2017 IL App (2d) 160433-U
No. 2-16-0433
Order filed July 11, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

LAUNDRY WORKS LAUNDROMAT TRUST, WASHLAND LAUNDROMAT TRUST, and JH MEYER ENTERPRISES, INC.,	)	Appeal from the Circuit Court of Du Page County.
Plaintiffs-Appellants,	)	
v.	)	No. 15-CH-361
JOHN E. ZARUBA, DEPUTY JOSEPH WOMACK, DU PAGE COUNTY SHERIFF'S OFFICE, and MIDWEST LAUNDRIES, INC.,	)	Honorable Bonnie M. Wheaton,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly dismissed plaintiffs' complaint, seeking damages for certain alleged actions relating to a levy sale. Affirmed.

¶ 2 Plaintiffs, Laundry Works Laundromat Trust, Washland Laundromat Trust, and JH Meyer Enterprises, Inc. (JHM), initially sought an expedited trial under section 12-201 of the Code of Civil Procedure (Code) (735 ILCS 5/ 12-201 (West 2016)) after defendants, John E. Zaruba (the sheriff) and the "Du Page County Sheriff's Office," carried out a levy sale of

property to satisfy plaintiffs' debts pursuant to a properly-enrolled judgment. As the case evolved, they added various fraud and trespass claims against the sheriff and the remaining defendants, sheriff's deputy Joseph Womack and Midwest Laundries, Inc. (the latter of which was the sole purchaser at the levy sale). The trial court dismissed plaintiff's 15-count complaint, finding that it was primarily barred by tort immunity and *laches*. We affirm the dismissal of: count I for failure to state a claim and tort immunity; count II for failure to state a claim and *laches*; counts III to V for failure to state a claim and tort immunity; count VI for failure to state a claim and *laches*; counts VII and VIII for failure to state a claim and tort immunity; count IX for failure to state a claim (intent and bailment), standing, and tort immunity; count X for failure to state a claim (intent and bailment), and *laches*; counts XI to XIII for failure to state a claim (intent and bailment), standing, and tort immunity; count XIV for failure to offer any argument on appeal, thus, invoking forfeiture of any argument; and count XV for failure to state a claim (improper defendant).

¶ 3 I. BACKGROUND

¶ 4 John R. Meyer is trustee of Laundry Works Laundromat Trust and Washland Laundromat Trust, and he is president of JHM. JHM operated a commercial laundry at 248-250 James Street in Bensenville.

¶ 5 On February 10, 2014, in case No. 2014 MR 173, the case underlying this action, Eastern Funding LLC, as judgment creditor, enrolled its New York judgment in Du Page County against JHM, Meyer, and Dolphin Laundry Services, Inc., as judgment debtors.

¶ 6 On November 10, 2014, with Meyer present, the trial court entered an order, pursuant to Eastern's motion, authorizing the Du Page County sheriff to enforce the personal property levy at the 248 James Street premises and authorizing the sheriff "to take all property stated in the

bond" in case No. 2014 MR 173. The court also directed that the sheriff "may use any reasonable force necessary to enter" the premises, including using a locksmith. The court also allowed Eastern to enter the premises and examine the property. (On November 14, 2014, upon Eastern's motion, the trial court amended its November 10, 2014, order to include the full address of the 248-250 James Street premises.)

¶ 7 On November 14, 2014, Eastern had the locks changed at the 248 James Street location. On December 10, 2014, the locks were changed at the 250 James Street location.

¶ 8 In a November 24, 2014, email to Eastern, Meyer listed items at the premises that allegedly did not belong to JHM and to which he asserted Eastern had no claim or right. In a December 3, 2014, email to Meyer from Eastern's counsel, Eastern states that the sheriff advised Meyer in person on November 13, 2014, that: (1) Eastern would not request the sale of paperwork or personal files, but that Meyer would have to wait until the eviction to take up this issue with the landlord; (2) Meyer produce original documents (leases, contracts, receipts) that identified the vendor or owner of any equipment and personal property at the premises that belonged to someone other than JHM; and (3) if Meyer failed to produced such documents, any property not subject to a third party's filed UCC financing statement that is superior to Eastern's would be sold as being owned by JHM. The letter also noted that an Eastern representative would be present on the day of the sale to meet with Meyer and direct the sheriff not to sell any fixtures, clothing, tools, and other items of "obvious individually-owned personal property (*i.e.*, sports equipment)." The purpose of the meeting, Eastern noted, was for Meyer to show the sheriff and Eastern original documents that clearly identified the vendor/owner of any of the equipment at the premises that belonged to someone other than JHM and to provide copies of such documents to Eastern for its files. Finally, the letter addressed certain personal property

(*i.e.*, water heaters, washers, machine parts, furniture and kitchen appliances, etc.) that Meyer had listed as belonging to a laundry owner and Dolphin Laundry Services. Eastern stated that, if Meyer convinced the sheriff that this property belonged to someone other than JHM, the property would not be sold at the auction.

¶ 9 Meyer responded to this letter on December 15, 2015, and stated that "the Sheriff acts at the orders of Eastern on this matter. The Sheriff has no ownership and claims no ownership of any of the property" at the 248 James Street premises. Meyer represented that he did *not* possess ownership documents concerning third-parties' property, but that the Dolphin Laundry Services documents were contained in a computer at the 248 James Street premises. He asked to meet an Eastern representative at the premises. (Apparently, these alleged computer files were never retrieved and they are not contained in the record.)

¶ 10 On January 22, 2015, Meyer emailed Liberty Mutual, the company that issued a bond to Eastern to cover any claims associated with the levy sale, informing it that Eastern appeared to intend to sell property at the levy sale that it had no right to sell.

¶ 11 The levy sale occurred on January 27, 2015.[1] In their complaint, plaintiffs alleged that, on this date, Meyer attempted to give notice to deputy Womack that "third parties owned or had rights superior to those of" Eastern Funding in certain property at the premises and informed the sheriff/deputy "that those parties intended to litigate their rights." The notice consisted of a letter, dated January 27, 2015, and an affidavit. In the letter, Meyer stated that third parties owned property at the premises and others had superior rights to Eastern in certain assets. He had informed Eastern and the bond company of the third-party property and the superior rights of

[1] Apparently, of the three judgment debtors involved in the underlying case, only one, JHM, was listed by the sheriff in his inventory as having property located at the premises.

others and that the third parties would litigate their rights and, as bailee, so would Meyer. "So the sale of this property at the Sheriff's sale today is an intentional tort and conversion of that property." Plaintiffs alleged that Meyer requested that the sheriff/deputy refuse to follow Eastern's directions and not sell the property that belonged to third parties and the property for which others had rights superior to Eastern's rights. In his affidavit, Meyer listed the equipment and other property that allegedly did not belong to JHM. The affidavit has a printed June 11, 2014, notarization date that is crossed out, with January 27, 2015, handwritten above it. Midwest was the sole purchaser at the levy sale.

¶ 12 On February 25, 2015, plaintiffs filed a complaint for expedited trial under section 12-201 of the Code. At a March 16, 2015, hearing, the trial court questioned whether it had jurisdiction over the matter (since the sale had concluded and the property was purchased in good faith) and whether plaintiffs had standing to bring the action. The court also expressed concern that the purchaser at the levy sale (Midwest Laundry) had not been named as a defendant. The court granted plaintiffs 14 days to file an amended complaint. Plaintiffs filed a first amended complaint on March 30, 2015, which was dismissed on June 16, 2015, with leave to file an amended complaint. The court noted that the complaint lacked specificity and that the "Du Page County Sheriff's Office," as opposed to the sheriff in his official capacity, was a non-suable entity.

¶ 13 In a May 2015 affidavit, Meyer averred that he was present on an unspecified date when the sheriff took control and possession of the premises and that he observed that certain items had been sorted and arranged in a certain fashion. However, on January 27, 2015, prior to the levy sale, Meyer observed that various customers' goods had been taken out of their containers and were co-mingled with other customers' goods and thrown in piles on the floor, some of them

damaged with bleach and other chemicals and beyond repair. He estimated that the replacement value of the goods was in excess of $300,000.

¶ 14 Plaintiffs filed a second amended complaint on July 16, 2015, which was dismissed on October 13, 2015. This complaint included a damage-to-property claim by JHM against the sheriff for alleged damage to property JHM held, as bailee, for Lufthansa German Airlines. The court noted that the defects in the original complaint had not been remedied; that alleged bailee's Lufthansa's property be specifically identified by plaintiffs; and it granted plaintiffs leave to file another amended complaint.

¶ 15 On November 16, 2015, plaintiffs filed a 15-count, 72-page, third amendment complaint. In this complaint, they raised claims for fraud, trespass to property, fraudulent misrepresentation, and related claims against the sheriff and Womack and alleged trespass to property against Midwest for its failure to return the property that was wrongfully sold at the levy sale. Plaintiffs alleged in their complaint that Meyer was present at the premises on the sale date and afterwards and spoke to Womack (in person and via subsequent telephone conversations). Womack allegedly informed Meyer that he: was taking possession of the premises and was changing the locks at Eastern's direction; would protect all the property, including that of third parties; and would not release any third party's personal property to Meyer without Eastern's consent (which Eastern refused). According to plaintiffs, Meyer notified Womack that certain personal property within the premises was owned by third parties who had rights superior to Eastern's levy rights. Also, plaintiffs alleged that Meyer informed Womack of the property that belonged to JHM and for which there were no rights of third parties superior to the rights of Eastern; thus, Womack knew which property was subject to the levy. Meyer allegedly told Womack which property was

owned by Laundry Works and Washland, as well as which property JHM did not own and was holding in bailment, all of which Womack allegedly agreed was not subject to the levy order.

¶ 16 Plaintiffs also alleged that Womack's representations were intentional and fraudulent and made to convince plaintiffs that Womack knew their property was not subject to the levy order. Eastern, according to plaintiffs, allegedly informed the trial court at hearing that it had no involvement with the levy other than to request the levy order. Plaintiffs surmised that Womack, thus, had exclusive possession and control of the premises. According to plaintiffs, during Womack's exclusive possession and control of the premises and prior to the levy sale, property of Carlos Lopez and Lufthansa was stolen and/or damaged. They also asserted that Womack included in the levy sale property that belonged to Jeff Juliano, Laundry Works, Washland, Dolphin Laundry Services Trust, and Dolphin Laundry Services, Inc.

¶ 17 As to Midwest Laundries, plaintiffs noted that it was the highest bidder at the levy sale and they alleged that Meyer had contacted Midwest and requested a return of the third parties' property (which consisted primarily of commercial equipment). Midwest refused.

¶ 18 In a subsequent filing, plaintiffs submitted a January 4, 2016, letter on Lufthansa's letterhead. The letter was signed by Isabelle Hermann, station manager at O'Hare, listing the allegedly damaged and stolen goods that were located at the premises. The letter, addressed to JHM, states that the parties had a contract for cleaning, drying, pressing, and packaging of Lufthansa linens and blankets and that the property was unlawfully damaged or stolen. It also states that Lufthansa authorizes JHM, as bailee, to litigate to obtain compensation for Lufthansa for its property. (Emails between Hermann and Meyer reflect that Meyer, not Hermann, compiled the list of goods at the premises.)

¶ 19 The sheriff and Womack moved to dismiss plaintiffs' complaint pursuant to section 2-619(a)(9) of the Code, raising standing and tort immunity, and 2-615 of the Code, addressing the claims for trespass to property, fraudulent misrepresentation, fraud, rent, and expedited trial. 735 ILCS 5/2-615, 2-619(a)(9) (West 2016). Midwest moved to dismiss the counts directed against it (II, VI, and X, for alleged trespass to personal property) under section 2-619(a)(9) of the Code, raising *laches*, and, alternatively, asserting that it was a *bona fide*, good faith purchaser.

¶ 20 In an April 20, 2016, response to Midwest's motion to dismiss, Meyer submitted an April 5, 2016, affidavit in which he averred that he was present on November 14, 2014, when the sheriff took possession of the premises and that he detailed for Womack the items therein that belonged to third parties. Meyer stated that Womack agreed and represented that the third-party items were not subject to the levy order and would not be sold at the levy sale. Meyer also averred that, prior to the levy sale, he had communicated with Eastern and obtained its agreement that the third-party items would not be sold at the levy sale. He asserted that he provided notice to Womack on the day of the sale and that Womack did not postpone the sale or notify the circuit clerk; rather, he held the sale and sold all of the items. Meyer asserted that he became aware that Midwest was a bidder at the sale after its completion. After the sale, Meyer contacted Midwest, informing it that many of the sold items were not owned by JHM and many items were subject to liens and security interests. He asked for their return, and Midwest refused to return the items.

¶ 21 On May 10, 2016, the trial court dismissed plaintiffs' third amended complaint with prejudice. Specifically, it granted Midwest's section 2-619(a)(9) motion to dismiss counts II, VI, and X, and it granted the sheriff's and Womack's section 2-619.1 motion to dismiss plaintiffs' supplemented complaint. As to the claims against the sheriff and Womack, the court found that

they were barred by tort immunity because these defendants "were complying with a valid court order and acting as officers of the court, not as individuals." The court also determined that plaintiffs' claims were also barred by *laches* or forfeiture. Meyer "may have attempted to give notice to a lot of people, but *** he did not give notice to [ ] this court." "There was nothing that was done in this court between November and January, which would have brought to this court's attention any claimed rights of any bailees or any owner of property, and I think the exhibits to the motions clearly point that out." Plaintiffs appeal.

¶ 22 II. ANALYSIS

¶ 23 Plaintiffs argue that the trial court erred in dismissing their complaint on the basis of tort immunity and *laches* and erred in dismissing the "Du Page County Sheriff's Office" as a defendant. The sheriff defendants disagree, arguing that plaintiffs: (1) failed to establish standing; (2) failed to properly address immunity issues; (3) did not sufficiently allege viable causes of action; and (4) failed to name proper parties. In a separate responsive brief, Midwest argues that the counts against it were properly dismissed on the basis of *laches* and that the *caveat emptor* doctrine, which plaintiffs raise, does not apply. For the following reasons, we find plaintiffs' arguments unavailing.

¶ 24 A. Standard of Review

¶ 25 A section 2-615(a) motion to dismiss tests the legal sufficiency of the complaint based on defects apparent on its face. *Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 15. A section 2-615(a) motion presents the question of whether the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, and taking all well-pleaded facts and all reasonable inferences that may be drawn from those facts as true, are sufficient to state a cause of action upon which relief may be granted. *Id.* ¶ 16. "[A] cause of

action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). In ruling on a section 2-615 motion, the court considers only: (1) those facts apparent from the face of the pleadings; (2) matters subject to judicial notice; and (3) judicial admissions in the record. *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill. 2d 381, 385 (2005). We review *de novo* a section 2-615(a) motion dismissal. *Doe-3*, 2012 IL 112479, ¶ 15.

¶ 26 A motion for involuntary dismissal under section 2-619(a)(9) of the Code admits the legal sufficiency of the complaint, admits all well-pleaded facts and all reasonable inferences therefrom, and asserts an affirmative matter outside the complaint bars or defeats the cause of action. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). When ruling on the section 2-619(a)(9) motion, the court construes the pleadings "in the light most favorable to the nonmoving party" (*Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55) and should only grant the motion "if the plaintiff can prove no set of facts that would support a cause of action" (*Snyder v. Heidelberger*, 2011 IL 111052, ¶ 8). We review *de nov*o a section 2-619(a)(9) dismissal. *Kean*, 235 Ill. 2d at 361.

¶ 27 An affirmative matter is not the defendant's version of the facts, as such a basis merely tends to negate the essential allegations of the plaintiff's cause of action. *Howle v. Aqua Illinois, Inc.*, 2012 IL App (4th) 120207, ¶ 34. Accordingly, section 2-619(a)(9) does not authorize the defendant to submit affidavits or evidentiary matter for the purpose of contesting the plaintiff's factual allegations and presenting its version of the facts. *Smith v. Waukegan Park District*, 231 Ill. 2d 111, 121-22 (2008). "It is well settled that the 'affirmative matter' asserted by the defendant must be apparent on the face of the complaint; otherwise, the motion must be

supported by affidavits or certain other evidentiary materials." *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 377 (2003). The existence of tort immunity or the plaintiff's lack of standing is a proper affirmative matter pursuant to section 2-619(a)(9), as each completely defeats the plaintiff's ability to successfully prosecute its claim against the defendant. *Smith*, 231 Ill. 2d at 121 (tort immunity); *Jackson v. Randle*, 2011 IL App (4th) 100790, ¶ 12 (standing).

¶ 28 Finally, we note that we may affirm a dismissal ruling on any basis or ground for which there is a factual basis in the record, regardless of the trial court's reasoning. *Colmar, Ltd. v. Fremantlemedia North America, Inc.*, 344 Ill. App. 3d 977, 994 (2003).

¶ 29 B. Sheriff Defendants

¶ 30 All but counts II, VI, and X in plaintiffs' 15-count, 72-page complaint were directed against the sheriff defendants. Plaintiffs, collectively or separately, raised claims against the sheriff defendants for expedited trial (alleged by all plaintiffs), trespass to property (alleged in separate counts by Laundry Works, Washland, and JHM as bailee), fraudulent misrepresentation (alleged in separate counts by Laundry Works, Washland, and JHM as bailee), fraud (alleged in separate counts by Laundry Works, Washland, and JHM as bailee), "damage to property" (presumably, trespass to property or conversion) (alleged by JHM as bailee), and rent (alleged by JHM). The trial court dismissed the counts against the sheriff defendants after finding that plaintiffs' claims were barred by tort immunity. For the following reasons, we affirm the dismissal on several bases.

¶ 31 1. Trespass, Fraudulent Misrepresentation, Fraud, and Property Damage

¶ 32 We first address the trespass, fraudulent-misrepresentation, fraud, and property-damage[2] counts (counts I, III to V, VII to IX, and XI to XIII). Each of these causes of action requires an

[2] Presumably, property damage refers to a claim for conversion.

intentional act. See *Sotelo v. DirectRevenue, LLC*, 384 F. Supp. 2d 1219, 1229 (N.D. Ill. 2005) (quoting Restatement (Second) of Torts, § 217) (trespass to personal property is committed by intentionally dispossessing another of chattel or using/intermeddling with chattel that is in the possession of another); *Doe v. Dilling*, 228 Ill. 2d 324, 342-43 (2008) (to state a claim for fraudulent misrepresentation, the plaintiff must plead a false statement of material fact, known or believed to be false by the person making it, an intent to induce the plaintiff to act, action by the plaintiff in justifiable reliance on the statement's truthfulness, and resulting damages to the plaintiff); *Oldendorf v. General Motors Corp.*, 322 Ill. App. 3d 825, 831 (2001) (common-law fraud elements include an untrue statement by the defendant of a material nature that was known or believed by the speaker to be untrue or made in culpable ignorance of its truth or falsity, that was relied upon by the plaintiff to his or her detriment, made for the purpose of inducing reliance, and such reliance led to the plaintiff's injury); *Loman v. Freeman*, 229 Ill. 2d 104, 127-29 (2008) (conversion, which is an intentional tort, requires the defendant's unauthorized and wrongful assumption of control, dominion, or ownership over plaintiff's personal property, the plaintiff's right in the property and his or her right to its immediate possession, absolutely and unconditionally, and the plaintiff's demand for possession).

¶ 33 We may affirm on any basis present in the record, and we conclude that plaintiffs failed to plead with sufficient specificity any facts showing the requisite intentional acts for these claims. In all counts, plaintiffs alleged that, on the day of the levy sale, Meyer was at the premises and spoke to Womack, who told Meyer that Eastern had directed him to proceed with the sale. Meyer then "attempted to tender" to Womack his letter and affidavit (wherein he stated that third parties owned certain of the property in the premises or had rights superior to Eastern's

in some property) and "pointed out to" Womack that "those parties intended to litigate their rights," but that Womack "refused to accept" Meyer's paperwork.

¶ 34 In the trespass-to-property counts, plaintiffs alleged that Womack included several of the items of plaintiffs' property at the levy sale and that he had the ability and duty to make certain the sale did not include such property. In violation of these duties, Womack sold the property at the sale and knew or should have known that it was not subject to the sale because he was informed that JHM did not own the other plaintiffs' or bailors' property and represented to Meyer that third-party property was not part of the levy order and would remain undisturbed. Notwithstanding Womack's "knowledge and representations, [he] deliberately and intentionally sold the [plaintiffs'] property at the Levy Sale in utter indifference to and conscious disregard for [plaintiffs'] rights in" their property. Plaintiffs further alleged that, if Womack had performed his duties under the law, he would not have taken possession of plaintiffs' property and would not have included it in the levy sale. The sheriff, further, had a duty to train and supervise Womack and did not do so and, as a result, they alleged, Womack sold the property at the sale.

¶ 35 In the fraudulent misrepresentation counts, plaintiffs alleged that Womack "had the ability and duty to make certain" the sale did not include plaintiffs' property, but he "deliberately and intentionally sold" the property "in utter indifference to and conscious disregard for" plaintiffs' rights in the property. Plaintiffs also alleged the Womack, on November 14, 2015, made certain misrepresentations of material facts to Meyer, which he knew were false when made (because Eastern later allegedly represented to the trial court that it never exerted any control over any property), including that: Womack took possession and control of the premises and property at Eastern's direction and had contacted Eastern; he informed Meyer that he was changing the locks at the premises at Eastern's direction and expense and was protecting all of

the property therein; and he would call Eastern to ask about releasing third parties' property to Meyer. Further, plaintiffs alleged that Womack's misrepresentations after November 14, 2015, included that he told Meyer that he had spoken to Eastern about releasing third parties' property to Meyer and that Eastern would be coming to the property to identify the property of JHM that would be sold, but where Eastern represented to the trial court that it never exerted any control over any of the property. Finally, plaintiffs alleged that, on January 27, 2015, Womack told Meyer that Eastern had directed him to proceed with the sale immediately, where, according to plaintiffs, Eastern represented to the trial court that it never exerted any control over the property.

¶ 36 In the fraud counts, plaintiffs alleged that the foregoing conduct by Womack showed that he knew or should have known that plaintiffs would rely upon his misrepresentations and false statements and that he made the misrepresentations "with the intent" that plaintiffs rely upon them. They also alleged that Womack wrongfully failed and refused to accept Meyer's letter and affidavit prior to the sale, in violation of the statute.

¶ 37 In the damage-to-property count, JHM, as bailee, alleged that Womack, knew or should have known that he had a duty to protect the Lufthansa goods and not allow them to be removed from the laundry carts, to be co-mingled with other customers' goods, and put into piles on the floor, whereby they were damaged with bleach, chemicals, mold, mildew, and water. The sheriff, according to JHM, failed to properly train and supervise Womack in the performance of his duties during the sale.

¶ 38 As the foregoing summary of the complaint allegations reflects, plaintiffs' theory that Womack acted intentionally is based upon his receiving some kind of oral notice from Meyer on the day of the levy sale (and during certain conversations thereafter) and his alleged disregard of

that notice in effectuating the sale. This theory also relies on plaintiffs' allegations that Eastern denied exerting any control over any of the personal property or being present at the premises; thus, "based upon [Eastern's] denial of any involvement in the Levy sale [*i.e.*, between November 14, 2015, and the conclusion of the sale], and based upon [Womack's] representations to [Meyer] that only he and [Eastern] would be in the premises during [this period] *** [Womack] *must have been* the individual engaged in the wrongful conduct which is the subject of the Counts below." (Emphasis added.) These allegations are problematic for several reasons. First, they are internally inconsistent because plaintiffs first allege that Eastern denied being present at the premises or exerting any control over any of the subject property and, they next allege that Womack represented to Meyer that only he *and Eastern* would be in the premises during the relevant period. Second, the allegation that Womack must have been the individual engaged in the wrongful conduct is inconsistent with Eastern *also* having access to the premises is conclusory, and it constitutes pure speculation inconsistent with sufficient pleading of any cause of action. (We also note that Meyer had access to part of the premises until November 14, 2014, and to the remaining premises until December 10, 2014.) Third, plaintiffs' claim that Womack had exclusive possession and control of the premises during the relevant period is belied by Meyer's December 15, 2014, email to Eastern, wherein he states that "the Sheriff acts at the orders of Eastern on this matter." Fourth, " 'knew or should have known' allegations do not comport with the standard for pleading *scienter* and intent" for fraud. See *Bank of Northern Illinois v. Nugent*, 223 Ill. App. 3d 1, 11 (1991).

¶ 39 Further, plaintiffs' allegations concerning the alleged notice to Womack are problematic as to the bailee counts (counts IX through XIII) because they do not reflect that Meyer informed Womack of Meyer's alleged bailee status, which we address further below. This status is noted

only in the letter that plaintiffs allege Meyer merely "attempted" to give to Womack and which Womack refused. Without any knowledge of Meyer's status, Womack could not form the requisite intent to sell the bailors' property of which he was unaware (or had no sufficient written documentation of such). Plaintiffs' allegations concerning the specific property, including equipment, clothing, tools, etc., do not include allegations that Meyer informed Womack of these items. Rather, Meyer informed Eastern of the specific property held in alleged bailment.

¶ 40 In summary, we affirm the dismissal of the trespass, fraudulent-misrepresentation, fraud, and property-damage counts against the sheriff defendants on the basis that plaintiffs failed to state any viable causes of action.

¶ 41 2. Expedited Trial (Count XV)

¶ 42 Count XV of plaintiffs' third amended complaint raised the expedited-trial issue under section 12-201 of the Code and was directed against the sheriff defendants. In announcing its ruling, the trial court first dismissed all counts on the basis of tort immunity. However, it further found that "there was nothing that was done in this court between November and January which would have brought to this court's attention any claimed rights of any bailee or any owner of property and I think the exhibits clearly point that out." For the following reasons, we conclude that this count was properly dismissed because it was directed against an improper defendant and, thus, did not state a claim against the specified defendants.

¶ 43 Section 12-201 provides, in relevant parts:

> "(a) Whenever a judgment or order of attachment, entered by any court, shall be levied by any sheriff or coroner upon any personal property, and such property is claimed by any person *other than the judgment debtor or defendant in such attachment*, or is claimed by the judgment debtor or defendant in attachment as exempt from levy or

> attachment by virtue of the exemption laws of the State, by giving to the sheriff or coroner notice, *in writing*, of his or her claim, and intention to prosecute the same, it shall be the duty of such sheriff or coroner to notify the circuit court of such claim.
>
> (b) The court shall thereupon cause the proceeding to be entered of record, and the claimant shall be made plaintiff in the proceeding, and the judgment creditor or plaintiff in attachment shall be made defendant in such proceeding.
>
> (c) The clerk of the circuit court shall thereupon issue a notice, directed to the judgment creditor or plaintiff in attachment, notifying him or her of such claim, and of the time and place of trial, which time shall be not more than 10 days nor less than 5 days from the date of such notice." (Emphasis added.) 735 ILCS 5/12-201(a), (b), (c) (West 2016).

"In a trial of the right of property the only question is whether the property levied on belongs to the claimant, or to the defendant in the execution." *Corrigan v. Miller*, 338 Ill. App. 212, 219 (1949).

¶ 44 On February 10, 2014, in case No. 2014 MR 173, the case underlying this action, Eastern, the judgment creditor, enrolled its New York judgment in Du Page County against JHM, Meyer, and Dolphin Laundry Services, Inc., the judgment debtors. Plaintiffs (consisting of Laundry Works, Washland, and JHM, not JHM, Meyer, and Dolphin) brought their 12-201 complaint against the sheriff, Womack, and Midwest.

¶ 45 The statute provides that someone "other than the judgment debtor" may seek section 12-201 relief. 735 ILCS 5/12-201(a) (West 2016). Thus, JHM, one of the judgment debtors in the case underlying this action, cannot seek such relief as a plaintiff with respect to the expedited trial count. Further, and fatal with respect to all plaintiffs in this count (Laundry Works,

Washland, and JHM), section 12-201 provides that "the claimant shall be made plaintiff in the proceeding, and the judgment creditor [*i.e.*, Eastern] *** shall be made defendant in such proceeding." 735 ILCS 5/12-201(b) (West 2016). Plaintiffs brought count XV against the sheriff, not Eastern. Accordingly, because the count is directed against the wrong defendant, we hold that the count was properly dismissed.

¶ 46 3. Bailment Theory (Counts IX to XIII)

¶ 47 In counts IX through XIII, JHM, as bailee, sought relief against the sheriff defendants and Midwest for trespass to property, "damage to property," fraudulent misrepresentation, and fraud. For the following reasons, we conclude that these counts were properly dismissed because plaintiffs failed to sufficiently plead a bailment relationship and because plaintiffs had no standing to bring such claims against the sheriff defendants.

¶ 48 Plaintiffs' third amended complaint alleged that JHM was, under oral agreements, bailee of: (1) Dolphin Laundry Services Trust, Dolphin Laundry Services, Inc., Carlos Lopez, and Jeff Juliano, who all *stored* property at the premises, could have immediate possession of their property at any time, and, with respect to both Dolphin entities and Juliano, whose property Womack unlawfully *sold* at the levy sale and, with respect to Lopez, whose property Womack *stole*; and (2) Lufthansa, for which it *processed* (*i.e.*, cleaned, dried, pressed, and packaged) *and stored* its linens, and which could have immediate possession of its property whenever it wanted and whose property Womack damaged or stole.

¶ 49 A bailment is "the rightful possession of goods by one who is not an owner. The characteristics common to every bailment are the intent to create a bailment, delivery of possession of the bailed items, and the acceptance of the items by the bailee." *Berglund v. Roosevelt University*, 18 Ill. App. 3d 842, 844 (1974). See also *American Ambassador Casualty*

Co. v. City of Chicago, 205 Ill. App. 3d 879, 881 (1990) ("A bailment is the delivery of property for some purpose upon a contract, express or implied, that after the purpose has been fulfilled, the property shall be redelivered to the bailor, or otherwise dealt with according to his [or her] directions, or kept until he [or she] reclaims it."). There are several types of bailments. A gratuitous bailment is a "bailment for the sole benefit of the bailor *** whereby the bailee voluntarily undertakes possession of the property without compensation." *Kirby v. Chicago City Bank & Trust Co.*, 82 Ill. App. 3d 1113, 1119 (1980). Presumably (because plaintiffs do not clarify), JHM was a gratuitous bailor for Dolphin Laundry Services Trust, Dolphin Laundry Services, Inc., Carlos Lopez, and Jeff Juliano because JHM merely "stored" their property. A bailment for the parties' mutual benefit is an "agreement [that] contemplate[s] compensation in return for work performed with regard to the personal property delivered." *Rajkovich v. Alfred Mossner Co.*, 199 Ill. App. 3d 655, 658 (1990). The Lufthansa arrangement appears to constitute this type of bailment. "[W]here a bailment for the mutual benefit of the parties is alleged, the plaintiff is required to allege the existence of consideration." *Kirby*, 82 Ill. App. 3d at 1116.

¶ 50 Here, the trial court repeatedly expressed concern that the complaint did not specify the property owned by each bailor, whether notice was given to the bailors, whether they acknowledged, on their own letterhead, for example, ownership, and whether they had requested that JHM, as bailee, pursue claims on their behalf.

¶ 51 Looking solely at the complaint allegations, we conclude that plaintiffs failed to sufficiently allege a bailment relationship. Plaintiffs noted only generally that they orally agreed to store certain *unspecified* (even generally) property, of an *unspecified* condition, at the premises and to preserve and protect that property until such time as the owner took back possession of the property. They also did not specify *when* the relationships began, for example.

Finally, and perhaps most critically as to the Lufthansa goods, the allegations failed to allege any consideration for the agreement. *Id.* Plaintiffs pleaded only in a conclusory fashion that they had an oral agreement to process and store the unspecified Lufthansa property. In sum, the allegations were not sufficiently specific to plead a bailment relationship.

¶ 52 Further, plaintiffs' additional filings reflect that JHM lacked standing to bring any claim as bailee. Exhibits to the complaint included substantially-similar letters from each of the alleged bailors. For example, a letter from Meyer as trustee of the Dolphin trust to himself as president of JHM, stated that Dolphin had stored certain listed items at the premises and, "[u]nder the arrangement with" JHM, Dolphin "could have immediate possession of the" items whenever it wanted; the items were unlawfully taken and sold, and JHM "as bailee, is litigating to recover for each of the respective owners the value of their unlawfully taken property" and "[b]y this letter I am authorizing [JHM], as bailee, to litigate to obtain compensation" for Dolphin. Similarly, a letter from Lopez, dated October 23, 2015, to JHM states that Lopez had stored tools, which he listed in the letter, with a replacement cost of "more than $1,000" at the 248 James Street premises. "Under the arrangement" with JHM, Lopez "could have immediate possession of my tools whenever I wanted." The tools, he further stated, were at the premises when the sheriff took possession of the property in November 2014, but they were not there at the time of the levy sale. Lopez authorized JHM, "as bailee, to litigate to obtain compensation for my tools *** which were stolen."

¶ 53 The doctrine of standing requires that a party have real interest in the action and its outcome. *Wexler v. Wirtz Corp.*, 211 Ill. 2d 18, 23 (2004). It is the defendant's burden to plead and prove lack of standing. *Id.* at 22. In their motion to dismiss, the sheriff defendants asserted lack of standing, arguing that plaintiffs' allegations were conclusory. We agree with defendants.

¶ 54 None of the letters is accompanied by affidavit, or, for example, receipts for the listed items. Nor do they specify *when* the alleged bailment relationships with JHM began or the *conditions* of the items. As to the Lufthansa letter, an email between Meyer and Isabelle Hermann, Lufthansa's station manager at O'Hare, reflects that Meyer, not Lufthansa, compiled the property list and drafted the letter Hermann signed on Lufthansa's behalf, authorizing Meyer to seek compensation. Indeed, even the letter from Hermann states "[m]y understanding from you is that the Lufthansa goods listed below were unlawfully damaged." This is in violation of the trial court's request that the *bailors* supply the relevant information.

¶ 55 The counts brought by JHM as bailee were properly dismissed, with respect to all defendants (counts IX through XIII), for failure to state any claims (because they failed to sufficiently plead a bailment relationship) and, further, with respect to the sheriff defendants (counts IX, and XI to XIII), for lack of standing.

¶ 56 4. Tort Immunity (Counts I, III to V, VII to IX, XI to XIII)

¶ 57 Plaintiffs argue that the trial court erred in dismissing their complaint on the basis of tort immunity. They assert that the sheriff defendants are not immune from civil liability and that they sufficiently alleged willful and wanton conduct. We disagree.

¶ 58 Immunity from suit under the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/1-101 *et seq.* (West 2016)) is an "affirmative matter" properly raised under section 2-619(a)(9) of the Code. *DeSmet v. County of Rock Island*, 219 Ill. 2d 497, 504 (2006). The Tort Immunity Act grants immunity to governmental entities in certain circumstances. *Zimmerman v. Village of Skokie*, 183 Ill. 2d 30, 43 (1998). "[T]he purpose of the [Tort Immunity] Act is to protect local public entities and public employees from liability arising from the operation of government." *DeSmet*, 219 Ill. 2d at 505. By enacting

immunity provisions, the legislature sought to prevent the diversion of public funds from their intended purpose to the payment of damage claims. *Id.*

¶ 59 Section 2-202 of the Tort Immunity Act provides that "[a] public employee is not liable for his act or omission in the execution or enforcement of any laws unless such act or omission constitutes willful and wanton conduct." 745 ILCS 10/2-202 (West 2016). "Willful and wanton conduct" is defined as "a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property." 745 ILCS 10/1-210 (West 2016). See also 745 ILCS 10/2-210 (West 2016) ("A public employee acting in the scope of his [or her] employment is not liable for an injury caused by his [or her] negligent misrepresentation or the provision of information either orally, in writing, by computer or any other electronic transmission, or in a book or other form of library material.").

¶ 60 Here, Eastern enrolled its New York judgment in Du Page County in February 2014. On November 10, and 14, 2014, upon Eastern's motion and with Meyer present in court, the trial court authorized the sheriff "to take all property stated in the bond" in case No. 2014 MR 173 and directed that the sheriff "may use any reasonable force necessary to enter" the premises, including using a locksmith. The court also allowed the plaintiff (Eastern Funding) to enter the premises and examine the property. As defendants point out, Meyer had access to the 248 James Street premises until at least November 14, 2014, and to the 250 James Street premises until at least December 10, 2014, when Eastern actually had the locks changed. On January 27, 2015, consistent with the trial court's orders, the sheriff executed the levy sale.

¶ 61 Section 3-6019 of the Counties Code provides that sheriffs "shall serve, execute, within their respective counties, and return all warrants, process, orders and judgments of every

description that may be legally directed or delivered to them." 55 ILCS 5/3-6019 (West 2016). Section 3-6020 of the Counties Code states:

> "The disobedience of any sheriff to perform the command of any warrant, process, order or judgment legally issued to him or her, shall be deemed a contempt of the court that issued the same, and may be punished accordingly; and he or she shall be liable to the party aggrieved for all damages occasioned thereby. No sheriff shall be civilly liable for serving, as directed by the court, any warrant, order, process, or judgment that has been issued or affirmed by a court of the State of Illinois and that is valid on its face, *unless the service involved willful or wanton misconduct by the sheriff*." (Emphasis added.) 55 ILCS 5/3-6020 (West 2016).

County sheriffs and their deputies have no discretion in executing state court orders. *In re Sumpter*, 171 B.R. 835, 847 (N.D. Ill. 1994).

¶ 62 We conclude that plaintiffs failed to properly allege willful and wanton misconduct by the sheriff or Womack. Plaintiffs assert that the sheriff and Womack are both public employees. See 745 ILCS 10/1-207 (West 2016) (a public employee is defined as "an employee of a local public entity"). Womack is clearly a public employee, but, assuming that the sheriff is also one, both sheriff defendants can be liable only if their conduct was willful and wanton. 745 ILCS 10/2-202 (West 2016). We concluded above that plaintiffs failed to sufficiently allege intentional acts for the trespass, fraud, fraudulent misrepresentation, and property damage counts. Because they failed to properly allege intentional conduct, their allegations certainly do not sufficiently allege willful or wanton conduct. The claims are barred by tort immunity and were properly dismissed.

¶ 63 Returning to the issue of the sheriff's capacity as a defendant, we note that plaintiffs' complaint included as a defendant the "Du Page County Sheriff's Office," which the court dismissed as a defendant early in the litigation. We address the propriety of that order below, but we note here that, if plaintiffs' intent was to sue the Sheriff of Du Page County in his official capacity, then such entity is a "local public entity" under the Tort Immunity Act because the county sheriff is a "local governmental body" under section 1-206 of the statute (745 ILCS 10/2-106 (West 2016)). *Carver v. Sheriff of La Salle County*, 203 Ill. 2d 497, 512-15 (2003). Section 2-106 of the Tort Immunity Act addresses oral promises or misrepresentations and provides that "[a] local public entity [*i.e.*, the sheriff in his official capacity] is not liable for an injury caused by an oral promise or misrepresentation of its employee, whether or not such promise or misrepresentation is negligent or intentional." 745 ILCS 10/2-106 (West 2016). Thus, tort immunity applies to bar the counts against the Sheriff of Du Page County.

¶ 64 In summary, plaintiffs' counts against the sheriff defendants (counts I, III to V, VII to IX, XI to XIII) were properly dismissed.

¶ 65 C. Midwest Laundries

¶ 66 Counts II, VI, and X were directed against Midwest, asserting trespass to property, and were separately raised by Laundry Works, Washland, and JHM as bailee. The trial court dismissed the claims against Midwest, which was the sole purchaser (for $21,000) at the levy sale, on the basis of *laches*. For the following reasons, we conclude that the counts were properly dismissed for failure to properly state a claim and on the basis of *laches*.

¶ 67 In count II, Laundry Works alleged that it owned certain personal property at the premises that was improperly sold by Womack during the levy sale; that Womack had a duty to make certain that the sale did not include this property; Womack knew or should have known

that it was not subject to the sale because Meyer informed him that JHM did not own this particular property; and Womack represented to Meyer that the property would remain undisturbed, but he deliberately and intentionally sold it. It further alleged that Midwest was the sole purchaser at the levy sale that included Laundry Works' property; that Laundry Works had an absolute and unconditional right to the immediate possession of its property at the time Midwest purchased it; despite repeated (unspecified) demands, Midwest refused to return any of Laundry Works' property; and, as a result, Laundry Works has suffered damages. In count VI, Washland raised identical allegations against Midwest. Similarly, in count X, JHM, as bailee, alleged that certain alleged bailors stored property at the premises; that Womack deliberately and intentionally sold this property at the levy sale; and Midwest was the sole purchaser at the sale and has refused to return the property to JHM.

¶ 68 We conclude that plaintiffs failed to sufficiently allege trespass to personal property against Midwest. Trespass to personal property is committed by intentionally dispossessing another of chattel or using/intermeddling with chattel that is in the possession of another. *Sotelo*, 384 F. Supp. 2d at 1229 (quoting Restatement (Second) of Torts, § 217). Plaintiffs did not allege that they informed Midwest of their or third parties' purported rights to the property, but merely alleged that they demanded (with *no additional details—as plaintiffs have failed to do throughout this case—concerning their alleged demand, including specifying any documents provided to Midwest that substantiated their claims*) a return of the property and that Midwest refused. In other words, plaintiffs alleged no intentional wrongdoing (dispossessing or intermeddling) on Midwest's part. They merely alleged that Midwest was the purchaser and, without specifying precisely what information they conveyed to Midwest when they asked it to

return the property, Midwest later refused to return the property.[3] The trial court properly dismissed Counts II, VI, and X.

¶ 69 We also conclude that the trial court properly dismissed plaintiffs' complaint on the basis of *laches*. The *laches* doctrine precludes a litigant from asserting a claim when the opposing party is prejudiced due to the litigant's unreasonable delay in raising the claim. *Madigan v. Yballe*, 397 Ill. App. 3d 481, 493 (2009). The factors to consider in determining if *laches* applies include: " '(1) [c]onduct on the part of the defendant giving rise to the situation of which complaint is made and for which the complainant seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had notice or knowledge of defendant's conduct and the opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he [or she] bases his [or her] suit[;] and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant or the suit is held not to be barred.' " *LaSalle National Bank v. Dublin Residential Communities Corp.*, 337 Ill. App. 3d 345, 351 (2003) (quoting *Pyle v. Ferrell*, 12 Ill. 2d 547, 553 (1958)).

¶ 70 Between November 2014 and January 27, 2015, plaintiffs knew that certain property was subject to alleged bailments and other third-party ownership claims, but they did nothing, as the trial court determined, to assert their rights in court. As Midwest notes, plaintiffs did not file a

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[3] In an April 5, 2016, affidavit, which we do not consider in assessing whether plaintiffs stated any cause of action, Meyer averred that he contacted Midwest shortly after the sale, informing it that certain items sold at the sale were owned by third parties and requesting that Midwest turn over the items. Midwest refused. The affidavit does *not* aver that Meyer provided to Midwest any documentation substantiating his claims of third-party ownership or claims.

petition for adjudication of title to the levy sale property (735 ILCS 5/12-201 (West 2016)), or notices of adverse claims on behalf of the alleged bailors. They also did not direct the alleged third-party owners or bailors to take any action. Indeed, plaintiffs did not file their initial complaint until February 25, 2015, nearly one month after the levy sale. Thus, in context, there was significant delay on plaintiffs' part.

¶ 71 The email exchange between Meyer and Eastern's counsel reflects that Eastern requested from Meyer original paperwork (leases, contracts, receipts), identifying the owners or vendors of any equipment and personal property at the premises that belonged to someone other than JHM and further states that, if Meyer failed to produce such documents, any property not subject to a third party's filed UCC financing statement that was superior to Eastern's would be sold as being owned by JHM. In a response, Meyer stated that he did *not* possess ownership documents, but that Dolphin's documents were contained in a computer on the premises. He also conceded that the sheriff was acting on Eastern's orders in this matter.

¶ 72 This exchange, which occurred in November and early December 2014, reflects that Meyer knew that Eastern planned to sell any property for which he provided *no* evidence of alleged third-party ownership and that Meyer did *not* actually have such evidence. (That is, plaintiff simply failed to substantiate any claim before the sale.) Further, on January 22, 2015, Meyer emailed Liberty Mutual, the bond company, informing it that Eastern intended to sell third-party property at the upcoming levy sale. This email reflects that he knew that the alleged third party property *would* likely be sold at the levy sale (the date of which he was aware) and belies his affidavit assertion that he had assurances from Eastern and the sheriff that the alleged third-party property would *not* be sold. Given this correspondence, Meyer's lack of documentation, and his knowledge of the inevitable sale of alleged third-party property, plaintiffs

could have and should have asserted their rights in court prior to the sale. Instead, they chose to wait until after the levy sale.

¶ 73 Plaintiffs claim that, notwithstanding their communications with Eastern and Liberty Mutual, Meyer gave notice to Womack, who told him that no third-party property would be sold at the levy sale. Under the law, they assert, when Meyer provided alleged (oral and non-specific) notice to Womack, Womack should have postponed the levy sale and given the circuit court notice of the claims so that all parties could be notified and set a prompt trial date. 735 ILCS 5/12-201 (West 2016). We reject plaintiffs' argument. Womack's alleged conduct on the sale date does not excuse plaintiff's lack of diligence in pursuing their claims *prior* to the sale.

¶ 74 We also conclude that Midwest was prejudiced. There were no public filings documenting any alleged third parties' rights to the property subject to the sale that would have put Midwest on notice that the property belonged to someone other than JHM. Indeed, Meyer's email to Eastern's counsel reflects that he had no such documentation. Also, as noted, the pleadings (and even his affidavit) do not allege that he provided any documents substantiating his representations to Midwest when he demanded a return of the property. Thus, Midwest was prejudiced because it purchased property that might be subject to competing claims and has incurred costs in defending itself in this convoluted litigation.

¶ 75 We also find unavailing plaintiffs' argument that Midwest was obligated to determine what ownership rights, if any, JHM had in the property offered at the levy sale. Plaintiffs raise the *caveat emptor* doctrine. "[A]t an execution sale, the doctrine of *caveat emptor* applies; where title fails, the purchaser is not entitled to a return from the judgment creditor of the amount paid." *Dixon v. City National Bank of Metropolis*, 81 Ill. 2d 429, 431 (1980). "Generally the doctrine of *caveat emptor* applies to judicial sales and the risk of a mistake or defect of title is to

be borne by the purchaser unless there is fraud, misrepresentation, or mistake of fact." *Marino v. United Bank of Illinois, N.A.*, 137 Ill. App. 3d 523, 526 (1985). Plaintiffs assert that Midwest could have asked Womack if any property was claimed by any third party and could have discovered that JHM had no ownership of the third parties' property. Midwest could also have contacted Meyer, with whom it had previously done business. According to plaintiffs, Midwest's lack of diligence precludes any application of *laches*.

¶ 76 Midwest responds that there is no due diligence it could have performed that would have revealed uncertain ownership or competing claims. It notes that plaintiffs themselves point to no documents in their possession or in the public record that would have put Midwest on notice that it was purchasing property subject to third-party claims. They argue that plaintiffs' claim of fraud in the levy sale is incompatible with their claim that Midwest has committed trespass to property. Even assuming that plaintiffs' allegations of fraud are true and that plaintiffs were fraudulently induced to not assert legal claims to the property prior to the sale, Midwest urges it is a victim of the same fraud. Under plaintiffs' theory, Midwest was offered and purchased property that either the sheriff knew should not have been sold because it was subject to superior third-party rights, or was subject to superior third-party rights. Midwest urges that, under plaintiffs' theory, *i.e.*, that the sale was permeated with fraud, the doctrine of *caveat emptor* cannot apply. We agree. Plaintiffs cannot rely on the *caveat emptor* doctrine because the fraud allegations are interwoven in all of the counts of their complaint.

¶ 77 The trial court did not err in dismissing the counts against Midwest.

¶ 78 D. Miscellaneous Issues

¶ 79 Next, plaintiffs argue that the trial court erred in dismissing the "Du Page County Sheriff's Office" as a defendant. We disagree. In addition to naming as a defendant Sheriff

Zaruba in his official capacity,[4] plaintiffs included as a defendant the "Du Page County Sheriff's Office." The trial court, in dismissing plaintiffs' first amended complaint, dismissed the office as a defendant, noting that "there is no such thing as the office of the Sheriff of Du Page County." Rather, "[t]here is a Sheriff of Du Page County." We agree that the office was properly dismissed as a non-suable entity where the claims were also brought against the sheriff in his official capacity. The office does not have a separate legal existence apart from the Sheriff of Du Page County. See *Magnuson v. Cassarella*, 812 F. Supp. 824, 827 (N.D. Ill. 1992) ("a defendant must have a legal existence, either natural or artificial"). The case law plaintiffs cite does not support their position that the Du Page County Sheriff's Office has a separate legal existence apart from the sheriff; indeed, the cases are consistent with our conclusion, as a closer reading by plaintiffs would have made clear. See *DeGenova v. Sheriff of Du Page County*, 209 F.3d 973, 974, 976-77 n.2 (7th Cir. 2000) (court's references to "Sheriff's office" and "Sheriff's department" are clearly references to defendant, "Sheriff of Du Page County," the only county officer, who was sued in his official capacity, in the matter; statement that "Sheriff's office has a legal existence separate from the county and the State, and is thus a suable entity" clearly refers to Sheriff of Du Page County); *Carver v. Sheriff of La Salle County*, 203 Ill. 2d 497, 55 (2003) (references to "sheriff's office" are clear references to defendant "the Sheriff of La Salle County," the defendant; also, in trial court proceedings, the federal district court dismissed the "La Salle County sheriff's department" on the basis that it did not have a separate legal existence apart from the "sheriff of La Salle County" and was a non-suable entity).

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[4] "A suit against a government officer in his official capacity is really a suit against the entity of which the officer is an agent." *Franklin v. Zaruba*, 150 F.3d 682, 684 n.2 (7th Cir. 1998).

¶ 80 Finally, as to count XIV of plaintiff's complaint, in which JHM asserts a rent claim against the sheriff, we affirm the dismissal of that claim because plaintiffs offer no argument on this count in their briefs. Ill. S.Ct. R. 341(h)(7) (eff. Jan. 1, 2016) ("[p]oints not argued are waived").

¶ 81 III. CONCLUSION

¶ 82 For the reasons stated, we affirm the dismissal of: count I for failure to state a claim and tort immunity; count II for failure to state a claim and *laches*; counts III to V for failure to state a claim and tort immunity; count VI for failure to state a claim and *laches*; counts VII and VIII for failure to state a claim and tort immunity; count IX for failure to state a claim (intent and bailment), standing, and tort immunity; count X for failure to state a claim (intent and bailment), and *laches*; counts XI to XIII for failure to state a claim (intent and bailment), standing, and tort immunity; count XIV for failure to offer any argument on appeal, thus, invoking forfeiture of any argument; and count XV for failure to state a claim (improper defendant).

¶ 83 Affirmed.