[Cite as *Transition Healthcare Assoc., Inc. v. New London Healthcare*, 2012-Ohio-3411.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

Transition Healthcare Associates, Inc.	Court of Appeals No. H-10-023
Appellant	Trial Court No. CVH 20080593
v.	
New London Healthcare, etc., et al.	**DECISION AND JUDGMENT**
Appellees	Decided: July 27, 2012

* * * * *

Gregory D. Seeley, Matthew K. Seeley, and Joseph P. Dunson, for appellant.

Peter N. Lavalette and Michael I. Bernstein, for appellees.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal from a judgment of the Huron County Court of Common Pleas which granted the summary judgment motion of defendants-appellees, Tri-State Healthcare of New London, LLC, Tri-State Healthcare of Huber Heights, LLC, and Tri-State Healthcare of West Carrolton, LLC, and thereby dismissed in its entirety the action

filed by plaintiff-appellant, Transition Healthcare Associates, Inc. Appellant now challenges that judgment through the following assignments of error:

A. The trial court's conclusions a) that there is no competent, credible evidence that the Provider Agreements were executed by, for or under the authority of the appellees, and b) that the [sic] reasonable minds could only conclude that the Provider Agreements were executed by agents of the IHS entities are contrary to the deferential standards required by Civil Rule 56(C).

B. The trial court's conclusions a) that there is no competent, credible evidence that appellees received and retained for their own any monies provided to them for services provided by appellant, and b) that there is now [sic] showing that appellees retained those funds for their own benefit are contrary to the deferential standards required by Civil Rule 56(C).

C. The trial court's conclusion that there is no evidence in the record to support a finding of intentional conspiracy is contrary to the deferential standards required by Civil Rule 56(C).

D. The trial court's conclusion that there is no evidence in the record to support a finding of concealment of evidence and false statements by appellees is contrary to the deferential standards required by Civil Rule 56(C).

E. The trial court's conclusion that there is no evidence in the record to support a finding of a broken promise and detrimental reliance upon said promise is contrary to the deferential standards required by Civil Rule 56(C).

F. The trial court's conclusions a) that the record contains no viable basis for a punitive damages claim, and b) that there is no evidence in the record to support a finding of malice by appellees are contrary to the deferential standards required by Civil Rule 56(C).

{¶ 2} The undisputed facts of this case are as follows. Appellant is a provider of physical, occupational and speech therapy services to nursing and long-term care facilities. Prior to September 1, 2003, entities knows as Firelands of IHS, Inc., Spring Creek of IHS, Inc., and Elm Creek of IHS, Inc. (collectively referred to as "IHS Entities"), were the licensed operators and lessees of long-term care facilities in New London, Ohio, Huber Heights, Ohio and West Carrolton, Ohio, respectively. Those IHS Entities were subsidiaries of IHS Long Term Care, Inc., a Delaware Corporation. Appellees, Tri-State Healthcare of New London, LLC, Tri-State Healthcare of Huber Heights, LLC and Tri-State Healthcare of West Carrolton, LLC, are Florida corporations which, in September 2003, registered in the state of Ohio as foreign limited liability corporations. Appellees registered in the state of Ohio with the intent to take over the tenancies of the long-term healthcare facilities operated by the IHS Entities and doing business as New London Healthcare Center, Elm Creek Nursing Center and Spring Creek Nursing and Rehabilitation Center. Appellees also registered fictitious names in the state of Florida corresponding to each of the long-term care facilities using the names New London Healthcare Center, Elm Creek Nursing Center, and Spring Creek Nursing and Rehabilitation Center.

{¶ 3} Appellant entered into provider agreements with each of the long-term care facilities to provide therapy services to the residents of those facilities. The first agreement was between appellant and New London Healthcare. That agreement was undated but was signed by Daniel Grant as Regional Director of New London Healthcare. The second agreement, between appellant and Elm Creek Nursing Center, was dated April 1, 2004, and was signed by Patricia Walter as Administrator for Elm Creek. The third agreement, between appellant and Spring Creek Nursing and Rehabilitation Center, was also undated and signed by Daniel Grant as Regional Director of Spring Creek. Each of these agreements was signed on behalf of appellant by Michael A. Freeman in his capacity as President of Transition Healthcare Associates, LLC. The record indicates that the signatories for each of the facilities were employees of the respective IHS Entities operating each facility. The three provider agreements are identical in all respects except for the identification of the facility entering into the contract and except for the commencement date of the agreements. The commencement date of the New London Healthcare agreement was March 1, 2004, whereas the commencement date of the Elm Creek and Spring Creek agreements was April 1, 2004. The agreements renewed automatically for successive one-year terms unless terminated by either party by written notice 90 days in advance of the renewal year.

{¶ 4} A third entity, Tri-State Health Investors, LLC ("Tri-State"), was a business located in Florida, that provided employee management and accounts payable services to the long-term care facilities at issue. Those back-office support services were provided

pursuant to an agreement between Tri-State and the IHS Entities. Each of the facilities would forward invoices to Tri-State for processing and for payment to be sent to the appropriate service provider. Each of the long-term care facilities would deposit funds for Tri-State to use to pay the facilities' invoices. Charles Menten, who processed the accounts payable at Tri-State, would disburse the available funds received from each of the facilities each month by paying down the account to a zero balance. During the period of March 1, 2004, through September 30, 2006, appellant submitted invoices to each of the long-term care facilities named in the provider agreements. The facilities would then forward the invoices to Tri-State for payment and processing. Many of the invoices were paid by checks issued by Tri-State. Some of the invoices, however, went unpaid and are now the subject of this litigation.

{¶ 5} It is noteworthy that appellant filed suit against Tri-State Health Investors, LLC, in the Unites States District Court for the Northern District of Ohio, seeking to collect the same amounts due that it seeks in this case. See *Transition Healthcare Assoc., Inc. v. Tri-State Health Investors, LLC*, N.D.Ohio No. 3:06-CV-2859, 2008 WL 820456 (Mar. 25, 2008). In that case, appellant similarly alleged breach of contract, suit on account and unjust enrichment. Tri-State filed a motion for summary judgment in which it asserted that there was no contractual relationship between Tri-State and appellant, that Tri-State did not operate the facilities at issue, and that Tri-State did not receive the benefit of appellant's services. The district court granted the motion on the ground that appellant failed to present any evidence that Tri-State was the owner or corporate alter

ego of the long-term care facilities. The Sixth Circuit Court of Appeals affirmed. *See Transition Health Care Assoc., Inc. v. Tri-State Health Investors, LLC,* 6th Cir. No. 08-3496, 2009 WL 67869 (Jan. 9, 2009).

{¶ 6} Although appellees established the business entities mentioned above for the purpose of taking over the long-term care facilities, appellees never acquired the licenses to operate the facilities from the state of Ohio and never obtained landlord approval for appellees to assume the lease for each of the facilities. Accordingly, no change of ownership ever occurred, appellees never became the lessees or owners of the long-term care facilities and never became licensed to operate those facilities. Further, Article Nine of the provider agreements states that "[n]either Provider nor Facility may assign or subcontract its rights or obligations under this Agreement without the prior written consent of the other contracting party." There is no evidence in the record indicating there was ever an assignment of rights or obligations under the provider agreements to appellees.

{¶ 7} On September 30, 2006, the IHS Entities, which had been operating the long-term care facilities, transferred their tenancy and their operating licenses to third parties who are not involved in this litigation.

{¶ 8} In its amended complaint filed against the Tri-State Healthcare entities, appellant asserted that during the years 2003 to 2006, or some portion thereof, appellees operated nursing homes and/or skilled nursing facilities in the state of Ohio. The complaint alleged that Tri-State Healthcare of New London, LLC, operated a nursing

home and/or skilled nursing facility in New London, Ohio, did business as New London Healthcare Center, New London Health Care Center and/or TriState of New London, that New London Healthcare Center was registered by Tri-State Healthcare of New London, LLC as a "fictitious name" in the state of Florida, and that Tri-State Healthcare of New London, LLC, listed as its statutory agent for the state of Ohio Barry Shisgul, at 204 West Main Street, New London, Ohio. The complaint further alleged that Tri-State Healthcare of West Carrolton, LLC, operated a nursing home and/or skilled nursing facility in West Carrolton, Ohio, did business as Elm Creek Nursing Center and/or TriState of West Carrolton, that Elm Creek Nursing Center was registered by Tri-State Healthcare of Huber Heights, LLC, as a "fictitious name" in the state of Florida, and that Tri-State Healthcare of West Carrolton, LLC, listed as its statutory agent for the state of Ohio Barry Shisgul, at 115 Elmwood Circle, West Carrolton, Ohio. The complaint then alleged that Tri-State Healthcare of Huber Heights, LLC, operated a nursing home and/or skilled nursing facility in Huber Heights, Ohio, did business as Spring Creek Nursing and Rehabilitation Center and/or TriState of Huber Heights, that Spring Creek Nursing and Rehabilitation Center was registered by Tri-State Healthcare of Huber Heights, LLC, as a "fictitious name" in the state of Florida, and that Tri-State Healthcare of Huber Heights, LLC, listed as its statutory agent for the state of Ohio, Barry Shisgul, at 5440 Charlesgate Road, Huber Heights, Ohio.

{¶ 9} The complaint next alleged that with respect to the long-term care facilities at issue, Tri-State Healthcare of New London, LLC, was the assignee of and/or successor

in interest to Firelands of IHS, Inc., that Tri-State Healthcare of West Carrolton, LLC, was the assignee of and/or successor in interest to Elm Creek of IHS, Inc., and that Tri-State Healthcare of Huber Heights, LLC, was the assignee of and/or successor in interest to Spring Creek of IHS, Inc. The complaint then asserted that appellant entered into separate provider agreements with representatives and/or agents of each appellee, and/or a predecessor or assignor of each appellee, to provide rehabilitation programs and therapy services at each of the long-term care facilities at issue, that each appellee agreed to receive and pay for those services, that appellant provided the services pursuant to the provider agreements but that appellees failed and refused to make payments for some of those services as required by the provider agreements. Based on these and other allegations in the complaint, appellant asserted claims for breach of contract (Count I), suit on account (Count II), unjust enrichment (Count III), civil conspiracy (Count IV), fraud (misnumbered as Count VI, referred to herein as Count V), promissory estoppel (Count VI), and punitive damages (Count VII).

{¶ 10} Upon review of appellees' motion for summary judgment and appellant's brief in opposition, as well as the numerous exhibits submitted in support of each, the lower court concluded that construing the undisputed facts in a light most favorable to appellant, there remained no genuine issue of material fact on any of the claims, and that appellees were entitled to judgment as a matter of law. It is from that judgment that appellant now appeals.

{¶ 11} Appellate review of a trial court's grant of summary judgment is de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Accordingly, we review the trial court's grant of summary judgment independently and without deference to the trial court's determination. *Brown v. Scioto Cty. Bd. of Commrs.*, 87 Ohio App.3d 704, 711, 622 N.E.2d 1153(4th Dist.1993). Summary judgment will be granted only when there remains no genuine issue of material fact and, when construing the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978); Civ.R. 56(C). The burden of showing that no genuine issue of material fact exists falls upon the party who moves for summary judgment. *Dresher v. Burt*, 75 Ohio St.3d 280, 294, 662 N.E.2d 264 (1996). However, once the movant supports his or her motion with appropriate evidentiary materials, the moving party "may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Civ.R. 56(E).

{¶ 12} Appellant's first assignment of error challenges the trial court's grant of appellees' motion for summary judgment on appellant's claims for breach of contract and suit on account. The breach of contract and suit on account claims alleged that appellees were obligated under the provider agreements to pay appellant for therapy services rendered, that appellees failure to pay for services rendered constituted a breach of

contract and that there was due on account from Tri-State Healthcare of New London, LLC, $48,302.21, from Tri-State Healthcare of West Carrolton, LLC, $65,855.04, and from Tri-State Healthcare of Huber Heights, LLC, $129,569.64.

{¶ 13} A contract is a promise or a set of promises, for the breach of which the law provides a remedy. *Cleveland Builders Supply Co. v. Farmers Ins. Group of Cos.*, 102 Ohio App.3d 708, 712, 657 N.E.2d 851 (8th Dist.1995). The elements of a breach of contract claim are the existence of a contract, performance by the plaintiff, breach by the defendant, and damage or loss to the plaintiff. *Doner v. Snapp*, 98 Ohio App.3d 597, 600, 649 N.E.2d 42 (2d Dist.1994). A plaintiff must present evidence on all of these elements to successfully prosecute a breach of contract claim. *Id.* The essential elements of a contract "'include an offer, acceptance, contractual capacity, consideration (the bargained for legal benefit and/or detriment), a manifestation of mutual assent and legality of object and of consideration.'" *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, 770 N.E.2d 58, ¶ 16, quoting *Perlmuter Printing Co. v. Strome, Inc.*, 436 F.Supp. 409, 414 (N.D.Ohio 1976). In an action on an account, a plaintiff is required to prove all the necessary elements of a contract. *Am. Sec. Serv. v. Baumann*, 32 Ohio App.2d 237, 289 N.E.2d 373 (10th Dist.1972), paragraph two of the syllabus. The action "exists to avoid the multiplicity of suits necessary if each transaction between the parties (or item on the account) would be construed as constituting a separate cause of action. Rather, the cause of action exists only as to the balance that may be due one of the parties as a result of the series of transactions." *Id.* at 242.

{¶ 14} In the proceedings below, appellees presented evidence in support of their argument that they never entered into contracts with appellant and that they were not parties to the contracts known as "provider agreements." Of particular importance is the undisputed evidence that throughout the terms of the provider agreements, all three of the long-term care facilities at issue were owned by the IHS Entities. That is, despite the fact that appellees, the Tri-State Entities, were registered in the state of Ohio for the purpose of taking over the tenancies from Firelands of IHS, Inc., which operated under the trade name IHS of New London at Firelands, Spring Creek of IHS, Inc., which operated under the trade name of Spring Creek Nursing and Rehabilitation Center, and Elm Creek of IHS, Inc., which operated under the trade name IHS of West Carrolton at Elm Creek, they never did, and the IHS Entities remained the sole tenants and licensed operators of the long-term care facilities at issue until they terminated those tenancies in September 2006. Moreover, it is undisputed that Daniel Grant and Patricia Walter, who signed the provider agreements, did so on behalf of the IHS Entities. Finally, it is undisputed that during the time period at issue in this case, 2003 through 2006, the licenses for the facilities, which were renewed annually through the Ohio Department of Health, were all held by and renewed by the IHS Entities.

{¶ 15} Appellant contends that because the provider agreements make no mention of the IHS Entities, but were rather made in the name of appellees' fictitious name registrations, appellees were parties to the agreements. Michael Freemen, president of appellant, however, testified at his deposition that an attorney retained by appellant

drafted the provider agreements. Freeman further testified that in determining the name to put on the provider agreements, he simply looked on the door of each facility. Freeman admitted that he did not make any other attempt to verify who the licensed operator or legal tenant of each facility was prior to executing the provider agreements.

{¶ 16} While it is true that appellees registered the names of New London Healthcare Center, Elm Creek Nursing Center and Spring Creek Nursing and Rehabilitation Center, as fictitious names in the state of Florida, those registrations along with the other corporate filings were done for the purpose of taking over the IHS Entities. Presumably, the provider agreements would have been assigned to appellees at that time. Appellees, however, never acquired the licenses to operate the facilities or authorization from the landlord to assume the leases. The IHS Entities were apparently tied up in bankruptcy litigation and lease issues, as discussed in *Integrated Health Services v. THCI*, 417 F.3d 953 (8th Cir.2005).

{¶ 17} Finally, Ken Tabler, the comptroller for IHS Long Term Care, Inc., the parent company of the IHS Entities, stated in his affidavit that during the period of January 1, 2004 through September 30, 2006, the only tenants and licensed operators of the facilities at issue were the IHS Entities, and that all provider numbers for Medicare and Medicaid attributable to the facilities were those of the IHS Entities. He further stated that appellees never managed, operated or provided clinical services to residents of the facilities, that any and all contracts executed by employees of the facilities during this time period were executed by and on behalf of the IHS Entities, and that any and all

benefits received from services provided by vendors to residents of the facilities were received by the IHS Entities as the licensed operators and tenants.

{¶ 18} Accordingly, it is undisputed that the provider agreements were not entered into between appellant and appellees and, therefore, no valid contract existed between the parties to this action. Absent a valid contract, appellant cannot prevail on its claims for breach of contract or suit on account, and the first assignment of error is not well-taken.

{¶ 19} In the second assignment of error, appellant challenges the trial court's dismissal of its claim for unjust enrichment. In its complaint, appellant alleged that appellees have been unjustly enriched by receiving the benefits of services provided by appellant without compensating appellant for those services.

{¶ 20} In Ohio, unjust enrichment is a claim under quasi-contract law that arises when a person is in receipt of benefits that he is not justly and equitably entitled to retain. *Hummel v. Hummel*, 133 Ohio St. 520, 527, 14 N.E.2d 923 (1938). To prevail on a claim of unjust enrichment, a plaintiff must prove (1) a benefit conferred by plaintiff upon the defendant, (2) knowledge by the defendant of the benefit, and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment. *L & H Leasing Co. v. Dutton*, 82 Ohio App.3d 528, 534, 612 N.E.2d 787 (3d Dist.1992), citing *Hambleton v. R.G. Barry Corp.*, 12 Ohio St.3d 179, 183, 465 N.E.2d 1298 (1984).

{¶ 21} Appellant points to a series of bank transactions in September 2006, to support its contention that genuine issues of material fact remain with regard to its unjust enrichment claim. In particular, appellant asserts that these bank transactions establish

that appellees, not the IHS Entities, were the de facto owners/operators of the long-term care facilities and were therefore the entities which benefited from payments made to the facilities by third party payors (insurance companies, Medicaid, Medicare, etc.) and intended for appellant.

{¶ 22} Contrary to appellant's assertions, the record establishes that the long-term care facilities at issue were operated by the IHS Entities during the entire term of the provider agreements. Although the record does indicate that Tri-State Health Investors, LLC, provided administrative and back-office support to the facilities, including processing invoices for each of the facilities, there is no indication that any benefit was conferred upon any of the appellees by appellant in this action. Rather, the services provided by appellant were rendered at each facility for the benefit of the residents of each IHS Entity. The IHS Entities, at all times relevant to this suit, were the state-approved licensed operators of each facility and the lessees of each property. While appellant has shown that certain funds were deposited in an account under the name New London Healthcare Center Patient Trust Fund, the record indicates that this account was established and used to hold funds in trust for the residents of the facilities to pay for services provided to residents that were not reimbursed by insurance providers, Medicare or Medicaid.

{¶ 23} It is undisputed that funds were transferred from the individual facilities to Tri-State Health Investors, LLC, for payment of the facilities' bills, including those of service providers like appellant. Charles Menten, an employee of Tri-State Health

Investors, LLC, would confirm with management of the individual facilities that the bills were accurate before paying them. Each month, all of the funds received from the facilities were paid out and the accounts were reduced to a zero balance. When the funds that were transferred from the facilities were not adequate to pay the bills, Menten would determine which invoices to pay on behalf of the facilities, i.e. on behalf of the IHS Entities. There is simply no evidence that appellees herein retained any benefit from appellant's provision of therapy services pursuant to the provider agreements.

{¶ 24} Accordingly, given the undisputed evidence, reasonable minds could only conclude that appellees are entitled to judgment as a matter of law on appellant's claim for unjust enrichment, and the second assignment of error is not well-taken.

{¶ 25} In its third assignment of error, appellant asserts that the trial court erred in granting appellees summary judgment on appellant's claim of civil conspiracy. In *Gosden v. Louis*, 116 Ohio App.3d 195, 219, 687 N.E.2d 481 (9th Dist.1996), the court explained:

> Civil conspiracy in Ohio is "a malicious combination of two or more persons to injure another in person or property, in a way not competent for one alone, resulting in actual damage." *Kenty v. Transamerica Premium Ins. Co.* (1995), 72 Ohio St.3d 415, 419, 650 N.E.2d 863, 866, citing *LeFort v. Century 21-Maitland Realty Co.* (1987), 32 Ohio St.3d 121, 126, 512 N.E.2d 640, 645, citing *Minarik v. Nagy* (1963), 8 Ohio App.2d 194, 196, 26 O.O.2d 359, 360, 193 N.E.2d 280, 281-282. Although the opinions

in neither of these Ohio Supreme Court cases contained further elaboration on this definition, in the *Minarik* case, * * * the Supreme Court quoted with apparent approval the rule that an underlying unlawful act is required before a civil conspiracy claim can be successful. *Minarik*, *supra*, at 195, 26 O.O.2d at 359-360, 193 N.E.2d at 280-281, citing 1 Cooley on Torts (4 Ed.) 234, Section 734. See also *Palmer v. Westmeyer* (1988), 48 Ohio App.3d 296, 301, 549 N.E.2d 1202, 1207-1208, and *Hill v. MTD Products, Inc.* (Apr. 10, 1996), Medina App. Nos. 2477-M and 2483-M, unreported, 1996 WL 170360, at *5.

{¶ 26} In support of its assignment of error, appellant argues that appellees worked in concert with Tri-State Health Investors, Avi Klein and Charles Menten to frustrate appellant's ability to collect the remainder of its invoices and that there is competent evidence in the record that these alleged conspirators entered into a mutual or common understanding or design in September 2006, to purposely, intentionally and wrongfully withhold payment for appellant's therapy services. Appellant, however, has not identified that evidence. On this claim, we find the following statement by the trial court to be directly on point:

While the names of the entities could appear confusing, especially when the IHS entities used the same name in doing business as those registered as fictitious names on behalf of the Defendants, the evidence shows the confusion stems from the Defendant's [sic] ultimately

> unsuccessful attempt to take over the tenancy of the facilities and obtain the operating licenses, and no evidence has been introduced to show this confusion was an intentional design to some how [sic] deprive Plaintiff of payment [f]or their services.

{¶ 27} Given the undisputed evidence, reasonable minds could only conclude that appellees are entitled to judgment as a matter of law on appellant's claim for civil conspiracy and the third assignment of error is not well-taken.

{¶ 28} Appellant's fourth assignment of error challenges the trial court's grant of appellees' motion for summary judgment on appellant's fraud claim. In its complaint, appellant alleged that each of the appellees, along with their representatives, agents and/or affiliates, made false representations regarding the ownership of the long-term care facilities and who bore the responsibility for payment for appellant's therapy services provided to residents of those facilities, that the appellees made the false representations with the knowledge of their falsity or with utter disregard and recklessness about their falsity, that the representations were material to the transactions between appellant and each of the appellees, that the representations were made with the intent of misleading appellant, that appellant was justified in relying on the representations and did so to its detriment, that due to its reliance on appellees' false representations and concealment of facts, appellant was induced into signing the provider agreements and entering into a business relationship to provide therapy services to

appellees, and that appellant was directly and proximately injured by its reliance on appellees' representations and concealment of facts.

{¶ 29} In order to prove fraud, a party must demonstrate

> (a) a representation or, where there is a duty to disclose, concealment of a fact, (b) which is material to the transaction at hand, (c) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred, (d) with the intent of misleading another into relying upon it, (e) justifiable reliance upon the representation or concealment, and (f) a resulting injury proximately caused by the reliance. *Russ v. TRW, Inc.*, 59 Ohio St.3d 42, 49, 570 N.E.2d 1076 (1991).

{¶ 30} Appellant based its fraud claim on the allegation that appellees or their agents made false representations regarding the ownership of the long-term care facilities and that the representations induced appellant to enter into the provider agreements with the facilities. At his deposition, however, Michael Freeman, the president of Transition Healthcare Associates and the individual from that entity who signed the provider agreements on behalf of appellant, admitted that prior to entering into the provider agreements, he never had a conversation with anyone about who were the lawful tenants of the facilities and that the only people he spoke to were the facilities' administrators. Those administrators were employees of the IHS Entities who owned the facilities until September 2006. In the proceedings below, appellant did not counter this evidence with

any evidence that could lead a reasonable jury to conclude that appellees fraudulently induced appellant into entering into the provider agreements.

{¶ 31} The trial court, therefore, did not err in granting appellees summary judgment on appellant's claim of fraud, and the fourth assignment of error is not well-taken.

{¶ 32} In its fifth assignment of error, appellant contends that the trial court erred in granting appellees summary judgment on appellant's claim of promissory estoppel. Under that claim, appellant alleged that appellees, their representatives, agents and/or affiliates, knowingly made clear and unambiguous promises to pay appellant for services rendered by appellant pursuant to the provider agreements, that appellant reasonably and foreseeably relied on those promises, and that as a direct and proximate result of that reliance, appellant has been injured in an amount equal to the amount of the unpaid invoices.

{¶ 33} In *Olympic Holding Co., L.L.C. v. ACE Ltd.*, 122 Ohio St.3d 89, 2009-Ohio-2057, 909 N.E.2d 93, ¶ 39, the Supreme Court of Ohio explained the doctrine of promissory estoppel:

> An action for damages under promissory estoppel provides an adequate remedy for an unfulfilled or fraudulent promise. "The doctrine of promissory estoppel comes into play where the requisites of contract are not met, yet the promise should be enforced to avoid injustice." *Doe v. Univision Television Group, Inc.* (Fla.App.1998), 717 So.2d 63, 65, citing

Restatement of the Law 2d, Contracts (1981) Section 90; see also *Cohen v. Cowles Media Co.* (Minn.1992), 479 N.W.2d 387, 389. We adopted promissory estoppel through the Restatement of the Law 2d, Contracts (1973), Section 90 in *Talley v. Teamsters, Chauffeurs, Warehousemen, & Helpers, Local No. 377* (1976), 48 Ohio St.2d 142, 146, 2 O.O.3d 297, 357 N.E.2d 44. "To be successful on a claim of promissory estoppel, '[t]he party claiming the estoppel must have relied on conduct of an adversary in such a manner as to change his position for the worse and that reliance must have been reasonable in that the party claiming estoppel did not know and could not have known that its adversary's conduct was misleading.'" *Shampton v. Springboro*, 98 Ohio St.3d 457, 2003-Ohio-1913, 786 N.E.2d 883, ¶ 34, quoting *Ohio State Bd. of Pharmacy v. Frantz* (1990), 51 Ohio St.3d 143, 145, 555 N.E.2d 630, citing *Heckler v. Community Health Serv.* (1984), 467 U.S. 51, 59, 104 S.Ct. 2218, 81 L.Ed.2d 42.

{¶ 34} In the instant case, as the discussion of the previous counts above shows, there has been no evidence to support a finding that appellees made clear and unambiguous promises to pay appellant for services rendered pursuant to the provider agreements. Further, appellant offered no evidence of any other agreement or promise, written or oral, between appellant and appellees as to any amounts due appellant for services provided to the long-term care facilities run by the IHS Entities. It is clear from the record that Tri-State Health Investors, LLC, paid appellant's invoices on behalf of the

IHS Entities in the course of its accounts payable role. Although bank accounts were set up on behalf of appellees in anticipation of the change in licensed ownership of the facilities, that change in ownership never occurred and the bills were paid through those accounts on behalf of the IHS Entities. Moreover, any promises to pay appellant's invoices were made by Charles Menten, the accounts payable employee of Tri-State Health Investors, LLC, which is not a party to this lawsuit.

{¶ 35} Accordingly, there is no genuine issue of material fact with regard to appellant's claim of promissory estoppel, and appellees were entitled to summary judgment on this claim. The fifth assignment of error is not well-taken.

{¶ 36} Finally, appellant challenges the trial court's order granting summary judgment to appellees on appellant's claim for punitive damages.

{¶ 37} In its claim for punitive damages, appellant asserted that the acts and omissions of appellees, their agents, representatives, and/or affiliates, previously set forth in the complaint, were committed with malice and constituted aggravated fraud, thereby entitling appellant to an award of punitive damages. It is well-settled, however, that regardless of whether a plaintiff's claims are based on tort or breach of contract, the plaintiff cannot recover punitive damages absent an award of compensatory damages. *Niskanan v. Giant Eagle, Inc.*, 122 Ohio St.3d 486, 2009-Ohio-3626, 912 N.E.2d 595, paragraph one of the syllabus; *Stockdale v. Baba*, 153 Ohio App.3d 712, 2003-Ohio-4366, 795 N.E.2d 727, ¶ 116-117 (10th Dist.). Because the lower court properly granted appellees' motion for summary judgment on all of appellant's underlying claims,

appellant has no independent cause of action for punitive damages. The trial court, therefore, did not err in granting appellees' summary judgment on the punitive damages claim, and the sixth assignment of error is not well-taken.

{¶ 38} On consideration whereof, the court finds that substantial justice has been done the party complaining and the judgment of the Huron County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, P.J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE