage the run-out of the outstanding A/R for a designed period. During this period net collections for surgery professional billings will be paid to USA based on reported collections as of the 1st and 15th of each month less:

a. direct expenses incurred for surgery department,

b. overhead costs allocated up to the date of the termination, and

c. a[n] 8% fee for collection.

5. **Payor Contracting & Credentialing**: CMP has provided USA a list of payors to use for contracting and credentialing. To assist with this effort, USA will identify the payors with which CMP contracts that need to be transitioned. **Proposal**: USA will initiate the contracting and credentialing process and notify CMP as the contracting and credentialing is completed for each payor so the official date for billing responsibility can be established for that payor as outlined below.

6. **Billing Responsibility**: All outstanding charges for encounters for dates of service up to the date of employment must be entered into the system so that they can [be] billed since insurance companies will not accept claims and provide reimbursement unless you have a contract and are credentialed as of the date of service. CMP will continue to bill for services until contracting is officially transition [sic]. **Proposal:** Carol, Debra and Mary will develop a plan and oversee the phased transition of billing responsibility as payor contracting and credentialing are completed. For Medicare, we can transition this fairly quickly on [sic] you are contracted. For commercial, if you have maintained USA as a contracting entity, the transition requires notification of a change in tax ID. If it requires a new contract, the process will take longer.

7. **Space Agreement**: Under the current employment arrangement, CMP has been providing space and support at no charge, i.e. it is included as part of CMP administrative overhead. **Proposal**: CMP will provide space at a rate of $100 per hour to be billed in half hour increments, i.e. use of the waiting room, front desk, nursing station, office and exam rooms on a scheduled basis.

8. **Registration**: CMP is currently providing support for reception and front desk functions. **Proposal**: As of the effective date, USA will assume responsibility [to] provide staffing, collect payments from patients, appointment scheduling, etc. during surgery office hours.

9. **Medical Records/EMR Use**: Paper records have been used as the basis for documentation of surgery services during the period of employment.

We do not envision that it will be necessary for you or your staff to use the EHR or PM applications. **Proposal**: Continuation of current practices as follows:

a. CMP will provide documentation needed to treat patients who are referred for care.

b. Surgical consultation, op notes, etc. will be transmitted to CMP via fax addressed to the appropriate provider.

c. USA will maintain all paper records for the mandated time period and allow access to CMP when requested.

10. **CMP Patients**: The current policy is that all [of CMP's] patients referred for endoscopies or surgical procedures are to be scheduled and performed at Howard County General Hospital facilities. **Proposal**: As stated in your email, it is [CMP's] expectation that the practice will be continued.

Within 90 minutes after sending the above e-mail, Mr. Oberlander sent a supplemental e-mail to Dr. Imoke on September 6, with some proposed alternatives:

I mistakenly thought you were here today but now realized you are scheduled to see patients tomorrow. Given your desire to effect the change as soon as possible, I am proposing the following alternatives for items 4, 5 and 6.

Alternatives

4. **A/R Management-Net Collections**: Under the current insurance participations agreements, remittance payments are made to the CMP bank lock box for claims submitted for dates of service during your employment. **Proposal**: CMP will manage the run-out of the outstanding A/R for the initial insurance payment. During this period net collections for surgery professional billings will be paid to USA based on reported collections as of the 1st and 15th of each month less:

a. Direct expenses incurred for surgery department,
b. Overhead costs allocated up to the date of the termination, and
c. A[n] 8% fee for collection.

> USA will provide[ ] a file on outstanding A/R and will assume responsibility for insurance company follow-up and collection of patient balances.
>
> 5. **Payor Contracting & Credentialing**: CMP has provided USA a list of payors to use for contracting and credentialing. To assist with this effort, USA will identify the payors with which CMP contracts that need to be transitioned. **Proposal**: USA will assume responsibility for contracting and credentialing as of the effective date of the termination of the employment agreement.
>
> 6. **Billing Responsibility**: All outstanding charges for encounters for dates of service up to the date of employment must be entered into the system so that they can [be] billed since insurance companies will not accept claims and provide reimbursements unless you have a contract and are credentialed as of the date of service. CMP will continue to bill for services until contracting is officially transition[ed]. **Proposal**: USA will assume responsibility for billing from the effective date forward from the termination date of the employment agreement.

On September 12, 2011, with the transition issues still unresolved, and with Dr. Imoke having neither signed nor (as far as the record extract discloses) directly responded to any of the documents CMP requested to formalize his resignation, CMP sent Dr. Imoke a letter captioned "Mutual Termination of Columbia Medical Practice Agreement." This letter stated:

> Dear Dr. Imoke:
>
> This letter constitutes formal acceptance by Columbia Medical Practice (CMP) of your resignation by email dated August 26, 2011 and the parties' mutual agreement that the Employment Agreement ("Agreement") between CMP and yourself dated September 30, 2009 will terminate effective September 1, 2011 ("Effective Date"). By signing where indicated below, you are agreeing to the following terms and conditions:
>
> 1. Both parties to the Agreement are waiving the one hundred eighty (180) [day] notice of without cause termination required under Section 9(a) of the Agreement.

2. In conjunction with this action, CMP will be closing the Department of Surgery as an operating department effective today. The termination date of your employment will be August 31, 2011. As of that date CMP will no longer be accountable for your salary, benefits and any other operating expenses.

3. CMP agrees to pay salary and benefits for the surgery employees (Carol Cwik and Deborah Ferreira) through today. CMP will be terminating their employment and removing them from the payroll and benefits programs. The health and dental insurance premiums for you, Ms. Cwik and Ms. Ferreira have been paid of [sic] September.

4. Consistent with your Employment Agreement, CMP shall retain all patient account collections for dates of service prior to the Effective Date referenced above.

5. In light of the fact that your actions have pre-empted the transition, CMP will not be providing any transition services to your practice effective immediately, with the exception that you may use CMP office space to see patients already scheduled through Thursday, September 15, 2011.

6. With the exception of the specific provisions set forth in this letter and any post-termination obligations set forth in the Agreement, the parties agree to release each other from any and all obligations under the terms of the Agreement.

The letter was signed by Mr. Oberlander, as CEO, and provided a line for Dr. Imoke's signature under the words "I understand, accept and agree to the termination of the Agreement effective September 1, 2011 and all other terms and conditions set forth above." Dr. Imoke did not sign this letter.

Dr. Imoke also did not sign the letter sent to him by CMP the next day, September 13, 2011. This letter was identical to the September 12 letter, except for paragraph 5, which was changed to say in the later letter:

5. To assist with the transition, CMP agrees to provide demographic information for patients on the September 2011 schedule; a copy of future

appointments; diagnostic reports and history & physical on referred patients; and the use of space to see patients scheduled through Thursday, September 15, 2011.

On September 14, 2011, CMP wrote Dr. Imoke a letter captioned "Re: Notice of Suspension of Employment & Investigation of Violation of Contract Terms," which provided:

Dear Dr. Imoke:

This letter constitutes formal notification that you are hereby suspended without pay effective September 1, 2011 as an employee of Columbia Medical Practice ("CMP"). You will receive partial compensation in your last pay check for the final days of August less appropriate tax and benefits withholdings.

This action has been taken pending the completion of a review of your conduct and actions with respect to the terms of Sections 3, 4 and 5 of the Employment Agreement ("Agreement") between Columbia Medical Practice and yourself dated September 30, 2009.

This review is being undertaken based on the following. As set forth in Section 9 Termination, (b) With Cause: "Employment pursuant to this Agreement may be terminated by the Employer without notice at any time upon any of the occurrences listed below, the existence of which shall be determined by the Employer's Board of Directors in its sole discretion unless other[wise] specified."

Pursuant to Section 9(b)(2) of the Agreement, the withholding of fees and billing information as well as instructions to CMP employees to withhold information needed to submit insurance claims for services provided to patients under the Employment Agreement for September 2011 and certain prior dates of service constitutes willful misconduct and breach of a material fiduciary duty.

The Executive Committee regrets that this action needed to be taken but your response to previous communications has left no other course of action.

On September 16, 2011, CMP sent Dr. Imoke the following correspondence:

> Re: Notice of Termination of CMP Employment Agreement – Effective September 1, 2011
>
> Dear Dr. Imoke:
>
> This letter constitutes formal notification that the Employment Agreement ("Agreement") between you and Columbia Medical Practice ("CMP") is terminated effective September 1, 2011. This action is being taken based on your conduct and actions with respect to the terms [of] the Agreement.
>
> As set forth in Section 9 Termination, (b) With Cause: "Employment pursuant to this Agreement may be terminated by the Employer without notice at any time upon any of the occurrences listed below, the existence of which shall be determined by the Employer's Board of Directors in its sole discretion unless other[wise] specified."
>
> Pursuant to the Agreement, CMP has determined that the withholding of fees and billing information as well as instructions to CMP employees to withhold information needed to submit insurance claims for services provided to patients under the Employment Agreement for September 2011 and certain prior dates of service constitutes "willful misconduct" and "breach of a material fiduciary duty" set forth in Section 9(b)(2).
>
> In conjunction with this action, the terms of the September 13, 2011 letter of Mutual Termination are withdrawn and all post-termination obligations set forth in the Employment Agreement remain in effect.

On June 10, 2014, Dr. Imoke filed a 7-count complaint against CMP and three individual defendants (Mr. Oberlander and Drs. Saway and Leichtling). Count I asserted breach of contract by CMP. Counts II and III asserted claims against CMP for alleged

violations of Maryland Code (1991, 2008 Repl. Vol.), Labor and Employment Article ("LE") §§ 3-502 and 3-505, respectively. [2]

On December 8, 2014, an order was docketed dismissing Counts IV through VII (including all claims against the individual defendants), and denying CMP's motion to dismiss with respect to Counts I through III. Those are the counts with which the current appeal is concerned.

CMP filed a motion for summary judgment on January 29, 2015. A hearing on this motion was conducted by the Circuit Court for Howard County on April 14, 2015. By order docketed on June 3, 2015, the court granted summary judgment in favor of CMP on Count I (breach of contract), without any explanation of the court's rationale, and denied the motion for summary judgment as to Counts II and III, also without explanation.

After Dr. Imoke's deposition on July 28, 2015, CMP filed a second motion for summary judgment as to Counts II and III, the only remaining counts, which asserted claims based upon LE § 3-502 and § 3-505 respectively.[3] On September 25, 2015, after a

[2] Count IV alleged unjust enrichment of CMP; Count V alleged fraudulent inducement on the part of all defendants to induce Dr. Imoke to enter into the relationship with CMP; Count VI alleged tortious interference with prospective advantage on the part of CMP; and Count VII alleged that Dr. Imoke had detrimentally relied upon false representations of all defendants.

[3] Count II alleged in paragraph 98 of the complaint that LE § 3-502 provides that "an employer shall set regular pay periods, and shall pay each employee at least once every two weeks or twice in each month." Paragraph 96 alleged: "To date, Plaintiff Imoke has not been compensated for work performed for the pay periods running from September 1, 2011 through February 27, 2012, which Plaintiff Imoke is entitled to under Section 9(a) of the Agreement, and Defendant CMP has refused to pay." Paragraph 100 alleged that the

hearing, the court granted CMP's motion for summary judgment as to Count III, but denied the motion as to Count II. With respect to Count III, the court explained:

> Count III is a demand for wages, and 3-505 of the Labor and Employment Article specifically covers wages. It doesn't cover monies due. That's not how it's phrased, it covers wages."

But CMP promptly filed a motion for reconsideration of the denial of summary judgment on Count II. At the conclusion of a hearing, CMP's motion for reconsideration was granted on September 28, 2015, and an order granting summary judgment in favor of CMP on Counts II and III was docketed on September 30, 2015. At the hearing, the motion judge explained his reasoning for granting summary judgment on both of the counts based upon the alleged nonpayment of wages:

> In the instant case, difficulties clearly developed between Dr. Imoke and the Defendants. To the extent that on August the 26th of 2011, Dr. Imoke sent, and there's no dispute about this, sent an e-mail stating that he was terminating his employment and he was waiving his notice, the notice requirement. And there's nothing about accounts receivable mentioned in that but what he sent was clear to me his intention not to work any further.
>
> And after that, there was a series of letters sent by the Defendant [to] Dr. Imoke, ... And it's clear to me that there may have been a dispute between the terms of the termination as articulated to the extent that anything was articulated in those papers and attachments.

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defendants had "withheld . . . $176,499.96[] in earned wages from Plaintiff Imoke, in violation of Section 3-502."

Count III alleged in paragraph 107 that LE § 3-505 provides that "an employer shall pay an employee all wages due for work that the employee performed before the termination of employment, on or before the day on which the employee would have been paid the wages if the employment had not been terminated. Paragraph 109 alleged that "Defendant CMP withheld $176,499.96 in earned wages from Plaintiff Imoke, in violation of Section 3-505."

But there was never a revocation of Dr. Imoke's termination, nor was there an affirmative revocation of the waiver of notice. But what's of importance to me is that there was a demonstration in the record that Dr. Imoke was not doing any more work on behalf of the Defendant following that date, following, we'll pick September 1st of 2011. And that he didn't intend to do any Memorandum of Recognition work and that the only relation back to work done for prior to September 1st, dealt with the accounts receivables issue to which he's not entitled under the contract and there was never any discussion or any authority presented by the Plaintiff that the employment contract itself entitled him to those accounts receivable. Nor is there any way that I see that that argument, entitlement to those account receivables even if it's part of a separate negotiation under termination, somehow morphs into something that is related to his employment that would make the 180 period beginning September 1st to be – to have some aspect of work already done that would be covered by [LE] 3-505.

I would also note that paragraph 106 of the Complaint . . . reads, "Plaintiff Imoke terminated his employment with Defendants CMP on or about September the 1st of 2011." And of course the e-mail which is exhibit 7, Dr. Imoke's response to the first Summary Judgment Motion is dated August 26th. The first letter attempt from the Defendant is dated September the 1st. It seems to me that the undisputed facts show that had [sic] concluded his employment and as far as conducting work for the Defendants. There was no work following August the 26th that has been demonstrated in the record to which [LE] 3-505 could be applied nor is there any work prior to August the 26th of 2011 when you consider the phrasing of paragraph 9A in the Employment Contract. There's no prior work to August 26th that can be reached back to . . . constitute making the benefits for whatever it might be, . . . paragraph 9A, a wage under Labor Employment of 3-505. . . .

* * *

[DEFENDANTS COUNSEL]: Your Honor, in light of the Court's ruling, the Defendant would move to dismiss the counter-claim without prejudice. The without prejudice would only be to reserve its rights to bring those claims in the event that the matter would be appealed and remanded for trial.

THE COURT: All right, there had been an answer filed to that. Mr. [Plaintiff's Counsel]?

[PLAINTIFF'S COUNSEL]: I'm sorry, Your Honor?

THE COURT: Mr. [Defendant's counsel] has moved to dismiss the Defendant's Counter-claim without prejudice and the only reason he's articulated, the only reason for that is to preserve their right to bring it back should there be an appeal of the various decisions made by the various Judges on the Plaintiff's Complaint and should there be a new trial. Mr. [Defendant's counsel], are you making a commitment on the record that absent a remand of the Plaintiff's complaint, it is not the intention of the Defendant to pursue the counter-complaint?

[DEFENDANT'S COUNSEL]: I'm absolutely making that binding representation on behalf of my client.

THE COURT: All right. Mr. [Plaintiff's counsel], do you have any objection to . . . his request to dismiss without prejudice based on his representations that there's no intention on the part of the Defendant to litigate that unless this matter should come back for litigation?

[PLAINTIFF'S COUNSEL]: No, Your Honor.

After final judgment was entered, this appeal followed.

STANDARD OF REVIEW

In *Injured Workers' Ins. Fund v. Orient Exp. Delivery Serv., Inc.*, 190 Md. App. 438, 450–51 (2010), we said:

> The standard of review applied in reviewing a grant of a motion for summary judgment is well-established in Maryland. "Summary judgment is appropriate where 'there is no genuine dispute as to any material fact' and 'the party in whose favor judgment is entered is entitled to judgment as a matter of law.'" *Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 294, 936 A.2d 343 (2007) (quoting Md. Rule 2-501(f)). The reviewing court is obliged to conduct an independent review of the record to determine if there is a dispute of material fact. *Id.* (citing *Wells Fargo Home Mortgage, Inc. v. Neal*, 398 Md. 705, 714, 922 A.2d 538 (2007)) (additional citations omitted). "A material fact is one that will alter the outcome of the case, depending upon how the fact-finder resolves the dispute." *Berringer v. Steele*, 133 Md. App. 442, 470-71, 758 A.2d 574 (2000) (citations omitted). Mere general allegations of conclusory assertions will not suffice. *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 738, 625 A.2d 1005 (1993); *accord Gunby v. Olde*

> *Severna Park Improvement Ass'n, Inc.*, 174 Md. App. 189, 235, 921 A.2d 292, *aff'd*, 402 Md. 317, 936 A.2d 365 (2007).
>
> Because the reviewing court "has the same information from the record and decides the same issues of law as the trial court, its review of an order granting summary judgment is de novo." *ABC Imaging of Wash., Inc. v. Travelers Indem. Co. of Am.*, 150 Md. App. 390, 394, 820 A.2d 628 (2003) (internal quotation marks omitted) (citations omitted). When conducting its de novo review, all reasonable inferences must be resolved in favor of the non-moving party. *Conaway v. Deane*, 401 Md. 219, 243, 932 A.2d 571 (2007) (citations omitted). "Even when the underlying facts are undisputed, if the undisputed facts are susceptible of more than one permissible factual inference, the choice between those inferences should not be made as a matter of law, and summary judgment should not be granted." *Heat & Power Corp. v. Air Prods. & Chems., Inc.*, 320 Md. 584, 591, 578 A.2d 1202 (1990) (citation omitted). The standard applied by the Court is not whether the trial court was clearly erroneous but whether the trial court was legally correct. *Id.* (citations omitted).

Maryland Rule 2-501(b) provides that a party opposing a motion for summary judgment must do so in writing, identifying, with particularity, "each material fact as to which it is contended that there is a dispute," and, as to each such fact, submitting "the relevant portion of the specific document, discovery response, transcript of testimony . . . or other statement under oath that demonstrates the dispute." The Rule further requires that a party asserting the existence of a material fact to preclude summary judgment "or controverting any fact contained in the record" must do so "by an affidavit or other written statement under oath."

With respect to interpretation of LE §§ 3-502 and 3-505, we described the standard of review as follows in *Blood v. Columbus US, Inc.*, 237 Md. App. 179, 186-87 (2018):

> Where an order appealed from "involves an interpretation and application of Maryland statutory and case law, [we] must determine whether the [circuit court's] conclusions are 'legally correct' under a *de novo* standard

> of review." *Walter v. Gunter*, 367 Md. 386, 392, 788 A.2d 609 (2002). Additionally, the interpretation of contracts is a question of law for the court. *Calomiris v. Woods*, 353 Md. 425, 434, 727 A.2d 358 (1999).
>
> Generally, on appeal of an action tried without a jury, such as here, we are bound by the circuit court's findings of fact unless they are clearly erroneous. Md. Rule 8–131(c); *see also Cunningham v. Feinberg*, 441 Md. 310, 321–22, 107 A.3d 1194 (2015). We typically afford no deference to the circuit court's legal determinations and conclusions of law, reviewing them *de novo. See Shih Ping Li v. Tzu Lee*, 437 Md. 47, 57, 85 A.3d 144 (2014). These legal determinations and conclusions of law also apply to the interpretation of contracts. *Sy–Lene of Washington, Inc. v. Starwood Urban Retail*, 376 Md. 157, 163, 829 A.2d 540 (2003). As the circuit court's determination of whether Blood's remuneration compensation was a "wage" was conditioned on the interpretation of the Wage Payment Act by Maryland's appellate courts, we review its decision *de novo*.

DISCUSSION

I. Count I – Breach of the Agreement

In Count I of his Complaint, Dr. Imoke alleged that CMP breached the Agreement because: a) the Agreement "contemplated" that he "would receive a productivity bonus," which he did not get; b) that he did not get a raise at the conclusion of the first year as, he claimed, he was informed he would receive; c) that he was entitled to compensation for being "on-call" pursuant to Section 1(g) of Exhibit A, which he demanded of CMP but was denied; and d) that CMP's deductions for overhead expenses were "at an excessive and arbitrary rate," such that his surgical practice became unprofitable. He also contended that he was wrongfully terminated as a result of CMP's breaches, and that, because he had relinquished various privileges and the Chief of Surgery position at Bon Secours Hospital when he accepted the job with CMP, he had "lost a referral base derived from twenty-eight (28) years of professional relationships."

In *Dennis v. Fire and Police Employees' Retirement System*, 390 Md. 639, 656-57 (2006), the Court of Appeals emphasized that Maryland adheres to an "objective theory of contract interpretation." Writing for the Court in *Dennis*, Judge Irma Raker said:

> Under Maryland law, the interpretation of a contract, including the question of whether the language of a contract is ambiguous, is a question of law subject to *de novo* review. *Towson v. Conte*, 384 Md. 68, 78, 862 A.2d 941, 946 (2004). We have long adhered to the objective theory of contract interpretation, giving effect to the clear terms of agreements regardless of what the parties may have intended by those terms at the time of contract formation. *Id.* at 78, 862 A.2d at 946–47. Under the objective theory:
>
> > "A court construing an agreement under [the objective theory] must first determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated. In addition, when the language of the contract is plain and unambiguous there is no room for construction, and a court must presume that the parties meant what they expressed. In these circumstances, the true test of what is meant is not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant."
>
> *General Motors Acceptance v. Daniels*, 303 Md. 254, 261, 492 A.2d 1306, 1310 (1985), *quoted in Conte*, 384 Md. at 78, 862 A.2d at 947.

In CMP's motion for summary judgment, CMP stated: "Under section 4(a) of the Employment Agreement Plaintiff's compensation was to be determined and reviewed from time to time, and compensation could be adjusted in accordance with the terms of the Employment Agreement. . . . Plaintiff did receive all compensation due to him based upon the profits and losses realized." Further, "[a]ny decision that Plaintiff made to resign from other facilities was his voluntary choice and was not directed by CMP." And, "[a]ny claim

of lost compensation due to CMP 'denial of payments' for on-call duties is patently false." These assertions were supported by an affidavit of Mr. Oberlander.

In his brief, Dr. Imoke argues that there "is a question of fact" as to whether he "received all the compensation and bonuses due him." He contends that CMP "breached their contract with Dr. Imoke by failing to pay him his 180 day severance and his bonus of $50,916, and $25,000 reserve payment."

But the Agreement does not support the argument that CMP was contractually obligated to pay these amounts. The Agreement is entirely silent on any "reserve payment," as Dr. Imoke had to concede at his deposition:

> [BY CMP'S COUNSEL]: So, the court's already determined that CMP has not breached the contract. Are you aware of that?
>
> [BY DR. IMOKE]: Right. But this is the USA.
>
> Q. You referenced money that you believe you're due from a reserve. Tell me what that is about.
>
> A. That is in one of the documents. Actually, I see several documents in which there's highlighted at $25,000 reserve, which, to my understanding, is a reserve that is kept for each physician employed.
>
> **Q. Is that reserve in your contract?**
>
> A. **Of course it's not. It's not.** And those were the issues there that, you know, things that were not in my contract.

(Emphasis added.)

Dr. Imoke was never able to provide the court a coherent explanation of what "the reserve" was, or why he believed he was entitled to damages for breach of contract based on a failure to pay a reserve that was never mentioned anywhere in the Agreement.

With respect to Dr. Imoke's claim that CMP breached the Agreement by not paying him a bonus, the Agreement plainly states, at § 4(b), that all bonuses are discretionary: "Bonuses may be paid to the Employee from time to time using productivity and quality based methodology developed and adopted by the Board of Directors." Dr. Imoke conceded at his deposition that the Agreement specifies that bonuses are discretionary. ("Q. [BY CMP'S COUNSEL] You understand that under the terms of your employment agreement that the bonus was discretionary?" "A. [BY DR. IMOKE] As determined by the board.") Similarly, Dr. Imoke acknowledged that the Agreement provides that compensation, including raises, is discretionary and left up to the Board.

Dr. Imoke alleged that he expected that CMP's physicians would refer surgical and endoscopic procedures to him, as the general surgeon, and that he could then perform the procedures at USC (the surgical center he owned through a separate entity that is not a party to this litigation) and collect a facility fee as the owner of that facility. But the Agreement does not include any commitment in this regard. Dr. Imoke gave this testimony on the topic at his deposition:

> [CMP'S COUNSEL]: Just so I understand, it would have been appropriate [sic], possibly illegal, for CMP to mandate referrals to you or the Department of Surgery, correct?
>
> [DR. IMOKE'S COUNSEL]: I'm not a lawyer, so I can't say categorically that it would have been illegal. Ethically, it would have been a problem. I'm not necessarily answering your question now, but there were several things -- several things in the arrangement that would have been considered illegal, but, you know . . .
>
> Q. I don't need you to give me a legal opinion.

A. Right. But you asked ---

Q. As I think all physicians have a basic understanding that there are Stark laws and other regulatory restrictions that govern referrals. And you have some basic understanding of that, correct?[4]

A. I have a fairly good understanding, not just basic in this case.

Q. Okay. So, ethics aside, it would have at least raised your concern if CMP would have suggested mandating all referrals to go through the Department of Surgery?

A. Yes.

Q. And at that point somebody would have said, hey, we need to pick up the phone and talk to a lawyer, right?

A. Not necessarily. But there were other ways to go about that, beyond mandating the physicians.

Q. Well, do you believe and is it your assertion in this case that CMP in some way failed to do what they promised with regard to the rate of referrals to you and the Department of Surgery?

---

[4] The term "Stark laws" refers to federal laws restricting medical referrals, described as follows in William Grioux, et al., *Health Care Fraud*, 55 Am. Crim. L. Rev. 1333, 1366-67 (2018):

> Congress enacted the Omnibus Budget Reconciliation Act of 1989 (containing "Stark I") to counteract the burgeoning cost of health care resulting from physician self-referrals. Stark I prohibits physicians from referring Medicare patients to clinical laboratories in which the physician has a financial interest, unless the financial interest falls under one of the exceptions provided in the statute. When Stark I proved insufficient to curtail the continuing abuses of self-referral, Congress enacted the Omnibus Reconciliation Act of 1993 (containing "Stark II"), which significantly expanded the scope of Stark I.

(Footnotes omitted.)

> A. **They didn't promise anything**. The fact that there was a surgeon there, the expectation from CMP and I was that most, most referrals will come --- would come my way.

(Emphasis added.)

When asked at deposition to explain the damages that he was claiming in this case, Dr. Imoke replied that he felt that he was entitled to be paid "[f]or the loss of cases to the surgery center would be two to $400,000," which was "based on the number of cases I felt could have been done at my facility." This, and the other categories of damages Dr. Imoke felt he was owed --- namely, his "accounts receivable" and loss of income from other hospitals --- is not something CMP agreed to pay in the Agreement. Furthermore, Dr. Imoke conceded, at another point during his deposition, that the fees he alleged that were attributable to "loss of cases to the surgery center" would have been payable to a corporate entity that is not a party to this litigation or to the Agreement.

And, to the extent that Count I asserted a claim that CMP improperly terminated his employment, the communications from Dr. Imoke regarding his departure unambiguously reflect that he wished to terminate his employment without 180 days' notice.

Because Dr. Imoke was unable to show the circuit court specific provisions in the Agreement that had been breached by CMP, the court did not err in granting CMP's motion for summary judgment as to Count I.

II. Counts II and III

In Counts II and III, Dr. Imoke asserted violations by CMP of LE §§ 3-502 and 3-505, which provide, in pertinent part, that an employer will pay an employee "at least once

in every 2 weeks or twice in each month," § 3-502(a), and that, upon termination of employment, an employer "shall pay . . . all wages due for work that the employee performed before the termination of employment. . .", § 3-505(a).

LE § 3-501(c) defines "wage[s]" and provides:

> (1) "Wage" means all compensation that is due to an employee for employment.
>
> (2) "Wage" includes:
>
> (i) a bonus;
> (ii) a commission;
> (iii) a fringe benefit;
> (iv) overtime wages; or
> (v) any other remuneration promised for service.

Dr. Imoke alleged that, "when CMP terminated [him] without cause or proper notice, the contract became a fixed term contract for 180 days," and that he is owed "the bonus, the reserve, the A/R, the payment for his wages through September 16, and the 180 days of his fixed term contract."

The basis of Dr. Imoke's claim is his assertion that "the bonus" (discretionary under the Agreement), "the reserve" and "the A/R" (both unmentioned in the Agreement), "the payment for his wages through September 16" (which he received), and "the 180 days of his fixed term contract" (which he said he would waive) are all "wages" due him pursuant to the Agreement.

But the Agreement is clear and unambiguous in not mandating that CMP pay these items. The Agreement stipulated that bonuses were discretionary. And the Agreement did not even mention "the reserve" or "the A/R." Regarding the alleged nonpayment "of his

wages through September 16," Dr. Imoke does not dispute that his base salary for that period was paid by CMP.

Dr. Imoke was given an opportunity at his deposition to explain the allegation of unpaid wages. When he was asked "what monies you're requesting related to Count Two for those wages," Dr. Imoke's initial answer was: "Oh, I don't know that detail. . . . I think that would be in the realm of the lawyer." Similar evasive answers were repeated multiple times:

> Q. [C]an you tell me what amounts of money you're going to be seeking from a jury in this case for the remaining Counts [T]wo and [T]here?
>
> A. I don't have a specific answer to that.
>
> * * *
>
> Q. . . . [W]e're going to trial in about 60 days. I want to know . . . what the monies you're going to be seeking compensation for.
>
> A. I don't know that we're going to be seeking monies, per se, for compensation for anything I say. . . .
>
> * * *
>
> Q. Dr. Imoke, sitting here today, can you give me a dollar value that you are seeking in damages?
>
> A. What do you mean by damages?
>
> * * *
>
> Q. Can you tell me the amount of money that you are seeking in the award from the court against CMP?
>
> A. Not off the top of my head.
>
> * * *

Q. . . . How much money do you believe that they owe you in unpaid wages?

A. That would be an estimate. And I certainly don't want to estimate something that critical.

After additional inquiry, Dr. Imoke mentioned the categories of items for which he was seeking compensation in Counts II and III. They included compensation for the loss of cases to his surgery center (USA) which he estimated would be "two to $400,000"; "the bonus" as to which he acknowledged "we don't know the exact number, but that's been variably discussed to about $90,000, maybe a hundred thousand dollars there"; "the accounts receivables"; and "also the reserve held for each physician, which is about $25,000."

Upon further questioning, Dr. Imoke conceded that the amount he attributed to "loss of cases" would have been fees payable to the USC company, and not him personally:

Q. And those facility fees are paid to the facility, correct?

A. Correct.

Q. And the facility in this case was which entity?

A. Universal Surgical Center.

* * *

Q. Is USC or USA a party to this litigation?

A. No.

Q. And those facility fees would not have been paid to you, personally, Dr. Imoke?

A. Not at all.

Q. In fact, you understand that they could not be paid to you personally?

A. Yes.

* * *

Q. And they're not wages, are they?

A. Right.

Dr. Imoke was later asked again to explain the allegation of unpaid wages:

[BY CMP'S COUNSEL]: You were paid $11,500 on the payroll date of September 2nd, 2011. Do you disagree with that?

[BY DR. IMOKE]: If you say so. I don't know the payroll dates.

Q. And on September 16th you were paid $3,450. Are you aware of that?

A. If that's what the record shows.

Q. And up until the time of your termination, your Department of Surgery staff, who also worked at your practice on Leeds Avenue [the USC location], they were also paid payroll. Are you aware of that?

A. They were, yeah.

Q. And the expenses of the facility at Leeds Avenue were also paid up until the time of your termination.

A. Okay.

Q. Are you aware of that?

A. Okay. Go ahead.

Q. Okay. So, until the time of your termination, CMP continued to pay everything that it had agreed to pay under the terms of your employment agreement; isn't that true?

A. Okay. And your point?

Q. My point is, sir, that you said that you had no income and that you felt that you were getting screwed. And, yet, up until the date of your termination, CMP continued to pay everything that it had agreed to up until that point in time?

A. Right. What they paid me was a salary to take care of myself, not to take care of my corporation. Okay? And I needed much more than 11,000, and two weeks later 3,000, to do that. That meant me going out there and looking for patients and operating on patients and billing for them and waiting for the money to come in. That's how it works. And that takes time. That takes time. That's why the negotiations were based on the accounts receivable. And once they pulled that, it was not good.

Whatever Dr. Imoke's personal expectations might have been, they were not based on any term or provision contained within his employment Agreement.

And there is no dispute of material fact that he was not entitled to any other "wage" compensation pursuant to either LE § 3-502 or § 3-505. It is clear from the record that Dr. Imoke initially resigned and waived the 180-day notice; he wrote those words himself. When later negotiations broke down, and CMP discovered that Dr. Imoke was purposely holding back billings due CMP because Dr. Imoke "felt I was being screwed," that was a violation of §9(b)(2) and (7) of the Agreement, and created "cause" for his termination.

This Court considered a similar claim in *Blood*, *supra*, 237 Md. App. 179, a case in which a former employee attempted to assert a lien for "wages" pursuant to LE § 3-1104 for post-employment remuneration that was to be paid if the employee honored a covenant not to compete. We reviewed the definition of "wage" in LE § 3-501(c), and observed that compensation would be considered a "wage" only if it was payable for work that had already been performed. 237 Md. App. at 188. In Blood's case, the compensation was not

payable for services performed before termination of the employment, but was remuneration promised if the employee refrained from competing after termination. We concluded that "this was not compensation that vested during Blood's employment, but only vested and accrued *after* employment and, accordingly, is not a 'wage.'" *Id*. at 192-93.

Similarly, in *Horlick v. Capital Women's Care, LLC*, 896 F. Supp. 2d 378, 388-89 (D. Md. 2011), Judge Ellen L. Hollander wrote: "[I]n order to be considered 'wages,' the subject payment must be due for work the employee actually performed."

Here, the circuit court correctly discerned that none of the compensation claimed by Dr. Imoke fit the statutory definition of "wage" to support a claim pursuant to LE § 3-502 or § 3-505. Accordingly, the court did not err in granting summary judgment in favor of CMP on Counts II and III of Dr. Imoke's complaint.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.