2017 IL App (1st) 152180-U

SIXTH DIVISION
FEBRUARY 24, 2017

No. 1-15-2180



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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| JUAN OCHOA,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>THE CICERO VOTERS ALLIANCE (THE LARRY DOMINICK TEAM), THE CICERO VOTERS ALLIANCE/LARRY DOMINICK TEAM, INC., LARRY DOMINICK, RUPERTO DELOERA, MICHAEL DEL GALDO, TOM M. TOMSCHIN, JOSEPH VIRRUSO, EMILIO CUNDARI, FRANCES REITZ, MARIA PUNZO ARIAS, LARRY BANKS, LORRAINE WALSH, JEFF FOLKERS, YESENIA TAPIA, DEL GALDO LAW GROUP, LLC,<br><br>Defendants-Appellees<br><br>(Alejandro Rueda, Anthony Grazzini, Nicholas V. Locanate, David Calvillo, James E. Terracino, Michael Benda, Maureen Carroll, Defendants Unknown,<br><br>Defendants). | ) | Appeal from the Circuit Court of Cook County.<br><br>No. 12 L 13824<br><br>Honorable Patrick J. Sherlock, Judge Presiding. |

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JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

**ORDER**

¶ 1 *Held*: The defendants' motions to dismiss the plaintiff's complaint complied with section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2012)), by properly presenting alternative arguments for dismissal premised on (1): section

> 2-615 (735 ILCS 5/2-615 (West 2012)) for failure to state a viable cause of action, and (2) section 2-619 of the Code (735 ILCS 5/2-619 (West 2012)), asserting that the plaintiff's complaint was barred by the Citizen Participation Act, 735 ILCS 110/1 *et seq.* (West 2012).) Thus, the trial court did not err in declining the plaintiff's requests to strike the motions to dismiss. As the plaintiff does not otherwise challenge the substantive arguments raised in the motions to dismiss, the dismissal of the complaint is affirmed.

¶ 2 The plaintiff-appellant Juan Ochoa (plaintiff) appeals from an order of the circuit court dismissing his second amended complaint (the complaint). We affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 This action arises out of the plaintiff's unsuccessful effort to seek election as the president of the Town of Cicero. The plaintiff asserts that he "was a formidable challenger" seeking to defeat the incumbent president, defendant Larry Dominick (Dominick). The plaintiff was defeated in a primary election on February 26, 2013.

¶ 5 The plaintiff alleges that he was the victim of a conspiracy to illegally interfere with his candidacy. The plaintiff alleges that a "plan to hinder [his] bid to become President of the Town of Cicero was conceived, lead, and coordinated by Michael Del Galdo and Larry Dominick", with Del Galdo as "the head of the conspiracy" and Dominick as "the titular head and front man." The complaint further alleges that the remaining defendants also played roles in the conspiracy.

¶ 6 The defendants include various supporters of Dominick, including the "Cicero Voters Alliance (The Larry Dominick Team)" and "Cicero Voters Alliance/Larry Dominick Team, Inc." (together, the CVA) and several Town of Cicero officials who are alleged to be members of the CVA. The named defendants also include attorney Michael Del Galdo, who is alleged to be general counsel to the Town of Cicero, and Del Galdo's law firm, Del Galdo Law Group, LLC.

The plaintiff also sued: Ruperto Deloera, who was a candidate in the same primary election before withdrawing his candidacy; several Cicero residents who allegedly petitioned for Deloera's candidacy; and "Defendants Unknown" who allegedly deceived the plaintiff's supporters to deter them from casting their ballots.

¶ 7 According to the complaint, whose dismissal is the subject of this appeal, the plaintiff filed nomination papers in support of his candidacy in or about November 2012. The plaintiff alleges that he was a "formidable challenger" to Dominick due to his name recognition, political track record, endorsements, and ability to raise campaign funds.

¶ 8 The plaintiff alleges that the defendants sought to hinder the plaintiff's bid for the Cicero presidency by planning, assisting, or encouraging various fraudulent and unlawful acts. Among such actions, plaintiff alleged that defendants Tom Tomschin and Alejandro Rueda filed an objection to the plaintiff's nomination, which claimed (falsely) that the plaintiff did not meet the legal residency requirement and that his nomination was not supported by the required minimum number of signatures. The plaintiff alleges that the objection was filed at the behest of all defendants with the intent of forcing the plaintiff to incur legal costs, to lose valuable campaign time, and to create "the perception that [his] campaign was in trouble."

¶ 9 The plaintiff also alleges that the defendants supported the nomination of Ruperto Deloera to run as a "straw candidate" to draw support away from the plaintiff. The plaintiff alleges that Deloera filed his nomination papers at the behest of the CVA "with the intention of splitting the Hispanic vote; thereby, making it more difficult for [the plaintiff] to win the election." The plaintiff alleges that certain defendants circulated and signed Deloera's petition sheets, despite knowing that Deloera was only a "straw candidate." Deloera withdrew his candidacy prior to the February 2013 primary election.

¶ 10 Separately, the complaint alleges that in January and February 2013, "Unknown Defendants dressed in uniform as Town of Cicero Community Service Officers *** visited supporters of Juan Ochoa who had requested mail-in ballots and informed those voters that their mail-in ballots were fraudulent and would not count in the election." The plaintiff alleges that these persons acted "at the behest of all of the Defendants with the intention of inducing those voters not to cast their mail-in ballots" in the plaintiff's favor.

¶ 11 The complaint was filed on January 6, 2014 and pleaded ten separate claims for relief: (1) "conspiracy to commit abuse of process" by all defendants (2) "abuse of process" against Tomschin and Rueda for filing the objection to the plaintiff's candidacy; (3) "conspiracy to commit abuse of process by all defendants" for "knowingly running a straw candidate"; (4) abuse of process against Deloera for running as a "straw candidate"; (5) abuse of process against five individuals for "Circulating Petition Sheets for a Straw Candidate"; (6) abuse of process against three individuals for "Knowingly Signing the Petition Sheet for a Straw Candidate"; (7) "Conspiracy to Commit Common Law Fraud" by all defendants for "Knowingly Lying to Voters to Induce Them Not to Vote" for the plaintiff; (8) common law fraud by "unknown defendants" for lying to the plaintiff's supporters with respect to the mail-in ballots; (9) "Conspiracy to Prevent Vote by all Defendants" in violation of section 29-18 of the Election Code (10 ILCS 5/29-18 (West 2012); and (10) "Deprivation of Constitutional Rights by Unknown Defendants" in violation of section 29-17 of the Election Code (10 ILCS 5/29-17 (West 2012)).

¶ 12 On February 5, 2014, certain defendants, including Dominick, Del Galdo, Del Galdo Law Group, Virruso, Cundari, Arias, Banks, Walsh, and Reitz, (together, the Dominick defendants) filed a motion to dismiss stating that it was brought "pursuant to 735 ILCS 5/2-615." That motion argued that the plaintiff's claims against those defendants were defective because plaintiff

had not pleaded that they "conspired to engage in illegal or fraudulent conduct"; failed to plead fraud with particularity, and failed to allege facts stating an abuse of process claim. That motion additionally asserted that the plaintiff's lawsuit violated the Illinois Citizen Participation Act, 735 ILCS 110/1 *et seq.*, (the Act), which concerns " 'Strategic Lawsuits Against Public Participation' in government or 'SLAPPs' as they are popularly called." 735 ILCS 110/5 (West 2012)). The Dominick defendants sought dismissal pursuant to the Act, which permits a motion to dismiss "on the grounds that the claim is based on *** acts of the moving party in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government." 735 ILCS 110/115 (West 2012).

¶ 13 On February 18, 2014, a separate motion to dismiss was filed by the CVA, Tapia, Tomschin and Folkers (the CVA defendants) "pursuant to Section 2-619.1 of the Illinois Code of Civil Procedure." See 735 ILCS 5/2-619.1 (West 2012). The CVA defendants' motion primarily argued that the plaintiff failed to allege facts to sustain valid a claim for conspiracy or abuse of process. Alternatively, the motion argued that the lawsuit was a SLAPP barred by the Act, because it sought to punish the defendants for protected political conduct. The motion to dismiss attached affidavits in which the CVA defendants claimed they had acted in good faith in opposing the plaintiff's nomination and supporting Deloera's candidacy.

¶ 14 Also on February 18, 2014, Deloera filed an independent motion to dismiss pursuant to section 2-619.1 of the Code, which expressly adopted the arguments made by his co-defendants that "no viable cause of action ha[d] been alleged" and that the complaint was barred by the Act.

¶ 15 On March 26, 2014, the plaintiff filed a response to each of the three motions to dismiss the complaint. The plaintiff’s response to the CVA defendants' motion urged that the motion should be struck as "a quintessential example of the slipshod practice of filing hybrid motions

that reviewing courts have long disapproved and that the legislature intended to eliminate when it enacted section 2-619.1 of the Code." He argued that the CVA defendants' motion demonstrated a "failure to understand section 2-619.1 or a blatant disregard of the rule because not only is the motion not presented in parts, but the motion also impermissibly relies on affidavits that merely deny the allegations."

¶ 16 The plaintiff's response to the Dominick defendants' motion to dismiss (which had been labeled as a section 2-615 motion rather than a combined motion under section 2-619.1) did not ask the court to strike that motion to dismiss in its entirety. However, the plaintiff argued that the court should strike the portion of the Dominick defendants' motion based upon the Act, as the plaintiff asserted that "a party cannot move to dismiss any one particular count of a complaint pursuant to both section 2-615 and 2-619."

¶ 17 Following a hearing, on April 28, 2014, the trial court entered an order striking the defendants' motions to dismiss. The written order indicated the court's agreement with the plaintiff that the motions did not comply with section 2-619.1 of the Code:

> "Defendants bring the [m]otions as combined section 2-615 and 2-619 motions pursuant to section 2-619.1 of the Illinois Code of Civil Procedure. Defendants have failed to comply with the procedural requirements for combined motions because defendants have impermissibly combined their 2-615 and 2-619 arguments. As plaintiff correctly points out, Illinois law does not support this type of pleading practice. [Citation.] Combined motions pursuant to section 2-619.1 retain procedural distinctions between section 2-

> 615, section 2-619, and section 2-1005 based motions, and parties are not free to ignore these distinctions. [Citation.]"

However, the April 29, 2014 order granted the defendants leave to re-file the motions "in a manner that properly complies with 735 ILCS 5/2-619.1's procedural mandates."

¶ 18 Notably, the April 28, 2014 written order specifically referenced only the motions filed by the CVA defendants and Deloera. The Dominick defendants subsequently filed a "motion for clarification" to determine the status of their motion to dismiss. On May 14, 2014, the court entered an order directing all defendants to refile or amend their motions to dismiss the complaint by May 19, 2014.

¶ 19 Accordingly, the defendants filed three new motions to dismiss on May 19, 2014. The Dominick defendants filed an "amended motion" stating that it sought dismissal "pursuant to 735 ILCS 5/2-615 and 619(9), as authorized by 735 ILCS 619.1."

That motion stated, in part:

> "3. Plaintiff's claims *** are insufficient and should be dismissed pursuant to 735 ILCS 5/2-615 because he has not plead any facts showing that they conspired to engage in illegal or fraudulent conduct ****.
>
> 4. Plaintiff has failed to allege facts sufficient to maintain an abuse of process theory and his claims should be dismissed pursuant to 735 ILCS 5/2-615.
>
> 5. Plaintiff has failed to allege fraud with specificity and these claims should be dismissed pursuant to 735 ILCS 5/2-615.

> 6. Plaintiff's claims violate the Illinois Citizen Participation Act, and should therefore be dismissed pursuant to 735 ILCS 5/2-615.
>
> 7. In the alternative, Plaintiff's claims should be dismissed pursuant to 735 ILCS 5/2-619(9)."

¶ 20 The Dominick defendants also submitted a supporting memorandum of law, which, under separate headings, asserted alternative arguments that (1) the complaint failed to state a claim for which relief could be granted and (2) that the Act barred the plaintiff's lawsuit. The Dominick defendants' memorandum of law argued that dismissal based on the Act was more appropriately sought under section 2-615 instead of 2-619 of the Code, because the Act rendered plaintiff's claims "substantially insufficient in law" without requiring examination of facts outside the complaint. Nonetheless, the Dominick defendants' motion also argued in the alternative that "even if this is a [section] 2-619 argument, the Second Amended Complaint is still baseless."

¶ 21 Also on May 19, 2014 the CVA defendants re-filed their motion to dismiss, specifying that it was brought pursuant to section 2-619.1 of the Code. That motion first argued (under six corresponding headings), that the plaintiff had failed to plead facts to state any of the claims for relief asserted in the various counts, warranting dismissal of those counts pursuant to section 2-615 of the Code. The seventh and final heading in the CVA defendants' motion was entitled: "Plaintiff's Second Amended Complaint Amounts To a SLAPP Suit, and Must be Dismissed Pursuant to Section 2-619(a)(9) of the Code of Civil Procedure and the Citizen Participation Act." Under that heading, the CVA defendants argued that, aside from any pleading defects on the face of the complaint, the plaintiff's lawsuit constituted a SLAPP attempting to punish

political conduct protected by the Act, such that the Act independently warranted dismissal under section 2-619(a)(9) of the Code.

¶ 22 Also on May 19, 2014, Deloera filed a motion to dismiss pursuant to section 2-619.1 of the Code, which expressly adopted and incorporated the arguments made by his co-defendants in their motions to dismiss. Otherwise, Deloera's motion first argued (under section headings referencing section 2-615) that the various counts of the complaint failed to state a claim against him. Under a separate heading, Deloera's motion alternatively argued that plaintiff's complaint was "A SLAPP Suit, And Must Be Dismissed Pursuant To Section 2-619(a)(9) of the Code of Civil Procedure and the [Act]."

¶ 23 On June 4, 2014, the plaintiff filed a combined response to the three amended motions to dismiss, which maintained that, despite the "cosmetic change" of adding headings, the motions to dismiss remained impermissible "hybrid motions" that violated section 2-619.1 of the Code. The plaintiff's response did not otherwise address the substance of the defendants' contentions that the complaint failed to state a valid cause of action, or that the lawsuit was a SLAPP barred by the Act.

¶ 24 On June 9, and June 11, 2014, the CVA defendants and the Dominick defendants filed reply briefs contending that their re-filed motions had, in fact, complied with the procedural requirements of a combined motion to dismiss, pursuant to section 2-619.1 of the Code.

¶ 25 On July 21, 2014, the court entered an order dismissing the complaint as to all defendants "pursuant to 735 ILCS 2-619, with prejudice." The dismissal order referenced the parties' briefing on the three motions to dismiss but did not otherwise specify the trial court's reasoning. Notably, the record on appeal does not contain a transcript from any corresponding hearing.

¶ 26 On August 12, 2014, the plaintiff filed a notice of appeal. However, our court determined that the July 21, 2014 order was not a final appealable order, in light of the Act's provision that the trial court shall award attorney's fees to a party who prevails on a motion to dismiss. 735 ILCS 110/25 (West 2012). As that attorney's fee award had not yet been made, the plaintiff's initial appeal (No. 1-14-2469) was dismissed for lack of jurisdiction on November 14, 2014.

¶ 27 Subsequently, certain of the defendants filed two petitions seeking to recover attorney's fees against the plaintiff. On June 30, 2015, the trial court entered orders awarding those defendants their attorney's fees incurred in connection with the motions to dismiss the complaint. On July 30, 2015, the plaintiff filed a notice of appeal, challenging the July 21, 2014 order granting the defendants' three motions to dismiss.

¶ 28 ANALYSIS

¶ 29 We note that we have jurisdiction as the defendant perfected a timely notice of appeal following the trial court's July 30, 2015 final order in this case. See Ill. S. Ct. R. 303(a) (eff. Jan. 1, 2015).

¶ 30 At the outset, we note that "our review of a combined section 2-619.1 motion to dismiss pursuant to either section 2-615 or section 2-619 of the Code [citation] is *de novo*." *Gatreaux v. DKW Enterprises, LLC*, 2011 IL App (1st) 103482, ¶ 10. As the parties dispute the meaning of provisions of the Code of Civil Procedure, we also note that *de novo* review applies to questions of statutory interpretation. *Land v. Board of Education of City of Chicago*, 202 Ill. 2d 414, 421 (2002).

¶ 31 The plaintiff's appeal does not raise substantive arguments as to whether his complaint sufficiently pleaded a claim for relief. Further, he does not address the merits of the defendants'

arguments that his lawsuit was prohibited by the Citizen Participation Act (Act) (735 ILCS 110/1 *et seq*.). Rather, as in the trial court, his argument on appeal consists of a procedural argument: that the defendants' motions to dismiss did not comply with the requirements of section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2012), which governs "combined motions" to dismiss. As the section 2-619.1 motions at issue combine arguments for dismissal premised upon sections 2-615 and 2-619, we review those Code provisions.

¶ 32 Section 2-615, entitled "Motions with respect to pleadings," provides:

> "(a) All objections to pleadings shall be raised by motion. The motion shall point out specifically the defects complained of, and shall ask for appropriate relief, such as: that a pleading or portion thereof be stricken because substantially insufficient in law, or that the action be dismissed ***." 735 ILCS 5/2-615(a) (West 2012).

"A section 2-615 motion to dismiss challenges only the legal sufficiency of a complaint and alleges only defects on the face of the complaint." *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 54. "In ruling on a section 2-615 motion to dismiss, a reviewing court must examine the allegations of the complaint in the light most favorable to the plaintiff and accept as true all the well-pleaded facts and reasonable inferences therefrom. [Citation.] If the facts are insufficient to state a cause of action upon which relief may be granted then dismissal pursuant to section 2-615 is appropriate." *Gatreaux*, 2011 IL App (1st) 103482, ¶ 10.

¶ 33 Section 2-619 of the Code is entitled "Involuntary dismissal based upon certain defects or defenses." 735 ILCS 5/2-619 (West 2012). Subsection (a) provides that a "Defendant may *** file a motion for dismissal of the action or for other appropriate relief upon any of the following grounds." 735 ILCS 5/2-619(a) (West 2012). Among those grounds, subsection (a)(9) allows

the defendant to argue "That the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(1) (West 2012). Thus, whereas a "section 2-615 motion to dismiss challenges only the legal sufficiency of a complaint and alleges only defects on the face of the complaint," "[a] motion to dismiss under section 2-619(a) admits the legal sufficiency of the plaintiff's claim but asserts certain defects or defenses outside the pleadings which defeat the claim." *Sandholm*, 2012 IL 111443, ¶ 55. Notably, our supreme court has held that "A motion to dismiss based on the immunity conferred by the [Citizen Participation] Act *** is more appropriately raised in a section 2-619(a)(9) motion," rather than a section 2-615 motion. *Id.* ¶ 54.

¶ 34 Section 2-619.1, entitled "Combined Motions," provides:

> "Motions with respect to pleadings under Section 2-615, motions for involuntary dismissal or other relief under Section 2-619, and motions for summary judgment under Section 2-1005 may be filed together as a single motion in any combination. A combined motion, however, shall be in parts. Each part shall be limited to and shall specify that it is made under one of Sections 2-615, 2-619, or 2-1005. Each part shall also clearly show the points or grounds relied upon under the Section upon which it is based." 735 ILCS 5/2-619.1 (West 2012).

¶ 35 Section 2-619.1 "was the legislature's response to the fact that reviewing courts have long disapproved of the slipshod practice of filing hybrid motions to dismiss pursuant to both section 2-615 and 2-619 because those motions cause unnecessary complication and confusion." (Internal quotation marks omitted.) *Higgins v. Richards*, 401 Ill. App. 3d 1120, 1125 (2010).

"Although section 2-619.1 of the Code permits a movant to combine separate claims brought under section 2-615, 2-619, or 2-1005 into one filing it prohibits the commingling of those distinctive claims." *Howle v. Aqua Illinois, Inc*., 2012 IL App (4th) 120207, ¶ 72. "Because section 2-619.1 of the Code explicitly requires that a motion combining both sections 2-615 and 2-619 (1) *must* be in parts, (2) *must* 'be limited to and shall specify that it is made under' either section 2-615 or 2-619, and (3) *must* 'clearly show the points or grounds relied upon under the [s]ection upon which it is based,' trial courts should not – and need not – accept for consideration combined motions under section 2-619.1 that do not meet these statutory requirements. (Emphasis in original.) *Id.* ¶ 73. "To avoid unnecessary complications and confusion [citation] trial courts should *sua sponte* reject such motions and give the defendant who filed them the opportunity (if they wish) to file a section 2-619.1 motion that meets the statutory requirements. Or, of course, such defendant may choose to file separate motions under sections 2-615 and 2-619, thereby avoiding any improper commingling of their claims." *Id.*

¶ 36 In this appeal, the plaintiff urges that section 2-619.1 bars a party from asserting, in the same motion, *alternative* arguments for dismissal of a claim under sections 2-615 and 2-619. He claims "a party cannot move to dismiss any one particular count of a complaint pursuant to both sections 2-615 and 2-619, *** because a motion pursuant to section 2-615 tests the legal sufficiency of the complaint while a motion pursuant to section 2-619 does the exact opposite by conceding the legal sufficiency of the complaint to instead focus on an existing affirmative matter that defeats the claim outright." As support, the plaintiff relies largely on language from our court's decision in *Garrido v. Arena*, 2013 IL App (1st) 120466. *Garrido* discussed the standards for dismissal under sections 2-615 and 2-619, in the course of deciding a motion to

dismiss a lawsuit on the basis that it was barred by the Act. However, *Garrido* does not support the proposition that the plaintiff urges us to adopt.

¶ 37 Similar to the facts in this case, the plaintiff in *Garrido* had lost an election, and thereafter sued the winning candidate and defendants that supported the winner's campaign. *Id.* ¶¶ 1-3. The plaintiff alleged, *inter alia*, that the defendants had sponsored campaign advertisements containing false statements and accusations. *Id.* ¶¶ 5-7. The defendants "moved to dismiss, raising numerous grounds under sections 2-615 and 2-619 of the Code [citation]. The defendants also moved to dismiss under the Citizen Participation Act. [Citation.]" *Id.* ¶ 8. The trial court found that the Act barred the plaintiff's claims and dismissed the complaint. *Id.*

¶ 38 *Garrido* explained the three-step analysis for determining whether a claim is a "Strategic Lawsuit Against Public Participation" (SLAPP) prohibited by the Act. *Id.* ¶¶ 15-16. *Garrido* explained that one of the steps to obtain dismissal under the Act is that the defendant "must affirmatively demonstrate that the [plaintiff's] claim is a SLAPP *** that is, that the claim is meritless and was filed in retaliation against the [defendants'] protected activities in order to deter the [defendants] from further engaging in those activities." (Internal quotation marks omitted.) *Id.* ¶ 18.

¶ 39 Our court noted in *Garrido* that whereas the term "meritless" "is often used loosely to describe any unsuccessful legal claim or theory[,]" "in the context of a SLAPP it is a term of art and means something more." *Id.* ¶ 20. That is, whether a claim is "meritless" in the context of the Act involves an inquiry as to whether the lawsuit was brought for an improper purpose, as the Act is "designed to bar only those lawsuits that try to abuse the justice system by bringing unfounded claims in retaliation against defendants who legitimately exercise their first amendment rights." *Id.* In this context, we explained that "A claim is not 'meritless,' *** merely

because the complaint is subject to dismissal under section 2-615 of the Code." *Id.* ¶ 19. That is, section 2-615 is inapplicable to the question of whether a lawsuit is a SLAPP, because section 2-615 merely concerns the "sufficiency of the complaint's allegations" but "not *** the factual question of whether the lawsuit was filed for the improper purpose of retaliating against a defendant for exercising some first amendment right." *Id.* ¶ 20 (as "it is impossible to determine whether a lawsuit is a SLAPP based solely on the face of the complaint," section 2-615 does not apply to a motion to dismiss based on the Act.).

¶ 40 The *Garrido* court further stated—in language relied upon by the plaintiff in this appeal—that: "This need to examine facts outside of the complaint is why the supreme court has specified that a motion to dismiss under the Act must be brought under section 2-619(a)(9) rather than section 2-615. [Citation.] The practical effect of this requirement is that a claim that may be legally insufficient under section 2-615 cannot be considered 'meritless' for the purpose of the Act because a motion under section 2-619(a)(9) concedes the legal sufficiency of that same claim." *Id.* ¶ 21. *Garrido* thus held that the defendants could not establish that the lawsuit was a "meritless" SLAPP merely by arguing pleading defects on the face of the complaint. *Id.* ¶ 22 ("[B]y seeking to dismiss plaintiff's complaints pursuant to the Act under section 2-619(a)(9), defendants have conceded that plaintiff's complaint is legally sufficient. They accordingly cannot rely on these alleged pleading defects in order to carry their burden of proving that this case is a SLAPP.").

¶ 41 The plaintiff's argument on appeal relies heavily on *Garrido*'s statement that "a claim that may be legally insufficient under section 2-615 cannot be considered 'meritless' for the purpose of the Act because a motion under section 2-619(a)(9) necessarily concedes the legal sufficiency of that same claim." *Id.* ¶ 21. The plaintiff argues that "in light of this Court's holding in

*Garrido*, section 2-619.1 does not permit a defendant to concurrently challenge any one count or an entire complaint pursuant to section 2-615 for failure to state a claim and, or, in the alternative, pursuant to section 2-619 for being a SLAPP *** because that kind of challenge is procedurally contradictory and, therefore, confusing."

¶ 42 We reject that argument, as it misconstrues *Garrido*. First, *Garrido* did not even mention section 2-619.1; nor did it suggest that a party may not make alternative arguments. Rather, *Garrido* analyzed the different inquiries under section 2-615 and 2-619 in order to explain how to determine if a lawsuit is "meritless" for purposes of determining if it is a SLAPP subject to dismissal under the Act.

¶ 43 The plaintiff's position simply misinterprets the application of section 2-619.1. That is, although section 2-619.1 "does not authorize the commingling of distinctive claims," (*Reynold*s, 2013 IL App (4th) 120139, ¶ 20), this is *not* equivalent to a prohibition against asserting alternative arguments for dismissal.

¶ 44 Principles of statutory interpretation do not support the plaintiff's interpretation of section 2-619.1. We must apply the plain meaning of the language in the Code. "In the absence of ambiguity, we must rely on the plain and ordinary meaning of the words chosen by the legislature. [Citation.] Further, where the language of a statute is clear and unambiguous, a court must give it effect as written, without reading into it exceptions, limitations, or conditions that the legislature did not express. [Citation.]" *Land*, 202 Ill. 2d 414 at 426.

¶ 45 By its plain language, section 2-619.1 permits "combined motions" raising arguments under both section 2-615 and 2-619 "filed together as a single motion in any combination," so long as (1) those arguments are clearly delineated in "parts"; (2) each part is "limited to and shall specify that it is made under" section 2-615 or 2-619; and (3) each part "also clearly show[s] the

points or grounds relied upon under the Section upon which it is based." 735 ILCS 5/2-619.1 (West 2012).

¶ 46 We also reject the plaintiff's attempts to equate the section 2-619.1 motions in this case with those at issue in *Reynolds* 2013 IL App (4th) 120139, and *Howle*, 2012 IL App (4th) 120207, which were found not to comply with section 2-619.1. Neither of those decisions suggests that a defendant may not argue for dismissal of the same cause of action on alternative grounds.

¶ 47 Those two decisions merely reiterate the importance of adhering to section 2-619.1's requirements to clearly delineate, in separate "parts," which arguments are made pursuant to section 2-615 and which are pursuant to section 2-619. 735 ILCS 5/2-619.1 (West 2012). There is nothing in those decisions that bars a party from asserting alternative arguments with respect to the same cause of action, so long as the separate arguments are appropriately contained in parts, each of which "clearly show[s] the points or grounds relied upon under the Section upon which it is based." *Id.*

¶ 48 Our review of the three motions to dismiss at issue in this case leads us to conclude that they did, in fact, comply with section 2-619.1's procedural requirements. Each of the motions contained separately-labeled parts which clearly delineated the parties' alternative arguments that (1) the plaintiff's complaint failed to plead a viable cause of action on its face, warranting dismissal under section 2-615; and (2) that the plaintiff's lawsuit was a SLAPP prohibited by the Act, independently warranting dismissal pursuant to section 2-619. We thus reject the plaintiff's argument that the defendants' motions to dismiss failed to comply with section 2-619.1. Thus, the trial court did not err in striking those motions.

¶ 49 We again note that the plaintiff's appeal raises no other argument challenging the trial court's dismissal order. The trial court's order dismissed the complaint "pursuant to 735 ILCS 2-619," indicating that the court agreed with the defendants' argument that the lawsuit was a SLAPP prohibited by the Act. However, as the plaintiff does not raise any argument to challenge that finding, we need not analyze that issue.

¶ 50 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 51 Affirmed.