

STATE OF MICHIGAN
COURT OF APPEALS

UNIVERSAL STANDARD MEDICAL CLINICAL
LABORATORIES, INC.,

UNPUBLISHED
September 23, 1997

Plaintiff-Appellant,

v

BLUE CROSS AND BLUE SHIELD OF
MICHIGAN,

No. 192174
Wayne Circuit Court
LC No. 95-519030 CK

Defendant-Appellee.

Before: White, P.J., and Bandstra and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right an order of the Wayne Circuit Court granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(8) and (10) on the ground that plaintiff's claims were preempted by the federal Employee Retirement Income Security Act (ERISA), 29 USC 1001 *et seq.* We affirm in part, reverse in part, and remand.

At the time the trial court decided defendant's motion for summary disposition, the trial court was bound by this Court's holding in *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan*, 206 Mich App 570; 522 NW2d 902 (1994), that the ERISA preempted the plaintiffs' claims in a case with facts very similar to the facts of the present case. While an application for leave to appeal to the Michigan Supreme Court was pending in *BPS Laboratories, supra*, the United States Supreme Court decided *New York State Conference of Blue Cross & Blue Shield Plans v Travelers Insurance Co*, 514 US 645; 115 S Ct 1671; 131 L Ed 2d 695 (1995). In *New York Blue Cross, supra* at 131 L Ed 2d 706, the Court held that the purpose of ERISA preemption was to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans. Therefore, the Court held that state laws that force an ERISA plan administrator to modify a benefit plan in order to comply with the laws of a specific state would violate the ERISA. *New York Blue Cross, supra* at 131 L Ed 2d 706-707. In lieu of granting leave to appeal in *BPS Laboratories*, the Michigan Supreme Court remanded the case to this Court for reconsideration in light of the United States Supreme Court's decision in *New York Blue Cross, supra*. *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan*, 449 Mich 860 (1995). On remand, we held that the plaintiffs' claims brought pursuant to the Michigan Nonprofit Health Care Corporation Reform Act (Act 350),

MCL 550.1101 *et seq.*; MSA 24.660 (101) *et seq.*, were not preempted by the ERISA because requiring the defendant to comply with the requirements of its enabling legislation did not preclude the nationally uniform administration of benefit plans. *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan (On Remand)*, 217 Mich App 687, 695-696; 552 NW2d 919 (1996). Furthermore, we found that the plaintiffs' claims brought pursuant to the Prudent Purchaser Act (PPA), MCL 550.51 *et seq.*; MSA 24.650(51) *et seq.*, were not preempted by the ERISA because "we fail to see how a statute that applies only to those who choose to fall within its purview could preclude the nationally uniform administration of employee benefit plans." *Id.* at 694. Therefore, based on this Court's holding in *BPS Laboratories (On Remand)*, *supra* at 694-696, 703, we conclude that plaintiff's claims in the present case are not preempted by the ERISA.

However, defendant was entitled to summary disposition of plaintiff's claims brought pursuant to Act 350¹ and the PPA because plaintiff was not entitled to bring a private action directly against defendant to enforce the acts. Although this issue was not addressed in the trial court, we may decide the issue because it is purely a question of law and the facts necessary for its resolution are before the Court. *Providence Hospital v National Labor Union Health & Welfare Fund*, 162 Mich App 191, 194-195; 412 NW2d 690 (1987). Act 350 does not grant health care providers the right to sue health care corporations directly to enforce the Act, but only allows the Attorney General or the Insurance Commissioner to enforce the Act against health care corporations. MCL 550.1619(2), (3); MSA 24.660(619)(2) and (3); *BPS Laboratories (On Remand)*, *supra* at 698. Furthermore, because Act 350 and the PPA each include language incorporating the other, the two statutes are to be read in *pari materia* and because the PPA does not contain an enforcement provision, the enforcement provision in Act 350 allowing the Act to be enforced only by the Attorney General or the Insurance Commissioner, will be read to also apply to the PPA. *Id.* at 702-703. Accordingly, we affirm the trial court's grant of summary disposition of plaintiff's claims brought pursuant to Act 350 and the PPA, not because the claims are preempted by the ERISA, but because plaintiff may not maintain an action directly against defendant to enforce the acts. However, plaintiff is entitled to bring an action in the Ingham Circuit Court to compel the Insurance Commissioner to enforce the acts. MCL 550.1619(3); MSA 24.660(619)(3); *BPS Laboratories (On Remand)*, *supra* at 703.

We reverse the trial court's grant of summary disposition with respect to plaintiff's claim for tortious interference with a business relationship on the ground that the claim was preempted by the ERISA. In *BPS Laboratories (On Remand)*, *supra* at 698-699, this Court determined that, even though the plaintiffs' claim for tortious interference with a business relationship was not preempted by the ERISA, the trial court properly granted summary disposition of the claim in favor of the defendant because the defendant established that its program was motivated by a legitimate business reason. In the present case, the trial court granted defendant's motion solely on the basis of ERISA preemption, and the merits of plaintiff's claims were not addressed. We remand for a determination on the merits of plaintiff's tortious interference claim.

We affirm in part, reverse in part, and remand. We do not retain jurisdiction.

/s/ Helene N. White
/s/ Richard A. Bandstra
/s/ Michael R. Smolenski

¹ Plaintiff claims three violations of Act 350: (1) breach of contract, (2) violation of MCL 550.1502a; MSA 24.660 (502a), and (3) violation of public policy. Plaintiff's breach of contract claim was not brought as a separate claim independent of the statutory claim.