2015 IL App (1st) 131985-U

SECOND DIVISION
January 13, 2015

No. 1-13-1985

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

WILLOW ELECTRICAL SUPPLY, INC. and U.S.-WAY DEPOT, INC.,	)	Appeal from the Circuit Court of Cook County
Plaintiffs-Appellees,	)	
v.	)	
VICTOR KORZEN,	)	No. 09 CH 12692
Defendant-Appellant.	)	
(US Way Corporation,	)	Honorable Franklin U. Valderrama, Judge Presiding.
Defendant).	)	

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Neville and Liu concurred in the judgment.

O R D E R

¶ 1 *Held*: Where defendant fails to provide any citation to the record in support of the recitation of facts and fails to provide citation to authority in support of arguments, he waives his arguments. Based on this waiver and the facts of record, the trial court's grant of summary judgment must be affirmed.

¶ 2 On March 20, 2009, plaintiffs Willow Electrical Supply, Inc. and U.S.-Way Depot, Inc. filed an eight count complaint against defendants Victor Korzen and US Way Corporation

sounding in counts for specific performance, breach of implied warranty of merchantability, breach of contract against US Way, breach of contract against Korzen, unjust enrichment, tortious interference, and injunctive relief.

¶ 3 Plaintiffs alleged that Korzen, president and sole shareholder of defendant US Way, was in the business of importing and distributing electrical components and sought new business relationships when its primary customer went out of business in 2005. In December 2005, plaintiffs and defendants started a relationship. In 2007, defendants offered to make plaintiffs the distributor of all of its products but later terminated that agreement. Around this time, plaintiffs transferred $46,780 to Korzen. Korzen admitted that he promised to pay the money back, considering it a loan, but that it was never repaid.

¶ 4 In November 2008, Wesley Wardzala, president of plaintiff Willow Electrical Supply, delivered a check for $14,000 to Korzen. On the memo line of the check, Wardzala wrote "Stock Purchase (51%)" and alleged that it was for a stock purchase of US Way. Korzen admitted that a stock purchase was discussed, that he thought about it, and that he cashed the check. Korzen claimed that the stock purchase was Wardzala's "fantasy" and there was no meeting of the minds as he cashed the check claiming that was partly a loan and partly for products.

¶ 5 On February 16, 2012, plaintiffs filed a motion for summary judgment based on the admissions of Korzen during discovery. On July 26, 2012, the trial court granted plaintiffs summary judgment on count IV for breach of contract awarding plaintiffs $46,780.82, but denied summary judgment on the remaining counts. On August 2, 2012, plaintiffs moved to voluntarily dismiss all but counts I and IV of the complaint and sought reconsideration of the denial of summary judgment on count I. On December 20, 2012, the trial court vacated its previous finding and granted summary judgment for plaintiff on counts I and IV of plaintiffs' complaint

for specific performance and breach of contract, respectively. Korzen was ordered to deliver 51% of shares of stock in US Way to plaintiffs and plaintiffs were awarded $46,780. This appeal followed and Korzen filed an appellant's brief *pro se*.

¶ 6 We begin by addressing plaintiffs' argument that defendant's statement of facts and brief should be disregarded for the failure to comply with our Supreme Court rules. We note that " '[a] reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research.' " *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 877 (2010), quoting *In re Marriage of Auriemma*, 271 Ill. App. 3d 68, 72 (1995). Supreme Court Rule 341(h) requires a statement of the facts, with citation to the record, necessary for an understanding of the case and a clear statement of contentions with supporting citation of authorities and pages of the record relied on. Ill. S. Ct. R. 341(h)(6), (7) (eff. July 1, 2008). In addition, Rule 342 requires the appellant's brief include an appendix containing, *inter alia*, a copy of the judgment appealed from and a complete table of contents with page references of the record on appeal. Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005).

¶ 7 These rules are not merely suggestions, but are necessary for the proper and efficient administration of the courts. *Parkway Bank and Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 10. We will not sift through the record or complete legal research to find support for this issue. Ill-defined and insufficiently presented issues that do not satisfy the rules are considered waived. *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 855 (2007). In fact, for these violations, this court may not only strike portions of the brief or consider arguments waived, but strike a brief in its entirety and dismiss the matter. *Parkway Bank* at ¶ 10. Despite Korzen's disregard of the rules and failure to support his arguments before this court, waiver is a limitation

on the parties and not on the courts and we consider the issues presented to provide finality in the matter. *Id.*

¶ 8 Summary judgment may be granted when the pleadings, depositions, admissions and affidavits on file demonstrate no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2006). We review an order granting summary judgment *de novo*. *Chicago Hospital Risk Pooling Program v. Illinois State Medical Inter-Insurance Exchange*, 397 Ill. App. 3d 512, 523 (2010). While we also review the evidence in a light most favorable to the nonmovant, we cannot ignore evidence unfavorable to the nonmovant and may sustain the trial court on any basis called for in the record. *Ruane v. Amore*, 287 Ill. App. 3d 465, 474 (1997).

¶ 9 Agreements are binding between parties so long as the court can ascertain under proper rules of construction that there is an offer, an acceptance, and a meeting of the minds as to the terms of the agreement. *Bruzas v. Richardson*, 408 Ill. App. 3d 98, 105 (2011). For a breach of contract claim, a plaintiff must prove these elements as well as performance by the plaintiff, breach of the contract by the defendant, and resultant damages or injury to the plaintiff. *Sheth v. SAB Tool Supply Co.*, 2013 IL App (1st) 110156, ¶68. The grant of specific performance is a discretionary decision by the trial court and requires proof of a valid and binding contract, compliance and willingness to perform by the plaintiff, and the failure or refusal of the defendant to perform his duties under the contract. *Schilling v. Stahl*, 395 Ill. App. 3d 882, 884 (2009).

¶ 10 We agree with plaintiffs that Korzen's recitation of the facts is wholly deficient and should be disregarded. There are no citations to the record anywhere in the statement of facts, which, as plaintiffs argue, are not simply a presentation of facts but a series of arguments and comments in violation of Rule 341(h)(6). As expressed in the case law above, it is not for this

court to request a record and conduct research for the parties, but for the parties to prepare and submit a complete record and provide citation to the record and authority in support of its arguments.

¶ 11 Furthermore, Korzen has completely failed to provide any legal support or analysis on appeal with the exception of citation to cases establishing the standard of review of a discovery dispute and general statements concerning factors to review on appeal for alleged discovery violations. While Korzen advanced two alleged bases for reversal, both arguments are without any authority whatsoever and any possible "argument" is generally indecipherable from the brief submitted.

¶ 12 Consistent with prior deficiencies, we are also without the benefit of a reply brief to rebut plaintiffs' response or provide any discussion of these issues. The record is devoid of any transcripts of the hearings before the trial court and contains only excerpts of deposition testimony. Therefore, Korzen's conclusory statements are disregarded and the unsupported arguments are considered waived. Korzen's first claim, that he was denied discovery by the trial court is only supported by a motion to compel that was filed, there is no transcript of any hearing or any order considering this motion to support Korzen's claim of prejudice or that the trial court erred.

¶ 13 The evidence of record indicates that plaintiffs made several loans and payments to Korzen. Korzen admits to receiving the payments and agreeing that he would pay plaintiffs back, and that he failed to make any of these payments. The evidence also clearly shows that the parties discussed a purchase of stock for the payment of $14,000, that Korzen understood this discussion, and Korzen cashed the check indicating the funds were for 51% of the stock.

¶ 14 The evidence demonstrates a contract was formed, plaintiff performed under the contract, and Korzen has failed or refused to perform his duties under the parties' agreement. Not having been presented any evidence to establish a genuine issue of material fact to overcome the presumption that the trial court correctly followed the law in granting defendant's motion for summary judgment, we affirm that ruling.

¶ 15 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 16 Affirmed.