2021 IL App (3d) 200176-U

Order filed March 10, 2021

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2021

PRAIRIE SURGICARE, LLC, Plaintiff-Appellant, v. ENCOMPASS SPECIALTY NETWORK, LLC, d/b/a ENCOMPASS SPECIALTY SURGICAL NETWORK, Defendant-Appellee.	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois, Appeal No. 3-20-0176 Circuit No. 19-L-63 Honorable Michael D. Risinger, Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Daugherity and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion by denying plaintiff's motion for sanctions against defendant.

¶ 2 Plaintiff, Prairie Surgicare, LLC, initiated this lawsuit against defendant, Encompass Specialty Network, LLC, d/b/a Encompass Specialty Surgical Network, seeking fulfillment of defendant's obligation to pay $83,053.35, plus interest, for medical treatment rendered by plaintiff to a State employee. Defendant filed an answer and affirmative defense to plaintiff's complaint, alleging payment and satisfaction of its debt to plaintiff. Plaintiff served discovery on

defendant but defendant did not provide discovery responses at any point in the proceedings. Instead, defendant filed a motion to dismiss or stay the litigation and compel arbitration based upon network provider agreements purportedly entered between the parties. Plaintiff challenged the applicability of the network provider agreements. Eventually, defendant abandoned its affirmative defense and theory of the case. Defendant deposited the $83,053.35, plus interest, demanded by plaintiff, with the circuit clerk. Plaintiff then filed a motion for sanctions under Illinois Supreme Court Rules 137(a) (eff. Jan. 1, 2018) and 219(c) (eff. July 1, 2002), seeking $60,391.47 in attorney fees and costs for defendant's alleged misconduct in the trial court. The trial court denied plaintiff's motion for sanctions. Plaintiff appeals.

¶ 3 I. BACKGROUND

¶ 4 On March 28, 2019, plaintiff filed a complaint against defendant, alleging breach of contract and unjust enrichment. Plaintiff alleged that the State of Illinois contracted with a third-party corporation, Tristar Risk Enterprise Management, Inc. (Tristar), for services related to the management of workers' compensation claims. As such, Tristar received $83,053.35 from the State of Illinois to pay for medical treatment rendered by plaintiff on June 11, 2018, to a State employee, T.M. Tristar then subcontracted with defendant to administer the payment of the $83,053.35 to plaintiff. Tristar delivered those funds to defendant.

¶ 5 On June 19, 2018, plaintiff allegedly submitted a claim to Tristar, seeking the $83,053.35. On September 7, 2018, defendant administered a check in that amount to plaintiff, purporting to fulfill its obligation to pay for the medical treatment rendered by plaintiff to T.M. However, on September 19, 2018, defendant's bank, pursuant to defendant's request, stopped the payment to plaintiff. Thus, as relief, plaintiff requested $83,053.35, plus interest.

¶ 6 On May 22, 2019, defendant filed an answer and affirmative defense to plaintiff's complaint, alleging payment and satisfaction of the debt owed to plaintiff. Due to "a duplicative billing instruction," defendant allegedly overpaid plaintiff for medical treatment rendered in 2012 and 2013 to an unrelated patient, D.S., and not the State employee, T.M. Defendant paid plaintiff for medical treatment to D.S. after American International Group, Inc., satisfied that debt to plaintiff. Defendant requested a refund, totaling $98,479.22, that plaintiff denied.

¶ 7 Defendant's affirmative defense stated, "[a]fter [plaintiff] refused to pay the $98,479.22 it owed to [defendant], [defendant] put a stop payment on the September 7, 2018 check payable to [plaintiff] in the amount of $83,053.35." Since plaintiff owed defendant an additional $15,425.87, representing the difference between the overpayment ($98,479.22) and the amount at issue in this case ($83,053.35), plaintiff was "attempting to enforce an alleged contract and collect on a debt that ha[d] been fully satisfied and paid." Defendant requested that the trial court offset any damages to plaintiff "by the outstanding negative accounts receivable due and owing."

¶ 8 A. The Parties' Discovery Communications and the Network Provider Agreements

¶ 9 On June 18, 2019, plaintiff delivered its first set of interrogatories and requests for production to defendant. Thereafter, on three separate occasions, plaintiff granted defendant's request for an extension to serve discovery responses. On August 14, 2019, defendant's counsel wrote to plaintiff's counsel, stating "[d]uring our search for responsive documents to your discovery requests, we came across an Execution Sheet ('Agreement') between [defendant] and [plaintiff]," which defendant believed "outline[d] the general terms and conditions regarding [plaintiff]'s participation in [defendant]'s surgical network." The network provider agreement, dated December 15, 2016, was attached to defendant's counsel's letter. Defendant's counsel

continued, "the Agreement *** obligates [plaintiff], as well as [defendant], to seek alternative dispute resolution and makes binding arbitration of all disputes mandatory."

¶ 10 Defendant's counsel also stated, "[w]hen the overpayments were issued *** on February 8, 2018 and February 22, 2018, [for treatment of unrelated patient, D.S.,] *** the Agreement was still in effect as [plaintiff] did not terminate the Agreement until May 23, 2018." Thus, plaintiff's lawsuit was "prohibited by Agreement, and the Court lack[ed] subject matter jurisdiction." Defendant's counsel indicated it would file a motion to compel arbitration and stay discovery.

¶ 11 On this same day, August 14, 2019, plaintiff's counsel responded by email to defendant's counsel's letter. Plaintiff's counsel stated the following:

> "I try to resist offering advice to opposing counsel, but I hate to see a usually diligent lawyer dig himself into a hole on behalf of a client who apparently isn't giving him timely and complete information or is feeding him information with the intention that the lawyer overlook and/or misstate material facts. For that reason, I'm making an exception here: I recommend that you not compound your client's problems by filing a frivolous motion of the type described in your letter. If you file the motions described in your letter, we'll have little choice than to invoke S. Ct. Rule 137(a)."

Plaintiff's counsel's email also gave lengthy arguments on the merits of a potential motion to compel arbitration and stay discovery. Plaintiff's counsel argued that the network provider agreement relied upon by defendant for a potential motion to stay the litigation and compel arbitration was between defendant and Prairie Spine and Pain Institute, S.C. In other words, plaintiff, Prairie Surgicare, LLC, was not a party to the agreement referenced by defendant's

counsel. While plaintiff and Prairie Spine and Pain Institute, S.C., do "have a common, ultimate owner," they are "separate and distinct legal entities." Plaintiff's counsel posited that, even if the agreement could bind plaintiff, the agreement was terminated before T.M.'s medical treatment in this case. Plaintiff's counsel concluded, "[p]lease serve your discovery responses immediately."

¶ 12 Despite plaintiff's counsel's email, defendant never served plaintiff with its discovery responses. Therefore, on August 26, 2019, plaintiff filed a motion to compel those responses.

¶ 13 B. Defendant's Motion to Dismiss or Stay the Litigation and Compel Arbitration

¶ 14 On September 9, 2019, defendant, consistent with its stated intent, filed a motion to dismiss or stay the litigation and compel arbitration. Attached to the motion was a network provider agreement that differed from the network provider agreement defendant's counsel originally attached to his August 14, 2019, letter. The network provider agreement, attached to defendant's September 9, 2019, motion, was also dated December 15, 2016, contained a dispute resolution and arbitration provision, and purported to be an agreement between plaintiff and defendant.

¶ 15 Also attached to defendant's motion was the affidavit of defendant's senior director of compliance, who confirmed defendant "mistakenly issued payments totaling $98,479.22 with respect to services rendered [by plaintiff] *** that were already paid." The affiant's affidavit stated that the medical services were rendered to an unrelated patient, D.S., and not the State employee at issue here, T.M. Further, the affiant attested that defendant requested a refund, which plaintiff denied. Therefore, defendant "stopped payment on [the] check recently issued to [plaintiff] for other claimed services involving a different patient[, T.M.,] in the amount of $83,053.35." The affiant believed, after an offset, plaintiff would owe defendant $15,425.87.

¶ 16 After filing its motion to dismiss or stay and compel arbitration with the trial court, defendant, on October 31, 2019, initiated an arbitration. Three days prior, defendant, on October 28, 2019, filed a motion for protective order and stay of discovery. Also on October 28, 2019, plaintiff filed a response to defendant's motion to dismiss or stay the litigation and compel arbitration, arguing that the network provider agreement purporting to be between plaintiff and defendant, dated December 15, 2016, was never finalized. Plaintiff argued that even if there was a network provider agreement that could bind plaintiff, defendant did not follow the agreed arbitration procedures or assert an affirmative defense of arbitration, which resulted in defendant's waiver of the dispute resolution and arbitration provision.

¶ 17 Further, plaintiff argued that any and all network provider agreements with defendant were terminated in May 2018.[1] Since the medical treatment related to plaintiff's complaint and the State employee, T.M., was rendered on June 11, 2018, plaintiff indicated no network provider agreement was applicable to this case. Similarly, defendant was not yet in existence as a corporate entity when plaintiff provided medical treatment to the unrelated patient for whom defendant sought a setoff, D.S. Thus, plaintiff maintained that no network provider agreement governed that dispute, either.

¶ 18 Attached to plaintiff's response was the affidavit of Dr. Richard A. Kube, who is the owner of plaintiff and Prairie Spine and Pain Institute, S.C. Dr. Kube testified consistent with the allegations in plaintiff's complaint. Further, Dr. Kube "refute[d] the false and unfounded claims that [plaintiff] was ever or is currently a party to a contract with [defendant] *** requiring that [plaintiff] submit its claims brought in this action for arbitration." Although Dr. Kube signed a

[1]Defendant admits this fact on appeal.

network provider agreement on behalf of plaintiff, the network provider agreement was never finalized because plaintiff "could not meet [defendant's] credentialing requirements."

¶ 19 Dr. Kube did finalize a network provider agreement on behalf of Prairie Spine and Pain Institute, S.C. However, while he is the manager of both plaintiff and Prairie Spine and Pain Institute, S.C., the companies are separate legal entities. Further, Dr. Kube sent a notice of termination of the network provider agreement to defendant on behalf of Prairie Spine and Pain Institute, S.C., in February 2018. Thus, by the time the State employee, T.M., was treated by Dr. Kube on June 11, 2018, "all contractual relationships between [Dr. Kube] and entities involved in [his] treatment of patients as providers in the [defendant] network were effectively terminated." Finally, Dr. Kube attested that, when he treated the unrelated patient, D.S., who is at the center of defendant's affirmative defense, defendant was not yet in existence as a legal company.

¶ 20 C. Defendant's Striking of its Affirmative Defense, Abandonment of its Theory of the Case, and Relinquishment of the Funds Demanded by Plaintiff

¶ 21 On November 14, 2019, defendant's counsel informed plaintiff's counsel that defendant "re-evaluated the circumstances presented in this case, as well as the circumstances associated with the payment of invoices for D.S., and has concluded that it will tender to [plaintiff] the full relief sought in the complaint and request that the Court dismiss the complaint in light of a full tender." Defendant's counsel stated, "[t]he funds are arriving at my office tomorrow and we will then tender the funds to either your client or the clerk of the court." Defendant was proceeding with arbitration, "but solely with respect to the duplicative payments" related to D.S.

¶ 22 This same day, in a reply to plaintiff's motion to stay arbitration, defendant stated it was "tendering a check for the full amount requested in [plaintiff]'s Complaint, plus costs *** [and] interest," which defendant believed would moot all other pending motions. Defendant indicated

it would "amend its Demand for Arbitration *** to eliminate any discussion of the payment concerning [the State employee related to this case,] patient T.M., [and] leaving only its Demand for Arbitration regarding" duplicative payments for the medical treatment of D.S. Ultimately, plaintiff declined to accept what it viewed as a conditional tender from defendant.

¶ 23 On December 4, 2019, defendant filed a motion for leave to deposit the amount demanded in plaintiff's complaint, $83,053.35 plus interest, with the clerk of the circuit court. The trial court granted defendant's motion on December 6, 2019. That same day, defendant filed another reply to the various motions pending in the trial court, wherein defendant stated it "clearly abandoned [its] affirmative defense by seeking leave and contemporaneously tendering the full amount demanded" by plaintiff. One week later, defendant deposited $88,866.24 with the circuit clerk, which purportedly totaled the amount demanded by plaintiff in its complaint.

¶ 24 D. Plaintiff's Motion for Sanctions

¶ 25 On December 23, 2019, plaintiff filed a motion for sanctions under Rules 137(a) and 219(c), requesting attorney fees and costs, totaling $60,391.47, for defendant's "improper and unwarranted tactics employed in the course of its defense of this case and circumvention of its express discovery obligations."[2] Plaintiff supported its request with invoices and an affidavit.

¶ 26 As support for its motion, plaintiff made three arguments. First, plaintiff argued, under Rule 137(a), defendant asserted an affirmative defense for which defendant "now concedes there was no factual basis." Second, plaintiff argued, under Rule 219(c), defendant failed to respond to discovery requests. Third, plaintiff argued, under Rule 219(c), defendant "sought to avoid its

[2]Plaintiff also requested for the trial court to (1) deny defendant's motion to dismiss or stay the litigation and compel arbitration, (2) deny defendant's motion for protective order and stay of discovery, (3) strike defendant's affirmative defense, and (4) compel defendant's responses to plaintiff's unanswered first set of interrogatories and requests for production.

discovery obligations and to avoid adjudication of its (now admitted) liability to [plaintiff] by filing and prosecuting a factually groundless motion to compel arbitration." In plaintiff's view, defendant took these actions because there was never a legitimate reason to stop the payment of the $83,053.35 check issued to plaintiff for medical treatment rendered to State employee, T.M.

¶ 27 On February 18, 2020, defendant filed a response to plaintiff's motion for sanctions, stating plaintiff "has no evidence to prove that [defendant]'s actions were anything other than reasonable and in good faith." To the contrary, defendant maintained that plaintiff's claims were based on mere "assumptions about the conduct of [defendant] and its intent." Therefore, plaintiff did not meet the standard for an imposition of sanctions by the trial court.

¶ 28 As further support for its response, defendant argued that it reasonably believed it had made duplicative payments to plaintiff and was entitled to raise the setoff issue as an affirmative defense. Relatedly, defendant reasonably believed that plaintiff was required to arbitrate the parties' disputes, such that defendant was required to seek a timely arbitration and a stay of discovery to protect against a waiver of its right to arbitrate. In addition, defendant argued that, during the significant briefing of all the pending motions in the trial court, defendant learned that its legal position was incorrect. Therefore, defendant stated that it "took immediate action to correct its legal position *** and tendered the amount demanded in the complaint."

¶ 29 On February 26, 2020, after a hearing on all pending motions, the trial court ordered defendant to file a first amended answer to plaintiff's complaint and to explain its calculation of interest on the funds tendered to the circuit clerk. Defendant filed a first amended answer to plaintiff's complaint, omitting its prior affirmative defense based on a setoff, on March 11, 2020.

¶ 30 E. Decision of the Trial Court

¶ 31 On March 26, 2020, the trial court held a hearing on plaintiff's motion for sanctions. At this point, the parties agreed plaintiff's motion for sanctions was the only motion that required a ruling from the trial court. The trial court received arguments from the parties and then took the matter under advisement. On April 1, 2020, the trial court ordered the circuit clerk to release the $88,866.24 tendered by defendant to plaintiff.[3] In addition, the trial court, after stating that it had fully considered the matter, denied plaintiff's motion for sanctions. The trial court explained:

> "1. [Plaintiff] was prepared to continue[] to litigate this case to the hilt!, even asking this Court to order discovery and stay arbitration in a matter not related to this case, all the while disputing the tendered monies that were essentially 'in the bank.' Now that [plaintiff] has reconsidered its position, the dispute over the tendered amount is over.
>
> 2. [Defendant] first asserted an affirmative defense and took other steps to force mediation of this case. Now that [defendant] has reconsidered its position, the dispute over arbitration and defense is over.
>
> The Court must decide if it is clear that the [defendant] knew—or upon reasonable inquiry would have known—that the material allegations of fact pled by him were false. In this case, it would have been required that the attorneys for [defendant] were working between the [defendant] and AIG, the party to which [defendant] was contracted. While this Court loathes that any attorney has to do 'extra' work that is unnecessary or that any attorney makes the wrong choice in an

[3]After previously challenging defendant's tender, plaintiff accepted that $88,866.24, including interest, was the correct amount owed for the medical treatment provided to T.M.

> approach to litigation, this Court cannot say that any pleadings in this case were in bad faith or that a more thorough, deeper inquiry should have been performed before filing such, or that [defendant]'s actions are sanctionable."

Plaintiff filed a timely notice of appeal of the trial court's decision on April 16, 2020.

¶ 32 II. ANALYSIS

¶ 33 On appeal, our court must decide whether the trial court abused its discretion, such that no reasonable person would agree with its decision, by denying plaintiff's motion for sanctions under Rules 137(a) and 219(c). See *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998); *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 16; *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 120 (1998). Below, we consider each basis for sanctions below.

¶ 34 A. Rule 137(a)

¶ 35 Plaintiff argues that defendant, without a reasonable legal basis under Rule 137(a), asserted an affirmative defense of a "setoff across different patient accounts and different agency-principal relationships." Plaintiff asserts that a Rule 137(a) violation is obvious because Illinois law does not permit a setoff of funds owed to plaintiff for treatment provided to State employee, T.M., due to the alleged prior duplicative payments plaintiff received for its 2012 and 2013 treatment of someone other than T.M., namely, the unrelated patient, D.S. Further, plaintiff argues that defendant pled its affirmative defense "absent a thorough investigation." According to plaintiff, even a cursory inquiry of the facts and law in this case would have revealed the impropriety of defendant raising an affirmative defense based on a setoff.

¶ 36 Defendant states the "correctness" of its setoff affirmative defense "is of no moment" because that is not the test for the imposition of sanctions under Rule 137(a). Instead, defendant maintains that its affirmative defense was reasonable and "at least 'close enough' for the case's

early stages." Defendant points out that it modified, rather than persisted in, its mistaken positions after the "legal and factual circumstances came into focus." Therefore, the imposition of sanctions in this case might disincentivize forthrightness and discourage future litigants from changing course during the pendency of a case.

¶ 37 The purpose of Rule 137 is to "discourage frivolous filings, not to punish parties for making losing arguments." *Arnold*, 2015 IL 118110, ¶ 15. The rule is intended to prohibit litigants from abusing the judicial process with vexatious or harassing claims that are based on unsupported legal or factual allegations. *In re Estate of Hanley*, 2013 IL App (3d) 110264, ¶ 79. The party requesting Rule 137 sanctions must prove that the other party "made untrue assertions of fact without any reasonable cause." *Peterson v. Randhava*, 313 Ill. App. 3d 1, 9 (2000).

¶ 38 Importantly, the trial court may, but is not required, to impose sanctions for Rule 137 violations. *Arnold*, 2015 IL 118110, ¶ 15; Ill. S. Ct. R. 137(a) (eff. Jan. 1, 2018). Further, a trial court is required to explain the rationale for imposing, but not for denying, a motion for sanctions under Rule 137. *Arnold*, 2015 IL 118110, ¶¶ 14-15, 19; Ill. S. Ct. R. 137(d) (eff. Jan. 1, 2018). Sanctions should not be based upon "subjective after-the-fact analysis or hindsight." *Toland v. Davis*, 295 Ill. App. 3d 652, 656 (1998). The test is whether, under the circumstances existing at the time of filing, the assertions were reasonable. *Commonwealth Edison Co. v. Munizzo*, 2013 IL App (3d) 120153, ¶ 35; *Peterson*, 313 Ill. App. 3d at 7; See also *Deutsche Bank National Trust Co. v. Ivicic*, 2015 IL App (2d) 140970, ¶ 24 ("[C]onduct must be assessed by an objective standard; subjective good faith is not sufficient.").

¶ 39 In some cases, courts have found that, if a party presents objectively reasonable arguments to support its position, then a court should not sanction that party for failing to investigate the facts and law before filing a pleading, even if the position is proven unpersuasive

or incorrect. See *Peterson*, 313 Ill. App. 3d at 7; accord *Barrett v. Fonorow*, 343 Ill. App. 3d 1184, 1199 (2003). Hence, sanctions are not warranted simply because the facts or law are found to be contrary to those contained in a particular pleading. See *Munizzo*, 2013 IL App (3d) 120153, ¶ 35. When reviewing a denial of a motion for sanctions, we "focus on whether the record provides an adequate basis for upholding the circuit court's decision" and "not on the circuit court's specific reasons for doing so." *Arnold*, 2015 IL 118110, ¶¶ 16, 19.

¶ 40 In this case, the particularly deferential abuse of discretion standard of review controls the outcome on appeal. To set aside the trial court's ruling, plaintiff must persuade our court that the trial court abused its discretion, such that no reasonable person would agree with the trial court's decision. See *id*. ¶ 16; *Gleason*, 181 Ill. 2d at 487. Plaintiff has not done so here.

¶ 41 Initially, we note that the trial court explained its denial of plaintiff's motion for sanctions without referencing Rule 137(a) or Rule 219(c). However, as alluded to above, the trial court is not required to explain a denial of sanctions. See *Arnold*, 2015 IL 118110, ¶¶ 14-15, 19. Further, even if presented with sanctionable conduct, the trial court could have, within its discretion, declined to impose sanctions. See *id*. ¶ 15; Ill. S. Ct. R. 137(a) (eff. Jan. 1, 2018).

¶ 42 Next, we conclude that defendant's affirmative defense was not unreasonable, at the time pled, because defendant could argue, in good faith, for an extension, modification, or reversal of the law, allowing a "setoff across different patient accounts and different agency-principal relationships." See Ill. S. Ct. R. 137(a) (eff. Jan. 1, 2018). Good faith arguments for novel defenses, even when ultimately unpersuasive, are necessary for the growth and evolution of the case law. As a result, we cannot conclude, in a case touching upon complex medical billing, that no reasonable person would agree with the trial court's decision to deny sanctions based on defendant's affirmative defense. See *Gleason*, 181 Ill. 2d at 487; *Arnold*, 2015 IL 118110, ¶ 16.

¶ 43 Finally, as defendant notes, Rule 137 sanctions might discourage forthrightness and disincentivize litigants from changing course upon recognizing their erroneous interpretations of the facts or law. Here, defendant, after reevaluating its position, deposited the amount demanded by plaintiff, plus interest, with the clerk of the circuit court. While plaintiff initially claimed the tender was flawed, defendant's action, at the very least, was consistent with Rule 137's implied requirement for " 'an attorney [to] promptly dismiss a lawsuit once it becomes evident that it is unfounded.' " See *Arnold*, 2015 IL 118110, ¶ 13 (quoting *American Service Insurance v. Miller*, 2014 IL App (5th) 130582, ¶ 13). The lawsuit was then resolved in short order.

¶ 44 For the foregoing reasons, we conclude that the trial court acted within its discretion when denying plaintiff's motion for sanctions under Rule 137.

¶ 45 B. Rule 219(c)

¶ 46 Next, we consider plaintiff's assertion that sanctions are warranted against defendant under Rule 219(c). Plaintiff argues that defendant's failure to respond to plaintiff's first set of interrogatories, requests for production, and motion to compel discovery was designed to curtail plaintiff's right to discovery. In support of this argument, plaintiff points out that defendant filed a motion to dismiss or stay the litigation and compel arbitration and a motion for protective order and stay of discovery by invoking ineffectual network provider agreements. Plaintiff states the network provider agreements were ineffectual because they were allegedly formed in December 2016 and undisputedly terminated in May 2018. Thus, the network provider agreements were entered three years after plaintiff's treatment of D.S. and terminated one month before plaintiff's treatment of T.M., indicating both agreements were inapplicable to disputes involving those individuals.

¶ 47 In response, defendant argues that the network provider agreements were effectual at the time of the alleged overpayments for the treatment of D.S., February 2018. Regardless, defendant argues that, like Rule 137(a), Rule 219(c) does not require the imposition of sanctions even when sanctionable conduct is found by the trial court. Further, defendant states its "participation in discovery could [have] jeopardize[d] its arbitration rights" due to waiver. As a result, it was not unreasonable that defendant refused to respond to plaintiff's discovery requests and motion to compel responses but, instead, sought to compel arbitration and stay discovery.

¶ 48 Rule 219(c) sanctions are authorized if a party *unreasonably* refuses to comply with discovery rules. See *Shimanovsky*, 181 Ill. 2d at 120. Noncompliance with discovery rules is unreasonable if it is "characterized by a deliberate and pronounced disregard" for those rules and the court. *In re Estate of Andernovics*, 311 Ill. App. 3d 741, 745 (2000); accord *Reyes v. Menard, Inc.*, 2012 IL App (1st) 112555, ¶ 22. The trial court is clearly in the best position to apply court rules and procedures. *New v. Pace Suburban Bus Service, a Division of Regional Transit Authority*, 398 Ill. App. 3d 371, 384 (2010).

¶ 49 Relevantly, Rule 219(c) sanctions "combat abuses of the discovery process and maintain the integrity of the court system." *Locasto v. City of Chicago*, 2014 IL App (1st) 113576, ¶ 27. As such, Rule 219(c)'s purpose is to "effectuate the goals of discovery," not to punish a party. *New*, 398 Ill. App. 3d at 384; See also *Shimanovsky*, 181 Ill. 2d at 123 ("[T]he court's purpose is to coerce compliance with discovery rules and orders, not to punish the dilatory party"). Thus, discovery sanctions "should be customized to address the nature and extent of the harm while prescribing a cure to the specific offense." *Locasto*, 2014 IL App (1st) 113576, ¶ 27. Discovery sanctions must be "just and proportionate to the offense," meaning, to the extent possible, the

sanction should insure discovery and the possibility of a trial. See *Yow v. Jack Cooper Transport Co., Inc.*, 2015 IL App (5th) 140006, ¶ 32; *Shimanovsky*, 181 Ill. 2d at 123.

¶ 50 Here, the trial court did not reference Rule 219(c) when explaining its denial of sanctions. However, as noted above, the trial court was not required to do so. Rule 219(c), like Rule 137, requires the trial court to explain the imposition, but not the denial, of sanctions. See Ill. S. Ct. R. 219(c) (eff. July 1, 2002); compare Ill. S. Ct. R. 137(d) (eff. Jan. 1, 2018); See also *Arnold*, 2015 IL 118110, ¶¶ 13-14. Also, under Rule 219(c), a trial court, when presented with sanctionable conduct, may decline to impose a sanction. See Ill. S. Ct. R. 219(c) (eff. July 1, 2002).

¶ 51 Clearly, the trial court, sitting in the best position to make such a determination, found the record did not contain sanctionable conduct under Rule 219(c). See *New*, 398 Ill. App. 3d at 384. As the parties' filings and competing affidavits of record demonstrate, there were, at the time the parties were arguing over the propriety of discovery versus arbitration, a number of questions about the circumstances of this case. Those questions included whether the parties formed and finalized a network provider agreement, whether a network provider agreement required an arbitration here, and whether the alleged overpayments for the treatment of unrelated patient, D.S., occurred while a network provider agreement was effectual. The barrier to receiving answers to these questions was the parties' opposite positions on the propriety of discovery and arbitration.

¶ 52 Without commenting on the propriety of an arbitration under the network provider agreements, we note that a contractual right to arbitration may be waived if not raised as an affirmative defense in an answer. See *Caterpillar Inc. v. Century Indemnity Co.*, 2019 IL App (3d) 190032, ¶¶ 27-29. However, even if defendant asserted a right to and initiated an arbitration after waiving that perceived contractual right, sanctions would not automatically be warranted.

Plaintiff raised its waiver argument on October 28, 2019, after defendant filed a motion to dismiss or stay the litigation and compel arbitration. That same day, plaintiff also submitted Dr. Kube's affidavit. It is true that defendant then initiated an arbitration but, just two weeks later, defendant reevaluated the circumstances of the case and decided to tender the relief sought by plaintiff.

¶ 53 Thus, as of that date, defendant essentially abandoned its demand for arbitration with respect to State employee T.M., stated an intent to tender payment to plaintiff, and arguably negated the need for further discovery. Under this timeline, the trial court could reasonably conclude that defendant's refusal to respond to plaintiff's discovery requests and motion to compel was not "a deliberate and pronounced disregard" for the discovery rules and the court. See *In re Estate of Andernovics*, 311 Ill. App. 3d at 745; *Reyes*, 2012 IL App (1st) 112555, ¶ 22. Simply stated, sanctionable conduct, under Rule 219(c), does not necessarily result from asserting, before soon correcting, a flawed argument.

¶ 54 For the foregoing reasons, we conclude that the trial court acted within its discretion when denying plaintiff's motion for sanctions under Rule 219(c).

¶ 55 III. CONCLUSION

¶ 56 The judgment of the circuit court of Peoria County is affirmed.

¶ 57 Affirmed.