

No. 1-13-0250

**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 allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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STAN VAN HOOSE,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 11 L 10831
	)	
AMERICAN FAMILY MUTUAL INSURANCE	)	
COMPANY,	)	The Honorable
	)	James E. Snyder,
Defendant-Appellee,	)	Judge Presiding.

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JUSTICE McBRIDE delivered the judgment of the court.  
Presiding Justice Palmer and Justice Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held:* Dismissal of plaintiff's second amended *pro se* complaint with prejudice affirmed.

¶ 2 Plaintiff Stan Van Hoose appeals from an order of the circuit court of Cook County, dismissing with prejudice, his second amended complaint against defendant, American Family Mutual Insurance. In doing so, plaintiff has failed to comply with the supreme court rules governing appellate review (Ill. S. Ct. R. 341 (eff. Feb. 6, 2013)). Notwithstanding, we find that

we may review the challenge to the ruling plaintiff intends to raise given the record before us and the cogent brief filed by defendant. *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001).

¶ 3 We glean from the pleadings that plaintiff's car was struck while parked on a Chicago street on May 12, 2008, and he sought coverage under his insurance policy with defendant. We also learn that plaintiff was involved in a vehicular accident with Juan Garcia on March 15, 2010, and sought recovery under his insurance policy.

¶ 4 On October 18, 2011, plaintiff filed a *pro se* complaint pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2012)) against defendant and its claims adjuster, alleging, in its entirety, "intent to defraud," and "post judgment, errors of fact, effect of record, grounds for relief, contradiction of record, effect of record, grounds for relief." In November and December, 2011, plaintiff sought a default judgment based on defendant's failure to appear or plead, and alleged bad-faith refusal to settle, and "loss-of-consortium damages, coverage."

¶ 5 The record shows that on March 8, 2012, defendant filed a motion to dismiss plaintiff's complaint in lieu of an answer. The motion was filed pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)), and, in it, defendant alleged that plaintiff filed a single count complaint alleging intent to fraud, but failed to set forth any facts in his complaint sufficient to support a recognized cause of action under Illinois law.

¶ 6 The court dismissed plaintiff's original complaint on March 19, 2012, finding that it was legally and factually insufficient and granted him leave to file an amended complaint within 28 days. The court further ordered that plaintiff's amended complaint contain numbered paragraphs, dates, times and parties.

¶ 7 On March 28, 2012, plaintiff filed an "answer," alleging that defendant had yet to comply with its insurance policy. He asserted that defendant breached its duty of good faith either by negligently or in bad faith refusing to settle within the policy limits, and requested damages and a default judgment in his favor.

¶ 8 Plaintiff subsequently filed a motion to consolidate actions "pending in different judicial circuits." On May 1, 2012, plaintiff appeared before the circuit court on this motion, and represented to the court that his claim against defendant is for failure to defend him against a counterclaim in a First Municipal case titled *Van Hoose v. Garcia*. The court continued the matter to May 15, 2012, for plaintiff to present proof of this pending claim.

¶ 9 Plaintiff also filed a motion for summary judgment on May 1, 2012. The court denied this motion on May 9, 2012, and ordered plaintiff to file an amended complaint by May 21, 2012. The court further ordered plaintiff not to file any additional motions in this case until that time.

¶ 10 Nonetheless, plaintiff filed an amended complaint on May 11, 2012, adding, without leave of court, J. Garcia and American Freedom Insurance Co. as additional defendants to the lawsuit. He alleged that defendant insured his vehicle from February 2, 2007, through December 1, 2010, that defendant was informed of property damage to his car while parked on a Chicago street on May 12, 2008, and that there was another vehicular accident involving Juan Garcia on March 15, 2010. He maintained that defendant failed to "reconcile" with him on the provisions of his insurance policy for the two vehicular accidents, that the agent and claims adjudicator for defendant were charged with culpable negligence, and that defendant has caused him severe emotional and physical distress, and loss of consortium. Plaintiff alleged that as a proximate result of the acts of defendant he has suffered loss of jobs and "distress of health" from loss of his automobile. He also alleged that he has suffered a wide array of physical symptoms resulting

from the March 15, 2010, vehicular accident. He requested punitive damages determined by proof at trial. In his amended complaint, plaintiff also included a motion to consolidate his other cases.

¶ 11 On May 15, 2012, Garcia's counsel was present, and the trial court transferred the case to mediation on a date agreed upon by the parties. The court then continued the consolidation matter to June 19, 2012.

¶ 12 On May 23, 2012, the trial court dismissed the amended complaint because it was legally and factually insufficient, and ordered plaintiff to file a second amended complaint by June 22, 2012. The court also transferred the case from the Law Division to the First Municipal Division. On June 8, 2012, defendant filed a motion to set pretrial or settlement conference.

¶ 13 When the case appeared on the status call in the First Municipal Division on July 9, 2012, it was dismissed for want of prosecution. That order was vacated on July 23, 2012, and the court then ordered plaintiff to file a second amended complaint within 21 days. The court further noted that if plaintiff failed to do so, the case would be dismissed.

¶ 14 On August 20, 2012, plaintiff filed another motion for summary judgment and "joinder of causes of action and use of counter-claims." He also filed a response to defendant's motion for a pretrial/settlement conference alleging defamation, and a number of incoherent claims.

¶ 15 On August 27, 2012, the court set a discovery deadline, and transferred the matter to mandatory arbitration. Defendant subsequently filed a motion to dismiss the cause with prejudice based on plaintiff's failure to file a second amended complaint, and there was no valid complaint pending. The trial court ordered plaintiff to file a second amended complaint by October 26, 2012, and noted that if plaintiff failed to do so, the cause would be dismissed with prejudice.

¶ 16 On October 25, 2012, plaintiff filed a motion for summary judgment, and "joinder of legal and equitable matters." Plaintiff also filed a second amended complaint in which he added additional defendants, including American Family Insurance Group and policyholders, and alleged that they had a duty to indemnify and defend him. He further alleged that there should be a joinder of actions, and that he has suffered from loss of consortium and society. He also raised numerous other non-related allegations.

¶ 17 Defendant filed a motion to dismiss, alleging that plaintiff has filed what appears to be a hybrid amended complaint and motion for summary judgment. Defendant asserted that in the amended pleading, plaintiff failed to allege any facts sufficient to support a recognized cause of action under Illinois law. On December 17, 2012, plaintiff filed a motion "to vacate defendant's motion to dismiss."

¶ 18 The trial court heard oral argument on December 28, 2012, and, after considering plaintiff's written opposition to defendant's motion, dismissed plaintiff's second amended complaint with prejudice. The court also struck the arbitration hearing set for February 15, 2013.

¶ 19 In this appeal from that ruling, plaintiff is essentially challenging the order entered on December 28, 2012, dismissing his second amended complaint with prejudice. We observe that the trial court dismissed plaintiff's original complaint because it was legally and factually insufficient, and ordered that plaintiff amend his complaint and insert numbered paragraphs, dates, times and parties, thereby placing him on notice that his petition must comply with sections 2-603 and 2-615 of the Code (735 ILCS 5/2-603(a), 615 (West 2012)). In granting defendant's motion to dismiss plaintiff's second amended complaint, the trial court did not state a reason in its written order; however, it is apparent that it did so based on plaintiff's failure to

provide a plain and concise statement of a cause of action, as well as one legally and factually sufficient.

¶ 20 Pursuant to section 2-603 of the Code (735 ILCS 5/2-603(a) (West 2012)), all pleadings shall contain a plain and concise statement of the pleader's cause of action. In addition, each count shall be separately pleaded, designated and numbered, and each shall be divided into paragraphs numbered consecutively, with each paragraph containing, as nearly as may be, a separate allegation. 735 ILCS 5/2-603(b) (West 2012). The purpose of section 2-603 is to give notice to the court and the parties of the claims being presented. *Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 19 (2009). Failure to comply with section 2-603 may be grounds for dismissal of the complaint. *Cable American, Inc.*, 396 Ill. App. 3d at 19; *Rubino v. Circuit City Stores, Inc.*, 324 Ill. App. 3d 931, 938 (2001). A complaint may be dismissed if it is drafted in such a manner as to render any attempt to answer it futile. *Rubino*, 324 Ill. App. 3d at 938. We review the court's decision to dismiss a complaint on the basis of section 2-603 for an abuse of discretion. *Cable American, Inc.*, 396 Ill. App. 3d at 22.

¶ 21 In this case, plaintiff included in his second amended complaint numerous allegations, but failed to provide a plain and concise statement of his cause of action or set forth the counts separately in violation of section 2-603 of the Code. The complaint is also written in such a way that it makes it impossible for defendant to understand plaintiff's allegations and adequately respond. *Rubino*, 324 Ill. App. 3d at 940-41. Accordingly, we find that the trial court did not abuse its discretion in dismissing plaintiff's second amended complaint. *Cable American, Inc.*, 396 Ill. App. 3d at 22.

¶ 22 Moreover, pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)), the second amended complaint is insufficient because plaintiff failed to present a legally and

factually sufficient claim as a basis for recovery or to plead facts which bring the claim within a legally recognized cause of action. *Chandler v. Illinois Central R.R. Co.*, 207 Ill. 2d 331, 348 (2003); *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶22. As such, we find no error by the court in dismissing the second amended complaint pursuant to section 2-615 of the Code. *Ottawa Savings Bank v. JDI Loans, Inc.*, 374 Ill. App. 3d 394, 401 (2007) (*de novo* review of dismissal of complaint pursuant to section 2-615 of the Code).

¶ 23 As for the dismissal of the second amended complaint with prejudice, we review the court's decision to dismiss with or without prejudice for an abuse of discretion. *Razor Capital v Antaal*, 2012 IL App (2d) 110904, ¶28. In doing so, we consider whether the trial court took into account the unique and particular circumstances of the case before it; if so, the court did not abuse its discretion. *Ingold v. Irwin*, 302 Ill. App. 3d 378, 384 (1998).

¶ 24 Here, plaintiff initially filed his complaint in October 2011, solely alleging "intent to defraud," and "post judgment, errors of fact, effect of record, grounds for relief, contradiction of record, effect of record, grounds for relief." The court gave plaintiff numerous opportunities over the course of a year to file an amended complaint; however, each time, plaintiff failed to present a plain and concise statement of a cause of action. In addition, plaintiff filed motions for summary judgment in direct violation of the court's orders, and failed to structure his amended pleadings as instructed by the court. Plaintiff's disregard for the court's orders thus warranted dismissal with prejudice where his repeated noncompliance caused the type of undue delays in the disposition of cases that the trial court had, in the exercise of its discretion, authority to curtail. *Cable America*, 396 Ill. App. 3d at 23-24. We, therefore, find no abuse of discretion by the circuit court in dismissing plaintiff's complaint with prejudice. *Razor Capital*, 2012 IL App (2d) 110904, ¶28.

¶ 25 Plaintiff also raises on appeal, the breach of insurance contract, fraud, and bad-faith refusal to settle. Although plaintiff attempted to raise these claims in some of his earlier pleadings, he did not raise them in his second amended complaint, and, accordingly, they are forfeited. *Jacobson v. Gimbel*, 2013 IL App (2d) 120478, ¶22. Plaintiff also alleges discovery violations; however, no discovery was conducted in this case, and plaintiff cannot raise this for the first time on appeal. *Bennet v. Raag*, 103 Ill. App. 3d 321, 328 (1982).

¶ 26 We further observe that plaintiff requests this court to enter summary judgment in his favor and for punitive damages. However, it does not appear that a final order was entered on plaintiff's summary judgment motion, and his notice of appeal does not indicate that he is appealing from any denial of a summary judgment motion. As a result, this matter is not properly before us. *Fitch v. McDermott, Will and Emery, LLP*, 401 Ill. App. 3d 1006, 1014 (2010); *In re Appointment of Special State's Attorney*, 305 Ill. App. 3d 749, 762 (1999).

¶ 27 We, therefore, affirm the order of the circuit court of Cook County dismissing plaintiff's second amended complaint with prejudice.

¶ 28 Affirmed.