2017 IL App (1st) 162967-U

FOURTH DIVISION
June 29, 2017

No. 1-16-2967

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KINGA ROGERS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 14 CH 18969
	)	
SCOTT AMMARELL; MARILYN JEFFERSON; AMY DEGNAN-GEMPELER, in her Official Capacity as Chief of Staff of the Chicago Housing Authority; and THE CHICAGO HOUSING AUTHORITY, a Municipal Corporation;	)	
	)	
Defendants	)	
	)	
(The Chicago Housing Authority,	)	Honorable
	)	Anna Helen Demacopoulos,
Defendant-Appellee).	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: We affirm the judgment of the circuit court granting defendant's motion for dismissal of plaintiff's complaint; though plaintiff claims defendant, Chicago Housing Authority, failed to abide by its own procedures for terminating employees, due to plaintiff's status as an at-will employee plaintiff failed to establish a violation of either a property right or contractual right and failed to establish prejudice even had defendant failed to abide by its procedures; plaintiff's claim that defendant terminated her in retaliation for her disclosure of information to a government agent under Illinois' Whistleblower Act fails because it was unreasonable for plaintiff to believe she was reporting a violation of a State or federal law, rule, or regulation; plaintiff's claim that defendant wrongfully withheld information in her request under the Freedom of Information Act is dismissed as moot.

¶ 2 Plaintiff filed a complaint in the circuit court of Cook County alleging she was terminated improperly from her employment at the Chicago Housing Authority; that her employer breached a contract with her; that she was terminated in retaliation for making disclosures to the State; and, that her Freedom of Information Act request was wrongfully denied. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 Plaintiff, Kinga Rogers, worked as an administrative assistant for defendant Chicago Housing Authority ("CHA") from 2003 until her termination on November 23, 2013. From 2007 through March 2013, plaintiff was employed as an "executive administrative assistant III" working in the office of the CEO. As part of her duties, plaintiff had access to the CEO's written and electronic correspondence. Plaintiff was an at-will employee and was not covered by any collective bargaining agreement. CHA is a municipal corporation that is a non-home rule unit of local government.

¶ 5 In 2008, plaintiff married Dallis Rogers, an attorney employed by the CHA legal department. Dallis Rogers was terminated by CHA in October 2012. Dallis Rogers is the attorney of record for plaintiff in the current appeal.

¶ 6 Plaintiff discovered that in December 2010, a CHA employee, Scott Ammarell, submitted

a reimbursement form for "refreshments" he purchased earlier that month for a weekend retreat for senior staff. Ammarell attached to the reimbursement request form a receipt for two bottles of "Margherita," totaling $47.80 after sales and liquor tax. After Lewis Jordan, then CEO of CHA, approved the reimbursement request, Ammarell was reimbursed $47.80. Plaintiff believed that Ammarell's reimbursement for that purchase constituted official misconduct and theft. CHA's zero tolerance policy for drugs and alcohol prescribe employee termination if an employee reports to work inebriated or with detectable illegal intoxicants in their system. Plaintiff believed Ammarell violated this policy by bringing alcohol to a weekend retreat for senior staff. CHA's General Business Expense Policy specified employees should not be reimbursed for purchasing alcoholic drinks, and for the employee to reimburse CHA for the full cost of alcoholic beverages if alcoholic beverages are purchased and CHA paid.

¶ 7 On November 13, 2013, plaintiff forwarded to her husband a copy of Ammarell's reimbursement request for the purchase of alcoholic beverages, along with earlier court records concerning Ammarell. Her husband forwarded the documents to the city of Chicago's corporation counsel. Though Dallis Rogers' name and address were on the envelope containing the documents, plaintiff's name was not. However, because plaintiff shares an address with Rogers, her address was on the envelope containing the disclosures to Chicago's corporation counsel. Additionally, because Rogers serves as plaintiff's attorney, plaintiff's attorney's name was on the envelope containing the disclosures.

¶ 8 Dallis Rogers had a pending case against CHA alleging his own wrongful termination. In his lawsuit against CHA, Dallis accused Ammarell of wrongdoing causing his termination. Dallis Rogers included documents about potential settlement of his lawsuit against CHA in the envelope containing the disclosures.

¶ 9 On November 26, 2013, plaintiff was called in to a conference room by Amy Degnan-Gempeler, then CHA chief of staff. Degnan-Gempeler left plaintiff in the room with Amanda Sonneborn, an attorney and partner at Seyfarth Shaw LLP. Plaintiff claims Sonneborn asked plaintiff questions about any privileged communications she had with her husband concerning CHA, even though plaintiff's husband was her attorney and plaintiff's husband was then litigating a claim against CHA. Later that day, plaintiff was terminated for violating the information security policy. Marilyn Jefferson, the vice president of human resources at CHA, signed plaintiff's termination notice.

¶ 10 Plaintiff initially filed a freedom of information request seeking minutes from board meetings where her name was mentioned. Plaintiff alleged that CHA rules require the CHA Board to ratify a termination of an employee. On June 20, 2012, CHA's board of directors (the "board") enacted resolution 2012-CHA-49, titled "A Resolution Establishing A Personnel Committee and Delegating Certain Authority to the Chief Executive Officer" (the "2012 resolution"). The 2012 resolution established a personnel committee comprised of three board members. The 2012 resolution authorized the CEO to provide the committee with recommendations for the selection, appointment, and removal of employees. The 2012 resolution also authorized the CEO to immediately appoint or remove employees in case of emergency or exigent circumstances, and then provide the board with notice within 48 hours. The CEO was further authorized to appoint or remove employees without board approval provided the CEO gained approval of two of the committee members. Should the board approve the CEO's termination decision, the resolution failed to provide employees with notice or opportunity to be heard. The board published the 2012 resolution on its website[1], but did not

[1] http://www.thecha.org/assets/1/20/B5-Establish_Personnel_Committee49.pdf

otherwise distribute or inform CHA employees of the resolution. On November 19, 2013, the board enacted resolution 2013-CHA-98, entitled "A Resolution to Amend Delegation of Certain Personnel Related Authority to the Chief Executive Officer"[2] (the "2013 resolution"), giving the CEO more flexibility to terminate lower level employees. The board published the 2013 resolution on its website, but did not otherwise distribute the resolution to its employees. Under the 2013 resolution, the CEO could terminate lower level employees without prior board approval, but the board was required to later review those terminations and vote on whether to ratify the CEO's decision. Neither the 2013 resolution nor the 2012 resolution provided employees with notice or opportunity to be heard prior to, or even after, termination. In the instance the board would reject a CEO's termination decision, the resolutions did not provide for allowance of back pay or a procedure for the employee's reinstatement. The resolutions failed to specify *any* procedures the board should follow if it disagrees with a CEO's termination decision. Prior to this, on October 29, 2013, the board enacted resolution 2013-CHA-93, appointing Michael Merchant as CEO of CHA. It also granted Amy Degnan-Gempeler interim authority to act as CEO from November 2, 2013 through November 11, 2013.[3]

¶ 11 CHA publishes the minutes of its board meetings on its website, and these include their decisions on personnel actions. The minutes list the job titles of persons whose terminations were ratified by the board. From November 2013 through April 2014, no posting indicated an executive administrative assistant III was terminated or recommended for termination.

¶ 12 Plaintiff received a response to her Freedom of Information Act request on November 20, 2014 from the office of the Illinois Attorney General partially granting and partially denying her request. See 5 ILCS 140/1 (West 2014). Plaintiff's request for minutes of board meetings

[2] http://www.thecha.org/assets/1/20/5-Personnel_Comm_Deleg_Amended_bp981.pdf
[3] http://www.thecha.org/assets/1/20/1-CEO_Appointment-Michael_R_Merchant93.pdf

where her name was mentioned was denied because minutes of meetings closed to the public are exempt from dissemination until the public body makes the minutes available to the public. See 5 ILCS 140/7(1)(k)(1) (West 2014).

¶ 13 On November 25, 2014, plaintiff filed the present suit against CHA alleging that her FOIA request was wrongfully denied, that CHA terminated her *ultra vires*, and that she was terminated in violation of Illinois' Whistleblower Act (740 ILCS 174/15 (West 2014)).

¶ 14 The trial court entered an order on March 21, 2016 dismissing plaintiff's FOIA claim with prejudice under section 2-619, and dismissing plaintiff's *ultra vires* and whistleblower claims under section 2-615 with leave to amend. 735 ILCS 5/2-615, 2-619 (West 2016). Plaintiff filed a verified second amended complaint in April 2016, in which she repleaded her FOIA claim only to preserve the claim for appellate review. Plaintiff raised three other counts in her verified second amended complaint: that she was wrongfully terminated because of CHA's failure to abide by its policies for employee termination; that CHA breached its contract with her on the basis of failing to abide by those policies; and, that she was terminated in violation of the Whistleblower Act. CHA replied by filing a motion to dismiss, and the court held a hearing on the motion on October 12, 2016.

¶ 15 At the conclusion of the October 12, 2016 hearing, the trial court dismissed the entirety of plaintiff's verified second amended complaint with prejudice. After arguments by both parties concerning whether CHA abided by either the 2012 resolution to seek prior approval for plaintiff's termination, or the 2013 resolution to seek ratification after plaintiff's termination, the trial court found:

> "it is now unambiguously clear that the CHA did not follow either the 2012 or the 2013 resolutions as no approval was sought by the board before or after the

plaintiff's termination. Were such board approval to have been obtained, the CHA would have brought proof of that on a 619 motion based on that dismissal." Although the trial court found that CHA failed to abide by either of the resolutions concerning the CEO's authority to terminate employees, the court dismissed under section 2-619 plaintiff's claim that CHA prejudiced her by failing to follow the 2012 resolution because defendant raised the affirmative defense that it was no longer obligated to follow the 2012 resolution after its adoption of the 2013 resolution. The court dismissed under 2-615 plaintiff's claim that she was prejudiced by CHA's failure to abide by the 2013 resolution because plaintiff failed to allege prejudice. The court also dismissed under 2-615 plaintiff's claim of breach of contract because plaintiff failed to prove contract formation. Finally, the court dismissed plaintiff's whistleblower claim under 2-615 because plaintiff could neither prove that she was the party who made the disclosures, nor that it was reasonable for her to believe that she was disclosing evidence of a crime or other violation of a State or federal law, rule, or regulation. Plaintiff appeals from dismissal of these claims, as well as from the earlier dismissal of her FOIA claim.

¶ 16 ANALYSIS

¶ 17 Plaintiff appeals from the trial court's dismissal with prejudice of all four counts of her complaint. A motion to dismiss under section 2-615 alleges certain defects on the face of the complaint such that the complaint fails to raise a claim for which the plaintiff can receive relief. 735 ILCS 5/2-615 (West 2016). Because dismissals under 2-615 raise an issue of law and not fact, we review them *de novo*. *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009). A section 2-619 motion to dismiss admits the legal sufficiency of the complaint, but raises an affirmative matter that otherwise defeats the claim. 735 ILCS 5/2-619 (West 2016). We also review dismissals under 2-619 *de novo*. *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶

31.

¶ 18 CHA's Failure to Follow its Resolutions on Employee Termination Did Not Prejudice Plaintiff, and CHA Did Not Breach a Contract with Plaintiff

¶ 19 Plaintiff claims CHA violated its 2012 and 2013 resolutions when CHA terminated plaintiff without either seeking board approval or ratification for her termination. Plaintiff argues that because CHA did not abide by its own procedures for employee termination she can maintain a cause of action for her wrongful termination, relying on *Bethune v. Larson*, 188 Ill. App. 3d 163 (1989). Plaintiff also relies on *Ertl v. City of Dekalb et al.*, 303 Ill. App. 3d 524 (1999) for her position that public employees have a cause of action when a public employer fails to follow its own administrative rules and the employee is prejudiced. However, we find both cases inapposite to plaintiff's claims here. Plaintiff can neither show that CHA deprived her of any right by failing to abide by its 2012 and 2013 resolutions, nor can plaintiff show that she was prejudiced by this failure to abide by the 2012 and 2013 resolutions. Plaintiff was neither deprived of a property right nor was she prejudiced because neither the 2012 nor the 2013 resolutions formed contracts entitling plaintiff to any procedures for termination.

¶ 20 Plaintiff claims the *Larson* court held that "although the plaintiff's termination [in *Larson*] was ultimately ratified by his governing board, absent that ratification his termination would have been void." However, *Larson* simply does not provide any support for plaintiff maintaining a cause of action here. The plaintiff in *Larson* worked as a counselor in the Montgomery County Health Department and was on probationary status when the defendant, an administrator in the health department, along with the chairman of the Montgomery County Board of Health, and the State's Attorney for Montgomery County secretly met and concluded that the defendant had the power to unilaterally terminate the plaintiff. *Larson*, 188 Ill. App. 3d at 165. The defendant then terminated the plaintiff and later informed the board of his unilateral

termination action. The board held a hearing and ratified the defendant's decision to terminate the plaintiff. *Id.* The plaintiff "sought administrative review of the Board's action pursuant to the Illinois Code of Civil Procedure, [citation] claiming that [the defendant] lacked authority to discharge him, and also claiming that the Board had not complied with the provisions of the Illinois Administrative Procedure Act." *Id*. at 166. However, the court held that the plaintiff's discharge was not subject to the provisions of the Administrative Procedure Act. *Id*. at 170. Moreover, the court held that it was appropriate to delegate to the defendant the authority to terminate the plaintiff. *Id*. at 172. The court also found that the defendant's decision to discharge the plaintiff was properly ratified after the fact. *Id*. Whether that ratification was necessary after the proper delegation of authority to terminate was not before the *Larson* court. We additionally note here plaintiff provided only a general citation to *Larson* and failed to provide any citation to any relevant passage from *Larson* that would support plaintiff's argument. Because the relevant issue before us here was not before the *Larson* court, we find plaintiff's argument unhelpful to our resolution of this case.

¶ 21 Plaintiff's reliance on *Ertl* is also misplaced because plaintiff in this case is an at will employee, unlike the employee in *Ertl*. The *Ertl* court found that "an administrative agency's failure to follow its rules is not actionable unless the failure prejudiced the plaintiff." *Ertl*, 303 Ill. App. 3d at 530.

¶ 22 *Ertl* provides guidance for why a plaintiff must show they were deprived of a property right when they are terminated without due process and are entitled to an expectation of continued employment. *Id*. at 526. The plaintiff in *Ertl* was terminated from the DeKalb fire department after the "plaintiff was arrested and charged with unlawful use of weapons [citation] and disorderly conduct." *Id*. at 525. The defendant "terminated [the] plaintiff's employment

without explanation," and refused to provide the plaintiff with a hearing or other relief. *Id*. The court found that the plaintiff would have a claim if he could show that the government entity deprived him of a property right without due process of law, in contravention of the fourteenth amendment, citing *Faustrum v. Board of Fire & Police Commissioners*, 240 Ill. App. 3d 947, 948 (1993). In order to maintain such a claim, the plaintiff had to prove his entitlement to his job - that he held a property interest in his continued employment. *Ertl*, 303 Ill. App. 3d at 526. "A person has a property interest in his job where he has a legitimate expectation of continued employment [citation] based on a legitimate claim of entitlement. [Citations.]" *Faustrum*, 240 Ill. App. 3d at 948. To demonstrate such an entitlement the employee "must point to a specific ordinance, State law, contract or understanding limiting the ability of the Board to discharge him. [Citations.]" *Faustrum*, 240 Ill. App. 3d at 949. Because the plaintiff in *Ertl* was a probationary employee he was not given a property interest in his job under 65 ILCS 5/10–2.1–17 (West 1996). However, the collective bargaining agreement in place provided that even probationary firefighters could only be fired for cause, and that the plaintiff was entitled to the disciplinary procedures under the collective bargaining agreement. *Ertl*, 303 Ill. App. 3d at 527-28. Because the plaintiff had a legitimate expectation of continued employment and procedural due process rights under the collective bargaining agreement, the court found that the plaintiff could maintain a claim against the defendant for its failure to follow its rules if he could prove he was prejudiced by this failure. *Id*. at 530. Here, plaintiff was an at-will employee and was not covered by any collective bargaining agreement. Neither the 2012 nor the 2013 resolutions contained any clear statements altering her status as an at-will employee.

¶ 23 Critical to the *Ertl* court's reasoning that the plaintiff held an expectation of continued employment was the analysis of the *Faustrum* court. See *Ertl*, 303 Ill. App. 3d at 526. Similar

to how the plaintiff in *Ertl* was a probationary firefighter, the plaintiff in *Faustrum* was a probationary police officer who was fired without a pretermination hearing. *Faustrum*, 240 Ill. App. 3d at 948-49. The *Faustrum* court used the analysis from our supreme court in *Duldulao v. Saint Mary of Nazareth Hospital Center*, 115 Ill. 2d 482 (1987) to note how a probationary employee may use an employee manual prescribing employee termination procedures as evidence of a contract between the employer and employee to abide by the terms of the manual. The *Faustrum* court then explained how "*Duldulao* requires that employee manuals contain a clear statement before they will be held to modify an at-will employment relationship." *Faustrum*, 240 Ill. App. 3d at 952. More specifically how

> "municipal fire and police boards are obligated to follow their own rules regarding the discharge of probationary officers. [Citation.] *Duldulao*, however, held that the presumption of at-will employment will not be overcome unless the language in the employer's policy statement "contain[s] a promise clear enough that an employee would reasonably believe" that the employer has offered to provide him with pretermination procedures. [Citation.]" *Id*. at 951.

The court found no clear statement modifying the at-will status of probationary police officers and concluded that the defendant lawfully discharged the plaintiff even without providing him pretermination notice or a hearing. *Id*.

¶ 24 Thus, resolving whether plaintiff here was prejudiced by CHA's failure to abide by either the 2012 or the 2013 resolutions is contingent upon resolution of whether plaintiff held an entitlement to an expectation of continued employment. Plaintiff cannot satisfy the prejudice component of *Ertl* because she cannot show that she held an entitlement to an expectation of continued employment. Plaintiff argues she was prejudiced by the board's failure to ratify her

termination because she was "aggrieved," relying on a definition of prejudice from *American Surety Company v. Jones*, 384 Ill. 222, 229-30 (1943).

> " 'A person is prejudiced or aggrieved, in the legal sense, when a legal right is invaded by the act complained of or his pecuniary interest is directly affected by the decree or judgment. * * * "Aggrieved" means having a substantial grievance; a denial of some personal or property right.' " *Jones*, 384 Ill. at 229–30.

The trial court found that plaintiff could not prove prejudice because she did not allege that the board would not have ratified her termination. Plaintiff argues, however, that "the onus is not, nor should not be, on the employee to have to plead what a board might have done if presented with a request to approve her termination." Plaintiff cites no law or *any* authority for this proposition. Plaintiff maintains that she satisfies the criteria for being prejudiced by CHA's failure to abide by the 2013 resolution because "she was inherently aggrieved when her pecuniary interests and continuous right to remain employed was [*sic*] snatched away." However, plaintiff cannot point to any clear statement altering her status as an at-will employee and establishing a right to employment at CHA.

¶ 25 Plaintiff's argument that she has a cause of action because she was aggrieved by CHA's failure to abide by the 2012 and 2013 resolutions fails because she cannot show that any legal right of hers was invaded. The claim that CHA violated her rights under the 2012 resolution can only stand if she proves that the 2012 resolution formed a contract precluding the board from altering termination procedures in the 2013 resolution. If the 2012 resolution was unilaterally revocable by CHA then the 2013 resolution altered the 2012 resolution's procedures. In the 2012 resolution, the board explicitly retained the right to alter or amend its policies. Plaintiff was terminated on November 26, 2013, just one week after the board enacted the 2013

resolution, so it stated CHA's then current termination procedures as opposed to the 2012 resolution. Plaintiff argues that CHA should have abided by the 2012 resolution requiring prior board approval for terminations, but plaintiff's only basis for this position is that CHA never provided her with consideration for altering the procedures for employee termination. Plaintiff's further claim that CHA's failure to abide by the 2013 resolution was prejudicial also fails because she cannot prove she was deprived of a right. Plaintiff claims that her rights were infringed because not only would it have been harder to secure plaintiff's termination, but also because CHA violated plaintiff's right to have CHA abide by its procedures for termination. Again, plaintiff's basis for an entitlement to these procedures was that a board resolution formed a contract that CHA breached. We note how the trial court dismissed plaintiff's claim of breach of contract under 2-615 because plaintiff failed to establish that either resolution met the requirements of contract formation.

¶ 26 The only basis for plaintiff claiming she held a property right to her job was that the 2012 and 2013 resolutions were contracts that she accepted by continuing to work for CHA. Plaintiff relies on *Duldulao* to argue that the 2012 and 2013 resolutions were contracts, and that CHA breached its contract by terminating her without seeking prior board approval or ratification after. Our supreme court held in *Duldulao* that "an employee handbook may, under proper circumstances, be contractually binding." *Duldulao*, 115 Ill. 2d at 487. The court provided three conditions that must be met to establish this type of contract formation:

> "an employee handbook or other policy statement creates enforceable contractual rights if the traditional requirements for contract formation are present. First, the language of the policy statement must contain a promise clear enough that an employee would reasonably believe that an offer has been made. Second, the

> statement must be disseminated to the employee in such a manner that the employee is aware of its contents and reasonably believes it to be an offer. Third, the employee must accept the offer by commencing or continuing to work after learning of the policy statement. When these conditions are present, then the employee's continued work constitutes consideration for the promises contained in the statement, and under traditional principles a valid contract is formed." *Duldulao*, 115 Ill. 2d at 490.

In *Duldulao*, the plaintiff was the human resources development coordinator of the defendant hospital. The plaintiff began working for the defendant as a nurse and left her job shortly after to go to the Philippines. Before she was rehired, the defendant published an employee handbook that the defendant used in training sessions for new employees. *Id*. at 484. The defendant revised the employee handbook a few years later and distributed a copy to all employees. The employee handbook noted how:

> "It is then necessary that every employee of Saint Mary of Nazareth Hospital Center be well informed on hospital policy and other pertinent information that will assist him in directing his total efforts toward the best patient care possible. A booklet containing hospital and personnel policy is given to each employee. As a new policy change is finalized, a copy will be given to every employee to be read and placed in his booklet. If a policy needs clarification, your Supervisor or Department Head will be happy to assist you in its interpretation.
>
> Please take the time to become familiar with these policies. They are designed to clarify your rights and duties as employees." *Id*. at 485–86.

This handbook provided that a probationary employee was to receive two weeks' notice for

dismissal. Later, the defendant issued a policy statement providing that probationary employees could be terminated without notice, but for only just cause. After a reorganization of several departments, the defendant promoted the plaintiff to human resources development coordinator. The plaintiff then received a "probationary evaluation" and a "final notice" informing her she was terminated as of the end of the day. *Id*. at 485. The plaintiff filed suit claiming her discharge was a breach of contract based on the violation of employee termination procedures in the employee handbook. The defendant maintained that it complied with the provisions of the handbook because the plaintiff was a probationary employee. Our supreme court found that the employee handbook formed a contract binding on the defendant and that the plaintiff was not a probationary employee within the meaning of initial probationary employees who could be fired without notice. *Id*. at 493. The court found all elements of contract formation present because the employee handbook contained a clear statement on employee rights that an employee would reasonably believe to be an offer, the employer distributed the handbook to all employees and required that all employees be familiar with the handbook, and the plaintiff accepted and gave consideration for this offer by continuing to work for the defendant. These conditions are not present in this case.

¶ 27 CHA never made a clear statement altering plaintiff's status as an at-will employee, nor otherwise made any clear statement that plaintiff could reasonably interpret to be an offer of a contract. In both the 2012 and 2013 resolutions, CHA's board maintained their right to revoke the resolutions. In contrast, the handbook in *Duldulao* "contain[ed] no disclaimers to negate the promises made. In fact, the introduction to the handbook states just the opposite, that the policies in the handbook 'are designed to clarify your *rights* and duties as employees.' " (Emphasis in original.) *Duldulao*, 115 Ill. 2d at 491. Here, the 2012 resolution was titled "A

Resolution Establishing A Personnel Committee and Delegating Certain Authority to the Chief Executive Officer," and the 2013 resolution was titled "A Resolution to Amend Delegation of Certain Personnel Related Authority to the Chief Executive Officer." Neither resolution contained a statement like the handbook in *Duldulao* where a CHA employee would have a reasonable expectation that this clarified any of their rights as employees. The resolutions were not distributed to CHA employees, nor were they actively announced to CHA employees. The resolutions were simply published on CHA's website along with the other minutes of board meetings and resolutions. However, in *Duldulao*, the defendant "gave the handbook to [the] plaintiff and intended that [the] plaintiff become familiar with its contents. In fact, a significant part of [the] plaintiff's duties as an employee consisted of instructing new employees on the contents of the handbook." *Id*. at 492. The elements of contract formation present in *Duldulao* do not exist here.

¶ 28 Thus, plaintiff cannot show that either resolution formed a contract that she accepted by continuing to work for CHA. Plaintiff cannot therefore claim that she was aggrieved by CHA's failure to abide by the 2012 or 2013 resolutions because she was not deprived of a right to continued employment. CHA made no policy statement altering her status as an at-will employee. We affirm the trial court's dismissal under 2-619 of plaintiff's claim that she was prejudiced by CHA's failure to abide by the 2012 resolution because CHA raised the affirmative defense that it was not obligated to follow the 2012 resolution based on its adoption of the 2013 resolution. 735 ILCS 5/2-619 (West 2016). Next, we affirm the trial court's dismissal under 2-615 of plaintiff's claim she was prejudiced by CHA's failure to abide by the 2013 resolution. 735 ILCS 5/2-615 (West 2016). Plaintiff failed to state a cause of action for which she could gain relief because she was an at-will employee and the 2013 resolution did not provide her with

any mechanism to obtain relief. Finally, we affirm the trial court's dismissal under 2-615 of plaintiff's breach of contract claim because plaintiff could not prove the elements of contract formation were present or that her status as an at-will employee was altered in any way. *Id.*

¶ 29 Unreasonable for Plaintiff to Believe She was Disclosing a Violation of a State or Federal Law, Rule, or Regulation

¶ 30 Plaintiff argues she was terminated in violation of the Illinois' Whistleblower Act when CHA fired her in retaliation for her disclosures to Chicago's corporation counsel. See 740 ILCS 174/1 (West 2012). The Whistleblower Act provides that an employer may not prevent an employee "from disclosing information to a government or law enforcement agency if that employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation." 740 ILCS 174/15 (West 2012). For plaintiff to maintain a claim that CHA violated the Whistleblower Act she must prove both that she disclosed information to a government agent and that she disclosed information relating to a violation of State or federal law, rule, or regulation. Though plaintiff argues that Ammarell failed to abide by CHA rules, the Whistleblower Act only covers employees who disclose violations of State or federal rules, not any and all corporate or company rules. *Id.* Plaintiff however, maintains that she was disclosing a violation of Illinois and federal law because she accused Ammarell of theft. We find that it was unreasonable for plaintiff to believe she was disclosing evidence of any crime.

¶ 31 Though plaintiff claims Ammarell committed "theft" by receiving reimbursement for the purchase of alcoholic beverages, plaintiff fails to cite *any* authority that this was a crime. Instead, plaintiff argues that the trial court held her "to the standard of a law school graduate sitting for the bar exam." We find it telling however, that throughout numerous briefs plaintiff's attorney has never provided a citation for how Ammarell's conduct constituted a crime or

violation of a State or federal law, rule, or regulation. Plaintiff, however, argues that even if this conduct was not a crime, that she was still protected by the Whistleblower Act because it was reasonable for her to believe that she was disclosing evidence of a violation of a State or federal law, rule, or regulation. Plaintiff relies on *Brame v. City of North Chicago*, 2011 IL App (2d) 100760 ¶ 5. The *Brame* court indicated how "generally, reasonableness is a question of fact rather than law, unless reasonable minds could not differ." Our inquiry, then, turns on whether reasonable minds could differ as to whether plaintiff's disclosure of a violation of the employee reimbursement policy was a disclosure of a State or Federal law, rule, or regulation. We find that reasonable minds would not differ that a disclosure of a violation of a company policy on reimbursements was not a violation of a State or federal law, rule, or regulation. To this point, Ammarell even attached the receipt clearly listing a liquor tax was paid for 2 bottles of "margherita" to his reimbursement form that was approved by the then CEO of CHA. Ammarell may have written that he was seeking reimbursement for "refreshments," but by attaching the receipt clearly Ammarell was not hiding from CHA that he was seeking reimbursement for his purchase of alcohol. No person could reasonably hold the belief that this is evidence of a crime. In fact, because plaintiff claims that she made her disclosure through her attorney, her husband, she had an opportunity to first ask an attorney whether she was disclosing evidence of a crime. While we do not hold that a person must consult an attorney to confirm the reasonableness of their belief, we simply point out how this plaintiff took the added measure of disclosing through her attorney and note the ease with which she could have found out that Ammarell's conduct was not criminal.

¶ 32 Plaintiff further argues her disclosure is protected by the Whistleblower Act because the Whistleblower Act prevents retaliation of any kind against "a reasonable employee and is

because of the employee disclosing or attempting to disclose public corruption or wrongdoing." 740 ILCS 174/20.1 (West 2016). Plaintiff argues that she was at least "attempting" to disclose evidence of something criminal, which she claims entitles her to protection under the Whistleblower Act. However, the Whistleblower Act only prevents employers from retaliating against employees for "disclosing information to a government or law enforcement agency if the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation." 740 ILCS 174/10 (West 2016). Plaintiff points out how "the statute is extremely sensitive to persons' efforts at attempting to disclose corruption or wrongdoing," but draws no further implication from this. It is one thing to argue that a whistleblower attempted to disclose evidence of a violation of law but was obstructed from doing so, and another to claim an employee was "attempting" disclose information that the employee had no reason to believe was a crime, or violation of federal or State law, rule, or regulation. Especially when this plaintiff claims to have completed her disclosure to the city of Chicago's corporation counsel by submitting her documents through her attorney.

¶ 33 Finally, we find that resolution of the issues of whether plaintiff was the party who made the disclosure to the government agency, and whether CHA was aware it was plaintiff who made those disclosures, are unnecessary to our disposition here. Plaintiff argues that she disclosed evidence of wrongdoing to a government agency by submitting the information through Dallis Rogers that Ammarell sought reimbursement for alcoholic beverages and court documents from a 2006 case involving Ammarell. CHA maintains that Dallis Rogers disclosed the information solely for his own lawsuit, and that he was not acting as plaintiff's intermediary in conveying the information to the corporation counsel for Chicago. Under the Whistleblower Act, an employee must not only allege that she disclosed information to a government agency, but also that she

reasonably believed she was disclosing information about a violation of State or federal law, rule, or regulation. 740 ILCS 174/15 (West 2012). Because we find that it was unreasonable for plaintiff to believe she was disclosing evidence of a violation of State or Federal law, rule, or regulation, it is unnecessary to our disposition to resolve whether plaintiff in fact was the party who made the disclosure. *Id.*

¶ 34 Plaintiff's FOIA Claim is Moot

¶ 35 Plaintiff's FOIA request included documents relating to minutes of CHA board meetings where plaintiff was discussed. CHA contends that such documents are *per se* excluded from FOIA disclosures because the meeting was closed to the general public and the minutes had not yet been made available. CHA further submitted two affidavits asserting that upon review of plaintiff's FOIA request, those requested documents were exempt from disclosure. However, a review of CHA's website indicates it published all the agendas and minutes of its meetings from January 16, 2001 through February 21, 2017. These published minutes of meetings and agendas include termination decisions, though only with reference to the employee's job title rather than name. No board resolution from November 2013, or the months following, indicated any person with the job title "executive administrative assistant III" was terminated. In the October 12, 2016 hearing the trial court found "it is now unambiguously clear that the CHA did not follow either the 2012 or the 2013 resolutions as no approval was sought by the board before or after the plaintiff's termination. Were such board approval to have been obtained, the CHA would have brought proof of that on a 619 motion based on that dismissal." As already noted, plaintiff's failure to establish prejudice from CHA's alleged failure to follow its 2012 or 2013 resolutions resulted in dismissal of plaintiff's claim for wrongful termination, and also dismissal of her breach of contract claim, as those resolutions never formed binding contracts and she was not

prejudiced. Plaintiff herself indicated that "should this Court agree that defendant failed to comply with its board resolutions 2012-CHA-49 and 2013-CHA-98, then Mrs. Rogers' FOIA claim would be moot." CHA argues it should not be compelled to disclose the existence of the documents plaintiff requested about board meetings where she was mentioned for termination. We find that resolution of this issue is unnecessary to our disposition because plaintiff waived her claim should the record indicate CHA failed to abide by the 2012 or 2013 resolutions. As such, plaintiff's FOIA claim is moot. This court may sustain the judgment of the trial court based on any grounds found in the record. "As a reviewing court, we can sustain the decision of a lower court on any grounds which are called for by the record, regardless of whether the lower court relied on those grounds." *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 97 (1995). Therefore, we affirm the trial court's dismissal with prejudice of plaintiff's FOIA claim under section 2-619. 735 ILCS 5/2-619 (West 2016).

¶ 36 CONCLUSION

¶ 37 For the foregoing reasons, the judgment of the circuit court of Cook County dismissing plaintiff's complaint in its entirety with prejudice is affirmed.

¶ 38 Affirmed.