

No. 1-13-2270

**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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HOWARD BLIETZ,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 2011 L 02000
	)	
SYSTEM INTEGRATION ARCHITECTS, LLC,	)	Honorable
	)	Joan E. Powell,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Delort and Justice Connors concurred in the judgment.

**ORDER**

**Held:** We hold plaintiff is procedurally defaulted from raising two claims of error from his third amended complaint because plaintiff failed to properly preserve those claims for our review in his fourth amended complaint. We also hold the circuit court properly dismissed plaintiff's fourth amended complaint pursuant to section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)) because plaintiff failed to state a claim for quantum meruit.

¶ 1 Plaintiff, Howard Blietz, filed a third amended complaint against defendant, System Integration Architects, LLC, which contained allegations of breach of contract, violation of the

Wage Payment and Collection Act (Wage Act) (820 ILCS 115/14 (West 2012)), and alternatively, a claim of quantum meruit. Pursuant to section 2-615 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2012)), the circuit court dismissed plaintiff's claims of breach of contract and violation of the Wage Act, with prejudice. The circuit court struck plaintiff's quantum meruit claim and granted him leave to file a fourth amended complaint. Plaintiff filed a single count fourth amended complaint alleging quantum meruit. Plaintiff did not reference or incorporate his previously dismissed breach of contract or Wage Act claims from his third amended complaint. The circuit court dismissed plaintiff's fourth amended complaint pursuant to section 2-615 of the Code. 735 ILCS 5/2-615 (West 2012).

¶ 2 Plaintiff raises the following issues for our review: (1) whether the circuit court erred when it dismissed plaintiff's breach of contract claim from his third amended complaint; (2) whether the circuit court erred when it dismissed plaintiff's Wage Act claim from his third amended complaint; and (3) whether the circuit court erred when it dismissed plaintiff's fourth amended complaint pursuant to section 2-615 of the Code. 735 ILCS 5/2-615 (West 2012). We hold plaintiff is procedurally defaulted from raising his breach of contract and Wage Act claims as alleged in his third amended complaint because plaintiff failed to properly preserve those claims for our review in his fourth amended complaint. We also hold the circuit court properly dismissed plaintiff's fourth amended complaint pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)) because plaintiff failed to state a claim for quantum meruit.

¶ 3 JURISDICTION

¶ 4 On June 25, 2013, the circuit court dismissed plaintiff's fourth amended complaint pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)), with prejudice. On July 15, 2013, plaintiff timely appealed. Accordingly, this court has jurisdiction pursuant to Illinois

Supreme Court Rules 301 and 303 governing appeals from final judgments entered below. Ill. S. Ct. R. 301 (eff. Feb.1, 1994); R. 303 (eff. May 30, 2008).

¶ 5 BACKGROUND

¶ 6 On February 22, 2011, plaintiff filed a complaint against defendant which contained claims of quantum meruit and equitable estoppel. Defendant filed a motion to dismiss the complaint pursuant to sections 2-615 (735 ILCS 5/2-615 (West 2010) and 2-603 (735 ILCS 6/2-603 (West 2010)) of the Code and Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. July 1, 2013)). On April 21, 2011, the circuit court allowed plaintiff to withdraw his complaint and granted leave to file an amended complaint.

¶ 7 On May 12, 2011, plaintiff filed his first amended complaint, which in addition to claims of quantum meruit and equitable estoppel, contained a claim under the Wage Act. 820 ILCS 115/14 (West 2010). Defendant filed a motion to dismiss pursuant to section 2-615 of the Code. 735 ILCS 5/2-615 (West 2010). On September 26, 2011, the circuit court struck plaintiff's first amended complaint, and allowed plaintiff leave to file an amended pleading.<sup>1</sup>

¶ 8 On November 3, 2011, plaintiff filed a second amended complaint against defendant. The complaint contained claims of breach of contract, violation of the Wage Act (820 ILCS 115/14 (West 2012)), and quantum meruit. Defendant filed a motion to dismiss pursuant to section 2-615 of the Code. 735 ILCS 5/2-615 (West 2010). On April 12, 2012, the circuit court struck plaintiff's second amended complaint, and allowed plaintiff leave to file an amended pleading.

¶ 9 On June 1, 2012, plaintiff filed his third amended complaint. Plaintiff's third amended complaint alleged breach of contract, violation of the Wage Act (820 ILCS 115/14 (West 2012)),

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<sup>1</sup> Throughout their briefs, the parties improperly state that the circuit court granted defendant's several motions to dismiss without prejudice. In such instances, we will continue to describe the court's order as a striking of the pleading.

and, in the alternative, a claim of quantum meruit. On June 20, 2012, defendant filed a combined motion to dismiss plaintiff's third amended complaint pursuant to section 2-619.1 of the Code. 735 ILCS 5/2-619.1 (West 2012). On November 5, 2012, the circuit court granted defendant's motion to dismiss with prejudice as to counts I and II of plaintiff's complaint, *i.e.*, his claims under the Wage Act and for breach of contract, pursuant to section 2-615 of the Code.<sup>2</sup> 735 ILCS 5/2-615 (West 2012). The circuit court denied defendant's motion as to plaintiff's quantum meruit claim. Defendant filed a motion to reconsider asking the circuit court to dismiss plaintiff's quantum meruit claim. On December 18, 2012, the circuit court struck plaintiff's quantum meruit claim, and allowed plaintiff leave to file an amended pleading.<sup>3</sup>

¶ 10 Plaintiff's Fourth Amended Complaint

¶ 11 On January 23, 2013, plaintiff filed his fourth amended complaint, which contained a single count alleging quantum meruit. Plaintiff did not re-allege or mention his dismissed claims of breach of contract or violation of the Wage Act from his third amended complaint. In his fourth amended complaint, plaintiff alleged that defendant's only shareholder, manager, and chief executive officer, Jason Miller, hired him to perform the following roles for defendant: "CFO and then later as the Sales Manager" and "senior advisor and CFO and company consultant." Plaintiff worked for defendant from May 28, 2009, until August 2, 2010.

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<sup>2</sup> Plaintiff did not number the claims in his third amended complaint as individual counts. Rather, he first listed his allegation of breach of contract, then his claim under the Wage Act, and finally his alternative quantum meruit claim. The parties agree in their briefs before this court that the circuit court dismissed plaintiff's breach of contract and Wage Act claims with prejudice, but allowed plaintiff's quantum meruit claim to stand. The parties also agree in their briefs that the circuit court's order contained a typo regarding the quantum meruit claim. Regardless, as discussed *infra*, plaintiff filed a fourth amended complaint which contained only an allegation of quantum meruit.

<sup>3</sup> As discussed *infra*, defendant's motion to reconsider is absent from the record. The order striking plaintiff's quantum meruit claim is included in the record.

Plaintiff stated that Miller sought him out because defendant was "struggling." According to plaintiff, he performed the following for services for defendant: implemented an operating model; participated in the allocation of resources; helped make executive management decisions; recruited key personnel; revamped the accounting process; secured a beneficial line of credit; oversaw human resources; created an employee manual; oversaw the sales representative; created a plan titled "Key Employee Incentive Plan;" and created a goal setting process and a strategic plan for the years 2009 and 2010. Plaintiff further alleged that he secured a contract with a customer for over a million dollars. That customer, according to the fourth amended complaint, stated "they would not have signed with [defendant] without the whole management team they were presented with, [which] included [plaintiff.]" Plaintiff alleged he saved the company "thousands in legal costs" after he was given authority to review, negotiate, and sign legal documents on defendant's behalf.

¶ 12 Plaintiff stated in his fourth amended complaint that defendant paid him a total of \$96,200. According to plaintiff, this represented only a portion of the value of the services he rendered despite the "normal and customary \*\*\* charge of \$400 \*\*\* per hour for the type of services rendered." Plaintiff characterized his services as "extremely valuable" and likened them to "those of a highly skilled executive whose job was to help make a startup company into a multi-million dollar company." Plaintiff alleged defendant benefited from his knowledge, expertise, and services as shown by the increase of defendant's value during and after his employment. He alleged it would be unjust for defendant to keep the benefits conferred without adequate compensation and asked for the "minimum amount of \$288,600.00 plus costs."

¶ 13 On February 19, 2013, defendant filed a combined motion to dismiss pursuant to section 2-619.1 of the Code. 735 ILCS 5/2-619.1 (West 2012). Under the section 2-615 portion of

the motion, defendant argued plaintiff's complaint failed to allege that the purported services rendered were of some measurable benefit to defendant. 735 ILCS 5/2-615 (West 2012). According to defendant, plaintiff claimed that he and his experience were valuable, but not that any service provided a specific advantage or value to defendant beyond what the parties agreed to. Defendant further argued that plaintiff's judicial admissions in his prior complaints, where he stated that an express contract governed the parties' relationship, rendered him unable to state a claim for quantum meruit. Under section 2-619(a)(9) of the Code, defendant again relied on plaintiff's prior judicial admissions of an express contract between the parties. 735 ILCS 5/2-619(a)(9) (West 2012). Specifically, defendant argued that plaintiff cannot allege quantum meruit in his fourth amended complaint where he repeatedly alleged in prior verified pleadings that a valid oral agreement addressing deferred compensation existed between the parties.

¶ 14 In response, plaintiff characterized his fourth amended complaint as a "one count complaint alleging \*\*\* quantum meruit." Plaintiff explained that he removed any reference to a contract in his fourth amended complaint.

¶ 15 In reply, defendant reiterated that plaintiff failed to make any factual allegation that his services were worth more than what defendant agreed to pay him. Defendant pointed out that plaintiff only alleged that his experience was invaluable and that defendant benefited from his knowledge and expertise.

¶ 16 On June 25, 2013, the circuit court dismissed plaintiff's fourth amended complaint pursuant to section 2-615 of the Code, with prejudice. 735 ILCS 5/2-615 (West 2012). The circuit court reasoned that the fourth amended complaint does not have any "specific benefits [plaintiff] bestowed upon the defendant that take him outside of any contract agreement or the value of any of those services other than just saying that they're valuable." The circuit court

further found plaintiff's allegations to be "very generalized," and noted that the fourth amended complaint did not state "the value of the services rendered." Specifically, the court reasoned that the allegations in the fourth amended complaint only contained general allegations that plaintiff "was highly skilled, that he did a lot for this company, and this company is better off for his services." On July 15, 2013, plaintiff timely appealed.

¶ 17

ANALYSIS

¶ 18 Initially, we must first discuss what is properly before us. The parties agree that the circuit court granted defendant's motion to dismiss plaintiff's third amended complaint as to his breach of contract and Wage Act claims, but allowed plaintiff's quantum meruit claim to stand. They also agree that defendant filed a motion to reconsider this decision. Upon reconsideration, the circuit court struck plaintiff's quantum meruit claim in his third amended complaint and allowed him leave to replead. The order striking plaintiff's quantum meruit claim in his third amended complaint is included in the record. Defendant's motion to reconsider, however, is not in the record. The parties refer to defendant's motion to reconsider and note its absence from the record. Defendant attached the motion to reconsider as an exhibit to its brief before this court. The rules addressing appellate procedure are well established. On review, we cannot consider matters outside of the record. *In re Marriage of Gulla*, 234 Ill. 2d 414, 422 (2009). Without a complete record, we must presume that the relevant order of the circuit court had a sufficient basis and conformed to the law. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.* at 392. Accordingly, we have not considered the contents of defendant's motion to reconsider as attached to defendant's brief as it is not included in the record.

¶ 19 Additionally, plaintiff argues the circuit court erred when it dismissed his breach of contract and Wage Act claims in his third amended complaint. Plaintiff, however, filed a fourth amended complaint which did not in any way reference or incorporate his breach of contract or Wage Act claims from his third amended complaint. The rules addressing the proper preservation of dismissed claims in subsequent pleadings are also well established. *Bonhomme v. St. James*, 2012 IL 112393, ¶ 17. The filing of an amended pleading waives objections to the circuit court rulings on prior complaints. *Foxcroft Townhome Owners Assoc. v. Hoffman Rosner Corp.*, 96 Ill. 2d 150, 153 (1983). " ' Where an amendment is complete in itself and does not refer to or adopt the prior pleading, the earlier pleading ceases to be a part of the record for most purposes, being in effect abandoned and withdrawn.' " *Id.* at 154 (quoting *Bowman v. County of Lake*, 29 Ill. 2d. 268, 272 (1963)). Plaintiff's fourth amended complaint contained a single quantum meruit claim and did not incorporate or reference the other claims dismissed in his third amended complaint. Our supreme court has noted that a simple paragraph or footnote in an amended pleading expressing a desire to preserve dismissed claims would be sufficient to preserve such issues for appellate review. *Bonhomme*, 2012 IL 112393, ¶ 26 n. 1. Plaintiff, however, failed to do so when he filed his fourth amended complaint without referencing or incorporating the previously dismissed claims. Accordingly, he is procedurally defaulted from raising his breach of contract and Wage Act claims from his third amended complaint before this court.

¶ 20 Quantum Meruit

¶ 21 Plaintiff argues the circuit court erred in dismissing his fourth amended complaint pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)) because he properly alleged facts establishing the elements of a claim for quantum meruit. Specifically, he argues

that he sufficiently alleged: that he performed a service for defendant which "it was normal and customary to charge \$400.00 \*\*\* per hour for;" he only received a portion of what he was owed; he was not working gratuitously; and defendant benefited from his work. Plaintiff did not file a reply brief before this court.

¶ 22 In response, defendant argues the circuit court properly dismissed plaintiff's fourth amended complaint pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)) because plaintiff failed to alleged the value of his service to defendant. Defendant characterizes plaintiff's allegations as improper conclusions, and contends that plaintiff's fourth amended complaint fails to provide any specific factual allegations supporting plaintiff's conclusion that he was paid less than the reasonable value of his services. Alternatively, defendant argues that the dismissal of plaintiff's fourth amended complaint is also proper because plaintiff made judicial admissions in his prior complaints admitting to an express contract between the parties.

¶ 23 A motion to dismiss brought pursuant to section 2-615 of the Code attacks the legal sufficiency of the complaint. *Chandler v. Illinois Central R.R. Co.*, 207 Ill. 2d 331, 348 (2003). The motion does not raise affirmative factual defenses, but rather alleges defects apparent on the face of the complaint. *Id.* Illinois is a fact pleading jurisdiction. *Weiss v. Waterhouse Securities, Inc.*, 208 Ill. 2d 439, 451(2004). Therefore, " ' a pleading must be both legally and factually sufficient. It must assert a legally recognized cause of action and it must plead facts which bring the particular case within that cause of action.' " *Chandler*, 207 Ill. 2d at 348 (quoting 3 R. Michael, Illinois Practice § 23.4 (1989)). "A plaintiff may not rely on conclusions of law or fact unsupported by specific factual allegations." *Simpkins v. CSX Transportation, Inc.*, 2012 IL 110662, ¶26. Only well-pleaded facts will be considered as opposed to conclusions which must be disregarded. *City of Chicago v. Beretta U.S.A. Corp.*,

213 Ill. 2d 351, 368 (2005). Under section 2-615, the question presented "is whether sufficient facts are contained in the pleadings which, if proved, would entitle plaintiff to relief." *Urbaitis v. Commonwealth Edison*, 143 Ill. 2d 458, 471(1991).

¶ 24 When ruling on a motion to dismiss pursuant to section 2-615, "only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record may be considered." *K. Miller Construction Co. v. McGinnis*, 238 Ill. 2d 284, 291 (2010). All well-pleaded facts in the complaint are accepted as true as well as all reasonable inferences drawn from those well-pleaded facts. *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill. 2d 1, 9 (1992). The allegations in the complaint are to be construed in the light most favorable to plaintiff. *Id.* A plaintiff is not required to set forth evidence in the complaint. *Chandler*, 207 Ill. 2d at 348. A plaintiff, however, cannot simply allege conclusions when opposing a motion to dismiss. *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 408 (1996). A cause of action should be dismissed "if it is clearly apparent that no set of facts can be proven which will entitle the plaintiff to recovery." *Chandler*, 207 Ill. 2d at 349. Review of a motion to dismiss pursuant to section 2-615 is *de novo*. *Vernon v. Schuster*, 179 Ill. 2d 338, 344 (1997).

¶ 25 In order to recover under a theory of quantum meruit, the moving party "must demonstrate the performance of services by the party, the conferral of the benefit of those services on the party from whom recovery is sought, and the unjustness of the latter party's retention of the benefit in the absence of any compensation." *First National Bank of Springfield v. Malpractice Research, Inc.*, 179 Ill. 2d 353, 365 (1997). The theory of "quantum meruit is based on the implied promise of a recipient of services to pay for those services which are of value to him." *In re Estate of Callahan*, 144 Ill. 2d 32, 40 (1991). If the recipient

would be able to retain the services without paying for them, the recipient would be unjustly enriched. *Id.* The literal meaning of the term quantum meruit is " " as much as he deserves." " *First National Bank of Springfield*, 179 Ill. 2d at 365 (quoting *Romanek-Golub & Co. v. Anvan Hotel Corp.*, 168 Ill. App. 3d 1031, 1041 (1988)). It is the burden of the provider of the valuable services to show that the recipient received the services and that it would be unjust for the recipient to retain those services without paying for them. *Bernstein and Grazian, P.C. v. Grazian and Volpe, P.C.*, 402 Ill. App. 3d 961, 979 (2010). Therefore, "the provider must prove that the services performed were 'of some measurable benefit to the defendant.' " *Id.* (quoting *Van C. Argiris & Co. v. FMC Corp.*, 144 Ill. App. 3d 750, 753 (1986)).

¶ 26 We hold the circuit court properly dismissed plaintiff's fourth amended complaint because plaintiff's non-specific and conclusory allegations fail to state a claim for quantum meruit. Plaintiff had to establish that he performed services for defendant, that defendant benefited from those services, and that it would be unjust for defendant to retain the benefit of those services without compensating plaintiff. *First National Bank of Springfield*, 179 Ill. 2d at 365. Plaintiff provides a long list of services he provided to defendant in his fourth amended complaint. He also, however, admits in his complaint that defendant paid him \$96,200. Accordingly, plaintiff had to establish that the services he provided, as alleged in his complaint, were either separate from, or in addition to, the \$96,200 he admits defendant paid him. Plaintiff failed to do so. First, he provides a timeline for his employment: May of 2009 until August of 2010. He even concludes that his services would normally be worth \$400 an hour. Plaintiff does not, however, provide any allegations establishing that defendant paid him less than the \$400 an hour because he does not provide any allegations establishing how many hours he worked for defendant. He also does not provide any well-pled facts establishing how long it

took for him to complete the services he put forth in his fourth amended complaint. Plaintiff only provides conclusory allegations that his services were "valuable" without saying the value of each service. Missing from plaintiff's fourth amended complaint are the necessary facts that would establish that plaintiff provided services to defendant that he was not compensated for, *i.e.*, services over the \$96,200 that plaintiff admits defendant paid him. Plaintiff's fourth amended complaint fails to establish that he even provided uncompensated services to defendant because he admits that defendant paid him, but fails to put forth well-pled facts showing that the amount defendant paid him did not cover the value of the services performed.

¶ 27 Furthermore, the allegations in plaintiff's fourth amended complaint fail to establish how his services were of a measurable benefit to defendant. As discussed above, plaintiff alleged his services were "valuable" without alleging a specific value. Similarly, plaintiff alleged "he created value to the company," and that defendant "greatly increased in value during [his] tenure and thereafter." Plaintiff does not, however, provide any well-pled facts showing how defendant's value increased due to his services. Plaintiff only provides conclusory allegations that defendant's value increased. In reviewing a motion to dismiss, we only consider well-pled facts and we will disregard improper conclusions. *Beretta U.S.A. Corp.*, 213 Ill. 2d at 368. Plaintiff failed to provide any well-pled facts establishing a measurable benefit to defendant outside of the \$96,200 he admits defendant paid him.

¶ 28 Plaintiff's failure to provide any well-pled facts establishing a claim of quantum meruit is fatal to his fourth amended complaint. Plaintiff failed to establish that his services, as alleged in his fourth amended complaint, were either worth more than, or were separate from, the \$92,600 that he admits defendant paid him. Similarly, the lack of well-pled facts addressing both the value of his services and defendant's alleged increase in value fail to establish that his services

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were of a measurable benefit to defendant. Accordingly, we hold the circuit court properly dismissed plaintiff's fourth amended complaint pursuant to section 2-615 of the Code. 735 ILCS 5/2-615 (West 2012).

¶ 29

#### CONCLUSION

¶ 30 The judgment of the circuit court of Cook County affirmed.

¶ 31 Affirmed.