2016 IL App (1st) 143327-U

FOURTH DIVISION
June 30, 2016

No. 1-14-3327

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOHN J. QUINN, Plaintiff-Appellant, v. ANDREW MINE, MARDELL NEREIM, ANDREW WORSECK, and THE CITY OF CHICAGO, an Illinois municipal corporation, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County 11-CH-07219 Honorable Patrick J. Sherlock, Judge Presiding

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Ellis and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Dismissal of second amended complaint and denial of motion to reconsider order was affirmed where former municipal employee failed to specify how his colleagues committed defamation *per se* and defamation *per quod*, and his new arguments on appeal concerning his federal civil rights claim were untimely presented and waived.

¶ 2 John J. Quinn alleged in this civil suit that he was fired from his job as the chief of zoning inspectors for the City of Chicago because three municipal attorneys defamed him by stating he accepted a bribe to reinstate a controversial building permit which had been revoked as nonconforming to the local building code. Quinn appeals from the dismissal of his second amended complaint with prejudice pursuant to section 2-615 of the Code of Civil Procedure and

the denial of his motion to reconsider and vacate the dismissal order pursuant to section 2-1203(a) of the same statute. 735 ILCS 5/2-615, 2-1203(a) (West 2012) (Code). The defendants, who are the City of Chicago and attorneys Andrew Mine, Mardell Nereim, and Andrew Worseck, respond that the two orders were warranted where Quinn did not specify to whom and under what circumstances the purported false statements were made, that Quinn was given numerous and sufficient opportunities to replead, that he did not pursue discovery, and that he is presenting arguments for the first time on appeal.

¶ 3 Before delving into the specifics of this appeal, we note that defamation is a tort that may be spoken or written communication and that these two forms of communication are commonly known as slander and libel. *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 89, 672 N.E.2d 1207, 1215 (1996). Previously, libel was considered the more serious wrong, but under the modern approach followed in Illinois courts, both forms of communication are analyzed under a single standard. *Bryson*, 174 Ill. 2d at 89, 672 N.E.2d at 1215. A statement is considered defamatory if it tends to cause such harm to the reputation of a person in that it lowers him or her in the eyes of the community or deters others from associating or dealing with the person. *Bryson*, 174 Ill. 2d at 87, 672 N.E.2d at 1214; Restatement (Second) of Torts § 559 (1977). To state a defamation claim, a plaintiff must allege facts showing that the defendant made a false statement which was unprivileged about the plaintiff to a third party. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579, 852 N.E.2d 825, 839 (2006); Restatement (Second) of Torts § 558 (1977).

¶ 4 Quinn asserted claims of defamation *per se* and defamation *per quod*. Defamation *per se* is a statement that is so obviously and materially harmful to the plaintiff that injury to his or her reputation may be presumed. *Bryson*, 174 Ill. 2d at 87, 672 N.E.2d at 1214. Relevant examples

of defamation *per se* are words that impute the commission of a criminal offense or impute a lack of integrity in the discharge of the duties of one's office or employment. *Bryson*, 174 Ill. 2d at 88, 672 N.E.2d at 1214-15.[1] If a defamatory statement is actionable *per* se, then the plaintiff does not need to plead or prove actual damage to the plaintiff's reputation in order to recover. *Bryson*, 174 Ill. 2d at 87, 672 N.E.2d at 1214. If the defamatory statement does not fall within one of the few recognized categories of statements that are actionable *per se,* then it is defamation *per quod* and damage to reputation will not be presumed. *Bryson*, 174 Ill. 2d at 103, 672 N.E.2d at 1221. A *per quod* claim may be brought in two circumstances. First, in a *per quod* action in which the defamatory nature of the statement is not apparent on its face, then the plaintiff must plead and prove extrinsic facts to explain the defamatory meaning of the statement, as well as pleading and proving actual damages. *Bryson*, 174 Ill. 2d at 103, 672 N.E.2d at 1221. In the second type of *per quod* action, the defamatory nature of the statement is apparent on its face, and it is unnecessary to plead and prove additional facts to show its defamatory meaning, but the plaintiff must plead and prove special damages to recover. *Bryson*, 174 Ill. 2d at 103, 672 N.E.2d at 1221.

¶ 5 Quinn's second amended complaint related the following. In late 2004, the City received complaints from property owners in the West Loop neighborhood about the construction of what appeared to be residential condominiums in an area zoned only for manufacturing. The City launched an investigation and suspended the building permit for the construction of "Morgan Place of Chicago." Defendant attorney Nereim, who works in the City's Law Department,

[1] In Illinois, there are five categories of statements that are considered defamatory *per se*. These are words that indicate a person (1) has committed a crime; (2) is infected with a loathsome communicable disease; (3) is unable to perform or lacks integrity in performing her or his office or employment; (4) lacks ability in his or her business, trade, or profession; and (5) has engaged in adultery or fornication. *Bryson,* 174 Ill. 2d at 88-89, 672 N.E.2d at 1214-15.

attended a subsequent meeting involving municipal departments responsible for building, construction and permits, zoning, and planning. Based on an investigator's photographs, Nereim advised her colleagues that construction of Morgan Place had progressed to the extent that the owner had vested rights in the building permit and that if the City revoked the permit and the owner sued, the permit would be reinstated. Accordingly, the City decided to negotiate terms with the owner, Jerry Cedicci, so that surrounding owners could continue to use their properties without complaints from the eventual residents of the new condominiums. Because it was "well known to all" that plaintiff Quinn was "acquainted with" Cedicci, Quinn was asked to negotiate on the City's behalf. Quinn did so in January 2005. That same month, the municipal department of construction and permits reinstated Cedicci's permit and he resumed construction. When neighboring property owners and "various City Hall contacts" questioned the reinstatement, the City repeatedly "issued statements" attributing the decision to its Law Department based on the progress of construction.

¶ 6 During the summer of 2005, Quinn went to Brazil with Cedicci "for a trade show and to sight see," and, although Cedicci initially "made the travel arrangements," Quinn reimbursed Cedicci for all of Quinn's expenses when they returned to Chicago. The City's Inspector General learned about the trip from "Rafael [*(sic)*]Hernandez [who was then the executive director of the City's department of construction and permits and] who believed that the act of traveling with a City permittee was a violation of the [municipal] ethics code."

¶ 7 When the Inspector General "intertwined" the trip to Brazil with the reinstatement of the Morgan Place building permit, "several City Department heads lost their jobs *** as did plaintiff" in 2005. In addition, Cedicci's building permit was revoked. Cedicci filed a lawsuit, Morgan Place of Chicago v. City of Chicago, No. 05 CH 11618 (Cir. Ct. Cook County), seeking

reinstatement based on the 2005 agreement, however, the City counterclaimed that Cedicci bribed Quinn and engaged in a conspiracy for the reinstatement. See *Morgan Place of Chicago v. City of Chicago*, 2012 IL App (1st) 091240, ¶ 26, 975 N.E.2d 187.

¶ 8 "Throughout the [Morgan Place] lawsuit, [Quinn] was repeatedly accused of taking a bribe" and "being the reason the permit was reinstated" and the defendant attorneys "withheld the truth under a claim of privilege" and "hid from [discovery and] the view of [the trial judge] *** documents proving that [Quinn] had nothing to do with the permit being reissued." "Defendants accused [Quinn] *** with full knowledge that [he] did not have any role in reinstating the permit." Furthermore, attorney Nereim gave "false testimony [about what occurred that] prove[d] *** her intent was to hide her role in the reinstatement, for fear of losing her job as well." The three attorneys also "falsely asserted and published to third persons, outside of any [privileged statements made in a] courtroom, that [Quinn] procured a non-conforming building permit for the applicant [Cedicci], after taking a bribe from the applicant[.]" In addition, attorneys Mine and Worseck "published and represented to third persons, outside of any courtroom, that plaintiff had reinstated the permit after accepting a bribe."

¶ 9 The three individual defendants "published, or caused the publication of, said false and defamatory statements, and therefore and thereby distributed, or caused the distribution of, copies of said defamatory statements to and among the media so that professional colleagues of [Quinn] would read such statements about [him]." "These publications cost [Quinn] his job, held him up to public ridicule, destroyed his ability to find gainful employment, and inflicted upon him and his wife significant stress and undo [*(sic)*] harassment."

¶ 10 Despite this conduct, during the bench trial, the City no longer asserted a legal privilege over certain documents which "conclusively proved that [Quinn] had nothing to do with the

reinstatement." These documents were then "seen for the first time by Mr. Cedicci's lawyers, [and] were admitted [into evidence]." In addition, Raphael Hernandez, who made the initial report to the Inspector General, testified that Quinn "had no effect on [Hernandez's] decision to reinstate the permit" and he "admitted it was the Department of Law that was responsible for that." Therefore, at the conclusion of the trial, the judge "vindicated [Quinn] as having no role in the reinstatement of the permit, and specifically found that [he] did not influence the decision to reinstate the permit." Although not alleged in the pleading at issue, we note that Cedicci did not prevail on his claims to have the permit reinstated but did overcome the City's counterclaims alleging impropriety, and that the trial judge's decision was affirmed in 2012 by another panel of this appellate court. *Morgan Place*, 2012 IL App (1st) 091240, ¶ 27, 975 N.E.2d 187.

¶ 11 In 2009, after Cedicci's suit concluded in the trial court, Quinn filed his first complaint against the City of Chicago attorneys and the municipality.

¶ 12 Because the issues on appeal implicate Quinn's diligence, we detail the procedural history of his suit.

¶ 13 The defendants opposed Quinn's first pleading with a motion to dismiss. Instead of responding to the motion, Quinn requested and obtained leave to file an amended complaint. He amended the pleading in July 2010. Nine days later, he voluntarily dismissed his suit.

¶ 14 Quinn revised his allegations and in July 2011 refiled under the current case number. In a § 2-619.1 combined motion to dismiss, the defendants argued this third version of Quinn's complaint was factually deficient, and that the claims were barred by the attorney litigation privilege, barred as untimely under the one-year statute of limitations in the Tort Immunity Act (745 ILCS § 10/8-101(a) (West 2010)), and that the allegations against the City were also barred by the section of the Tort Immunity Act which shields local public entities from liability for the

libelous or slanderous statements of its employees (745 ILCS § 10/2-107 (West 2010)). See 735 ILCS § 5/2-619.1 (West 2010) (authorizing a litigant to combine in a single motion § 2-615 arguments directed to the sufficiency of the allegations and § 2-619 arguments which raise affirmative defenses).

¶ 15 On December 7, 2011, the trial judge entered a briefing schedule requiring Quinn to respond to the motion to dismiss by January 11, 2012. Quinn did not meet that deadline and on February 28, 2012, the trial judge gave Quinn a new deadline of March 19, 2012. Quinn did not meet that deadline and on April 20, 2012, he requested and was given a deadline of May 11, 2012, to instead file an amended complaint. Quinn also missed that deadline, but on July 10, 2012, he tendered an amended complaint which he was given leave to file *instanter*, and the defendants were given three days to file a motion to dismiss. The judge specified that Quinn must file his response to the motion to dismiss within seven days of service of the motion and that his "[f]ailure to do so [would] result in a dismissal with prejudice." Quinn filed a timely response.

¶ 16 After a hearing, the judge granted the defendants' motion on August 28, 2012, and dismissed Quinn's amended complaint without prejudice. At this point, Quinn requested and was given leave to depose the three attorneys within 60 days and to file a second amended complaint within the subsequent 21 days. However, at a status hearing convened on November 27, 2012, Quinn tendered a written request for a 30-day extension for his discovery and repleading. The request was supported by a sworn statement from Quinn's attorney detailing (1) the hospitalization and death of his law firm's administrative manager between May and June 2012, (2) the attorney's office move in October 2012, (3) his involvement in his elderly father's healthcare in Palm Desert, California, in October 2012, due to his father's increasing dementia,

and (4) his involvement in his daughter's healthcare and difficulties with insurance coverage between June 2012 and October 2012, due to stage III cancer and complications from her medical treatment. The defendants argued that a 30-day extension of the prior order should not be granted, because discovery is inappropriate when no complaint is on file. The judge then denied the requested extension for discovery and repleading, but gave Quinn 21 days to file a second amended complaint, and specified in a written order that Quinn's request for additional discovery time could be presented after a complaint was on file. Quinn missed the filing deadline of March 20, 2013.

¶ 17 The defendants filed a motion to dismiss Quinn's case with prejudice pursuant to Illinois Supreme Court Rule 219(c) on grounds that he was demonstrating a lack of interest in pursuing his suit, given that in his original and refiled cases, (1) Quinn "violated no less than 10 orders requiring him to amend his pleading, respond to a dispositive motion, or initiate discovery" and (2) that he had not had a complaint on file in seven months. Ill. S. Ct. R. 219(c) (eff. July 1, 2002). On April 1, 2013, the judge set a briefing schedule which obligated Quinn to respond to the motion by April 15, 2013, in anticipation of a hearing set for May 6, 2013. Quinn did not meet the April filing deadline. At the hearing in May, Quinn arrived with a written response in which he argued that dismissal with prejudice as a first sanction would be harsh when normally progressive sanctions are entered in order to encourage the completion of discovery and the resolution of litigation on the merits. The response included an affidavit similar to counsel's previous affidavit attributing his delays in the case primarily to the serious health problems experienced by his staff and family. Nevertheless, the judge then presiding over the case struck the response as untimely, found that Quinn had not been diligent in prosecuting his case, denied leave to amend the complaint, and dismissed the suit for want of prosecution.

¶ 18 Quinn filed a motion to vacate the dismissal. This motion was heard and granted by a different trial judge who ordered Quinn to plead within 7 days, which was November 12, 2013. This same judge presided over the case for the remainder of the trial court proceedings. When the parties appeared for a status date on November 21, 2013, which was well after the pleading deadline, Quinn requested additional time to file. The judge gave Quinn four more days to file a complaint and specified that if Quinn missed the new deadline of November 25, 2013, his case would be dismissed. Quinn met the deadline by filing the second amended complaint which is now at issue.

¶ 19 The defendants countered with a § 2-615 motion to dismiss Quinn's defamation *per se* and defamation *per quod* counts because they lacked specifics (counts I and II) and a separate § 2-615 motion to dismiss his claim brought under the federal civil rights law commonly known as § 1983 (42 U.S.C. § 1983 (2012)) because Quinn had been an at-will employee with no property right to his continued employment and he had not identified a municipal policy, custom, or practice that caused the deprivation of any Constitutionally-protected rights (count III). Quinn did not file a response or appear at the scheduled hearing and the judge granted the defendants' request for a dismissal with prejudice. This is the first of two rulings Quinn appeals. The court's brief written order does not specify whether the dismissal was based on the defendants' written arguments or whether Quinn's failure to oppose the motion led the defendants to orally renew their contention that his demonstrated lack of interest in pursuing his case was grounds for dismissing it with prejudice.

¶ 20 Within 30 days, Quinn filed a motion to vacate the dismissal. He offered no explanation for his failure to oppose the motion to dismiss by complying with the briefing schedule and appearing at the hearing. Instead, he responded to the § 2-615 motion. He argued that his

defamation counts were sufficiently pled when the necessary information was in the defendants' possession and he had not had the benefit of discovery. He argued that he "should be permitted to depose the defendant attorneys before *** [being] required to respond to any motion to dismiss or to re-plead any count." He also argued that various § 2-619 defenses which the defendants had not argued in their § 2-615 motions, including governmental tort immunity and statute of limitations, were unpersuasive. 735 ILCS §§ 5/2-615, 2-619 (West 2010).

¶ 21 Two months later, the defendants filed a motion to strike Quinn's pending motion, because he had neither served it on the defendants nor obtained a hearing date. The judge denied the motion to strike and gave Quinn a briefing schedule and hearing date.

¶ 22 The defendants then prepared a response brief and devoted a considerable portion of it to arguing that Quinn repeatedly ignored deadlines and that his conduct was "dilatory and abusive" and "should not be rewarded and encouraged." The defendants came to the conclusion that "[f]or five years, plaintiff has been allowed to keep this litigation alive and consume the resources of the court and counsel, all without making any effort to actually litigate the case, much less overcome the factual deficiencies in his pleadings." The defendants also argued that the motion to vacate should be denied for substantive reasons. Quinn did not reply. The judge denied Quinn's motion to vacate in a written order indicating the judge had "been made aware of the premises" and had heard oral arguments. This is the second of the two orders on appeal. We cannot summarize the trial judge's reasoning for denying the motion to vacate, because the written order does not specify the reasons and the record on appeal does not include a transcript of the hearing.

¶ 23 On appeal, Quinn contends it was error to dismiss his second amended complaint with prejudice and an abuse of discretion to deny his motion to vacate the ruling. He argues his

pleading burden was lessened, because the defendant attorneys had "possession and control" of all the information about what they did and said, that Quinn pled sufficient facts in his defamation and § 1983 claims, and that he should have been permitted to conduct depositions before his case was dismissed with prejudice. He contends he alleged defamation and unprivileged publication of those defamatory statements by alleging "the attorney defendants falsely accused and published to third persons, outside the courtroom, that plaintiff had procured a non-conforming building permit for the applicant, after a bribe from the applicant, which publication was false." He also points to his allegation that Mine and Worseck "published and represented to third persons, outside of any courtroom, that plaintiff had reinstated the permit after accepting a bribe." He contends these are allegations the defendants stated he committed a crime and lacked integrity in performing his job duties, which are recognized categories of defamation *per se*. He also contends he alleged malice and falsity by alleging that the attorneys "hid from the view of *** the trial judge *** documents proving that plaintiff had nothing to do with the permit being issued." He makes no specific argument about his defamation *per quod* count, but concludes his *per se* and *per quod* counts were sufficient and, thus, erroneously dismissed.

¶ 24 Quinn's second appellate argument is that the Tort Immunity Act (745 ILCS 10/1-101 (West 2010)) does not shield governmental employees for their intentional conduct.

¶ 25 Quinn's third argument about the "with prejudice" dismissal is that the judge should have given Quinn leave to replead given that his complaint was only twice amended and the judge never entered a finding that there was no set of facts that would entitle Quinn to relief.

¶ 26 Quinn admits that he failed to present these arguments before the trial judge ruled, but he contends a written response to the § 2-615 motion was unnecessary because the defendants'

motion was inadequate. Quinn does not acknowledge that he also failed to attend the dismissal hearing.

¶ 27 Quinn's final contention is that the judge should have granted Quinn's motion to vacate where Quinn stated factually sufficient claims in his second amended complaint and there was no finding that there was no set of facts that would entitle him to relief.

¶ 28 The defendants respond that Quinn forfeited all of these appellate arguments when he did not oppose the motion to dismiss by filing a response brief and appearing at the hearing, and that the dismissal of the § 1983 argument is forfeited for the additional reason that Quinn did not present it in the trial court in his motion to vacate the dismissal order. In the event we proceed to the merits, the defendants reiterate arguments they made in the trial court.

¶ 29 As we indicated above, it is impossible to determine from the record why the judge dismissed Quinn's complaint with prejudice. The written order does not specify the underlying reasons and the record does not include a transcript of the hearing which Quinn failed to attend. Given that before and after the hearing, the defendants argued Quinn was not diligent with his case, it seems likely that the defendants orally renewed this argument at the hearing which Quinn failed to attend. On more than one occasion, the defendants had pointed out the effect of Quinn's failure to comply with various deadlines. One judge found Quinn had not been diligent and dismissed his case for want of prosecution and the subsequent judge vacated the order but demonstrated impatience with Quinn by granting only short deadlines and short extensions.

¶ 30 Quinn's contention that a written response to the § 2-615 motion was unnecessary because the defendants' motion was inadequate is untrue. Quinn supports this position with cases such as *Nedzvekas* indicating that when a defendant provides facts demonstrating that he or she is entitled to summary judgment, the plaintiff may no longer rest on the sufficiency of his or her

complaint to create a material issue of fact and is burdened with presenting a factual basis which would arguably entitle him or her to a favorable judgment. *Nedzvekas v. Fung*, 374 Ill. App. 3d 618, 624, 872 N.E.2d 431, 437-38 (2007). The three other cases Quinn cite also concern summary judgment: *Patel v. Burke*, 102 Ill. App. 3d 554, 430 N.E.2d 162 (1981); *Lytle v. Roto Lincoln Mercury & Subaru, Inc.*, 167 Ill. App. 3d 508, 521 N.E.2d 201 (1988); *Topps v. Ferrro*, 235 Ill. App. 3d 43, 601 N.E.2d 292 (1992). Summary judgment concepts are not relevant here. Moreover, none of these cases indicates that if a litigant determines a written response will be unnecessary, the litigant should forego the common courtesy of informing opposing counsel and the court, in advance, that the litigant will be waiving the opportunity to file a written brief. Furthermore, in litigation, an attorney owes a duty to the court to appear before it on notice and to assist the court in the expeditious consideration and disposal of cases. *People v. Pincham*, 3 Ill. App. 3d 295, 297, 279 N.E.2d 108, 110 (1971). For these reasons, we find that Quinn's belated excuse for failing to respond in writing or to appear at the hearing is not well taken. His excuse brings to mind *O'Callaghan*, in which the plaintiffs chose to respond to only some of the defendants' arguments for dismissal, deeming another argument to be "specious" but purporting to "reserve the right to respond in detail if Defendants raise this argument in a proper motion." *O'Callaghan v. Satherlie*, 2015 IL App (1st) 142152, ¶ 11, 36 N.E.3d 999. The court held that the plaintiffs "never possessed such a right, as the fantasy practice they proposed would unnecessarily prolong litigation." *O'Callaghan*, 2015 IL App (1st) 142152, ¶ 22, 36 N.E.3d 999. Similarly, the appropriate time for Quinn to have first presented his arguments or announced his decision to forego a written brief was before, not after, the trial judge ruled on the motion to dismiss. Quinn's failure to prepare for and attend the hearing likely caused confusion and delay

on the hearing date and resulted in the additional time and expense of preparing and arguing his motion to vacate the ruling.

¶ 31 Perhaps more important to appellant Quinn is that without a written response to the motion to dismiss and a hearing transcript, the record now suggests two different reasons for the judge to have entered the dismissal with prejudice. It would be inappropriate for us to review the ruling for the first reason—the pleading's factual sufficiency, if the dismissal was actually entered for the second reason—as a sanction for Quinn's want of prosecution. It was Quinn's burden as the appellant to provide this court with a record sufficiently complete to permit review. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 459 N.E.2d 958 (1984). When a record on appeal is deficient, we may summarily affirm the challenged ruling, based on the presumption that the missing portion of the record supports the ruling and that the trial judge acted in conformity with both the facts and the law. *Coleman v. Windy City Balloon Port, Ltd.*, 160 Ill. App. 3d 408, 419, 513 N.E.2d 506, 514 (1987). The only thing that prevents us from applying that principle now is that the defendants affirmatively state on page 23 of their appellate response brief that the dismissal with prejudice was based on the pleading deficiencies argued in their written motion. Therefore, despite these lapses, we proceed with the appeal.

¶ 32 Defendants are correct that Quinn's failure to respond in the trial court is reason for us to find his appellate arguments have been waived. "[A]n argument not raised in a plaintiff's response to a motion to dismiss is forfeited [on appeal]." *O'Callaghan*, 2015 IL App (1st) 142152, ¶ 22, 36 N.E.3d 999. Nevertheless, waiver is a limitation on the parties and not the courts (*American Federation of State, County & Municipal Employees, Council 31, AFL–CIO v. County of Cook*, 145 Ill. 2d 475, 480, 584 N.E.2d 116, 119 (1991)), and in our discretion, we choose to address Quinn's pleading.

¶ 33 A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face. *Bryson*, 174 Ill. 2d at 86, 672 N.E.2d at 1213. The court must accept as true the well-pled facts and reasonable inferences to be made from the allegations and construe the allegations in the light most favorable to the plaintiff. *Bryson*, 174 Ill. 2d at 86, 672 N.E.2d at 1213. Accordingly, a cause of action should not be dismissed pursuant to § 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief. *Bryson*, 174 Ill. 2d at 86, 672 N.E.2d at 1213. Our standard of review is *de novo. Bryson*, 174 Ill. 2d at 86, 672 N.E.2d at 1213. A complaint will be examined with the view to doing substantial justice between the parties. *Holton v. Resurrection Hospital*, 88 Ill. App. 3d 655, 658, 410 N.E.2d 969, 972 (1980). However, "[i]t is often said that a complaint to be sufficient in law must set out specific facts showing a cause of action exists, and a complaint is insufficient if it states mere conclusions, whether of fact or of law." *Holton*, 88 Ill. App. 3d at 657, 410 N.E.2d at 971 (rejecting as insufficient the allegations that plaintiff "was a liar and was guilty of unethical and improper conduct") (quoting *Mittelman v. Witous*, 135 Ill. 2d 220, 552 N.E.2d 973 (1989)). We also note that words which are purportedly defamatory must be alleged " 'clearly and with particularity.' " *Lykowski v. Bergman*, 299 Ill. App. 3d 157, 700 N.E.2d 1064 (1998). A factually sufficient complaint serves two specific purposes. It justifies the enactment of the trial process itself and it allows the defendant to formulate an answer and determine what he needs to do in preparation for the trial. *Holton*, 88 Ill. App. 3d at 658, 410 N.E.2d at 972.

¶ 34 After considering the pleading and arguments in light of these legal principles, we find that Quinn's second amended complaint relies on his subjective conclusions and paraphrasing of the elements of a defamation claim rather than objective and sufficient factual statements depicting defamation. For his *per se* and *per quod* claims, Quinn relies on the allegation in

paragraph 8 of his pleading that "the attorney defendants falsely accused and published to third persons, outside the courtroom, that plaintiff had procured a non-conforming building permit for the applicant, after a bribe from the applicant, which publication was false." This is a legal conclusion. It is unclear from this conclusion (1) when the statement was or statements were made by "the attorney defendants" (is Quinn alleging that the "attorney defendants" simultaneously spoke the same words or jointly authored a written statement), (2) who heard or read the statement or statements, and (3) what exactly was communicated. Furthermore, if the defamation was a libelous publication, Quinn was required to attach a copy of the writing to his pleading, and there is no such attachment. *Senese v. Climatemp, Inc.*, 222 Ill. App. 3d 302, 309, 582 N.E.2d 1180, 1185 (1991); 735 ILCS §5/2-606 ("[i]f a claim or defense is founded upon a written instrument, a copy thereof * * * must be attached to the pleading as an exhibit or recited therein, unless the pleader attaches to his or her pleading an affidavit stating facts that the instrument is not accessible to him or her").

¶ 35 Quinn also relies on the allegation in paragraph 9 of his pleading that Mine and Worseck "published and represented to third persons, outside of any courtroom, that plaintiff had reinstated the permit after accepting a bribe." Here again Quinn fails to allege (1) when the objectionable statement or statements occurred, (2) who read or heard Mine and Worseck's words, and (3) what exactly was "published and represented" to the unnamed "third persons."

¶ 36 Although not argued by Quinn, we also considered paragraph 19 of the second amended complaint, in which Quinn alleged "Defendants, with actual malice, published or caused the publication of, said false and defamatory statements, and therefore and thereby distributed, or caused the distribution of, copies of said defamatory statements to and among the media so that professional colleagues of plaintiff would read such statements about plaintiff." This allegation

suggests libel rather than slander, but Paragraph 19, even read in conjunction with paragraphs 8 and 9, does not factually convey what was "published and represented" or how the statement was "distributed" and the supposed recipients are identified only vaguely as "the media" and "professional colleagues of plaintiff."

¶ 37 Quinn does not develop any specific argument in support of his defamation *per quod* count. In contrast to a *per se* claim, by entitling the count as a *per quod* claim, Quinn was indicating that he would need to allege that he sustained actual damage and perhaps also allege extrinsic facts to explain the defamatory meaning of the statement or statements. *Bryson*, 174 Ill. 2d at 103, 672 N.E.2d at 1221; *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 416, 667 N.E.2d 1296, 1303 (1996) ("Her first amended complaint contains no extrinsic facts establishing that Vanden Dorpel's alleged comment was interpreted [by others] as being defamatory."). In that count, Quinn realleged and incorporated many of his earlier allegations, including paragraphs 8 and 9, and added the following paragraph, which the defendants characterize as "unintelligible":

> "23. Extrinsic circumstances in Chicago in the real estate industry who were familiar with the zoning and permit aspects of the real estate industry in Chicago [(*sic)*] would understand that the accusations and statements made by the defendant attorneys as imputing a lack of governmental integrity and honesty and would lead such persons, based on these extrinsic circumstances, to conclude that plaintiff fixed the reinstatement of the permit and was therefore a corrupt public official. Such circumstances were and are defamatory. "

¶ 38 In this paragraph, Quinn is suggesting that extrinsic circumstances are people ("Extrinsic circumstances in Chicago in the real estate industry who were familiar with the zoning and permit aspects of the real estate industry in Chicago would understand") and also suggesting that

extrinsic circumstances themselves are actionable ("Such circumstances were and are defamatory."). These confusing allegations do not add any specific facts to the pleading and thus, neither improve the *per se* claim nor create a *per quod* claim.

¶ 39 Quinn falls back on the pleading principle that where defendants have most of the relevant information in their possession, they are aware of and can easily determine the specific details for themselves, and they do not need to rely primarily on facts stated in the plaintiff's complaint in order to prepare an answer or responsive motions. *Lozman v. Putnam*, 328 Ill. App. 3d 761, 767 N.E.2d 805 (2002). Certain claims may be aided by this pleading rule, for instance, "conspiracies are often intentionally 'shrouded in mystery,' which by nature makes it difficult for the plaintiff to allege with complete specificity all of the details of the conspiracy." *Time Savers, Inc. v. LaSalle Bank, N.A.*, 371 Ill. App. 3d 759, 771, 863 N.E.2d 1156, 1167 (2007). Another example is a negligent death claim filed in Cook County concerning a man who died of a heart attack very shortly after being treated and released from Resurrection Hospital's emergency room, and his executor was at first capable of alleging only that "an unqualified [emergency room] employee and/or medical doctor" must have interpreted the man's electrocardiogram and failed to make a proper diagnosis. *Holton*, 88 Ill. App. 3d at 657, 410 N.E.2d at 971. Illinois is a fact-pleading jurisdiction, but under circumstances such as the two just described, the plaintiffs were not required to plead with specificity and precision the facts that were within the defendant's control and knowledge. *Time Savers*, 371 Ill. App. 3d at 771, 863 N.E.2d at 1167. "This rule assists plaintiffs who may be unable to discover the information needed to draft a detailed complaint before bringing an action." *Bryson*, 174 Ill. 2d at 110, 672 N.E.2d at 1225. This rule permits a plaintiff to state the material facts with *less* specificity than is normally required, but it does not release a plaintiff from his or obligation to plead *sufficient* facts. Even

when a plaintiff is relying on this principle, he or she "must allege specific facts from which the existence of a [claim] may properly be inferred." *Time Savers*, 371 Ill. App. 3d at 771-72, 863 N.E.2d at 1167-68. Although "[n]o pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim *** which he or she is called upon to meet" (735 ILCS 5/2-612(b) (West 2012)), a plaintiff is still required to allege facts essential to his or her cause of action. This pleading principle does not remedy the fact that paragraphs 8, 9, 19, and 23 lack "specific facts from which the [intended claims] may properly be inferred." *Time Savers*, 371 Ill. App. 3d at 771-72, 863 N.E.2d at 1167-68.

¶ 40 To this argument, Quinn adds that he should have been permitted to depose the three attorney defendants before the judge ruled on the motion to dismiss counts I and II and the separate motion to dismiss count III. The record indicates, however, that Quinn was granted leave to depose Mine, Nereim, and Worseck, but Quinn failed to meet the 60-day deadline to conduct the depositions, which was one of many scheduling orders he disregarded. Quinn also failed to file a written response in opposition to the motions to dismiss and he failed to attend the hearing. Thus, what Quinn is suggesting is the judge should not have ruled on the unopposed motions and should have instead *sua sponte* entered a discovery schedule and postponed the pending motions until after Quinn could file a response brief and/or amend his pleading. This is not how our adversarial legal system works. Furthermore, none of the cases Quinn cites remotely supports his argument. See *e.g.*, *Yuretich v. Sole*, 259 Ill. App. 3d 311, 317, 631 N.E.2d 767, 772 (1994) ("a trial court should not refuse a discovery request"); *Senese*, 222 Ill. App. 3d at 319, 582 N.E.2d at 1191 (indicating the trial court erred by rejecting plaintiff's request for discovery).

¶ 41 A pleading which merely paraphrases the elements of a cause of action in conclusory terms is not sufficient, which is what Quinn did in his second amended complaint. *Knox College*

v. Celotex Corp., 88 Ill. 2d 407, 423-27, 430 N.E.2d 976, 984 (1981) (indicating that notice pleading and paraphrasing statements of law will not suffice in an Illinois state court complaint); *Richardson v. Eichhorn*, 18 Ill. App. 2d 273, 276, 151 N.E.2d 819, 821 (1958) (where plaintiff simply paraphrased statements of law in his complaint "as though he needs only to say that his case will meet legal requirements, without stating the facts," the court found the plaintiff misinterpreted Illinois' pleading standards). Quinn paraphrased the general elements of claims for defamation *per se* and *per quod*, instead of pleading the claims in specific and sufficient factual detail. His nonspecific allegations did not warrant a trial and did not permit the defendants to formulate an answer and determine what was needed to prepare for trial. Accordingly, we find that Quinn has not shown error in the dismissal of counts I and II of his second amended complaint.

¶ 42 Continuing with his arguments of factual sufficiency, Quinn contends his § 1983 claim was adequate. Quinn did not present this argument in the trial court. He is asking this court of review to reverse the judge's ruling on grounds which the judge was never asked to consider. We cannot justify addressing his arguments. Our adversarial system does not allow Quinn to introduce new arguments so late in the proceedings. We find that his challenge to the dismissal of count III has been waived. *O'Callaghan*, 2015 IL App (1st) 142152, ¶ 22, 36 N.E.3d 999; *Pajic v. Old Republic Insurance Co.*, 394 Ill. App. 3d 1040, 1051, 917 N.E.2d 564, 574 (2009).

¶ 43 We need not reach Quinn's argument that the Tort Immunity Act does not shield the individual defendants' intentional conduct. The defendants made this argument once, early in the proceedings, but they did not include it in the motion to dismiss the pleading at issue. Our opinion about the relevance of the Tort Immunity Act would not affect the trial judge's ruling.

¶ 44 We next consider Quinn's contention that the judge "erred in ruling that the dismissal of the Second Amended Complaint was with prejudice and not giving Quinn leave to replead." Before a trial judge can be deemed to have abused his discretion, the record must disclose that reasons or facts were presented to the judge as a basis for requesting the favorable exercise of the judge's discretion. *Cable America*, 396 Ill. App. 3d at 24, 919 N.E.2d at 391; *Frantzve v. Joseph*, 150 Ill. App. 3d 850, 853, 502 N.E.2d 396, 398 (1986) (plaintiffs who fail to seek leave to file an amended complaint waive any right to question the trial court's dismissal of a complaint without permitting amendment). Quinn failed to oppose the dismissal of his second amended complaint by filing a written response and appearing for oral argument, and he did not request leave to plead a third amended complaint. We cannot fault the judge's ruling under these circumstances.

¶ 45 Quinn's final arguments concern his motion to reconsider and vacate the dismissal order. The judge denied the motion after briefing and oral argument. The judge's ruling is reviewed for an abuse of discretion. *Cable America*, 396 Ill. App. 3d at 24, 919 N.E.2d at 391. Quinn contends the motion should have been granted in part because he stated valid claims in his second amended complaint, but as we discussed above, he did not. Furthermore, he did not tender a proposed third amended complaint or otherwise detail how he would revise his pleading to correct its deficiencies. He also contends the judge needed to make a finding that there was no set of facts that would entitle Quinn to relief. Quinn fails to cite any authority indicating a trial judge must include this rote language in a dismissal order in order to effectively dismiss a claim with prejudice. He cites *Village of South Elgin v. Waste Management of Illinois, Inc.*, 348 Ill. App. 3d 929, 939-40, 810 N.E.2d 658, 669 (2004), which includes the often repeated concepts that the purpose of a section 2-615 motion (735 ILCS 5/2-615 (West 2002)) is to point out defects in a pleading and allow the plaintiff an opportunity to present a valid complaint, and that

generally, a judge will liberally grant leave to amend. The opinion also states, "Unless it clearly appears that no set of facts exist that would entitle the plaintiff to relief, the dismissal should not be with prejudice." *Village of South Elgin*, 348 Ill. App. 3d at 940, 810 N.E.2d at 669. The principle was relevant in that opinion because the plaintiff's one and only complaint was dismissed without leave to replead, and after analyzing the complaint, the appellate court found the pleading to be somewhat lacking, and reversed and remanded for an opportunity to amend. *Village of South Elgin*, 348 Ill. App. 3d at 944, 810 N.E.2d at 672. In contrast, here, the trial judges gave Quinn repeated opportunities to replead, to no avail. The record does not indicate that the "with prejudice" portion of the ruling was an abuse of judicial discretion.

¶ 46 For these reasons, we affirm the dismissal of Quinn's second amended complaint and the denial of his motion to reconsider and vacate that order.

¶ 47 Affirmed.