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2012 IL App (3d) 110626-U

Order filed August 14, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

JERRY L. CRABILL,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
Plaintiff-Appellant,	)	McDonough County, Illinois
	)	
v.	)	Appeal No. 3-11-0626
	)	Circuit No. 10-L-12
BANK OF AMERICA,	)	
	)	Honorable Richard H. Gambrell,
Defendant-Appellee.	)	Judge, Presiding.

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PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.  
Justices O'Brien and Wright concurred in the judgment.

**ORDER**

¶ 1 *Held:* Plaintiff's second amended complaint failed to allege the necessary elements of a breach of contract action. Thus, the trial court did not err or violate plaintiff's constitutional rights when granting the defendant's motion to dismiss.

¶ 2 On April 8, 2011, the circuit court of McDonough County dismissed plaintiff, Jerry Crabill's, second amended complaint against defendant, Bank of America. The trial court found plaintiff failed to plead the elements necessary to maintain his breach of contract action. Plaintiff

appeals, claiming, *inter alia*, the trial judge "failed to understand the breach of contract, and the right of trial" in violation of his "right to equal protection of the laws and due process."

¶ 3

### BACKGROUND

¶ 4 Plaintiff's original complaint against Bank of America, unnamed individuals and agents of Bank of America, failed to identify a specific cause of action, but loosely sounded in conversion and defamation based on the servicing of his home loan. The trial court granted defendant's motion to dismiss the original complaint, but also granted plaintiff leave to file an amended complaint. The trial court also provided plaintiff specific instructions on Illinois' pleading requirements as plaintiff has acted *pro se* throughout this process.

¶ 5 Plaintiff filed an amended complaint alleging breach of contract. Again, the trial court granted defendant's motion to dismiss the amended complaint for failure to state a claim, but gave plaintiff leave to file a second amended complaint. Again, the trial court provided plaintiff instructions on asserting a breach of contract claim, specifically referencing the requirement that the contract be attached to the complaint if the claim involved a written contract.

¶ 6 Plaintiff filed a second amended complaint alleging breach of contract. This filing included 16 exhibits. The exhibits indicate that this dispute began when defendant failed to timely pay real estate taxes from plaintiff's escrow account. The record reveals, and defendant does not dispute, that the taxes were paid 19 days late. This apparently led plaintiff to unilaterally reduce his mortgage payment by the amount routinely deposited in his escrow account while continuing to make payments in an amount equal to the principal and interest

charges.

¶ 7 The record on appeal further suggests that defendant ultimately paid the amount of taxes due from the escrow account, albeit 19 days late, and all late fees or penalties associated with the late payment at no expense to plaintiff. As a result of the late payment, plaintiff wrote to the office of the Comptroller of Currency for the Administrator of Nation Banks to request elimination of the escrow requirement on his mortgage. That entity informed plaintiff that since his "loan originated through the Veteran Administration \*\*\*, the escrow account for property taxes and insurance is a requirement that cannot be discontinued."

¶ 8 Ultimately, defendant moved to dismiss plaintiff's second amended complaint. At the hearing on defendant's motion, the trial court asked plaintiff to identify the exhibit that contained the contract supporting his breach of contract claim. After plaintiff failed to identify the contract, which he claimed was breached, the trial court dismissed the second amended complaint with prejudice for failure to state a claim upon which relief can be granted. Plaintiff filed a motion to reconsider, which the trial court denied. This timely appeal followed.

¶ 9

#### ANALYSIS

¶ 10 Defendant brought its motion to dismiss pursuant to section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)). In determining whether dismissal pursuant to section 2-615 is warranted, "[t]he proper inquiry is whether the well-pleaded facts of the complaint, taken as true and construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted." (Internal quotation marks omitted.)

Thurman v. Champaign Park District, 2011 IL App (4th) 101024 (quoting Loman v. Freeman, 229 Ill. 2d 104, 109 (2008)). “[A] cause of action should not be dismissed, pursuant to a section 2-615 motion, unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief.” Tedrick v. Community Resource Center, Inc., 235 Ill. 2d 155, 161 (2009).

“However, the plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action.” Id. Where the trial court dismisses a complaint under section 2-615, this court applies a de novo standard of review. Kirchner v. Greene, 294 Ill. App. 3d 672, 679 (1998).

¶ 11 Plaintiff's second amended complaint claims breach of contract. Specifically, plaintiff alleges that defendant breached a contract by not paying taxes "on time" as McDonough County real estate records show taxes were "paid late by 19 days." The complaint continues, alleging that defendant's failure to pay the taxes on time was done deliberately and intentionally to cause him emotional distress. Plaintiff further alleges that he made payments totaling \$419, which defendant failed to apply toward his principal and interest "in the manner that is stated on the contract."

¶ 12 To maintain a cause of action for breach of contract, plaintiff must allege "the existence of a valid and enforceable contract, performance by the plaintiff, breach of the contract by the defendant, and resultant damages or injury to the plaintiff." Razor Capital v. Antaal, 2012 IL App (2nd) 110904, ¶ 30. It is essential in pleading the existence of a valid contract to allege facts sufficient to indicate the terms of the contract. Id. "Liberal construction cannot cure a breach-of-contract complaint that fails to plead those essential allegations." Id.

¶ 13 Plaintiff's second amended complaint fails to allege the necessary elements of a breach of contract action. Therefore, we find the trial court did not err in granting defendant's motion to dismiss.

¶ 14 The most notable deficiency in plaintiff's complaint is its failure to identify the contract between plaintiff and defendant or state or identify the contractual terms that defendant allegedly breached. During oral argument of defendant's motion to dismiss, the trial court asked the plaintiff, "Which of the exhibits do you believe constitutes a contract between yourself and the defendant?" Plaintiff identified "exhibit 3."

¶ 15 This exhibit contains five pages. Page one appears to be the first page of his mortgage. Exhibit No. 3 indicates that the mortgage is 12 pages in length. When asked why he did not attach the entire mortgage to the complaint, the plaintiff indicated he believed it to be "too bulky." Plaintiff acknowledged during oral argument on defendant's motion that exhibit No. 3 "is not a complete mortgage."

¶ 16 Pages two through five of exhibit No. 3 contain an "initial escrow account disclosure statement" which details "an estimate of activity in your escrow account during the coming year based on payments anticipated to be made from your account." Plaintiff argued to the trial court that the first page of his mortgage and the documents detailing escrow payments, actual and anticipated, constituted the contract between the parties.

¶ 17 In granting defendant's motion to dismiss, the trial judge stated the second amended complaint contained no allegations of offer and acceptance and failed to identify with any

specificity the contractual terms allegedly breached. Moreover, the trial court noted that the complaint failed to allege that the plaintiff fully performed his duties and obligations. The court noted that the documents plaintiff attached to the complaint seemingly refute any argument that plaintiff fully performed under the contract as they indicate that plaintiff failed to make necessary payments required of him. As such, the trial court found plaintiff failed to allege sufficient facts upon which relief can be granted. We cannot say the trial court erred in making this finding. As the plaintiff failed to plead the necessary elements for a colorable breach of contract claim, we hold that the trial court properly granted defendant's motion to dismiss.

¶ 18 Plaintiff claims dismissing his complaint violates many of his constitutional rights, most notably, his "right of trial, \*\*\* right to equal protection of the laws and due process." However, our supreme court noted long ago that a plaintiff's "constitutional rights cannot be infringed where an insufficient or defective complaint is dismissed." *Deasey v. City of Chicago*, 412 Ill. 151, 155 (1952); see also *Harvey v. Mackay*, 109 Ill. App. 3d 582, 589 (1982) ("there can be no infringement of the constitutional right to a jury trial where an insufficient or defective complaint is dismissed."); *Delis v. Sepsis*, 9 Ill. App. 3d 217 (1972).

¶ 19 Finally, plaintiff contends that the circuit court erred when denying his motion for leave to amend his second amended complaint. Whether to allow an amendment to pleadings is within the sound discretion of the trial court, whose determination will not be disturbed on appeal absent an abuse of that discretion. *Lewandowski v. Jelenski*, 401 Ill. App. 3d 893 (2010). A trial court abuses its discretion if no reasonable person would take the view adopted by the trial court.

Id. Factors to be considered when determining whether to allow a motion to amend pleadings are whether the amendment would cure all defects in the pleading and whether there were previous opportunities to amend the pleadings. *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 467-68 (1992); *Loyola Academy v. S&S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273 (1992).

¶ 20 Plaintiff repeatedly argues to this court and the court below that he should not be held to the same pleading standards as a litigant represented by counsel. The Supreme Court has long held that the "right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law." *Faretta v. California*, 422 U.S. 806, 834 (1975). Illinois courts have echoed this principle, noting a "pro se litigant must comply with the rules of procedure required of attorneys, and a court will not apply a more lenient standard to pro se litigants." *People v. Fowler*, 222 Ill. App. 3d 157, 163 (1991); see also *People v. Vilces*, 321 Ill. App. 3d 937, 939 (2001).

¶ 21 By quoting the Supreme Court's language in *Faretta*, we certainly do not mean to imply that plaintiff has abused the dignity of the courtroom. Our review of the record reveals quite the opposite is true. Nevertheless, plaintiff has failed to properly plead his cause of action or explain how a third amended complaint would cure the defects of his second amended complaint.

¶ 22 While it appears plaintiff attached the remainder of his mortgage to his motion to reconsider, he failed to explain how doing so cured the defects of his second amended complaint. One of the most notable defects is plaintiff's failure to allege that he performed all his obligations under the contract. Plaintiff's own exhibits demonstrate that the office of the Comptroller of

Currency for the Administrator of Nation Banks informed him that defendant's 19-day delay in paying the real estate taxes did not relieve him of his obligation to make escrow payments. This exhibit further informed him that if he wished to be free from that obligation, he needed to secure financing other than that available from the Veteran's Administration. Plaintiff does not deny and, in fact, admitted during oral arguments that he stopped making the full amount of his payments. As such, we cannot say the trial court abused its discretion when denying plaintiff's motion for leave to amend his second amended complaint. Given the admissions and facts contained within plaintiff's own exhibits, he simply cannot plead he fully performed his obligations and duties, which is a necessary element of any breach of contract cause of action.

¶ 23 We are certainly not unsympathetic to the plaintiff's situation. The record makes clear that he has properly alleged that defendant had a duty to pay the real estate taxes on time and that it failed to do so. The record (plaintiff's own exhibits) is also clear, however, that upon realizing its error, defendant paid the real estate taxes and all associated fees and penalties at no monetary cost to plaintiff.

¶ 24 CONCLUSION

¶ 25 For the foregoing reasons, the judgment of the circuit court of McDonough County is affirmed.

¶ 26 Affirmed.