THIRD DIVISION
June 29, 2018

No. 1-17-1848

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SFX ENTERTAINMENT, INC., a Delaware corporation, JEFFERY CALLAHAN, LUCAS KING and NICK KAROUNOS,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs,	)	
v.	)	14 CH 11554
JL PRODUCTIONS, LLC, an Illinois limited liability company,	)	
Defendant/Counter-Plaintiff-Appellant	)	
(JEFFERY CALLAHAN, LUCAS KING, and NICK KAROUNOS,	)	Judge Presiding.
Plaintiffs/Counter-Defendants-Appellees).	)	Neil H. Cohen, Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Cobbs and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court of Cook County granting plaintiffs/counter-defendants' motion to dismiss defendant/counter-plaintiff's fourth amended counterclaim

with prejudice is affirmed; defendant's counterclaim for fraudulent misrepresentation is barred by collateral estoppel because the issue of whether plaintiffs made false statements defendant could reasonably rely upon was presented and decided in arbitration involving defendant; defendant's counterclaims for conspiracy and unjust enrichment depended on the existence of the alleged fraud, therefore they were properly dismissed.

¶ 2 JL Productions, LLC (JLP) entered into a contract with React Presents, Inc. (React) for JLP to finance two music festivals put on by React in 2013 with the option to finance the same two festivals in succeeding years 2014 through 2016. Plaintiffs/counter-defendants Jeffery Callahan, Lucas King, and Nick Karounos were the managers of React. The contract contains an arbitration clause. A key provision of the contract required JLP to give React written notice of its intent to participate in the 2014 Festivals no later than January 1, 2014. After JLP entered the contract with React, React sold all of its assets to SFX Entertainment, Inc., a Delaware corporation (SFX). In March 2014, JLP was told they were not entitled to invest in the 2014 Festivals or subsequent festivals because JLP did not give written notice as required. JLP initiated arbitration proceedings against React and the other parties pursuant to the contract. JLP alleged that the managers of React made false statements to JLP to lull them into believing that React had honored the right of JLP to participate in the 2014 Festivals without the written notice required by the contract. SFX, Callahan, King, and Karounos (herein, collectively "plaintiffs") filed a complaint in the circuit court of Cook County seeking a declaration they are not parties to the contract between JLP and React and, therefore, cannot be compelled to arbitration pursuant to the arbitration provision in the contract. Plaintiffs also sought to stay the arbitration pending the outcome of this case. JLP filed counterclaims against plaintiffs, ultimately filing a fourth amended counterclaim. The circuit court of Cook County entered a declaratory judgment that plaintiffs are not parties to the contract and cannot be compelled to participate in arbitration. An arbitration proceeded between JLP and React. An arbitrator entered an award in favor of React.

Plaintiffs filed a motion to dismiss JLP's fourth amended counterclaim, which the trial court granted.

¶ 3 For the following reasons, we affirm.

¶ 4 BACKGROUND

¶ 5 The following are taken from defendant's fourth amended counterclaim. JLP is an Illinois limited liability company with Jason Perlow and Lee Casty as its members. Callahan and King were co-owners of React and Karounos "is a principal of" React. Callahan, King, and Karounos were partners in the operation of React and two music festivals: Spring Awakening and Summer Set. The Festivals themselves were owned by Spring Awakening LLC and Summer Set LLC. React was the sole or majority member of each. Sometime in 2012, SFX approached Callahan and King about acquiring React. SFX and Callahan, King, and Karounos negotiated the potential sale throughout 2013. Also in 2013, Callahan, King, and Karounos sought funding for Spring Awakening and Summer Set and turned to Perlow and Casty. Perlow and Casty agreed to fund the two music festivals in exchange for a return of their investment and 25% of the net profits of the music festivals. Perlow and Casty also insisted on the right to participate in future music festivals. JLP provided React $800,000 in March 2013. In April 2013 Perlow and Casty and React entered into a contract pursuant to which JLP agreed to provide React with $400,000 for each music festival in exchange for a return of its cash advance, 25% of the festivals' net profits (or it would be charged for 25% of a net loss), and other rights. The contract provided: "JLP shall have the right of future participation in Spring Awakening [and Summer Set], or its successor festival, under the same terms set forth herein for the following three years. To exercise such right, JLP shall provide written notice of its/his intent to so participate to React Presents by January 1 of each successive year."

¶ 6 JLP communicated its "intent" and that it was "committed" to fund the 2014 Festivals. One such communication occurred on or around May 2, 2013 during a meeting between Perlow, Casty, and Callahan at a Chicago restaurant where growth opportunities for the 2014 Festivals were discussed. "At this meeting, Perlow and Casty told Callahan JLP intended to participate in the 2014 Festivals." Perlow and Casty offered to increase JLP's funding. "Callahan made statements to the effect of: 'We are moving forward, we are going to have a multi-year commitment, just like we signed, and let's do other things.' Callahan also made statements to the effect of: 'if you guys [Perlow, Casty and JLP] want to do this, I'll put the budgets together and this will be great.' " Callahan's statements "led Perlow and Casty to believe that Callahan had accepted JLP's exercise of its right to participate in the 2014 Festivals."

¶ 7 In June 2013, the Spring Awakening Festival was held in Chicago. Perlow and Casty spoke to Callahan at the 2013 Spring Awakening Festival. During a discussion of plans for the 2014 Festival "Callahan told Perlow and Casty something to the effect of: 'This is going to be amazing. You guys are my partners.' " That statement was false and led Perlow and Casty to believe Callahan had accepted JLP's exercise of its right to participate in the 2014 Festivals. On or about July 20, 2013, Callahan sent an email to Perlow requesting JLP agree to amend their contract to give React the right to terminate the contract. The email also indicated that if React did not sell the Festivals to SFX, JLP could participate as discussed, "meaning that Callahan was attempting to lead JLP into believing that they had elected to participate in the 2014 Festivals." On July 26, 2013, a representative of SFX told Callahan that the contract with JLP was "ruining" the Festivals' profits which could lower the price SFX would pay to acquire the Festivals. Callahan told the representative "not to worry" because React would not be obligated to JLP going forward. Callahan, King, and Karounos sought ways to avoid the contract with JLP while at the same time ensuring they had funding for the 2014 Festivals in the event the sale to SFX

did not go through. Thus, Callahan, King, and Karounos developed an unlawful plan to defraud JLP into believing JLP had elected to participate in the 2014 Festivals and React had accepted JLP's notice of intent to participate. But "Callahan, King and Karounos did not intend for JLP to participate in the 2014 (or 2015 or 2016) Festivals" because SFX would not permit it and JLP's participation would decrease the sale price or cause SFX not to purchase the Festivals.

¶ 8 In August 2013 the Summer Set Festival was held in Somerset, Wisconsin. On August 6, 2013, Perlow reiterated JLP's intent to participate in the 2014 Festivals to Callahan when the two met at a nightclub. Callahan did not tell Perlow that JLP would be barred from participating in the 2014 Festivals. On or around August 24, 2013, Perlow, Casty, and Callahan had dinner together to discuss the proposed amendment to the parties' contract. JLP refused to agree to the amendment. Perlow and Casty reiterated their commitment to the 2014 Festivals. "Callahan responded by saying words to the effect of: 'Well, you know what? You guys are in. We'll keep going.' " That statement by Callahan "was false and intentionally fraudulent. Callahan and [plaintiffs] did not intend to allow JLP to participate in the Festivals." Callahan's statements induced JLP "into failing to make the formal, written election to participate in the 2014 Festivals." Callahan knew React would not allow JLP to participate in the 2014 Festivals if JLP failed to deliver the formal notice of intent required by the contract. This fraud was part of a scheme to maximize plaintiffs' profits from the Festivals by cutting out JLP.

¶ 9 SFX and React eventually negotiated a deal whereby a portion of React's profits from its sale to SFX would be placed into an escrow account, and JLP would be paid from that account, if necessary. Separately, Callahan, King, and Karounos negotiated a deal to split the funds in the escrow account equally.

¶ 10 In September 2013, React transferred $1.2 million to JLP representing a return of its $800,000 initial investment and JLP's share of the net profits from the two festivals. On or

around February 18, 2014, SFX and React entered into an agreement to transfer all of React's interests in Spring Awakening LLC and Summer Set LLC to a new entity: SFX-React.

¶ 11 In March 2014, following several communications between the parties but no in-person meetings, Callahan informed Perlow and Casty JLP was not entitled to invest in the 2014 Festivals because it failed to give written notice of its intention by January 1, 2014 as required by their contract. In December 2014 and in December 2015, JLP wrote to React and SFX notifying them of JLP's intention to participate in the 2015 and 2016 Festivals. JLP did not participate in the 2014, 2015, or 2016 Festivals.

¶ 12 Defendant's fourth amended counterclaim alleges fraudulent misrepresentation against Callahan. The fraudulent misrepresentation count specifically alleges that Callahan, with King and Karounos' knowledge and agreement, made false statements of material fact on May 2, June 13, August 2, and August 13, 2013. The fourth amended counterclaim also alleges conspiracy to commit fraudulent misrepresentation against Callahan, King, and Karounos. The conspiracy count alleges Callahan, King, and Karounos combined for the purpose of accomplishing a lawful purpose by unlawful means, the unlawful means being "Callahan's misrepresentations." The conspiracy count further alleges "Callahan (with King and Karounos' knowledge and agreement) committed an overt act by making the fraudulent intentional misrepresentations" alleged in the fourth amended counterclaim. Finally, the fourth amended counterclaim alleges "unjust enrichment" against Callahan, King, and Karounos. The unjust enrichment count alleges JLP was improperly prevented from participating in the profits from the 2014-2016 Festivals, and Callahan, King, and Karounos' retention of 25% of those profits is to JLP's detriment. The unjust enrichment count also alleges Callahan, King, and Karounos' retention of the consideration for the sale of React to SFX is to JLP's detriment.

¶ 13 Based on the foregoing facts alleged in the fourth amended counterclaim, in May 2014 JLP filed a demand for arbitration against React, SFX, Callahan, King, and Karounos. SFX, Callahan, King, and Karounos filed a complaint for declaratory judgment seeking a declaration they are not subject to the arbitration clause in JLP's contract with React. SFX, Callahan, King, and Karounos also sought to stay the arbitration pending the outcome of their complaint for declaratory judgment.

¶ 14 In response to the complaint for declaratory judgment, JLP filed an answer and counterclaim against React, SFX, Callahan, King, and Karounos. The trial court granted a stay of the arbitration. Following limited discovery on the issue of arbitability the trial court granted summary judgment in favor of SFX, Callahan, King, and Karounos ruling that they were not parties to the contract and are not bound by the arbitration provisions in the contract. The court lifted the stay.

¶ 15 JLP sought to amend its arbitration demand against React to add claims for intentional misrepresentation, promissory fraud, and securities fraud. The arbitrator initially denied the motion to amend. As it pertains to this appeal, the arbitrator found that the motion for leave to file a count for equitable estoppel alleges that React falsely represented that JLP could participate in future festivals. The arbitrator found that count duplicative of the count in the arbitration demand alleging breach of contract because JLP did not allege it sustained any damages on account of the alleged false assurances that are different from those that would be recoverable under its breach of contract claim. The arbitrator also denied the motion for leave to file a count for misrepresentation. The proposed count alleged that React repeatedly assured JLP that it would be allowed to participate in the Festivals in 2014 pursuant to the contracts. The arbitrator found that did not allege a misrepresentation of material fact. Upon JLP's motion to reconsider, the arbitrator found that in connection with the equitable and promissory estoppel claims, JLP

argued React lulled it into not giving written notice as required by the contract by making repeated promises and representations that JLP would be allowed to participate in future festivals. The arbitrator ruled:

> "these claims are not necessary (and therefore, are duplicative) because I have assumed that a party cannot deliberately induce the other party to forego exercise of a contractual obligation and then seize on that failure to claim breach of contract. The promises and representations JLP has alleged thus are relevant to its claim for breach of contract. If React were to demonstrate that written notice was required as a matter of law, despite such allegedly lulling conduct, I would reconsider my rulings on these counts."

¶ 16 Following the arbitration, the arbitrator ruled on JLP's claim it gave informal notice of its intent to participate in the 2014 Festivals. The arbitrator discussed JLP's argument "that React lulled it into not giving notice." The arbitrator found "[t]here is no evidence to support this argument." Later, the arbitrator wrote:

> "JLP sought to plead claims for promissory fraud and equitable estoppel which I struck ***. For the sake of completeness, I note that there was no evidence introduced at the hearing that would have supported those claims. The evidence failed to prove any clear representation or promise by React on which those claims could be based."

¶ 17 Following the arbitration JLP filed its fourth amended counterclaim alleging fraudulent misrepresentation against Callahan and conspiracy and unjust enrichment against Callahan, King, and Karounos. Callahan, King, and Karounos filed a motion to dismiss the fourth amended counterclaim on the grounds it fails to state a cause of action upon which relief can be granted and the fraudulent misrepresentation claim is barred by the doctrine of collateral

estoppel. The trial court denied the motion to dismiss based on collateral estoppel and granted the motion to dismiss for failure to state a claim.

¶ 18 This appeal followed.

¶ 19 ANALYSIS

¶ 20 Callahan, King, and Karounos (hereinafter "counter-defendants") filed their motion to dismiss JLP's fourth amended counterclaim pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2016)), which allows a party to combine a section 2-619 motion to dismiss with a section 2-615 motion to dismiss. *Patrick Engineering, Inc., v. City of Naperville*, 2012 IL 113148, ¶ 31. Our review of a judgment under either section is *de novo*. *Id.* (citing *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006)). Counter-defendants filed a cross-appeal from the trial court's judgment denying their motion to dismiss pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2016)) which was based on collateral estoppel. JLP filed a motion to dismiss the cross-appeal. JLP's motion to dismiss the cross-appeal conceded that counter-defendants could raise their collateral estoppel argument in opposing JLP's appeal. This court granted JLP's motion to dismiss counter-defendants' cross-appeal. Counter-defendants argue "the implicit import of that order was that [counter-defendants] could permissibly assert the collateral estoppel argument as an alternative basis for affirming the Circuit Court's dismissal with prejudice." We need not decide what was or was not implicit in the order granting JLP's motion to dismiss because it is axiomatic that under the *de novo* standard of review, this court "reviews the judgment, not the reasoning, of the trial court." *Faison v. RTFX, Inc.*, 2014 IL App (1st) 121893, ¶ 26. Because this court' review is *de novo*, "we may affirm the judgment on any basis in the record, regardless of the trial court's reasoning." *O'Callaghan v. Satherlie*, 2015 IL App (1st) 142152, ¶ 17.

¶ 21 In this appeal, counter-defendants assert there was a final arbitration award on the merits against JLP that decided adversely to JLP on all the core issues presented in this case with respect to JLP's fraudulent misrepresentation claim against counter-defendants. Counter-defendants argue JLP is therefore estopped as to the fraudulent misrepresentation issues and, because the claims for conspiracy and unjust enrichment are premised upon fraudulent misrepresentation as an underlying wrong, those claims necessarily fail once the fraudulent misrepresentation claim fails.

> "The doctrine of collateral estoppel applies when a party, or someone in privity with a party, participates in two separate and consecutive cases arising on different causes of action and some controlling fact or question material to the determination of both causes has been adjudicated against that party in the former suit by a court of competent jurisdiction. The adjudication of the fact or question in the first cause will, if properly presented, be conclusive of the same question in the later suit, but the judgment in the first suit operates as an estoppel only as to the point or question actually litigated and determined and not as to other matters which might have been litigated and determined.
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> The minimum threshold requirements for the application of collateral estoppel are: (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. [Citations.] Application of the doctrine of collateral estoppel must be narrowly tailored to fit

the precise facts and issues that were clearly determined in the prior judgment. [Citation.]" *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 390-91 (2001).

¶ 22 "As a general rule, arbitration awards have the same *res judicata* and collateral estoppel effect as court judgments." *Taylor v. Peoples Gas Light & Coke Co.*, 275 Ill. App. 3d 655, 661 (1995).

¶ 23 Counter-defendants argue the first element of collateral estoppel—that the issue decided in the prior adjudication is identical with the one presented in the suit in question—is satisfied "because the Arbitrator decided an issue that is identical to the one that would need to be decided to resolve [JLP's] fraud claim here." Counter-defendants argue the fraudulent misrepresentation claim "is based on the same alleged lulling statements and reliance thereupon as JLP alleged and sought to prove at the Arbitration." Specifically, the fraudulent misrepresentation claim and lulling claim allege that Callahan, by certain allegedly false statements, misrepresented to JLP that React understood that JLP intended to participate in the 2014 Festivals, React would allow JLP to participate in the 2014 Festivals, and JLP relied on those statements to believe formal written notice would not be required. Counter-defendants argue the arbitrator made findings relevant to collateral estoppel. Counter-defendants point to the arbitrator's finding there was no evidence to support JLP's claim Callahan lulled it into failing to provide written notice. Counter-defendants also argue the arbitrator found JLP could not have reasonably relied on Callahan's statements when the arbitrator found Callahan's actions should have put JLP on guard to follow the contract to the letter and "spurred JLP to ensure its rights were protected, rather than lulled it into inactivity."

¶ 24 In its reply brief, JLP argues "the issues to be decided in the [fourth amended counterclaim] are not identical to the limited issues determined in the arbitration." JLP attempts to disassociate the arbitrator's specific finding that there was no evidence to support JLP's

argument that React, through misrepresentations, lulled it into not giving notice from its claim that Callahan made material misstatements of fact that induced JLP not to give formal written notice of its intent to participate in the 2014 Festivals by arguing that the notice obligations under the contract are not at issue in determining whether Callahan made actionable misrepresentations.

¶ 25 We find the issue decided in the arbitration is identical to the one presented in the fraudulent misrepresentation count of the fourth amended counterclaim.

> "In order for a previous judgment to be conclusive, it must appear clearly and certainly that the identical and precise issue was decided in the previous action. [Citation.] It is absolutely necessary that there shall have been a finding of a specific fact in the former judgment or record that is material and controlling in that case and also material and controlling in the subsequent case. It must also conclusively appear that the matter of fact was so in issue that it was necessarily decided by the court rendering the prior judgment." *Hexacomb Corp. v. Corrugated Systems, Inc.*, 287 Ill. App. 3d 623, 631 (1997).

¶ 26 Collateral estoppel requires that "the fact or issue decided earlier must be identical to that presented in the subsequent litigation." *Grobe v. Hollywood Casino-Aurora,, Inc.*, 325 Ill. App. 3d 710, 720 (2001). Here, it is clear the arbitrator decided "the identical and precise issue" JLP raised in the fourth amended counterclaim. In its motion to reconsider the arbitrator's denial of its motion for leave to file an amended demand and complaint for equitable estoppel, misrepresentation, and promissory fraud, JLP argued as follows:

- "[E]quitable estoppel was properly plead [*sic*] in the alternative ***."
- "[T]he operative facts forming its equitable estoppel claim [are] React, with knowledge, misrepresented or concealed facts about whether JLP

would be allowed to participate in the 2014 festivals, JLP relied on the misrepresentations in good faith and did not have knowledge of their falsity, and allowing React to deny the truth of these representations now prejudices JLP."

- "Specifically, JLP alleges *** that React made repeated, false assurances that JLP would be allowed to participate in the festivals. These assurances were made after JLP notified React of its intent to participate." (Emphasis omitted.)
- "JLP's misrepresentation claim is also properly pled in the alternative ***."
- "JLP would have also been induced by React's misrepresentations [that JLP would be allowed to participate in the 2014 festivals and that React had accepted JLP's notice of intent to participate] into not giving proper notice and, through no fault of its own, relinquishing its right to participate in the festivals."
- "The Order [denying the motion for leave to file an amended demand] misinterprets JLP's promissory fraud claim."
- "JLP alleges *** that React made repeated assurances that JLP would be allowed to participate in the 2014 festivals and had accepted JLP's notice of intent to participate."

The arbitrator's order on JLP's motion to reconsider states:

"JLP argues in connection with the equitable and promissory estoppel claims that React lulled JLP into not giving written notice as required by the [contract] by repeated promises and representations that [it] would be allowed to

> participate in future festivals. *** In my view, these claims are not necessary (and therefore, are duplicative) because I have assumed that a party cannot deliberately induce the other party to forego exercise of a contractual obligation and then seize on that failure to claim breach of contract. *The promises and representations JLP has alleged thus are relevant to its claim for breach of contract.* If React were to demonstrate that written notice was required as a matter of law, despite such allegedly lulling conduct, I would reconsider my rulings on these counts." (Emphasis added.)

The fourth amended counterclaim reads, in part, as follows:

> "Through late 2013 and early 2014, Callahan *** repeatedly assured Perlow and Casty, both orally and in writing, that React Presents and SFX were aware of JLP's right to participate in profit-sharing for the 2014 Festivals on the same terms and conditions as outlined in the [contracts.] Callahan further indicated that JLP would be allowed to participate in profit-sharing for the 2014 Festivals on those same terms and conditions.
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> Callahan's statements and omissions regarding JLP's participation *** were false statements of material fact at the time they were made.
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> JLP *** did, in fact, reasonably act in reliance upon Callahan's statements, including but not limited to failing to give formal written notice of election to participate in the 2014 Festivals."

¶ 27 JLP's "lulling" issue is identical to its fraudulent misrepresentation claim. Both claims are based on the same statements by Callahan and allege the same purpose and effect of those

statements: that Callahan misrepresented to JLP that it would participate in the 2014 Festivals, despite then having not given formal written notice, to induce or "lull" JLP into not giving formal written notice. JLP asserts the "arbitration decided only whether React breached its contract with JLP." According to JLP, "the Arbitrator only made factual and legal findings relating to JLP's contractual rights under the [contract] with React." JLP asserts that whether counter-defendants misrepresented that JLP would participate in the 2014 Festivals "was never decided (or even argued) during the arbitration." We disagree.

¶ 28 The arbitrator decided more than JLP's contractual rights and specifically decided there was no evidence Callahan misrepresented that JLP would participate in the 2014 Festivals. In response to the issue of whether JLP had in fact given the contractually required notice, the arbitrator considered JLP's argument "that Callahan's statement that he 'would still like to have you participate as discussed' is an admission that there was an understanding that *** JLP would participate in the 2014 festivals." The arbitrator rejected that argument. Despite the finding being made in relationship to another legal argument, the arbitrator made the factual determination that the "ambiguous statement cannot carry the weight that JLP ascribes to it." See *Taylor*, 275 Ill. App. 3d at 663 ("The factual issues forming the basis for the plaintiffs' claims were actually and necessarily decided by the arbitrators. Thus, their civil claims were properly held to be barred."). Regardless, the arbitrator made the specific finding that there "is no evidence to support" the argument that React lulled JLP into not giving notice. The arbitrator also specifically found "there was no evidence introduced at the hearing that would have supported [the] claims [for promissory fraud and equitable estoppel.] *The evidence failed to prove any clear representation or promise by React on which those claims could be based*." (Emphasis added.) As demonstrated above, this is the identical fact and issue presented by the fraudulent misrepresentation claim in the fourth amended counterclaim. See *Grobe*, 325 Ill.

App. 3d at 720. As to JLP's argument the issue was not argued during the arbitration, JLP vigorously pursued placing this issue before the arbitrator, the arbitrator specifically ruled, after JLP's motion to reconsider, that the issues were relevant to JLP's claim of breach of contract, and, as will be discussed in greater detail below, JLP presented evidence of Callahan's alleged misrepresentations and JLP's interpretation of them during the arbitration. Finally, the arbitrator specifically decided the issue in its final award. Under the circumstances we cannot say the issue was not argued during the arbitration. We find the "the issue decided in the prior adjudication is identical with the one presented in the suit in question" element is satisfied.

¶ 29 Next, counter-defendants argue the "final judgment on the merits in the prior adjudication" element is satisfied because "JLP's lulling theory—which is the basis for Count I of the [fourth amended counterclaim]—was decided in a final judgment in the Arbitration which adjudicated the very fact claims that undergird the fraudulent misrepresentation claim here," and, the arbitrator's decision is a final judgment on the merits.[1] JLP argues there was no full and final judgment on the merits in the arbitration regarding the issues presented by JLP's fraudulent misrepresentation claim because "JLP was never given a full and fair opportunity to litigate the issues regarding its claim[] for misrepresentation." Specifically, JLP argues, the arbitration concerned only whether React breached its contract with JLP, and the arbitrator denied JLP the

[1] JLP asserts that counter-defendants argue, without citation to Illinois authority, that the arbitrator's refusal to hear JLP's claim for misrepresentation constituted a final judgment on the merits. Counter-defendants addressed JLP's argument in the trial court, that the arbitration did not result in a final judgment on the merits because the arbitrator dismissed some of JLP's claims rather than adjudicating them at the arbitration, by arguing that collateral estoppel can bar a subsequent claim where the underlying issue was resolved on a motion to dismiss for failure to state a claim. That argument, however, was merely preemptive; counter-defendants do not rely on the denial of JLP's motion to amend its arbitration demand as the "final judgment" on which collateral estoppel should be based (arguing expressly, "The Arbitrator's decision is a final judgment on the merits."), and neither do we.

opportunity to present any evidence on the fraudulent misrepresentation claim. Therefore, JLP asserts, it "did not seek to introduce evidence supporting its misrepresentation claim."

> "The 'full and fair opportunity' requirement is satisfied even if only a slight amount of evidence was presented on the disputed matter decided in the first suit. [Citations.] Further, 'actually litigated' does not mean thoroughly litigated, but only that the parties disputed the issue and the trier of fact resolved it. [Citation.] Collateral estoppel generally will apply as long as the party had a procedural, substantive, and evidentiary opportunity to be heard on the issue. [Citations.]" *Taylor*, 275 Ill. App. 3d at 663.

¶ 30 JLP's assertions are contradicted by the record before this court. First, the arbitrator found, in ruling on JLP's motion to reconsider, that: "The promises and representations JLP has alleged thus are relevant to its claim for breach of contract." The alleged misrepresentations and their reasonable effect on JLP were, therefore, issues in the arbitration in connection with JLP's breach of contract claim. Accordingly, the issue of whether Callahan's statements induced or lulled JLP into failing to give the formal notice required by the contract was disputed in the arbitration and the arbitrator resolved it. Further, JLP was not denied the opportunity to present and did introduce evidence concerning fraudulent misrepresentation. Counter-defendants point this court to excerpts of transcripts of Perlow's testimony in the arbitration, which were attached as an exhibit to counter-defendants' motion to dismiss JLP's fourth amended counterclaim. Counter-defendants assert "JLP's principal Perlow testified to: (1) each and every one of the Alleged Representations; and (2) the specific places where Callahan allegedly made them, and to whom." We have reviewed the transcripts and agree with counter-defendants. Perlow testified as to statements Callahan made on May 2 that "If you guys want to do this, I want to do this. And this will be great for all of us." and "You guys are my partners." (The arbitration transcript

states Perlow was asked about a dinner on May 3, not May 2 as alleged in the fourth amended counterclaim but this appears to be a misstatement as the restaurant referenced in the testimony is the same as that alleged in the fourth amended counterclaim.) Perlow testified regarding statements on June 13 at the 2013 Spring Awakening Festival that "This is going to be amazing. You guys are my partners." Perlow also testified regarding statements on August 13 at a different restaurant where Callahan proposed the amendment to the contract and, after the amendments were refused, Callahan said "You guys are in. We'll keep going."

¶ 31 Based on the arbitrator's ruling on the motion to reconsider, the evidence actually presented at the arbitration, and the final award, we find JLP had a procedural, substantive, and evidentiary opportunity to be heard on the issue of Callahan's statements. Accordingly, we find the "final judgment on the merits in the prior adjudication" element is satisfied. JLP does not dispute that "the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication" element is satisfied, nor could they. "[C]ollateral estoppel requires only that the party against whom the bar is asserted have been a party to the prior proceeding." *Taylor*, 275 Ill. App. 3d at 660. Thus, as long as JLP was a party to the arbitration, it is irrelevant that counter-defendants were not parties. *Id.*

¶ 32 Finally, JLP cites *Airtite, a Division of Airtex Corp. v. DPR Limited Partnership*, 265 Ill. App. 3d 214 (1994) and *Saxon Mortgage, Inc. v. United Financial Mortgage*, 312 Ill. App. 3d 1098 (2000), for the proposition that "Illinois courts will not preclude parties from litigating their claims in subsequent proceedings where the adverse party had previously refused to participate in the prior proceedings." JLP's authorities are inapposite. Each case dealt with the application of *res judicata*, not collateral estoppel, and involved facts not present here. See *Airtite*, 265 Ill. App. 3d at 219 ("Since (1) the parties and the arbitrator understood Airtite could proceed on the foreclosure claim at another time, and (2) fundamental fairness requires that Airtite be allowed to

proceed on its foreclosure claim, *res judicata* does not apply and the trial court did not err in denying dismissal."); *Saxon*, 312 Ill. App. 3d at 1111 ("Here, the evidence shows that the defendant not only failed to object to the plaintiff's pursuit of these premium refund claims separate from the federal litigation, but also expressly attempted to resolve them during the federal proceedings, without objection to their inclusion in the federal case. Under these circumstances, *res judicata* will not be applied.").

¶ 33 The "minimum threshold requirements for the application of collateral estoppel" are met in this case as to JLP's fraudulent misrepresentation claim. *Nowak*, 197 Ill. 2d at 391. Accordingly, we hold collateral estoppel bars JLP's fraudulent misrepresentation claim. Having made that determination, the remaining claims in JLP's fourth amended counterclaim are easily disposed of.

> "The elements of a civil conspiracy are: (1) a combination of two or more persons, (2) for the purpose of accomplishing by some concerted action either an unlawful purpose or a lawful purpose by unlawful means, (3) in the furtherance of which one of the conspirators committed an overt tortious or unlawful act. [Citation.] A conspiracy is not an independent tort. [Citation.] Where *** a plaintiff fails to state an independent cause of action underlying [the] conspiracy allegations, the claim for a conspiracy also fails. [Citation.]" (Internal quotation marks omitted.) *Illinois State Bar Ass'n Mutual Insurance Co. v. Cavenagh*, 2012 IL App (1st) 111810, ¶ 37.

JLP's conspiracy count alleged the "unlawful means" to accomplish the purpose of the conspiracy was "Callahan's misrepresentations *** with the intent to induce JLP not to make a formal, written election to participate in the 2014 Festivals." The cause of action underlying the conspiracy allegation is the alleged fraudulent misrepresentation. JLP is estopped from stating

an independent cause of action for fraudulent misrepresentation, thus the claim for conspiracy fails. *Id.* JLP's unjust enrichment count alleges "JLP was improperly prevented from participating in the profits for the 2014-2016 Festivals as a result of Counter-Defendants' tortious and fraudulent conduct asserted throughout this Counterclaim" namely, Callahan's "fraudulent intentional misrepresentations" with King and Karounos' knowledge and agreement.

> "Our supreme court has expressly held that to 'state a cause of action based on a theory of unjust enrichment, a plaintiff must allege that the defendant has unjustly retained a benefit to the plaintiff's detriment, and that defendant's retention of the benefit violates the fundamental principles of justice, equity, and good conscience.' [Citation.]
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>
> "[U]njust enrichment may be predicated on either quasi-contract or tort." *Peddinghaus v. Peddinghaus*, 295 Ill. App. 3d 943, 949 (1998).

In this case, JLP's unjust enrichment claim is predicated on the tort of fraudulent misrepresentation. The absence of a valid underlying fraud claim precludes an unjust enrichment claim predicated on the fraud. *Martis v. Grinnell Mutual Reinsurance Co.*, 388 Ill. App. 3d 1017, 1025 (2009) ("Because there was no valid underlying fraud claim, the trial court properly dismissed plaintiff's unjust enrichment claim."). Because JLP cannot state a claim for fraudulent misrepresentation, JLP's claim for unjust enrichment cannot stand. *Id.*

¶ 34 CONCLUSION

¶ 35 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 36 Affirmed.