

FIRST DIVISION
January 5, 2015

No. 1-13-3466

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

TOMICA PREMOVIC, individually and on)	Appeal from the
Behalf of all others similarly situated,)	Circuit Court of
)	Cook County.
Plaintiffs-Appellees,)	
)	
v.)	
)	No. 12 CH 15799
NORTHSHORE UNIVERSITY)	
HEALTH SYSTEM, an Illinois not-for-profit)	
Corporation, individually and d/b/a Skokie)	
Hospital,)	Honorable
)	Mary Lane Mikva,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Delort and Justice Connors concurred in the judgment.

ORDER

Held: The circuit court properly denied defendant's motion to compel arbitration based on the plain language of the arbitration agreement.

¶ 1 Defendant, Northshore University Healthsystem, treated plaintiff, Tomica Premovic, at one of its hospitals after an automobile accident. Defendant, however, refused to bill plaintiff's health insurance carrier and placed a health care provider lien on plaintiff's personal injury cause of action for the entire bill. Accordingly, plaintiff, individually and on behalf of similarly situated individuals, filed a class action complaint against defendant. Relevant here, plaintiff alleged he is a third-party beneficiary of a contract between his health insurance carrier and defendant.¹ Defendant moved to compel arbitration according to an arbitration provision contained in its contract with plaintiff's health insurance carrier, which the circuit court denied. At issue is whether the circuit court properly denied defendant's motion to compel arbitration. We hold the circuit court properly denied defendant's motion to compel arbitration based on the plain language of the arbitration agreement.

¶ 2 JURISDICTION

¶ 3 On October 15, 2013, the circuit court denied defendant's motion to compel arbitration. On November 12, 2013, defendant filed its interlocutory appeal as of right. On November 14, 2013, defendant filed its amended interlocutory appeal as of right. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rule 307(a)(1) governing interlocutory appeals as of right. Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010).

¶ 4 BACKGROUND

¶ 5 On May 8, 2013, plaintiff, individually and on behalf of similarly situated individuals, filed an amended class action complaint against defendant. Plaintiff alleged he had been taken to one of defendant's hospitals for treatment after he sustained injuries in an August 2010 motor

¹ As discussed in more detail *infra*, defendant disputes plaintiff's third-party beneficiary claim.

vehicle accident. Defendant refused to bill plaintiff's health insurance carrier, Blue Cross Blue Shield of Texas. Rather, it placed a health care provider lien on plaintiff's personal injury cause of action for the entire bill. According to plaintiff, defendant's refusal to submit the bill to his health insurance carrier violated a participating provider option (PPO) contract between defendant and Blue Cross Blue Shield of Illinois (hereinafter Blue Cross), which he alleged applied to his health insurance carrier.² Plaintiff's first amended complaint contained several claims, including violation of the Illinois Consumer Fraud and Deceptive Practices Act, breach of contract, unjust enrichment, and a claim that he is a third-party beneficiary of contracts entered into between defendant and Blue Cross.³

¶ 6 On June 13, 2013, defendant filed a motion to compel arbitration.⁴ In its motion, defendant argued that plaintiff, as a third-party beneficiary of the PPO contract, is bound by its terms, including the contract's arbitration provision.

¶ 7 The arbitration provision is under "Article X" of the PPO contract and is titled "Appeals Procedures." The provision provides, in relevant part, as follows:

"In order to avoid the cost and time consuming nature of litigation, *any disputes between Blue Cross and [defendant] arising out of or related to this Agreement* shall be resolved in accordance with the following procedures:

² Defendant disputes plaintiff's status as a third-party beneficiary of the PPO contract and moved to dismiss plaintiff's third-party beneficiary claim, which the circuit court denied. That dispute, however, is not at issue in this interlocutory appeal and defendant noted its continued objection to plaintiff's status as a third-party beneficiary in its opening brief before this court.

³ Blue Cross and defendant had entered into several PPO contracts. The arbitration provision, however, did not change.

⁴ Defendant filed a motion to dismiss plaintiff's amended complaint pursuant to section 2-619.1 of the Illinois Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2012)) contemporaneously with its motion to compel arbitration.

A. Blue Cross or [defendant], as the case may be, shall give to the other written notice of the existence of a dispute (the "Initial Notice").

B. Representatives of [defendant] and Blue Cross shall meet no later than thirty (30) calendar days after receipt of such notice to seek to resolve such dispute (the "Initial Meeting"). Such [defendant] representatives and Blue Cross staff may conduct as many subsequent meetings as are mutually agreeable in order to resolve the dispute.

C. If the dispute is not resolved pursuant to Paragraph B above, either [defendant] or Blue Cross may, at any time after the Initial Meeting, request in writing, with a copy to the other party, consideration of the dispute by Blue Cross Senior Management. Blue Cross Senior Management shall complete its consideration of the dispute and provide [defendant] with a written notice of its decision no later than thirty (30) calendar days after receipt by Blue Cross of the request for reconsideration.

D. The decision of Blue Cross Senior Management shall be final and binding unless [defendant] furnishes to Blue Cross, no later than fifteen (15) calendar days after its receipt of Blue Cross Senior Management's decision, a written notice of a decision to arbitrate the dispute signed by the Chief Executive Officer or designee of [defendant] (the "Arbitration Notice"). *In such event, the dispute shall be submitted to binding arbitration in accordance with the Rules of the American Arbitration Association ***.*"⁵ (Emphasis added).

⁵ The arbitration provision refers to defendant as "Hospital."

¶ 8 The arbitration provision further provides clauses addressing selection of an arbitrator, the procedure before and after the arbitration proceedings, and costs.

¶ 9 Defendant argued that under Illinois law, plaintiff, as a third-party beneficiary seeking to enforce a contract, is bound by the arbitration provision of the contract as if he was a party to the contract. Specifically, defendant contended that plaintiff cannot both seek to enforce the contract while also avoiding its arbitration provision. Accordingly, defendant argued that the clear language of the PPO contract combined with defendant's allegation that he is a third-party beneficiary to the contract required the circuit court to compel arbitration.

¶ 10 In response, plaintiff argued that he is not bound by the arbitration provision despite his status as a third-party beneficiary to the contract. Specifically, plaintiff argued that the arbitration provision applied only to Blue Cross and defendant based on the following language contained in the provision: "any disputes between Blue Cross and [defendant] arising out of this Agreement***." Plaintiff argued that although the PPO contract may confer benefits upon him as a third-party beneficiary, it does not impose upon him the burden of the arbitration provision because the language of the provision reserves arbitration for defendant and Blue Cross. Plaintiff further argued that enforcement of the arbitration provision would lead to an absurd result whereby Blue Cross, with whom plaintiff has no dispute, would have to provide notice to defendant and meet with defendant. According to plaintiff, he would be excluded from this process because the arbitration provision does not name him but specifically names defendant and Blue Cross. Additionally, plaintiff argued that defendant waived its right to compel arbitration.

¶ 11 In reply, defendant maintained that plaintiff should be bound by the PPO contract's mandatory arbitration provision and disputed plaintiff's contention that it waived its right to motion the court to compel arbitration.⁶

¶ 12 On October 15, 2013, the circuit court denied defendant's motion to compel arbitration after a hearing based on the language of the arbitration provision. The circuit court acknowledged that "there seems to be a split in the Illinois courts as to whether a third-party beneficiary can be compelled to arbitrate if they are not a signatory to the contract."

¶ 13 On November 12, 2013, defendant filed its interlocutory appeal as of right. See Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010). On November 14, 2013, defendant filed its amended interlocutory appeal as of right.

¶ 14 ANALYSIS

¶ 15 Defendant argues that plaintiff, as a third-party beneficiary seeking to obtain the benefit of a contract in which he is not named, should be required to submit his claim to arbitration pursuant to the arbitration provision in the contract. According to defendant, general legal principles regarding arbitration, the third-party beneficiary doctrine, and contract law establish that there is no need to specifically name plaintiff in the arbitration agreement where he seeks to obtain the benefit of the contract. Defendant further argues that plaintiff should be compelled into arbitration based on equitable estoppel.

¶ 16 In response, plaintiff argues that the circuit court properly held that the arbitration provision did not apply in this case because the clear and unambiguous language of the provision shows it applies only to Blue Cross and defendant. Plaintiff further argues that the terms of the

⁶ Defendant also asked that the circuit court first determine whether plaintiff is a third-party beneficiary entitled to enforce the contract prior to determining its motion to compel.

provision, specifically the language that provides for the procedure prior to submission to arbitration, illustrates that the arbitration provision was only intended to apply to Blue Cross and defendant, not to the insured of Blue Cross, such as plaintiff. Plaintiff disputes defendant's equitable estoppel argument, stating defendant cannot show how it relied upon any statements he made concerning arbitration.

¶ 17 Arbitration is a favored method of dispute resolution in both Illinois and federal courts. *United Cable Television Corp. v. Northwest Illinois Cable Corp.*, 128 Ill. 2d 301, 306 (1989); *QuickClick Loans, LLC v. Russell*, 407 Ill. App. 3d 46, 52 (2011). Arbitration agreements, however, are contracts. *United Cable Television Corp.*, 128 Ill. 2d at 310. As such, "[t]he parties to an agreement are bound to arbitrate only those issues they have agreed to arbitrate, as shown by the clear language of the agreement and their intentions expressed in that language." *Salsitz v. Kreiss*, 198 Ill. 2d 1, 13 (2001). Similarly, "the particular dispute must be of the *type* that the parties have agreed should be submitted to arbitration." (Emphasis added). *United Cable Television Corp.*, 128 Ill. 2d at 306. We will not extend an arbitration agreement by construction or implication. *Kreiss*, 198 Ill. 2d at 13. "[W]here the language of the arbitration agreement is clear and it is apparent that the disputes are not within the scope of the arbitration clause, the court should decide the question of arbitration in favor of the party opposing arbitration." *United Cable Television Corp.*, 128 Ill. 2d at 308. Furthermore, a party can only be compelled to arbitrate a dispute if it is a party to the arbitration contract. *Carter v. SSC Odin Operating Co.*, 2012 IL 113204, ¶ 55. Our interpretation of an arbitration agreement, as a matter of contract, is a legal question subject to *de novo* review. *Carr v. Gateway*, 241 Ill. 2d 15, 20 (2011).

¶ 18 After reviewing Article X of the PPO contract in its entirety, which addresses the appeals procedure that ultimately concludes in arbitration, we hold the dispute at issue is both outside the scope of the arbitration agreement and not the type of dispute the parties to the arbitration agreement, *i.e.*, Blue Cross and defendant, agreed to submit to arbitration. Initially, plaintiff is not named in the agreement. See *Carter*, 2012 IL 113204, ¶ 55 (“only parties to the arbitration contract may compel arbitration or be compelled to arbitrate”). The agreement specifically names defendant and Blue Cross, stating it governs: “any disputes between Blue Cross and [defendant] arising out of or related to this Agreement.” Blue Cross, defendant, or both, are then specifically named in each step of the appeals procedure described in Article X. Other named entities in arbitration agreement appear to be related to or part of either defendant or Blue Cross. Those include: defendant's “representatives”, or “designee”; “Blue Cross Senior Management”; “Blue Cross staff”; and “the Chief Executive Officer.” Plaintiff, however, is not named, referred, or even contemplated according to the language of the arbitration agreement.

¶ 19 Furthermore, the plain language of the agreement contains a detailed procedure for Blue Cross and defendant to follow, which if the dispute persists, culminates in submitting the dispute to arbitration. For example, Blue Cross or defendant is to first notify the other of a dispute. They will then meet. If that course of action is unsuccessful, either party may request in writing “consideration of the dispute by Blue Cross Senior Management.” The agreement provides that Blue Cross senior management will then consider the dispute and make a decision. Only then, if defendant disagrees with the decision of Blue Cross senior management, can defendant submit the dispute to binding arbitration. The plain language of the arbitration agreement setting forth the procedure Blue Cross and defendant must follow in the event of a dispute supports the conclusion that Blue Cross and defendant only intended the arbitration provision to apply to

disputes between themselves. The language is detailed, specific, and contains several instances where representatives of either defendant or Blue Cross are directed to take action. After reviewing the appeals procedure culminating in submission of a dispute to binding arbitration, we cannot say that plaintiff's dispute falls within the scope of the arbitration agreement, as agreed to by Blue Cross and defendant. Rather, the language of the agreement shows that Blue Cross and defendant intended for the arbitration provision to apply to disputes between themselves, not third parties such as plaintiff. Accordingly, the type of dispute the arbitration provision covers is any dispute between Blue Cross and defendant.

¶ 20 Defendant maintains that plaintiff, as a third-party beneficiary, is bound to the arbitration agreement. Defendant points to an apparent split in authority amongst various panels and districts of this court regarding whether the third-party beneficiary doctrine applies to arbitration agreements. For example, certain panels of this court have held that third-party beneficiaries cannot be compelled to arbitrate a dispute. *Brooks v. Cigna Property and Casualty Cos.*, 299 Ill. App. 3d 68, 72 (1998) ("a nonparty to the contract or a third-party beneficiary cannot be compelled to arbitrate"); *City of Peru v. Illinois Power Co.*, 258 Ill. App. 3d 309, 311-13 (1994). In other instances, panels of this court have recognized that a third-party beneficiary may be bound by an arbitration agreement. *Equistar Chemicals, LP v. Hartford Steam Boiler Inspection & Insurance Co. of Connecticut*, 379 Ill. App. 3d 771, 779 (2008); *Tortoriello v Gerald Nissan of North Aurora, Inc.*, 379 Ill. App. 3d 214, 239-40 (2008); *Ervin v. Nokia, Inc.*, 349 Ill. App. 3d 508, 514 (2004). We need not put forth an opinion on this split in authority at this time, because even if we did rely on authority holding that third-party beneficiaries may be compelled to arbitrate, defendant would still not be able to compel plaintiff to arbitrate based on the specific contract language at issue here. In *Johnson v. Noble*, a panel of this court explained

how a third-party beneficiary can be compelled to arbitrate, holding "[w]here it is shown that the signatories to the agreement intended that the nonsignatories were to derive benefits from the agreement and *where the arbitration clause itself is susceptible to this interpretation*, then arbitration is proper." (Emphasis added.) *Johnson v. Noble*, 240 Ill. App. 3d 731, 735-36 (1992). As discussed above, the agreement between Blue Cross and defendant is detailed and provides specific steps defendant, Blue Cross, and even their respective representatives, are required to take to resolve a dispute. We have difficulty finding that plaintiff, as an individual insured through Blue Cross seeking payment for medical expenses, would derive any benefit from an appeals procedure which includes a potentially binding decision by Blue Cross senior management. Accordingly, we hold the specific language at issue here prevents defendant from compelling arbitration.

¶ 21 Defendant's final argument is that plaintiff should be compelled to arbitrate based on the doctrine of equitable estoppel as established in both Illinois and federal courts. In Illinois, equitable estoppel is defined as:

" ' where a person, by his or her statements or conduct, induces a second person to rely, to his or her detriment, on the statements or conduct of the first person. The party asserting a claim of estoppel must have relied upon the acts or representations of the other and have had no knowledge or convenient means of knowing the facts, and such reliance *must have been reasonable.*' " (Emphasis added). *Ervin*, 349 Ill. App. 3d at 514 (quoting *In re Marriage of Smith*, 347 Ill. App. 3d 395, 399 (2004)).

Plaintiff filed his initial complaint on April 3, 2012. On March 14, 2013, the circuit court ordered defendant to provide plaintiff with the PPO contract, of which the arbitration provision is

a part of. Plaintiff included the PPO contract in his amended complaint filed on May 8, 2013. Accordingly, plaintiff did not receive the PPO contract and its arbitration provision until it had already initiated this litigation. Therefore, we cannot say that any reliance on defendant's part regarding the arbitration provision would have been reasonable. It would be unreasonable for defendant to assume that plaintiff would willingly submit his cause of action to arbitration when he had already initiated the litigation without the benefit of the PPO contract. Accordingly, defendant cannot show that any reliance on its part would be reasonable to satisfy the elements of the doctrine of equitable estoppel as it exists in Illinois.

¶ 22 Defendant also urges this court to consider federal authority in addressing its equitable estoppel argument. Defendant's position, however, has already been rejected by this court in *Ervin v. Nokia, Inc.*, and we see no reason to depart from that precedent. *Ervin*, 349 Ill. App. 3d at 514-17.

¶ 23

CONCLUSION

¶ 24 The judgment of the circuit court of Cook County is affirmed.

¶ 25 Affirmed.