IN THE SUPREME COURT OF GUAM

EUGENE C. WASSON, III and WASSON III, INC., f.k.a. GUAM RADIOLOGY CONSULTANTS, INC.,
Plaintiffs-Appellees,

v.

NATHANIEL BERG, MD,
Defendant-Appellant.

OPINION

Cite as: 2007 Guam 16

Supreme Court Case No.: CVA06-012
Superior Court Case No.: CV0246-05

Appeal from the Superior Court of Guam
Argued and submitted on June 1, 2007
Hagåtña, Guam

Appearing for Defendant-Appellant:
William L. Gavras, *Esq.*
Law Offices of William L. Gavras, P.C.
A Professional Corp.
2nd floor, J7R Bldg., 208 Route 4
Hagåtña, Guam 96910

Appearing for Plaintiffs-Appellees:
Elyze J. McDonald, *Esq.*
Carlsmith Ball LLP
Bank of Hawaii Bldg., Suite 104
134 West Soledad Ave.,
P.O. Box BF
Hagåtña, Guam 96932-5027

BEFORE: F. PHILIP CARBULLIDO, Chief Justice; RICHARD H. BENSON, Justice *Pro Tempore*; ROBERT G.P. CRUZ, Justice *Pro Tempore*.

CARBULLIDO, C.J.:

[1] This appeal concerns an Asset Purchase Agreement ("Agreement") entered into between Plaintiffs-Appellees Eugene C. Wasson, III, and Wasson III, Inc. (collectively "Wasson") and Defendant-Appellant Nathaniel Berg, MD ("Berg") for the purchase of a diagnostic imaging service. A dispute arose between the parties regarding a price reduction clause contained in the Agreement. Wasson sued Berg in the Superior Court of Guam for breach of contract and breach of promissory note. Wasson thereafter filed a motion for summary judgment, which was eventually granted by the lower court. Berg appeals from this grant of summary judgment, arguing that the lower court erred in its interpretation of the terms and conditions of the price reduction clause. For the reasons stated herein, we reverse.

I.

[2] The parties entered into an Agreement wherein Berg, the buyer, agreed to purchase from Wasson, the seller, certain assets of Wasson pertaining to the operation of a diagnostic imaging service, including the name "Guam Radiology Consultants" as well as an outpatient CAT scan machine (also interchangeably referred to as a CT scan machine). Excerpts of Record ("ER"), pp. 8-31 (Agreement); ER, p. 175 (Aff. of Nathaniel Berg). The total purchase price under the Agreement was $1,448,661.85, which was to be paid over time. Payment was secured by a promissory note executed by Berg. The due date on the note was on or before November 30, 2004. ER, p. 12 (Agreement).

[3] At the time the parties entered into the Agreement, the CAT scan machine at issue was the only outpatient machine of its kind in Guam. Consequently, Berg was purchasing a complete

market share of all outpatient CAT scan referrals. ER, p. 155 (Reply to Def.'s Opp'n to Pls.' Mot. for Summ. J.). The parties, through their respective legal counsels, negotiated a price reduction clause as part of their purchase agreement. The clause, which is the subject of this appeal, outlined the conditions that would trigger a reduction in the total purchase price. The pertinent portion of that clause contemplates a $50,000.00 reduction in the purchase price if, in the two years after closing, certain market conditions simultaneously occurred. The clause reads in relevant part:

> 2.3.4 Reduction of Purchase Price.
>
> If the Certificate of Need is non-transferable, non-enforc[e]able or otherwise becomes a non-functional document, and a second out-patient CAT scan is installed in the Territory of Guam and the Buyer does not have a financial interest in such unit and the Buyer does not interpret exams for the [*sic*] such unit then the following shall apply:
>
> . . .
>
> (b) Second Year Reduction. If the number of CAT scan procedures billed during the second year of this agreement decreases by more than 5% (five per cent) versus the number of CAT scan procedures completed in the previous year then there shall be a reduction in the purchase price of $50,000 which will be deducted from the final installment.

ER, p. 13 (Agreement).

[4] Approximately two years before the final installment date, a second outpatient CAT scan machine was put in place in Guam at PMC Health Systems.[1] When the note came due, the principal amount owed under the note was $563,661.85. Berg made the final installment payment on the note in the amount of $513,661.85 – the principal amount, less $50,000.00. Thereafter, Wasson filed a Complaint in the Superior Court against Berg alleging Breach of

[1] This second outpatient CAT scan machine was owned/operated by Guam Imaging Consultants. *See* ER, p. 167 (Aff. of Tess Canoy). It is not disputed that Berg did not have a financial interest in, or interpret exams for, this second machine. Whether or not this machine was *installed* is a key element of dispute in the present litigation.

Contract and Breach of Promissory Note. Berg filed his Answer claiming as an affirmative defense that he was relieved of paying the final $50,000.00 because all of the conditions in the price reduction clause of the Agreement had been satisfied.

[5] Wasson then filed a Motion for Partial Summary Judgment, which Berg opposed in writing. The parties agreed that the portion of the clause pertaining to the Certificate of Need had been satisfied by the passage of section 55 of Guam Public Law 26-76 (2001), which nullified the requirement of obtaining a Certificate of Need. The parties, however, disputed the applicable meaning of the term *installed.* And while it was ultimately not disputed that Berg did not have a financial interest in the second machine nor that he did not interpret exams for the second machine, the parties disagreed as to whether or not the stated decrease in Berg's CAT scan procedures billed must be proven to have been caused by the second outpatient CAT scan machine.

[6] The lower court denied Wasson's motion for partial summary judgment, stating that a "material fact" was not "sufficiently fleshed out for the Court." Transcript ("Tr."), tab 1, p. 23 (Pl.'s Mot. for Summ. J.). The lower court stated that, while it agreed with Wasson that the clause implies a competition requirement, a material fact remained disputed – that is, whether the threshold five percent (5%) reduction in procedures had been met. The lower court gave the parties additional time to conduct further discovery with regard to whether the decline in Berg's procedures billed was causally related to the second CAT scan machine, which the lower court deemed an unresolved "genuine issue of fact." ER, p. 242 (Decision and Order).

[7] The matter again came before the court on Berg's Ex Parte Motion requesting, *inter alia*, a ruling on the motion for partial summary judgment. Pursuant to this ex parte motion, Berg stated that, although he disagreed with the lower court's interpretation that the price reduction

clause contains a "competition" element and requires proof of causation between the decline in procedures and the second outpatient CAT scan machine, he would stipulate in the interest of judicial economy that he cannot conclusively prove that the second machine directly caused the decline in procedures performed. Berg, without assenting to Wasson's motion for partial summary judgment, requested that the lower court enter a ruling. The lower court issued its Decision and Order granting Wasson's motion for partial summary judgment. Subsequently, the parties settled out of court on all other remaining issues. The lower court then entered Summary Judgment. Berg timely filed his Notice of Appeal.[2]

II.

[8] This court has jurisdiction over an appeal from a final judgment of the Superior Court pursuant to 48 USC § 1424-1(a)(2) (Westlaw through Pub. L. 110-120 (2007)); 7 GCA §§ 3107 (b) and 3108 (a) (2005).

III.

[9] The lower court's grant of a motion for summary judgment is reviewed *de novo*. *Nat'l Union Fire Ins. Co. v. Guam Hous. & Urban Renewal Auth.*, 2003 Guam 19 ¶ 12. "Summary judgment is proper 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" *Hemlani v. Flaherty*, 2003 Guam 17 ¶ 7 (quoting Guam R. Civ. P. 56(c)). "There is a genuine issue, if there is 'sufficient evidence' which establishes a factual dispute requiring resolution by a fact-finder." *Iizuka Corp. v. Kawasho Int'l (Guam), Inc.*, 1997 Guam10 ¶ 7 (quoting *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987)). In addition, the "dispute must be as to a

[2] *See* GRAP Rule 4(a)(1).

'material fact'," which is a fact that "is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit." *Id.* (quoting *T.W. Elec. Serv.*, 809 F.2d at 630).

IV.

A. Approaches to Contract Interpretation

[10] In construing what various terms in a contract mean, the task of the court is to discern and give legal effect to the intent of the parties at the time of contracting. *See* 18 GCA § 87102 (2005); *Camacho v. Camacho*, 1997 Guam 5 ¶ 32; *Leon Guerrero v. Moylan*, 2000 Guam 28 ¶ 8. Further, the intent of the parties to a contract is generally, and whenever possible, restricted by the plain meaning of the contract terms. *See Camacho*, 1997 Guam 5 ¶ 33; 18 GCA § 87104 (2005). When attempting to divine the intent of the parties to a contract, there is a divergence among courts as to when extrinsic evidence may be admitted to assist courts in determining the intended meaning of contract terms. Two approaches to contract interpretation have thus emerged – the "traditional" approach and the "modern" approach.

1. Traditional Approach

[11] In general, courts that follow the traditional or "plain meaning" approach look to the four corners of the contract and determine whether, as a matter of law, any ambiguity exists. *See* 11 Richard A. Lord, Williston on Contracts § 30:5 (4th ed. 1999); 5 Margaret N. Kniffin, Corbin on Contracts § 24.7 at 33 (Rev. ed. 1998). "Under traditional contract principles, extrinsic evidence is inadmissible to interpret, vary or add to the terms of an unambiguous integrated written instrument." *Trident Ctr. v. Conn. Gen. Life Ins. Co.*, 847 F.2d 564, 568 (9th Cir. 1988). If, however, the court finds there is ambiguity, then extrinsic evidence may be allowed to clarify and resolve the ambiguity as a question of fact.

[12] The chief criticism of this approach to contact interpretation is that it supposes that words have one fixed and objective meaning unaffected by "the social, economic, religious, and ethnic group to which the user belongs; and, the change of times." Karla K. Poe, Note, *Contracts – New Mexico Adopts the Modern Approach to Interpreting Ambiguities:* C.R. Anthony Company v. Loretto Mall Partners, 23 N.M. L. Rev. 281, 284 (1993) (hereinafter "Poe, *New Mexico Adopts the Modern Approach*"). The California Supreme Court, in abandoning the traditional approach, opined that "[i]f words had absolute and constant referents, it might be possible to discover contractual intention in the words themselves and in the manner in which they were arranged. Words, however, do not have absolute and constant referents." *Pac. Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co.*, 442 P.2d 641, 644 (Cal. 1968). The advantages to the traditional approach, meanwhile, are that it simplifies the interpretation process, provides predictability, and avoids the risk that a party may conveniently argue that it meant something other than what is written. Poe, *New Mexico Adopts the Modern Approach*, 23 N.M. L. Rev. at 285-86.

2. Modern Approach

[13] By contrast, the modern approach does not require the court to make a threshold finding as a matter of law that some ambiguity exists. *Id.* at 286. Rather, the question of a contract's meaning as a whole is treated as a question of fact for the fact-finder to determine. *Id.* at 287. By this approach, extrinsic evidence is considered to determine whether any ambiguity exists; the fact-finder may consider such things as the "circumstances surrounding the making of the contract and . . . any relevant usage of trade, course of dealing, and course of performance" but may not consider prior negotiations. *Id.* at 286 (internal quotation marks omitted).

[14] California is among the minority of jurisdiction that has adopted the modern approach. Thus, "[u]nder California law, '[t]he test of admissibility of extrinsic evidence to explain the meaning of a written instrument is . . . whether the offered evidence is relevant to prove a meaning to which the language of the contract is reasonably susceptible.'" *Barris Indus., Inc. v. Worldvision Enters., Inc.*, 875 F.2d 1446, 1450 (9th Cir. 1989) (citations omitted). In *Trident*, the Ninth Circuit Court of Appeals, while begrudgingly following California substantive law, offered sharp criticism of the modern approach and of *Pacific Gas*, the California Supreme Court opinion that adopted this approach:

> Under *Pacific Gas,* it matters not how clearly a contract is written, nor how completely it is integrated, nor how carefully it is negotiated, nor how squarely it addresses the issue before the court: the contract cannot be rendered impervious to attack by parol evidence. . . .
>
> It also chips away at the foundation of our legal system. By giving credence to the idea that words are inadequate to express concepts, *Pacific Gas* undermines the basic principle that language provides a meaningful constraint on public and private conduct. If we are unwilling to say that parties, dealing face to face, can come up with language that binds them, how can we send anyone to jail for violating statutes consisting of mere words lacking "absolute and constant referents"? . . .
>
> Be that as it may. While we have our doubts about the wisdom of *Pacific Gas*, we have no difficulty understanding its meaning, even without extrinsic evidence to guide us.

Trident, 847 F.2d at 569.

[15] While the trend in the nation may be toward adopting the modern approach, a majority of jurisdictions still apply the "plain meaning" or traditional approach to contract interpretation. *See generally* Poe, *New Mexico Adopts the Modern Approach,* 23 N.M. L. Rev. 281; Margaret N. Kniffin, *A New Trend in Contract Interpretation: The Search for Reality as Opposed to Virtual Reality*, 74 Or. L. Rev. 643, 656-63 (1995).

3. Guam's Adherence to the Traditional Approach

[16] In this court's recent opinion in *Torres v. Torres* addressing what evidence is to be considered in contract interpretation, the court reserved judgment on the issue of whether or not extrinsic evidence may be considered when a contract is unambiguous within its four corners. 2005 Guam 22 ¶ 37 n.8. A review of cases regarding the interpretation of a written contract, however, confirms that our jurisdiction is in the majority that adheres to the traditional approach. *See Takagi & Assocs., Inc. v. Int'l Ins. Underwriters*, 2006 Guam 4 ¶ 23 ("Therefore, since the four corners of the contract address the situation in which a commission is returned, there was no need to look to industry practice or custom, or any other extrinsic evidence and the lower court erred."); *Guam United Warehouse Corp. v. DeWitt Transp. Servs.*, 2003 Guam 20 ¶ 24 ("[W]e 'look to the. . .four corners to determine the parties' intentions, which are controlling.'. . . 'If the language within the four corners of the contract is unambiguous, then a court does not resort to extrinsic evidence of the contract's meaning, and a court determines the parties' intentions from the plain meaning of the contractual language as a matter of law.'") (internal citations omitted); *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Guam Hous. & Urban Renewal Auth.*, 2003 Guam 19 ¶ 36 n.17 ("We are merely required to interpret the contract as written, in light of the plain language and the reasonable expectations of the insured.").

[17] Moreover, Guam's statutes regarding contract interpretation support this approach. *See* 18 GCA § 87104 (2005) ("The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity."); 18 GCA § 87105 (2005) ("When a contract is reduced to writing, the intention of the parties is to be ascertained from the

writing alone, if possible; subject, however, to the other provisions of this Chapter.").[3] The origin of these statutes is the California Code, which still reflects the same or similar language.[4] Although the California Supreme Court in *Pacific Gas* adopted the modern approach, even with statutory language similar to ours, Guam's case law is clear that the "plain meaning" or traditional approach is what we are bound to follow in matters of contract interpretation.[5]

B. Summary Judgment

[18] Berg's primary argument raised on appeal is that summary judgment was improper because the lower court erred in its interpretation of the price reduction clause at issue. Specifically, the lower court imposed requirements of competition and causation as additional (or implied) conditions precedent that must be proved in order to trigger the price reduction called for by the clause, even though the clause itself does not state that those additional requirements exist. Wasson, citing 13 GCA § 3101 *et seq.*, argues that they have met their burden as the movant for partial summary judgment by establishing that: (1) there is a note; (2) Wasson is the legal holder and owner of the note; (3) Berg is the maker of the note; and (4) a certain balance is due and owing on the note. Wasson argues that once these elements are established, it is not error for the lower court to grant summary judgment on that issue.

[3] The source of these statutes is the Civil Code of Guam, section 1635 *et seq.*. The Civil Code, as with the codes originally published under the Naval Government, was patterned after California codes. *See* Foreword (1953) *in* Code of Civil Procedure (1970). Although some of California's codes have changed over the years, the language contained in our current statute regarding interpretation of contracts (Chapter 87 of Title 18 of the Guam Code Annotated) still reflects the current California Code.

[4] Cal. Civ. Code § 1635 *et seq.* (West 2007).

[5] Although there may be a day when we find it necessary to deviate from our jurisdiction's case law setting out this approach, the situation presented in this case does not compel us to abandon the traditional, "plain meaning" approach at this time.

[19] In the instant case, the underlying dispute is a contract dispute, with the disputed portion of the contract being the price reduction clause – the clause raised by Berg in his pleadings as an affirmative defense to Wasson's claim that additional monies are owed on the promissory note. When the matter of a contract dispute comes before the court on a motion for summary judgment, summary judgment is proper if the contract language need only be construed and given legal effect. *See Riley v. Pub. Sch. Syst.*, No. 93-027, 1994 WL 111129 at *2 (N. Mar. Feb 9, 1994). However, when the court must sit as fact-finder and resort to determining the parties' intent because of ambiguity arising from disputed relevant evidence, then summary judgment is not appropriate. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *see also Barris Indus., Inc.* 875 F.2d at 1450.

[20] Both parties argue that the terms of the price reduction clause (section 2.3.4) are unambiguous: Wasson, that *installed* unambiguously means a fully functioning and competing machine (a meaning to which the lower court subscribed); and Berg, that *installed* unambiguously means, plainly, *installed.* Furthermore, Wasson essentially argues that the language "if the number of CAT scan procedures billed during the second year of this agreement decreases by more than 5% (five per cent) versus the number of CAT scan procedures completed in the previous year" unambiguously (when placed in proper context) means *if this decrease occurs because of the second CAT scan machine*. ER, p. 129 (Agreement). Berg, conversely, contends that this language, in the context of the whole clause, plainly and unambiguously means *if this decrease occurs together with* the previously stated conditions expressly contained in the clause.

[21] Applying our jurisdiction's "plain meaning" or traditional approach to the facts of this case, it is apparent that neither the contract in general nor this clause in particular is ambiguous.

From the language contained within the four corners of the contract, one simply cannot glean from this clause – even when taken in context of the contract as a whole –that *installed* should mean *functioning* or *competing*, or that causation should be implied.

[22] It is apparent from the Decision and Order as well as the transcript of the hearings on this matter that the lower court did not believe there was any ambiguity in the clause, and construed the term *installed* to mean a functioning and competing machine, and further construed the clause to imply a causation element between the *installation* of the second outpatient CAT scan machine and the decrease in Berg's procedures billed. For the reasons set forth below, we find that, as a matter of law, the lower court committed error.

1. The lower court erred in its interpretation of the term *installed*.

[23] Much of the argument below, as well as the argument raised by the parties in their briefs, focused on the meaning of the word *installed* and whether that word was meant by the parties to connote a degree of competition. Certain material evidence is undisputed. It is not disputed that a second outpatient CAT scan machine existed during the relevant time, and that it was put in place around August 2002. Neither is it disputed that, *technically*, the second machine worked. Even according to the affidavits submitted on Wasson's behalf, the second machine performed "test" runs and operated for one or two days, and that the reason it stopped performing scans had to do with business-related issues.[6]

[6] The president of Gamma Corporation, which conducts at least 75% of all physics consulting work, including CT scanner testing, in Guam, attested that since 1992, there have only been three operational CT scanners in Guam – one at Guam Memorial Hospital, one at Naval Hospital, and the one owned by Berg. Further, he attested that a fourth machine (the PMC machine at issue) only ran one or two days because of "software licensing issue and mismanagement." ER, pp. 164-65 (Aff. of Phillip Manly).

[24] *Install* has generally been defined in the following way: "to put machinery or equipment into place and make it ready for use."[7] At least one court has addressed the specific issue of how to define *install*, and has applied a version of this common definition. In *Crystal Apartments Group v. Cook,* 558 N.Y.S.2d 786, 786 (N.Y. City Civ. Ct. 1990), a landlord brought action against a tenant claiming that the tenant violated the lease provision that stated: "Tenant shall not install any dishwasher, clothes washing or drying machines . . . without written permission of the Owner." *Id.* The tenant in that case claimed that because the washing machine at issue was a portable one, requiring only a simple hose connection and not a fixed connection to the plumbing, then the machine was not *installed. Id.* The tenant contended that the term *install* should be interpreted to mean something more permanent, requiring the services of a plumber. That court found that:

> [T]he natural meaning of the word 'install' in common usage is simply 'to put in place.' No special degree of permanence is necessarily implied. . . . Absent proof to the contrary, common sense dictates, and the Court finds, that [the provision] prohibits the putting in place for use of a washing machine.

Id.

[25] Wasson seems to overstate to their benefit how the accepted, common meanings of the word *install*, such as "put in place and ready for use," further mean that the thing must actually be consistently used (or used a certain number of times) in order to be considered installed. Wasson argues that to read that word otherwise would lead to an absurd result. Appellees' Brief, p. 11.

[26] However, this court agrees with Berg that the plain meaning of the term leads us to conclude that the second CAT scan machine was indeed installed – it was put in place and ready

[7] ENCARTA WORLD ENGLISH DICTIONARY (N. Am. ed. 2006) at http://encarta.msn.com/dictionary_/install.html. *See also* Appellees' Brief, p. 11.

to be used and, in fact, it *was* used to some extent. It does not seem absurd to apply this meaning to *installed* as used in the clause, as words in a contract are generally to be accorded their ordinary meanings, unless specifically stated otherwise in the contract. *See Camacho*, 1997 Guam 5 ¶ 33 ("[I]n interpreting a clause of a contract to determine the intent of the contracting parties, whenever possible, the express language of the contract should control. The words of a contract should be given an ordinary meaning, unless they are technical words, such as legal terms of art."). In this case, there is no evidence that the parties intended any special meaning be attached to the word, and the clause itself confers no special meaning to the word.

2. The lower court erred in finding that the clause unambiguously implied an element of causation.

[27] The lower court ruled that, by the terms of the clause, Berg must show not just that there was a five percent (5%) decrease in his procedures billed compared to the previous year, but also that such decrease was caused by competition from the second CAT scan machine. The lower court apparently agreed with Wasson that, although the clause does not expressly state that this requirement is an additional condition precedent to invoking the clause, it would be absurd for the court to interpret it any other way than that Berg must produce evidence of causation.

[28] This court rejects the lower court's and Wasson's interpretation, and agrees with Berg that, by a plain reading of the clause, so long as this condition occurs simultaneously with the other express conditions of the clause, then evidence that this fact (i.e., the decrease) occurred is enough to satisfy this prong. The contrary position urges this court to read causation as an implied condition precedent (that not only must the decrease occur, but that it must occur *because of* the second machine) in order for Berg to invoke the price reduction benefit. However, "[a]s a general rule of contract construction[,] conditions precedent are not favored

and an agreement will be strictly construed against a party asserting that its provisions impose a condition precedent." *Helzel v. Super. Ct.,* 176 Cal. Rptr. 740, 745 (Ct. App. 1981).

[29] It is an overstatement to argue, as Wasson does, that to read this part of the clause as *not* requiring evidence of causation would be akin to making Wasson the overall insurer of Berg's business. To the contrary, the clause does not just state that if the number of CAT scan procedures billed decreases by five percent, then Berg is entitled to a reduction of $50,000.00 in the total purchase price. In fact, by the express terms of the clause, only when this condition occurs *together with* all of the other conditions stated would Berg be entitled to the price reduction.

[30] Indeed, parties to a contract often "contract away" the trouble of litigating causation, which may often be nearly impossible to conclusively prove, by negotiating clauses such as liquidated damages clauses. *See, e.g., PYCA Indus., Inc. v. Harris County Waste Water Mgmt. Dist.,* 177 F.3d 351, 368 (5th Cir. 1999)("The inherent difficulty of affixing actual damages . . . is a factor favoring the use of liquidated damages clauses."). This price reduction clause, though technically different from a liquidated damages clause, may nonetheless be viewed as similarly motivated. The protection to Wasson is that all the conditions precedent must occur simultaneously before the clause can be triggered. The benefit to Berg is that he may forego trying to prove that the machine directly caused his decrease in business. The incentive to the parties collectively is that they, in theory, might avoid costly and time-consuming litigation on the issue of causation.

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[31] In general, "courts should not rewrite the contracts before them to conform to their own conception of business equity." *Wastemasters, Inc. v. Diversified Investors of N. Am.*, 159 F.3d 76, 79 (2nd Cir. 1998). As one court recognized:

> [The parties] were generally free to contract as they pleased. They evidently did so. They thereby established what was 'fair' and 'just' [between themselves]. We may not rewrite what they themselves wrote. We must certainly resist the temptation to do so here simply in order to adjust for chance – for the benefits it has bestowed on one party without merit and for the burdens it has laid on others without desert.

Aerojet-General Corp. v. Transport Indem., 948 P.2d 909, 932 (Cal. 1997) (citations omitted).[8]

[32] Looking at the four corners of the Agreement and the express terms of the relevant provision, it is clear that the terms unambiguously do not require proof of causation. For the lower court to have found otherwise was erroneous.

C. The Non-Compete Provisions of the Agreement

[33] Wasson further urges this court to read the price reduction clause in section 2.3.4 in light of the non-compete provisions in section 12 of the Agreement. Doing so, Wasson argues, will

[8] In the case of *City of Hope, Inc, v. Fisk Building. Associates*, 46 N.Y.S.2d 472 (N.Y. App. Div. 1978), the court considered a challenge by tenants to various price adjustment or escalation clauses in its lease agreement, claiming unjust enrichment on the part of the landlords. The crux of tenants' argument was that, where one clause called for an increase in annual rent based on the consumer price index and one clause called for a rental increase based on the increased cost of electricity, this was unfair because the consumer price index already included as one of its factors the cost of electricity. Tenants' argument that this was an unfair and substantial duplication of an escalation clause was rejected by the court. The court found that each clause had a reasonable purpose behind it, and that the parties (commercial tenants and landlords) "were free to adopt or reject any measuring device they wished in order to accomplish each purpose. The parties might have bargained for the same device . . . to measure the factor on which to predicate the increase contemplated. . . . They chose, however, to utilize two separate measuring devices, one for each of the two clauses." *Id.* at 947. Similarly, in the instant case, Berg and Wasson could have negotiated a number of factors or combinations thereof that would trigger a price reduction representing a decreased value in the CAT scan machine purchased, but this is the clause they negotiated, and its terms are unambiguous.

See *also Reimann v. Saturday Evening Post Co.*, 464 F. Supp. 214 (S.D.N.Y. 1979) (holding that a clause in contract for sale of a business, which provided that no further payment would be made on the base purchase price after certain date if cash flow had not reached a specified sum by a certain date, was enforced where the contract clearly provided that no further payments would be made to plaintiff after that specific date even if the total payments under the Agreement up to that date did not equal the base purchase price; the court found that seller understood this when he executed the Agreement, and declined to interfere with the parties' contractual obligations.)

show that the parties intended that the disputed section 2.3.4 would protect Berg against competition just as section 12 does. Section 12 specifically provides that Wasson be restrained from engaging in conduct that would amount to competition with Berg's business or otherwise threaten Berg's market share as a diagnostic services provider. Wasson notes that the time frame covered by the non-compete provisions of section 12 (three years) is the same time frame covered by the price reduction clause of section 2.3.4 (three years). Therefore, Wasson further argues, it follows that the parties must have intended that Berg be generally protected from competition for a three year time period – supporting their argument that the parties, in crafting the clause at issue, meant a second outpatient CAT scan machine that effectively competed with Berg's machine and caused the requisite decrease in Berg's procedures billed.

[34] However, while it is true that contract terms should not be read in isolation but in the context of the whole, *Pacificare,* 2004 Guam 17 ¶ 73, it does not appear that the "non-compete" tenor of section 12 necessarily elucidates the intended meaning of the terms of section 2.3.4. For instance, section 12 contains very specific language against competition, defining the competitive conduct proscribed. Section 2.3.4, however, states only that the listed conditions precedent must occur together, with no specific reference or allusions either to section 12 or to a requirement of competition.[9] Furthermore, neither section is dependent upon the other; one section could be breached by a party without resulting in a breach of the other section.

[9] Moreover, the three-year period could reasonably have been used for purposes unrelated to the section 12 non-compete provisions; the three-year time frame could conceivably have been used in section 2.3.4 because three years was the point at which the note would come due, which would be the time at which the price reduction pursuant to the clause could have been effected. *See* section 2.3.4 (b), ER, p. 13 (Agreement) ("[T]here shall be a reduction in the purchase price of $50,000 which will be *deducted from the final installment*") (emphasis added).

[35] This court does not find the provisions of section 12 of the Agreement to be instructive to or determinative of the meaning of the terms in the price reduction clause in section 2.3.4, and therefore rejects this argument.

V.

[36] In accordance with the foregoing, we hold that the lower court erred in granting summary judgment in favor of Wasson. Specifically, the lower court erred in its interpretation of the price reduction clause. While the lower court correctly concluded in its Decision and Order that the contract at issue is unambiguous, it erroneously interpreted the term *installed* in the price reduction clause, and erroneously concluded that this clause implied a causation requirement. Applying the "plain meaning" or traditional approach to contract interpretation, which is the approach we follow in our jurisdiction, one simply cannot divine from the four corners of the contract that *installed* was intended to mean *functioning* or *competing*, as the lower court found, nor that there should be an implied requirement of causation between the installation of the second CAT scan machine and the decline in Berg's procedures billed. We therefore find that, as a matter of law, the lower court committed error.

[37] This court finds that the contract language at issue is unambiguous. Moreover, while there was no cross motion for summary judgment filed on the matter of the price reduction clause, we find as a matter of law, using a plain reading of the contract and the clause, that the second CAT scan machine at PMC Health Systems was installed, that proof of causation between this second machine and the decline in Berg's procedures billed is not a requirement of the price reduction clause, and therefore, that all the elements of the price reduction clause have been satisfied.

[38] Accordingly, the lower court's decision granting Plaintiffs-Appellees' Motion for Summary Judgment is hereby **REVERSED**. This matter is **REMANDED** for further proceedings consistent with this Opinion.

RICHARD H. BENSON

RICHARD H. BENSON
Justice *Pro Tempore*

ROBERT G. P. CRUZ

ROBERT G.P. CRUZ
Justice *Pro Tempore*

F. PHILIP CARBULLIDO

F. PHILIP CARBULLIDO
Chief Justice