

No. 1-16-1362

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

LAKESHORE ATHLETIC CLUB ILLINOIS CENTER, LLC and TWO ELEVEN NORTH STETSON, LLC,)	Appeal from the
)	Circuit Court of
)	Cook County
Plaintiffs-Appellants,)	
)	No. 2013 L 011795
v.)	
)	Honorable
PETER GOLDMAN,)	Patrick J. Sherlock,
)	Judge Presiding.
Defendant-Appellee)	
)	
(STRATEGIC HOTELS & RESORTS, INC. and)	
LSAC 2017, LLC,)	
)	
Defendants).)	

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Hyman and Justice Neville concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court properly dismissed plaintiffs' third amended complaint for failure to state a claim arising from plaintiffs' loss of real property and an ongoing business concern because, despite multiple amendments, the complaint failed to set forth facts supporting essential elements of the claims asserted. The trial court also properly awarded Rule 137 sanctions against plaintiffs based on obvious defects in their pleadings.

¶ 2 Plaintiff-appellant Lake Shore Athletic Club Illinois Center, LLC (Lake Shore) is the former operator of a health club in real property owned by plaintiff-appellant Two

Eleven North Stetson (211 North). Both entities are controlled by the same family. Lake Shore and, eventually, 211 North pursued this action against defendant-appellee Peter Goldman and others seeking damages allegedly caused by Goldman's conduct in connection with the eventual sale of the real estate to Strategic Hotels & Resorts, Inc. (Strategic)¹ after the property went into foreclosure. The plaintiffs' theory was that if Goldman had not breached a confidentiality agreement and interfered with the lender on the property, 211 Stetson would not have lost the property and Lake Shore would still be a going concern. The trial court dismissed the third amended complaint as to Goldman and Goldman later asked for sanctions under Illinois Supreme Court Rule 137 (eff. July 1, 2013), which the trial court awarded. We affirm both orders.

¶ 3 Lake Shore and 211 North were both controlled by the Kaiser family. The real property involved is located at 211 North Stetson in Chicago. Lake Shore, 211's only tenant, operated the Lake Shore Athletic Club at the property. The club was a seven-level 120,000 square foot facility that offered its members, among other features, indoor and outdoor swimming pools, a basketball court, squash courts and a running track.

¶ 4 In May 2007, 211 North obtained a \$21 million loan from CIBC, Inc., evidenced by a note and secured by a mortgage on the property. Under the terms of the mortgage, 211 North agreed to assign its interest in the Lake Shore lease to the lender and provide CIBC with financial statements, books and records on a regular basis. 211 North also agreed that CIBC could share that information without limitation and waived any claim it

¹ Strategic was named as a defendant in the lawsuit, but settled with plaintiffs after their third amended complaint was dismissed and so is not a party to this appeal.

might have as a result of such disclosure. Finally, 211 North waived any right of reinstatement or redemption under the mortgage.

¶ 5 The note and mortgage were ultimately assigned to a JPMorgan Chase entity denominated JPMCC 2007-CIBC 19 Stetson Avenue, LLC. 211 North defaulted on the loan in September 2009 and the assignee commenced foreclosure proceedings in April 2010. The foreclosure complaint sought to foreclose not only 211 North's ownership interest in the real property, but also sought to terminate Lake Shore's leasehold interest.

¶ 6 Goldman's involvement began in May 2010, after 211 North had already defaulted on the loan. Goldman was interested in purchasing a share of the property and the Lake Shore Athletic Club as a going concern, while attempting to work out matters with 211 North's lender. Lake Shore insisted that Goldman sign a confidentiality agreement, which required him to maintain the "absolute confidentiality" of information disclosed by Lake Shore and to use that information solely in connection with his proposed purchase. In particular, the agreement provided that Goldman, without Lake Shore's consent, would not contact any of Lake Shore's lenders. As tenant, Lake Shore did not have any "lenders," but the parties treated the prohibition as extending to 211 North's lenders. Lake Shore disclosed to Goldman information relating to its operations and financial status. On March 30, 2011, Goldman offered \$5 million to acquire 80% of the business and the real estate, which Lake Shore rejected.

¶ 7 Meanwhile, in the foreclosure proceedings, a receiver was appointed on July 27, 2010, to collect rents from Lake Shore. The order appointing the receiver directed 211 North to turn over to the receiver "all contracts, documents, and agreements relating to accounts receivable and payable" as well as documents relating to the property's

operation and maintenance. Lake Shore stopped paying rent in September 2010. In response to the receiver's motion for a rule to show cause against 211 North for failing to comply with the terms of the July 27 order, Walter Kaiser, on behalf of 211 North, filed a "Certification by Verification" on October 26, 2010, in which he stated that Lake Shore's lease had been "abrogated" and that there was no current lease on the property. In April 2011, the circuit court entered an order directing that Lake Shore make use and occupancy payments of nearly \$190,000 per month, which Lake Shore also failed to pay. Eventually electrical service to the building was cut off for non-payment of bills and the facility ceased to operate. The court placed the receiver in possession on November 15, 2011. The court also entered a judgment against Lake Shore for \$1.3 million in unpaid rent.

¶ 8 In October 2011, CIBC listed the note and mortgage for sale on an internet auction site with a minimum bid of \$2.3 million. Online bidding was scheduled for November 14-17. 211 Stetson and Lake Shore were not precluded from bidding, but were financially unable to satisfy even the minimum bid. Strategic, which owned the property next door—operated as the Fairmont Hotel—purchased the note and mortgage through a subsidiary for \$10.5 million² and closed the transaction in January 2012. Strategic substituted as the foreclosure plaintiff, ultimately obtaining a judgment of foreclosure on November 28, 2012, which reflected an indebtedness of more than \$21 million. Strategic refused to negotiate with plaintiffs, purchased the property at the sheriff's sale with a credit bid in the amount it paid to purchase the mortgage and, after

² Because the distinction is not relevant to this appeal, we refer to both Strategic and its subsidiary as "Strategic."

the sale was confirmed, sold the property to Goldman for \$10.5 million on October 10, 2013. Goldman later reopened the health club.

¶ 9 Lake Shore, as the sole plaintiff, filed a verified complaint on October 24, 2013, against Goldman, also naming Strategic as a respondent in discovery. In its complaint, Lake Shore admitted that it shared its confidential information with "its lenders and loan servicers and those employees of LAC who required access to the [information] to perform their jobs." The complaint charged Goldman with breaching the confidentiality agreement based on the allegation that Goldman used Strategic as a "strawman" to purchase the property and circumvent the prohibition against contacting 211 North's lenders. A second count charged Goldman with intentionally interfering with Lake Shore's contractual relationship with its lenders. Each count sought damages of \$10.5 million.

¶ 10 After it responded to discovery served by Lake Shore, Strategic filed a motion, which the trial court granted, to be added as a defendant so that it could file a motion to dismiss. At the time Strategic filed its motion in April 2014, Goldman had yet to be served. Lake Shore, again the sole plaintiff, filed its first amended verified complaint on April 30, 2014, adding tortious interference claims against Strategic for accepting confidential information from Goldman and interfering with Lake Shore's relationship with its lenders.

¶ 11 Although plaintiffs' appeal addresses the legal sufficiency of the claims in the third amended complaint, a detailed recitation of the procedural history of the case is necessary as it is relevant to the propriety of the trial court's sanctions award, which plaintiffs challenge as well.

¶ 12 Goldman ultimately appeared and both Strategic and Goldman filed motions to dismiss. Goldman challenged Lake Shore's standing to sue given that the complaint sought damages arising from the loss of the property, but a non-party, 211 North, not Lake Shore owned the property. For its part, Strategic moved to dismiss on a number of grounds, including the alleged preclusive effect of the foreclosure proceedings, both under common law collateral estoppel and under the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1509(c) (West 2012)). Like Goldman, Strategic challenged Lake Shore's standing and also contested the sufficiency of the amended complaint's allegations to state a claim.

¶ 13 In a detailed written order, the trial court granted both motions. The court accepted the premise of Lake Shore's complaint that Goldman, bound by the terms of his confidentiality agreement, used Strategic to circumvent the prohibition on approaching the lender on the property so that he could ultimately obtain it from Strategic. The court acknowledged that Goldman's conduct spoke of "sharp practices," but noted that not all sharp practices are actionable. Although the court concluded that Lake Shore could potentially have a claim for the loss of its business, the court found it did not have standing to sue for damages sustained by 211 North based on the loss of the real property. The court rejected Strategic's arguments regarding the preclusive effect of the foreclosure judgment, finding that Lake Shore had no opportunity to pursue its claims in that litigation. As to the sufficiency of the allegations against Goldman, the court again focused on the claimed injury and ruled that Lake Shore was required to allege an injury to its own interests and, in general, how that injury was caused by Goldman's alleged breach of the confidentiality agreement. Regarding Lake Shore's tortious interference

with contract count against Goldman, the court found that because the only contract alleged was between 211 North and its lender, that count failed to state a claim. Despite "blatant inaccuracies" in the verified pleading, the court dismissed the claims without prejudice and with leave to replead.

¶ 14 In the second amended verified complaint filed on November 17, 2014, 211 North was included as a plaintiff. This version of the complaint contained seven counts: Count I and II brought against Goldman by Lake Shore and 211 North, respectively, for the alleged breach of the confidentiality agreement; Counts III and IV brought against Goldman by the respective entities for alleged interference with prospective economic advantage; Count V charged Strategic with tortiously interfering with the confidentiality agreement and in Counts VI and VII, both entities charged Strategic with interfering with their prospective economic advantage.

¶ 15 The amended pleading attempted to add allegations as required by the trial court, but was still lacking in specificity. In particular, plaintiffs added allegations regarding the Kaisers' unsuccessful efforts to negotiate with Strategic following the auction of the note and mortgage. Lake Shore claimed that it lost its lease and "valuable tangible and intangible assets," which it claimed to hold "up until May 13, 2013, when they were taken by Goldman and Strategic." Lake Shore included this allegation even though it had been evicted from the premises for non-payment of rent and use and occupancy payments in November 2011 and even though Kaiser swore in 2010 that the lease had been "abrogated." 211 North similarly claimed that it lost the property because of Goldman's and Strategic's "refusal to negotiate" although the complaint never alleged that plaintiffs were ready, willing and able to pay any amount to retain the property or the business. Up

until the sale to Strategic was confirmed, Lake Shore claimed the health club could have been sold to Strategic or another investor as a going concern for over \$10 million and 211 North claimed that it could have redeemed the property, renegotiated the note and mortgage with Strategic or sold the property to another investor, all if Goldman had not interfered. No third parties with whom Lake Shore or 211 North anticipated successfully negotiating were identified.

¶ 16 Strategic filed an answer, affirmative defenses and a counterclaim in response to the second amended complaint; Goldman filed another motion to dismiss. Goldman argued that the second amended complaint again improperly conflated damages suffered by Lake Shore as a result of the loss of the health club and those suffered by 211 North as a result of losing the property. Regarding the claimed breach of the confidentiality agreement, Goldman argued that (i) the verified pleading alleged that any information shared with Goldman was also shared with 211 North's lenders and loan servicers and so could not, as a matter of law, be deemed confidential; (ii) there were no facts alleged that supported the inference that Goldman's alleged breach of the confidentiality agreement caused either entity's damages; and (iii) 211 North was not a third party beneficiary of the confidentiality agreement and so could not separately sue for its breach. On the remaining counts, Goldman further criticized the lack of specificity in the amended pleading regarding the identity of any third parties with whom either Lake Shore or 211 North anticipated completing a deal, Goldman's claimed knowledge of those expectations, and the manner in which he allegedly interfered, essential elements of a tortious interference claim.

¶ 17 The trial court granted Goldman's motion to dismiss on March 24, 2015. Noting that plaintiffs failed to respond to Goldman's argument regarding the sharing of the allegedly confidential information with third parties, the court confined its analysis to the claim that Goldman violated the agreement by contacting lenders without Lake Shore's permission. With this limitation, the court found that plaintiffs failed to plead how Goldman's conduct in contacting lenders (assuming he did so through his "strawman" Strategic), caused the loss of the business or the property. The court noted that the gaps in plaintiffs' pleading were "striking" in that plaintiffs failed to allege that (i) the business or the property was for sale, (ii) plaintiffs had any relationship with Strategic that Goldman could have interfered with and (iii) unidentified "prospective purchasers" could not satisfy the required element of a valid business relationship or expectancy. The court further found that 211 North was not a third party beneficiary of the confidentiality agreement and, for that reason, could not pursue a claim for its breach.

¶ 18 The court expressed a healthy skepticism regarding the viability of plaintiffs' claims:

"What is clear from plaintiffs' allegations in both the first and second amended complaints is that the landlord failed to pay its mortgage, that once the foreclosure case started, the tenant failed to pay its rent, and that at no time did either party attempt to pay their debts. What puzzles this Court is the source of plaintiffs' apparent belief that if it had not been for Goldman, the foreclosure *** would have been averted and plaintiffs would have sold their encumbered real estate and failing athletic club business to Strategic or some other unidentified buyer,

thereby reaping the \$10.5+ million benefit they are seeking in damages in this case."

With those observations in mind, the court placed certain restrictions on plaintiffs' ability to further amend. As to Goldman's breach of the confidentiality agreement, the only breach Lake Shore was given leave to pursue related to Goldman's alleged contact of lenders, the only damages Lake Shore could seek were those it claimed it, as the tenant, suffered as a result of the contact, and Lake Shore was required to allege specific facts to support the conclusion of proximate cause. As to the claims for intentional interference, Lake Shore and 211 North were directed to identify prospects by name, including the type and timing of the prospective business relationship, "together with facts showing that plaintiffs' anticipations were something more than wishful thinking." 211 North's count for breach of the confidentiality agreement was dismissed with prejudice.

¶ 19 Undaunted, plaintiffs filed their third amended verified complaint on April 15, 2015. Contrary to the court's specific instructions, plaintiffs continued to allege that Goldman improperly used the confidential information disclosed by Lake Shore both in the claim against Goldman alleging a breach of the confidentiality agreement and in the claim against Strategic for inducing the breach. In several paragraphs, plaintiffs purported to identify individuals or entities that had "expressed an interest" in purchasing or investing in the health club. Plaintiff's identified one individual who "expressed an interest" in purchasing the "Stetson facility," presumably including the real estate. No other details were provided. There was no allegation that Goldman knew of these discussions or that he did anything to interfere with them. The counts against Goldman for intentional interference with prospective economic advantage alleged that Goldman

knew Strategic was willing to purchase the health club and the real property and interfered with the potential purchase by directing Strategic to buy the note and mortgage and then refuse to negotiate with Lake Shore and 211 North. The interference counts against Strategic alleged in conclusory fashion that Strategic "wrongfully and directly" interfered (i) with Lake Shore's relationship with 211 North and 211 North's lenders and (ii) with 211 North's relationship with its lenders. In all counts, the only allegation concerning a causal relationship between Goldman's or Strategic's conduct and the claimed losses stated:

"As a result of the breach of the Agreement, [Lake Shore's] landlord could not redeem the property as its management had done previously with other facilities resulting in [Lake Shore] losing its lease, [Lake Shore] and 211 North could not renegotiate the note and mortgage, [Lake Shore] was not sold to Strategic or another investor as a going concern, and [Lake Shore] lost its valuable tangible and intangible assets."

¶ 20 Both Goldman and Strategic moved to dismiss the fourth attempt to assert viable claims. Both parties criticized plaintiffs' failure to comply with the court's specific directives and again challenged the complaint's failure to allege facts supporting the existence of any causal relationship between Goldman's or Strategic's conduct and plaintiff's claimed losses. Both parties also cited the lack of facts supporting the existence of any identifiable economic relationship plaintiffs anticipated entering into but for defendants' interference.

¶ 21 Responding to the motions, plaintiffs continued to argue, despite the trial court's earlier order, that the information disclosed to Goldman was confidential. Plaintiffs

advanced no argument that Goldman's conduct in allegedly contacting lenders without permission separately caused any damage. With respect to the third parties identified in the third amended complaint, plaintiffs argued: "Plaintiffs did not have the funds to redeem the property themselves but were working with several investors *** who would have contributed to redeeming the property." Plaintiffs theorized that Goldman's and Strategic's conduct caused Strategic to purchase the note and mortgage (for roughly half its face amount) instead of paying \$10.5 million to the Kaisers.

¶ 22 On July 29, 2015, the trial court dismissed the third amended complaint with prejudice. The court observed that the pleading contained not a single fact to support the necessary element of proximate cause as to any of the claims asserted. The court found plaintiffs' argument that, but for Goldman, Strategic would have paid \$10.5 million to the Kaisers, which they would have pocketed, nonsensical. Given the \$21 million debt on the property, the court reasoned that anything Strategic paid to the Kaisers would necessarily have been immediately paid to the lender, leaving Lake Shore and 211 North in the same position they occupied after the sale of the note and mortgage to Strategic. The court agreed that the allegations that other parties "expressed an interest" in purchasing all or a part of the assets were insufficient to support plaintiffs' intentional interference claims. The court concluded that "[p]laintiffs' insistence that had it not been for Goldman and Strategic they could have found a buyer for [Lake Shore] as a going concern, and reaped a profit into the bargain, is unsupported by any facts." The order provided that it was a final disposition of all matters in controversy.

¶ 23 Plaintiffs filed a notice of appeal on August 4, 2015. Plaintiffs voluntarily dismissed the appeal in light of the fact that, despite the language in the dismissal order, it

did not resolve the counterclaim Strategic filed in response to the second amended complaint, which sought to enforce the judgment against Lake Shore for non-payment of rent. Plaintiffs and Strategic later settled and in an order approving the settlement entered on October 1, 2015, the court again indicated it had finally resolved all matters in controversy. Plaintiffs re-filed a notice of appeal on October 23, 2015.

¶ 24 On October 28, 2015, Goldman filed a motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013). Goldman claimed all the iterations of plaintiffs' complaint were based on the following demonstrably false facts: the information Lake Shore gave Goldman was confidential; Goldman contacted plaintiffs' lenders; 211 North was prevented from redeeming the property or renegotiating the note due to Goldman's breach of the confidentiality agreement; Goldman interfered with plaintiffs' business expectancies; and Goldman's conduct caused plaintiffs' damages. Goldman provided deposition testimony given by Walter Kaiser in another lawsuit by one of his entities against Goldman in which Kaiser admitted he had no knowledge of Goldman's conduct vis-à-vis any of the "prospects" identified in the third amended complaint. As a sanction, Goldman requested an award of the attorney's fees and costs he incurred in defending the litigation.

¶ 25 Again, despite the trial court's earlier findings, plaintiffs insisted that it had sufficiently pled the confidential nature of the information it shared with Goldman, while failing to even acknowledge the basis of the court's rulings that no reasonable expectation of confidentiality existed. And plaintiffs repeated their theory, despite the lack of factual support in the complaints, that were it not for Goldman and Strategic's "conspiracy," they would not have lost the health club or the property. Plaintiffs also pointed to the

settlement they had reached with Strategic by which Strategic gave up its right to pursue collection of the outstanding judgment for unpaid rent entered in the foreclosure proceedings. Plaintiffs contended that Strategic's willingness to give up collection of a \$2 million judgment underscored the merit in their claims. Plaintiffs' response did not address what, if any, investigation they undertook in the two weeks between the date of the sale to Goldman and the date the complaint was filed, nor did plaintiffs contest the reasonableness of the fees and costs requested by Goldman.

¶ 26 The court granted the motion and awarded Goldman fees and costs in the amount of \$33,317.98. The court found the arguments advanced by plaintiffs "unrelated" to the merits of the sanctions motion. Plaintiffs' settlement with Strategic was irrelevant to the merits of the claims against Goldman, a conclusion underscored by the fact that the only right Strategic gave up was the ability to pursue collection proceedings against single purpose entities lacking any assets or ongoing operations. Plaintiffs' reliance on the court's "sharp practices" comment made early in the litigation was unwarranted given the dearth of factual support for plaintiffs' claims. And while Walter Kaiser's testimony supported the allegations that several parties had "expressed interest" in the property, it negated essential elements of the tortious interference claims since Kaiser, who had verified all of plaintiffs' pleadings, disclaimed any factual support for the claim that Goldman did anything to interfere with those prospects.

¶ 27 Plaintiffs moved for reconsideration of the sanctions order, reiterating the arguments they made in response to Goldman's motion to dismiss and suggesting for the first time that an evidentiary hearing was required to resolve the motion. The motion was denied and plaintiffs timely re-filed their notice of appeal.

¶ 28 A section 2-615 motion attacks the legal sufficiency of the complaint based on defects apparent on the face of the pleading. 735 ILCS 5/2-615 (West 2012); *Simpkins v. CSX Transportation, Inc.*, 2012 IL 110662, ¶ 13. The relevant inquiry is whether the allegations, viewed in the light most favorable to the pleader, are sufficient to state a claim. *Sheffler v. Commonwealth Edison Co.*, 2011 IL 110166, ¶ 61. A section 2-619 motion "admits the legal sufficiency of the plaintiff's complaint, but asserts an affirmative defense or other matter that avoids or defeats the plaintiff's claim." *Relf v. Shatayeva*, 2013 IL 114925 ¶ 20; *De Luna v. Burciaga*, 223 Ill. 2d 49, 59 (2006); 735 ILCS 5/2-619 (West 2012). "Affirmative matter" includes any defense apart from one that negates an essential allegation of plaintiff's cause of action. *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 115 (1993). We review the dismissal of plaintiffs' complaint under either section *de novo*. *Schweihs v. Chase Home Finance, LLC*, 2016 IL 120041, ¶ 27 (section 2-615 motion); *Moon v. Rhode*, 2016 IL 119572, ¶ 15 (section 2-619 motion).

¶ 29 Plaintiffs' brief on appeal (no reply was filed) is largely a regurgitation of the same arguments repeatedly rejected by the trial court. Indeed, examination of the brief reveals that plaintiffs literally cut and pasted the brief they filed in response to Goldman's motion to dismiss the third amended complaint and the brief they filed in support of their motion for reconsideration and submitted it to this court. Plaintiffs' statement of facts is truncated and argumentative and the arguments on the merits of the dismissal of their complaint and the award of sanctions are intermingled. We need not devote much time to analyzing the arguments presented as we agree with the trial court that they are thoroughly without merit.

¶ 30 As to the propriety of the dismissal of the breach of contract count, plaintiffs argue that they sufficiently pled that the information shared with Goldman was confidential. As a threshold matter, plaintiffs wholly fail to address their failure to respond to Goldman's argument in the trial court that the allegations of the verified complaint itself, which revealed that plaintiffs disclosed their confidential information to 211 North's lender with absolutely no restrictions on its use or dissemination, contradict the allegation that the information was, in fact, confidential. Plaintiffs failed to respond to this argument when it was raised in the trial court and, as a result, the trial court directed plaintiffs to omit references to Goldman's use of confidential information in future pleadings. Plaintiffs' obstinacy in disregarding the trial court's order cannot alter the conclusion that plaintiffs forfeited their right to assert that the information was, in fact, confidential by failing to advance any argument against that proposition in the trial court. *Parks v. Kownacki*, 193 Ill. 2d 164, 180 (2000) (arguments not raised in the trial court are forfeited and may not be raised for the first time on appeal); *Illinois State Toll Highway Authority v. South Barrington Office Center*, 2016 IL App (1st) 150960, ¶ 54 (same). For this reason alone, we could refuse to consider further any arguments regarding Goldman's alleged use of confidential information.

¶ 31 But even a cursory review of the undisputed facts reveals that plaintiffs could not have had a reasonable expectation that the information they shared with Goldman was, in fact, confidential. By May 2010, when the confidentiality agreement was executed, 211 North was in default on its \$21 million loan and foreclosure proceedings had been commenced. Two months later, 211 North was directed to turn over all of its documents regarding the operation and maintenance of the property to the receiver appointed in the

foreclosure proceedings. Without any citation to the record, plaintiffs argue here that "information unrelated to [211 North]'s loans such as customer lists or operating procedures *of course* were not shared with 211 North's lenders." (Emphasis added). But, even if that was true before the foreclosure (and we sincerely doubt it), it was certainly not true after. Under the terms of the mortgage, 211 North assigned its rights under Lake Shore's lease to its lender, and because (i) the lender in the foreclosure proceedings was seeking to foreclose Lake Shore's leasehold interest and (ii) income generated under the lease would provide a source for payment of the indebtedness, the order to turn over documents necessarily included documents relating to Lake Shore's operations. Thus, even if we assumed, generously, that Goldman used the information provided to him by Lake Shore in connection with Strategic's bid for the property more than a year later in November 2011, by that time, the confidential nature of the information, if it ever existed, was irretrievably lost. Thus, Goldman's use of that information could not, as a matter of law, have constituted a breach.

¶ 32 Plaintiffs also theorized that Goldman contacted 211 North's "lender," which was also prohibited under the confidentiality agreement. Again no facts were pled substantiating this claim and plaintiffs failed even to plead which lender Goldman supposedly contacted. Nothing prevented Goldman from contacting Strategic, who was not 211 North's lender, nothing prevented Strategic (or Goldman, for that matter) from bidding on the note and mortgage offered at a public auction and nothing required Strategic, after it became 211 North's lender, to negotiate with plaintiffs.

¶ 33 Whether under section 2-615, based on the allegations of the pleading itself, or under section 2-619, based on consideration of undisputed facts outside the four corners

of the complaint, the trial court's ruling on the viability of the breach of contract claim was correct.

¶ 34 The support claimed for the elements of plaintiffs' tortious interference claims is even more tenuous. These claims required plaintiffs to plead facts supporting the following four elements: (i) a reasonable expectation of entering into a valid business relationship, (ii) defendant's knowledge of that expectancy, (iii) purposeful interference by defendant that prevents the expectancy from ripening into a business relationship and (iv) resultant damages. *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 406-07 (1996); *Atanus v. American Airlines, Inc.*, 403 Ill. App. 3d 549, 556-57 (2010). Although plaintiffs eventually identified third parties whom they claimed had "expressed an interest" in acquiring the club and, in one case, the property, they never alleged facts regarding the nature of the expectancy so as to support the inference that it was something other than "wishful thinking." Plaintiffs also never alleged that Goldman knew of these prospective relationships, much less that he did anything to interfere with them. And Walter Kaiser, who verified every one of plaintiffs' complaints, admitted under oath that he had no factual support for either Goldman's knowledge or interference.

¶ 35 Finally, all of plaintiffs' claims, whether based on the alleged breach of contract or the claimed interference with business expectancy, were properly dismissed because plaintiffs failed to plead facts supporting the inference that there was a causal relationship between Goldman's alleged conduct and the damages claimed by plaintiffs. The failure of plaintiffs to plead such facts independently warranted dismissal. Here, as in the trial court, plaintiffs rely solely on the conclusion alleged in their complaint that as a result of Goldman's conduct, 211 North lost the property and Lake Shore lost the health club. But

nothing Goldman did caused: 211 North not to pay its mortgage, Lake Shore not to pay its rent, the commencement of foreclosure proceedings by CIBC's assignee, the appointment of a receiver, the discontinuation of the operations of the health club, the assignee's decision to auction the note and mortgage online to the highest bidder or the inability of plaintiffs to secure investors to help them pay their debts. The trial court flatly rejected plaintiffs' causation theory, as do we. See *Purmal v. Robert N. Wadington & Assoc.*, 354 Ill. App. 3d 715, 721 (2004) (dismissing complaint containing conclusory allegations of causation); *Jackson v. Michael Reese Hospital & Medical Center*, 294 Ill. App. 3d 1, 16 (1997) (proximate cause must be pled with specificity to withstand 2-615 motion to dismiss).

¶ 36 Our discussion of the utter lack of factual support for the claims asserted in the third amended complaint foretells the outcome of plaintiffs' appeal of the sanctions order.

¶ 37 Under Illinois Supreme Court Rule 137 (eff. July 1, 2013), the signature of an attorney or a party certifies that he or she has read the pleading, motion or other paper and to the best of that person's knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and warranted by existing law. The attorney's or party's signature further certifies that the pleading or other paper is "not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." *Id.* The rule is not designed to penalize a litigant for lack of success, but is intended to punish those litigants who bring vexatious and harassing actions based on unsupported allegations of fact and meritless legal theories. *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 15; *Father & Sons Home*

Improvement II, Inc. v. Stuart, 2016 IL App (1st) 143666, ¶¶ 56-57; *Stiffle v. Baker Epstein Marz*, 2016 IL App (1st) 150180, ¶ 32.

¶ 38 A party seeking Rule 137 sanctions bears the burden to show that the opposing party made false allegations without reasonable cause. *Stiffle*, 2016 IL App (1st) 150180, ¶ 32; *Technology Innovation Center, Inc. v. Advanced Multiuser Technologies Corp.*, 315 Ill. App. 3d 238, 243 (2000). In assessing whether a pleading or other paper is well grounded in fact and warranted by existing law, courts employ an objective standard, which focuses on the circumstances that existed when the pleading was filed. *Kensington's Wine Auctioneers & Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 18 (2009); *Sanchez v. City of Chicago*, 352 Ill. App. 3d 1015, 1020 (2004). Where the party seeking sanctions succeeds in showing that the challenged pleading was objectively unreasonable, a trial court need not conduct an evidentiary hearing before awarding sanctions. *Hess v. Loyd*, 2012 IL App (5th) 090059, ¶ 26 (citing *Century Road Builders, Inc. v. City of Palos Heights, Inc.*, 283 Ill. App. 3d 527, 531 (1996)).

¶ 39 The trial court's decision on a motion for sanctions is committed to the court's sound discretion (*Stuart*, 2016 IL App (1st) 143666, ¶ 58), and we will consider an award of sanctions an abuse of discretion only when no reasonable person would have adopted the same view. *Arnold*, 2015 IL 118110, ¶ 16. Thus, our review is limited to determining "whether the trial court's decision was informed, based on valid reasoning, and follows logically from the facts." *Commonwealth Edison Co. v. Munizzo*, 2013 IL App (3d) 120153, ¶ 33.

¶ 40 Plaintiffs continue to advance here, again with little variation, the same arguments the court rejected in granting Goldman's motion for sanctions. Plaintiffs' assertion that

their claims were objectively reasonable is again belied by the uncontested facts. By the time Lake Shore entered into the confidentiality agreement with Goldman in May 2010, 211 North was nine months in arrears on the loan and the foreclosure proceedings were underway. Nothing prevented plaintiffs then or at any time prior to the sheriff's sale from seeking to cure the default or renegotiate the loan. By the same token, nothing in the note and mortgage gave 211 North the right to redeem or reinstate, rights it expressly waived. By July 2010, a receiver had been appointed to collect rents, which Lake Shore failed to pay. The court also ordered plaintiffs to turn over all documents regarding the property's operations, which would have encompassed any of the "confidential" information shared with Goldman. Thus, by July 2010, any claim plaintiffs had to the confidentiality of this information, if it ever existed, was extinguished.

¶ 41 The terms of the mortgage permitted the lender to share any information provided by 211 North with anyone it chose and 211 North specifically waived in the mortgage any claim it might have as a result of such disclosure. And certainly once the property was listed for auction on the internet, complete with an online "information vault" that any registered bidder could access, plaintiffs had no reasonable expectation that any of their information would remain confidential. Thus, before the date Goldman allegedly "conspired" with Strategic to bid on the property, anyone, including Goldman, was entitled to access whatever information the lender chose to reveal because it was then the lender's information to disclose. And nothing in the confidentiality agreement can reasonably be construed as a prohibition on Goldman bidding on the property at a public auction.

¶ 42 Similarly, the lack of factual or legal merit in the tortious interference claims should have been readily apparent. Quite simply, at the time the lawsuit was filed, plaintiffs possessed no facts that supported the existence of any business expectancy or Goldman's knowledge of or interference with that expectancy, all essential elements of those claims. And plaintiffs' delusional theory of causation should have prompted them and their attorneys to (i) refrain from filing those claims or, at a minimum, (ii) dismiss them once their obvious lack of merit was pointed out by the circuit court. The fact that plaintiffs continue to argue in this court that Lake Shore maintained its interest in the leasehold until May 2013 when it was "taken" by Goldman and Strategic is astonishing given that Lake Shore was dispossessed of the premises in November 2011 and Kaiser averred that Lake Shore's lease had been abrogated as early as October 2010. But plaintiffs' persistence does underscore the propriety of the trial court's exercise of discretion.

¶ 43 So while plaintiffs may have been suspicious when Goldman ultimately emerged as the buyer of the property and health club, the objective facts known to plaintiffs before they filed this lawsuit preclude a finding that they held any reasonable belief that Goldman's conduct was the cause of 211 North's loss of the property or Lake Shore's loss of its business. And the law applicable to plaintiffs' claims should have dissuaded any reasonable attorney from pursuing them. Thus, we affirm both the dismissal of the third amended complaint and the trial court's award of sanctions.

¶ 44 Affirmed.