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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOHN PRODROMOS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 10 L 8281
)	
STACEY VRAME,)	Honorable
)	Joan Powell,
Defendant-Appellee.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court did not err in granting defendant's section 2-615 motion to dismiss where plaintiff's amended complaint failed to state a cause of action.

¶ 2 Plaintiff, John Prodromos, appeals from an order of the circuit court of Cook County dismissing with prejudice his amended complaint against his sister, defendant Stacey Vrame, pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2010)). On appeal, plaintiff contends the circuit court erred in dismissing his complaint where he sufficiently stated causes of action for breach of contract, breach of fiduciary duty and, promissory estoppel. We affirm.

¶ 3 The record shows, in relevant part, plaintiff filed a verified complaint against defendant for breach of an oral partnership agreement and breach of fiduciary duty. In that complaint, plaintiff alleged he and defendant entered into a partnership in which plaintiff would purchase four burial

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plots adjacent to plots already owned by defendant in Memorial Park Cemetery, Skokie, Illinois. Plaintiff and defendant then "would agree upon a monument" to be paid for by defendant and defendant would pay for and effectuate the transfer of the remains of their paternal grandmother and two uncles (the interred remains) from their present interment in Elmwood Park Cemetery, Elmwood, Illinois, to Memorial Park Cemetery. After plaintiff purchased four burial plots for \$12,095, defendant informed him she would not move the interred remains to Memorial Park Cemetery, and stated her desire to move their father's remains from Memorial Park Cemetery to Elmwood Park Cemetery. Defendant also obtained the consent of two siblings to do so, and took steps to move their father to a mausoleum in Elmwood Park Cemetery.

¶ 4 Defendant moved to strike and dismiss plaintiff's complaint pursuant to sections 2-615 and 2-619 (735 ILCS 5/2-619 (West 2010)) of the Code. The circuit court granted her motion, dismissed the complaint without prejudice, and gave plaintiff 14 days to file an amended complaint.

¶ 5 Plaintiff then filed the verified-amended complaint at bar seeking relief on theories of breach of contract, breach of fiduciary duty and, promissory estoppel. Plaintiff alleged, therein, that defendant "offered" to purchase "a monument" if plaintiff purchased the four burial plots adjacent to the plots she already owned in Memorial Park Cemetery. Defendant "agreed" their father and the interred remains would be buried in her plots; plaintiff "agreed" defendant would pay to transfer the interred remains from Elmwood Park Cemetery to Memorial Park Cemetery; both "agreed" the names of the deceased would be inscribed on defendant's side of the monument and; plaintiff "would have the right" to inscribe four names on his side of the monument.

¶ 6 Plaintiff then purchased the four burial plots for \$12,095, and he and defendant discussed the monument with a representative of Memorial Park Cemetery, who was directed by defendant "to send Plaintiff some possible monuments at a cost Defendant was willing to bear so that Plaintiff could choose a design." Thereafter, however, defendant informed him she would not move the interred remains to Memorial Park Cemetery; stated her desire to move their father's remains from

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Memorial Park Cemetery to Elmwood Park Cemetery; obtained the consent of two siblings to do so and; took steps to move their father to a mausoleum in Elmwood Park Cemetery.

¶ 7 Plaintiff specifically alleged defendant breached their oral contract by failing to purchase a monument and relocate the interred remains to Memorial Park Cemetery. He also alleged defendant owed him a fiduciary duty because she was a sibling with "superior knowledge as to her intentions with regard to the burial plots and the memorial" and a participant in their "joint venture to purchase eight adjacent burial plots in order to have the ability to place a monument thereon." Plaintiff also alleged defendant breached her duty by making the decision to move their father's remains to Elmwood Park Cemetery and by taking steps to move his remains to a mausoleum in Memorial Park Cemetery. Lastly, in his count for promissory estoppel, plaintiff alleged he spent \$12,095 on four burial plots in reliance upon defendant's "unambiguous promise" to purchase a monument and pay for the interred remains to be relocated. In each count, plaintiff sought damages in the amount of \$12,095. Additionally, in the breach-of-contract count, plaintiff sought an order requiring defendant to "pay for the monument or, in the alternative for damages equal to the value of [t]he cost of a monument;" an order directing defendant to pay for and move the interred remains from Elmwood Park Cemetery to Memorial Park Cemetery and; an order restraining defendant from selling her burial plots at Memorial Park Cemetery.

¶ 8 Defendant moved to strike and dismiss the amended complaint pursuant to sections 2-615 and 2-619 of the Code. Defendant asserted plaintiff was bound by his admission in his original verified complaint that the parties "would agree upon a monument" and, in his amended complaint, plaintiff did not plead essential terms of the contract—such as the design and cost of the monument—and who would be responsible for obtaining the consent of relatives prior to relocating the interred remains. She further asserted that a fiduciary relationship did not arise merely because she and plaintiff are siblings and that promissory estoppel was unavailable where there was no unequivocal promise or reasonable reliance.

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¶ 9 Following a hearing on defendant's motion, the circuit court found plaintiff failed to allege sufficient facts to establish a cause of action for breach of contract, noting: "the terms of the monument itself and the discussion about the monument are unclear and ambiguous" and a contract to move the remains of the deceased could not be enforced. The court also found there was no fiduciary relationship between defendant and plaintiff and defendant's alleged promise was ambiguous for purposes of promissory estoppel. Accordingly, the court dismissed the amended complaint with prejudice pursuant to section 2-615 of the Code for failure to state a cause of action. Defendant now challenges that dismissal.

¶ 10 A motion to dismiss under section 2-615 challenges the legal sufficiency of a complaint based on defects apparent on its face. *Simpkins v. CSX Transp., Inc.*, 2012 IL 110662, ¶ 13. We review *de novo* an order granting such a motion and accept as true all well-pleaded facts and reasonable inferences which may be drawn therefrom. *Id.* We also construe the allegations in the complaint in the light most favorable to plaintiff and will not dismiss a cause of action unless it is clearly apparent that no set of facts can be proved which would entitle plaintiff to recovery. *Id.*

¶ 11 Plaintiff first claims he sufficiently stated a cause of action for breach of contract. To establish such cause, plaintiff must allege: (1) the existence of a valid and enforceable contract; (2) substantial performance by plaintiff; (3) a breach by defendant and; (4) resultant damages. *W.W. Vincent and Co. v. First Colony Life Ins. Co.*, 351 Ill. App. 3d 752, 759 (2004).

¶ 12 Plaintiff also claims he properly pleaded a valid oral contract; that he substantially performed pursuant to the contract; that defendant abandoned the agreement; and that he was damaged as a result of the breach. Defendant responds that plaintiff failed to plead a valid and enforceable contract where he did not allege the essential terms of the agreement in the amended complaint.

¶ 13 The formation of a valid contract includes an offer and acceptance, consideration and, definite and certain terms. *Zirp-Burnham, LLC v. E. Terrell Associates, Inc.*, 356 Ill. App. 3d 590, 600 (2005). This court has previously recognized: "[i]n order for a valid contract to be formed, an

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'offer must be so definite as to its material terms or require such definite terms in the acceptance that the promises and performances to be rendered by each party are reasonably certain.' " *Rose v. Mavrakis*, 343 Ill. App. 3d 1086, 1090 (2003) (quoting *Academy Chicago Publishers v. Cheever*, 144 Ill. 2d 24, 29 (1991)). In other words, a contract is only enforceable where its terms and provisions enable the court to determine what the parties have agreed to do. *Id.* at 1091.

¶ 14 Here, plaintiff alleged in his amended complaint that defendant offered to purchase a monument if he purchased four burial plots adjacent to the plots she already owned in Memorial Park Cemetery. This alleged offer does not indicate how much money defendant was to spend on the monument, what the design of the monument would be, who would decide the design, when the monument was to be purchased or erected, or how agreement would be reached between plaintiff and defendant on those matters. We are, therefore, unable to ascertain the exact agreement of the parties, as it contains "major unresolved uncertainties." *Academy Chicago Publishers*, 144 Ill. 2d at 31. Further, the lack of adequate terms for compliance in the alleged agreement provides no basis for determining when a breach has occurred and, thus, the agreement is not a valid and enforceable contract. *Id.* at 30.

¶ 15 There is also no factual allegation in the amended complaint that defendant ever offered to move the interred remains. Rather, plaintiff merely alleged defendant "informed" him "that she wanted to move" the interred remains to Memorial Park Cemetery and "[p]laintiff agreed that [defendant] would pay for the cost of transferring their remains." We, thus, find plaintiff failed to allege mutual assent between the parties on a term requiring defendant to pay for and effectuate the transfer of the interred remains and, without such assent, there was no valid contract as to that matter either. *Corrugated Metals, Inc. v. Industrial Comm'n*, 184 Ill. App. 3d 549, 554 (1989).

¶ 16 Additionally, plaintiff sought both damages for breach of the contract or, in the alternative, specific performance of the purported contract. In such a case, "the law requires a greater deal of specificity than is demanded for other purposes." *McCormick Road Associates, L.P. II v. Taub*, 276

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Ill. App. 3d 780, 783 (1995) (quoting *Cinman v. Reliance Federal Savings & Loan Association*, 155 Ill. App. 3d 417, 423-24 (1987)). As discussed, the alleged contract lacks essential terms and is too indefinite to be enforced. Plaintiff's complaint was insufficient to sustain his claim for specific performance relief.

¶ 17 Finally, we do not dispute the proposition of law cited by plaintiff, that a contract may be established by circumstances showing the parties intended to contract. *Gaffney v. McCarron*, 45 Ill. App. 3d 944, 946 (1977). However, simply pleading an intent to contract is not a substitute for pleading the formation of a valid and enforceable contract. *Academy Chicago Publishers*, 144 Ill. 2d at 29. Also, plaintiff's claim that the circuit court's dismissal of his amended complaint pursuant to section 2-615 was improper as a matter of law, where the court found terms in the alleged oral contract to be "ambiguous" is of no import here, as it is well-settled that a reviewing court may affirm the decision of the trial court on any basis supported by the record, regardless of the basis relied upon by the lower court. *Doe v. PSI Upsilon Intern.*, 2011 IL App (1st) 110306, ¶ 11. We thus conclude for the reasons stated, that plaintiff's breach of contract claim was properly dismissed pursuant to section 2-615 for failure to state a cause of action. *Simpkins*, 2012 IL 110662, ¶ 13; *W.W. Vincent Co.*, 351 Ill. App. 3d at 759.

¶ 18 Plaintiff alternatively claims he sufficiently stated a cause of action for promissory estoppel. To establish a cause of action for promissory estoppel, plaintiff must prove: (1) defendant made an unambiguous promise to him; (2) that plaintiff relied on that promise; (3) that the reliance was expected and foreseeable by defendant and; (4) that plaintiff relied on the promise to his detriment. *Newton Tractor Sales, Inc. v. Kubota Tractor Corp.*, 233 Ill. 2d 46, 51 (2009).

¶ 19 Here, plaintiff alleged he spent \$12,095 on four burial plots in reliance upon defendant's "unambiguous promise" to purchase a monument and pay for the interred remains to be relocated. As discussed above, however, defendant's alleged promise to purchase "a monument" did not indicate how much she would pay for it, did not indicate the design or type of monument and, it is

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unclear exactly what was promised—the alleged promise is, thus, ambiguous. The amended complaint is also devoid of any factual allegation that defendant promised to relocate the interred remains. We, thus, find the amended complaint does not contain sufficient factual allegations of an unambiguous promise to support a cause of action for promissory estoppel. *Id.* Furthermore, *Quake Const., Inc. v. American Airlines, Inc.*, 141 Ill. 2d 281 (1990), cited by plaintiff, is factually distinguishable from the case at bar. In *Quake*, plaintiff bid on a construction project and received a letter of intent which specifically set forth both the scope of work to be performed, and the amount that would be paid for such work. Here, by contrast, the alleged promise contains no cost or specifics regarding the monument.

¶ 20 Plaintiff finally claims he sufficiently stated a cause of action for breach of fiduciary duty.¹ To establish such cause, plaintiff must allege a fiduciary duty exists, the fiduciary duty was breached, and the breach proximately caused the injury of which plaintiff complains. *Tully v. McLean*, 409 Ill. App. 3d 659, 681 (2011).

¶ 21 Here, plaintiff claims defendant owed him a fiduciary duty because she was a sibling with "superior knowledge," and a participant in a joint venture. He also claims defendant breached her fiduciary duty by failing to purchase a monument and pay for the relocation of the interred remains.

¶ 22 Defendant responds that a fiduciary relationship did not exist merely because she and plaintiff are siblings, and that plaintiff failed to allege any other facts to support the existence of such a relationship. Defendant also responds there was not a joint venture because there was no contract.

¶ 23 "A fiduciary relationship exists where, by reason of friendship, agency, or business association and experience, trust and confidence are reposed by one party in another and the latter party gains an influence and superiority over the first as a result." *Id.* at 681-82. The essence of a fiduciary relationship is a relationship where one party is dominated by the other, *i.e.*, a significant

¹ Defendant has requested that we take judicial notice of the occupation of plaintiff's wife, and plaintiff's status as the named plaintiff in other unrelated lawsuits. However, these matters are irrelevant to a section 2-615 analysis, and we do not consider them here.

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degree of superiority and dominance is present. *Id.* at 683.

¶ 24 Here, in the amended complaint, plaintiff alleged defendant owed him a fiduciary duty because she is a sibling with "superior knowledge as to her intentions with regard to the burial plots and the memorial." However, the mere fact of a blood relationship does not establish a confidential or fiduciary relationship (*Perry v. Wyeth*, 25 Ill. 2d 250, 253 (1962)), and to find defendant gained superiority over plaintiff merely by being aware of her own intentions would effectively vitiate the element of superiority in a fiduciary relationship, as people are generally aware of their own intentions. We, thus, find this allegation insufficient to establish a fiduciary duty.

¶ 25 Plaintiff further alleged in the amended complaint that defendant owed him a fiduciary duty by virtue of her participation in a "joint venture to purchase eight adjacent burial plots in order to have the ability to place a monument thereon." This allegation is similarly unavailing, however, because "[e]ssential to the creation of a joint venture is the existence of a contract between the parties." *Richton v. Farina*, 14 Ill. App. 3d 697, 704 (1973). Having found plaintiff and defendant never entered into a valid and enforceable contract, we necessarily find there was no joint venture on which to predicate the existence of a fiduciary relationship (*id.* at 707) and, consequently, conclude the allegations in the amended complaint fail to state a cause of action for breach of fiduciary duty. *Tully*, 409 Ill. App. 3d at 681.

¶ 26 In closing, we note plaintiff has objected to defendant's argument that "[t]he fatal defect in the Plaintiff's appeal is that his whole argument is predicated on the Defendant's Motion to Dismiss being based on only a Section 2-615 Motion," since the motion was based both on section 2-615 and section 2-619. Plaintiff notes the court specifically dismissed his complaint pursuant to section 2-615 of the Code. We agree. The circuit court expressly dismissed the amended complaint pursuant to section 2-615 of the Code. Accordingly, we have confined our review of the propriety of the court's dismissal order to that section which was here, also found dispositive.

¶ 27 For the reasons stated, we find plaintiff failed to sufficiently state a cause of action in his

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amended complaint entitling him to relief (*Simpkins*, 2012 IL 110662, ¶ 13) and, thus, affirm the order of the circuit court of Cook County dismissing his amended complaint pursuant to section 2-615 of the Code.

¶ 28 Affirmed.