

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2017 IL App (4th) 160443-U

NO. 4-16-0443

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

FILED
February 22, 2017
Carla Bender
4th District Appellate
Court, IL

JOHN A. AUCAR, M.D.,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Champaign County
CARLE HEALTH CARE INCORPORATED, d/b/a)	No. 14L94
CARLE PHYSICIAN GROUP, an Illinois Corporation;)	
and CARLE FOUNDATION HOSPITAL)	Honorable
INCORPORATED, an Illinois Nonprofit Corporation,)	Jeffrey B. Ford,
Defendants-Appellees.)	Judge Presiding.

Presiding JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

- ¶ 1 *Held:* Since plaintiff cannot plead facts establishing the damages element of his breach of contract claim, the circuit court properly dismissed with prejudice count I of his first amended complaint.
- ¶ 2 In May 2014, plaintiff, John A. Aucar, M.D., filed a three count complaint against defendants, Carle Health Care Incorporated., doing business as Carle Physician Group (Carle Inc.), and Carle Foundation Hospital Incorporated (Hospital), which were his former employers. In March 2015, plaintiff filed a first amended complaint, and defendants filed a motion to dismiss counts I and III of that complaint under section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2014)). In July 2015, the Champaign County circuit court granted defendants’ motion and dismissed with prejudice counts I and III. The court later made a finding under Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016) that no just reason existed for delaying the appeal of the dismissal of count I.

¶ 3 Plaintiff appeals, contending the circuit court erred by dismissing count I because it (1) failed to view the contracts as a whole, (2) made a legal ruling that is contradicted by its own factual finding, (3) incorrectly found the covenants of good faith and fair dealing are inapplicable, and (4) improperly found plaintiff's allegations of damages were inadequate. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On August 27, 2007, plaintiff and the Carle Clinic Association (Clinic) entered into an employment contract with an effective date of "January 2008" (2007 Contract). One of the recitals of the 2007 Contract was the following: "PHYSICIAN desires to assume the duties and obligations of a CLINIC Pre-Associate physician and to be considered in CLINIC'S sole discretion for election as a CLINIC Associate physician." The 2007 Contract provided defendant was to be paid for the role of general surgery residency director as well as for a clinical/surgical role. As to the term of the agreement, the 2007 Contract stated the following:

"Full-time employment under this Agreement shall commence on January 2008 and continue for a period of two years plus a period of time not to exceed sixty (60) days following the date of the first regularly scheduled CLINIC Shareholder Meeting at which PHYSICIAN'S eligibility for CLINIC shareholder status is scheduled to be considered as required by the CLINIC'S then existent Bylaws, Policies and Procedures unless earlier terminated as provided in Paragraph 4.2 herein."

The Clinic's bylaws in effect in January 2010 set forth the qualifications for becoming a shareholder, one of which was to "[c]omplete not less than two (2) full years of full time employment with the corporation." In addition to the annual meeting in May, the bylaws

provided for regular meetings on the “third Mondays of January and September in each year or at such other time in said month as the Chairman of the Board of Governors shall specify.”

¶ 6 In March 2010, plaintiff entered into an employment contract with Carle Inc., an affiliate of the Hospital (2010 Contract). The next month, the Hospital acquired the Clinic. In August 2012, defendants terminated plaintiff’s employment without cause.

¶ 7 In May 2014, plaintiff filed a complaint against defendants, asserting (1) breach of the 2007 Contract, (2) breach of the 2010 Contract, and (3) interference with a beneficial business arrangement. Defendants filed a motion to dismiss. After a December 2014 hearing, the circuit court dismissed without prejudice all three counts of plaintiff’s complaint. In March 2015, plaintiff filed his first amended complaint, raising the following causes of action: (1) breach of the 2007 Contract, (2) breach of the 2010 Contract, and (3) tortious interference with a valid business relationship or expectancy. Plaintiff attached copies of the two contracts and the Clinic’s bylaws to the first amended complaint.

¶ 8 Plaintiff’s breach of the 2007 Contract claim, which is the one at issue in this appeal, asserted the Clinic held a regularly scheduled meeting in January 2010, but it did not consider plaintiff or eight other similarly situated pre-associate physicians for shareholder status. Plaintiff alleged the shareholders privately agreed to end evaluations for shareholder status in late 2009 to maximize the value of their existing shares prior to the Clinic’s acquisition by the Hospital. Plaintiff contended the failure to consider his shareholder status at the January 2010 meeting was a direct breach of the express terms of the 2007 Contract. He also alleged the Clinic’s refusal to engage in good faith evaluations of eligible pre-associate physicians for shareholder status was a breach of the implied covenants of good faith and fair dealing. Plaintiff argued that, but for the Clinic’s breach, plaintiff would have been approved for shareholder

status at the January 2010 meeting. He suffered significant damages because the shareholders were paid a premium when the Clinic was purchased by the Hospital, resulting in “an approximate stock purchase price of more than \$850,000.” Plaintiff alleges the shares he intended to purchase had an approximate value of \$25,000, and thus he was denied the opportunity to profit from the sale of the Clinic in the amount of \$825,000.

¶ 9 In April 2015, defendants filed a section 2-615 motion to dismiss counts I and III and certain relief sought in count II of plaintiff’s first amended complaint. As to count I, defendants argued it failed to state a claim upon which relief could be granted because (1) the contract’s unambiguous terms did not obligate defendants to consider plaintiff for or elect him as a shareholder and (2) any damages plaintiff claims as a result of the breach are pure speculation. After the parties filed briefs on the motion, the circuit court entered a July 2015 written order, dismissing with prejudice counts I and III. Regarding count I, the court found (1) the 2007 Contract is unambiguous and did not require defendants to consider plaintiff for shareholder status, (2) the implied duty of good faith and fair dealing does not produce additional contract terms and thus it did not compel defendants to consider plaintiff for shareholder status, and (3) plaintiff’s allegations as to damages are based on conjecture and speculation.

¶ 10 In April 2016, plaintiff filed a motion for an Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016) finding as to the circuit court’s dismissal with prejudice of counts I and III of plaintiff’s first amended complaint. Defendants opposed plaintiff’s request. After reviewing the parties’ arguments, the court entered a May 12, 2016, order, finding no just reason for delaying an appeal as to count I. The court denied plaintiff’s request for such a finding as to count III because of the overlapping facts with count II.

¶ 11 On June 9, 2016, plaintiff filed a timely notice of appeal in compliance with

Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). Accordingly, we have jurisdiction of this appeal under Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016).

¶ 12

II. ANALYSIS

¶ 13 Plaintiff appeals the dismissal of count I under section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)). A section 2-615 motion to dismiss challenges the complaint's legal sufficiency based on defects apparent on its face. *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 19. In ruling on such a motion, "a court must accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts." *Blumenthal*, 2016 IL 118781, ¶ 19. The court must determine "whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted." *Blumenthal*, 2016 IL 118781, ¶ 19. This court reviews *de novo* the grant of a section 2-615 motion to dismiss. *Blumenthal*, 2016 IL 118781, ¶ 19.

¶ 14 To establish a breach of contract action, plaintiff must allege (1) the existence of a contract between him and defendants, (2) his performance of his obligations under the contract, (3) defendants' failure to perform their obligations under the contract, and (4) damages resulting from the breach. See *Walker v. Ridgeview Construction Co.*, 316 Ill. App. 3d 592, 595-96, 736 N.E.2d 1184, 1187 (2000). While plaintiff raises several claims of error, this case is best addressed by examining plaintiff's argument regarding the element of damages.

¶ 15 "The basic theory of damages in a breach of contract action requires that a plaintiff 'establish an actual loss or measurable damages resulting from the breach in order to recover.'" *In re Illinois Bell Telephone Link-Up II*, 2013 IL App (1st) 113349, ¶ 19, 994 N.E.2d 553 (quoting *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 149, 835 N.E.2d 801, 832 (2005)). With a breach of contract action, the proper measure of damages is

“the amount of money necessary to place the plaintiff in a position as if the contract had been performed.” *Illinois Bell Telephone Link-Up II*, 2013 IL App (1st) 113349, ¶ 19, 994 N.E.2d 553. However, a damages award should not place the plaintiff in a better position, resulting in a windfall to the plaintiff. *Illinois Bell Telephone Link-Up II*, 2013 IL App (1st) 113349, ¶ 19, 994 N.E.2d 553. Stated differently, the plaintiff may recover the damages that “ ‘naturally and generally result from a breach.’ ” *Insureone Independent Insurance Agency, LLC v. Hallberg*, 2012 IL App (1st) 092385, ¶ 89, 976 N.E.2d 1014 (quoting *Midland Hotel Corp. v. Reuben H. Donnelley Corp.*, 118 Ill. 2d 306, 318, 515 N.E.2d 61, 67 (1987)). Moreover, “[a] plaintiff must prove damages to a reasonable degree of certainty, and evidence cannot be remote, speculative, or uncertain.” *Dowd & Dowd, Ltd. v. Gleason*, 352 Ill. App. 3d 365, 383, 816 N.E.2d 754, 770 (2004). Damages are speculative “only if their existence itself is uncertain, not if the amount is uncertain or yet to be fully determined.” *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 307, 837 N.E.2d 99, 107 (2005). Finally, “[d]amages are an essential element of a breach of contract action.” *Illinois Bell Telephone Link-Up II*, 2013 IL App (1st) 113349, ¶ 19, 994 N.E.2d 553; see also *Walker*, 316 Ill. App. 3d at 596, 736 N.E.2d at 1187 (noting damages are an essential element of a breach of contract action and the failure to present evidence of damages results in the defendant being entitled to a directed finding as a matter of law).

¶ 16 Even assuming, *arguendo*, defendants breached the express terms of the 2007 Contract or its implied covenants of good faith and fair dealing by failing to evaluate defendant for shareholder status at the January 2010 meeting, the breach only resulted in defendant losing the opportunity to be evaluated as a shareholder at the January 2010 meeting. The 2007 Contract expressly stated whether plaintiff would be elected as a shareholder was within the Clinic’s sole

discretion. Thus, even with defendant's "outstanding qualifications for shareholder election," whether defendant would have been elected a shareholder at the January 2010 meeting if he had been evaluated is uncertain and speculative. In his amended complaint, plaintiff's claim of damages is based on the amount of money he would have received as a shareholder when the Clinic was purchased by the Hospital. Since plaintiff's election to shareholder was within the Clinic's discretion and not guaranteed, plaintiff's claim of damages (1) is speculative and uncertain, (2) does not naturally and generally result from the breach, and (3) would place plaintiff in a better position. Accordingly, we find plaintiff failed to and is unable to plead facts establishing the damages element of his breach of contract claim, and thus the circuit court properly dismissed with prejudice plaintiff's breach of contract claim based on the 2007 Contract.

¶ 17

III. CONCLUSION

¶ 18 For the reasons stated, we affirm the Champaign County circuit court's judgment.

¶ 19 Affirmed.