



her she would have to wait two months before the tub could be installed. She entered into the contract with defendant on October 13, 2009, and made a \$1,000 down payment. The total purchase price for the tub, with fees, was over \$10,000.

¶ 4 On October 21, 2009, the tub arrived at plaintiff's home. Plaintiff was asked to sign a new "clean" contract and predate it for October 13, 2009, the date of the original contract. Apparently a mistake had been made on the first contract and the bank required a "clean" copy for financing purposes. As the tub sat unboxed in her front yard, plaintiff realized the tub was not the one she believed she had ordered. She told the installer she did not want it because it was too small for her use. She went to her bedroom to try contacting the salesman and company. Plaintiff was told there was a period of adjustment and she needed to try it first. Defendant told her they would not take the bathtub back, and the installer proceeded to install the tub. After the tub was installed, plaintiff signed the satisfaction agreement presented to her by the installer. She claimed she did so because he pleaded with her, telling her he would not get paid unless she signed. Plaintiff has never used the tub. She bought another one that met her needs from another supplier shortly thereafter.

¶ 5 The trial court found no evidence of fraud under the provisions of the Consumer Fraud and Deceptive Business Practices Act (Act) (815 ILCS 505/1 to 12 (West 2008)) and further found in favor of defendant that there was also no breach of contract. Plaintiff appeals contending the court erred in not finding a breach of the contract or a violation of the Act.

¶ 6 In order to establish a breach of contract, a plaintiff must prove an offer and acceptance, consideration, definite and certain terms of the contract, the plaintiff's performance of all required contractual conditions, the defendant's breach of the terms of the contract, and damage resulting from that breach. *Weis v. State Farm Mutual Automobile Insurance Co.*, 333 Ill. App. 3d 402, 407, 776 N.E.2d 309, 312 (2002). Under the Act, to

adequately establish a private cause of action, a plaintiff needs to prove a deceptive act or practice on the part of the defendant, intent on the defendant's part that plaintiff rely on that deception, the occurrence of that deception in the course of conduct involving trade or commerce, and actual damage proximately caused by the deception. *Oliveira v. Amoco Oil Co.*, 201 Ill. 2d 134, 149, 776 N.E.2d 151, 160 (2002). Violation of the Act must have proximately caused the plaintiff an actual injury. *Weis*, 333 Ill. App. 3d at 408, 776 N.E.2d at 313.

¶ 7 Plaintiff contends that defendant misrepresented that it could provide the bathtub that she needed. We disagree. Defendant provided a bathtub she could use, although not in the way she envisioned. Defendant measured the bathroom and installed a walk-in tub that fit the space without making alterations to the room or her house. Plaintiff admitted she did not want to have alterations, such as knocking out a wall or enlarging the doorway, made to her home at that time and she also did not want to wait for several months to have the tub installed. More importantly, she allowed the tub to be installed in her home even though it was not the right one, and she signed the papers stating she was satisfied with the installation. We recognize plaintiff is an elderly woman with medical issues, but she still did not have to let the installer in her house. While we question the wisdom of defendant in pushing the issue by installing the tub in spite of plaintiff's protests, we also cannot say that plaintiff connected her alleged damages to any deceptive act or practice on part of defendant in this instance.

¶ 8 Plaintiff argues that defendant violated the Act by failing to notify her in writing and orally of her right to rescind the contract. Under section 2B of the Act (815 ILCS 505/2B (West 2008)), a seller is required to notify a buyer both in writing and orally that the buyer may cancel the transaction at any time within three days of signing the contract. Because plaintiff here did not receive such notice orally or in the proper written form, she contends

the contract was breached by defendant's violation of the Act. The notice of the right to cancel was included on the back of the contract; although not in the proper form. Plaintiff further asserts she told the salesman what her needs were at the time of the purchase but when the tub was delivered it was not the right tub. She told the installer to take it back and he refused. According to plaintiff, defendant did not perform all the contract conditions because defendant did not provide her with the bathtub for which she thought she had bargained. She also believes she, in essence, rescinded the agreement in a timely fashion by telling defendant she did not want the tub once it arrived. A breach of a contractual promise, without more, is not actionable under the Act, however. *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 169, 835 N.E.2d 801, 844 (2005). If we accept the assertion that promises which go unfulfilled are actionable under the Act, plaintiffs could convert any suit for breach of contract into a consumer fraud action. Such is not the case. *Zankle v. Queen Anne Landscaping*, 311 Ill. App. 3d 308, 312, 724 N.E.2d 988, 992 (2000). Moreover, the lack of the proper written notice of cancellation of the contract also did not convert the alleged breach into fraud. Compliance with the Act is not a condition precedent to the existence of an enforceable contract. *General Motors Acceptance Corp. v. Johnson*, 354 Ill. App. 3d 885, 891-92, 822 N.E.2d 30, 35-36 (2004). While we acknowledge the predicament in which plaintiff found herself, we have no choice but to conclude that the trial court correctly ruled in favor of defendant in this instance.

¶ 9 For the foregoing reasons, we affirm the judgment of the circuit court of St. Clair County.

¶ 10 Affirmed.