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SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

AMBER WINTERS, et al., Plaintiffs, vs. BANNER HEALTH INC., et al., Defendants.	No. CV2012-007665 **SUPPLEMENT TO DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR NEW TRIAL**

The Court should deny Plaintiffs' motion to overturn Judge Gama's dismissal of Plaintiffs' claim for breach of contract, regardless of whether that motion is under Rule 59 or Rule 60. Plaintiffs' motion relies exclusively upon an opinion of the Court of Appeals that is no longer good law—the Supreme Court reversed that opinion in its entirety.

I. Background

In addition to their claim for federal preemption under the Supremacy Clause, Plaintiffs brought a claim for breach of contract, contending that Defendants breached their AHCCCS Provider Participation Agreements by enforcing health care provider liens under A.R.S. § 36-2903.01(G)(4). The parties briefed competing motions for summary

judgment on this claim. After hearing oral argument, Judge Gama granted Defendants' motion for summary judgment and dismissed Plaintiffs' contract claim.

On December 23, 2014, the Court of Appeals issued its opinion in the closed lien prong of this case. Even though no claim for breach of contract was before the Court of Appeals, the Court's opinion concluded that Defendants breached their provider agreements by enforcing liens under A.R.S. § 36-2903.01(G)(4).

Based on that opinion, Plaintiffs filed an untimely motion for new trial that asked this Court to "reconsider its prior ruling" on the contract claim. According to Plaintiffs, Judge Gama's ruling was "contrary to law" "in light of [the Court of Appeals' opinion]." Plaintiffs asked the Court to conclude that Defendants did breach their provider agreements and award attorneys' fees under A.R.S. § 12-341.01. In their reply, Plaintiffs sought to convert their Rule 59 motion for new trial into a Rule 60 motion for relief from the judgment. This Court then stayed further proceedings pending Supreme Court review of the Court of Appeals' opinion.

II. Plaintiffs' motion should be denied because it relies exclusively upon a Court of Appeals opinion that is no longer good law.

The Supreme Court accepted review and "reverse[d] the court of appeals' opinion." *Abbott v. Banner Health Network*, 239 Ariz. 409, ¶ 20, 372 P.3d 933, 939 (2016). The Court of Appeals' opinion is no longer good law, no longer has precedential value, and is no longer authoritative on any issue. Plaintiffs may not cite to the Court of Appeals' opinion in seeking to overturn Judge Gama's decision on the contract claim. Regardless of whether Plaintiffs' motion is under Rule 59 or Rule 60, the motion should be denied.

Plaintiffs will no doubt argue that the Court of Appeals' opinion *remains binding* on the merits of whether Defendants breached their provider agreements. Such a position is preposterous. Nothing in the opinion suggests that the Supreme Court agreed with *any*

portion of the Court of Appeals' opinion. Nothing in the opinion suggests that the Supreme Court intended *any* portion of the Court of Appeals' opinion to remain binding on the parties, precedential, or otherwise effective in any way. Reversing "the court of appeals' opinion" can mean only one thing: the Supreme Court reversed the *entire* opinion, not merely a *portion* thereof.

The effect of an opinion reversing the decision of an intermediate appellate court is to overturn that decision and return the case to the same posture as if the intermediate court had rendered no decision at all. *Disher v. Citigroup Glob. Markets, Inc.*, 486 F. Supp. 2d 790, 797-99 (S.D. Ill. 2007); *Clough v. Greyhound Corp.*, 88 S.E.2d 700, 700 (Ga. Ct. App. 1955); 5 C.J.S. *Appeal and Error* § 1106. Plaintiffs will try to evade that basic principle by manufacturing a distinction between "reverse" and "vacate." But the terms "reverse" and "vacate" are often used interchangeably.[1] *E.g.*, *Bergstrom v. Bergstrom*, 320 N.W.2d 119, 121-22 (N.D. 1982); *Moore v. N. Am. Van Lines*, 462 S.E.2d 275, 276 (S.C. 1995); *State v. Janis*, 317 N.W.2d 133, 137-38 (S.D. 1982). Moreover, the proffered distinction makes no sense—how and why would the Arizona Supreme Court *silently* signal its *agreement* with any portion of the Court of Appeals' opinion by *reversing* that opinion? *Compare Hogan v. Washington Mut. Bank, N.A.*, 230 Ariz. 584, 587, 277 P.3d 781, 784 (2012) ("[A]lthough we agree with the result reached by the court of appeals, its opinion is vacated.").

III. Conclusion

Plaintiffs may not attack Judge Gama's ruling on the contract claim by citing to an opinion that was reversed by the Supreme Court. This Court should deny Plaintiffs' motion to overturn Judge Gama's ruling on the contract claim.

[1] No Arizona appellate opinion has ever distinguished between the terms "reverse" and "vacate."

RESPECTFULLY SUBMITTED this 3rd day of October, 2016.

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