FOURTH DIVISION
February 9, 2017

No. 1-16-2019

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ORLANDO CORYELL,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 16 CH 2845
	)	
THE PARK DISTRICT OF LA GRANGE, a body politic and Illinois Corporation, PATHWAY ACQUISITIONS, LLC, and PATHWAY DEVELOPMENT PARTNERS, LLC,	)	Honorable
	)	Mary L. Mikva,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Ellis and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court of Cook County dismissing plaintiff's first amended complaint for an injunction against the transfer of any property rights in park property to a private party and the construction of a driveway on park property is affirmed; plaintiff's complaint failed to state a cause of action based on a transfer of property (i) without statutory authorization, (ii) for a private purpose, or (iii) in violation of the public trust doctrine, because the park district is not transferring the property, has statutory authority to improve the property, may grant easements for its use, and the public will continue to enjoy the use of the park property.

¶ 2 Plaintiff, Orlando Coryell, filed a first-amended complaint for declaratory and injunctive relief against defendants, the Park District of La Grange (District), and Pathway Acquisitions, LLC and Pathway Development Partners, LLC (collectively, Pathway). Plaintiff sought to prevent Pathway from building a driveway on property owned by the District. Plaintiff alleged the building of the driveway would (1) amount to a transfer of the property that was without legal authority, (2) result in the property being used almost entirely for a private purpose in violation of the Illinois Constitution, and (3) violate the public trust doctrine. The trial court granted the District's motion to dismiss plaintiff's first amended complaint with prejudice. Plaintiff filed a motion to reconsider and for leave to file a second amended complaint. The trial court denied both motions.

¶ 3 For the following reasons, we affirm the judgment granting the motion to dismiss with prejudice.

¶ 4 BACKGROUND

¶ 5 This appeal arises from ongoing litigation concerning three lots in Gordon Park in the Village of La Grange. This court previously addressed a portion of that litigation in *In re Application of the Park District of La Grange*, 2013 IL App (1st) 110334. As this court previously found, in March 2009, the District filed an application to the circuit court of Cook County pursuant to the Park Commissioners Land Sale Act (Land Sale Act) (70 ILCS 1235/1 *et seq.* (West 2008)) to sell two parcels of land (Parcel 2 and Parcel 3)[1] in Gordon Park. The March 2009 application followed an unsuccessful September 2007 petition for sale of land no longer needed for park purposes which encompassed Parcels 2 and 3 as well as a vacated portion of Shawmut Avenue in La Grange (Parcel 1). The September 2007 petition was unsuccessful

[1]When referring to the individual pieces of property, the parties have used "Parcel" and "Lot" interchangeably. We will designate the property as a "Parcel" for consistency.

because the "inclusion of vacated Shawmut Avenue took the total amount of land embraced in the application above three acres, and, therefore, the court lacked jurisdiction under the Land Sale Act." *In re Application of the Park District of La Grange*, 2013 IL App (1st) 110334, ¶ 6. The District exchanged Parcel 1 for a piece of land owned by the Village of La Grange (Village) and the Village became the sole owner of Parcel 1 before the District filed the March 2009 application. The transfer of Parcel 1 included a reverter clause under which ownership of Parcel 1 would revert to the District if certain conditions were not met. See *id.* ¶ *7*. This court held that the trial court properly granted the District's March 2009 application to sell Parcel 2 and Parcel 3, in part because "Parcel 2 and Parcel 3 do not exceed three acres" (*id.* ¶ 54), and the legislature failed to restrict the number of transactions a park district may enter to sell parcels of land of less than three acres in one park. See *id.* ¶ 57.

¶ 6 In the case leading to the instant appeal, plaintiff's first amended complaint (hereinafter "first amended complaint" or "complaint") alleges that on August 24, 2015, the District entered into a contract to sell Parcel 2 and Parcel 3 to Pathway, but the District "has not at anytime [*sic*] obtained authority to sell or transfer any rights whatsoever" in Parcel 1. The complaint alleges that Parcel 1 runs between Parcels 2 and 3, and the contract provides that Pathway will build a driveway (referred to as the Shawmut Avenue Extension) on Parcel 1. Plaintiff alleges this driveway "will provide motor vehicle access only to the facilities to be built on [Parcel] 3 and the private parking lot to be built on [Parcel] 2." Plaintiff alleges the contract between the District and Pathway does not require Pathway to pay anything for ownership, use, or dominion over Parcel 1, does not provide that Pathway will be granted an easement or other property rights for the use of Parcel 1, and "on information and belief," "there is a secret agreement" between the District and Pathway "to transfer to Pathway property rights in [Parcel] 1." Count I of plaintiff's complaint purports to state a claim for "unauthorized transfer of parkland." Count I alleges that

the District "is effectively transferring substantially all of its property rights in [Parcel] 1 to Pathway," but the District "has not obtained authority either by referendum or by court order to transfer any property rights in [Parcel] 1." Count II purports to state a claim for "private use of public property." Count II alleges that Parcel 1 is public property and the "driveway to be built over [Parcel] 1 will be all but entirely for the use of Pathway, a private company," in violation of Article VIII § 1(a) of the Illinois Constitution. Count III purports to state a claim for violation of the public trust doctrine. Count III alleges the District holds the parkland in trust for the benefit of the public, and under the contract the District "will reallocate [Parcel] 1 to Pathway's private use." Count III further alleges that the "private driveway to be built upon [Parcel] 1 will be controlled and maintained by Pathway," will have "no or very little public use," and the original use of Parcel 1 as "open space will be completely lost." Plaintiff alleged in Count III that virtually all of the public use of Parcel 1 will be lost and will not be offset by any new or enhanced public use.

¶ 7 Counts IV, V, and VI of the complaint make similar allegations to those in Counts I, II, and III, respectively, with regard to an "irregular parcel" at the western edge of Parcel 1 that was allegedly not re-platted as Parcel 1 with the rest of the vacated right-of-way known as Shawmut Avenue. (The District contends this "irregular parcel" is part of the Village's right-of-way.) Each count in the complaint seeks an injunction preventing the District from transferring any property rights in Parcel 1 to Pathway, an injunction preventing Pathway from building any driveway on Parcel 1 or using Parcel 1 for its private purposes, and a declaration that all of the provisions of the contract between the District and Pathway which provide for the use of Parcel 1 by Pathway or the building of a driveway upon Parcel 1 are in violation of law and void.

¶ 8 The District filed a motion to dismiss plaintiff's complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2014)) for failing to state a cause

of action and pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2014)) based on lack of standing, *res judicata*, and collateral estoppel. The trial court granted the District's motion with prejudice. The court also denied plaintiff's motion to reconsider and for leave to file a second amended complaint. This appeal followed.

¶ 9 ANALYSIS

¶ 10 Plaintiff notes that a park district may only exercise those powers expressly granted to it by statute. Plaintiff argues the contract with Pathway effectively transfers "substantially all of its rights in a parcel of parkland to a private party *** for nearly exclusive use by that private party" and the District is without statutory authority to do so. Plaintiff's complaint also alleges the construction of the Shawmut Avenue Extension would violate the public purpose clause of the Illinois constitution and the public trust doctrine. The District moved to dismiss plaintiff's complaint pursuant to sections 2-615 and 2-619 of the Code.

> "A section 2-615 motion challenges the legal sufficiency of a complaint based on defects apparent on its face. [Citation.] In ruling on such a motion, the court may consider only those facts apparent from the face of the pleadings, judicial admissions in the record, or matters of which the court can take judicial notice. [Citation.] In addition, we accept all well-pleaded facts in the complaint as true and draw all reasonable inferences from those facts which are favorable to the plaintiff. [Citation.] We review a dismissal under section 2-615 *de novo*. [Citation.]" *Dempsey v. Johnson*, 2016 IL App (1st) 153377, ¶ 10.

We may affirm the trial court's judgment on any ground apparent in the record. *Id.* ¶ 53.

¶ 11 "A section 2-619 motion admits the legal sufficiency of the plaintiff's claim but asserts certain defects or defenses outside the pleadings which defeat the claim. [Citation.] In reviewing a motion to dismiss under section 2-619, the court is obligated to construe the

complaint and the evidentiary material submitted in support or in opposition, in a light most favorable to the plaintiff, and to accept as true all well-pleaded facts in the complaint. [Citation.] Our review is *de novo*. [Citation.]" *Dempsey*, 2016 IL App (1st) 153377, ¶ 54.

¶ 12 A. Count I and IV: Unauthorized Transfer of Parkland

¶ 13 Count I of plaintiff's complaint alleges the District has not complied with either section 1 of the Land Transfer Act (70 ILCS 1235/1 (West 2014)) or section 10-7 of the Park District Code (70 ILCS 1205/10-7 (West 2014)) as required for the District to transfer rights in the parkland. Plaintiff's arguments raise issues of statutory construction, which we consider *de novo*. *In re Park District of La Grange*, 2013 IL App (1st) 110334, ¶ 51 ("The construction of a statute is a question of law that is reviewed *de novo*."). Defendants respond the trial court properly dismissed Counts I and IV under the Park District Code and Land Transfer Act because plaintiff failed to show that the proposed use of Parcel 1 was a transfer of Parcel 1.[2] Defendants argue the Shawmut Avenue Extension is not a transfer but an improvement to Parcel 1 that will be used for public access to Gordon Park from La Grange Road, and utilities, which is authorized by the Park District Code. Defendants assert the only transfer of rights in Parcel 1 is a grant of public easements to preserve public access and utilities on Parcel 1 and the District will retain ownership of Parcel 1. Defendants further assert that Pathway will have no greater rights in Parcel 1 than those afforded to the public in general. Plaintiff also argues that the District's assertions of statutory authority did not provide grounds for dismissal of his complaint. Moreover, plaintiff argues that whether or not the District retains ownership of Parcel 1 is

[2]The District adopted its arguments as to Count I as applicable to Count IV. We agree that the legal issues affecting both are identical, and thus will treat the counts stated as to Parcel 1 concurrently with the corresponding counts stated against the alleged "irregular parcel." We make no findings concerning the alleged irregular parcel and merely accept as true at this stage of proceedings plaintiff's allegations concerning the re-plat of a portion of the vacated right-of-way as Parcel 1.

irrelevant because it nonetheless lacks statutory authority to transfer "substantially all of its property rights in [Parcel] 1 to Pathway."

¶ 14 1. Section 10-7 of the Park District Code and Section 1 of the Land Transfer Act

¶ 15 Plaintiff's complaint alleges "[p]ark districts in Illinois have two statutory paths for obtaining authority to sell parkland:" either section 10-7 of the Park District Code or section 1 of the Land Sale Act. Section 10-7 of the Park District Code states, in pertinent part, that

> "[a]ny park district owning or holding any real estate is authorized to convey such property to a nongovernmental entity in exchange for other real property of substantially equal or greater value as determined by 2 appraisals of the property and of substantially the same or greater suitability for park purposes without additional cost to such district." 70 ILCS 1205/10-7(b) (West 2014).

Section 1 of the Land Sale Act states, in pertinent part, that

> "[a]ny board of park commissioners having the control or supervision of any public park *** parcel of land not exceeding 3 acres in area, which shall no longer be needed or deemed necessary or useful for the purpose of said park *** may apply to the Circuit Court of the county in which such piece or parcel of land is situated, by petition in writing for leave to sell the same." 70 ILCS 1235/1 (West 2014).

¶ 16 Defendants argue the trial court properly dismissed plaintiff's complaint for failing to state a cause of action because both statutes involve a sale or conveyance of park property and the District is not selling Parcel 1 to Pathway. We agree. The District entered a contract with Pathway for the sale of Parcel 2 and Parcel 3. That contract included a term requiring the construction of the Shawmut Avenue Extension on Parcel 1. The contract reads, in pertinent part, as follows:

> "3.3.1 Shawmut Avenue Extension. The Seller desires to improve access to Gordon Park with the Shawmut Avenue Extension, and as additional consideration for the purchase of the Property, the Purchaser agrees that after the Closing Purchaser shall construct and maintain the Shawmut Avenue Extension on Lot 1, at Purchaser's expense and according to the standards prescribed by the Village of La Grange, ***. *** This Agreement is not a conveyance of Lot 1, and Seller reserves its ownership rights in Lot 1."

¶ 17 Plaintiff argues that the belief that plaintiff was complaining that the District was illegally *selling* parkland to Pathway is a mischaracterization, and "[w]hat the amended complaint actually asserts is that the [District] does not have authority to transfer any rights in [Parcel] 1 for the use of Pathway." In his reply plaintiff claims that section 10-7 of the Park District Code and section 1 of the Land Sale Act are only "mentioned" in the complaint, while the "crux of Count I and IV is that the [District] can only exercise those powers expressly granted to them by statute, *** and the [District] lacks the statutory authority to transfer any interest in [Parcel] 1 to Pathway." Section 10-7 of the Park District Code and section 1 of the Land Sale Act are the only statutory authorities plaintiff cited in support of Count I of the complaint. Count I further references the requirements of those two specific statutory sections. Plaintiff specifically alleged in Count I: "The Park District has not obtained authority either by referendum or by court order to transfer any property rights in [Parcel] 1." Section 10-7b of the Park District Code, titled "Referendum" requires that property may not be sold under the provisions of section 10-7 "unless the sale or transfer thereof is approved by a majority of the voters of said park district

voting on the question at a regular election." 70 ILCS 1205/10-7b (West 2014).[3] Section 1 of the Land Sale Act requires a court order to sell parkland. 70 ILCS 1235/1 (West 2014). Thus, plaintiff's complaint can only be construed to attempt to allege a cause of action based on the District acting beyond the statutory authority conveyed by section 10-7 of the Park District Code and section 1 of the Land Sale Act. "Since Illinois is a fact-pleading jurisdiction, a plaintiff must allege facts sufficient to bring his or her claim within the scope of the cause of action asserted. [Citation.] A plaintiff need not prove his or her case at the pleading stage; however, he or she must allege specific facts supporting each element of the cause of action, and the court will not admit conclusions of law and conclusory allegations not supported by specific facts. [Citation.]" *Rajterowski v. City of Sycamore*, 405 Ill. App. 3d 1086, 1092 (2010). The well-pled factual allegations of plaintiff's complaint fail to bring his claim that the District acted without authority under section 10-7 of the Park District Code or section 1 of the Land Sale Act within that cause of action. Plaintiff's allegations of a "secret agreement, understanding, or handshake deal *** to transfer to Pathway property rights in [Parcel] 1" is conclusory and not supported by any specific facts. Accordingly, Count I of plaintiff's complaint fails to state a claim and was properly dismissed.

¶ 18 The defendants argue that even if we accept plaintiff's characterization of his complaint, not only do plaintiff's allegations fail to show that the proposed use of Parcel 1 was a transfer of Parcel 1, the District also has authority to provide for the construction of a driveway on Parcel 1 under sections 7-2 and 8-11 of the Park District Code. Plaintiff argues neither section is applicable to the proposed use of Parcel 1, leaving open the question of what statutory authority

[3]A resolution by the park district board declaring that the property is no longer needed or useful for park purposes and stating an intent to sell the property is also required. 70 ILCS 1205/10-7a (West 2014).

exists for the District to allow Pathway to construct the Shawmut Avenue Extension. We hold plaintiff failed to plead sufficient facts to state a cause of action under section 10-7 of the Park District Code or section 1 of the Land Sale Act as he attempted to do in the first amended complaint. However, "[a]s the supreme court has often noted, [a] complaint should be dismissed with prejudice under section 2-615 only if it is clearly apparent that no set of facts can be proven that will entitle the plaintiff to recover. [Citations.] Thus, even where dismissal is appropriate under section 2-615, a plaintiff should be given leave to replead unless doing so would be futile." (Internal quotation marks omitted.) *Abazari v. Rosalind Franklin University of Medicine & Science*, 2015 IL App (2d) 140952, ¶ 35. We will consider the authority the District claims for its acts, sections 7-2 and 8-11 of the Park District Code, to determine if further amendment by plaintiff to attempt to state a cause of action based on exceeding statutory authority (other than section 10-7 of the Park District Code or section 1 of the Land Sale Act) would be futile.

¶ 19 2. Section 7-2 of the Park District Code

¶ 20 Section 7-2 of the Park District Code reads as follows:

> "Power is hereby conferred upon any park district to acquire, lay out, extend, maintain, and improve pleasure driveways and boulevards and to acquire and improve any and all real estate, lands, riparian estates or rights, and all other property acquired or needed for any such park, boulevard, or driveway or for extending, adorning, or maintaining the same if such land is located within such park district, under the provisions of Article 9 of the Illinois Municipal Code, as heretofore and hereafter amended. The Board shall, by resolution, designate the Local Improvement Act under which it elects to proceed. The same provision shall apply to the collections of the assessments by installments and for the issuing of bonds and vouchers therefor as are provided in case of special

> assessments of cities and villages in said Article 9 of the Illinois Municipal Code, except as limited by Sections 7-3 to 7-5 hereof." 70 ILCS 1205/7-2 (West 2014).

¶ 21 Defendants argue the Shawmut Avenue Extension is an "improvement to real estate on [Parcel] 1, authorized by [section 7-2 of the] Park District Code." Plaintiff argues section 7-2 of the Park District Code "does not authorize park districts to construct driveways for private use on parkland." Plaintiff argues that section 7-2 "confers power to construct pleasure driveways and boulevards for the enjoyment of the public at large," but the Shawmut Avenue Extension would not satisfy either criterion. Defendants counter that plans for the proposed construction show "park patron drop-off for vehicles," and "walking paths for pedestrians to access Gordon Park from the west [(the direction of Parcel 1)]." Plaintiff argues a site plan shows that the proposed driveway "would provide vehicle access only to Pathway's facility and Pathway's parking lot." Plaintiff also argues that whether the Shawmut Avenue Extension will benefit the public is a question of fact that should be determined at a trial and is not grounds for dismissal pursuant to section 2-615 of the Code.

¶ 22 We hold that any attempt to amend the complaint to state a cause of action based on section 7-2 of the Park District Code would be futile. Section 7-2 grants the District authority to "improve any and all real estate *** needed for any *** park." The District asserts it has entered an agreement to improve Parcel 1 to create access to Gordon Park. Plaintiff disputes whether the Shawmut Avenue Extension will provide public access to Gordon Park. According to the terms of the contract, attached to plaintiff's complaint, the District entered the agreement for the construction of the Shawmut Avenue Extension to "improve access to Gordon Park," and the documents attached to plaintiff's complaint show that the improvement will provide such access, although not in the manner plaintiff's complaint implies, but does not establish, is necessary (vehicular access). Plaintiff also attached to his complaint a site plan for the proposed

construction of the Shawmut Avenue Extension. Contrary to plaintiff's assertion, the site plan clearly depicts pedestrian walkway access to Gordon Park. Moreover, plaintiff's complaint only alleged a lack of vehicular access to Gordon Park. The complaint contains no allegations concerning pedestrian access. Thus, accepting the allegations in plaintiff's complaint as true, the complaint fails to state a claim the District lacks authority to contract with Pathway to construct the Shawmut Avenue Extension because the District has authority under section 7-2 to improve Parcel 1 in this manner. The use of the Shawmut Avenue Extension is not an assertion of fact "that is nothing more than a denial of the allegations in the amended complaint," as plaintiff argues. This finding is based on the exhibits plaintiff attached to his complaint. "Any exhibits attached to the complaint are to be considered as part of the pleadings for purposes of considering a section 2–615 motion to dismiss." *Falls v. Silver Cross Hospital & Medical Centers*, 2016 IL App (3d) 150319, ¶ 26. We hold that any attempt by plaintiff to amend the complaint to allege the District lacked authority to contract with Pathway to improve Parcel 1 would be futile.

¶ 23 The District also argues that it has authority to grant easements across its property for public services pursuant to section 8-11 of the Park District Code, and, it asserts, public access and utilities on Parcel 1 "clearly serve the public." Having found statutory authority exists for the District to contract to improve Parcel 1, we have no need to address this alternative argument. The complaint fails to state a cause of action based on section 10-7 of the Park District Code or section 1 of the Land Sale Act. We also hold that an attempt to amend plaintiff's complaint would be futile. The District is not transferring Parcel 1 and is statutorily authorized to improve the property. Accordingly, the trial court's judgment granting the District's motion to dismiss Count I of plaintiff's complaint with prejudice is affirmed.

¶ 24 B. Counts II and V: Private Use of Public Property

¶ 25 "Courts all agree that the determination of whether a given use is a public use is a judicial function. [Citation.]" *Southwestern Illinois Development Authority v. National City Environmental, L.L.C.*, 199 Ill. 2d 225, 237 (2002). Plaintiff argues the complaint states a cause of action under Article VIII § 1(a) of the Illinois Constitution, which states that "[p]ublic funds, property or credit shall be used only for public purposes." Ill. Const. 1970, art. VIII, § 1. The complaint alleges that the "driveway to be built over [Parcel] 1 will be all but entirely for the use of Pathway, a private company," in violation of this provision. Defendants argue the complaint was properly dismissed because the driveway will provide public access to Gordon Park as a public right-of-way. We find plaintiff's complaint fails to state a claim that the proposed use of Parcel 1 would be for other than a public purpose. In reaching that decision, we find our supreme court's decision in *People ex rel. City of Urbana v. Paley*, 68 Ill. 2d 62 (1977), instructive. In *Paley*, the mayor of the city of Urbana appealed from a judgment in a mandamus proceeding brought on behalf of the city against the mayor. *Paley*, 68 Ill. 2d at 65. The city sought mandamus to compel the mayor to execute general obligation bonds "for the purpose of acquiring a parcel of land as part of an urban development program." *Id.* The urban development program undertaken by the city called for the city to acquire land necessary for a commercial development. *Id.* at 66-67. The mayor had expressed concern that the issuance of the bonds for the purpose of acquiring land for a commercial development "would violate the Constitution of the State of Illinois in that it would constitute the taking of private property for a private use and the expenditure of public funds and the lending of public credit for private (as opposed to public) purposes." (Internal quotation marks omitted.) *Id.* at 65.

¶ 26 The *Paley* court cited an explanation of article VIII, § 1(a) from the constitutional convention. "In explaining section 1 of the proposed finance article of the 1970 Constitution, now found in article VIII, section 1(a), Delegate Cicero stated to the constitutional convention:

> 'We intend this provision to allow the state's credit to be used to guarantee debts of local governments, for example, to allow the state to enter into arrangements with development corporations, other types of nongovernmental corporations, so long as public purposes are served thereby.
>
> It is the feeling of the committee that in the age we live in many of these types of enterprises are going to be undertaken, as they are at the present time, through various types of ventures cooperative ventures between nongovernmental corporations and state or local governments; and this is intended to allow that type of thing so long as a public purpose is served.' [Citation.]" *Id.* at 71 (citing 2 Record of Proceedings, Sixth Illinois Constitutional Convention 869).

¶ 27 The court found that its decision "depends upon whether or not the use to which the city intends to put the money raised by issuance of the bonds in question is invested with a public purpose. If it is, then there has been no violation of either the due process clause or article VIII, section 1(a), of the Illinois Constitution of 1970." *Id.* at 72. The court found that it is well settled that the elimination of a blighted area is itself a public purpose and furthermore, "this is not altered by the use to which the land will subsequently be put, including nonresidential development [citation], or sale or lease to private interests for redevelopment after acquisition [citation]." *Id.* at 74. The court wrote that it has "held on a number of occasions that if the principal purpose and objective in a given enactment is public in nature, it does not matter that there will be an incidental benefit to private interests. [Citation.]" *Id.* at 75. In *Paley*, the court found that it was "apparent that the city of Urbana intends to undertake the redevelopment in question primarily for the purpose of revitalizing an economically stagnant downtown area. The purpose of the project is therefore clearly and predominantly a public purpose, and the benefit reaped by private developers is merely an inevitable incident thereto." *Id.* at 76. In assessing the

scope of what is "predominantly a public purpose," we find guidance in our supreme court's decision in *Southwestern Illinois Development Authority*, 199 Ill. 2d at 225, a case involving the use of eminent domain. There, the court wrote that "[a] purely private taking could not withstand the scrutiny of the public use requirement; it would serve no legitimate purpose of government and would thus be void. [Citation.] As this court held in *Gaylord [v. Sanitary District*,] 204 Ill. [576], 584 [(1903),] [t]he public must be to some extent entitled to use or enjoy the property, not as a mere favor or by permission of the owner, but by right." (Internal quotation marks omitted.) *Southwestern Illinois Development Authority*, 199 Ill. 2d at 238 (citing *Hawaii Housing Authority v. Midkiff, et al.*, 467 U.S. 229, 245 (1984)).

¶ 28 Initially we note that in this case the District is not expending public funds to improve Parcel 1. The only issue is the use to which Parcel 1 will be put under the District's agreement with Pathway. We hold that use is "invested with a public purpose." *Paley*, 68 Ill. 2d at 72. The fact that Pathway will enjoy a private benefit from the use of Parcel 1 does not create a constitutional prohibition. *Id.* at 76 ("We have indicated that there is no constitutional prohibition against the use of public funds which inure to the benefit of private interests, so long as the money is utilized for a public purpose." (Internal quotation marks omitted.)). Moreover, the contract does not create a purely private use of Parcel 1, as plaintiff claims. Plaintiff's claim that the use of Parcel 1 is entirely private is based on his allegation that the Shawmut Avenue Extension will not provide vehicular access to Gordon Park. Even accepting that allegation as true at this stage of proceedings, plaintiff fails entirely to address pedestrian access to Gordon Park, which is clearly established as a part of the Shawmut Avenue Extension by plaintiff's own exhibits. The public will be entitled to the continued use and enjoyment of Parcel 1 "not as a mere favor or by permission of the owner, but by right." (Internal quotation marks omitted.) *Southwestern Illinois Development Authority*, 199 Ill. 2d at 238. Plaintiff attached to his

complaint Pathway's application for a planned development and proposed ordinance approving the development. (Although the copy of the ordinance attached to plaintiff's complaint was not executed, the District attached an executed copy of the ordinance to its motion to dismiss.) The ordinance states that for the development of Parcel 2 and Parcel 3 to proceed the District must "grant permanent easements for public access over the Shawmut extension." Thus, the record establishes the Shawmut Avenue Extension will not be constructed without an easement across it for public access. We note here that plaintiff cannot dismiss the exhibits attached to his complaint as containing merely self-serving statements by the District, as he attempted to do. *Falls*, 2016 IL App (3d) 150319, ¶ 26 (exhibits attached to the complaint are to be considered as part of the pleadings for purposes of considering a section 2-615 motion to dismiss). Additionally, a pertinent "statement" in this instance establishing a public use sufficient to withstand a claim based on article VIII, § 1(a) of the Illinois Constitution (see *Southwestern Illinois Development Authority*, 199 Ill. 2d at 238) was made by the Village of La Grange, not the District. It is apparent from the face of the pleadings and exhibits that there are no set of facts that will permit plaintiff to recover under Count II.

¶ 29 C. Counts III and VI: Violation of the Public Trust Doctrine

¶ 30 Plaintiff alleges that the driveway will violate the "public trust doctrine" because it "will be controlled and maintained by Pathway" and "will have no or very little public use." In support of Count III based on the public trust doctrine, plaintiff relies on our supreme court's decision in *People ex rel. Scott v. Chicago Park District*, 66 Ill. 2d 65 (1976). There, the court wrote that "the State holds title to submerged land, as is involved here, in trust for the people, and that in general the governmental powers over these lands will not be relinquished." *People ex rel. Scott*, 66 Ill. 2d at 77. The court held that "when a grant of submerged land *** is proposed *** the public purpose to be served cannot be only incidental and remote." *Id.* at 80.

In that case the court found that "[t]he claimed benefit here to the public *** is too indirect, intangible and elusive to satisfy the requirement of a public purpose." *Id.* at 80-81. *People ex rel. Scott* involved submerged land. We find a more analogous decision in *Friends of the Parks v. Chicago Park District*, 203 Ill. 2d 312, 325 (2003), in which the plaintiff argued that enabling legislation permitting public financing for physical improvements to Soldier Field violated the public trust doctrine "because it allows a private party (the Bears) to use and control Soldier Field for its primary benefit with no corresponding public benefit." *Friends of Parks*, 203 Ill. 2d at 325. Similarly, in this case, plaintiff argues Pathway will use and control the Shawmut Avenue Extension with no corresponding public benefit. The *Friends of the Park* court held that the public trust doctrine was not violated where the public would "enjoy a fully renovated, multiuse stadium." *Id.* at 328.

¶ 31 Defendants assert that "the proposed use of [Parcel] 1 serves *** public purposes, by granting public vehicular and pedestrian access to Gordon Park from La Grange Road, and easements for public utilities." As noted above, the pleadings and exhibits on file establish that public access is and must be provided over the Shawmut Avenue Extension. *Supra* ¶ 31. Plaintiff asserts the contract language is not only self-serving, but belied by Pathway's site plan for the Shawmut Avenue Extension, which plaintiff purports shows only vehicular access to Pathway's facility and parking lot. However, our review of that document reveals that the site plan clearly calls for pedestrian access to Gordon Park, and, as we have noted, plaintiff has failed to address this element of the agreement for the construction of the Shawmut Avenue Extension. We acknowledge the record does not establish that the District has granted an easement for public use of the Shawmut Avenue Extension at this time. However, the pleadings do establish that an easement for public access is requisite for Pathway's development of Parcel 2 and Parcel 3 and, consequently, the building of the Shawmut Avenue Extension. Here, as in *Friends of the*

Parks, the District "is, and will remain, the owner" (*Friends of the Parks*, 203 Ill. 2d at 327) of Parcel 1, and the public will gain better access to Gordon Park. "These results do not violate the public trust doctrine even though [Pathway] will also benefit from the completed project." *Friends of the Parks*, 203 Ill. 2d at 328. Accordingly, we find that plaintiff has failed to plead a cause of action under the public trust doctrine. We further find that it does not appear that there are any facts that will allow plaintiff to recover under Count III. The public must enjoy the benefit of the Shawmut Avenue Extension or it will not be built based on the record before this court. The judgment dismissing Count III of plaintiff's complaint with prejudice is affirmed.

¶ 32 In light of our holdings as to Count II and Count III, we have no need to address the District's alternative *res judicata* arguments.

¶ 33 CONCLUSION

¶ 34 For the foregoing reasons, the circuit court of Cook County is affirmed.

¶ 35 Affirmed.