2012 IL App (2d) 120122-U
No. 2-12-0122
Order filed August 29, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

JOSEPH DANNA,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 11-L-137
	)	
MED DATA, INC.,	)	Honorable
	)	Dorothy F. French,
Defendant-Appellee.	)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

Held: The trial court did not err in granting defendant's motion to dismiss plaintiff's amended complaint. Plaintiff's breach of contract claim failed because plaintiff was not a third-party beneficiary of the contract between his corporation and defendant, and plaintiff's promissory estoppel claim failed because he did not allege that defendant made any extra-contractual promises that were not supported by consideration.

¶ 1 Plaintiff, Joseph Danna, appeals from the trial court's grant of a motion to dismiss by defendant, Med Data, Inc. Plaintiff argues that the trial court erred in dismissing his complaint because: (1) he is an intended third-party beneficiary under the contract between his corporation,

Emergency Care and Health Organization, Ltd. (ECHO), and defendant; (2) the contract's arbitration provision is unenforceable against him; and (3) he has a claim for detrimental reliance. We affirm.

¶ 2 I. BACKGROUND

¶ 3 Plaintiff is a medical doctor and the CEO and sole shareholder of ECHO, a professional medical services provider. In November 2005, ECHO and defendant contracted for defendant to provide ECHO with coding and billing services. In April 2008, ECHO and defendant extended the terms of their agreement for another three years.

¶ 4 The agreement had an arbitration provision that stated:

¶ 5 "Any dispute to this Agreement shall be submitted to speedy arbitration under the rules of the American Arbitration Association, with the prevailing party awarded its full attorney's fees and all costs[.] Venue for any dispute to this Agreement shall lie in the county and state where the defendant resides, and the laws of that venue shall govern this Agreement."

¶ 6 Plaintiff and ECHO filed their initial complaint against defendant on February 10, 2011. Defendant subsequently sought to dismiss the complaint or alternatively stay the complaint and compel arbitration. ECHO was then voluntarily dismissed as a party, and the trial court allowed plaintiff to file an amended complaint.

¶ 7 Plaintiff filed an amended complaint on July 14, 2011. He alleged in relevant part as follows. Defendant was aware and specifically instructed that ECHO was an "S" corporation and that any profit or loss errors would affect plaintiff personally. Plaintiff informed defendant in the last quarter of 2008 that in 2009, he intended to enter into an asset purchase agreement for three emergency department contracts ECHO possessed. Defendant was specifically instructed that accurate value

of ECHO's projected accounts receivable was important and material for the sale to consummate, and that under the asset purchase agreement, plaintiff, as ECHO's sole shareholder, would be personally liable if the projections were incorrect. Defendant tendered the 2009 projections at the end of 2008, and plaintiff entered into the asset purchase agreement in 2009.

¶ 8 Plaintiff alleged in count I that defendant breached its contract with ECHO by, among other things, failing to accurately assess and develop the 2009 projections. Plaintiff alternatively alleged detrimental reliance in count II. He alleged that he reasonably relied upon defendant's actions and written and verbal statements regarding accounts receivable projections, to his detriment.

¶ 9 Defendant moved to dismiss the amended complaint on August 11, 2011. It argued that plaintiff lacked standing to assert breach of contract because he was neither a party to nor a third-party beneficiary of the agreement between it and ECHO. Defendant argued that even if plaintiff were a third-party beneficiary, he would be subject to the contract's mandatory arbitration provision. Regarding plaintiff's claim of detrimental reliance, defendant argued that the claim should be dismissed because: (1) such a claim was not a cause of action under Illinois or California law[1]; (2) plaintiff did not allege that defendant owed him any duties independent of the duties defendant owed to ECHO, and (3) since any alleged duty defendant owed plaintiff arose from the contract, a claim based upon a breach of that duty was barred by the economic loss doctrine.

¶ 10 On October 20, 2011, the trial court granted defendant's motion to dismiss "with prejudice," but it also allowed plaintiff leave to re-plead any "new theory." Plaintiff subsequently requested the trial court to render a final and appealable order, which the trial court did on January 12, 2012. Plaintiff timely appealed.

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[1]Defendant resides in California.

¶ 11 II. ANALYSIS

¶ 12 On appeal, plaintiff challenges the trial court's grant of defendant's motion to dismiss, which was brought pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2010)).[2] In reviewing the grant of a section 2-619 motion, we must interpret the pleadings and supporting documents in the light most favorable to the nonmoving party. *Snyder v. Heidelberger*, 2011 IL 111052, ¶ 8. A section 2-619 dismissal resembles the grant of a motion for summary judgment; we must determine whether a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether the dismissal was proper as a matter of law. *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 254 (2004). We review *de novo* the grant of a motion to dismiss under section 2-619. *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶ 23.

¶ 13 Plaintiff first argues that the trial court erred in concluding that he was not a third-party beneficiary of the contract between ECHO and defendant. Defendant maintains that this issue should be resolved under California law because the agreement provides for the law of the defendant's residence to apply. Defendant argues that under California law, plaintiff is not a third-party beneficiary, and that this holds true even if Illinois law applies. Plaintiff responds that Illinois law should apply because he is not a party to the contract; plaintiff points out that he signed the contract only on behalf of ECHO, and not in an individual capacity.

¶ 14 We have found no Illinois cases directly addressing whether an alleged third-party beneficiary status should be determined under Illinois law or the law of the jurisdiction in a contract's choice-of-

[2]According to the report of proceedings, defendant brought the motion pursuant to section 2-619 instead of section 2-615 of the Code (735 ILCS 5/2-615 (West 2010)) because defendant wanted to affirmatively show that its residence was in California.

law provision.[3] However, we do not resolve this issue because the result is the same under either jurisdiction's law.

¶ 15 Looking first at Illinois law, Illinois recognizes two types of third-party beneficiaries, those being intended third-party beneficiaries and incidental third-party beneficiaries. *Hacker v. Shelter Insurance Co.*, 388 Ill. App. 3d 386, 394 (2009). Only an intended beneficiary may sue under the contract. *Id.* There is a strong presumption that contracting parties intended that the contract's provisions just apply to them and not to third parties. *Wilfong v. L.J. Dodd Construction*, 401 Ill. App. 3d 1044, 1057 (2010). A third party may enforce the contract only where the contracting parties intentionally entered into the contract for the third-party's direct, rather than incidental benefit, as demonstrated by the contract's language. *Id.* The contract must have an express provision identifying the third-party beneficiary by name or by description of a class to which he belongs. *Id.* at 1058. That the contracting parties know, expect, or intend that others will benefit from their agreement alone is insufficient to overcome the presumption that the contract was intended only for the parties' direct benefit. *Id.*

¶ 16 Here, there is nothing in the contract itself that expressly shows that it was made for plaintiff's benefit or for a class of people to which plaintiff belongs. Accordingly, he does not qualify as a third-party beneficiary under the contract.

¶ 17 Plaintiff cites several federal cases in arguing that the court can look beyond the agreement to the surrounding circumstances to determine whether the parties intended to benefit the third party. We note that we are not bound by federal circuit or district court cases. *Daniel v. Aon Corp.*, 2011 IL App (1st) 101508, ¶ 21 (stating that the court did not need to determine the applicability of a

[3]For this reason, we reject defendant's argument that, by failing to cite California law, plaintiff has forfeited his right to challenge the trial court's ruling.

federal case because it had already decided the issue using state court precedent and was not bound by federal circuit or district court cases). Moreover, while "[c]ircumstances surrounding the execution of the contract may be considered [citation], *** the alleged third-party beneficiary must be expressly named in the contract [citation]." *Paukovitz v. Imperial Homes, Inc.*, 271 Ill. App. 3d 1037, 1039 (1995). "Illinois courts require an express provision indicating third-party-beneficiary status because of the strong presumption against construing it, and the presumption can only be overcome by an implication so strong as to be practically an express declaration." *Estate of Willis, Kiferbaum Construction Corp.*, 357 Ill. App. 3d 1002, 1008 (2005). Here, there is absolutely no language in the contract indicating that the parties intended to benefit plaintiff.

¶ 18 Plaintiff further argues that statutory obligations allow him to be a third-party beneficiary without specifically being named in the contract. In support, he cites *A.E.I. Music Network, Inc. v. Business Computers, Inc.*, 290 F.3d 952 (7th Cir. 2002). There, the Seventh Circuit held that a subcontractor was an intended third-party beneficiary of an agreement between the general contractor and a public entity, even though the subcontractor was not named in the agreement. *Id.* at 956. The Seventh Circuit reasoned that the Illinois Bond Act (30 ILCS 550/0.01 *et seq.* (West 2002)) mandates that public entities require contractors to post bonds for the subcontractors' benefit (*id.* at 953), and that this requirement is read into every construction contract of a public entity as a matter of law (*id.* at 955). The Seventh Circuit stated that to carry out the legislature's purpose, subcontractors must be able to enforce the contract. *Id.* at 956.

¶ 19 Plaintiff argues that because ECHO was a corporation under the Medical Corporation Act (805 ILCS 15/1 *et seq.* (West 2010)), which requires that shareholders be physicians (805 ILCS 15/13 (West 2010)), he was responsible for all corporate actions and should therefore also be

considered an intended beneficiary of ECHO's contracts. However, we agree with defendant that this situation is distinguishable from *A.E.I.* because there the statute required a contracting party to secure a bond specifically for the subcontractor's benefit, whereas here there is no similar legislative intent to confer a contractual benefit to a shareholder-physician. See *Fure v. Sherman Hospital*, 55 Ill. App. 3d 572, 574 (1977) (under the Medical Corporation Act, "a physician-shareholder has the same privileges and liabilities as a shareholder of any other Illinois corporation"). Plaintiff also repeatedly emphasizes that he was the sole shareholder of ECHO and that its finances directly impacted his personal finances, but "[a] corporation is an entity distinct from its stockholders, even sole stockholders, and they must be treated as separate legal entities." *Sabath v. Mansfield*, 60 Ill. App. 3d 1008, 1017 (1978).

¶ 20 In sum, under Illinois law plaintiff cannot be considered a third-party beneficiary of the contract between ECHO and defendant because the contract does not indicate that the parties intended to benefit plaintiff, and plaintiff's arguments that the contract need not refer to him are without merit.

¶ 21 We arrive at the same result under California law. As in Illinois, California law provides that a third party may be considered a third-party beneficiary to a contract where an intent to benefit that party *appears from the contract's terms*. *Provost v. Regents of the University of California*, 201 Cal. App. 4th 1289, 1299 (2011). The contract does not need to identify the third party by name if the agreement reflects the contracting parties' intent to benefit the third party; the third party may enforce the contract if he can show that he is a member of a class for whose benefit it was made. *Cargill, Inc. v. Souza*, 201 Cal. App. 4th 962, 967 (2011). "The contract need not expressly state that it is intended to benefit a third party as long as such an intent is apparent through the ordinary means

of contract interpretation." *Service Employees International Union, Local 99 v. Options*, 200 Cal. App. 4th 869, 878 (2011). As discussed, here plaintiff points to nothing in the contract itself that shows an intent to benefit him.

¶ 22 Based on our conclusion that plaintiff is not a third-party beneficiary of the contract between ECHO and defendant, we do not address plaintiff's argument that the contract's arbitration provision does not apply to him.

¶ 23 Plaintiff additionally argues that the trial court erred in dismissing count II, in which he alleged detrimental reliance. In count II, plaintiff alleged as follows. He entrusted defendant with records, bills, invoices, patient charts, and other information to generate an accurate and thorough accounts receivable projection, and this information was within defendant's exclusive control "during the term of the parties' agreement." Defendant "had a contractual obligation to ECHO and its intended beneficiary" plaintiff to accurately assess the accounts receivable and collection value, and plaintiff reasonably relied on defendant's misrepresentations as to the projected accounts to his detriment. Had plaintiff known that defendant's calculations were inaccurate or untruthful, he would not have entered into the asset purchase agreement under its current terms and would have hired another company to conduct a substitute analysis. Defendant knew and was specifically informed that its assessments would reasonably induce plaintiff to enter into the asset purchase agreement, which exposed him to personal liability, and that plaintiff and the third-party asset purchaser "were expected and intended beneficiaries of [defendant's] promise to project accurate accounts receivable budgets and collection values ***."

¶ 24 Defendant argues that this issue should be resolved under California law based on the contract's choice-of-law provision. However, as plaintiff is not a party to or a third-party beneficiary to that contract, he is not bound by that provision. Accordingly, we apply Illinois law.

¶ 25 Defendant also argues that we should affirm the trial court's dismissal on the basis that detrimental reliance is not a recognized cause of action under Illinois law. See *Jordan v. Civil Service Comm'n*, 246 Ill. App. 3d 1047, 1048 (1993) ("Illinois law provides no cause of action under a theory of detrimental reliance."). However, the nature of a complaint defines a cause of action, rather than the label given to it by the plaintiff (*Childs v. Pinnacle Health Care, LLC*, 399 Ill. App. 3d 167, 181 (2010)), and at the trial court level, the parties and the trial court addressed the count in terms of promissory estoppel. Accordingly, defendant's argument is without merit. See also *Quaker Construction, Inc. v. American Airlines, Inc.*, 141 Ill. 2d 281, 309 (1990) (treating claim of detrimental reliance as one of promissory estoppel).

¶ 26 To establish a claim of promissory estoppel, the plaintiff must prove that: (1) the defendant made him an unambiguous promise; (2) the plaintiff relied on the promise; (3) the plaintiff's reliance was expected and foreseeable by the defendants; and (4) the plaintiff relied on the promise to his detriment. *Newton Tractor v. Kubota Tractor*, 233 Ill. 2d 46, 51 (2009).

¶ 27 We conclude that the trial court correctly dismissed count II, as plaintiff failed to allege an unambiguous promise that defendant made to him, personally. Although plaintiff refers to defendant's contractual obligations, the contract was between defendant and ECHO, and we have determined that plaintiff was not a third-party beneficiary. Moreover, promissory estoppel is "intended to enforce promises that are not supported by consideration" (*Janda v. U.S. Cellular Corp.*, 2011 IL App (1st) 103552, ¶ 88), and here there was clearly consideration paid to defendant

for its agreement to supply accounts receivable figures. In sum, plaintiff's promissory estoppel claim was properly dismissed because plaintiff did not allege that defendant made him an unambiguous promise distinct from the contractual duties it owed to ECHO under its contract with that company.

¶ 28 Based on our resolution of this issue, we do not address defendant's argument that even if plaintiff had rights under the contract, he cannot seek relief for breach of duty in tort, based on the economic loss doctrine.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we affirm the judgment of the Du Page circuit court.

¶ 31 Affirmed.