2013 IL App (4th) 120415-U

NO. 4-12-0415

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 31, 2013
Carla Bender
4th District Appellate
Court, IL

JEFFREY PAUL SOUSA,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Vermilion County
ASTRA ZENECA PHARMACEUTICALS, LP,	)	No. 10L72
Defendant-Appellee.	)	
	)	Honorable
	)	Claudia S. Anderson,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Steigmann and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's dismissal of plaintiff's complaint as the parties entered into a valid settlement agreement and plaintiff presents no evidence or authority in support of his argument to set aside the settlement.

¶ 2 In August 2010, plaintiff, Jeffrey Paul Sousa, filed a complaint against defendant, AstraZeneca Pharmaceuticals, LP, alleging liability for personal injuries resulting from use of the medication Seroquel. In October 2011, the parties entered into a settlement agreement. In January 2012, defendant filed a motion to dismiss plaintiff's complaint on the basis of the October 2011 settlement agreement. In February 2012, the trial court dismissed, with prejudice, defendant's complaint.

¶ 3 Plaintiff appeals, arguing the trial court erred in granting defendant's motion to dismiss. Plaintiff asserts he was "misled and coerced" into the settlement agreement because

defendant did not inform him about an out-of-state class-action settlement. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 In August 2010, plaintiff filed a complaint against defendant alleging liability for personal injuries resulting from use of the medication Seroquel. Defendant is a pharmaceutical company that manufactures, markets, distributes, and sells Seroquel in the United States. Plaintiff alleged he was administered Seroquel while detained at the Cook County jail from August 7, 2003, through August 15, 2005. As a result of the use of Seroquel, plaintiff alleged he suffered "hyperglycemia and type II diabetes, distorted metabolism, hypertension, obesity and finally a massive coronary heart-attack, which then resulted in extraordinary mental health complications."

¶ 6 In September 2011, plaintiff filed a "Second Request for Hearing On Summary Judgment or Default Judgment." In that document, plaintiff asserted defendant was a "non-fair playing" and "arrogant" corporation, represented by "diabolical" and "unethical" attorneys. The document does not state a legal basis upon which summary judgment or default judgment should be granted.

¶ 7 On October 21, 2011, the parties appeared for a hearing on plaintiff's motion for summary judgment and several motions filed by defendant. After appearing before the trial court and resolving some of the parties' motions, the parties engaged in settlement negotiations. At the conclusion of the negotiations, plaintiff signed a confidential settlement agreement in consideration of a certain sum, to be made payable to a charity. The written settlement agreement states it was in settlement for "any and all claims relating to diabetes or a diabetes-

related medical condition" related to the use of Seroquel. The settlement stated it "has been made in good faith and is made as arm's length transactions."

¶ 8 On January 13, 2012, defendant filed a motion to dismiss plaintiff's complaint on the basis of the settlement agreement. Attached to the motion was an affidavit by Melissa Armstrong, one of defendant's attorneys, stating (1) on October 21, 2011, the parties entered into a confidential agreement "that fully resolves all issues in dispute between the parties"; and (2) on November 20, 2011, defendant funded the settlement amount and the settlement check posted on or about November 23, 2011.

¶ 9 On January 30, 2012, plaintiff filed a "Motion for Change of Venue under Doctrine of Forum Conveniens." In his motion, plaintiff stated (1) on October 21, 2011, he was "lied to by Ms. Armstrong about not being able to afford or have a professional medical witness who could establish and corrolate [*sic*] the injuries plaintiff suffered from defendant's product to his claimed injuries and tort lawsuit"; (2) he "agreed to settle due to coercion, [and] intimidation"; (3) the settlement check "was never inscribed the way [he] requested it"; (4) he was "misled and baldly lied to by defendant's paid counsel"; and (5) while awaiting transport at the Pontiac Correctional Center "he found out through another inmate that [defendant] was and had settled a class-action lawsuit with a Texas lawfirm [*sic*] *** in where [defendant] had been litigating for 4 years and the allocated proportions" of the class-action settlement were $15,000 for "Insulin Dependent Diabetes" and $7,000 for "Non-insulin Dependent Diabetes." Notably, plaintiff accused defendant's counsel of punishing him for defendant's "whims" and being "so evidently arrogant and snidely smug." Defendant did not file a counteraffidavit.

¶ 10 In February 2012, the trial court dismissed, with prejudice, plaintiff's complaint.

The court found "the parties have fully resolved all matters between them in this action."

¶ 11 In March 2012, plaintiff filed a motion for reconsideration in which he asserted he agreed to the settlement "only through duress and coersion [*sic*]" and the settlement check was incorrectly inscribed. Further, plaintiff asserted at the October 21, 2011, hearing, Armstrong "decided to manipulate the situation and instigate a settlement conference of which [the judge] relinquished to both parties." In April 2012, the trial court denied plaintiff's motion.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 Plaintiff contends he was "misled and coerced by defendant's attorneys" in signing the settlement agreement because defendant's attorneys (1) "had not told or divulged 'other' class action settlement stipulations or categories of injuries for which plaintiff could himself gage [*sic*] what monetary bracket he fit although plaintiff had even more extensive injuries," and (2) told him his settlement amount was the "top payment made, or was going to be made to the several other class actionists in another suit." Plaintiff asserts the trial court erred because it did not believe plaintiff's "statement of Defendant's attorneys misleading and misdirecting the fact of an agreement in another suit in which Defendant's [*sic*] catagorically [*sic*] paid out settlements that were not as severe in injury as plaintiff's in this case." Plaintiff "seeks to enhance the monetary sum he agreed to accept and to instigate the Defendant's counsel to issue the check as originally requested by plaintiff" and requests this court to remand this case to the circuit court "for arbitration of enhancement of [his] settlement."

¶ 15 A. Plaintiff's Comments Concerning Defendant's Counsel

¶ 16 Before we consider the merits of plaintiff's claim, we find it necessary to address

plaintiff's comments concerning defendant's counsel. At times during the course of this litigation, plaintiff has accused, in written motions, defense counsel of being "diabolical," "arrogant," "snidely smug," "unethical," and manipulative of court proceedings. While plaintiff may be zealous in prosecuting his claim, these comments are disparaging, demeaning, and uncivil. We remind plaintiff, as a *pro se* litigant he is subject to the same rules as a licensed attorney. *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 528, 759 N.E.2d 509, 517 (2001). This includes rules of conduct and civility. See Ill. Rs. Prof'l Conduct R. 3.5 cmt. 4 (eff. Jan. 1, 2010) ("Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants.").

¶ 17 B. Plaintiff's Claim

¶ 18 Plaintiff contends this appeal is an issue of "fairness" and asserts he was denied fair dealing when defendant "misled and coerced" him into the settlement agreement because defendant did not provide him with information about other settlements and told him his amount was the "top payment made" for claims. Plaintiff concedes he accepted the payment from defendant in settlement of his claim but now seeks to "enhance the monetary sum he agreed to accept." As best we can tell, plaintiff seeks rescission of the settlement agreement in order to pursue a higher settlement amount because, according to plaintiff, defendant did not fairly negotiate with him when defendant did not disclose information about a class-action settlement.

¶ 19 "A settlement agreement is binding where there is a clear offer and acceptance to compromise and there is a meeting of the minds as to the terms of the agreement." *Kulchawik v. Durabla Manufacturing Co.*, 371 Ill. App. 3d 964, 972, 864 N.E.2d 744, 751 (2007). We will not reverse a trial court's decision about whether a settlement occurred unless it is contrary to the

manifest weight of the evidence. *Kulchawik*, 371 Ill. App. 3d at 972, 864 N.E.2d at 751. A reviewing court will not disturb the trial court's decision granting or denying rescission of a contract unless it clearly resulted from an abuse of discretion. *23-25 Building Partnership v. Testa Produce, Inc.*, 381 Ill. App. 3d 751, 757, 886 N.E.2d 1156, 1163 (2008).

¶ 20 Illinois public policy strongly favors the freedom of parties to contract, and courts will not declare a contract illegal unless it is contrary to law or public policy. *Jordan v. Knafel*, 355 Ill. App. 3d 534, 539, 823 N.E.2d 1113, 1118 (2005). "Absent mistake or fraud, a settlement is presumed to be valid and 'conclusive on the parties thereto as to all matters included therein.' " *Cameron v. Bogusz*, 305 Ill. App. 3d 267, 272, 711 N.E.2d 1194, 1197 (1999) (quoting *Haisma v. Edgar*, 218 Ill. App. 3d 78, 86, 578 N.E.2d 163, 168 (1991)); *Jordan*, 355 Ill. App. 3d at 540, 823 N.E.2d at 1119 (presumption includes agreements with confidentiality provision). "In the absence of mistake or fraud, the settlement agreement will not be disturbed or set aside lightly." *Cameron*, 305 Ill. App. 3d at 272, 711 N.E.2d at 1197.

¶ 21 In this court, plaintiff asserts defendant misrepresented information about the existence of a settlement schedule in an out-of-state class-action settlement. Plaintiff does not articulate a legal basis for setting aside the settlement agreement other than on the basis of the "good-faith doctrine." First, we reject plaintiff's claim defendant's purported breach of its obligation of good faith and fair dealing entitles him to renegotiate the settlement agreement. See *Northern Trust Co. v. VIII South Michigan Associates*, 276 Ill. App. 3d 355, 367, 657 N.E.2d 1095, 1104 (1995) ("The obligation of good faith and fair dealing is essentially used to determine the intent of the parties where a contract is susceptible to two conflicting constructions."); *Voyles v. Sandia Mortgage Corp.*, 196 Ill. 2d 288, 297, 751 N.E.2d 1126, 1131 (2001) (covenant of

good faith and fair dealing is a rule of construction, not an independent source of tort liability).

¶ 22 Second, plaintiff's claim the settlement agreement is invalid because defendant purportedly did not disclose information about an out-of-state class action settlement is equally without legal merit. See *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 406 Ill. App. 3d 325, 339, 943 N.E.2d 646, 658 (2010) (contracting parties have no duty to speak absent a fiduciary or other legal relationship between the parties). The settlement agreement expressly states it was made in an arm's length transaction.

¶ 23 Plaintiff has made various claims about the purported misrepresentations made by defendant and defendant's counsel. As defendant points out, plaintiff did not raise the issue of whether his amount was the "top payment made" in the trial court. To establish an equitable claim for rescission on the basis of fraud and misrepresentation, plaintiff must prove: "(1) a false statement of material fact; (2) known or believed to be false by the party making it; (3) intended to induce the other party to act; (4) acted on by the other party in reliance on the truth of the representation; and (5) resulting damage." *23-25 Building Partnership*, 381 Ill. App. 3d at 758, 886 N.E.2d at 1164. "A misrepresentation is 'material' if the party seeking rescission would have acted differently had he been aware of the fact or if it concerned the type of information upon which he would be expected to rely when making his decision to act." *Jordan v. Knafel*, 378 Ill. App. 3d 219, 229, 880 N.E.2d 1061, 1069 (2007).

¶ 24 Plaintiff's argument is unpersuasive for the following reasons: (1) he has not introduced any evidence contradicting Armstrong's statement in her affidavit the settlement represented the parties' agreement to release all claims, defendant remitted payment in consideration of said agreement, and the check was accepted by plaintiff or his agents; and (2) he

has offered no evidence before any court, other than his own bare assertions, about the statements or omissions made by defendant's counsel during their negotiation sessions. Moreover, plaintiff has provided no citation in support of his argument the settlement agreement should be set aside on the basis of misrepresentation and has forfeited such argument. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *23-25 Building Partnership*, 381 Ill. App. 3d at 755, 886 N.E.2d at 1161 (appellate court is not a depository in which the appellant may dump the burden of argument and research). In short, plaintiff has provided no evidence and no legal basis upon which he should be permitted to "enhance" the settlement amount or the settlement agreement should be rescinded, and his claims fail.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the trial court's judgment.

¶ 27 Affirmed.