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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ARSHAD JAVID, an individual, and CAFÉ)	
DESCARTES COMPANY, a corporation,)	
)	
Plaintiffs-Appellants,)	Appeal from the Circuit Court
)	of Cook County.
v.)	
)	No. 16 M1 10524
)	
PUBLIC STORAGE PICKUP & DELIVERY,)	The Honorable
INC., a corporation, and PS ILLINOIS TRUST,)	Clare J. Quish
owner or agent for owner of the self storage)	Judge, presiding.
facility, Tax ID #95-3551121, located at 2638 N.)	
Pulaski Road, Chicago, IL 60639,)	
)	
Defendants-Appellees.)	

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Mason and Justice Lavin concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court order dismissing plaintiff’s complaint alleging conversion, breach of contract, and violations of the Illinois Self-Service Storage Act and the Illinois Consumer Fraud Act is affirmed. As a result, the trial court order granting partial summary judgment limiting damages to \$5000 is moot.
- ¶ 2 For nearly five years, Arshad Javid rented a storage unit from defendants, Public Storage Pickup and Delivery, Inc. and PS Illinois Trust (collectively, “Public Storage”), to store restaurant equipment with an estimated value of about \$89,000. Under the rental agreement,

Public Storage's liability for the loss of Javid's property would not exceed \$5000. During the lease term, Javid frequently fell behind in rent and, under the terms of the rental agreement, Public Storage put the contents of the unit up for sale. But eventually Javid would make good on the rent and Public Storage never sold the stored property. Javid claims, however, that twice when he visited his storage unit some of his property was missing or damaged, and he sued Public Storage alleging conversion (count I), breach of contract (count II), violation of the Illinois Self-Storage Facility Act (770 ILCS 95/1, *et seq.* (West 2016)) (count III), and violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1, *et seq.* (West 2016)) (count IV).

¶ 3 Public Storage moved to dismiss the complaint under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2016)) or, alternatively, to strike Javid's prayer for relief and limit damages to \$5000. The trial court dismissed counts I, III and IV with prejudice and count II without prejudice, and granted Javid time to replead that count. The trial court also granted Public Storage partial summary judgment, limiting Javid's damages to \$5000. Javid filed a notice of appeal, which the appellate court dismissed for want of jurisdiction. Javid then voluntarily dismissed count II with prejudice and filed another notice of appeal contending the trial court erred in (i) dismissing his claims for conversion and for violations of the Self-Storage Facility Act and Consumer Fraud Act, because a question of fact exists as to whether Public Storage sold his property at auction and (ii) granting Public Storage partial summary judgment limiting damages to \$5000.

¶ 4 We affirm. The record shows Public Storage did not sell Javid's property at auction and Javid has otherwise failed to state a claim for conversion or for violations of the Self-Storage Facility Act and the Consumer Fraud Act. Further, because the trial court correctly dismissed

Javid's complaint with prejudice, the trial court's decision to grant partial summary judgment in Public Storage's favor and limit damages to \$5000 is moot.

¶ 5

Background

¶ 6

On March 30, 2011, Arshad Javid signed a rental agreement for a storage unit in a self-service storage facility in Chicago owned by Public Storage. Javid used the unit to store restaurant equipment, which he alleges had a value of about \$89,000. The rental agreement set a monthly rental rate of \$119 due on or before the first of the month. In the rental agreement, Javid agreed and acknowledged he was responsible for obtaining insurance coverage for the unit and its contents and that Public Storage was "not responsible for *** any loss liability, claim, expense [or] damage to property that could have been insured." The agreement further provided the "Occupant agrees under no circumstances would the aggregate value of all personal property stored in the Premises exceed or be deemed to exceed, \$5,000 and may be worth substantially less than \$5,000." The agreement also stated that Public Storage's "total responsibility for any Loss from any cause whatsoever will not exceed a total of \$5,000." Javid initialed these provisions, indicating he read and understood them, and signed the rental agreement.

¶ 7

Javid also executed an insurance addendum to the rental agreement, acknowledging he was personally responsible for any loss and that Public Storage would not provide insurance on his property. The insurance certification states, "I understand that if I do not have insurance, or if my insurance lapses, I am personally responsible for any loss or damage to my goods and Owner/Landlord is not responsible no matter how the loss or damage occurs." In the addendum, Javid purchased \$5000 of insurance coverage through Willis Insurance Services for an additional \$20 per month.

¶ 8 The rental agreement provided that Public Storage had a lien on all of an occupant's property in the unit. Further, if the occupant fell behind in payments of rent or other fees and charges, Public Storage could open the unit, take inventory of its contents, and deny the occupant access until he or she paid past due rent. If the occupant failed to pay the past due rent, charges, or fees, within 14 days of Public Storage giving notice, Public Storage could sell or otherwise dispose of the occupant's personal property to satisfy the lien.

¶ 9 The record shows that beginning about April 2013, Javid was frequently late on his rental payments. Each time Javid was late, Public Storage sent him a lien letter and charged a late fee. The lien letter advised Javid that if he failed to bring his account up to date, the contents of the unit would be advertised for sale. Javid, however, always paid the balance before a lien sale, and Public Storage never sold his stored property. Public Storage's ledger records for Javid's unit show that on April 20, 2014, Javid was behind in rent and an auction was "due," but Javid paid down his balance on April 21, and the auction did not occur. In September 2014, Javid was again late on his rent. According to the ledger, on September 23, 2014, Public Storage auctioned off Javid's unit for \$1000. But, later entries show that Public Storage cancelled the auction after Javid paid the past due rent and brought his balance to zero. (The ledger also shows Javid was late in paying rent and his unit was again set for auction multiple times between November 2014 and January 2016, when he vacated the unit.)

¶ 10 After his lease terminated, Javid filed a complaint against Public Storage, which he later amended, alleging that on two occasions, in April and September 2015, when he was delinquent in rent, he went to his storage unit and found the lock was changed or removed and items in the unit were missing or damaged. He asserted Public Storage's owner and district manager told him they were not liable for missing or damaged items because his insurance had terminated in April

2014. Javid filed a police report for theft and asserts in his complaint that he believes Public Storage “unlawfully auctioned, sold, or disposed of” his missing items. Javid’s four-count complaint against Public Storage alleged conversion (count I), breach of contract (count II), violation of the Illinois Self Storage Facility Act (770 ILCS 95/1, *et seq.* (West 2016)) (count III), and violation of the Illinois Deceptive Business Practices Act (815 ILCS 505/1, *et seq.* (West 2016)) (count IV). Javid sought damages in excess of \$100,000.

¶ 11 Public Storage filed a combined motion to dismiss the amended complaint or, in the alternative, to limit damages assessed to \$5000. In its motion, Public Storage asserted the conversion, breach of contract, and Self-Storage Facility Act claims should be dismissed under section 2-619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2016)). Specifically, Public Storage argued the conversion and breach of contract claims fail under the plain language of the rental agreement, which states that Javid did not have had an unconditional right to the property and that Public Storage “will not be responsible for *** any loss, liability, claim expense, damage to property that could have been insured.” Further, Public Storage asserted it never had possession of Javid’s property. Public Storage asserted the Self-Service Storage Act claim fails because Public Storage never held an auction and the Consumer Fraud Act claim should be dismissed under section 2-619 because Javid’s complaint did not specifically allege any deceptive or unfair practices. Alternatively, Public Storage argued that if Javid’s claims were not dismissed his recovery should be limited to \$5000 under the express terms of the rental agreement.

¶ 12 Public Storage submitted an affidavit from Nick Giordano, its district manager, averring that when Javid was late in paying rent, Public Storage initiated procedures under the Self Storage Facility Act, including locking Javid out of the unit, but that those procedures were

halted when he paid his rent in full. Giordano further averred that Public Storage never held an auction for the contents of Javid's storage unit.

¶ 13 On October 27, 2016, the trial court granted Public Storage's motion dismissing with prejudice counts I, III, and IV and granting partial summary judgment limiting Javid's damages to \$5000. The court also granted Public Storage's motion to dismiss count II for breach of contract without prejudice, allowing Javid until November 20, 2016 to replead that count. Instead, Javid filed a notice of appeal, which this court dismissed for lack of jurisdiction. Javid moved for a Supreme Court Rule 304(a) (eff. March 8, 2016) finding that there is no just reason for delaying either enforcement or appeal or both. Then, on June 5, 2017, Javid dismissed with prejudice count II and withdrew his request for Rule 304(a) language. He then appealed the October 27, 2016 and June 5, 2017 orders.

¶ 14 Analysis

¶ 15 Dismissal Order

¶ 16 A motion to dismiss under section 2-619 of the Code admits the legal sufficiency of the complaint and raises defects, defenses, or other affirmative matters that appear on the face of the complaint or are established by external submissions that act to defeat the plaintiff's claim. *Neppl v. Murphy*, 316 Ill. App. 3d 581, 584 (2000). A section 2-619 dismissal resembles the grant of a motion for summary judgment; we determine whether a genuine issue of material fact should have precluded the dismissal or, absent that, whether the dismissal was proper as a matter of law. *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill.2d 248, 254 (2004). Generally, we review *de novo* a section 2-619 dismissal. *Neppl*, 316 Ill. App. 3d at 583. And we review a trial court's decision to dismiss a complaint with prejudice for an abuse of discretion. *Bruss v. Przybylo*, 385 Ill. App. 3d 399, 405 (2008).

¶ 17 Javid sole argument is that the trial court erred in granting Public Storage’s motion to dismiss his complaint with prejudice because some of the items in his storage unit are missing, raising a question of fact as to whether Public Storage sold them at auction. Javid acknowledges Public Storage provided an affidavit from Nick Giordano, its district manager, averring that no auction occurred during the entire time he rented the storage unit. But, Javid contends the affidavit is contradicted by Public Storage’s ledger, which states that an auction occurred on September 23, 2014 and the items in the unit were sold for \$1000. Javid contends this contradictory evidence and his missing property raises a question of fact and made dismissal under section 2-619 premature. We disagree.

¶ 18 Javid correctly notes that Public Storage’s ledger states that on September 23, 2014, his unit was sold at auction \$1000, but he does not provide a complete picture. The ledger shows that Public Storage contacted Javid to notify him the unit had been auctioned for \$1000. Javid then paid the past due rent, and Public Storage cancelled the auction. Thus, the ledger does not raise a question of fact as to whether Public Storage auctioned Javid’s property and does not provide a basis for reversal.

¶ 19 Turning to the dismissal order, we note that Javid’s brief does not refute the trial court’s rulings as to each count of his complaint. We agree with the trial court that Javid failed to state claims for conversion or violations of the Self-Storage Facility Act and the Fraud and Deceptive Practice Act, and will address each claim.

¶ 20 **Conversion**

¶ 21 “To prove conversion, a plaintiff must establish that (1) he has a right to the property; (2) he has an absolute and unconditional right to the immediate possession of the property; (3) he made a demand for possession; and (4) the defendant wrongfully and without authorization

assumed control, dominion, or ownership over the property.’ ” *Loman v. Freeman*, 229 Ill. 2d 104, 127 (2008) (quoting *Cirrinzione v. Johnson*, 184 Ill.2d 109, 114 (1998)). The essence of conversion is the wrongful deprivation of one who has a right to the immediate possession of the object unlawfully held. *General Motors Corp. v. Douglass*, 206 Ill. App. 3d 881, 886 (1990).

¶ 22 Javid did not at all times have an “absolute and unconditional right to immediate possession of the property” in his storage unit. The rental agreement provided that Public Storage had a lien on all of Javid’s property in the unit and if Javid failed to pay the past due rent, charges, or fees within 14 days of Public Storage giving him notice, it could sell or otherwise dispose of Javid’s property to satisfy the lien. Further, the Self-Service Storage Facility Act also provides that the owner of a self-service storage facility has a lien on all personal property in the storage facility, which attaches on the date the property is brought to the facility and is “superior to any other lien or security interest except for a statutory lien or security interest which is perfected through filing and has been perfected, prior thereto, through proper filing.” 770 ILCS 95/3 (West 2016). There is no question that Javid failed to timely pay his rent on multiple occasions, that Public Storage had a lien on the property in the unit, and thus, that Javid did not have “absolute right to the property.”

¶ 23 Further, Public Storage did not wrongfully assume control, dominion, or ownership of Javid’s property. Javid’s complaint does not allege Public Storage sold his belongings, only that it initiated lien proceedings. Although Javid contends there is a question of fact as to whether Public Storage took possession and auctioned his personal property, the uncontradicted record, as noted, shows that proceedings were commenced but never completed. Thus, Javid’s complaint failed to establish two necessary elements of a conversion claim, and dismissal under section 2-619(a)(9) of the Code (735 ILCS 5/2-609) (West 2016)) was warranted.

¶ 24 Self-Storage Facility Act and Consumer Fraud Act

¶ 25 The trial court also correctly dismissed the statutory violation counts of Javid’s complaint, namely, that Public Storage violated the Self-Storage Facility Act and the Consumer Fraud Act. Section 4 of the Self-Service Storage Act delineates the steps a storage facility owner must take to enforce a lien, including notifying the unit owner, making a demand for payment not less than 14 days after delivery of the notice, and providing a conspicuous statement that unless the claim is paid the personal property will be advertised for sale and will be sold at a specified time and place. 770 ILCS 95/4 (West 2016). A plaintiff can state a claim if the storage facility failed to follow the steps delineated in section 4 of the Act.

¶ 26 Javid’s complaint alleges he received no notice or explanation regarding the whereabouts of his items or any notice of any sale or auction of his items. Javid’s claim fails, however, because the record shows that Public Storage never sold or auctioned off the property in his unit. First, Nick Giordano’s affidavit avers Public Storage did not auction Javid’s property. The affidavit is supported by Public Storage’s ledger, which shows Javid was notified that an auction occurred on September 23, but the auction was halted when Javid made a rental payment bringing the account balance to zero. Absent an auction or other lien sale, Javid cannot state a claim for violation of the Self-Service Storage Act.

¶ 27 To state a claim under the Illinois Consumer Fraud Act, a complaint must set forth specific facts showing (i) a deceptive act or practice by the defendant, (ii) the defendant’s intent that the plaintiff rely on the deception, (iii) the deception occurred in the course of trade or commerce, and (iv) the consumer fraud proximately caused the plaintiff’s injury. *Connick v. Suzuki Motor Co.*, 174 Ill. 2d 482, 501 (1996). “[A] complaint alleging a violation of consumer

fraud must be pled with the same particularity and specificity as that required under common law fraud.” *Id.*

¶ 28 Javid’s complaint alleged Public Storage employees rushed through discussion of the terms of the rental agreement and did not explain important provisions regarding insurance, the \$5000 storage value limit, and late payments. He asserted English is his second language and Public Storage’s failure to spend more time explaining the terms of the rental agreement were both unfair and deceptive. Further, the complaint asserted Public Storage knew he was storing items valued at more than \$5000 and did not warn him of the \$5000 storage value limit. Javid also claimed he was unaware that if he failed to timely pay his rent he would be locked out of the storage unit or that Public Storage would terminate his insurance policy if he fell behind on payments. Lastly, he contends Public Storage’s records suggest it sold some of his property at auction but Public Storage has refused to explain where the missing property is.

¶ 29 None of Javid’s allegations was sufficient to state a claim under the Consumer Fraud Act. Javid contends he was not aware of certain provisions of the rental agreement, but he does not allege with any specificity how the language in those provisions was false or misleading. The provisions he takes issue with, including the \$5000 storage value limit and the consequences of failing to timely make rental payments were spelled out in the rental agreement, which he signed and initialed. As for the missing property, Public Storage has submitted an affidavit stating it did not sell Javid’s property at auction, and in the rental agreement, Public Storage disclaimed liability for any lost property. Without any other allegations showing Public Storage acted to deceive Javid, the complaint fails to state a violation of the Act.

¶ 30 As for the breach of contract claim, the trial court dismissed the claim without prejudice and granted Javid leave to file an amended complaint on that claim. Instead Javid chose to

dismiss the breach of contract count with prejudice so that he could appeal all his claims. Because he decided not to replead that count and voluntarily dismissed the breach of contract claim with prejudice, there are no grounds to appeal the dismissal.

¶ 31 Damages

¶ 32 Javid contends the trial court erred in granting partial summary judgment limiting his damages to \$5000. Because we affirm the trial court's dismissal of Javid's complaint, the question of damages is moot. An issue is moot if no actual controversy exists or where events occur which make it impossible for the court to grant effectual relief. *Dixon v. Chicago and North Western Transportation Co.*, 151 Ill. 2d 108, 116 (1992). Once Javid's claims were dismissed with prejudice, whether Public Storage could limit his damages to \$5000 was no longer an issue, as there was no possibility that Public Storage would have incurred any liability as a result of the suit's outcome. Thus, that part of the trial court's order is moot.

¶ 33 Affirmed.