2018 IL App (1st) 172534-U
No. 1-17-2534

SECOND DIVISION
October 16, 2018

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CENTURY AMERICA LLC, Plaintiff-Appellant, v. SHANNON F. DEPROFIO, JOHN F. FLANAGAN, WILMA PITTS GRIFFIN, FRED R. SASSER, ROBERT C. DEBOLT, each in their capacity as a Director of The Goodheart-Willcox Company, Inc., THE GOODHEART-WILLCOX COMPANY, INC., Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 16 CH 10970 The Honorable Sanjay Tailor, Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Lavin and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Where plaintiff failed to request that the dismissal of its complaint be without prejudice or for leave to amend prior to the dismissal, the trial court did not abuse its discretion in making its dismissal order with prejudice. Trial court's denial of plaintiff's post-judgment request for leave to amend affirmed, because plaintiff had no statutory right to amend its complaint after final judgment other than to conform the pleading to the proofs.

¶ 2 This appeal arises out of the trial court's dismissal with prejudice of the complaint filed by plaintiff, Century America, LLC, against defendants Shannon F. DeProfio, John F. Flanagan, Wilma Pitts Griffin, Fred R. Sasser, Robert C. Debolt, and Goodheart-Willcox Company, Inc. Plaintiff is an Illinois limited liability company and the beneficial owner of 42,700 shares of stock in defendant Goodheart-Willcox Company, Inc. Defendant Goodheart-Willcox Company, Inc. (the "Company") is a Delaware corporation with its principal place of business in Tinley Park, Illinois. The Company publishes print and digital textbooks and produces other instructional resources for educational, professional, and technical training. Defendants DeProfio, Flanagan, Griffin, Sasser, and Debolt (collectively, the "Directors") were members of the Company's Board of Directors ("Board") in 2011, the time of the events alleged in plaintiff's complaint.

¶ 3 In that complaint, plaintiff brought a derivative action on behalf of the Company and a direct, individual action on its own behalf. The trial court dismissed the complaint with prejudice on the bases that plaintiff failed to allege facts that would excuse demand on the Board prior to instituting the derivative claim and that plaintiff failed to state a cause of action for a direct claim. Thereafter, plaintiff filed a "Motion to Reconsider and Vacate Judgment, or to Modify Same to Grant Leave to Amend" ("motion to reconsider"). The trial court denied that motion, and it is from that order that plaintiff appeals, arguing that the trial court erred in (1) making its dismissal of the complaint with prejudice and not allowing plaintiff leave to amend, and (2) concluding that, based on plaintiff's proposed amended complaint, amendment of the complaint would have been futile. For the reasons that follow, we affirm.

¶ 4 BACKGROUND

¶ 5 In its complaint, plaintiff alleged that the Directors breached their fiduciary duty of care and good faith to the Company's shareholders by purchasing all of the Company's shares held by Fred Eychaner at an inflated price and rejecting Eychaner's offer to purchase the Company at the same inflated per-share price. According to plaintiff, the Directors did this to solidify their control over the Company. Plaintiff further alleged that the Directors breached their fiduciary duty by allowing interested directors to participate in the consideration of Eychaner's offer, failing to consider the effect of the Directors' decision on the Company's other shareholders, and maintaining exorbitantly large cash reserves for no apparent business reason.

¶ 6 Defendants filed a motion to dismiss plaintiff's complaint under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)). In that motion, defendants argued that plaintiff failed to state a cause of action for its derivative claim, because it failed to allege sufficient facts that demand on the Board was excused.[1] Specifically, under the test announced in *Aronson v. Lewis*, 473 A. 2d 805 (Del. 1984), defendants argued that plaintiff failed to allege sufficient facts that, if taken as true, demonstrated that a majority of the Directors were interested or lacked independence or that the Board failed to exercise business judgment in approving the purchase of Eychaner's shares. Defendants also argued that plaintiff failed to state a claim for a direct action, because it failed to allege any duty by defendants to inform plaintiff of the Eychaner transaction or to allow plaintiff to participate in that transaction. In addition, defendants argued, the complaint alleged that the transaction was, in fact, disclosed to the shareholders.

[1] "A stockholder may not pursue a derivative suit to assert a claim of the corporation unless the stockholder: (a) has first demanded that the directors pursue the corporate claim and the directors have wrongfully refused to do so; or (b) establishes that pre-suit demand is excused because the directors are deemed incapable of making an impartial decision regarding the pursuit of the litigation." *Wood v. Baum*, 953 A. 2d 136, 140 (Del. 2008). The parties agree that because the Company was incorporated in Delaware, Delaware law governs this matter.

¶ 7 In its written response, plaintiff argued that it had alleged sufficient facts to excuse demand on the Board under *Aronson*, by alleging the Directors' interest in the form of holding Company shares, preserving employment, and avoiding personal liability. Plaintiff made no written response to defendants' arguments on Count II.

¶ 8 At the hearing on the motion to dismiss, plaintiff changed tacks and relied on *Unocal Corp. v. Mesa Petroleum Co.*, 493 A. 2d 946 (Del. 1985), to justify its failure to make a demand on the Board prior to instituting the derivative action. Under *Unocal*, plaintiff argued, where a board of directors takes defensive measures in response to a perceived threat to company policies and effectiveness, the standard presumption that the board exercised reasonable business judgment is suspended and a heightened standard of scrutiny applies. According to plaintiff, when that heightened scrutiny is triggered, demand is automatically excused. Plaintiff argued that the Board's purchase of Eychaner's shares was a defensive measure to Eychaner's offer to purchase the Company, which the Board viewed as a threat to the Company's policies and effectiveness. Thus, the heightened standard of scrutiny under *Unocal* applied and plaintiff was excused from making a pre-suit demand on the Board. With respect to its individual claim in Count II, plaintiff argued that claims of director entrenchment may be direct as well as derivative, so long as the shareholder alleges that the entrenching activity impaired one of the shareholder's rights. Plaintiff did not, however, address defendants' claim that plaintiff did not possess a right to be informed of and participate in the Eychaner transaction.

¶ 9 The trial court granted defendants' motion to dismiss with prejudice. In doing so, the trial court explained that it was unclear whether demand is automatically excused where *Unocal*'s heightened standard of scrutiny applied. In any case, the trial court concluded that even if the triggering of the *Unocal* standard automatically excused demand, *Unocal* was not

triggered in this case, because the facts alleged in plaintiff's complaint did not suggest that the Board perceived any threat to its control or Company policy. More specifically, the trial court found that Eychaner's offer to purchase the Company was simply one of three options proposed by Eychaner, all of which the Company was free to either accept or decline; there were no allegations that Eychaner was disgruntled or contemplating a takeover of the Company; there were no allegations of an impending change to the corporate structure or bylaws or any market conditions that would make the Company susceptible to a takeover; the Board's consideration of the collateral effects of declining Eychaner's offer to purchase did not qualify as a defensive action; the Board approached Eychaner with an offer to purchase his shares first; the Board did not make any potential takeover more difficult; and the Board's rejection of Eychaner's acquisition offer did not constitute a defensive measure.

¶ 10 Putting *Unocal* aside, the trial court concluded that plaintiff failed to allege sufficient facts under *Aronson* to establish that a majority of the Directors were interested, and plaintiff did not allege any facts to support an inference that a majority of the Directors were motivated solely or primarily by entrenchment purposes in agreeing to purchase Eychaner's shares. With respect to Count II, the trial court found that plaintiff failed to establish a duty by the Board to inform plaintiff of the Eychaner transaction or a right by plaintiff to participate in the transaction. Noting that plaintiff had made no request to amend its complaint, the trial court dismissed it with prejudice.

¶ 11 Following the trial court's dismissal of its complaint with prejudice, plaintiff filed its motion to reconsider. In that motion, plaintiff argued not only that the trial court erred in dismissing its complaint, but also that the trial court erred in dismissing the complaint with prejudice. According to plaintiff, instead of making the dismissal with prejudice because

plaintiff had not requested leave to amend, the trial court should have made a finding that plaintiff could not plead any set of facts that would entitle it to relief. Because of this error, plaintiff argued, the trial court should vacate that part of its dismissal order making the dismissal with prejudice and allow plaintiff to file an amended complaint.

¶ 12 Attached to plaintiff's motion to reconsider was a proposed amended complaint. The base allegations in plaintiff's proposed amended complaint were substantially the same as those in its initial complaint. In the proposed amended complaint, however, plaintiff included additional factual allegations designed to demonstrate that demand on the Board was excused.

¶ 13 In response to plaintiff's motion to reconsider, defendants argued that plaintiff's request to amend its complaint was untimely, because, pursuant to statute, after judgment it could only be amended to conform the pleadings to the proofs. They also argued that the motion to reconsider did not present any new evidence or change in the law that would justify altering the dismissal order, and the proposed amendment to the complaint was futile.

¶ 14 After plaintiff filed its reply, the trial court held a hearing on the motion to reconsider at which both parties were provided ample opportunity to present their arguments. The parties' arguments at the hearing touched both on whether plaintiff's proposed amended complaint cured the defects of its initial complaint and whether plaintiff should be granted leave to amend where the request was made after final judgment. The trial court asked a number of questions of both parties, clearly exhibiting that it had thoroughly read the parties' briefs on the matter. Ultimately, the trial court denied plaintiff's motion to reconsider. First, it found that its dismissal of the initial complaint was proper because plaintiff had not requested leave to amend at the time of the proceedings on the motion to dismiss. Second, the trial court stated that it was not completely clear whether a post-judgment request to amend should be liberally granted.

Although stating that it would otherwise be inclined to allow amendment, the trial court concluded that it did not have to actually decide that question, because it found that plaintiff's proposed amended complaint did not cure the defects of its initial complaint. Specifically, the trial court found that the proposed amended complaint did not allege facts demonstrating the existence of a threat to corporate policy or effectiveness or that the Board took defensive measures to prevent a takeover.

¶ 15 Plaintiff then brought this timely appeal.

¶ 16 ANALYSIS

¶ 17 On appeal, plaintiff does not contest the merits of the dismissal of its complaint. Rather, plaintiff argues only that the trial court erred in dismissing the complaint with prejudice and denying it leave to file its proposed amended complaint. A large part of plaintiff's argument is focused on the trial court's determination that, based on the proposed amended complaint, amendment would be futile. In this respect, plaintiff maintains that it alleged sufficient facts in its proposed amended complaint to demonstrate that demand on the Board was automatically excused under *Unocal* and to conclude it had sustained an individualized injury warranting a direct claim. We determine that we need not address whether plaintiff's proposed amended complaint cured the alleged defects in its initial complaint, because we conclude that the trial court did not abuse its discretion in making the dismissal of plaintiff's complaint with prejudice and in denying plaintiff's post-judgment request for leave to amend on the basis that it was untimely.

¶ 18 Plaintiff first argues that the trial court erred in dismissing its complaint with prejudice because, before entering the dismissal with prejudice, the trial court should have first made a determination that plaintiff could not prove any set of facts in any future pleading that would

entitle plaintiff to relief. In other words, plaintiff believes that although it never requested leave to amend the complaint prior to the trial court's entry of the dismissal order, the trial court should have nevertheless conducted a *sua sponte* analysis of whether plaintiff would be able, in some hypothetical future pleading, plead a valid cause of action. We review the issue of whether the trial court erred in making its dismissal with prejudice for an abuse of discretion. *McCastle v. Mitchell B. Sheinkop, M.D., Ltd.*, 121 Ill. 2d 188, 194 (1987) ("The decision whether to grant leave to amend the pleadings is within the sound discretion of the trial court. However, we will not hesitate to overturn the trial court's determination where there has been a manifest abuse of discretion."). "An abuse of discretion occurs where no reasonable person would agree with the position adopted by the trial court." *Schwartz v. Cortelloni*, 177 Ill. 2d 166, 176 (1997).

¶ 19 As mentioned, at no point prior to the trial court's dismissal of the complaint did plaintiff request that the dismissal, should there be one, be without prejudice or that plaintiff be given the opportunity to replead. "The general rule is that where a trial court dismisses a complaint and plaintiff does not seek leave to amend, the cause of action must stand or fall on the sufficiency of the stricken pleading." *Bajwa v. Metropolitan Life Insurance Co.*, 208 Ill. 2d 414, 435 (2004). Illinois courts have repeatedly held that where a plaintiff does not request leave to amend the complaint, the trial court does not err in dismissing the complaint with prejudice. See *Teter v. Clemens*, 112 Ill. 2d 252, 260-61 (1986); *Thompson v. N.J.*, 2016 IL App (1st) 142918, ¶ 64; *Kovac v. Barron*, 2014 IL App (1st) 121100, ¶ 108. It would seem, then, that the trial court here acted well within its discretion in dismissing plaintiff's complaint with prejudice, because plaintiff did not request leave to amend prior to the dismissal.

¶ 20 Nevertheless, despite the fact that plaintiff had not requested leave to amend or submitted any proposed amendments during the proceedings on the motion to dismiss, plaintiff argues that

the trial court should have *sua sponte* engaged in an analysis of whether plaintiff could have somehow, in a future pleading, stated a valid cause of action. In support, plaintiff cites to caselaw for the proposition that "[a] cause of action should not be dismissed under section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." *Cowper v. Nyberg*, 2015 IL 117811, ¶ 12; see also *Abazari v. Rosalind Franklin University of Medicine and Science*, 2015 IL App (2d) 140952, ¶ 12; *Andersen v. Mack Trucks, Inc.*, 341 Ill. App. 3d 212, 219 (2003).

¶ 21 Plaintiff's reliance on this proposition and these cases is misplaced, however. Although it is certainly true that the trial court should not dismiss a complaint without determining that there are no set of facts that could be proved to entitle the plaintiff to recover, the cases that utilize this standard do so in the context of assessing whether the complaint on file, *i.e.*, the complaint subject to the motion to dismiss, alleges any set of facts on which the plaintiff could recover, not in determining whether the plaintiff could file a new or amended complaint that might state a valid cause of action. See *Cowper*, 2015 IL 117811, ¶ 22 (where the plaintiff alleged in his complaint that the clerk forwarded to the Department of Corrections an inaccurate number of days that plaintiff had been in custody, rather than alleging that the clerk failed to forward the same number of days that the clerk had received from the sheriff, his complaint should not have been dismissed with prejudice, because he could have, with "a minor adjustment to *the claim already filed*," alleged a proper cause of action (emphasis added)); *Abazari*, 2015 IL App (2d) 140952, ¶ 35 (concluding that the dismissal should not have been with prejudice, because "the presence of the necessary allegations *elsewhere in the complaint* suggests that further amendment of this claim would not be futile: the plaintiff could simply expand his count II allegations to include those *currently included in count IV*" (emphasis added)); *Andersen*, 341

Ill. App. 3d at 219-20 (dismissal with prejudice improper where the state of the governing law was unsettled and the allegations in the complaint on file could potentially fall within applicable caselaw); see also *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 492-93(1994) (concluding that the complaint should not have been dismissed with prejudice because the complaint stated a cause of action other than the one expressly identified by the plaintiff).[2]

¶ 22 Here, what plaintiff suggests is not that the trial court erred in determining that plaintiff could not prove a set of facts entitling it to recovery under the allegations of the complaint, but instead that the trial court should have engaged in a separate analysis, after determining the insufficiency of the allegations of the complaint, of whether plaintiff could prove a set of facts in the future that would entitle it to recovery. Not only is this notion unsupported by the authority cited by plaintiff, but it is simply impractical and unrealistic, especially under the circumstances of this case. Given that plaintiff did not, during the proceedings on the motion to dismiss, make any request to amend the complaint or offer the trial court a proposed amended complaint, there is no way that the trial court could have known what other facts existed that plaintiff could plead in support of its claims, much less assess whether those facts would have stated a valid cause of action. To impose such a requirement on the trial court would be nonsensical. Accordingly, we conclude that the trial court did not abuse its discretion in making its dismissal of plaintiff's complaint with prejudice.

[2] Plaintiff relies on *Illinois Graphics* to argue that the no-set-of-facts standard applies even where no request for leave to amend has been made. While it is true that the *Illinois Graphics* court stated that the no-set-of-facts standard applies even where the plaintiff has not requested leave to amend, the court clearly uses the standard to analyze whether the *complaint on file* alleges facts that, if proven, would entitle the plaintiff to recover. It does not use the standard to make some sort of guess at whether the plaintiff could, in a future amendment, allege facts—of which the court would have no way of being aware—that would state a valid cause of action.

¶ 23 We now turn to the question of whether the trial court erred in denying plaintiff's post-judgment request for leave to amend. Again, we review this issue for an abuse of discretion. *Compton v. Country Mutual Insurance Co.*, 382 Ill. App. 3d 323, 331 (2008) (trial court's decision whether to allow amendment of pleadings will not be reversed absent an abuse of discretion). In its motion to reconsider, plaintiff requested that the trial court modify the "with prejudice" part of its dismissal order and allow plaintiff to file its proposed amended complaint. The trial court denied that request based, in part, on the fact that plaintiff had not requested leave to amend at the time the trial court ruled on the motion to dismiss. Plaintiff now argues that the trial court erred in denying its motion to reconsider on this basis, because it results in a "one shot and you're out" approach. We disagree.

¶ 24 In the typical situation of a pre-judgment request for leave to amend a complaint, leave to amend should be liberally granted. *Tomm's Redemption, Inc. v. Hamer*, 2014 IL App (1st) 131005, ¶13. This is consistent with section 2-616(a) of the Code of Civil Procedure ("Code") (735 ILCS 5/2-616(a) (West 2016)), which provides that amendment prior to judgment should be allowed on "just and reasonable terms." It is also consistent with section 1-106 of the Code (735 ILCS 5/1-106 (West 2016)), which provides that the Code is to be liberally construed, "to the end that controversies may be speedily and finally determined according to the substantive rights of the parties." With those principles in mind, when making a determination on a pre-judgment request for leave to amend, trial courts are to consider four factors: (1) whether the amendment would cure the defects in the original pleading; (2) whether the other party would suffer prejudice or surprise as a result of the amendment; (3) the timeliness of the proposed amendment; and (4) whether the requesting party has had other opportunities to amend the pleading. *Tomm's*, 2014 IL App (1st) 131005, ¶ 13.

¶ 25 Had plaintiff requested leave to amend prior to the trial court's dismissal of the complaint with prejudice, the above would have been the guiding principles in determining whether plaintiff should have been granted that leave. In this case, however, we are presented with the rare situation where plaintiff's request for leave to amend was not made until *after* final judgment had been entered. When this happens, the above-discussed principles do not apply, and the determination of whether leave to amend should be granted is governed by section 2-616(c) of the Code (735 ILCS 5/2-616(c) (West 2016)). See *Tomm's* 2014 IL App (1st) 131005, ¶ 14 ("But these factors [described above] apply only to amendments that have been proposed prior to final judgment."). As this court has previously explained:

> "After final judgment, a plaintiff has no statutory right to amend a complaint and a court commits no error by denying a motion for leave to amend. [Citation.] The reason is that although section 2-616(a) of the Code of Civil Procedure [citation] provides that '[a]t any time before final judgment amendments may be allowed on just and reasonable terms,' there is no corresponding provision mandating similar latitude in amendments offered *after* final judgment has been entered. Following judgment, a complaint may only be amended in order to conform the pleadings to the proofs. 735 ILCS 5/2-616(c) (West 2010). A complaint cannot be amended after final judgment in order to add new claims and theories or to correct other deficiencies. [Citations.]"

Tomm's, 2014 IL App (1st) 131005, ¶ 14. Thus, although amendment is to be liberally granted where the request to amend was made prior to judgment, where the request is made after judgment, numerous courts, including our supreme court, have held that amendment is not permitted for any purpose other than to conform the pleadings to the proofs. See, *e.g.*, *Fultz v. Haugan*, 49 Ill. 2d 131, 136 (1971); *FHP Tectonics Corp. v. American Home Assurance Co.*,

2016 IL App (1st) 130291, ¶ 36; *Tomm's*, 2014 IL App (1st) 131005, ¶14; *Mandel v. Hernandez*, 404 Ill. App. 3d 701, 708 (2010); *Compton*, 382 Ill. App. 3d at 332-33.

¶ 26 Plaintiff does not take issue with the notion that after final judgment, amendment is only permitted in order to conform the pleadings to the proof. Instead, plaintiff attempts to avoid application of that rule by arguing that the trial court should have vacated the "with prejudice" portion of its dismissal order, thus removing the impediment to plaintiff's substantive amendment to the complaint. In support, plaintiff relies on the case of *Ruklick v. Julius Schmid, Inc.*, 169 Ill. App. 3d 1098 (1988). In *Ruklick*, as here, the trial court dismissed the plaintiffs' complaint with prejudice. After the dismissal, the plaintiffs filed a motion to vacate the dismissal with prejudice and for leave to amend. The trial court denied that motion. *Id.* at 1103. On appeal, the plaintiffs in *Ruklick* argued that the substantive dismissal of their complaint was erroneous, and the appellate court agreed. *Id.* at 1110.

¶ 27 The plaintiffs also argued that the trial court erred in denying them leave to amend their complaint. In response, the defendant's argued that, under section 2-616(c) of the Code, the trial court lacked the authority to permit the plaintiffs to amend their complaint after final judgment was entered. *Id.* at 1111. This court recognized that "once a final judgment of dismissal with prejudice was entered on plaintiffs' complaint, there was no authority under section 2-616 of the Code for the court to allow their proffered amendment to be filed." *Id.* Having said that, however, this court noted, in that case, that the trial court had improperly dismissed the complaint in the first place and thus:

> "had the court first vacated its judgment as plaintiffs requested, there would then have been no impediment to allowing the filing of the amended complaint. Furthermore, if, as we have held, the judgment of dismissal was improperly entered to begin with, the

> amendment issue is subsumed by the trial court's opportunity to require more specific pleading."

Ruklick, 169 Ill. App. 3d at 1111.

¶ 28 The present case is readily distinguishable from *Ruklik*. Unlike in *Ruklick*, plaintiff has made no challenge on appeal to the substantive dismissal of its complaint. Rather, the only basis for vacating the dismissal with prejudice that plaintiff advances is that the trial court did not engage in plaintiff's version of the no-set-of-facts analysis prior to making its dismissal order with prejudice. As discussed above, that argument is without merit, because the trial court is not required to engage in a speculative, *sua sponte* analysis of whether a hypothetical future pleading, based on facts unknown to the trial court at the time, could cure the defects in the initial pleading. Accordingly, unlike in *Ruklick*, plaintiff has not offered any meritorious basis on which to vacate the trial court's dismissal and thus remove the impediment to its amendment of the complaint. See *Compton*, 382 Ill. App. 3d at 332-33 (distinguishing *Ruklick* on the same basis).

¶ 29 Because *Ruklick* has no application here, the standard rules apply. In other words, the trial court's dismissal of plaintiff's complaint with prejudice was a final judgment. *FHP*, 2016 IL App (1st) 130291, ¶ 37. Accordingly, once that judgment was entered, plaintiff's only right to amend its complaint was to conform the complaint to the proofs. Of course, plaintiff did not seek amendment for that purpose, but instead sought to allege additional facts in support of its derivative and individual claims. As amendment for that purpose is not provided for under section 2-616 of the Code of Civil Procedure, the trial court acted within its discretion in denying plaintiff's post-judgment request to file its amended complaint. See *id.* at ¶ 37; *Tomm's*, 2014 IL App (1st) 131005, ¶15; *Compton*, 382 Ill. App. 3d at 332-33.

¶ 30 Plaintiff argues that this result has the effect of imposing a "one shot and you're out" regime. We disagree. There was nothing that prevented plaintiff from seeking leave to amend prior to or during the proceedings on defendants' motion to dismiss. The proposed amended complaint was clearly drafted in an attempt to address the shortcomings alleged by defendants in their motion to dismiss. There is no reason that plaintiff could not have done the same thing earlier in the process, thereby potentially avoiding costly litigation of the motions to dismiss and preserving its right to take advantage of its opportunity to amend. Even if plaintiff did not want to amend immediately in response to the motion to dismiss, in drafting its response to the motion to dismiss, plaintiff could have requested that if the trial court determined dismissal was appropriate, the complaint be dismissed without prejudice and plaintiff be granted the opportunity to replead. Instead of taking advantage of either of these options, plaintiff chose to ride out its complaint and only ask for leave to amend after everything had been finally determined. If plaintiff was afforded only one shot, it was as a result of plaintiff's litigation choices, not the procedures of the courts.

¶ 31 As a result of plaintiff's chosen litigation strategy in this respect, the trial court was essentially constrained in its ability grant leave to amend. Once final judgment had been entered and without a meritorious basis on which to vacate the dismissal with prejudice, plaintiff simply had no statutory right to amend for any reason other than to conform the pleadings to the proofs (of which there was none at the time). Nevertheless, we note that the trial court gave thoughtful consideration to the parties' arguments on plaintiff's motion to reconsider and even went so far as to consider whether plaintiff's proposed amended complaint would have cured the defects found in the initial complaint. In other words, despite plaintiff essentially procedurally tying the trial court's hands, the trial court nevertheless considered all possible avenues of affording

plaintiff relief. While we commend the trial court for going above and beyond what was strictly required of it, we conclude that the denial of plaintiff's request for leave to amend was appropriate on procedural grounds and need not review the trial court's analysis of whether the proposed amended complaint would have cured the defects of the initial complaint. Although the trial court's decision was not based on procedural grounds, we may affirm the trial court "on any basis that appears in the record without regard to whether the trial court relied upon such ground or whether the trial court's rationale was correct." *Gunthorp v. Golan*, 184 Ill. 2d 432, 438 (1998).

¶ 32 Again, we note that the rules applied in the present case are those that apply to the unusual situation where the request for leave to amend is made *after* final judgment. Our decision is this case is in no way meant to alter or shrink the broad discretion enjoyed by trial courts in ruling on *pre-judgment* requests for leave to amend. In those cases, the well-known principles regarding the liberal granting of requests to amend should continue to be applied in order to encourage resolution of claims on the merits.

¶ 33 In sum, because plaintiff did not request leave to amend its complaint before or during the proceedings on the motion to dismiss, the trial court did not abuse its discretion in dismissing the complaint with prejudice. In addition, because plaintiff's request for leave to amend the complaint to add additional facts was made after the final judgment, the trial court did not abuse its discretion in denying that request.

¶ 34 CONCLUSION

¶ 35 For the reasons stated above, the judgment of the Circuit Court of Cook County is affirmed.

¶ 36 Affirmed.