

¶ 3

BACKGROUND

¶ 4 On June 19, 2015, Porter filed a *pro se* complaint in the Law Division of the circuit court of Cook County seeking \$1 million in damages from the bank. The bank moved to dismiss certain claims pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2014)) and to transfer the remaining claim to small claims court. The case was transferred to the First Municipal District, and the circuit court subsequently granted the motion to dismiss without prejudice. Porter's two-count amended complaint¹ – alleging breach of contract and fraud – is the subject of this appeal.

¶ 5 Although lacking in clarity, the amended complaint appears to allege as follows. On January 7, 2015, Porter was robbed and her purse, containing her debit card, was stolen. Porter notified the bank regarding the stolen debit card on that date. The thief used the debit card to make a purchase, which caused Porter's account to be overdrawn by approximately \$20. When Porter visited the bank on January 9, 2015, regarding the stolen card, she was informed that "nothing had been charged to her debit card" and "everything is OK." However, the bank "did not actually pay this authorized [*sic*] purchase until January 14, 2015." According to the amended complaint, the bank should have declined authorization for the purchase in accordance with its rules, and the transaction "could have been [*flagged*] before paying it on January 14."

¶ 6 On June 16, 2015, Porter went to the bank to withdraw funds to purchase pain medication. She learned that her account had been closed due to the unpaid overdraft. She

¹ Porter filed "Plaintiff's Request to Amend Complaint on on [*sic*] 2-Counts Count 1 Cause of Action for Breach of Contract Arising From Bank's Failure to Act in Good Faith and Damages Arose Count 11 [*sic*] Cause of Action for Fraud, Arose When Defendant Made False Representation About the Material Facts and The Defendant Knew He Was Making A False Representation and Damages Arose as a Result." The parties and the circuit court have considered this document to be the amended complaint, as do we. For ease of review, we have adjusted the capitalization, formatting, and/or font in certain quotes of the amended complaint and Porter's briefs.

"pleaded" with Bob Wade, the branch manager, "trying to convince him that she was in need of her funds." He responded that Porter had no funds in the bank. Three days later, she filed the instant lawsuit, seeking \$1 million in damages from the bank. Shortly thereafter, the bank sent Porter a check for \$63.69, purportedly representing the balance in her account prior to the transaction which resulted in the overdraft.

¶ 7 In Count I (breach of contract), Porter asserted, in part, that the bank violated its Deposit Agreement and Disclosures (deposit agreement). She quoted language from the deposit agreement:²

"Personal Accounts – Overdraft Practices and Settings

We automatically apply our standard overdraft practices to personal accounts. We refer to this as our Standard Overdraft Setting. We also offer an optional Decline All Transactions overdraft setting.

*With our Standard Overdraft Setting, we do not authorize overdrafts for everyday non-recurring debit card transactions and ATM transactions. ***"*

(Emphasis in original.)

In Count II (fraud), she stated, in part, that on January 9, 2015, "the defendant knowingly and intentionally gave false representation to the plaintiff" by "telling the plaintiff that nothing had been charged to her debit card and that everything was OK, when defendant knew he [*sic*] had authorized a charge for \$20[.]00 more than the funds that was [*sic*] in the account[.]" As to her damages, Porter alleged she suffered nightmares, sleep loss, and emotional distress beginning on June 16, 2015. Porter again requested an award of \$1 million.

¶ 8 In a motion to dismiss pursuant to section 2-619.1 of the Code, the bank asserted, among

² Porter misquoted the language; the correct language is included herein.

other things, that the amended complaint (i) violated the pleading requirements of section 2-603(b) of the Code, (ii) failed to establish any breach of contract or resulting damages, and (iii) failed to satisfy the heightened pleading standard for fraud claims. After a hearing, the circuit court entered an order providing that the motion "to dismiss Plaintiff's Amended Complaint pursuant to 735 ILCS 5/2-619.1 is granted with prejudice." Porter timely appealed.

¶ 9

ANALYSIS

¶ 10 Although her briefs are unclear, Porter's fundamental contention on appeal appears to be that the bank illegally took her funds and then attempted to hide its misdeeds. Citing a federal criminal statute regarding bank fraud (18 U.S.C. § 1344), she asserts that the bank "had stolen the funds and shut down the account, pretending [as] though [Porter] was no longer an account holder." Porter claims that the bank repaid the "stolen" funds only after she initiated litigation, in an effort "to falsely cover-up the stealing" and "try and stop the lawsuit."

¶ 11 Porter's briefs reference the breach of contract and fraud counts in her amended complaint but fail to include any case law or other legal authority (except the federal criminal bank fraud statute) to challenge the dismissal of the amended complaint. As the bank accurately observes, "Porter only makes a minimal argument in favor of reversal." Although we recognize that Porter is *pro se*, this court "is not a depository in which the appellant may dump the burden of argument and research." (Internal quotation marks omitted.) *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 855 (2007). See also Ill. S. Ct. R. 341(h)(7) (Jan. 1, 2016) (requiring briefs to contain argument "with citation of the authorities and the pages of the record relied on"). Furthermore, her opening brief lacks: a summary statement (Ill. S. Ct. R. 341(h)(1)); a reference to the rule or law which confers jurisdiction on this court (Ill. S. Ct. R. 341(h)(4)(ii)); and a statement of facts "with appropriate reference to the pages of the record on appeal" (Ill. S.

Ct. R. 341(h)(6)). Porter's *pro se* status does not relieve her from compliance with court rules, and dismissal of this appeal would be proper based on her noncompliance. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶¶ 8-9. As we are able to ascertain the key facts and arguments from the briefs and record, however, we decline to dismiss the appeal.

¶ 12 The bank filed a section 2-619.1 motion to dismiss the amended complaint. 735 ILCS 5/2-619.1 (West 2014). Section 2-619.1 of the Code allows a party to file a motion combining a section 2-615 motion with a section 2-619 motion. *Id.* "A motion to dismiss under section 2-615 of the Code challenges the legal sufficiency of a complaint based on defects apparent on its face." *Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 15; see 735 ILCS 5/2-615(a) (West 2014). "A motion to dismiss pursuant to section 2-619 admits the legal sufficiency of [the] complaint, but asserts affirmative matter which defeats the claim." *Doe-3*, 2012 IL 112479, ¶ 15; see 735 ILCS 5/2-619(a)(9) (West 2014). "Review under either section 2-615 or section 2-619 is *de novo*." *Id.* We may affirm on any basis warranted by the record. *Reyes v. Walker*, 358 Ill. App. 3d 1122, 1124 (2005).

¶ 13 As an initial matter, we agree with the bank that dismissal of the amended complaint was proper under section 2-603 of the Code, which addresses the form of pleadings. Section 2-603(a) requires that "[a]ll pleadings shall contain a plain and concise statement of the pleader's cause of action." Section 2-603(b) provides, in part, that "[e]ach separate cause of action upon which a separate recovery might be had shall be stated in a separate count *** and each count *** shall be separately pleaded, designated and numbered, and each shall be divided into paragraphs numbered consecutively, each paragraph containing, as nearly as may be, a separate allegation." 735 ILCS 5/2-603 (West 2014). The amended complaint in this case lacks a "plain and concise statement" of Porter's cause of action. In addition, the seven-page amended

complaint includes only eight numbered paragraphs; each paragraph contains multiple allegations. Although section 2-603 provides that "[p]leadings shall be liberally construed with a view to doing substantial justice between the parties" (735 ILCS 5/2-603(c)), non-compliance with section 2-603 is a basis for dismissal of a complaint. See, e.g., *Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 22 (2009) (holding that circuit court did not abuse its discretion in dismissing fifth amended complaint based on section 2-603 violations); *Rubino v. Circuit City Stores, Inc.*, 324 Ill. App 3d 931, 938 (2001) (noting that "[a] complaint may be dismissed for failure to meet statutory pleading requirements"). Notwithstanding section 2-603, dismissal of the amended complaint was proper for other reasons, discussed below.

¶ 14 The breach of contract claim appears to be based on the bank's alleged failure to comply with its own rules or procedures regarding overdrafts, *i.e.*, the bank should not have accepted a debit card transaction that caused the account to become overdrawn and subsequently closed.

The contract that was allegedly breached was the deposit agreement. Generally, when money is deposited in a bank, a debtor-creditor relationship exists between the bank and the depositor, and the rules governing their relationship are determined by their contract. *Susen v. Citizens Bank & Trust Co.*, 111 Ill. App. 3d 909, 913 (1982). See also *Menicocci v. Archer National Bank of Chicago*, 67 Ill. App. 3d 388, 391 (1978) (noting that "the express or implied contract between the depositor and the bank controls their relationship"). "When an account is opened, a contract is made as to how and by whom the money may be drawn out, and when payment is made according to that agreement, the bank is discharged from further liability." *Bray v. Illinois National Bank of Springfield*, 37 Ill. App. 3d 286, 288 (1976); see also *Menicocci*, 67 Ill. App. 3d at 391.

¶ 15 We reject Porter's contention that the bank did not comply with the deposit agreement.

The deposit agreement expressly provides that the bank has discretion to pay overdrafts and to close accounts. For example, the deposit agreement provides, in part:

"When we determine that you do not have enough available funds in your account to cover a check or other item, then we consider the check or other item an insufficient funds item. If you have enrolled in one of the optional Overdraft Protection plans and have enough available funds in the linked account under the Overdraft Protection plan, we transfer funds to cover the item. *Otherwise, without notice to you, we will either authorize or pay the insufficient funds item and overdraw your account (an overdraft item) or we decline or return the insufficient funds item without payment (a returned item).*

We pay overdrafts at our discretion, which means we do not guarantee that we will always, or ever, authorize and pay them[] *** We may pay all, some, or none of your overdrafts, without notice to you." (Emphasis added.)

The deposit agreement further states, in part: "You or we may close your checking or savings account at any time without advance notice, except that we may require you to give us seven days advance notice when you intend to close your savings or interest bearing checking account by withdrawing your funds." Based on the foregoing language and additional provisions in the deposit agreement, the bank's actions do not constitute a breach of the agreement. It is axiomatic that a party cannot breach a contract by complying with its terms. *Asset Exchange II, LLC v. First Choice Bank*, 2011 IL App (1st) 103718, ¶ 37. Dismissal of the breach of contract count was thus proper.

¶ 16 Even assuming *arguendo* that Porter adequately alleged a breach of the parties' contract, the bank contends that Illinois law does not permit Porter to recover damages for mental or

emotional distress for breach of contract. In seeking a \$1 million award, Porter asserted that she suffered from sleep loss and emotional distress commencing on June 16, 2015. She allegedly experienced repeated nightmares in which she was robbed at gunpoint in the lobby of the bank.

¶ 17 Recoverable damages in a breach of contract action "are those which naturally result from the breach, or are the consequence of special or unusual circumstances which are in the reasonable contemplation of the parties when making the contract." *Doe v. Roe*, 289 Ill. App. 3d 116, 130 (1997). "Recovery for mental distress is excluded unless *** the contract or the breach is of such a kind that serious emotional disturbance was a particularly likely result." (Internal quotation marks omitted.) *Id.*, citing Restatement (Second) of Contracts, § 353, at 149 (1981); *Maere v. Churchill*, 116 Ill. App. 3d 939, 944 (1983) (noting that "[i]n the contract area, damages for breach will not be given as compensation for mental suffering, except where the breach was wanton or reckless and caused bodily harm, or where the defendant had reason to know, when the contract was made, that its breach would cause mental suffering for reasons other than mere pecuniary loss"). Accord *Hanumadass v. Coffield, Ungaretti and Harris*, 311 Ill. App. 3d 94, 100 (1999).

¶ 18 For example, the appellate court in *Maere v. Churchill* affirmed the striking of the plaintiffs' damage claims for mental anguish and emotional distress. *Maere*, 116 Ill. App. 3d at 944. The court was "unable to conclude that serious emotional disturbance is a particularly likely result of an attorney's breach of contract in his examination of title to real estate." *Id.* Conversely, in *Petrowsky v. Family Service of Decatur, Inc.*, 165 Ill. App. 3d 32, 39 (1987), the appellate court stated that breach of an adoption agreement could trigger mental suffering because "due to the delicate nature of adoption proceedings, the parties are especially susceptible to emotional trauma."

¶ 19 The amended complaint herein did not allege that "serious emotional disturbance" is a "likely and foreseeable" result of the deposit agreement or any possible breach thereof by the bank. *Petrowsky*, 165 Ill. App. 3d at 39. The deposit agreement in the instant case is more akin to the real estate-related contract in *Maere* than the adoption agreement in *Petrowsky*. Based on the allegations of the amended complaint, damages based on emotional or mental distress are not recoverable. Furthermore, Porter's monetary losses, if any, were satisfied by the \$63.69³ check from the bank. The dismissal of her breach of contract claim was thus proper.

¶ 20 The amended complaint also included a fraud count. "To state a cause of action for common-law fraud, a plaintiff must plead: (1) a false statement of material fact; (2) knowledge or belief by the defendant that the statement was false; (3) an intention to induce the plaintiff to act; (4) reasonable reliance upon the truth of the statement by the plaintiff; and (5) damage to the plaintiff resulting from this reliance." *Avon Hardware Co. v. Ace Hardware Corp.*, 2013 IL App (1st) 130750, ¶ 15. "A high standard of specificity is imposed on pleadings asserting fraud." *Chatham Surgicore, Ltd. v. Health Care Service Corp.*, 356 Ill. App. 3d 795, 803 (2005). "Fraud claims must be pleaded with sufficient specificity, particularity, and certainty to apprise the opposing party of what he is called upon to answer." *Avon*, 2013 IL App (1st) 130750, ¶ 15. "Therefore, a plaintiff must at least plead with sufficient particularity facts which establish the elements of fraud, including what misrepresentations were made, when they were made, who made the misrepresentations, and to whom they were made." *Id.*

¶ 21 The bank correctly observes that the amended complaint "alleges two sets of conversations – one in January 2015 after her debit card was allegedly stolen and one in June

³ Porter refers to the "[c]orrect amount of funds" as \$64.00, not \$63.69. However, even assuming *arguendo* that there is a 31 cent discrepancy, we nevertheless affirm the judgment of the circuit court for the other reasons stated herein.

2015 when she spoke with a Bank of America branch manager who allegedly told her that her account was overdrawn and the bank could not release money to her as a result." Her allegations regarding both sets of communications were inadequate to plead a viable fraud claim. As to the January 2015 communications, the amended complaint failed to meet the heightened pleading standards imposed upon fraud claims. The amended complaint does not specify with any degree of particularity which bank employee made statements, that the employee knew that the statements were untrue, that the employee intended Porter to rely on the statements, and that her reliance led to her injury. See *Avon*, 2013 IL App (1st) 130750, ¶ 15. As to her interactions with branch manager Bob Wade on June 16, 2015, the amended complaint failed to allege any false statement was made that Porter could have justifiably relied upon that caused her injury.

Dismissal of the fraud count was proper. *E.g.*, *Chatham*, 356 Ill. App. 3d at 805 (affirming dismissal of fraud count where plaintiff failed to plead with requisite specificity).

¶ 22 While Porter does not specifically challenge the dismissal *with prejudice* of her amended complaint, we also conclude that such dismissal was appropriate under the circumstances herein. Based on our review of the record, it appears that Porter neither requested leave from the circuit court to amend the amended complaint nor submitted a proposed second amended complaint. "The failure to tender the proposed amendment forfeits review of the trial court's decision."

Illinois Non-Profit Risk Management Ass'n v. Human Service Center of Southern Metro-East, 378 Ill. App. 3d 713, 726 (2008).

¶ 23 In any event, a party does not have the absolute right to amend her pleadings. *Weidner v. Midcon Corp.*, 328 Ill. App. 3d 1056, 1061 (2002). The decision to grant leave to amend a complaint is within the sound discretion of the circuit court. *Hayes Mechanical, Inc. v. First Industrial, L.P.*, 351 Ill. App. 3d 1, 7 (2004). "Where it is apparent even after amendment that

no cause of action can be stated, leave to amend should be denied." *Id.* Given Porter's inability to state a cause of action for breach of contract, "the allowance of further amendments would not further the ends of justice." *Weidner*, 328 Ill. App. 3d at 1061. See also *Lacey v. Perrin*, 2015 IL App (2d) 141114, ¶ 76 (discussing four factors considered by courts in determining whether an amendment would "further the ends of justice"). Furthermore, as the bank observes, "Porter had two opportunities to properly allege all the facts necessary to establish a fraud claim against [the bank] but failed in both instances to come close to satisfying the heightened pleading standard for fraud." The circuit court did not err in dismissing the amended complaint with prejudice.

¶ 24 Finally, we observe that the reply brief suggests unfairness or impropriety in her treatment in the circuit court proceedings, *e.g.*, that the trial court was "very rude" and "mean" to Porter, who is a "disabled senior citizen." These contentions were improperly raised for the first time in the reply brief and are otherwise unsupported by the record. See *In re Marriage of Winter*, 2013 IL App (1st) 112836, ¶ 29 (noting that "an appellant's arguments must be made in the appellant's opening brief and cannot be raised for the first time in the appellate court by a reply brief"); Ill. S. Ct. R. 341(h)(7) (eff. Jan 1, 2016). We thus reject such contentions.

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, the judgment of the circuit court of Cook County dismissing Porter's amended complaint with prejudice is affirmed.

¶ 27 Affirmed.