

No. 1-15-3606

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

JOHN D. DUDLEY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	2014 L 011073
)	
RED ROOF INNS, INC., FMW RRI NC LLC,)	
R-ROOF II LLC, WESTBRIDGE HOSPITALITY)	
FUND II GP LLC, WRRH INVESTMENTS LP,)	
and CITIGROUP GLOBAL MARKETS)	
HOLDINGS INC.,)	Honorable
)	Sheryl A. Pethers,
Defendants-Appellees.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

ORDER

Held: We affirm the circuit court's section 2-615 dismissal with prejudice of the plaintiff's amended complaint where he failed to allege sufficient facts establishing a cause of action for consumer fraud.

¶ 1 Plaintiff John D. Dudley appeals from an order of the circuit court dismissing his amended complaint pursuant to section 2-615 of the Illinois Code of Civil Procedure (Code) based on the court's finding that the plaintiff failed to allege sufficient facts establishing a cause of action for consumer fraud under the Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West 2014)). Plaintiff filed the consumer fraud action against defendants Red Roof Inns, Inc.; FMW RRI NC LLC, R-Roof II LLC; Westbridge Hospitality Fund II GP LLC; WRRH Investments LP; and Citigroup Global Markets Holdings Inc. (collectively defendants). The action was based on plaintiff's allegations that the defendants made fraudulent misrepresentations to him in connection with his attempts to redeem a pass for a free, one-night stay, at a Red Roof Inn hotel. For the reasons that follow, we affirm.

¶ 2 **BACKGROUND**

¶ 3 The factual and procedural background giving rise to the issues in this appeal is as follows. In his initial complaint, plaintiff alleged that on October 8, 2011, he checked into a Red Roof Inn located in Arlington Heights, Illinois. He was charged a rate of \$44.99 per night. The next day he was charged a rate \$40.49 per night. On October 10th, plaintiff complained that he was not being charged the online rate of \$39.99 per night. He made similar complaints on October 13th and 20th. On October 23rd, plaintiff confirmed a week's reservation beginning on October 24th, at the rate of \$42.99 per night.

¶ 4 On October 24th, in an effort to address some of the plaintiff's complaints regarding the discrepancies in the hotel room rates, a manager at the Red Roof Inn emailed plaintiff a "VIP Pass" for a free one-night stay at the hotel chain. The email stated:

"I have faxed over a VIP pass to Inn #102 to apply to your current stay paying for one night's stay. Hopefully this will make up some for all the issues you've had trying to resolve the discrepancy in rates you experienced over the last several weeks.

Thank you for staying with Red Roof inns and I hope you continue to do so in the future."

¶ 5 The face of the VIP Pass included the following language indicating it was nontransferable: "This special pass entitles you to one free night at any Red Roof nationwide. This pass is nontransferable, has no cash value and is void during special events and after expiration date. Please present pass at the front desk when registering."

¶ 6 That same day, October 24, 2011, plaintiff attempted to redeem the VIP Pass. The Red Roof Inn refused to accept the pass without a photo identification, which the plaintiff claimed he did not have.

¶ 7 Three years later to the day, on October 24, 2014, plaintiff filed a complaint against defendants alleging consumer fraud under the Consumer Fraud Act. In his complaint, plaintiff alleged the defendants misrepresented to him that he was required to show photo identification in order to check into the hotel; that their online rates were \$39.99 per night, when they were actually charging \$42.99 per night; and that they would honor his VIP Pass, which they refused to do. Plaintiff sought damages in an amount to be proven at trial, plus costs, interest, and attorney's fees.

¶ 8 Defendants moved to dismiss the complaint pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2012)). Defendants argued that any allegations in the complaint which involved conduct occurring prior to October 24, 2011, were time barred by the three-year statute of limitations for claims brought under the Consumer Fraud Act (815 ILCS 505/10a(e) (West

2012)). Defendants further argued that the remaining allegations in the complaint which were not time barred, failed to establish a viable cause of action under the Consumer Fraud Act, absent allegations of deceptive conduct or intended reliance on that deceptive conduct.

¶ 9 On May 14, 2015, the circuit court partly granted and partly denied the defendants' motion to dismiss. The court determined that all allegations asserting conduct occurring prior to October 24, 2011, were stricken as time barred. The court granted defendants' motion dismissing plaintiff's cause of action for consumer fraud, but granted plaintiff leave to file an amended complaint.

¶ 10 Plaintiff filed an amended complaint on June 4, 2015. The amended complaint asserted some of the same factual allegations contained in the original complaint, including allegations the circuit court previously struck as being time-barred.

¶ 11 Defendants moved to dismiss the amended complaint pursuant to section 2-615 of the Code. Defendants maintained that the allegations in the amended complaint which were not time-barred failed to establish a cause of action for consumer fraud under the Consumer Fraud Act. Specifically, the defendants argued that the conduct plaintiff complained of that occurred on October 24, 2011, namely, requiring him to produce a photo identification in order to redeem the VIP Pass, did not constitute a deception actionable under the Consumer Fraud Act. Defendants claimed that the face of the VIP Pass clearly stated it was nontransferable and therefore requiring plaintiff to produce a photo identification in order to show that he was the legitimate holder of the pass, did not constitute a deceptive act or practice.

¶ 12 On August 31, 2015, the circuit court granted the defendants' section 2-615 motion dismissing the amended complaint with prejudice.

¶ 13 After retaining new counsel, plaintiff moved for reconsideration of the dismissal, which motion was argued and denied on November 19, 2015. In denying the motion for reconsideration, the circuit court reiterated its basis for granting the defendants' section 2-615 motion dismissing the amended complaint with prejudice. The court stated in relevant part:

"I dismissed the case with prejudice because [plaintiff] didn't state a cause of action under the Consumer Fraud Act and [plaintiff] couldn't because the facts on which it were based made it time barred and there was no misrepresentation in no way for the plaintiff to plead any facts showing a misrepresentation.

I also allowed the plaintiff more time to re-plead a different cause of action. Plaintiff didn't want to do that, so it was dismissed with prejudice and its going to stay that way and you can take your appeal. And by the way, it's not judicially economical to do a motion to re-consider that rehashes everything."

¶ 14 This appeal followed.

¶ 15 ANALYSIS

¶ 16 This cause is before us following a motion to dismiss pursuant to section 2-615 of the Code. A motion to dismiss under this section of the code attacks the legal sufficiency of the complaint by alleging defects on the face of the complaint. *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81 (2004). In ruling on a section 2-615 motion, all well-pleaded facts must be taken as true, but conclusions of law will not be taken as true unless supported by specific factual allegations. *Bonhomme v. St. James*, 2012 IL 112393, ¶ 34. When ruling on a section 2-615 motion, the relevant question is whether the allegations in the complaint, construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted. *Canel*

v. Topinka, 212 Ill. 2d 311, 317 (2004). We review an order granting a section 2-615 motion to dismiss *de novo*. *Wakulich v. Mraz*, 203 Ill. 2d 223, 228 (2003).

¶ 17 The Consumer Fraud Act is designed to protect consumers against fraud and unfair or deceptive acts or practices in the conduct of trade or commerce. *Skyline International Development v. Citibank, F.S.B.*, 302 Ill. App. 3d 79, 85 (1998). Section 10a(a) of the Consumer Fraud Act authorizes a private right of action for "[a]ny person who suffers actual damages as a result of a violation of [the] Act." 815 ILCS 505/10a(a) (West 2008); *Krautsack v. Anderson*, 223 Ill. 2d 541, 553 (2006).

¶ 18 To adequately plead a private cause of action under the Consumer Fraud Act, a plaintiff must allege: "(1) a deceptive act or practice by the defendant, (2) the defendant's intent that the plaintiff rely on the deception, (3) the occurrence of the deception in the course of conduct involving trade or commerce, and (4) actual damage to the plaintiff, (5) proximately caused by the deception." *Barbara's Sales, Inc. v. Intel Corp.*, 227 Ill.2d 45, 72 (2007).

¶ 19 Here, plaintiff fails to allege any deceptive acts or practices on the part of the defendants which could have formed the basis of a consumer fraud claim. The deception that plaintiff argues supports his consumer fraud claim is that the defendants misrepresented to him that he was required to show photo identification in order to check into the hotel. We do not find there was any misrepresentation in this regard.

¶ 20 A review of the facts in the amended complaint indicate that the plaintiff had previously rented rooms at the hotel without any issues concerning a photo identification. The only time plaintiff was required to present a photo identification was when he attempted to redeem the VIP Pass for a free one-night stay at the hotel. Any representations defendants made to plaintiff concerning the photo identification requirement was made in the context of confirming that he

was the legitimate holder of the VIP Pass for which he was to receive a benefit of a free one-night stay at the hotel.

¶ 21 Requiring plaintiff, as the holder of a nontransferable pass for a free one-night stay at a hotel, to tender a photo identification in order to confirm that the benefit belonged to him, does not amount to a deceptive act or practice. Absent photo identification to trigger the use of the nontransferable pass and without showing any other means to pay for the rental of the hotel room, the defendants could not have violated the Consumer Fraud Act by refusing to allow plaintiff to check into the hotel under these factual circumstances. Our court has determined that the Consumer Fraud Act is not intended to be used as a vehicle for transforming nondeceptive, nonfraudulent conduct into actionable conduct. *Kellerman v. Mar-Rue Realty & Builders Inc.*, 132 Ill. App. 3d 300, 306 (1985). ¶ 22 Accordingly, for the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 23 Affirmed.