2017 IL App (4th) 150956-U

NO. 4-15-0956

FILED
March 20, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

SUTTON SIDING & REMODELING, INC., Plaintiff-Appellant, v. PAMELA S. BAKER and CITIZENS EQUITY FEDERAL CREDIT UNION, a/k/a CEFCU, Defendants-Appellees.	)))))))))	Appeal from Circuit Court of Logan County No. 13CH54 Honorable Thomas W. Funk, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Turner and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court reversed the trial court's striking of a written agreement attached as an exhibit to plaintiff's complaint because the Home Repair Act did not provide a basis for striking the agreement. However, the appellate court affirmed the trial court's dismissal of plaintiff's breach-of-contract claims and the claim to foreclose its mechanics' lien after finding that the written agreement upon which they were based was not a valid contract.

¶ 2 Plaintiff, Sutton Siding & Remodeling, Inc., appeals the trial court's (1) decision to strike an exhibit, an October 4, 2012, written agreement between it and defendant, Pamela S. Baker (defendant), and all mention of the agreement, from its original and amended complaints; and (2) dismissal of its claim to foreclose its mechanics' lien against defendant and Citizens Equity Federal Credit Union (CEFCU), which holds a mortgage on Baker's property. We affirm in part and reverse in part.

¶ 3 I. BACKGROUND

¶ 4 On October 3, 2012, defendant's house was damaged in a fire. On October 4, 2012, plaintiff and defendant signed a "Work Authorization and Agreement" (written agreement) that authorized plaintiff to provide all necessary labor and materials to repair the damaged house and American Family, defendant's insurance provider, to pay plaintiff directly for the repairs.

¶ 5 On November 14, 2012, plaintiff commenced repairs on defendant's house. Plaintiff completed its work on May 3, 2013, at a total cost of $116,669.07. On June 11, 2013, plaintiff filed a "Claim for Mechanic's Lien" with the Logan County Clerk and Recorder asserting that the parties entered into a written contract on November 14, 2012, for fire restoration work and that defendant owed plaintiff $46,242.57 for completed work. On August 1, 2013, plaintiff filed an "Amended Claim for Mechanic's Lien," again asserting that the parties entered into a written contract on November 14, 2012, but indicating defendant owed a lesser amount, $45,628.98, for the completed work. Plaintiff's claim for a mechanics' lien and its amended claim for a mechanics' lien will hereinafter be referred to as the "mechanics' liens."

¶ 6 On September 5, 2013, plaintiff filed a two-count complaint against defendant and CEFCU. Count I sought to foreclose the mechanics' lien and alleged plaintiff's rights were superior to the rights of CEFCU. Count II sought recovery of money damages from defendant under a breach-of-contract theory. Attached to plaintiff's complaint were copies of the written agreement (Exhibit A); 24 pages of documents, including selection agreements, cost estimates, and change orders (Exhibit B); and copies of the claims for mechanics' liens (Exhibits C and D).

¶ 7 On October 1, 2013, defendant filed a motion to strike and dismiss plaintiff's complaint pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619 (West 2012)). With respect to count II of plaintiff's complaint, defendant asserted that the written agreement, which involved work valued in excess of $1,000, was

"substantially insufficient at law" as it failed to set forth the total cost of the project. In support of her contention, defendant cited section 15 of the Home Repair and Remodeling Act (Home Repair Act) (815 ILCS 513/15 (West 2012)), which provides, in relevant part:

> "[p]rior to initiating home repair or remodeling work for over $1,000, a person engaged in the business of home repair or remodeling shall furnish to the customer for signature a written contract or work order that states the total cost, including parts and materials listed with reasonable particularity and any charge for an estimate."

Accordingly, defendant asked the court to strike the written agreement, and all references to the written agreement, from the complaint. With respect to count I of plaintiff's complaint, defendant sought dismissal on the grounds that plaintiff failed to provide her with written notice within 10 days of recording its mechanics' liens as required by section 7(d) of the Mechanics Lien Act (Lien Act) (770 ICLS 60/7(d) (West 2012)).

¶ 8 On January 22, 2014, Judge William Yoder granted defendant's motion to strike the written agreement and every mention of the written agreement from the complaint for failure to comply with the Home Repair Act. Specifically, the court found the written agreement did not comply with the Home Repair Act because it included work in excess of $1,000 but did not state a total cost. However, the court denied defendant's motion to dismiss plaintiff's claim to foreclose the mechanics' lien, noting that the "[d]efendant has not demonstrated any damages as a result of [p]laintiff's failure to notify in a timely fashion."

¶ 9 On April 28, 2014, plaintiff filed a first amended five-count complaint. Counts I and II incorporated the allegations set forth in the original complaint to preserve them for appeal.

Count III sought to foreclose the mechanics' lien as to defendant and CEFCU, alleging that defendant employed plaintiff to perform repair and remodeling work on October 4, 2012; that plaintiff performed such work; and that defendant owed $45,628.98. Count IV alleged a breach-of-contract claim against defendant and sought recovery in the amount due plus prejudgment interest and costs. Count V sought recovery under a theory of *quantum meruit*, alleging that defendant would be unjustly enriched if she were not ordered to pay the amount due. Attached to plaintiff's complaint were the 24 pages of documents attached to its original complaint (exhibit A) and its claims for mechanics' liens (exhibits B and C).

¶ 10 On May 22, 2014, defendant filed a combined motion to dismiss pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)) or, in the alternative, a motion for partial summary judgment pursuant to section 1005 of the Code (735 ILCS 5/1005 (West 2012)). She sought dismissal of counts I and II on the basis that the court had previously dismissed them and no genuine issues of material fact remained. She sought dismissal of count III on the basis that the claims for mechanics' liens attached to plaintiff's first amended complaint referred to a written contract between the parties, but that plaintiff's first amended complaint contained no allegation of the existence of a written contract. CEFCU submitted authority in support of defendant's combined motion, asserting that count II of the first amended complaint should be dismissed as plaintiff's claims for mechanics' liens did "not contain a sufficient statement of the contract forming the basis of the claim."

¶ 11 On February 13, 2015, plaintiff filed a motion to reconsider the prior ruling by Judge Yoder which struck the written agreement and any mention of it from the complaint. On March 6, 2015, defendant filed a motion to strike plaintiff's motion to reconsider, asserting that plaintiff's motion was untimely. Following a March 12, 2015, hearing on the motions, Judge

Thomas W. Funk entered an order by docket entry finding plaintiff's motion to reconsider untimely and granting defendant's motion to strike.

¶ 12 Thereafter, on March 23, 2015, the court entered a memorandum of decision, finding that the January 22, 2014, order striking the written agreement was a final order and therefore, defendant's February 13, 2015, motion to reconsider that ruling was untimely. The court also noted that the Lien Act requires a claim for a lien to include "a sufficient statement of the contract forming the basis of the claims," and that the first amended complaint at issue referred to an October 4, 2012, agreement, but no written agreement was attached to the complaint, "presumably because the January 22, 2014[,] Order of the Court had stricken references to this document. Instead, a series of documents are attached, none of which is dated October 4, 2012." The court further noted that while the first amended complaint alleged an October 4, 2012, written contract, the mechanics' lien claims alleged a November 14, 2012, contract. The court concluded, "if the [p]laintiff can establish that a written contract dated November 1[4], 2012[,] exists[,] then it may still be able to proceed with its Mechanic's Lien claim. Plaintiff is thus given 21 days from the date of this dismissal of Count I and III of its [a]mended [c]omplaint to do so."

¶ 13 On April 13, 2015, plaintiff filed a second amended complaint consisting of six counts. Counts I, II, and III incorporated the allegations set forth in the original complaint (counts I and II) and the first amended complaint (count III) to preserve them for appeal. Count IV sought to foreclose the mechanics' lien as to defendant and CEFCU, alleging that defendant executed a written agreement with plaintiff on October 4, 2012, and that defendant owed plaintiff $45,628.98 for work it had completed under that written agreement. Count V alleged a breach-of-contract claim against defendant and sought recovery in the amount due plus

prejudgment interest and costs. Count VI sought recovery under a theory of *quantum meruit*, alleging that defendant would be unjustly enriched if she were not ordered to pay the amount due. Attached to plaintiff's second amended complaint were the October 4, 2012, agreement; the 24 pages of documents attached to its initial complaint; and its claims for mechanics' liens.

¶ 14 On April 20, 2015, defendant filed a motion to strike and dismiss counts I through IV of plaintiff's second amended complaint pursuant to sections 2-615 and 2-619 of the Code (735 ILCS 5/2-615, 2-619 (West 2012)) and an answer to count VI of plaintiff's second amended complaint. Regarding count IV, defendant sought dismissal pursuant to section 2-615 and asserted the trial court had previously found plaintiff could only proceed with its claim to foreclose its mechanics' lien if it could establish the existence of a written contract dated November 14, 2012, and it had not done so. Defendant also maintained that count V should be dismissed pursuant to section 2-619 since it alleged she breached a contract that the court had previously struck from the complaint, and thus, the cause of action was barred by a prior judgment. On May 4, 2015, CEFCU filed a motion to strike and dismiss plaintiff's claim to foreclose the mechanics' lien (counts I, III, and IV). We note CEFCU's motion to dismiss count IV was brought pursuant to section 2-615 and similarly claimed that plaintiff had failed to plead the existence of a written contract.

¶ 15 Following a hearing on defendant's and CEFCU's motions to strike and dismiss plaintiff's second amended complaint, the trial court entered its memorandum of decision. The court dismissed counts I, II, and III consistent with its prior dismissals. Regarding count IV, the court noted that the second amended complaint referred to a contract dated October 4, 2012, while the claims for a mechanics' liens referred to a contract dated November 14, 2012. Due to this discrepancy, the court noted that third parties reading the lien claim would assume the

contract was entered on November 14, 2012, while those reading the second amended complaint would assume the contract was formed on October 4, 2012. The court deemed this "a significant inaccuracy" since "[t]he purpose of the filing requirements of the *** Lien Act are [*sic*], among other things, to give notice to third parties of the nature of the contract upon which the lien was based." Therefore, the court dismissed count IV of plaintiff's second amended complaint as legally insufficient. The court denied defendant's request to dismiss count V, noting that a cause of action for breach of an oral contract had been adequately pleaded. Last, the court found that its memorandum would serve as a final order of the court and noted there was no just cause to delay appeal or enforcement of the order. See Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)).

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, plaintiff asserts the trial court erred in (1) striking the written agreement and all references to it from the complaint and the amended complaints; (2) finding plaintiff's February 13, 2015, motion to reconsider the court's January 22, 2014, order was untimely; and (3) dismissing the claim to foreclose its mechanics' lien. In addition, plaintiff contends that this court has jurisdiction to review each of the trial court's orders which successively struck from the complaint and amended complaints the written agreement as an exhibit.

¶ 19 Before proceeding to the merits, we note that defendant did not file a brief. However, "[w]hen the record is simple, and the claimed errors are such that this court can easily decide them on the merits without the aid of an appellee's brief, this court should decide the appeal on its merits." *Plooy v. Paryani*, 275 Ill. App. 3d 1074, 1088, 657 N.E.2d 12, 23 (1995).

Because the briefs filed by plaintiff and CEFCU sufficiently present the issues and the record is relatively simple, we will address the merits of the appeal as it relates to both appellees.

¶ 20 A. Sections 2-615 and 2-619 Motions To Dismiss and the Standard of Review

¶ 21 "A section 2-615 motion to dismiss challenges the legal sufficiency of the complaint based upon defects apparent on its face." *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 47, 978 N.E.2d 1020. "In reviewing the sufficiency of a complaint, we accept as true all well-pleaded facts in the complaint and all reasonable inferences that may be drawn therefrom. In addition, we construe the allegations of the complaint in the light most favorable to the plaintiff." *Id.* "A cause of action should not be dismissed unless it is clearly apparent that no set of facts can be proved that would entitle a plaintiff to recover." *Id.*

¶ 22 "A section 2-619 motion to dismiss admits the legal sufficiency of the complaint but asserts an affirmative defense or other matter defeating the plaintiff's claim." *Skaperdas v. Country Casualty Insurance Co.*, 2015 IL 117021, ¶ 14, 28 N.E.3d 747. "[Its] purpose is to provide litigants with a method of disposing of issues of law and easily proved issues of fact relating to the affirmative matter early in the litigation." *Hascall v. Williams*, 2013 IL App (4th) 121131, ¶ 16, 996 N.E.2d 1168. "In ruling on a motion to dismiss, a court must interpret the pleadings and supporting documents in the light most favorable to the nonmoving party." *Henderson Square Condominium Ass'n v. LAB Townhomes, LLC*, 2015 IL 118139, ¶ 34, 46 N.E.3d 706.

¶ 23 We review *de novo* a circuit court's decision to grant or deny motions to dismiss under sections 2-615 and 2-619 of the Code (735 ILCS 5/2-615, 2-619 (West 2012)).

¶ 24 B. The Written Agreement

¶ 25 Plaintiff's first contention on appeal is that the trial court erred in dismissing its breach-of-contract claims which were based on the written agreement and in striking the written agreement because "the provisions of the Home Repair *** Act did not provide any basis for the trial court to grant [defendant's] motion to strike [its] written [agreement] and all references to it from the complaint."

¶ 26 Prior to July 12, 2010, section 30 of the Home Repair Act provided as follows:

> "Unlawful acts. It is unlawful for any person engaged in the business of home repairs and remodeling to remodel or make repairs or charge for remodeling or repair work before obtaining a signed contract or work order over $1,000 and before notifying and securing the signed acceptance or rejection, by the consumer, of the binding arbitration clause and the jury trial waiver clause as required in Section 15 and Section 15.1 of this Act. This conduct is unlawful but is not exclusive nor meant to limit other kinds of methods, acts, or practices that may be unfair or deceptive." 815 ILCS 513/30 (West 2008).

In short, the Home Repair Act made it unlawful for a contractor to begin repairs in excess of $1,000 prior to obtaining a signed contract or work order from the customer. However, effective July 12, 2010, section 30 of the Home Repair Act was amended to provide as follows:

> "Action for actual damages. Any person who suffers actual damage as a result of a violation of this Act may bring an action pursuant to Section 10a of the Consumer Fraud and Deceptive Business Practices Act." 815 ILCS 513/30 (West 2010).

Thus, a contractor's failure to obtain a signed contract prior to beginning repairs in excess of $1,000 is no longer "unlawful" under the Home Repair Act.

¶ 27 In this case, it is undisputed that the repairs were valued at more than $1,000 and that plaintiff did not provide defendant with a written contract or work order which set forth the total cost of the estimated repairs. It is also undisputed that the written agreement was entered into after the July 2010 amendment to the Home Repair Act. In striking the written agreement, and all references to it, from the complaint, the trial court found that the written agreement did not comply with the Home Repair Act because it "failed to include a total cost figure or any reference to the cost of materials or labor contemplated in this restoration project." However, this was not a valid reason for striking the written agreement.

¶ 28 Our supreme court recently considered a similar issue in *K. Miller Construction Co. v. McGinnis*, 238 Ill. 2d 284, 938 N.E.2d 471 (2010). At issue in that case was whether a contractor who violated sections 15 and 30 of the Home Repaiir Act could nonetheless enforce an oral contract or seek recovery in *quantum meruit* against the homeowner who refused to pay for the completed repairs. *Id*. at 286, 938 N.E.2d at 474. Section 15 of the Home Repair Act states that, " '[p]rior to initiating home repair or remodeling work for over $1,000, a person engaged in the business of home repair or remodeling shall furnish to the customer for signature a written contract or work order.' " *Id*. (quoting 815 ILCS 513/15 (West 2006)). The court held that while it was a statutory violation to commence home repairs in excess of $1,000 based on an oral contract, the statutory violation did not render the oral contract unenforceable or relief in *quantum meruit* unavailable. *Id*. at 300, 938 N.E.2d at 482. Instead, the court found the remedy for violations of the Home Repair Act, particularly following the July 2010 amendment to

section 30, fell under the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/10(a) (West 2008)). *K. Miller*, 238 Ill. 2d at 300, 938 N.E.2d at 482.

¶ 29 Based on our reading of *K. Miller*, whether a contractor has complied with the Home Repair Act is irrelevant to a determination of the enforceability of the contract. Accordingly, we find the trial court erred in striking the written agreement, and all mention of it, from the complaint based on plaintiff's failure to comply with the Home Repair Act.

¶ 30 Although the trial court erred in striking the written agreement, we find a separate basis exists which supports the trial court's dismissal of plaintiff's breach-of-contract claims based on the written agreement.

> "To state a cause of action for breach of contract, a plaintiff must allege the existence of a contract, the plaintiff's performance of all contractual obligations required of him or her, the facts constituting the alleged breach, and the existence of damages resulting from the breach. Also, the existence of the contract must be detailed by stating facts constituting an offer, acceptance, and consideration." *Segall v. Berkson*, 139 Ill. App. 3d 325, 332, 487 N.E.2d 752, 757 (1985).

Here, plaintiff seeks to collect money damages from defendant based on her breach of the written agreement. The problem is that the written agreement fails to set forth the terms of any financial obligations on the part of defendant. As noted, there are no cost figures referenced in the agreement. The only reference in the agreement to payment is contained in a paragraph where it is stated, "all work shall be in accordance with the specifications and/or estimates approved for payment by the Owner(s)'s insurance company." While "[a] contract may be

enforced even though some contract terms may be missing or left to be agreed upon, *** if the essential terms are so uncertain that there is no basis for deciding whether the agreement has been kept or broken, there is no contract." *Academy Chicago Publishers v. Cheever*, 144 Ill. 2d 24, 30, 578 N.E.2d 981, 984 (1991). Here, the essential financial terms necessary to form a contract are missing from the written agreement. Thus, the written agreement does not constitute a contract upon which a breach-of-contract action may be based. Accordingly, we find the trial court's dismissal of plaintiff's breach-of-contract claims based on the written agreement was not error. See *Stoll v. United Way of Champaign County, Illinois, Inc.*, 378 Ill. App. 3d 1048, 1051, 883 N.E.2d 575, 578 (2008) ("this court may affirm the trial court's judgment on any basis that is supported by the record").

¶ 31 C. The Complaint To Foreclose The Mechanics' Lien

¶ 32 Plaintiff also challenges the trial court's dismissal of its complaint to foreclose its mechanics' lien. Specifically, the trial court dismissed plaintiff's complaint to foreclose its mechanics' lien after finding it insufficient at law due to what it deemed to be "a significant inaccuracy" between the written contract dates alleged in plaintiff's amended claim for a mechanics' lien, *i.e.*, November 14, 2012, versus in its complaint to foreclose its mechanics' lien, *i.e.*, October 4, 2012. On appeal, plaintiff essentially argues that the written contract date listed on the amended claim for a mechanics' lien is irrelevant because section 7 of the Lien Act does not require a claim for a mechanics' lien to include the contract date.

¶ 33 Section 7(a) of the Lien Act sets forth the prerequisites that a contractor must satisfy before enforcing a mechanics' lien. 770 ILCS 60/7(a) (West 2012). Specifically, a claimant must file a claim for a lien against a creditor within four months of completing his work, or a claim against an owner within two years of completing his work, and the claim must

be accompanied by a verified affidavit of the claimant or his agent or employee. *Id*. In addition, the lien must (1) contain "a brief statement of the claimant's contract"; (2) set forth "the balance due after allowing all credits"; and (3) provide a "sufficiently correct description of the lot, lots or tracts of land to identify the same." *Id*. Because mechanics' liens are in derogation of the common law, they must be strictly construed, and the contractor has the burden of proving each statutory requisite has been satisfied. *Ronning Engineering Co. v. Adams Pride Alfalfa Corp.*, 181 Ill. App. 3d 753, 758-59, 537 N.E.2d 1032, 1035 (1989).

¶ 34 We agree with plaintiff that section 7 of the Lien Act does not require a claimant to provide the contract date in its claim for a lien. However, section 11 of the Lien Act, which deals, in relevant part, with averments in pleadings, does require a contract date to be set forth in a complaint to foreclose a mechanics' lien. Specifically, section 11(a) provides as follows:

> "Any pleading asserting a claim for lien shall contain (i) a brief statement of the contract or contracts to which the person (hereinafter called the 'claimant') asserting a claim for lien in the pleading is a party and by the terms of which the claimant is employed to furnish lienable services or material for the real property (herein called the 'premises'), (ii) the date when the contract or contracts were dated or entered into, (iii) the date on which the claimant's work, labor or material labor, services, material, fixtures, apparatus or machinery, forms or form work was last performed or furnished, whether the claimant completed furnishing or performing its work, labor and material labor, services, material, fixtures, apparatus or machinery, forms or form work and if not why, (iv) the amount due and unpaid to the claimant, (v) a description of the premises, and (vi) such other

facts as may be necessary for a full understanding of the rights of the parties." 770 ILCS 60/11(a) (West 2012).

¶ 35 Here, on its face, plaintiff's complaint to foreclose its mechanics' lien sufficiently pleaded the necessary requirements set forth in section 11. We note, however, that plaintiff's complaint alleged the contract forming the basis of its claim for a mechanics' lien was the October 4, 2012, written agreement between plaintiff and defendant, which was also attached as an exhibit to plaintiff's second amended complaint. As previously stated, though, we find the written agreement fails to include terms which are essential to the formation of a valid contract, and an invalid contract cannot serve as the basis for plaintiff's complaint to foreclose its mechanics' lien. See *Fandel v. Allen*, 398 Ill. App. 3d 177, 185, 937 N.E.2d 1124, 1130 (2010) ("The legal capacity to foreclose a mechanic's lien depends upon the validity of the lien. [Citation.] The lien, in turn, must be based upon a valid contract, and in its absence, the lien is unenforceable. [Citation.] "). Accordingly, we find the trial court's dismissal of count IV of plaintiff's second amended complaint, which sought to foreclose plaintiff's mechanics' lien which was based on an invalid contract, was not in error.

¶ 36 Finally, we note that whether plaintiff can assert a claim for a mechanics' lien based on an oral agreement with defendant is not an issue we considered on appeal, as here, plaintiff has only ever alleged a valid mechanics' lien based on a *written* agreement.

¶ 37 D. Remaining Issues

¶ 38 Because we hold that the trial court erred in striking the written agreement, and all mention of the written agreement, from plaintiff's second amended complaint, we need not address plaintiff's remaining contentions regarding (1) the trial court's authority to reconsider its prior ruling made during the course of the case or (2) our jurisdiction to review each of the trial

court's orders successively striking the written agreement, as these issues have been rendered moot.

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we reverse the trial court's striking of the written agreement, and all mention of the agreement, from plaintiff's second amended complaint. We otherwise affirm the trial court's judgment.

¶ 41 Affirmed in part and reversed in part.