IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

CAROL NIEWINSKI, et al.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**04 CH 15187**
	)	
RESURRECTION HEALTH CARE CORPORATION,	)	
	)	
	)	
Defendant.	)	

MEMORANDUM AND ORDER

This cause comes before the court on Defendant Resurrection Health Care Corporation's motion to dismiss pursuant to 735 ILCS 5/2-619.1. The court has been fully advised of the premises herein.

Plaintiffs Carol Niewinski ("Niewinski"), Frank Niewinski, and Aixa Reyes ("Reyes") have filed a Class Action Complaint against Defendant Resurrection Health Care Corporation ("Resurrection"). Carol Niewinski was a patient at Resurrection Medical Center and Our Lady of Resurrection Medical Center. Her payment for services was guaranteed by Frank Niewinski. Reyes was a patient at St. Elizabeth's Hospital and St. Mary's Hospital.

Count I of the Complaint alleges that Resurrection has violated the Consumer Fraud Act by: (1) failing to disclose to Plaintiffs and other uninsured patients that the prices charged to patients covered by insurance and government programs such as Medicare and Medicaid are discounted; and by failing to disclose the actual price, allegedly unreasonably high, for various services before requiring uninsured patients to sign a payment guarantee. Counts II and III of the Complaint allege that Resurrection has violated the Consumer Fraud Act by requiring uninsured patients to sign a payment guarantee without disclosing the opportunity to apply for charity care and by utilizing "aggressive" collection practices. Count IV alleges that Resurrection breached its contracts with Plaintiffs and other uninsured patients by charging rates that were not fair and reasonable. Count V seeks declaratory relief in the form of vacating judgments entered against Plaintiffs and the potential class members. Resurrection is moving to dismiss the Complaint in its entirety.

Proper Defendant:

Initially, Resurrection contends that Plaintiffs have sued the wrong entity because Plaintiffs' legal relationships were with the hospitals that treated them, which are separate corporations, rather than with Resurrection. Plaintiffs, apparently recognizing the defects in their Complaint, argue that this court should "pierce the corporate veil" or that the hospitals at which they were treated are "apparent agents" of Resurrection.

Plaintiffs' Complaint is inconsistent throughout as it asserts both allegations against Resurrection directly and allegations against the individual hospitals at which Plaintiffs were treated. Additionally, it is clear that the collection lawsuits filed against Plaintiffs were not filed by Resurrection, but by the individual hospitals. (Carmen Alzate's Affidavit, Ex. B; Gwen Jones's Affidavit, Ex. A). If Plaintiffs wish to hold Resurrection liable for the hospitals' actions, it must clearly allege facts demonstrating the basis for such liability.

The remainder of the arguments made by Resurrection will be considered for the sake of judicial economy.

Consumer Fraud (Counts I, II and III):

"To plead a private cause of action for a violation [of the Consumer Fraud Act], a plaintiff must allege: (1) a deceptive act or practice by the defendant, (2) the defendant's intent that the plaintiff rely on the deception; (3) the occurrence of the deception in the course of conduct involving trade or commerce, and (4) actual damage to the plaintiff, (5) proximately caused by the deception." Oliveira v. Amoco Oil Co., 201 Ill. 2d 134, 149 (2002). A claim for consumer fraud must be pled with the same specificity as a claim for common law fraud. Smith v. Prime Cable of Chicago, 276 Ill. App. 3d 843, 857 (1st Dist. 1995).

In determining whether certain conduct is unfair, a court considers "(1) whether the practice offends public policy; (2) whether it is immoral, unethical, oppressive, or unscrupulous; or (3) whether it causes substantial injury to consumers." Robinson v. Toyota Motor Credit Corp., 201 Ill. 2d 403, 417-18 (2002). "'All three criteria do not need to be satisfied to support a finding of unfairness. A practice may be unfair because of the degree to which it meets one of the criteria or because to a lesser extent it meets all three.'" Id. at 419.

Discounting System for Insured Patients and Medicare/Medicaid Patients

Plaintiffs allege that Resurrection's practice of discounting its base rates for insured patients and Medicare/Medicaid patients is "unfair and unreasonable." Generally speaking, discriminatory pricing is not a violation of the Consumer Fraud Act. Laughlin v. Evanston Hosp., 133 Ill. 2d 374, 391 (1990). Giving discounts to certain high-volume customers while charging higher prices to other consumers for similar services is a legitimate business practice. Perrin v. Pioneer Nat'l Title Ins. Co., 83 Ill. App. 3d 664

(1st Dist. 1980). Nor, without more, is charging unconscionably high prices sufficient to establish an unfairness claim under the Consumer Fraud Act. Saunders v. Michigan Ave. Nat'l Bank, 278 Ill. App. 3d 307, 313 (1st Dist. 1996).

The mere fact that Resurrection or the individual hospitals provide discounts for Medicare/Medicaid patients (which is legally mandated) and for insured patients (which are the result of negotiations with the various insurance companies) is insufficient to allege an unfair practice. Plaintiffs, however, have alleged more than simply a practice of giving certain patients discounts and charging higher prices to uninsured patients.

Plaintiffs have alleged that each Resurrection hospital sets its charges at amounts significantly higher than the actual cost of providing the services and without regard to market forces or the actual payments received for the services from the majority of their patients. (Complaint, ¶34) . Plaintiffs further allege that at the same time the hospitals are charging significantly more than the actual cost of services to uninsured patients, they are giving substantial discounts to insured patients. (Complaint, ¶35). Charging uninsured patients significantly more than the actual costs of providing the services is unethical and oppressive. The uninsured patients seeking emergency care have little or no choice but to agree to pay the base rates charged. Saunders, 278 Ill. App. 3d at 313; Perrin, 83 Ill. App. 3d at 673. The practice of charging significantly more than the actual cost of services to uninsured patients also has the potential to cause substantial harm to uninsured patients by discouraging them from seeking needed emergency care which they cannot afford. Plaintiffs have alleged the existence of an unfair practice.

Despite the fact that Plaintiffs have alleged the existence of an unfair practice, they have not alleged any facts showing that they suffered any actual damage proximately caused by Resurrection or the hospitals charging significantly more than the actual cost of services or by the failure to disclose that other patients received discounts. Plaintiffs have not alleged that they actually paid more than a reasonable rate as a result of the conduct of Resurrection or the hospitals. As such, dismissal of Count I is warranted. Avery v. State Farm Mutual Auto. Ins. Co., 216 Ill. 2d 100, 196, 203 (2005). (The representative plaintiff must be able to establish a claim for consumer fraud to maintain a class action).

Charity Discounts

Plaintiffs also allege that Resurrection violated the Consumer Fraud Act by failing to disclose the availability of charity care deceiving Reyes and others into believing that they were required to pay their entire bill even though they might have been eligible to receive free or reduced-fee charitable care. (Complaint, ¶134). The failure to disclose allegations are only applicable prior to January 2004, as the Complaint alleges that Resurrection began to post signs stating the availability of charity care at that time and began to reveal this information on its billing statements. (Complaint, ¶66; 107).

Even assuming that the alleged failure to notify patients of the availability of charity care is an unfair practice under the Consumer Fraud Act, Plaintiffs have not stated

a cause of action. First, there are no allegations showing that Resurrection, rather than St. Elizabeth Hospital, billed Reyes for any services or took any collection action against her. The allegations regarding Reyes all address conduct by St. Elizabeth, not Resurrection. (Complaint, ¶93-110). Plaintiffs have not alleged any facts which would allow this court to impute St. Elizabeth's actions to Resurrection on either a theory of piercing the corporate veil or apparent agency.

Second, Reyes does not allege any actual damages proximately caused by the alleged failure to disclose. Reyes does not allege that she would have applied and actually qualified for a charity discount. In fact, the allegations of the Complaint show that when Reyes did learn about the charity discount she made one attempt to find out information about the charity discount and did nothing more. (Complaint, ¶¶107-108). Reyes has never applied for a charity discount. Plaintiffs seem to believe that Resurrection is required to ask patients to apply for a charity discount and that failure to do so is an unfair practice. (Complaint, ¶110). There is no authority for this proposition.

Third, to the extent that Count II includes allegations regarding Niewinski, Niewinski has no claim for consumer fraud. Niewinski, in fact, received a charitable discount on her 2001 hospital bill. Niewinski does not allege that she received any care prior to 2001. (Complaint, ¶77; Affidavit of Gwen Jones, Ex. C). Beginning in 2002, Niewinski was covered by Medicaid. (Jones's Affidavit, Ex. B). Niewinski was not actually damaged by any failure of Resurrection to disclose the availability of charity discounts. Additionally, Niewinski, like Reyes, fails to allege any actual damages proximately caused by the alleged failure to disclose.

Because there are no facts alleged showing that either Reyes or Niewinski has a consumer fraud claim based upon the failure to disclose the availability of charitable discounts, dismissal of Count II is warranted. Avery, 216 Ill. 2d at 203 (2005). Dismissal of the same allegations of a failure to disclose the availability of a charity discount in Count III is also warranted.

Collection Practices

In Count III, Plaintiffs allege that Resurrection engages in unfair collection practices. Plaintiffs, however, allege only that Resurrection expects payment for its services and pursues this payment through lawsuits and wage garnishment. (Complaint, ¶141). Filing collection lawsuits is not an unfair practice. Lyddon v. Shaw, 56 Ill. App. 3d 815 (2d Dist. 1978)(the only cause of action for the alleged wrongful filing of a lawsuit is an action for abuse of process of malicious prosecution.) Nor is garnishing wages pursuant to a judgment. A creditor is legally entitled to enforce its judgment and Plaintiffs cite no authority prohibiting a creditor from enforcing a judgment simply because the debtor is of limited means. Dismissal of the allegations of "aggressive collection practices" in Count III is warranted.

Breach of Contract (Count IV):

In Count IV, Plaintiffs allege that Resurrection breached its contracts with Plaintiffs by charging unreasonable rates for its services. Count IV suffers from several defects.

First, Plaintiffs have not alleged any facts showing that they had a contract with Resurrection as opposed to the individual hospitals at which they were treated. There can be no breach of contract claim against Resurrection unless it was a party to the contracts.

Second, an Agreed Order to Dismiss with leave to reinstate was entered in Resurrection Medical Center's lawsuit against Niewinski for the hospital services she received from Resurrection Medical Center in 2001. (Jones's Affidavit, Ex. A). The dismissal was predicated on Niewinski's agreement to pay monthly installments on the $22,604.71 owed which Resurrection Medical Center specifically alleged were "reasonable." Niewinski cannot maintain a breach of contract action based upon the 2001 charges. Nor can she allege a breach of contract for any other charges as she became eligible for Medicaid in 2002 thereby receiving the rates mandated for Medicaid patients.

Third, Reyes cannot state a breach of contract claim for her 1999 treatment at St. Elizabeth because judgment was entered against her for the cost of that treatment. (Alzate's Affidavit, Ex. B). Res judicata prevents Reyes from maintaining a breach of contract action. River Park, Inc. v. City of Highland Park, 184 Ill. 2d 290, 302 (1998)(Res judicata bars not only matters actually decided in the first action, but also all matters which could have been decided in the first action).

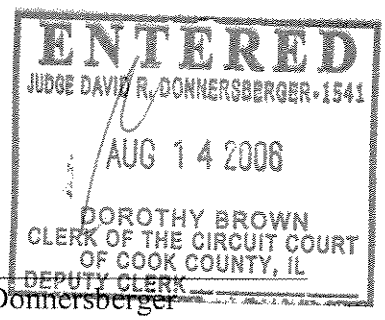
Fourth, and finally, with regard to Reyes's remaining treatment in 2001, 2002, and 2004, she has not alleged sufficient facts to support a breach of contract action. Count IV is long on legal conclusions and sparse on actual facts. Plaintiffs allege only that the rates charged were unreasonable and, therefore, Resurrection breached the contracts and unspecified damage was suffered. It is not clear whether the contracts Reyes alleges were breached were express or implied. Nor does Reyes allege that she has suffered any damages by actually paying more than a reasonable amount.

Dismissal of Count IV is warranted as neither Niewinski or Reyes has alleged a claim for breach of contract.

Declaratory Judgment (Count V):

Count V requests that this court vacate all judgments against Plaintiffs and the potential class members based upon Resurrection's alleged misrepresentations that its rates were reasonable. Plaintiffs' counsel should know that this court cannot vacate final judgments. Plaintiffs had two options: (1) to seek relief under §2-1401; or (2) to file an appeal. As this court cannot grant the requested relief, dismissal with prejudice is warranted.

IT IS HEREBY ORDERED that Counts I, II, III and IV are dismissed without prejudice. Count V is dismissed with prejudice.



Judge David R. Donnersberger

28 DAYS TO FILE AMENDED
28 DAYS TO RESPOND