

NOTICE
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2018 IL App (5th) 180026-U

NO. 5-18-0026

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

JASPER OIL PRODUCERS, INC.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	St. Clair County.
)	
v.)	No. 14-AR-236
)	
DUPO OILFIELD DEVELOPMENT, INC.,)	Honorable
)	Heinz M. Rudolf,
Defendant-Appellee.)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Presiding Justice Barberis and Justice Cates concurred in the judgment.

ORDER

¶ 1 *Held:* Order denying plaintiff’s posttrial motion to amend the pleadings to conform to the proofs affirmed where claims sought in the requested fourth amended complaint were available to the plaintiff at the time of the original complaint because the facts supporting those claims were known. Denial of plaintiff’s motion for a judgment notwithstanding the verdict affirmed where motion was based on the same facts and claims sought in the proposed fourth amended complaint as set forth in the motion to conform the pleadings to the proofs. Denial of plaintiff’s motion to reconsider affirmed where plaintiff waived the issue due to violations of Illinois Supreme Court Rule 341 (eff. Jan. 1, 2016) in its brief or, when considering the merits, denial is affirmed where authority cited in support of the argument is immaterial to the issue.

¶ 2 The plaintiff, Jasper Oil Producers, Inc., appeals the December 13, 2017, order of the circuit court of St. Clair County, that—after a jury verdict in favor of the defendant,

Dupo Oilfield Development, Inc.—denied the plaintiff’s posttrial motions to amend the pleadings to conform to the proofs, for a judgment notwithstanding the verdict (*n.o.v.*), and to reconsider. For the following reasons, we affirm.

¶ 3

FACTS

¶ 4 This case has a lengthy procedural history and is before us for the second time on appeal. The original complaint was filed by the plaintiff in the circuit court on March 12, 2014, and consisted of three counts. Count I was for a breach of contract. Count II contained an alternative request for specific performance. Count III was for unjust enrichment. The complaint alleged that the parties entered into a contract on September 16, 2008, and the defendant breached the contract. According to the complaint, the defendant agreed to sell to the plaintiff, for \$25,000, a 1/32 share of all mineral interests and development rights the defendant acquired in the Dupo Oilfield.

¶ 5 The complaint alleged that the plaintiff tendered a cashier’s check to the defendant on September 17, 2008, which the defendant cashed and deposited. For several years thereafter, the plaintiff repeatedly inquired of the defendant about the conveyance of the 1/32 share and the defendant responded that it was “having some trouble with the oilfield and would get at preparing the documents soon.” Finally, in a meeting in March 2011, the defendant was vague and unresponsive to the plaintiff’s inquiry. The complaint alleges that this is when the defendant breached the contract.

¶ 6 On June 23, 2014, the defendant filed a motion to dismiss the complaint, arguing, *inter alia*, that the complaint was filed outside the five-year statute of limitations as set forth in section 13-205 of the Illinois Code of Civil Procedure (Code) (735 ILCS

5/13-205 (West 2014)). On July 14, 2014, the circuit court entered an order granting the plaintiff leave to amend the complaint within 30 days.

¶ 7 On July 28, 2014, the plaintiff filed a first amended complaint that consisted of two counts. Count I alleged breach of oral contract. Count II requested specific performance and an accounting. Notably, the unjust enrichment count was omitted from the first amended complaint. Otherwise, the operative facts alleged mirrored those in the original complaint. Attached to the first amended complaint was supporting documentation in the form of two checks associated with the purported contract between the parties.

¶ 8 On August 18, 2014, the defendant filed a motion to dismiss the first amended complaint based primarily on the five-year statute of limitations as set forth in section 13-205 of the Code (735 ILCS 5/13-205 (West 2014)). On October 9, 2014, the circuit court entered an order dismissing the first amended complaint. In the order, the circuit court found that the plaintiff's claims were barred by the statute of limitations and the plaintiff "knew or reasonably should have known its claims accrued more than five years prior to the filing of the action based on the allegations set forth in the first amended complaint." The circuit court granted the plaintiff leave to again amend the complaint within 30 days.

¶ 9 On November 7, 2014, the plaintiff filed a second amended complaint, providing further details of the interactions between the parties in the years prior to the plaintiff filing suit. The second amended complaint contained the same two counts as the first amended complaint, and—like the first amended complaint—also omitted the unjust enrichment count that had been included in the original complaint.

¶ 10 On January 7, 2015, the defendant filed a motion to dismiss the second amended complaint, again arguing that the five-year statute of limitations applied to bar the plaintiff's cause of action. See 735 ILCS 5/13-205 (West 2014). The parties filed a bystander's report regarding the hearing on these motions. See Ill. S. Ct. R. 323 (eff. Dec. 13, 2005). The plaintiff argued that the details set forth in the second amended complaint regarding the communications between the parties created a question of fact as to when the breach of contract occurred and the statute of limitations began to run. On February 10, 2015, the circuit court entered an order dismissing the second amended complaint with prejudice based on the statute of limitations. On March 6, 2015, the plaintiff filed a notice of appeal, and on March 10, 2015, filed an amended notice of appeal.

¶ 11 We issued our original decision in this case on September 29, 2015. On October 20, 2015, the defendant filed a petition for rehearing. After full briefing by the parties on the petition for rehearing, we issued a modified order upon denial of rehearing on December 18, 2015. *Jasper Oil Producers, Inc. v. Dupo Oilfield Development, Inc.*, 2015 IL App (5th) 150084-U. In that order, we held that the circuit court erred in dismissing the plaintiff's claim for a breach of contract based on the five-year statute of limitations because the allegations of the complaint, construed liberally, pled equitable estoppel as a defense to the statute of limitations, and, in the interest of justice, the plaintiff should be granted leave to amend its complaint to plead the precise elements for such a defense. *Id.* ¶ 17.

¶ 12 We further held that the circuit court erred in dismissing the plaintiff's claim for specific performance because questions of fact remained as to whether the real estate contract at issue was evidenced by a writing sufficient to satisfy the Frauds Act (Statute of Frauds) (740 ILCS 80/2 (West 2014)), which would determine whether specific performance was available as a remedy or whether the plaintiff's remedy was limited to the value of its performance, which was the purchase price it paid. *Id.* ¶ 22. We remanded the case with directions for the circuit court to allow the plaintiff to amend its complaint to specifically plead the elements of equitable estoppel as a defense to the statute of limitations and for further proceedings consistent with the order. *Id.* ¶ 24.

¶ 13 On remand, the circuit court entered an order on January 5, 2016, granting the plaintiff 28 days to amend its complaint and granting the defendant 28 days to file responsive pleadings. On January 25, 2016, the plaintiff filed a third amended complaint, again alleging a claim for a breach of contract in count I and specific performance in count II. Attached to the third amended complaint were, *inter alia*, documents relating to property surveys, presumably in response to this court's finding of a question of fact regarding the specificity of the description on the check and whether it was sufficient to withstand a Statute of Frauds defense. As with the previous amended complaints, the plaintiff did not assert a claim for unjust enrichment, nor did it assert claims for *quantum meruit* or constructive trust.

¶ 14 On March 16, 2016, the defendant filed a motion to dismiss count II of the third amended complaint, arguing that the Statute of Frauds applied because the description of the interest at issue was inadequate because the memo line of the check did not set forth

the type of interest to be conveyed, “*i.e.*, whether it is a surface interest or mineral interest; whether the interest is in fee or a leasehold; or whether it is expense bearing or expense free.” The motion to dismiss also alleged that the Statute of Frauds was not satisfied because the plaintiff failed to identify with accuracy the location of the property involved.

¶ 15 On July 7, 2016, the plaintiff filed a motion to dismiss the defendant’s affirmative defenses, including, *inter alia*, the Statute of Frauds defense because the defendant admittedly signed the check. Accordingly, the plaintiff alleged in the motion that “[t]here is, in fact, *** a writing signed by the defendant—the person sought to be charged.” The circuit court denied the motion to dismiss the Statute of Frauds defense in an order entered on October 6, 2016.¹

¶ 16 After a failed mediation attempt, the circuit court held a jury trial on the third amended complaint, along with the defendant’s Statute of Frauds defense, beginning June 19, 2017, and concluding on June 21, 2017. The jury returned a verdict in favor of the defendant. On July 15, 2017, the plaintiff filed three posttrial motions, including a motion to conform the pleadings to the proofs, which contained a request to file a fourth amended complaint to add a claim for unjust enrichment or, in the alternative, constructive trust and/or *quantum meruit*. The plaintiff also filed a motion for a judgment *n.o.v.*, in which the plaintiff sought to file the fourth amended complaint, based on the assertion that the plaintiff was entitled to a favorable verdict on “the additional counts

¹We note that this argument ignores this court’s previous order, outlined above, regarding the factual questions necessary to resolve the Statute of Frauds issue.

filed pursuant to the motion to conform the pleadings to the proofs.” In other words, the plaintiff asked the circuit court to overturn the jury verdict based on claims that were neither presented to nor heard by the jury. The plaintiff also filed a motion to reconsider, alleging that it was entitled, as a matter of law, to an order dismissing the Statute of Frauds defense. The circuit court denied all three motions in an order entered on December 13, 2017. The plaintiff filed a timely notice of appeal. Additional facts will be set forth as necessary in our analysis of the issues on appeal.

¶ 17

ANALYSIS

¶ 18 The plaintiff raises the following three issues on appeal: (1) whether the circuit court erred by denying the plaintiff’s posttrial motion to conform the pleadings to the proofs; (2) whether the circuit court erred by denying the plaintiff’s posttrial motion for a judgment *n.o.v.*; and (3) whether the circuit court erred by denying the plaintiff’s posttrial motion to reconsider.

¶ 19 We note at the outset that the plaintiff’s brief violates Illinois Supreme Court Rule 341(h)(6) (eff. Jan. 1, 2016). Subsection (6) requires the appellant’s brief to “*contain the facts necessary to an understanding of the case, *** with appropriate reference to the pages of the record on appeal ***.*” (Emphasis added.) *Id.* “The appellate court has the discretion to strike an appellant’s brief and dismiss the appeal as a result of the appellant’s failure to provide a complete statement of facts.” *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 845 (2001).

¶ 20 Here, the statement of facts is limited to one page, consisting solely of portions of the testimony and admissions of the defendant’s president at trial. The facts provide

absolutely no procedural history related to the pleadings leading up to the posttrial motions, therefore providing no understanding of the case nor correlating references to the record. See Ill. S. Ct. R. 341(h)(6) (eff. Jan. 1, 2016). Accordingly, we could opt to strike the appellant’s brief and dismiss the appeal. See *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶¶ 7-12. Notwithstanding this option, we will proceed in reviewing the merits of the arguments.

¶ 21

I. Motion to Conform

¶ 22 The first issue we consider is whether the circuit court erred by denying the plaintiff’s motion to conform the pleadings to the proofs. We review this issue under an abuse of discretion standard. See *Benzakry v. Patel*, 2017 IL App (3d) 160162, ¶ 85. “A trial court abuses its discretion when its decision is arbitrary or exceeds the bounds of reason.” *Prairie v. Snow Valley Health Resources, Inc.*, 324 Ill. App. 3d 568, 571 (2001). “Only where no reasonable person would agree with the position taken by the trial court does an abuse of discretion occur.” *Id.*

¶ 23 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 2014). “The test is ‘whether the allowance of the amendment furthers the ends of justice.’ ” *Benzakry*, 2017 IL App (3d) 160162, ¶ 85 (quoting *American National Bank & Trust Co. of Chicago v. Dozoryst*, 256 Ill. App. 3d 674, 678 (1993)). “This includes whether ‘the amendments alter[ed] the nature of proof required to defend’ and whether ‘the other party would be prejudiced or surprised.’ ” *Id.* (quoting *American National Bank*, 256 Ill. App. 3d at

679). “ ‘Any doubt as to whether pleadings should be amended should be resolved in favor of an amendment.’ ” *Id.* (quoting *American National Bank*, 256 Ill. App. 3d at 679).

¶ 24 However, “[a] section 2-616(c) motion is improper where, after judgment, the moving party seeks to add claims or causes of action that were available at the time of the original complaint.” *Mandel v. Hernandez*, 404 Ill. App. 3d 701, 708 (2010). Here, the plaintiff filed the posttrial motion to conform the pleadings to the proofs, pursuant to section 2-616(c), in an attempt to add a count for unjust enrichment and alternative counts for constructive trust and/or *quantum meruit*. The plaintiff argues that the motion to conform the pleadings to the proofs should have been granted because of several judicial admissions made by the defendant’s president at trial. We disagree.

¶ 25 None of the requested counts in the proposed fourth amended complaint would be properly allowed because the operative facts cited therein to support the claims—including any judicial admissions made by the defendant’s president at trial—were known to the plaintiff at the time of the original complaint. Accordingly, all of the claims in the requested fourth amended complaint were available when the original complaint was filed. See *Mandel*, 404 Ill. App. 3d at 708. Moreover, the claim for unjust enrichment was not only *available* when the original complaint was filed, but it was also *included* as a claim in the original complaint but thereafter excluded in the three amended complaints.

¶ 26 Based on these facts, we find that allowing a fourth amendment to conform the complaint to the proofs would not further the ends of justice. See *Benzakry*, 2017 IL App (3d) 160162, ¶ 85. We further find that the circuit court’s decision to deny the plaintiff’s

motion to conform the pleadings to the proofs was not arbitrary, nor did it exceed the bounds of reason, nor can we say that no reasonable person would agree with the position taken by the circuit court. Accordingly, the circuit court did not abuse its discretion. See *Prairie*, 324 Ill. App. 3d at 571.

¶ 27 II. Motion for a Judgment *n.o.v.*

¶ 28 The second issue on appeal is whether the circuit court erred by denying the plaintiff's posttrial motion for a judgment *n.o.v.* However, the plaintiff's motion for a judgment *n.o.v.* is completely dependent on the circuit court's granting its motion to conform the pleadings to the proofs, essentially arguing that the evidence presented at trial supported a claim for unjust enrichment—a claim which the jury was not instructed to consider. Because the circuit court did not abuse its discretion in denying the plaintiff's postjudgment motion to conform the pleadings to the proofs, it follows that the denial of the motion for a judgment *n.o.v.* must be affirmed.

¶ 29 III. Motion to Reconsider

¶ 30 The final issue on appeal is whether the circuit court erred by denying the plaintiff's posttrial motion to reconsider. Just as the plaintiff's brief violated Illinois Supreme Court Rule 341 due to an inadequate statement of facts, the same is true of the purported argument in support of this issue. Subsection (7) requires the argument section of the appellant's brief to "contain the contentions of the appellant and the reasons therefor, *with citation of the authorities and the pages of the record relied on.*" (Emphasis added.) Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016).

¶ 31 Moreover, “[a] reviewing court is entitled to have the issues clearly defined and supported by pertinent authority and cohesive arguments; it is not merely a repository into which an appellant may ‘dump the burden of argument and research,’ nor is it the obligation of this court to act as an advocate or seek error in the record.” *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 459 (2009) (quoting *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993)).

¶ 32 Here, the motion to reconsider is based on the plaintiff’s motion to dismiss, *inter alia*, the defendant’s affirmative defense of the Statute of Frauds, which the circuit court denied. The argument section on this issue is—like the facts section of the plaintiff’s brief—grossly inadequate due to a lack of a provision of any procedural history leading up to the motion to dismiss, as well as a complete absence of any mention of the motion to dismiss, the order denying the motion, or pages in the record where these are located. Such deficiencies render the appellant’s brief inadequate, resulting in solid grounds for this court to dismiss the appeal (*In re Guardianship of Tatyanna T.*, 2012 IL App (1st) 112957, ¶ 18) or a waiver of the issues on appeal (*U.S. Bank*, 397 Ill. App. 3d at 459).

¶ 33 Waiver and inadequacies of the brief notwithstanding, we find the circuit court did not err by denying the motion to reconsider. The cases cited by the plaintiff are irrelevant because they discuss the law of principal and agent, in which one person agrees to act for another. In this case, there was never any allegation that the defendant ever acted as an agent of the plaintiff at any time. Accordingly, we affirm the circuit court’s denial of the motion to reconsider.

¶ 34

CONCLUSION

¶ 35 For the foregoing reasons, we affirm the December 13, 2017, order of the circuit court of St. Clair County, which denied the plaintiff's three posttrial motions.

¶ 36 Affirmed.