

No. 1-12-3076

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SHAHIDA FOZIA KHAN,)	
)	Appeal from the Circuit
)	Court of Cook County
Plaintiff-Appellant,)	
)	
v.)	
)	No. 11 M1 117540
WELLS FARGO DEALERS SERVICES, Inc.,)	
)	
Defendants-Appellees.)	The Honorable
)	Patrick J. Sherlock,
)	Judge Presiding.

JUSTICE TAYLOR delivered the judgment of the court.
Presiding Justice Gordon and Justice Palmer concurred in the judgment.

ORDER

¶ 1 *Held:* We need not address the merits of an appeal where plaintiff, whose amended complaint was dismissed by the trial court, makes only conclusory statements not supported by legal authority, in violation of Illinois Supreme Court Rule 341(h)(7). Moreover, even if we were to review the circuit court's dismissal of the amended complaint, we would conclude that it was not erroneous, where the

complaint failed to include specific facts which may support a recognized cause of action. Lastly, since plaintiff failed to provide a copy of a proposed second amended complaint, we affirm the circuit court's denial of leave to amend.

¶ 2 Plaintiff Shahida Fozia Kahn, *pro se*, appeals from a judgment of the circuit court of Cook County dismissing her amended complaint against defendant Wells Fargo Dealers Services, Inc., in which plaintiff claimed that her vehicle had been wrongly repossessed by defendant. Plaintiff maintains that the court erred in denying her motion to vacate the order dismissing her amended complaint because she was unable to attend the hearing, and appears to argue that she should have been allowed to file a new amended complaint.

¶ 3 BACKGROUND

¶ 4 We initially note that plaintiff has only provided us with a common law record, and has not included a transcript of the proceedings below. Based on this limited record, we are only able to glean what appears to be the following facts and procedural history.

¶ 5 It appears that this matter arises out of a retail installment contract entered into on or about December 6, 2007, between plaintiff and defendant's predecessor, Advantage Chevrolet, for plaintiff's purchase of a 2007 Chevrolet Equinox Carryall, Serial No. 2CNDL23F276043014 for \$24,914. The contract was subsequently assigned to defendant, who repossessed the vehicle after plaintiff missed payments. It is undisputed that on several occasions, plaintiff paid in excess of her contract installments of \$436.82, and as a result, her contract was modified in 2008 so that the overpayments would be applied to the principal and she would finish paying off the loan sooner than originally expected. While plaintiff has alleged throughout the proceedings that

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she did not want to make that modification, which caused the next payment to become due sooner, defendant has alleged that it was plaintiff who requested the change.

¶ 6 On May 9, 2011, plaintiff filed a document styled "complaint incorrect car possession (defendant's account #5769058802)," in which she alleged that defendant had wrongfully repossessed her vehicle. While the complaint did not explicitly state whether plaintiff had missed any payments, she alleged that she was contacted by defendant's representative on February 15, 2011, and told that she owed \$1,299.78 in overdue payments and late charges. At that time, she explained to the representative that she was not behind on her loan payments, and that if she were, the amount owed would be lower. Plaintiff also told the representative that because she was unemployed, she had sent a payment of \$100 that month and intended to pay an additional \$340 the following week. The representative, however, allegedly insisted that plaintiff owed \$1,299.78, and that plaintiff had no options other than paying the full amount. According to plaintiff, she was unaware that defendant intended to repossess her vehicle until February 17, 2011, when her car was missing from the spot where she parked it.

¶ 7 Plaintiff challenged defendant's actions in repossessing her vehicle, stating that defendant did not comply with its requirement to send her proper notice of the repossession, and that if she had known of defendant's intentions, she could have found a way to make the necessary payments from her emergency funds. She further states that she has a history of making payments on time to defendant on the loan in question, as well as on other loans which she has taken over the years. In addition, plaintiff claimed that defendant's actions were unduly harsh because some of her past payments were above the minimum required, and as a result, the total

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amount that she has paid on this loan is greater than it would have been if she had made only minimum payments. Accordingly, plaintiff sought the return of her vehicle, along with certain personal belongings that were inside it at the time of the repossession.

¶ 8 On April 20, 2011, plaintiff filed a motion to replevin and a document styled "motion to request to expedite the case and to consider additional information presented here." In her motion to replevin, plaintiff alleged that she had been making payments since the car was repossessed and seeks to regain possession of it. Plaintiff further alleged that not having access to the vehicle has hindered her ability to seek employment and to generate income, and asks that defendant ensure that the car is well maintained before returning it to plaintiff. In her motion to expedite the case, plaintiff mostly reiterated the allegations in her complaint and made additional arguments to challenge the repossession, including a claim that she was denied due process by defendant's actions. She further added that if defendant had already sold the vehicle, it should pay plaintiff a total amount of \$26,000, which included the value of the vehicle and the items inside it when it was repossessed. Plaintiff then requested the court to place this matter on expedited proceedings due to her need for her vehicle. On May 10, 2011, plaintiff filed an "emergency motion to replevin as prima facie," arguing that defendant had been wrongfully delaying the proceedings, and that she should be granted possession of the vehicle because she had continued to make payments and to pay for insurance on the vehicle.

¶ 9 It appears that on May 18, 2011, defendant filed a counterclaim against plaintiff. Count I sought a judgment in detinue pursuant to section 3-114(f-5) of the Illinois Vehicle Code (625 ILCS 5/3-114(f-5) (West 2010)), awarding defendant possession of the vehicle in question and

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that plaintiff's alleged defenses to repossession were insufficient. Count II of the counterclaim sought damages for any deficiency that may remain on plaintiff's account after the vehicle is liquidated. In that counterclaim, defendant alleged that plaintiff defaulted under the contract by failing to make her required monthly payments, and that, under the terms of the contract, such default triggered defendant's right to declare the entire balance of the contract immediately due and payable. Defendant further claimed that it had a security interest in the vehicle under the contract, and was entitled to possession of it under Article IX of the Illinois Uniform Commercial Code (810 ILCS 5/9-101 *et seq.* (West 2010)). Although plaintiff was afforded the opportunity to reinstate the contract, she failed to make the payments required to do so. According to defendant, plaintiff had filed an affidavit of defense challenging the repossession, but her allegations in that affidavit are insufficient to establish a valid defense to the repossession of the vehicle. Attached to the complaint was plaintiff's affidavit of defense, in which she noted that she had filed a complaint at the circuit court of Cook County, and claimed that she was not responsible for "this mess."

¶ 10 The matter was set for trial on June 14, 2011, following which the trial court entered a written order granting judgment in favor of defendant on count I of the counterclaim. In doing so, the court found that defendant had the right to possession of the vehicle in question and that plaintiff's purported defense to repossession was insufficient.

¶ 11 On January 23, 2012, plaintiff filed a document titled "motion to review corrected complaint and review case under contract laws," in which she contends that she had not materially breached the loan agreement as defendant would be required to prove to repossess the

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vehicle. She further stated that she no longer sought to gain possession of the vehicle because at that point it must have issues related to not being started for several months. On that same day, plaintiff filed an "addition to corrected complaint," in which she stated that there was a prior occasion when she missed payments, and when she explained that she wished to pay additional amounts in certain months to compensate for months when she could not make payments, defendant agreed.

¶ 12 After a hearing on plaintiff's motions, the trial court allowed plaintiff to file an amended complaint, which she did. In count I, plaintiff claimed that any late or missed payments prior to that date were not a material breach that would entitle defendant to repossess the vehicle because some of her payments exceeded the installment amounts. In count II, she argued that defendant had waived its right to repossess the vehicle by accepting late payments and not taking action when she first missed a payment. In count III, plaintiff alleged that defendant breached its "fiduciary relationship" to her by unduly influencing her to modify her contract in 2008, shortening it by three months and causing her to accrue late fees when she missed payments. According to count IV, plaintiff should also be excused from additional payments because at that point, the car must be damaged as a result of not being started in over four months. In count V, plaintiff alleges that defendant "wrongfully deprived" her of the vehicle because she did not know that missed payments would result in repossession. In count VI, she stated that the finance charges that defendant introduced at trial were higher than expected as per her loan agreement, and in count VII, she alleged that defendant failed to provide her with account statements before repossessing the vehicle. Count VIII is similar to count V, in that plaintiff claims that the

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situation could have been resolved without repossession if defendant had answered her questions about the loan. In count IX, in contrast to her waiver argument in count III, plaintiff claimed that defendant repeatedly towed her car on prior occasions and ultimately returned it to her. In count X, plaintiff alleges that defendant harassed her to make the contract modifications in 2008, and in count XI, she claims that the prior times when her car was towed away had been "illegal."

Lastly, in count XII, she apparently seeks damages for emotional distress caused by defendant's actions. Thus, plaintiff sought a finding that defendant was not entitled to repossess her vehicle, as well as compensation and punitive damages for the repossession and "appropriate remedies."

¶ 13 Attached to the amended complaint was a copy of the loan agreement, as well as what appears to be a copy of plaintiff's payment history that was allegedly introduced at the June 14, 2011 trial. That statement showed not only the amount of her payments applied to the principal and interest, but also late fees charged after missed payments.

¶ 14 On April 16, 2012, defendant filed a motion to dismiss plaintiff's amended complaint under section 2-615 of the Illinois Code of Civil Procedure for failing to state a cause of action upon which relief may be granted, and under section 2-619 for being barred by the "mend-the-hold" doctrine. In its motion under section 2-615, defendant stated that six of the counts of plaintiff's amended complaint should be dismissed for her failure to ask for relief other than non-liability under the contract. Further, defendant claimed that plaintiff failed to state sufficient facts to show that defendant waived its right to repossess the vehicle because the loan agreement explicitly states that waiver of default in any payment does not operate as waiver of any future defaults. With respect to the contract modification, defendant stated that plaintiff failed to show

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that defendant had the alleged fiduciary relationship with plaintiff that would have been breached by suggesting that she shorten the loan by three months. Defendant further argued that another two of her counts did not include a cogent argument, and noted that the trial court had previously held that defendant's repossession of the vehicle had not been wrongful.

¶ 15 In its motion under section 2-619 of the Code, defendant contended that since plaintiff had initially based her defense on an allegation that she had not missed payments, she was now barred by the mend-the-hold doctrine, from arguing that her missed payments were somehow defendant's fault. Defendant further stated in its motion to dismiss that the vehicle had already been sold, but defendant would no longer seek a deficiency and was prepared to dismiss count II of its counterclaim.

¶ 16 On June 6, 2012, plaintiff filed a motion for additional time to respond to defendant's motion to dismiss, explaining that she would be out of the country between June 14 and July 20, 2012. The court entered a written order on June 12, 2012, giving plaintiff until June 15, 2012, to file a response, and scheduled a hearing on defendant's motion on August 7, 2012.

¶ 17 In her response to defendant's motion to dismiss her amended complaint, plaintiff reiterated the arguments raised in her amended complaint, and claimed that they were not barred by the mend-the-hold doctrine because they consisted of the same "basic issues" as those brought in her initial complaint. She argues that, to the extent that the claims in her amended complaint differ from those in her initial complaint, those issues were brought in various motions filed before the trial on defendant's counterclaim, but never properly heard by the court. Plaintiff further stated that her amended complaint sufficiently stated a cause of action so as to survive a

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motion to dismiss under section 2-615, and that she did not have enough information to state what form of relief was appropriate for every count.

¶ 18 Defendant filed a motion for an extension of time to reply, which defendant did seven days later. In that reply, defendant argued that even if plaintiff had raised any of those arguments in pretrial motions, they would not have constituted an amendment to her complaint because she did not obtain leave until after the trial. In addition, defendant argued that to the extent that plaintiff's claims were argued at the trial on defendant's counterclaim, they were rejected by the court, which ruled that plaintiff's defenses to the repossession of her vehicle were insufficient. Defendant further argued that plaintiff failed, in her response, to identify any factual allegations that properly support her cause of action.

¶ 19 On August 7, 2012, after a hearing on defendant's motion to dismiss, the trial court granted defendant's motion to file its late reply and dismissed all remaining claims of all parties with prejudice. Plaintiff, who was apparently absent at that hearing, filed a motion to vacate that order stating that she was out of the country on the date of the hearing. The trial court denied the motion in a written order entered on September 17, 2012, "for reasons stated in open court." Plaintiff filed a motion to reconsider the court's denial of her motion to vacate which was denied on October 30, 2012.

¶ 20 ANALYSIS

¶ 21 On appeal from that order, plaintiff now contends that the trial court erred in dismissing her amended complaint. She appears to argue that her various motions over the course of the proceedings were not properly considered by the trial court, and that she was unaware that

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defendant's motion to dismiss her complaint was going to be decided at the hearing on August 7, 2012, which she believed was only a "case management call." According to plaintiff, when she learned that she would be unable to attend the hearing on August 7, 2012, it was too late to request a continuance, and that she could not fully express her circumstances in her motions to vacate and to reconsider because she did not have access to a word processor. Thus, plaintiff contends that her amended complaint was improperly dismissed because she was unable to present her arguments at the hearing. She then reiterates her prior argument that defendant wrongly influenced her to change the terms of her loan agreement in 2008, as a reason why her amended complaint should not have been dismissed.

¶ 22 We initially note defendant's challenge to this court's jurisdiction over plaintiff's appeal from the denial of her motion to reconsider because the trial court had not ruled on that motion prior to the filing of the notice of appeal on October 17, 2012. Pursuant to Illinois Supreme Court Rule 303(a)(2) (eff. June 4, 2008), when the circuit court renders a decision on a timely postjudgment motion, a premature notice of appeal takes effect when the court enters the order disposing of the posttrial matter. In this case, the trial court entered an order on plaintiff's motion to reconsider on October 30, 2012, at which time the notice of appeal became effective. Thus, this court has proper jurisdiction.

¶ 23 However, we next observe that plaintiff's arguments consist almost entirely of allegations and references to matters that are outside the record. While we are mindful that some deference is to be afforded *pro se* litigants in presenting their arguments, there is a certain minimum standard which must be met before this court can adequately review the decision on appeal.

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Rock Island County v. Boalbey, 242 Ill. App. 3d 461, 462 (1993). The orderly administration of this court requires that a party appealing follow the established rules of appellate procedure. *Lill Coal Co. v. Bellario*, 30 Ill. App. 3d 384, 385 (1975). In this case, we find that we are unable to reach the merits of plaintiff's contentions due to their failure to adhere to the supreme court rules governing appellate review.

¶ 24 Significantly, plaintiff has failed to comply with the rules for appellate briefs set forth in Supreme Court Rule 341 (210 Ill. 2d R. 341). Most importantly, plaintiff has failed to state a cogent argument for reversal of the circuit court's ruling in her brief, or to cite to legal authority, as required by Rule 341(h)(7) (210 Ill. 2d R. 341(h)(7); *Bank of Ravenswood v. Maiorella*, 104 Ill. App. 3d 1072, 1074 (1982)). Rather, she notes what she apparently argued before the circuit court, makes conclusory statements without citing to governing legal authority, and raise matters that are not reflected in the record filed on appeal. Aside from references to sections of the Code and cases that support the notion that the circuit court should liberally allow litigants to amend their complaints, plaintiff does not cite to authority in support of her arguments for reversal. As such, plaintiff has failed to articulate an organized and cohesive legal argument for this court's consideration in her brief (*Rock Island County*, 242 Ill. App. 3d, 463), and we need not reach the merits of her appeal (*Bank of Ravenswood*, 104 Ill. App. 3d at 1075).

¶ 25 Moreover, even if we were to review the dismissal of her amended complaint, plaintiff would fare no better. When reviewing a legal sufficiency claim under section 2-615, the issue is whether the allegations of the complaint, when viewed in light most favorable to the plaintiff, and taking all well-pleaded facts and all reasonable inferences that may be drawn from those

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facts as true, are sufficient to establish a cause of action upon which relief may be granted.

Dratewska-Zator v. Rutherford, 2013 IL App (1st) 122699, ¶ 14. A circuit court's decision on a motion to dismiss is reviewed *de novo*. *Id.* at ¶ 16.

¶ 26 With respect to count I, and to the extent that plaintiff appears to seek a finding that she was not liable for breach of her agreement in counts IV, V and IX, we note that under the principle of "nonliability for past conduct," a party cannot seek declaratory relief to excuse herself from liability incurred after acting in a way that would affect contractual rights. *Regency Commercial Associates, LLC v. Lopax, Inc.*, 373 Ill. App. 3d 270, 280 (2007).

¶ 27 Moreover, with respect to all counts, we note that in Illinois, a plaintiff must plead specific facts that bring a complaint within a recognized cause of action and that mere conclusory allegations unsupported by specific facts will not suffice. *Primax Recoveries, Inc. v. Atherton*, 365 Ill. App. 3d 1007, 1010 (2006). Here, the facts alleged in plaintiff's amended complaint are conclusory, irrelevant to her claims, or simply do not support her legal conclusions. For instance, while she alleges in count III that defendant breached its fiduciary duty to her by influencing her to change the terms of her contract in 2008, she alleges no facts that support such a relationship with defendant. Similarly in count II, where plaintiff alleges that defendant waived its right to repossess the vehicle by accepting late or inconsistent payments, the loan agreement, which plaintiff herself attached to the complaint, explicitly states that waiver of any default shall not operate as a waiver of future default. Insofar as plaintiff seeks monetary damages, or other "appropriate remedies" for defendant's failure to provide her with statements or warn her that her car was about to be repossessed, as well as for defendant's actions in overcharging her, harassing

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her, and towing her vehicle on prior occasions, plaintiff fails to plead facts that would establish the elements for any cause of action. Neither does she plead specific facts to support her cause of action for damages for emotional distress. Accordingly, we conclude that the trial court's dismissal of plaintiff's amended complaint was not erroneous.

¶ 28 Lastly, insofar as plaintiff appears to contend that the trial court erred in not allowing her to further amend her complaint, any such argument would be unpersuasive. The decision whether to grant leave to amend a complaint rests in the sound discretion of the trial court, whose decision is not to be disturbed absent abuse of that discretion. *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 467 (1992). Further, it is well established that a plaintiff's failure to include a copy of the proposed second amended complaint in the record on appeal impedes our ability to review the circuit court's denial of such leave to amend, and thus provides a sufficient basis to affirm such denial. *Lake County Grading Co. of Libertyville, Inc. v. Advance Mechanical Contractors, Inc.*, 275 Ill. App. 3d 452, 461 (1995). Since plaintiff in this case merely alluded to her intention to file a new amended complaint, but failed to include a copy of her proposed second amended complaint, we have no choice but to affirm the circuit court's denial of leave to amend her complaint.

¶ 29 CONCLUSION

¶ 30 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 31 Affirmed.