FOR PUBLICATION

STATE OF MICHIGAN

COURT OF APPEALS

JOHN HOFMANN, D.C., and
RICHARD HERFERT, D.C.,

Plaintiffs-Counter-
Defendants-Appellees,

v   No. 94401

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Counter-
Plaintiff-Appellant.

BEFORE: R.M. Maher, P.J., G.R. McDonald and H.E. Deming*, JJ.

PER CURIAM

Defendant-counter plaintiff, Auto Club Insurance Association (ACIA), appeals as of right from the June 13, 1986 order of the Wayne Circuit Court granting summary disposition to plaintiff-counter defendants John Hofmann, D.C. and Richard Herfert, D.C. (Hofmann and Herfert) on ACIA's counterclaim.

Hofmann and Herfert are chiropractors who have treated patients with health insurance through Blue Cross-Blue Shield of Michigan (BCBSM) and who are additionally entitled to no-fault insurance through ACIA. Hofmann and Herfert allegedly received partial payment for their services from BCBSM, billing the balance to ACIA. For some unspecified period of time, it was the practice of ACIA to pay the additional amounts claimed by Hofmann and Herfert.

On January 4, 1985, Hofmann and Herfert filed an action in circuit court seeking, inter alia, a declaratory judgment providing that certain procedures and devices commonly prescribed by Hofmann and Herfert were approved within the chiropractic practice in the State of Michigan.[1] ACIA had allegedly refused

---

*Circuit Judge, sitting on the Court of Appeals by assignment.

to pay chiropractors for the procedures and devices on the ground that chiropractors are unauthorized to perform those procedures or prescribe the devices.

On February 22, 1985, ACIA filed its counterclaim seeking, inter alia, reimbursement or restituton for payments previously made to Hofmann and Herfert on claims for payment in addition to that made by BCBSM. ACIA alleged in its counterclaim that the payments made by it to Hofmann and Herfert violated both the No-fault Automobile Insurance Act, 1972 PA 294, MCL 500.3101 et seq.; MSA 24.13101 et seq., and the chiropractors' contracts with BCBSM as construed in Dean v ACIA, 139 Mich App 266; 362 NW2d 247 (1984), lv den 422 Mich 918 (1985).

Hofmann and Herfert subsequently moved for summary disposition on the counterclaim pursuant to MCR 2.116(C)(8). Hofmann and Herfert argued that ACIA was not entitled to restitution because: (1) Dean should be applied prospectively only; (2) the payments were made under a mistake of law, rendering them "voluntary"; and (3) Hofmann and Herfert have changed their positions such that it would be unfair to require repayment. Circuit court granted the motion by an order dated July 15, 1986.

The sole issue on appeal is whether the trial court erred by granting summary disposition pursuant to MCR 2.116(C)(8). As we have previously held:

> "A motion under this subrule tests the legal sufficiency of the pleadings alone. All well pled allegations must be taken as true. The motion should be denied unless the alleged claims are so clearly unenforceable as a matter of law that no factual development can possibly justify a right to recover. Hankins v Elro Corp, 149 Mich App 22; 386 NW2d 163 (1986)." Dzierwa v Michigan Oil Co, 152 Mich App 281, 288; 393 NW2d 610 (1986).

In Dean v ACIA, 139 Mich App 266; 362 NW2d 247 (1984), lv den 422 Mich 918 (1985), we held that:

> "[T]he Legislature did not intend to allow participating health care providers to seek additional reimbursement from no-fault insurers over and above the BCBSM reimbursement rate. The no-fault act was as concerned with the rising cost of health care as it was with providing an efficient system of automobile insurance. And there is little doubt that the legislation

governing health care corporations (BCBSM), MCL 550.1101 et seq.; MSA 24.660(101) et seq., had as its chief concern the affordability of health care. See generally the discussion in Blue Cross & Blue Shield of Michigan v Insurance Comm'r, 403 Mich 399; 270 NW2d 845 (1978). Accordingly, plaintiffs may not participate in the BCBSM health care plan and then frustrate the legislative attempt to contain health care costs by simply seeking payment on the excess from no-fault insurers." Dean, supra, 273-274.

Hofmann and Herfert have conceded that the substantive aspect of ACIA's counterclaim is simply "Dean revisited." However, the procedural aspect of the counterclaim -- reimbursement for claims previously paid -- was not addressed in Dean. Thus, the initial question raised in this appeal is simply whether Dean should be given "retroactive" effect to allow ACIA reimbursement for claims it erroneously paid prior to Dean.

As explained in King v General Motors Corp, 136 Mich App 301; 356 NW2d 626 (1984), lv den 422 Mich 871 (1985):

> "The general rule is that decisions of Michigan appellate courts are to be given full retroactivity unless limited retroactivity is preferred where justified by (1) the purpose of the new rule, (2) the general reliance upon the old rule, and (3) the effect of full retroactive application of the new rule on the administration of justice. Tebo v Havlik, 418 Mich 350, 360-361; 343 NW2d 181 (1984); People v Longwish, 109 Mich App 15, 18-19; 310 NW2d 893 (1981), lv den 413 Mich 887 (1982). See also the late Justice Moody's article entitled Retroactive Application of Law-Changing Decisions in Michigan, 28 Wayne L Rev 439 (1982)." King, supra, 306. Accord, Moorhouse v Ambassador Ins Co, 147 Mich App 412, 421; 383 NW2d 219 (1985).

Here the purpose of the new rule, as explained in Dean, was to further the legislative goal of providing economical systems of health and auto insurance. That purpose can only be furthered by retroactive application of the Dean rule. Moreover, since Dean addressed an issue of first impression, there was no "old rule" upon which Hofmann and Herfert might have relied. Finally, since there was no reliance upon an overturned rule of law, we perceive of no complications or inequities which would necessarily result form full, retroactive application. Cf. Maurer v McManus, ____ Mich App ____; ____ NW2d ____ (No 90248, rel'd 6-16-87). We can therefore only conclude that Dean should be given full, retroactive application.[2]

The other arguments raised by Hofmann and Herfert merit only summary comment. Restitution imposed under the equitable theory of implied or quasi contract to prevent the unjust enrichment of one party at the expense of another. 66 Am Jur 2d, Restitution & Implied Contracts, §§ 1-3, pp 942-946. A mistake of either law or fact will entitle a party to restitution unless it is inequitable or inexpedient for restitution to be granted. 66 Am Jur 2d, Restitution & Implied Contracts, § 13, pp 956-957. See also Schwaderer v Huron-Clinton Metropolitan Authority, 329 Mich 258, 271; 45 NW2d 279 (1951). We view the apparently contrary holding in Montgomery Ward & Co v Williams, 330 Mich 275, 285; 47 NW2d 607 (1951), as obiter dictum. A quasi-contractual obligation arises when a defendant receives a benefit from a plaintiff which is inequitable for the defendant to retain. Colonial Village Townhouse Cooperative v City of Riverview, 142 Mich App 474, 476; 370 NW2d 25 (1985), lv den 424 Mich 881 (1986). ACIA pled those elements in its counterclaim. Thus, to the extent that ACIA's claim is construed as one for restitution,[3] it is not so clearly unenforceable as a matter of law that no factual development could justify a right to recovery. Circuit Court therefore erred in granting summary disposition pursuant to MCR 2.116(C)(8). Dzierwa, supra. The trial court's order of summary disposition on the counterclaim must therefore be reversed.

Reversed.

/s/ Richard M. Maher
/s/ Gary R. McDonald
/s/ Hudson E. Deming

[1] It is conceded by both parties that summary disposition would not be dispositive of Hofmann and Herfert's claim and that claim is not addressed further in this opinion.

[2] Since the matter has not been addressed on appeal, we have not considered the effect of any statute of limitations on ACIA's counterclaim.

[3] We are not persuaded, at this juncture, that ACIA's claim is or need be one in quasi or implied contract.