2018 IL App (1st) 172867-U

No. 1-17-2867

Order filed November 21, 2018

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

KATHLEEN KISS, Plaintiff-Appellant, v. BERNARD A. HENNIG & ASSOCIATES, P.C., an Illinois corporation; BERNARD A. HENNIG JR.; CAROLYN M. POTAMITIS; UNKNOWN ATTORNEYS, AGENTS, PARTNERS, EMPLOYEES and JOHN DOES 1 through 20, Defendants, (Bernard A. Hennig & Associates, P.C., an Illinois corporation; Bernard A. Hennig Jr.; and Carolyn M. Potamitis, Defendants-Appellees).	)	Appeal from the Circuit Court of Cook County No. 16 L 9903 Honorable Diane M. Shelley, Judge presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Gordon and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err in considering defendants' combined motion to dismiss despite their failure to follow the statutory requirements for filing one,

and plaintiff forfeited her contentions that the court improperly dismissed her 10-count complaint with prejudice. Plaintiff also was not deprived of an opportunity to file an amended complaint because she did not request leave to do so.

¶ 2 I. BACKGROUND

¶ 3 According to plaintiff Kathleen Kiss' complaint filed in October 2016, she lived in a condominium on the 6500 block of West Irving Park Road in Chicago and one of her neighbors and friends had been Phyllis Snyder, whom plaintiff helped care for due to Snyder's age. The complaint alleged that, at some time in 2008, Snyder placed her condominium in a living trust in which her second cousin, Ellen Berman, was the sole beneficiary. At some point in 2009, while plaintiff and Snyder were at the law office of defendant Bernard A. Hennig & Associates, P.C. (Hennig & Associates), Snyder told plaintiff that she wanted to leave her entire estate to plaintiff. Snyder accordingly directed defendant Bernard A. Hennig, Jr. (Hennig), to prepare the necessary documents, and he agreed.

¶ 4 On March 6, 2009, Snyder gave plaintiff power of attorney over her property through a document prepared by Hennig, which was attached to the complaint. The following day, Snyder signed a will, which was also attached to the complaint, that granted her entire estate to plaintiff. Hennig prepared the will, and defendant Carolyn M. Potamitis (Potamitis) was named the executor and Hennig was named the first successor executor. The will authorized the executor to "sell, mortgage, lease or encumber any real estate *** without order of Court and without bond." The complaint claimed that, at the time Snyder executed her will, plaintiff was unaware that the condominium had already been placed in Snyder's living trust, a fact that Hennig concealed from plaintiff. Eventually, on December 4, 2013, Snyder passed away.

¶ 5 After Snyder's death, the complaint alleged that plaintiff retained Hennig to transfer title of Snyder's condominium to herself pursuant to Snyder's will. The complaint further stated that,

on May 13, 2014, plaintiff agreed to sell Snyder's condominium for $100,000. Plaintiff attached to the complaint a sales contract purporting to show that she agreed to sell the condominium for $100,000.

¶ 6 On September 8, 2014, Hennig wrote plaintiff, asserting that his law firm had researched "the issues involved with regard to the condo and its sale" and "[b]ecause of the uncertainty of the relatives of the decedent and the fact that they have been disinherited, the estate must be probated." The letter, which was attached to the complaint, noted that Potamitis was the executor of the will, and the law firm had begun the probate process.

¶ 7 On February 14, 2015, Hennig & Associates sent plaintiff an invoice, which was attached to the complaint, for $6,835 in legal fees "for professional services rendered in connection with the estate of Phyllis Snyder." The bill included various fees for filing Snyder's will in court, publishing her will in a newspaper and $5,800 in legal fees to the law firm.

¶ 8 On June 8, 2015, Hennig sent plaintiff another letter reminding her that when they last spoke, she was unsure how she "wanted to proceed with the estate property" and requesting that she let him know if she was "still planning on keeping it so that" his law firm could "prepare the necessary estate paperwork to transfer the property and close the estate." On July 22, 2015, Hennig followed up with plaintiff and stated that, although he was unsure how she wanted to proceed with the condominium, he believed that she wanted to keep the property. As such, and because he had not heard from her, he prepared the necessary documents to transfer the property to her. Plaintiff attached both letters to the complaint. Despite these letters from Hennig, the complaint claimed that plaintiff had, in fact, previously requested that he transfer the property to her and ultimately, he never followed through in transferring the property to her.

¶ 9 On October 6, 2015, Potamitis sent plaintiff a letter, which was attached to the complaint, informing her that Snyder's estate had been closed.

¶ 10 Plaintiff's complaint brought forth 10 counts based primarily on defendants' failure to revoke or amend Snyder's living trust, their failure to transfer title of the condominium to plaintiff, various alleged misrepresentations made by them to her and for charging her attorney fees when they did not actually transfer title of the condominium to plaintiff. Count I alleged that defendants committed legal malpractice by failing to transfer the condominium to plaintiff, which resulted in her being unable to consummate the sale of the property for $100,000. The complaint raised nine other counts: Count II, breach of fiduciary duty; Count III, equitable estoppel; Count IV, promissory estoppel; Count V, common law fraud; Count VI, unjust enrichment; Count VII, willful and wanton misconduct and negligence; Count VIII, intentional and emotional distress; Count IX, civil conspiracy; Count X, violation of the Racketeering Influenced and Corrupt Organizations Act (RICO) (18 U.S.C. §§ 1961-1968 (2012)).

¶ 11 Defendants filed a motion to dismiss based on plaintiff's failure to comply with the applicable statute of limitations and statute of repose. Defendants also attached to their motion a copy of a trustee's deed recorded with the Cook County Recorder of Deeds on December 13, 2013. In the deed, which was executed on November 1, 2013, and prepared by attorney Philip M. Kiss (Kiss) of Kiss & Associates, Ltd. (Kiss & Associates), plaintiff used the power of attorney given to her by Snyder and conveyed the condominium to herself. Following briefing, the circuit court denied defendants' motion to dismiss, finding "a question of fact exist[ed] as to when the statute of limitations and the statute of repose *** began to run."

¶ 12 Defendants subsequently filed a motion to stay the litigation, arguing that plaintiff's actual damages were not yet ascertainable and the entire lawsuit may be moot because, if the

trustee's deed had been executed and recorded properly, plaintiff had already obtained ownership of the condominium. Additionally, defendants asserted that, based on representations from plaintiff's attorney, plaintiff already had possession of the condominium and was paying its taxes and utilities, which further supported the conclusion that she already owned the condominium.

¶ 13 Defendants also requested, and received, leave from the circuit court to file a third-party complaint for contribution against Kiss and Kiss & Associates, alleging he and his law firm failed to properly prepare and record the deed documents transferring ownership of the condominium to plaintiff. According to defendants, because plaintiff alleged in her complaint that she was injured by the failure to have the condominium properly transferred to her, Kiss and Kiss & Associates contributed in part, or in whole, to her alleged injuries.

¶ 14 Kiss and Kiss & Associates answered defendants' third-party complaint, denying the material allegations. The circuit court subsequently ordered defendants to withdraw their motion to stay the litigation and re-file it as a motion to dismiss.

¶ 15 Thereafter, defendants filed a combined motion to dismiss citing both section 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619 (West 2016)). They argued that, because plaintiff had already executed and recorded the trustee's deed transferring ownership of the condominium to herself, it was uncertain whether she actually incurred damages to support her legal malpractice cause of action. Defendants therefore contended that her complaint must be dismissed as moot. Defendants used this argument to apparently support dismissal under both sections 2-615 and 2-619 of the Code, as the motion was not divided into parts corresponding to arguments made under each section. Defendants also did not identify which subsection of section 2-619 of the Code they were relying on.

¶ 16 Plaintiff responded that her complaint was legally sufficient, as it set forth legally recognized claims, and factually sufficient, as it pled facts that brought the claims within the legally recognized causes of action. Plaintiff further argued that defendants' combined motion to dismiss was fatally flawed because it was not divided into parts as required by section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2016)). Additionally, with respect to the section 2-615 portion, plaintiff posited that defendants did not challenge the legal sufficiency of her complaint. And with respect to the section 2-619 portion, plaintiff asserted that defendants failed to identify the external defect or defense defeating her claim and did not attach an affidavit to their motion.

¶ 17 In defendants' reply, they highlighted that, while plaintiff made several arguments in her response, she failed to address their primary basis for dismissal, the uncertainty of her damages. Defendants argued that, if plaintiff owned the condominium, there could be no legal malpractice action against them for failing to transfer ownership of the property to her and without a finding that she either owned or did not own the property, she had not sustained any actual damages.

¶ 18 On November 2, 2017, the circuit court held a hearing on defendants' motion to dismiss. Plaintiff's attorney was not present when the case was called, so the court asked defendants' attorney to call plaintiff's attorney. Defendants' attorney could not reach him, resulting in the hearing occurring without him. In the hearing, the court agreed with defendants that, because plaintiff executed the trustee's deed pursuant to the power of attorney, which conveyed title of the condominium to her, she lacked ascertainable damages. According to the court, even if Snyder's living trust had created a cloud on the title of the condominium, plaintiff "cured" that cloud by transferring the property to herself before Snyder's death. When making these findings, the court made clear that it was addressing the section 2-619 portion of the motion to dismiss.

¶ 19 The circuit court did have a question, however, regarding why defendants sent plaintiff the invoice with the attorney fees. Defendants responded that the invoice was sent to plaintiff because she had all of the assets of Snyder's estate and was the only person who could pay for the estate's expenses. According to defendants, the estate was billed, not plaintiff individually. After being satisfied with defendants' answer, the court concluded that the condominium had been conveyed to plaintiff and therefore she had no damages related to the lack of possession or ownership of the property. The court stated that it would grant defendants' motion to dismiss with prejudice, but did not specifically address each of plaintiff's 10 counts.

¶ 20 In a written order, the circuit court stated: "Defendants' motion is granted for the reasons stated on the record; Plaintiff's complaint is hereby dismissed with prejudice." The court added that plaintiff's attorney appeared after the hearing had concluded, and it advised him of the ruling. Plaintiff did not file any postjudgment motions and timely appealed the court's order.

¶ 21 II. ANALYSIS

¶ 22 On appeal, plaintiff raises multiple issues, all involving the circuit court's grant of defendants' motion to dismiss. But before addressing the merits of plaintiff's contentions, we must address two issues involving our supreme court's rules.

¶ 23 A. Transcript of Motion to Dismiss Hearing

¶ 24 Initially, we note that the transcript from the hearing on defendants' motion to dismiss was not included in the record on appeal yet both parties have included that transcript in their respective briefs' appendices. Generally, the record on appeal cannot be supplemented by including a relevant document to a brief's appendix. *Marzouki v. Najar-Marzouki*, 2014 IL App (1st) 132841, ¶ 20. Furthermore, we generally cannot consider documents that were not included in the record on appeal. *Jackson v. South Holland Dodge, Inc.*, 197 Ill. 2d 39, 55 (2001).

¶ 25 However, under Illinois Supreme Court Rule 329 (eff. July 1, 2017), "[m]aterial omissions *** may be corrected by stipulation of the parties *** after the record is transmitted to the reviewing court." In *Chicago Title & Trust Co. v. Brooklyn Bagel Boys, Inc*., 222 Ill. App. 3d 413, 417 (1991), this court found that, pursuant to Rule 329, where the parties stipulated to the accuracy of an agreed report of proceedings attached to one party's brief, but not included in the record on appeal, we could consider the document when reviewing the appeal. In this case, similar to *Brooklyn Bagel*, because both parties have included the same transcript in their respective appendices, they have, in essence, stipulated to supplementing the record on appeal to correct a material omission. Therefore, despite the transcript of the hearing on the motion to dismiss not being included in the record on appeal, we may consider the transcript in this appeal.

¶ 26 B. Compliance With Supreme Court Rules

¶ 27 Additionally, defendants have requested that we strike plaintiff's brief for failing to follow Illinois Supreme Court Rule 341(h) (eff. May 25, 2018) in multiple respects, including not having points and subpoints in her "Points and Authorities" section, and neglecting to provide a jurisdictional statement. See Ill. S. Ct. R. 341(h)(1), (4) (eff. May 25, 2018). Although harsh, we may sanction violations of our supreme court rules by striking an appellant's brief or even by dismissing the appeal altogether. *North Community Bank v. 17011 South Park Ave., LLC*, 2015 IL App (1st) 133672, ¶ 14. While we do not find either punitive sanction warranted, we remind the parties that our supreme court's rules are not suggestions. *Id.*

¶ 28 We also note that plaintiff uses 23 footnotes in her opening brief despite Illinois Supreme Court Rule 341(a) (eff. May 25, 2018) discouraging their use. Moreover, despite defendants pointing out plaintiff's overuse of footnotes and citing to Rule 341(a) in their brief, plaintiff used nine more footnotes in her 11-page reply brief. Though footnotes are discouraged, there is an

absolute bar to including substantive arguments in them. *Technology Solutions Co. v. Northrop Grumman Corp.*, 356 Ill. App. 3d 380, 382 (2005). Therefore, we will disregard any substantive arguments made by plaintiff in her footnotes. See *John Crane, Inc. v. Admiral Insurance Co.*, 2013 IL App (1st) 093240-B, ¶ 29 (disregarding substantive arguments made in footnotes).

¶ 29 C. Combined Motion to Dismiss

¶ 30 We now turn to the merits of plaintiff's appeal and begin by addressing her initial contention that the circuit court committed reversible error by considering defendants' combined motion to dismiss because the motion was improperly filed as a hybrid motion.

¶ 31 There are two types of motions to dismiss directed at a complaint, one brought pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2016)) and one brought pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2016)). A motion to dismiss brought under section 2-615 challenges the legal sufficiency of the complaint by alleging defects apparent on its face. 735 ILCS 5/2-615 (West 2016); *In re Estate of Powell*, 2014 IL 115997, ¶ 12. In other words, a section 2-615 motion to dismiss argues that the facts the plaintiff has alleged do not plead a cause of action against the defendants. *Winters v. Wangler*, 386 Ill. App. 3d 788, 792 (2008). A dismissal is proper under section 2-615 only when "it is clearly apparent from the pleadings that no set of facts can be proven that would entitle the plaintiff to recover." *In re Estate of Powell*, 2014 IL 115997, ¶ 12.

¶ 32 In contrast, a motion to dismiss brought under section 2-619 admits the legal sufficiency of the complaint, but asserts that certain external defects or defenses defeat the claims. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. Such defects and defenses include a lack of subject-matter jurisdiction, statute of limitations violations, unenforceability under the statute of frauds and

where "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(1), (5), (7), (9) (West 2016).

¶ 33 When analyzing either type of motion to dismiss, the circuit court is required to accept all well-pled facts in the complaint as true, as well as any reasonable inferences from those facts. *In re Estate of Powell*, 2014 IL 115997, ¶ 12; *Sandholm*, 2012 IL 111443, ¶ 55. And we review both types of motions *de novo*. *Lutkauskas v. Ricker*, 2015 IL 117090, ¶ 29.

¶ 34 In this case, instead of filing separate motions to dismiss under each section, defendants brought a combined motion to dismiss pursuant to both sections, a procedure allowed by the Code. 735 ILCS 5/2-619.1 (West 2016). Although a combined motion to dismiss is permissible, when a party brings one, it "shall be in parts" and "[e]ach part shall be limited to and shall specify" whether it was made under section 2-615 or section 2-619. *Id.* Additionally, "[e]ach part shall also clearly show the points or grounds relied upon under the Section upon which it is based." *Id.* Because a section 2-615 motion to dismiss attacks the complaint in a different manner than a section 2-619 motion to dismiss, section 2-619.1 of the Code requires the party filing the combined motion to organize and divide the motion in a manner to avoid commingling of arguments. *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 20.

¶ 35 So while the Code permits a party to bring a combined motion to dismiss, it does not allow a "hybrid motion" in which arguments are commingled. *Mareskas-Palcek v. Schwartz, Wolf & Bernstein, LLP*, 2017 IL App (1st) 162746, ¶ 20. And when a party fails to follow the procedures set forth in section 2-619.1, it can be a fatal mistake. See *Howle v. Aqua Illinois, Inc.*, 2012 IL App (4th) 120207, ¶ 75 (stating that, where the defendant did not comply with the requirements of section 2-619.1, the circuit court "could have denied [its] motion solely on this basis"). However, generally, the circuit court will only deny a combined motion to dismiss for

failing to comply with section 2-619.1 if the motion prejudices the nonmoving party. *Mareskas-Palcek*, 2017 IL App (1st) 162746, ¶ 22.

¶ 36 In this case, defendants' combined motion to dismiss did not comply with the statutory requirements of section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2016)). Notably, although they relied on both sections 2-615 and 2-619, they did not divide their motion into parts and specify under which section their arguments were directed toward. Defendants also did not even cite to section 2-619.1. They likewise failed to identify which subsection of section 2-619 they were relying on to argue dismissal was warranted. Though defendants did not follow the statutory requirements when filing their combined motion to dismiss, we cannot find that plaintiff was prejudiced by the lack of compliance. Defendants' primary argument in support of their motion to dismiss was that plaintiff was not injured by defendants' alleged failure to transfer the condominium to plaintiff because of the trustee's deed, which demonstrated that plaintiff had already transferred ownership of the condominium to herself. Thus, according to defendants, plaintiff's claims were moot. Defendants' reasoning was not buried in their five-page combined motion to dismiss, of which one page contained only a signature block; rather, their reasoning was clearly apparent. While in plaintiff's response to defendants' motion to dismiss, she did not directly address their mootness argument, plaintiff knew, or at the very least should have known, the basis upon which defendants were requesting dismissal. Though the circuit court never addressed defendants' failure to comply with section 2-619.1 during the hearing on their motion to dismiss, despite the argument being raised in plaintiff's response to defendants' motion, plaintiff was not prejudiced by their lack of compliance.

¶ 37 Nevertheless, plaintiff highlights that, in *Lavite v. Dunstan*, 2016 IL App (5th) 150401, ¶ 21, this court directed that, when a combined motion to dismiss under section 2-619.1 does not

comply with the statutory requirements, the circuit could should *sua sponte* deny the motion and provide the moving party an opportunity to re-file an appropriate combined motion to dismiss or, alternatively, separate motions under section 2-615 and section 2-619. While the circuit court certainly can *sua sponte* deny a motion that fails to comply with the statutory requirements of section 2-619.1, especially if the motion commingles arguments and causes unnecessary confusion, there is no requirement that the court must deny such a motion. Ultimately, in this case, plaintiff knew, or at the very least should have known, the basis upon which defendants were requesting dismissal, and thus, she suffered no prejudice by their lack of compliance. Consequently, the circuit court did not commit reversible error by considering defendants' combined motion to dismiss.

¶ 38 D. Dismissal of the Complaint

¶ 39 Plaintiff next contends that the circuit court improperly dismissed her complaint where all 10 of her counts contained sufficient factual matters to state viable causes of action.

¶ 40 1. Count I

¶ 41 Concerning Count I, plaintiff merely argues that she "has pled a viable claim for bad faith, COUNT I – LEGAL MALPRACTICE." That is all. Plaintiff does not explain how or why she sufficiently stated a cause of action for legal malpractice and does not cite to any case law for support. This represents a clear violation of Illinois Supreme Court Rule 341(h)(7) (eff. May 25, 2018), which requires that the appellant support her claims of error with "the reasons therefor" and "citation of the authorities." When the appellant contends that error has occurred in a conclusory manner "without argument or citation of authority," the contention does "not merit consideration on appeal" and is forfeited. *First National Bank of LaGrange v. Lowrey*, 375 Ill.

App. 3d 181, 207 (2007). Consequently, plaintiff has forfeited her contention that the circuit court improperly dismissed Count I. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018).

¶ 42 2. Count II

¶ 43 Concerning Count II, in which plaintiff alleged that defendants' breached their fiduciary duty, she similarly argues in a conclusory fashion that she sufficiently pled a viable cause of action. Though this time, she supports her conclusory contention with citations to case law, she does not cite to any Illinois case law. Rather, plaintiff cites to decisions from the United States District Court for the Northern District of Illinois and the United States District Court for the Western District of Washington. Two of her citations are not even to published decisions from those courts. While "the use of foreign decisions as persuasive authority is appropriate where Illinois authority on point is lacking or absent" (*Carroll v. Curry*, 392 Ill. App. 3d 511, 517 (2009)), there is an abundance of Illinois case law on causes of action for breach of fiduciary duty. See, *e.g.*, *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 69 (explaining what a plaintiff must allege in order to state a claim for a breach of fiduciary duty); *Neade v. Portes*, 193 Ill. 2d 433, 444 (2000) (same); *800 South Wells Commercial LLC v. Cadden*, 2018 IL App (1st) 162882, ¶ 65 (same). Consequently, because of her conclusory argument and lack of citation to Illinois case law, plaintiff has forfeited her contention that the circuit court improperly dismissed Count II. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018).

¶ 44 3. Counts III through X

¶ 45 Concerning Counts III through X, for some counts plaintiff again argues in a conclusory fashion that she sufficiently pled viable causes of action, but for other counts, she argues more thoroughly. However, for all eight counts, she asserts that each count contained sufficient factual matters when accepted as true to state a viable cause of action that was "plausible on its face"

and cites each time to *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), a United States Supreme Court decision.

¶ 46 *Iqbal* was decided two years after the United States Supreme Court's decision in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and together, these cases adopted the plausibility pleading standard in federal court. This standard requires that, in order to survive a motion to dismiss, the plaintiff must have alleged sufficient factual matters when accepted as true "to 'state a claim to relief that is plausible on its face.' " *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). In adopting the plausibility standard, the Supreme Court abrogated its prior decision in *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957), which had held that a court could not dismiss a complaint unless it appeared beyond doubt that the plaintiff would be able to prove no set of facts in support of his claims that would entitle her to relief. See *Iqbal*, 556 U.S. at 670. However, *Twombly* and *Iqbal* involve federal pleading standards, which are different from Illinois pleading standards.

¶ 47 For one, federal courts are notice-pleading jurisdictions (*Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 360 n. 1 (2008)), meaning the plaintiff must provide the defendant with fair notice of the claim and proposed relief, such that the opponent is able to formulate a response. *Swanson v. Citibank, N.A.*, 614 F.3d 400, 404 (7th Cir. 2010). On the other hand, Illinois courts are fact-pleading jurisdictions, meaning the plaintiff must allege sufficient factual matters to bring her claim within a legally recognized cause of action. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429-30 (2006). The difference is important. "Fact pleading imposes a heavier burden on the plaintiff, so that a complaint that would survive a motion to dismiss in a notice-pleading jurisdiction might not do so in a fact-pleading jurisdiction." *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 368 (2004).

¶ 48 Moreover, the standard to survive a motion to dismiss is different. As mentioned, in federal court, dismissing a complaint for failing to state a claim upon which relief can be granted is proper only if the complaint failed to plead sufficient "facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. In contrast, in Illinois, dismissing a complaint for failing to state a claim upon which relief can be granted is proper only when "it is clearly apparent from the pleadings that no set of facts can be proven that would entitle the plaintiff to recover." *Kanerva v. Weems*, 2014 IL 115811, ¶ 33. In citing to *Iqbal*, plaintiff has failed to recognize these critical differences between complaints filed in federal courts and those filed in Illinois state court. As the reviewing court, we are "entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented." (Internal quotation marks omitted.) *Bartlow v. Costigan*, 2014 IL 115152, ¶ 52. *Iqbal* is not pertinent authority for Illinois state courts, and because plaintiff has failed to provide pertinent Illinois authority, she has forfeited her contention that the circuit court improperly dismissed Counts III through X. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018).

¶ 49 E. Opportunity to File Amended Complaint

¶ 50 Plaintiff next contends that the circuit court erred when it deprived her an opportunity to amend her complaint.

¶ 51 Section 2-616(a) of the Code provides that "[a]t any time before final judgment amendments may be allowed on just and reasonable terms *** in any matter, either of form or substance, *** which may enable the plaintiff to sustain the claim for which it was intended to be brought." 735 ILCS 5/2-616(a) (West 2016). Illinois has "a liberal policy of allowing amendments to the pleadings so as to enable parties to fully present their alleged cause or causes of action." *Grove v. Carle Foundation Hospital*, 364 Ill. App. 3d 412, 417 (2006). However, the

plaintiff does not have an absolute right to amend her complaint. *Lacey v. Perrin*, 2015 IL App (2d) 141114, ¶ 76. Instead, the circuit court retains discretion to determine whether to allow an amendment, and a reviewing court will not reverse that determination unless the circuit court has abused its discretion. *Id.* An abuse of discretion occurs when no reasonable person would adopt the same view as the circuit court. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005).

¶ 52 In this case, before the circuit court dismissed plaintiff's complaint with prejudice, a final judgment (*Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 502 (1997)), she never once requested leave from the court to amend her complaint. Because she never gave the court the opportunity to utilize its discretion in determining whether to grant such leave, she cannot claim the court committed error in not allowing an amendment. See *Matanky Realty Group, Inc. v. Katris*, 367 Ill. App. 3d 839, 844 (2006) (finding the circuit court did not abuse its discretion in dismissing the plaintiff's complaint with prejudice "where no exercise of that discretion was requested because the record demonstrates that plaintiff never sought leave to amend its complaint"). Plaintiff, in essence, posits that the court should have *sua sponte* offered her the opportunity to amend her complaint, which the court has no responsibility to do. See *id.*

¶ 53 Moreover, section 2-616(c) of the Code provides that "[a] pleading may be amended at any time, before or after judgment, to conform the pleadings to the proofs, upon terms as to costs and continuance that may be just." 735 ILCS 5/2-616(c) (West 2016). Section 616(c) provides a narrow right to amend a pleading after judgment to conform the pleadings to the proofs (*Tomm's Redemption, Inc. v. Hamer*, 2014 IL App (1st) 131005, ¶ 14), a situation inapplicable here. Simply, "[a] complaint cannot be amended after final judgment in order to add new claims and theories or to correct other deficiencies." *Id.* Thus, plaintiff had no right after the dismissal order to amend her complaint. Furthermore, plaintiff never filed a motion to vacate the order

dismissing her complaint with prejudice. Consequently, the circuit court did not deprive plaintiff of an opportunity to amend her complaint. Rather, she deprived herself.

¶ 54 F. Consent to Probate the Estate

¶ 55 Lastly, we briefly address a contention plaintiff made during oral argument, where she appeared to argue that, in order for Snyder's estate to begin the probate process, she had to consent to it. We disagree.

¶ 56 Under section 6-3(a) of the Probate Act of 1975 (Probate Act) (755 ILCS 5/6-3(a) (West 2016)), within 30 days a person learns he or she has been named the executor of a will of a deceased person, he or she must either begin a proceeding to have that will admitted to probate in court or refuse the appointment as executor. In this case, Potamitis had been named the executor of Snyder's will, resulting in her having the obligation to begin the probate process or declare her refusal. Within 14 days of the court's order admitting the will to probate or denying the will's admission to probate, the executor must provide a required notice to the heirs and beneficiaries about their rights, including an explanation of their right to contest the admission or denial of admission of the will to probate. 755 ILCS 5/6-10 (West 2016); Ill. S. Ct. R. 108 (eff. Jan 1, 2018); *In re Estate of Levin*, 135 Ill. App. 3d 866, 869 (1985). What this notice means is that the admission or denial of admission of a will to probate does not preclude further proceedings regarding the validity of the will. *In re Estate of Alfaro*, 301 Ill. App. 3d 500, 503 (1998); *In re Estate of Levin*, 135 Ill. App. 3d at 869. And to that end, sections 8-1 and 8-2 of the Probate Code (755 ILCS 5/8-1, 8-2 (West 2016)), respectively, govern the procedure to contest an admission of a will to probate and the denial of admission of a will to probate.

¶ 57 In sum, as the named executor of Snyder's will, Potamitis did not need plaintiff's consent to begin the probate process. Plaintiff, as the beneficiary of Snyder's will, had rights that came to fruition after the probate process began.

¶ 58 III. CONCLUSION

¶ 59 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 60 Affirmed.