

Zheng Xuefeng and Chen Guoqing v. People's Hospital of Jiangsu Province on medical service contract

Year: 2003.11.18

Court: Intermediate People's Court of Nanjing City

Abstract of the Judgment

A public medical service institution altered the medical solution agreed on by both sides while performing the medical service contract without permission and under non-emergency circumstances. The Court held this act to be in accordance with Article 107 of Contract law, which applies when "one party to a contract fails to perform the contract obligations or its performance fails to satisfy the terms of the contract".

Plaintiff: Zhen Xuefeng

Plaintiff: Chen Guoqing

Defendant: People's Hospital of Jiangsu Province

Legal Representative: Huang Jun, Director of the hospital

Plaintiff Zheng Xuefeng and Chen Guoqing disputed with defendant People's Hospital of Jiangsu Province (abbreviated as People's Hospital) over a medical service contract and brought this case to People's court of Gulou District, Nanjing city, Jiangsu Province.

The two plaintiffs claimed that they saw the doctor at People's hospital for not having baby after being married for 7 years, and agreed with People's hospital to apply assisted reproduction through intracytoplasmic sperm injection (ICSI), but People's Hospital took liberty and altered the medical solution and took in vitro fertilization and embryo transfer, (IVF) which lead a failure in treatment. Based on the Contract Law of P.R.C (Contract Law) and Law of the People's Republic of China (Law on the Protection of Consumer Rights and Interests) and General Principles of the Civil Law of the P.R.C (Civil Law), People's Hospital was judged as to double compensate medical bill of 25,000 RMB, cost of lost labor of 1392.5 RMB, and mental injury compensation of 10,000 RMB and to do publically apologies.

The defendant argued that IVF and ICSI are both the technical means for assisted reproduction, each have different adaptability. There is no agreement as to which technology to be used between the defendant and the plaintiff. Hence it is in conformity with the common practice that the hospital adopts IVF based on the condition and there is no wrong on the side of hospital. And besides, the relationship between the plaintiff and defendant are not a common relationship between consumer and operator, so this case is not applicable using the Law on Protection of

Consumer Rights and Interests. There is no legal ground for the plaintiff to request the hospital to shoulder mental injury compensation at the excuse of breach of contract.

The People's Court of Gulou District of Nanjing City found out that:

The two plaintiffs are a couple and saw the doctor at People's court for impaired fertility. On Sep. 9th, 2002, the two plaintiffs signed an Agreement and Reminder on Test Tube Assisted Reproduction (abbreviated as Agreement and Reminder). There are many means of assisted reproduction, for which IVF and ICSI are two means applicable. In the Agreement and Reminder, there is no identification of which means that People's Hospital is going to adopt for treatment. But Zheng Xuefeng paid a Check-up fee of 5,400 RMB, the same as the sum of first 3 items in the charging standard for ICSI, which is an evidence provided by People's hospital, and the last item of medical measures in ICSI is not been performed. Hospital's Agents ad litem in court hearing also confirmed that People's Court collected medical charges according to ICSI's charging standards. And the record sheet of IVF Ovulation Induction on Sep. 9th, 2002 put to proof by People's Hospital also recorded that the planned treatment is ICSI. Hence, it is recognizable that although both plaintiffs and defendant have no written agreement on which technology to adopt, the plaintiff knows the existence of two different treatment and the fee payment shall be deemed as a choice among the medical treatment and the charging of People's Court shall be deemed as a confirmation of the choice made by plaintiff, which the court gives the benefit of doubt and judged that there is an agreement between plaintiffs and defendants on adopting ICSI technology to perform assisted reproduction and People's hospital is obligated to treat plaintiffs with ICSI.

On Sep. 25th, 2002, Zheng Xuefeng paid an medical examination fee of 5400 RMB to People's Hospital and in the same day, People's hospital performed an oval harvest and collected Cheng Guofeng's sperm. The medical staff, after observing the sperm of Cheng Guoqing, hold that it is more appropriate to adopt IVF and operate accordingly, but eventually failed.

It also was found out that two plaintiffs paid a total of RMB 6,072 (include RMB5400 mentioned above) of check-up fee and medical bill to People's hospital and to induct ovulation, two plaintiffs paid 5,362 RMB for drugs outside the hospital, making a total of 11,434.05 RMB.

Above facts are evidenced by the narration of plaintiffs and defendants, medical record and invoices of medical bills.

People's Court of Gulou District, Nanjing District holds that:

The plaintiffs maintain that Law on Protection of Consumers' Rights and Interests is applicable to this case, but this law is more inclined on regulating behaviors of

operators and protecting the rights and interests entitled to consumers on buying, using commodities and accepting services. Service referred to in the Law is commercial service that operators provided for the purpose of obtaining economic benefits. Evidence that the Court retrieved from the Department of Public Health of Jiangsu Province shows that People's Hospital is non-for-profit institution, hence no operator and the People's Hospital provide public medical health service to the populace instead of commercial service, hence the Law on Protection of Consumers' Rights and Interests are not applicable to this case. As for the suit of default filed by plaintiffs, we should firstly identify if there is a relationship of contract between the two sides and if the two contracts is valid. Medical service contract comes into effect when the patients pose a request of examination and treatment to hospital and the Hospital makes commitment. The Defendant received medical fees paid by the plaintiff and the two defendants and the defendant signed an Agreement and Reminder, besides the defendant also treated the plaintiffs, hence it shall be deemed that the medical service contract between the two sides is established and is effective.

Article 60 of Contract Law stipulates: "Each party shall fully perform its own obligations as agreed upon. The parties shall abide by the principle of good faith, and perform obligations of notification, assistance, and confidentiality, etc. in accordance with the nature and purpose of the contract and the transaction practice." Medical service contract is aimed at curing disease for patients and the party of hospital shall be highly prudent and adequately diligent and as the medical service is highly professional, hospitals are bestowed with high discretion in fulfilling the commitment. But because the hospital and the patients are equal civil subject in the medical service contract and the implementation of medical behavior shall have direct impact upon the body of patients. If the right to the choice of the patients is totally neglected, then it is obviously unfair. In the medical service contract, the hospital is duty bound to explain the medical treatment and the patient is entitled to the right of choosing among medical solutions. Before implementing medical solution, the hospital is liable to explain medical solutions to patients or its agents unless in emergency. And the patients are fully entitled to be informed the after-effect of medical treatment do onto themselves and choose among medical solutions.

Respect of patients' right to choose shall be embodied by the hospital making adequate explanations on the pros and cons of different treatment solutions, should there be two or more solutions and selects the treatment solutions based on the decision of the patients. In this case, there are ICSI, IVF and other means for assisted reproduction. The plaintiffs and the defendants have agreed upon ICSI, if the medical staff deemed it is more appropriate to use IVF, should the conditions permit, the medical staff shall elaborate to the plaintiff and solicit the opinions of plaintiffs on the change of medical solutions. But the evidence provided by defendants can only prove that the plaintiffs know of the change in medical solutions and can't prove that the plaintiffs have granted approval to the specific change. So this shall be deemed breach of contract and the party concerned shall shoulder corresponding obligations.

Contract Law of Article 107 stipulates that "If a party fails to perform its obligations

under a contract, or its performance fails to satisfy the terms of the contract, it shall bear the liabilities for breach of contract such as to continue to perform its obligations, to take remedial measures, or to compensate for losses.” In this case, the plaintiff’s payment of medical service fee in the medical service contract is a loss and its scope includes the check-up fee and the medical bill the plaintiffs paid to People’s Hospital and the bill plaintiffs paid for the drugs purchased outside the hospital, which the defendants shall pay back. But the compensation for cost of labor is not fully evidenced, hence this request is not supported.

As for the mental injury compensation the plaintiff requested from the defendant, according to the Article 107, Article 113.1 of the Contract Law, where a party fails to perform its obligations under the contract or its performance fails to conform to the agreement and cause losses to the other party, the amount of compensation for losses shall be equal to the losses caused by the breach of contract, including the interests receivable after the performance of the contract, provided not exceeding the probable losses caused by the breach of contract which has been foreseen or ought to be foreseen when the party in breach concludes the contract, but not including mental injury compensations. Hence in this case, the plaintiffs’ request of mental injury compensation and the request for public apology by the defendant are not supported.

Therefore, based on the Article 10.1, Article 44.1, Article 60, Article 107, Article 113.1 of Contract Law and Article 64.1 of the Civil Procedure Law, People’s Court of Gulou District in Nanjing city ruled on Jul. 18th, 2003:

One. The defendant People’s hospital of Jiangsu Province shall pay back 11,434.05 RMB to the plaintiffs Zheng Xuefeng and Chen Guoqing in a lump-sum in 5 days since the judgment became effective.

Two. Other requests by the plaintiffs --Zheng Xuefeng and Chen Guoqing rejected

The case acceptance fee of RMB 1,465 is split among two plaintiffs for RMB 995 and defendant for RMB 470.

After the pronouncement of the judgment of the first instance, People’s Hospital of Jiangsu Province refused to comply and file a lawsuit to the intermediate People’s Court of Nanjing city, Jiangsu Province.

People’s Hospital’s grounds of appeal are that the first instance judgment had error of facts. The appellant wants an assisted reproduction technology that both sides agreed upon, but in the agreement, there is no agreement on IVF and ICSI technologies, and the means of payment can’t back the unagreed matter; and the procedure of payment and treatment shows that the appellee supports and agrees upon the implementation of IVF solution which is reached based on the medical principle.

Zheng Xuefeng and Chen Guoqing accept the judgment of the first instance and didn't reply in writing to the appellant's grounds of suit.

Intermediate People's Court of Nanjing reviewed and confirmed the facts found out in the first instance.

Intermediate People's Courts hold that:

The parties should fulfill obligations according to the agreement. If a party fails to perform its obligations under a contract, or its performance fails to satisfy the terms of the contract, it shall bear the liabilities for breach of contract such as to continue to perform its obligations, to take remedial measures, or to compensate for losses. Zhen Xuefeng, Chen Guoqing, despite the unavailability of evidence to prove that both sides agreed upon ICSI, had the bill of Sep. 25th, 2002 proving that People's hospital collects medical fees based on the standards of ICSI; the phone call recording and the mail that Zheng Xuefeng and Chen Guoqing delivered to the Medical Division of People's hospital also mentioned that they requested to be treated by ICSI. And the above indirect evidences constitute mutual corroboration and it is presumable that Zheng Xuefeng/ Chen Guoqing and People's hospital orally agreed to use ICSI technology for assisted reproduction and People's Hospital shall fulfill the medical service contract to the full based on the agreement. And while fulfilling the medical service contract, hospital's altering the medical solution agreed by both sides without permit under non-emergency cases are what described by Article 107 of Contract Law as "one party to a contract fails to perform the contract obligations or its performance fails to satisfy the terms of the contract". In this case, People's Hospital took the liberty to change treatment solution without the permit of Zheng Xuefeng and Chen Guoqing under the circumstances of not occurring emergencies. Hence the act of People's Hospital constitute "failing to perform the contract obligations and result in a loss on the other side of the contract, hence shall shoulder the liability to compensation." The first instance court is right on the default liabilities and the loss, hence the judgment made is not inappropriate. People's hospital is inadequate in the grounds of suit, hence the case is rejected.

By far, based on the Article 60.1, Article 107 of Contract Law, Article 153.1 Paragraph 1 of Civil Procedure Law of P.R.C, Intermediate People's Court of Nanjing city ruled on Nov. 18th, 2003:

Appeal dismissed and judgment of the first instance sustained.

This judgment is final.