2017 IL App (1st) 160727-U

FIFTH DIVISION
March 24, 2017

No. 1-16-0727

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

ELENZ & ASSOCIATES, LTD, an Illinois corporation, d/b/a BENEFITS AGE,	)	Appeal from the Circuit Court of Cook County
Plaintiff-Appellant,	)	
v.	)	No. 14 M3 3550
POLAR HARDWARE MFG. CO., INC., an Illinois corporation	)	Honorable Martin Agran,
Defendant-Appellee.	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: Affirming the decision of the circuit court of Cook County granting with prejudice judgment on the pleadings to the defendant where the plaintiff failed to provide written disclosure of compensation to the defendant, in violation of a provision of the Illinois Insurance Code.

¶ 2 Elenz & Associates, Ltd., d/b/a Benefits Age (Elenz) filed an action in the circuit court of Cook County against Polar Hardware Mfg. Co., Inc. (Polar) seeking approximately $67,000 in unpaid fees. Elenz appeals from an order granting Polar's motion for judgment on the pleadings with prejudice. For the reasons stated below, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 In October 2014, Elenz filed a verified complaint alleging breach of contract against Polar, a manufacturing company. According to the complaint, in November 2013 Polar and Elenz commenced discussions regarding the retention of Elenz "as a broker/consultant to navigate through the Affordable Care Act," also known as Obamacare. On January 15, 2014, the parties entered into an agreement whereby Polar agreed to pay 25% of the amount of savings on its medical insurance premium costs through Elenz's efforts. Elenz produced $26,216.45 in savings, and Polar paid Elenz $6,204.00 (25% of the savings).

¶ 5 In February 2014, Polar requested that Elenz "perform another task of enrolling Medicare eligible employees into a Medicare supplement program." Instead of billing Polar at an hourly rate, the parties agreed that Elenz would "again receive" 25% of the premium savings. Based on the number of eligible employees, Elenz estimated "that 25% of potential savings to be about $6,000." By May 2014, Polar had paid $6,000 to Elenz.

¶ 6 The complaint further provided that Elenz had expended 325 hours of staff time securing health insurance premium savings on behalf of Polar, totaling $267,378.40 through calendar year 2015. Elenz sought payment of 25% of the savings, or $66,844.60. According to the complaint, Polar refused to make payment despite repeated demands.

¶ 7 Polar filed a motion to dismiss pursuant to section 2-615(a) of the Code of Civil Procedure (735 ILCS 5/2-615(a) (West 2014)), asserting that the complaint "fails to allege any facts showing or supporting the existence of a contract between [Elenz] and Polar, which was breached by Polar." Polar argued that the complaint alleged that Elenz was paid in full for the agreed-upon services relating to Polar's medical insurance premium costs and "with respect to enrolling Medicare eligible employees of Polar into Medicare programs." According to Polar,

the complaint did not describe any other agreement between Elenz and Polar, or allege any facts supporting the existence of a contract, *e.g.*, offer and acceptance. The circuit court granted the motion to dismiss.[1]

¶ 8 Elenz filed a two-count amended verified complaint against Polar in January 2015, asserting breach of contract and *quantum meruit* claims. The amended complaint alleged that Elenz had acted as the insurance broker to procure health insurance for Polar's non-union employees for the twelve-year period prior to November 2013. At that time, a Polar employee contacted the president of Elenz to discuss its retention as a consultant to help reduce the health insurance costs associated with Polar's union and non-union employees.

¶ 9 According to the amended complaint, the parties entered into a contract on or about January 15, 2014, "pursuant to which [Elenz] would provide consulting services to [Polar] to design a system that would reduce [Polar's] healthcare costs for its employees." Elenz alleged that "in lieu of paying [Elenz] its standard hourly consulting fee of $275 per hour, [Polar] instead offered to pay [Elenz] twenty-five (25%) [*sic*] of any and all costs savings from [Elenz's] review and restructuring of [Polar's] current health insurance program for its employees." In accordance with the contract, Polar paid Elenz $6,204 and $6,000 for certain services.

¶ 10 Count I of the amended complaint asserted breach of contract. The complaint alleged that, in February 2014, Polar faced potential legal action for failing to provide its union employees with health insurance coverage, as required under the Affordable Care Act. According to Elenz, Polar had permitted the existing coverage to lapse for fifty employees and their families by failing to timely pay the premiums. At Polar's request, Elenz devoted 325 hours of staff time to coordinate coverage for each of Polar's union employees prior to a March

[1] Although Elenz's opening brief states that the motion to dismiss was "withdrawn," the appellate record includes an order granting the motion.

31, 2014, deadline established by the Affordable Care Act. Elenz alleged that it designed and implemented a strategy whereby Polar's employees would obtain health insurance through resources established pursuant to the Affordable Care Act, including subsidized health insurance, low-cost unsubsidized health insurance, and coverage through Medicaid for eligible employees. Elenz further alleged that Polar's cost savings totaled at least $267,378.40, based on the anticipated monthly savings during the twenty-month period between the implementation of Elenz's plan and January 1, 2016 – the effective date of the mandate under the Affordable Care Act for businesses which employ fifty or more workers. According to the amended complaint, Polar refused to pay Elenz $66,844.60 (25% of the $267,378.40 savings), pursuant to their contract. Elenz also sought prejudgment interest.

¶ 11 In Count II of the amended complaint, Elenz pled in the alternative that "should a court of competent jurisdiction determine that no contract existed to prescribe payment for these services, pursuant to the equitable doctrine of *quantum meruit* [Elenz] is entitled to be paid for the 325 plus hours of consulting services rendered at its usual and customary rate of $275.00 per hour, or $89,375.00," plus prejudgment interest.

¶ 12 Polar filed an answer to the amended complaint with affirmative defenses. In its first affirmative defense, Polar claimed that the amended complaint was barred for Elenz's failure to comply with section 500-80 of the Illinois Insurance Code (Insurance Code) (215 ILCS 5/500-80 (West 2014)), which requires written disclosure of fees charged by an "insurance producer" or "business entity" and the signature of the contracting party, under specified circumstances. In its second affirmative defense – alleging "unenforceability on the grounds of public policy" – Polar contended that Elenz's strategy whereby Polar's union employees would obtain health insurance coverage through resources established pursuant to the Affordable Care Act, rather than through

an employer plan, was "discriminatory" and created additional tax liability. In its third affirmative defense, Polar asserted that the *quantum meruit* claim was barred by the doctrine of unclean hands. Elenz responded, in part, that it was not "acting in the capacity of a licensed producer or business entity when it rendered the consulting services at issue."

¶ 13 Polar filed a motion for judgment on the pleadings pursuant to section 2-615(e) of the Code of Civil Procedure (735 ILCS 5/2-615(e) (West 2014)). Polar argued that section 500-80 of the Insurance Code is applicable, and that Elenz's failure to comply with the statutory requirements precluded its recovery. Elenz responded, in part, that section 500-80 is "simply inapplicable" because Elenz was "not acting as an insurance producer, but rather a consultant." (Emphasis in original.) After oral argument, the circuit court entered a memorandum ruling granting Polar's motion for judgment on the pleadings with prejudice. The circuit court found that Elenz failed to comply with the requirements of section 500-80 and concluded "[t]he alleged agreement between [Elenz] and [Polar] is against public policy and as such cannot be enforced."

¶ 14 Elenz filed a motion to reconsider, arguing, in part, that it was not required to follow the statute and thus no written disclosure or signature was required. The circuit court denied the motion, and Elenz filed a timely appeal.

¶ 15 ANALYSIS

¶ 16 Elenz argues on appeal that the circuit court erred in concluding the contract was enforceable because Elenz violated public policy as set forth in section 500-80 of the Insurance Code (215 ILCS 5/500-80 (West 2014)). Polar contends that the circuit court properly granted its motion for judgment on the pleadings due to Elenz's failure to comply with the statute.

¶ 17 As an initial matter, we must address certain issues raised by Elenz's briefs. Although its statement of facts in the opening brief provides that "[n]o health insurance policies were sold or

delivered to [Polar]," Elenz failed to include any citation to the record for this proposition. Pursuant to Illinois Supreme Court Rule 341(h)(6), the statement of facts "shall contain *** appropriate reference to the pages of the record on appeal." Ill. S. Ct. R. 341(h)(6) (eff. Jan. 1, 2016). A citation to the record is similarly missing for its contention in the argument section of the brief that "the employees were never obligated to purchase insurance from [Elenz], and in fact, some did not." See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (requiring "citation of the authorities and the pages of the record relied on" in the argument section of a brief).

¶ 18 Elenz argues extensively regarding the movant's burden and the standard of review when considering a motion to dismiss. We observe, however, that Polar moved for judgment on the pleadings pursuant to section 2-615(e) of the Code of Civil Procedure. As a section 2-615(a) motion to dismiss and section 2-615(e) motion for judgment on the pleadings are not identical (*e.g.*, *Bennett v. Chicago Title & Trust Co.*, 404 Ill. App. 3d 1088, 1094 (2010)), we are puzzled by Elenz's failure to cite any case in its briefs which references section 2-615(e). "A court of review is entitled to have the issues clearly defined and to be cited *pertinent* authority." (Emphasis in original.) *People ex rel. Illinois Dept. of Labor v. E.R.H. Enterprises*, 2013 IL 115106, ¶ 56. However, despite the foregoing deficiencies, we turn to the merits.

¶ 19 Section 2-615(e) provides that "[a]ny party may seasonably move for judgment on the pleadings." 735 ILCS 5/2-615(e) (West 2014). "Judgment on the pleadings is proper only where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law." *Hooker v. Illinois State Board of Elections*, 2016 IL 121077, ¶ 21. "In ruling on a motion for judgment on the pleadings, a court may consider only those facts appearing on the face of the pleadings, matters subject to judicial notice, and any judicial admissions in the record." *Id.* "All well-pleaded facts and reasonable inferences based on those facts are taken as

true." *Id*. We review the grant of judgment on the pleadings *de novo*. *Id.*

¶ 20 Section 500-80 of the Insurance Code provides, in pertinent part:

> "(e) When an insurance producer or business entity charges any fee or compensation separate from commissions deductible from, or directly attributable to, premiums on insurance policies or contracts, it must comply with all of the following:
>
> (1) It must provide written disclosure to the consumer or contracting party that clearly specifies the amount or extent of the compensation or fee prior to the delivery of the corresponding policy. A copy of the written disclosure must be maintained by the producer or business entity that collects the compensation or fee for a period of 7 years.
>
> (2) If the combined compensation or fee exceeds 10% of a directly attributable premium amount of a corresponding contract or policy, the disclosure must also include the signature of the consumer or contracting party acknowledging the compensation or fee." 215 ILCS 5/500-80 (West 2014).

¶ 21 Elenz asserts on appeal that it had worked as a "consultant" and not a "broker" vis-à-vis Polar, and thus section 500-80 is inapplicable. Specifically, Elenz argues that it was acting as a consultant on behalf of Polar and separately acting as a broker in connection with certain policies it sold directly to Polar's employees. Not only are these contentions not supported by citations to the record (see Ill. S. Ct. R. 341(h)(7)), but they also appear inconsistent with both (a) the allegation in the original verified complaint that the parties discussed Polar's retention of Elenz as a "broker/consultant" and (b) the reference to "[b]enefits brokerage" in certain invoices

generated by Elenz to Polar that were appended to the complaint. Although Elenz suggests otherwise – without any support – these statements appear to be judicial admissions which bind Elenz and preclude it from making contradictory assertions. See, *e.g.*, *Wausau Insurance Co. v. All Chicagoland Moving & Storage Co.*, 333 Ill. App. 3d 1116, 1122 (2002) (defining a judicial admission as a "deliberate, clear, unequivocal statement of a party, about a concrete fact, within the party's peculiar knowledge," and noting that "[i]t is well settled that the party making the admission is bound by that admission and cannot contradict it").

¶ 22 In any event, the "broker" versus "consultant" distinction is not relevant to our analysis under section 500-80. The section imposes obligations on an "insurance producer or business entity." 215 ILCS 5/500-80 (West 2014). Section 500-10 of the Insurance Code defines "[i]nsurance producer" as "a person required to be licensed under the laws of this State to sell, solicit, or negotiate insurance." 215 ILCS 5/500-10 (West 2014). A "[b]usiness entity" is defined as "a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity." *Id.* Elenz admitted "it is a licensed producer or business entity under the Illinois Insurance Code" in its response to Polar's affirmative defenses. Elenz instead suggests that it "was not acting as a broker in connection with its work for [Polar]." The plain language of section 500-80, however, neither references "consultants" or "brokers," nor makes any distinctions or exceptions based on the particular capacity in which an insurance producer was acting. "Where the statutory language is clear and unambiguous, we will enforce it as written and will not read into it exceptions, conditions, or limitations that the legislature did not express." *In re A.A.*, 2015 IL 118605, ¶ 21.

¶ 23 Pursuant to section 500-80, when an insurance producer "charges any fee or compensation separate from commissions deductible from, or directly attributable to, premiums

on insurance policies or contracts," it must comply with certain requirements set forth in the statute. 215 ILCS 5/500-80(e) (West 2014). Based on the allegations in the amended complaint, Elenz charged Polar a "fee or compensation" that was separate from commissions deductible from or attributable to premiums, *i.e.*, 25% of the cost savings "related to procuring health insurance for [Polar's] union employees."

¶ 24 One of the requirements in section 500-80(e) is that the insurance producer "must provide written disclosure to the consumer or contracting party that clearly specifies the amount or extent of the compensation or fee prior to the delivery of the corresponding policy." 215 ILCS 5/500-80(e)(1) (West 2014). Elenz has adopted varying positions throughout this litigation as to whether it had entered into a single agreement or multiple agreements with Polar. The original complaint suggested multiple agreements, the amended complaint alleged a single agreement, and the opening brief provides that "[w]hether the circuit [c]ourt calls this a 3rd consulting agreement or a continuation of the 1st and 2nd agreements is irrelevant." Regardless of the number and nature of agreements, however, there is no indication in the record that Elenz provided any written disclosure to Polar.

¶ 25 Elenz further contends that section 500-80 does not apply because Elenz did not deliver any insurance policy to Polar "prior to, during or after its consulting engagement." We share Polar's assessment, however, that the reference to "prior to the delivery of the corresponding policy" in the statute is "the time limitation for when the written disclosure is to be provided to the consumer or contracting party; it does not specify to whom the policy must be delivered."

¶ 26 The parties also dispute the additional requirement in section 500-80(e) that "[i]f the combined compensation or fee exceeds 10% of a directly attributable premium amount of a corresponding contract or policy, the disclosure must also include the signature of the consumer

or contracting party acknowledging the compensation or fee." 215 ILCS 5/500-80(e)(2) (West 2014). As there was no disclosure, there was no signature herein. According to Polar, "[Elenz] itself asserts that the 'Current Payable Premium' relating to the health insurance coverage for [Polar's] union employees on an annual basis is approximately $335,460." Polar posits that "[t]en percent of $335,460 is $33,546, which is obviously less than the $66,844.60 [Elenz] claims it is owed for savings." Polar thus contends that its signature was required.

¶ 27 Elenz asserts that Polar "is correct that [Polar's] calculated fees exceed 10% of [Polar's] premiums (but the premiums were an amount paid by [Polar] to a third party prior to the hiring of [Elenz], on which [Elenz] did not earn a fee or commission and on which [Elenz] did not write a contract." According to Elenz, section 500-80 does not apply because Elenz did not receive any fee or compensation "separate from commissions deductible from, or directly attributable to premiums, on insurance policies or contracts" as Elenz "never delivered, nor was contracted to deliver, such policies to [Polar] or its employees." As discussed above, we reject Elenz's interpretation of the statutory requirement regarding "delivery of the corresponding policy." In any event, regardless of the applicability of the signature requirement in section 500-80(e)(2), the written disclosure requirement in section 500-80(e)(1) was not met.

¶ 28 "The public policy of this state is reflected in its constitution, statutes, and judicial decisions." *Schultz v. Illinois Farmers Insurance Co.*, 237 Ill. 2d 391, 400 (2010). "[A] statute's requirements cannot be avoided through contractual provisions." *Progressive Universal Insurance Co. v. Liberty Mutual Fire Insurance Co.*, 215 Ill. 2d 121, 129 (2005). At a minimum, the written disclosure requirement of section 500-80 was not satisfied, and thus judgment on the pleadings was proper.

¶ 29 Finally, we observe that Elenz has not set forth any arguments on appeal regarding

potential recovery under a *quantum meruit* theory, and thus such arguments are forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). As our supreme court had stated, a "reviewing court is not simply a depository into which a party may dump the burden of argument and research." *E.R.H. Enterprises*, 2013 IL 115106, ¶ 56. We will not "sift through the record or complete legal research" to resolve issues that are "ill-defined and insufficiently presented." *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 6.

¶ 30 For the foregoing reasons, we conclude that the circuit court did not err in finding that the parties' agreement was in contravention of section 500-80 of the Insurance Code and was thus unenforceable.

¶ 31 CONCLUSION

¶ 32 The judgment of the circuit court of Cook County granting Polar's motion for judgment on the pleadings with prejudice is hereby affirmed.

¶ 33 Affirmed.