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SECOND DIVISION
November 27, 2012

No. 1-11-3282
2012 IL App (1st) 113282-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FRANK C. BEMIS, D.C.; DR. FRANK C. BEMIS)	Appeal from the
& ASSOCIATES, CHIROPRACTORS; and)	Circuit Court of
DR. FRANK C. BEMIS & ASSOCIATES,)	Cook County
CHIROPRACTORS, S.C.,)	
)	
Plaintiffs-Appellants,)	
)	
v.)	No. 07 CH 21066
)	
STATE FARM FIRE & CASUALTY COMPANY,)	Honorable
)	Raymond W. Mitchell,
Defendant-Appellee.)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Harris and Justice Quinn concurred in the judgment.

ORDER

Held: Plaintiff health-care providers' claims against defendant insurance company for breach of contract and unjust enrichment were properly dismissed pursuant to the doctrine of collateral estoppel.

¶1 Plaintiffs, which are a chiropractor and his practice group, sued defendant State Farm Fire & Casualty Company over defendant's alleged failure to properly reimburse plaintiffs for medical services that plaintiffs provided to defendant's insurees. The circuit court dismissed the complaint on multiple grounds, among them being collateral estoppel. We affirm.

¶2 Plaintiffs participate in a preferred provider organization (PPO), which is a network of health-care providers like plaintiffs and insurance companies (called payors) like defendant who

are linked through an intermediary called a PPO administrator. The relationship between all three entities is contractual and work essentially as follows. The providers agree to provide discounted rates for their services while the payors agree to steer patients to a network of providers through a variety of financial incentives to the payor's insurees. The idea is that both parties benefit because providers will receive a higher volume of patients and payors (who, as insurance companies, are ultimately responsible for most of the patient's bills) will pay a reduced rate for providers' services. PPO administrators facilitate this arrangement by maintaining a network of providers and marketing access to the network to payors. Providers, however, do not contract directly with payors. Instead, they enter into a contract (called a "provider agreement") with the PPO administrator, which then in turn enters into its own contract with the payor (the "payor agreement"). The two contracts together form what is known as the "PPO agreement." All of this is controlled by statute and is heavily regulated in Illinois. See 215 ILCS 5/370f *et seq.* (West 2010).

¶3 In this case, plaintiffs entered into a provider contract with a PPO administrator called First Health Group Corp., which is not a party to this case. First Health maintains its own payor agreement with defendant, and plaintiffs do not have a direct contractual relationship with defendant. The trouble in this case all began in 2003, when plaintiffs treated several of defendant's insurees for work-related injuries, who had been referred to plaintiffs through the PPO network. As is usual in these arrangements, plaintiffs submitted the bill for services rendered to defendant for reimbursement. Defendant declined to pay the entire bill, citing its payor agreement with First Health, which allowed it to pay a discounted rate for any bill submitted by a First Health provider. Plaintiff, however, maintained that defendant was not entitled to the discount because it was allegedly operating as a so-called silent PPO, which

means that defendant took advantage of the First Health discount and network but without actually “steering” any insurees to First Health providers. Plaintiffs (along with a co-plaintiff who has since withdrawn) eventually filed this putative class action case against defendant over the situation, raising claims for civil conspiracy and breach of contract or, alternatively, consumer fraud and unjust enrichment.

¶4 Following a significant amount of litigation, including a change of venue, consolidation with two other cases, a motion for substitution of judge, and at least two supervisory orders from the supreme court (see generally *Bemis v. State Farm Fire & Casualty Co.*, 388 Ill. App. 3d 687 (2009), *vacated by* 2010 Ill. LEXIS 1902 (supervisory order)), defendant filed a combined motion to dismiss the complaint under section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2010)). The circuit court granted the motion in an extensive written order, dismissing the case on the merits for failure to state a claim and under the doctrine of collateral estoppel.

¶5 On appeal, plaintiffs have abandoned all of their claims except breach of contract and unjust enrichment, so we limit our review to only those claims. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). We review dismissal under section 2-619 *de novo*, taking as true all well-pleaded facts in the complaint and supporting documents and interpreting them in the light most favorable to the non-moving party. See *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 18.

¶6 Whether collateral estoppel applies is the dispositive issue in this appeal, and this is also a question that we review *de novo*. See *State Building Venture v. O'Donnell*, 239 Ill. 2d 151, 158 (2010).

“The doctrine of collateral estoppel prevents the relitigation of issues resolved in earlier causes of action. [Citation.] There are three requirements for application

of collateral estoppel: ‘(1) the issue decided in the prior adjudication is identical with the one presented in the suit in question, (2) there was a final judgment on the merits in the prior adjudication, and (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication.’

[Citation.] Moreover, ‘[f]or purposes of applying the doctrine of collateral estoppel, finality requires that the potential for appellate review must have been exhausted.’ [Citation.]” *Id.* at 158-59.

¶7 The basis for defendant’s assertion of collateral estoppel is *Coy Chiropractic Health Ctr. v. Travelers Cas. & Surety Co.*, 409 Ill. App. 3d 1114 (2011) (modified opinion on denial of rehearing). *Coy* was also a putative class action case over an alleged silent PPO, and plaintiffs were also complaining parties in that case. The primary issue on appeal was whether the circuit court properly certified the case as class action, but in resolving that question we considered whether the allegations in the complaint stated claims for breach of contract and unjust enrichment. See *id.* at 1118. After examining all of the relevant agreements, we determined that “the provider agreements state that the plaintiffs will provide treatment to workers’ compensation beneficiaries at a discounted rate. The provider agreements do not delineate that the providers only need to accept a discount rate in those situations where there has been some type of steerage.” *Id.* at 1120. Because the contracts did not premise the discount on the existence of steerage, the plaintiffs did not have a viable breach of contract claim against the defendants. Regarding the claim for unjust enrichment, we were persuaded by and adopted the analysis of a federal case that dealt with this exact issue, *Roche v. Travelers Property Casualty Insurance Co.*, No. 07-cv-302-JPG, 2009 U.S. Dist. LEXIS 26864 (S.D. Ill. 2009) (unpublished order), and

found that the plaintiffs could not state a claim for unjust enrichment in this situation. See *Coy*, 409 Ill. App. 3d at 1121.

¶8 Plaintiffs concede that the first element of the collateral estoppel test is met because they were also plaintiffs in *Coy*. The only questions that are in dispute are whether *Coy* was a final judgment on the merits and whether the issues in this case are identical to those of *Coy*.

¶9 Regarding the final judgment question, there is no real doubt that *Coy* qualifies. Although the case was remanded to the circuit court with directions, the circuit court then dismissed the case based on our findings in *Coy* regarding the viability of plaintiffs' claims (see *Coy Chiropractic Health Center, Inc. v. Travelers Casualty & Surety Co.*, No. 05-L-151 (Cir. Ct. Madison Cty. Jan. 26, 2012)), and dismissal for failure to state a claim operates as an adjudication on the merits. See *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 390 (2001). And although plaintiffs have appealed the circuit court's judgment order, that appeal is limited to only the circuit court's compliance with our mandate on remand. See *Quincy School District No. 172 v. Illinois Educational Labor Relations Board*, 366 Ill. App. 3d 1205, 1208-09 (2006). More importantly for the issue of finality is that the supreme court declined to hear plaintiffs' appeal of our decision in *Coy*, so there is no longer any possibility that the decision might be reversed. See *Coy Chiropractic Health Ctr., Inc. v. Travelers Cas. & Sur. Co.*, 2011 Ill. LEXIS 1387 (Sep. 28, 2011) (denying petition for leave to appeal).

¶10 This leaves only the question of whether the issue in *Coy* is identical to the issue in this case, but after examining the facts alleged in the complaint and the applicable agreements, we can see no difference between this case and *Coy*. Plaintiffs make no effort, for collateral estoppel purposes, to distinguish his unjust enrichment claim from the one that we rejected in *Coy*, so any argument on that point is forfeit. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). As

for the breach of contract claim, both cases involve allegations that the defendant operated as a silent PPO, that is, that the defendant claimed discounts on provider bills without steering insurees into the system in return. In fact, the provider agreement here is identical to the provider agreement in *Coy*, which we found did not make the discounted rate contingent on steerage by payors. See *Coy*, 409 Ill. App. 3d at 1120. Although plaintiffs contend that the payor contract in this case is materially different in wording and structure from the one in *Coy*, plaintiffs fail to provide any persuasive examples of these alleged differences. Indeed, the operative provisions in the contract here are effectively the same as the one in *Coy*. In fact, the payor agreement here disclaims enforceability where it conflicts with applicable law, which is functionally identical to the same provision in *Coy*. See *id.* at 1119-20 (requiring steerage only “as permitted by applicable law”).

¶11 Plaintiffs only argument against finding that *Coy* decided identical issues is that the court in *Coy* misunderstood the applicable law and plaintiff’s theory of the case. The problem with this argument is that the prior court’s understanding of the issues is irrelevant for the purpose of determining identity of issues. Collateral estoppel applies not only to issues of fact but also those of law (see *Du Page Forklift Service v. Material Handling Services*, 195 Ill. 2d 71, 79 (2001)), and *Coy* quite clearly determined that plaintiffs’ breach of contract claim was insufficient as a matter of law. But see *id.* at 80 (noting two exceptions to estoppel that are not relevant here). The only question for us here is whether *Coy* decided an issue that is identical to one in this case, not whether the issue could have been decided differently. Indeed, even if we assume for the sake of argument that plaintiffs are correct that *Coy* overlooked applicable precedent that might have changed the decision, this does not affect the identity of the issues. *Cf., e.g., Lieberman v. Liberty Healthcare Corp.*, 408 Ill. App. 3d 1102, 1109 (2011) (failure to

raise an argument for the court's consideration in the prior proceeding is irrelevant to issue identity for collateral estoppel purposes).

¶12 We accordingly must conclude that plaintiffs' claims in this case are barred by collateral estoppel, and we need not reach any of the other grounds for dismissal that the circuit court relied on. See *Studt v. Sherman Health Systems*, 2011 IL 108182, ¶ 48 (“[A]n appellate court may affirm a trial court's judgment on any grounds which the record supports ***.”).

¶13 Affirmed.