

No. 1-15-1940

**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).

---

IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

KAIVALYA H. RAWAL,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	
NEWLAND & NEWLAND, LLP, GARY A.	)	No. 13 L 11941
NEWLAND, AND MICHAEL G. CONRAD	)	
	)	
Defendants.	)	
	)	The Honorable
(Newland & Newland, LLP and Gary A. Newland,	)	Kathy M. Flanagan,
Defendants-Appellants).	)	Judge Presiding.

---

JUSTICE BURKE delivered the judgment of the court.  
Justices Reyes and Lampkin concurred in the judgment.

**ORDER**

*Held:* We affirm the circuit court's section 2-615 dismissal with prejudice of plaintiff's fourth amended complaint where plaintiff failed to sufficiently plead the proximate cause element of his legal malpractice claim.

¶ 1 Plaintiff, Kaivalya Rawal, appeals from an order of the circuit court of Cook County dismissing with prejudice his fourth amended complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2012)). Defendants, Newland & Newland and

1-15-1940

one of its attorneys, Gary Newland (collectively, "Newland Defendants"), were named as parties in the legal malpractice lawsuit along with attorney Michael Conrad. During the course of the litigation, Rawal amended his complaint four times following orders of the circuit court that found his claims legally insufficient. Count I of Rawal's fourth amended complaint alleged legal malpractice against the Newland Defendants and Count II alleged legal malpractice against Conrad arising out of their representation of Rawal in a landlord-tenant action (Underlying Litigation). On June 17, 2015, the circuit court dismissed with prejudice Count I of the fourth amended complaint for failure to sufficiently allege proximate cause against the Newland Defendants.<sup>1</sup> On appeal, Rawal contends that the circuit court erred by dismissing his legal malpractice claim for failure to sufficiently plead proximate cause. For the following reasons, we affirm.

¶ 2

## I. BACKGROUND

¶ 3

The following facts are derived from Rawal's fourth amended complaint and the record filed on appeal.<sup>2</sup> Rawal is a member of "Suhk-Mila dba Falafel Bistro-Wilmette" ("Suhk-Mila" or "Suhk-Mila, LLC"), a limited liability company that was formed to operate a restaurant in a commercial space owned by the plaintiffs in the Underlying Litigation, John and Alloah Losinske (Underlying Plaintiffs). On April 5, 2012, the Underlying Plaintiffs filed suit against Suhk-Mila LLC, Rawal, individually, and his partner in Sukh-Mila (Underlying Defendants). The complaint sought collection of rent due on the commercial space. Rawal alleged that there was no written lease between the parties for the commercial space, but that the Underlying Plaintiffs granted the previous tenants the right to assign the lease to Suhk-Mila, LLC. Rawal attached the assignment document to his complaint in the present legal malpractice lawsuit, in

---

<sup>1</sup> There is no indication in the record regarding the circuit court's disposition on Count II of the complaint.

<sup>2</sup> All references are made to Rawal's fourth amended complaint unless otherwise noted.

1-15-1940

which the Underlying Plaintiffs granted the previous tenant, Nea Agora, Inc., the right to assign the lease for the commercial space to "Sukh-Mila, Inc."

¶ 4 Rawal retained the Newland Defendants to represent him, his partner, and Sukh-Mila, LLC in the Underlying Litigation. According to Rawal's complaint, on June 20, 2012, the Newland Defendants filed a demand for a bill of particulars demanding that the Underlying Plaintiffs identify a legal theory under which Rawal could be held personally liable for the unpaid rent. Rawal contended that the Underlying Plaintiffs responded to the demand, but did not identify a legal theory under which he could be held personally liable.

¶ 5 Rawal further alleged that on July 3, 2012, the Underlying Plaintiffs filed a request to admit facts. Rawal attached the request to his complaint in the present matter. In paragraph one of the request to admit, the Underlying Plaintiffs alleged that the "manager" of Sukh-Mila received a notice from the Underlying Plaintiffs, a copy of which was attached to the request to admit.<sup>3</sup> In paragraphs two through five of the request to admit, the Underlying Plaintiffs alleged that the Underlying Defendants, received notice that they owed rent to their landlord, that they did not pay the rent within the timeframe specified, that the amount of rent they had paid from January 2012 through July 2012 was deficient, and that they owed unpaid rent in the amount of \$21,000. On July 20, 2012, the Newland Defendants filed a response to the request to admit facts. The response was attached to Rawal's complaint and reads "[n]ow come defendants, Sukh-Mila, LLC dba Falafel Bistro-Wilmette, Kaivalya H. Rawal, Anand D. Shukla, and all unknown occupants by and through their attorney's Newland & Newland LLP." The answer admitted all facts in paragraph one, but denied all facts in paragraphs two through five. The answer is signed and verified by Rawal "for Sukh-Mila, LLC dba Falafel Bistro-Wilmette."

---

<sup>3</sup> The referenced notice was not attached to Rawal's complaint.

¶ 6 Rawal's complaint further alleged that on July 20, 2012, the Newland Defendants filed an answer to the Underlying Plaintiffs' complaint on behalf of the Underlying Defendants. Rawal alleged that because the Newland Defendants did not file an answer to the Underlying Plaintiffs' requests to admit on behalf of Rawal, individually, all of the requests were deemed admitted against him. He contended that because the verification was signed by him on behalf of Suhk-Mila, it did not serve as a response for him personally. He further contended that the Newland Defendants should have filed a motion to dismiss him from the suit because he was not personally liable for the amount owed because the lease was assigned to Suhk-Mila, LLC.

¶ 7 On August 10, 2012, the Underlying Plaintiffs filed a second request to admit facts. Rawal contended that the Newland Defendants did not file a response to this second request. On August 13, 2012, Rawal informed the Newland Defendants that he had retained Conrad to represent him in the Underlying Litigation. The next day, Conrad received notice of the Underlying Plaintiff's August 10 request to admit facts and the Newland Defendants' failure to respond to the requests. On August 22, 2012, Conrad filed an appearance on behalf of the Underlying Defendants. Rawal contended that Conrad thereafter failed to respond to the Underlying Plaintiffs' second request to admit facts. Accordingly, Rawal contended that the court deemed admitted against him all of the allegations in both of the Underlying Plaintiffs' requests to admit facts.

¶ 8 Rawal further contended that on November 27, 2012, Conrad indicated that he was filing a counterclaim and was awaiting a hearing date, when, in fact, Conrad had decided to not file the counterclaim and did not inform Rawal of that decision. On December 6, 2012, the Underlying Plaintiffs filed a motion for summary judgment. In his complaint against the Newland Defendants, Rawal contended that the summary judgment motion was based on the allegations

1-15-1940

that the court deemed admitted as a result of Rawal's failure to respond to the first and second requests to admit facts. Rawal contended that there would have been no basis for summary judgment against him if the Newland Defendants and Conrad had responded to the requests to admit facts. On March 28, 2013, the circuit court granted the Underlying Plaintiffs' motion for summary judgment, and entered a judgment of \$21,000 plus costs against the Underlying Defendants.

¶ 9 Rawal further contended that in April 2013, Conrad told him that the case had been dismissed and that he would not be personally liable for the judgment. In July 2013, however, Rawal learned that Conrad had provided him with inaccurate information and that he was, in fact, being held personally liable for the amount of the judgment. Rawal obtained new counsel and brought a petition for relief from judgment under section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)) seeking to vacate the judgment against him. After a hearing, the circuit court dismissed his section 2-1401 petition.

¶ 10 On October 29, 2013, Rawal filed his initial legal malpractice complaint naming the Newland Defendants and Conrad as defendants. The Newland Defendants filed a motion pursuant to section 2-615 of the Code to dismiss Rawal's complaint for failure to state a claim. The circuit court granted the Newland Defendants' motion and dismissed Rawal's complaint without prejudice finding that he failed to establish that the Newland Defendants' alleged negligence proximately caused his damages. Rawal amended his complaint three times and each time the circuit court granted the Newland Defendants' motion to dismiss the counts against them in the complaint pursuant to section 2-615 of the Code finding that Rawal failed to establish proximate cause.

1-15-1940

¶ 11 Finally, Rawal filed his fourth amended complaint. In support of his claim against the Newland defendants, Rawal contended that an attorney-client relationship existed between him and the Newland Defendants which began in April 2012 and persisted throughout the Underlying Litigation. Rawal further contended that the Newland Defendants breached the standard of care owed to him by failing to respond to the first and second requests to admit, failing to monitor the status of the Underlying Litigation as attorneys of record, and failing to communicate with him regarding the status of the Underlying Litigation. Rawal contended that when the Newland Defendants would communicate with him, they would do so in a "hostile and dismissive manner, in opposition to the Illinois Rules of Professional Conduct." Rawal further contended that the Newland Defendants breached their duty of care by failing to identify that the Underlying Plaintiffs lacked a legal theory under which Rawal could be held personally liable for the unpaid rent, and for failing to file a motion to have him dismissed from the litigation on that basis.

¶ 12 Rawal alleged that but for the Newland Defendants' negligence, the Underlying Plaintiffs' claims against him would have failed because there was no privity of contract between him and the Underlying Plaintiffs and there was no other basis for finding him personally liable for the unpaid rent. Rawal further contended that but for the Newland Defendants' negligence, he would have "acquired a successful outcome" because the Underlying Plaintiffs were unable to present a theory of personal liability against him. Rawal asserted that the court would have granted a motion to dismiss him from the case because there was no basis for entering a judgment against him personally.

¶ 13 Rawal further alleged that but for the Newland Defendants' failure to respond to the requests to admit, Rawal would have "acquired a successful outcome" because the facts deemed admitted created the basis for the summary judgment and there was no other basis for a judgment

1-15-1940

against him. Finally, Rawal contended that but for the Newland Defendants' negligence, he would not have incurred monetary damages, including the judgment against him and the unnecessary legal fees resulting from his continued participation as a party in the Underlying Litigation and subsequent fees incurred in the filing of his section 2-1401 petition.

¶ 14 On June 3, 2015, the Newland Defendants moved to dismiss the fourth amended complaint pursuant to section 2-615 of the Code. The Newland Defendants asserted, *inter alia*, that Rawal had still not properly alleged proximate, but-for causation with respect to any of the alleged breaches. Specifically, the Newland Defendants contended that Rawal failed to allege facts establishing that he would have been successful in the Underlying Litigation. The Newland Defendants asserted that Rawal failed to provide any facts surrounding the lease agreement between the Underlying Defendants and the Underlying Plaintiffs. The Newland Defendants further contended that the "bare allegation" that they failed to respond to the requests to admit was insufficient to satisfy the proximate cause element because Rawal did not identify what facts deemed admitted were untrue, nor did he show how he would have been successful in the Underlying Litigation if the Newland Defendants had responded to the requests. The Newland Defendants finally contended that Rawal failed to show how their purported violation of the Illinois Rules of Professional Conduct (IRPC) proximately caused Rawal's damages and that Rawal failed to show that he was entitled to recover attorney's fees incurred during the Underlying Litigation or in the section 2-1401 proceedings.

¶ 15 On June 17, 2015, the circuit court entered a written order granting the Newland Defendants' motion and dismissing Rawal's complaint with prejudice. In dismissing the complaint, the circuit court found that Rawal failed to provide specific facts which demonstrated that but for the Newland Defendants' negligence, he would have prevailed in the Underlying

Litigation. The court determined that Rawal's allegations were conclusory and that he failed to provide facts to support his claims that he was not personally liable, that the Newland Defendants' failure to respond to the requests to admit was the basis of the summary judgment in the Underlying Litigation, and that the Newland Defendants' purported violation of the IRPC caused him to be unsuccessful in the Underlying Litigation. The court also found that Rawal's claim for attorney's fees was improper because he failed to plead facts that would support the recovery of attorney's fees. Accordingly, the court granted the Newland Defendants' motion pursuant to section 2-615 of the Code and dismissed Rawal's complaint with prejudice.

¶ 16

## II. ANALYSIS

¶ 17

### A. The Parties' Claims

¶ 18

On appeal, Rawal contends that the circuit court erred in dismissing his claims against the Newland Defendants because his complaint adequately established the proximate cause element of a legal malpractice claim. He maintains that the complaint adequately alleges that he had no personal liability in the Underlying Litigation and that the Newland Defendants failed to file a motion to have him dismissed from the litigation on that ground, resulting in him being found personally liable for the amount of the judgment. He further maintains that the Newland Defendants' failure to respond to the requests to admit formed the basis for the circuit court's entry of summary judgment. He also asserts that the court could consider the Newland Defendants' violations of the IRPC in determining whether they conformed to minimum professional standards. Rawal further contends that the Newland Defendants' negligence was the direct cause of the additional legal expenses he incurred in the Underlying Litigation and subsequent section 2-1401 proceeding, and, accordingly, that he is entitled to recover those expenses.



¶ 19 The Newland Defendants respond that the circuit court properly dismissed Rawal's complaint because he failed to adequately plead that their alleged negligence proximately caused his damages. They maintain that Rawal failed to allege facts establishing that he would have been successful in the Underlying Litigation in the absence of the purported negligence and that he failed to show a causal nexus between the Newland Defendants' purported violation of the IRPC and his damages. The Newland Defendants further contend that Rawal did not allege any facts establishing that he was entitled to the recovery of attorney's fees because he did not show that he would not have incurred such fees even in the absence of any purported negligence. Finally, the Newland Defendants assert that because Rawal's alleged defenses were still viable when Conrad replaced them as Rawal's attorney in the Underlying Litigation, that they cannot be held liable for any loss.

¶ 20 B. Section 2-615

¶ 21 "A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face." *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009); 735 ILCS 5/2-615 (West 2012). The question presented by a section 2-615 motion is "whether the allegations of the complaint, when taken as true and viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted." *Turner v. Memorial Medical Center*, 233 Ill. 2d 494, 499 (2009). However, a plaintiff may not rely on mere conclusions of law or fact that are unsupported by specific factual allegations. *Pooh-Bah Enterprises, Inc.*, 232 Ill. 2d at 473 (citing *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 408 (1996)). In ruling on a section 2-615 motion, we may consider only those facts apparent from the face of the pleadings, matters of which this court may take judicial

1-15-1940

notice,<sup>4</sup> and judicial admissions in the record. *Pooh-Bah Enterprises, Inc.*, 232 Ill. 2d at 473 (citing *Mt. Zion State Bank & Trust v. Consol. Comm'cs, Inc.*, 169 Ill. 2d 110, 115 (1995))

¶ 22 Illinois is a fact-pleading jurisdiction (see, e.g., *Weiss v. Waterhouse Securities, Inc.*, 208 Ill. 2d 439, 451 (2004)), and although a plaintiff is not required to set forth evidence in the complaint (*Chandler v. Illinois Central R.R. Co.*, 207 Ill. 2d 331, 348 (2003)), a plaintiff must allege facts that are sufficient to bring his claim within a legally recognized cause of action (*Vernon v. Schuster*, 179 Ill. 2d 338, 344 (1997)), and may not simply allege conclusions (*Anderson*, 172 Ill. 2d at 408). "While a motion to dismiss admits all well-pleaded facts as true, the motion does not admit conclusions of law or conclusions of fact which are not supported by allegations of specific facts which form the basis of such conclusions." *Towne v. Town of Libertyville*, 190 Ill. App. 3d 563, 566 (1989) (citing *Payne v. Mill Race Inn*, 152 Ill. App. 3d 269, 273 (1987)). We review *de novo* the circuit court's order granting a section 2-615 motion to dismiss. *Bell v. Hutsell*, 2011 IL 110724, ¶ 9.

¶ 23 C. Legal Malpractice

¶ 24 To establish a cause of action for legal malpractice, the plaintiff must allege facts to establish: (1) the attorney owed the plaintiff a duty of due care arising from an attorney-client relationship, (2) the attorney breached that duty, (3) the plaintiff suffered an injury in the form of actual damages, and (4) the actual damages resulted as a proximate cause of the breach. *Nelson v. Quarles & Brady, LLP*, 2013 IL App (1st) 123122, ¶ 28. In their briefs before this court, the parties focus on the fourth element of a legal malpractice claim: whether Rawal's damages were a proximate cause of the Newland Defendants' breach of duty. Our supreme court recently stated the proper standard for evaluating proximate cause in *In re Estate of Powell*, 2014 IL 115997. In

---

<sup>4</sup> We may take judicial notice of the Underlying Litigation. *O'Callaghan v. Satherlie*, 2015 IL (1st) 142152, ¶ 20.

that case, the supreme court explained that “[t]o satisfy the element of proximate cause, the plaintiff must plead sufficient facts to establish that ‘but for’ the negligence of the attorney, the plaintiff would not have suffered actual damages.” *Id.* ¶ 24. Essentially, the plaintiff must plead and prove a “ ‘case within a case,’ meaning that the malpractice complaint is dependent upon the underlying lawsuit.” See *Fabricare Equip. Credit Corp. v. Bell, Boyd & Lloyd*, 328 Ill. App. 3d 784, 788 (2002) (citing *Sharpenter v. Lynch*, 233 Ill. App. 3d 319, 323 (1992)). This is because, since a legal malpractice claim is wholly predicated upon an unfavorable result in the plaintiff’s underlying suit, no malpractice can exist unless counsel’s negligence resulted in the loss of that underlying suit. See *Fabricare*, 328 Ill. App. 3d at 788 (citing *Ignarski v. Norbut*, 271 Ill. App. 3d 522, 525-26 (1995)).

¶ 25 Here, Rawal’s complaint did not allege sufficient facts to properly plead the proximate cause element of a legal malpractice claim. That is, he did not plead sufficient facts to establish that but for the Newland Defendants’ purported negligence, he would have been successful in the Underlying Litigation. Although Rawal alleged that but for the Newland Defendants’ negligence, he would have “acquired a successful outcome” because he was not personally liable for the unpaid rent, these are merely conclusions that are unsupported by specific facts. Rawal does not allege, for instance, that he was not personally liable for any unpaid rent under the terms of the lease that he contends existed between the Underlying Defendants and the Underlying Plaintiffs. Instead, he relies on the assignment document, which merely shows the assignment of the lease, but does not contain any terms. Rawal alleged that there was no “privity of contract,” between him and the Underlying plaintiffs, but again does not disclose the terms of the lease between the Underlying Defendants and the Underlying Plaintiffs to substantiate that claim. Thus, Rawal’s allegation that he was not personally liable for the unpaid rent is an unsupported conclusion,

1-15-1940

which fails to meet the pleading standard required by section 2-615 of the Code. *Pooh-Bah Enterprises, Inc.*, 232 Ill. 2d at 473.

¶ 26 Rawal contends, however, that the Newland Defendants proximately caused his damages when they failed to respond to the requests to admit his behalf. He asserts that the Newland Defendants' failure to respond to these requests resulted in the requests being deemed admitted and formed the basis for the court's summary judgment in the Underlying Litigation. The Newland Defendants respond that Rawal's bare allegation that they failed to respond to the requests does not satisfy his pleading burden on the proximate cause issue. They also assert that they cannot be accountable for Rawal's loss because any alleged meritorious defense was still viable at the time Conrad replaced them as counsel in the Underlying Litigation.

¶ 27 As the circuit court recognized, Rawal failed to set forth facts showing the merits of his claim that the Newland Defendants' failure to respond to the requests to admit formed the basis for his loss on the summary judgment motion. Rawal merely states that the "failure to respond to these requests created a sufficient basis for summary judgment" in the Underlying Litigation. Although the Newland Defendants' failure to respond to the requests to admit facts may have been a breach of duty, Rawal fails to allege sufficient facts to show that it proximately caused his damages.

¶ 28 Crucially, Rawal does not sufficiently allege that he would have been successful in the Underlying Litigation if the court did not grant the Underlying Plaintiffs' motion for summary judgment. He merely focuses on the court's grant of the summary judgment motion, but does not plead sufficient facts to prove the "case within a case" aspect necessary to state a cognizable claim for legal malpractice. *Fabricare*, 328 Ill. App. 3d 784, 788 (2002). He asserts that because he had no personal liability, if the Newland Defendants had filed a motion to dismiss him from

1-15-1940

the Underlying Litigation or identified "legal strategies," that such a motion would have been granted and he would have suffered no damages. However, Rawal failed to sufficiently substantiate this claim with facts and merely relies on the conclusion that he was not personally liable under the terms of the lease agreement with the Underlying Plaintiffs. As discussed, his mere conclusion that he was not personally liable is insufficient without specific factual support. *Pooh-Bah Enterprises, Inc.*, 232 Ill. 2d at 473.

¶ 29 Furthermore, as the Newland Defendants point out, before a response to the Underlying Plaintiffs' second request to admit facts was due, and before the Underlying Plaintiffs filed their motion for summary judgment, Conrad filed a substitute appearance as attorney on behalf of the Underlying Defendants. At the time Conrad became involved in the case, Rawal's purported defense that he was not personally liable was still viable and Conrad could have filed a motion to dismiss him from the Underlying Litigation if such a defense was meritorious. Where Rawal's alleged defense was still viable at the time Conrad filed a substitute appearance, Rawal "can prove no set of facts which connect [the Newland Defendants'] conduct with any damage" he sustained. *Mitchell v. Schain, Fursel & Burney, Ltd.*, 332 Ill. App. 3d 618, 620-21 (2002) (quoting *Land v. Greenwood*, 133 Ill. App. 3d 537, 541 (1985)). Rawal nonetheless contends that his claim that he was not personally liable was no longer viable when Conrad filed his substitute appearance because of the Newland Defendants' failure to properly respond to the first requests to admit. However, as with Rawal's other claims, he fails to substantiate this contention with specific facts. He merely draws the conclusion that after the Newland Defendants failed to properly respond to the first request to admit, that any defense he could raise was no longer viable. As discussed, this is insufficient to meet the pleading standard required to avoid dismissal under section 2-615 of the Code.

1-15-1940

¶ 30 Finally, Rawal contends that the court may consider the Newland Defendants' violation of the IRPC in determining whether they conformed to "minimum standards." Even assuming such breaches occurred, Rawal failed to allege facts showing how these breaches proximately caused his loss in the Underlying Litigation. Rawal alleged that the Newland Defendants failed to communicate with him regarding the status of the Underlying Litigation and were hostile when they did so, but he does not allege that he would have been successful in the Underlying Litigation if the Newland Defendants had been more communicative and less hostile. Rawal's contention speaks only to an alleged breach of duty, which is only one aspect of a legal malpractice claim. Rawal's contention that the Newland Defendants violated the IRPC does not, however, establish that such a breach proximately caused his damages.

¶ 31 We are cognizant of the standard that Rawal identifies in his reply brief that "a plaintiff is not required to prove his case in the pleading stage," but we recognize that a plaintiff must still set forth "sufficient facts to state all the elements which are necessary to constitute his cause of action." *Visvardis v. Ferleger*, 375 Ill. App. 3d 719, 724 (2007) (quoting *Claire Associates v. Pontikes*, 151 Ill. App. 3d 116, 123 (1986)). Here, we find that Rawal has failed to do so. As discussed, Rawal's allegations are merely factual and legal conclusions that do not satisfy the Section 2-615 pleading standard. *Pooh-Bah Enterprises, Inc.*, 232 Ill. 2d at 473. Accordingly, we find that the circuit court properly granted the Newland Defendants' motion to dismiss the complaint with prejudice for failing to adequately allege proximate cause. Because we find that Rawal failed to state a cause of action for legal malpractice, he is not entitled to the recovery of attorney's fees. See, *Huang v. Brenson*, 2014 IL App (1st) 123231, ¶¶ 25, 34, 37.

¶ 32

### III. CONCLUSION

¶ 33

For the reasons stated, we affirm the judgment of the circuit court of Cook County.

1-15-1940

¶ 34          Affirmed.