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THIRD DIVISION  
March 30, 2018

No. 1-17-1282

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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SENYA M. KALPAKE, individually, and as a special administratrix of the ESTATE OF PAUL KALPAKE,	)	
	)	Appeal from the Circuit Court
	)	of Cook County, Illinois,
	)	County Department, Law
Plaintiffs-Appellants,	)	Division.
	)	
v.	)	No. 15 L 11178
	)	
JOHN PAUL REGAS, individually and J.P. REGAS & ASSOCIATES, LTD, an Illinois Corporation,	)	The Honorable
	)	Patrick J. Sherlock,
	)	Judge Presiding.
Defendants-Appellees.	)	
	)	

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JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Justices Howse and Lavin concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court properly dismissed the plaintiff's third and fourth amended complaints with prejudice, where, after numerous opportunities to amend her pleadings, the plaintiff failed to sufficiently allege facts to state any of her three causes of action-- breach of contract, common law fraud and violations of the Illinois Consumer Fraud and Deceptive Practices Act (815 ILCS 513/10, 15, 20 (West 2014)).

¶ 2 This cause of action arises from alleged defects in the heating, ventilation and air

conditioning (HVAC) system that was installed during a renovation and remodeling project in the home purchased by the plaintiff, Senya M. Kalpake, and her now deceased husband, Paul Kalpake (collectively referred to as the Kalpakes). The plaintiff, both individually, and as special administratrix of the estate of her deceased husband, now appeals from the dismissal of her three-count complaint, alleging: (1) breach of contract; (2) fraud and fraudulent misrepresentation; and (3) violations of the Illinois Consumer Fraud and Deceptive Practices Act (Consumer Fraud Act) (815 ILCS 513/10 (West 2014)), against the defendants, John Paul Regas (John Paul Regas) and J.P. Regas & Associates (Regas) (hereinafter collectively referred to as the Regas defendants). The plaintiff contends that the trial court erred in dismissing her complaint pursuant to section 2-615 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2014)). For the reasons that follow, we affirm.

¶ 3

#### I. BACKGROUND

¶ 4

The proceedings in this cause of action commenced in April 2014, under case No. 14 L 4390, when the Kalpakes filed their initial four-count complaint, against numerous defendants involved in the renovation of their home, including: (1) the Regas defendants; (2) Cornell Gorman (Gorman), (3) A Custom Climate (Custom Climate); (3) Fiorino Architects LLC (Fiorino); (4) Daniel Hanches (Hanches); and (4) Starstone Construction, Inc. (Starstone). The original complaint alleged common law fraud, violations of the Consumer Fraud Act (815 ILCS 513/10 (West 2014)), and breaches of implied and express warranties against all of the defendants. The Kalpakes subsequently amended their complaint to include a breach of contract claim. Because the instant appeal involves only the Regas defendants, we set forth only those facts and procedural history relevant to them.

¶ 5

On December 16, 2014, the trial court dismissed the Kalpakes' amended complaint and

stayed the proceedings, pending the Kalpakes' non-binding arbitration of their claims against one of the defendants, Starstone. In 2015, the case was removed from the stay calendar and refiled under its current number, 15 L 11178, and the Kalpakes were permitted to file their first amended complaint because one of the individual defendants, Hanches, was voluntarily dismissed.<sup>1</sup>

¶ 6 After the death of her husband, on December 21, 2015, the plaintiff sought to file her second amended complaint and spread the death of record, and on January 13, 2016, she filed that second amended complaint.

¶ 7 On April 13, 2016, the plaintiff filed her third amended complaint, which is at issue in this appeal. In the third amended complaint, the plaintiff, individually and on behalf of her deceased husband, alleged breach of contract (count I), fraudulent misrepresentation (count II) and violations of the Consumer Fraud Act (count III) against, *inter alia*, the Regas defendants.

¶ 8 According to the third amended complaint, in 2010, the Kalpakes purchased a single-family house in Winnetka, Illinois, and had it extensively remodeled. Prior to that purchase, John Paul Regas, as employee or agent of Regas, approached the Kalpakes to advise them that the real estate was on the market and would need a total renovation, and offered to undertake the renovation for them. According to the complaint, at all relevant times, the Regas defendants represented to the Kalpakes that they were "experts" in architecture, interior design, and total renovation (including "conceptual drawings, detailing, lighting, landscaping, and all facets of interior design"). Based on these material representations, the Kalpakes hired the Regas defendants to act as architect, interior designer, project manager and construction manager of the

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<sup>1</sup> By this point in the proceedings, the defendant, Fiorino, had also been dismissed from the lawsuit on the basis that it entered into a written contract with the Kalpakes that expressly provided that Fiorino was not responsible for the HVAC system.

improvements to their house. They relied upon the represented expertise of the Regas defendants to plan, direct and supervise the total renovation work.

¶ 9 The third amended complaint, further alleged that once retained, the Regas defendants "sought the professional services" of: (1) Fiorino (to prepare and certify by seal the architectural plans for the renovation to be submitted to the Village of Winnetka for approval); (2) Gorman, individually and doing business as Custom Climate (to provide services for the new HVAC and "radiant heat system to be installed" in the home); and (3) Starstone (to provide services as the "general contractor" for the complete interior remodeling and addition to the home). According to the third amended complaint Fiorino prepared design concept plans and elevations based upon the program criteria and as directed by John Paul Regas. Similarly, Starstone preformed its contracted work at the direction of John Paul Regas, and Gorman and Custom Climate performed their subcontracted work at the direction of both Starstone, and John Paul Regas.

¶ 10 According to the third amended complaint, the Regas defendants directed and supervised the renovation and remodeling work including the sale and installation of the new HVAC, and radiant heating system. After the completion of the work, however, the Kalpakes experienced air conditioning and heating problems. The third amended complaint alleged that these problems arose from the failure of the Regas defendants to "select, direct and supervise the proper installation of the HVAC system, as well as, the radiant heating system." The Regas defendants subsequently refused the Kalpakes' repeated request to repair or replace the HVAC and radiant heating systems, and the Kalpakes were ultimately forced to incur \$75,000 in replacement costs.

¶ 11 In support of its allegations, the third amended complaint attached: (1) a contract

between the Kalpakes and Starstone detailing Starstone's obligations as general contractor (Exhibit 1); and (2) a contract between the Kalpakes and Custom Climate with respect to Custom Climate's HVAC work.

¶ 12 On May 18, 2016, the Regas defendants filed a section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2014)) arguing that the third amended complaint failed to sufficiently plead any causes of action. With respect to the breach of oral contract claim (count I), the Regas defendants argued that the plaintiff had failed to plead facts demonstrating the existence or terms of the contract, and that in fact the third amended complaint demonstrated that the damages alleged arose from a separate written contract that the Kalpakes had entered into with Starstone and to which the Regas defendants were not a party. With respect to the fraud claim (count II), the Regas defendants argued that the plaintiff failed to sufficiently plead fraud and to allege any reliance. With respect to the violation of the Consumer Fraud Act (815 ILCS 513/10 (West 2014)) (count III), the Regas defendants asserted that the plaintiff failed to allege the existence of a contract for home repair and remodeling, which is a requisite to such a claim, and to plead actual damages.

¶ 13 In support of their motion, the Regas defendants attached: (1) the trial court's December 16, 2014, order in case No. 14 L 4390, dismissing the Kalpakes' amended complaint, albeit without prejudice as to the same three counts, for failure to plead them with sufficient specificity; and (2) a written contract between the Kalpakes and Starstone dated November 19, 2010, for the remodeling of their home, which stated that Starstone, rather than the Regas defendants, was responsible for the remodeling project, including supplying and installing the HVAC system.

¶ 14 On August 16, 2016, the trial court dismissed the breach of contract count with prejudice,

finding that the Kalpakes' written contract with Starstone contradicted the allegations that the Regas defendants hired Starstone, and that they were responsible for supervising and directing any work with respect to the HVAC system. In addition, the court found that the plaintiff had failed to allege any facts "to support the legal conclusion that Regas had an obligation to supervise Starstone's activities."

¶ 15 The trial court similarly dismissed the fraudulent misrepresentation count, finding that the allegations in the third amended complaint "fell far short of the strict pleading requirements for fraud." The court determined that the only possible actionable misrepresentation was that the Regas defendants misrepresented their expertise in selecting contractors. The court therefore granted the plaintiff leave to replead these allegations if she could provide specific facts to show what the Regas defendants said in regard to their contractor-selection expertise, when and to whom they made these statements and that the statements were false. The trial court further noted that the failure of any particular contractor to correctly perform work in and of itself could not demonstrate the Regas defendants' lack of expertise in selecting that contractor.

¶ 16 The trial court further held that its finding with respect to common law fraudulent misrepresentation equally applied to the plaintiff's Consumer Fraud Act claim (815 ILCS 513/10 (West 2014)), and dismissed that count with prejudice, except as to any allegations that the Regas defendants had misrepresented their expertise in selecting contractors.

¶ 17 On November 22, 2016, the plaintiff filed her fourth amended complaint, realleging all of her previous counts, for purposes of preserving the record. The fourth amended complaint was identical to the third amended complaint with respect to all claims raised against the Regas defendants, except for one paragraph added to the common law fraudulent misrepresentation count. In an attempt to respond to the trial court's request for specific facts as to the Regas

defendants' misrepresentations about their contractor-selection expertise, the complaint alleged merely alleged that the Regas defendants: (1) hired architects that did not take responsibility for the design of the mechanical system; (2) selected a general contractor and subcontractor that lacked the requisite knowledge; and (3) failed to properly supervise the HVAC work.

¶ 18 On December 28, 2016, the Regas defendants filed a section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2014)) the fourth amended complaint. On March 15, 2017, the trial court granted that motion with prejudice, noting that the fourth amended complaint repeated all the previous allegations that it had already held were deficient. In addition, the court stated that the plaintiff had disregarded the trial court's direction to allege specific facts demonstrating *what the Regas defendants had said* to the Kalpakes that would demonstrate their lack of contractor selection expertise.<sup>2</sup> The plaintiff now appeals the dismissal of her third and fourth amended complaints.

¶ 19 II. ANALYSIS

¶ 20 A motion to dismiss pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)) attacks the legal sufficiency of a complaint based on defects apparent on its face. *DeHart v. DeHart*, 2013 IL 114137, ¶ 18; *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). At this pleading stage, a plaintiff is not required to prove her case and need only allege sufficient facts to state all the elements of her cause of action. *Peraica v. Riverside-Brookfield High School Dist. No. 208*, 2013 IL App (1st) 122352, ¶ 9 (citing *Fox v. Seiden*, 382 Ill. App. 3d 288, 294 (2008)). When reviewing a section 2-615 motion, we must accept as true all well-pleaded facts and reasonable inferences that can be drawn therefrom, and interpret the allegations in the complaint in the light most favorable to the plaintiff. *DeHart*, 2013 IL 114137, ¶ 18; *Simpkins v.*

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<sup>2</sup> The cause of action was dismissed with prejudice in its entirety on April 25, 2017, after the plaintiff settled her claims against Starstone, Gorman and Custom Climate.

*CSX Transportation, Inc.*, 2012 IL 110662, ¶ 13. In ruling on such a motion, only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record may be considered. *DeHart*, 2013 IL 114137, ¶ 18; *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). If there is a conflict between the written exhibit and the allegations of a pleading, the exhibit controls. *McCready v. Illinois Secretary of State, White*, 382 Ill. App. 3d 789, 794 (2008); see also *Garrison v. Choh*, 308 Ill. App. 3d 48, 53 (1999). The trial court should grant a section 2–615 motion to dismiss only where it is clearly apparent that "no set of facts can be proved that would entitle the plaintiff to relief." *DeHart*, 2013 IL 114137, ¶ 18 . " This broad statement, however, should not be interpreted as an adoption of notice pleading.' [Citation.]" *CNA International, Inc. v. Baer*, 2012 IL App (1st) 112174, ¶ 30. Illinois is a fact-pleading jurisdiction, and as such "a plaintiff must allege facts, not mere conclusions, to establish his or her claim as a viable cause of action." *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305 (2008); *Weiss v. Waterhouse Securities, Inc.*, 208 Ill. 2d 439, 451 (2004); *Behringer v. Page*, 204 Ill. 2d 363, 369 (2003); see also *Pooh–Bah Enterprises, Inc.*, 232 Ill. 2d at 473 (In opposing a motion for dismissal under section 2–615, "a plaintiff may not rely on mere conclusions of law or fact unsupported by specific factual allegations."). Our review of an order granting a section 2-615 motion to dismiss is *de novo*. *DeHart*, 2013 IL 114137, ¶ 18.

¶ 21 A. Breach of Contract

¶ 22 On appeal, the plaintiff first contends that the trial court erred in dismissing her breach of oral contract claim. For the reasons that follow, we disagree.

¶ 23 To state a cause of action for breach of contract, whether written or oral, a plaintiff must



establish: (1) the existence of a valid and enforceable contract; (2) the plaintiff's performance of all contractual conditions; (3) a breach by the defendant; and (4) resulting damages. *Sheth v. SAB Tool Supply Co.*, 2013 IL App (1st) 110156, ¶ 68. To establish the existence of a valid and enforceable contract, the plaintiff must sufficiently allege: an offer, acceptance and consideration. *CNA International, Inc. v. Baer*, 2012 IL App (1st) 112174, ¶ 45. A general allegation that a contract exists without supporting facts is a legal conclusion which may not be admitted as true by a motion to dismiss. *Talbert v. Home Sav. of America, F.A.* 265 Ill. App. 3d 376, 380 (1994). In addition, "for an agreement to be legally binding, it must be reasonably definite and certain in its terms." (Internal quotation marks omitted.) *Midwest Builder Distributing, Inc. v. Lord & Essex, Inc.*, 383 Ill. App. 3d 645, 658 (2007). "When material terms and conditions are not ascertainable, there is no enforceable contract, even if the intent to contract is present." (Internal quotation marks omitted.) *Midwest Builder*, 383 Ill. App. 3d at 658; *Babbitt Municipalities, Inc. v. Health Care Service Corp.*, 2016 IL App (1st) 152662, ¶ 30 ("If the contract terms are too uncertain or indefinite to enforce, allegations of a breach of those terms will not provide a basis for a breach of contract claim"). Where a complaint alleging breach of contract fails to state essential allegations it is defective and its deficiency may not be remedied by liberal construction." *Midwest Builder*, 383 Ill. App. 3d at 658.

¶ 24 In the present case, the plaintiff argues that the third and fourth amended complaints sufficiently alleged the existence of a valid oral contract between the Regas defendants and the Kalpakes. In that respect, the plaintiff points to the following allegations in her pleadings. The Regas defendants "approached the Kalpakes to advise them that the real estate was placed for sale" and that it was "in need of a total renovation" which the Regas defendants "would undertake." The Kalpakes "sought to have a total renovation performed to the \*\*\* premises as

represented to them by [the Regas defendants]." The Regas defendants "offered" and the Kalpakes "accepted" that the Regas defendants would perform services as architect, interior designer, project manager and construction manager for the remodeling and addition, including "having architectural drawings prepared and approved, design[ing] the home interior finish and furnishings, select[ing] contractors, to perform all facets of the total renovation, oversee[ing], coordinat[ing] and supervis[ing] the contractors' work, including the selection of sufficient mechanical systems, such as HVAC and radiant heat." The Regas defendants were paid "good and valuable consideration," which "included a markup on the services provided by others as well as a markup on furnishings and fixtures used in the renovation."

¶ 25 Contrary to the plaintiff's position, however, the aforementioned allegations fail to present sufficient facts that would show the existence of an oral contract (*i.e.*, that an offer was made and accepted for consideration.). These allegations fail to state when, where and how the Regas defendants made their oral offer to perform the alleged services, and when and under what circumstances that offer was accepted by the Kalpakes. In addition, the allegations say nothing about what "total renovations" were to be undertaken. Most glaringly, the allegations fail to explain what the Kalpakes obligations were under the purported offer. While the complaint alleges that as consideration, the Regas defendants received a "markup on the services provided by others," and a markup on "furnishing and fixtures," the complaint does not allege that these markups were a part of the Regas defendants' offer or that the Kalpakes agreed to make these payments when they purportedly accepted that offer. The complaint simply alleges that the Regas defendants somehow received payments in the form of a markup on unspecified "services provided by others," and unspecified "furnishings and fixtures." From these allegations it is

impossible to determine whether the Kalpakes agreed to any payment obligations and, if they did, how those payments were to be calculated.

¶ 26 Moreover, even if the aforementioned allegations were sufficient to establish the existence of a valid oral contract, the complaint fails to sufficiently allege the remaining elements of a breach of contract claim, since the plaintiff's own exhibit directly rebuts any contention that a breach of such contract occurred.

¶ 27 The third and fourth amended complaints allege that after the Kalpakes entered into an oral contract with the Regas defendants for Regas to act as architect, designer, project manager and construction manager for the renovation project, the Regas defendants hired Starstone as the general contractor. According to the complaint, Starstone subsequently preformed the work "under the direction" of the Regas defendants. The complaint further alleges that the Regas defendants breached the contract by failing "to select, direct and supervise the proper installation of the HVAC system" by Starstone.

¶ 28 These allegations, however, are directly contradicted by the plaintiff's own exhibit, which is a written contract entered into on November 19, 2010, between the Kalpakes and Starstone. This written contract states that it covers the "complete interior remodeling and addition" of the Kalpakes' home. It contains 29 specifications and 2 notes for the installation of the HVAC system, and provides for 15 pieces of HVAC equipment to be supplied by Starstone. The contract further provides that Starstone "*will supervise and direct the work, using the contractors' best skills and attention*" and that Starstone "*shall be solely responsible for and have control* over construction means, methods, techniques, sequence, procedures and for coordinating all [portions] of the work." (Emphasis added.) It provides that Starstone "*has the sole right* to hire subcontractors in connection with the \*\*\* [w]ork, and is obligated for the

supervision and good performance of such contractors." (Emphasis added.) The contract further states that Starstone will deliver, handle, store and install materials in accordance with the manufacturer's instructions. According to the contract, Starstone guarantees that the work performed "will be free from defects" and "will conform to the requirements of the contract documents." The contract also provides the cost of the HVAC system (\$28,700), and incorporates the architectural plans (made by Fiorino).

¶ 29 The plaintiff asserts that the Kalpakes contract with Starstone does not contradict her allegations, and that the Regas defendants' duties under the oral contract were broader than those of Starstone. Contrary to the plaintiff's contention, however, the Starstone contract unequivocally establishes that it was not the Regas defendants who hired Starstone to act as general contractor, but rather the Kalpakes. Moreover, the Starstone contract nowhere mentions the Regas defendants, or their role in the renovation project. Instead the written contract explicitly provides that Starstone alone is responsible for supervising and directing the renovation project and the work of the other subcontractors. The contract explicitly gives Starstone the sole responsibility and control over the construction means, methods, techniques, sequence and procedures and for coordinating all portions of the construction of the renovation project. In signing the contract with Starstone, the Kalpakes expressly agreed that no other party had authority to oversee, coordinate or supervise Starstone. Under this record, we are compelled to conclude that the plaintiff has failed to allege sufficient facts to state any breach of contract. *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 24 ("[I]f there is any conflict between the factual matters in the exhibits and those alleged in the complaint, the factual matters in the exhibit control."); see also *Garrison*, 308 Ill. App. 3d at 53 ("When, there is a discrepancy between the allegations in a complaint and the contents of an attached exhibit, the exhibit controls.").

¶ 30 B. Fraudulent Misrepresentation

¶ 31 The plaintiff next contends that the trial court erred when it dismissed her common law fraud claim. To state such a claim, the plaintiff had to allege five elements: (1) a false statement of material fact; (2) by one who knows or believes it to be false; (3) made with the intent to induce action by another in reliance on the statement; (4) action by the other in reliance on the statement; and (5) injury to the other resulting from that reliance. *Village of Palatine v. Palatine Associates, LLC*, 2012 IL App (1st) 102707, ¶ 80. Our courts have repeatedly held that fraud claims require "an especially 'high standard of specificity.'" *Merilees v. Merilees*, 2013 IL App (1st) 121897, ¶ 15 (quoting *Chatham Surgicore, Ltd. v. Health Care Service Corp.*, 356 Ill. App. 3d 795, 803–04 (2005)). As such, a plaintiff must plead, in the very least, "what misrepresentations were made, when they were made, who made the misrepresentations and to whom they were made." *Board of Education of City of Chicago v. A, C & S, Inc.*, 131 Ill. 2d 428, 457 (1989). Elements of a claim for fraud cannot be inferred or implied from the facts alleged; they must be specifically pleaded. *Chatham Surgicore*, 356 Ill. App. 3d at 805.

¶ 32 For the reasons that follow, we find that the third and fourth amended complaints failed to allege any actionable misrepresentation with specificity, as well as to link any damages incurred by the Kalpakes from the deficient HVAC and radiant heating systems to any alleged misrepresentations made by the Regas defendants.

¶ 33 The complaint alleges three instances of misrepresentation. First, according to the complaint, before the Kalpakes purchased their home, the Regas defendants stated that they were "experts" in architecture, interior design, and total renovation, including "construction, management, finding, selecting and supervising contractors to perform the renovation, conceptual drawings, detailing, lighting, landscaping, and all facets of interior design." Second, the complaint further

alleges that before the home purchase, the Regas defendants also represented that they were "experts in providing all facets of a total renovation and more specifically, in having architectural drawings prepared and approved, the design of home interior finish and furnishings, the selection of contractors to perform all facets of total home renovation and the oversight, coordination and supervision of contractors' work and design sufficient mechanical systems such as HVAC radiant heat." Finally, the complaint alleges that "upon substantial completion of the work" the Regas defendants represented that they had "in fact performed the services as agreed and that the total renovation was done in a workmanlike manner under [their] oversight, coordination and supervision including the selection and design of sufficient mechanical systems such as HVAC and radian heat."

¶ 34 With respect to the first two instances of misrepresentation, aside from noting that the statements were made prior to the Kalpakes' purchase of their home, the complaint provides no further detail as to when and under what circumstances those statements were made. In fact, from the face of the complaint it is not even possible to determine whether these two statements were separate instances, or different characterizations of one and the same statement. The same is true of the final statement, which the complaint merely alleges was made "upon substantial completion of the work." The complaint does not explain when and to whom and under what circumstances that statement was made. See *Merilees*, 2013 IL App (1st) 121897, ¶ 15 (fraud claims require "an especially 'high standard of specificity.' "); see also *Hirsch v. Feuer*, 299 Ill. App. 3d 1076, 1085 (1998) (Cases of fraud "must be pleaded with sufficient specificity, particularly and certainty to apprise the opposing party of what he is being called to answer.")

¶ 35 More importantly, the plaintiff provides no specific facts demonstrating the falsity of any of

the three alleged misrepresentations. While the complaint generally alleges that the Regas defendants made the three statements knowing that they were not experts "in all of the services" that they "offered to perform," it does not allege any specific facts regarding their actual expertise or lack thereof. Instead, the complaint attempts to infer the lack of expertise from the fact the HVAC and radiant systems, which the Kalpakes contracted with other parties to supply and install, did not perform to their expectations. As already noted above, however, elements of a claim for fraud cannot be inferred or implied from the facts alleged, but rather must be specifically pleaded. *Chatham Surgicore*, 356 Ill. App. 3d at 805.

¶ 36 In addition, the third and fourth amended complaints fail to allege facts demonstrating reliance. In that respect, the complaint alleges that "based upon" the first two allegedly false statements, the Kalpakes purchased their home and hired the Regas defendants "to have architectural drawings prepared and approved, to design of (*sic*) home interior finish and furnishings, to select contractors to perform all facets of total home renovation and to oversee, coordinate and supervise the contractors' work and design sufficient mechanical systems such as HVAC and radiant heat." However, as explained above, the plaintiff's own exhibits demonstrate that contrary to their allegations, the Kalpakes themselves entered into contracts with Starstone (as the general contractor), as well as Custom Climate (as the HVAC subcontractor) to provide the HVAC and radiant heating. The complaint nowhere alleges that the Regas defendants recommended that the Kalpakes hire Starstone or Custom Climate or that the Kalpakes relied on the Regas defendants' stated expertise when they hired these two contractors. In fact, because the complaint fails to sufficiently allege when the Regas defendants' made the first two allegedly false statements, it is not even possible to determine whether those statements were made before the Kalpakes hired Starstone and Custom Climate.

¶ 37 Similarly, with respect to the third alleged false statement, the complaint does not explain how the Kalpakes' reliance on this alleged misrepresentation could have resulted in damages. The complaint only alleges that the Kalpakes had to expend \$75,000 to replace the allegedly deficient HVAC and radiant heating systems. The complaint alleges, however, that the Regas defendants misrepresented that they "in fact performed the services as agreed and that the total renovation was done in a workmanlike manner" including the design and selection of the HVAC, only "upon substantial completion of the work." Accordingly, as per the plaintiff's own pleadings, at the time this allegedly false statement was made, the HVAC and radiant heating systems would already have been designed, selected and installed, and the Kalpakes' damages would already have been incurred, negating any reliance.

¶ 38 Therefore, for all of the aforementioned reasons, taking, as we must the allegations in the pleadings in the light most favorable to the plaintiff, we are nonetheless compelled to conclude that the pleadings fail to state sufficient acts to permit the plaintiff to proceed with her common law fraud claim.

¶ 39 C. Consumer Fraud Act

¶ 40 For these same reasons we find that the plaintiff has failed to assert a fraudulent misrepresentation claim under the Consumer Fraud Act. 815 ILCS 505/2 (West 2014). Section 2 of that Act prohibits:

"[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, \*\*\*in the conduct of any trade or commerce" 815 ILCS 505/2 (West 2014).



Section 10(a) of the Act provides for a private cause of action for "any person who suffers actual damage as a result of a violation of this Act." 815 ILCS 505/10(a) (West 2014).

¶ 41 Accordingly, to adequately plead a private cause of action under section 2 of the Act, a plaintiff must allege: (1) a deceptive act or practice by the defendant; (2) the defendant's intent that the plaintiff rely on the deception; (3) that the deception occurred in the course of conduct involving trade or commerce; and (4) actual damage to the plaintiff (5) proximately caused by the deception. *Pappas v. Pella Corp.*, 363 Ill. App. 3d 795, 798-99 (2006) (citing *Oliveira v. Amoco Oil*, 201 Ill. 2d 134, 149 (2002) and *Zekman v. Direct American Marketers, Inc.*, 182 Ill. 2d 359, 373 (1998)). It is thus apparent that the elements of a fraud claim under the Consumer Fraud Act are the same as common law fraud, except that a plaintiff is not required to plead reliance. See *Connick*, 174 Ill. 2d at 501. A complaint alleging a violation of consumer fraud must be pled with the same particularity and specificity as that required under common law fraud. *Connick*, 174 Ill. 2d at 501.

¶ 42 Our findings with respect to the common law fraud claim equally apply to the consumer fraud count. Specifically, the plaintiff does not offer any facts to show how the Regas defendants' alleged misrepresentations caused the Kalpakes to enter into contracts with Starstone or Custom Climate for the installation of the HVAC and radiant heating systems or how any deficient performance by these contractors is attributable to the Regas defendants.

¶ 43 What is more, the Consumer Fraud Act does not apply where the only controversy is whether an isolated breach of contract occurred. *Brody v. Finch University of Health Sciences/The Chicago Medical School*, 298 Ill. App. 3d 146, 158 (1998). Rather, claims under the Act must satisfy a consumer nexus test, under which the alleged conduct must involve trade practices

addressed to the market generally or otherwise implicate consumer protection rights. *Brody*, 298 Ill. App. 3d at 159.

¶ 44 Here, the third and fourth amended complaints allege that the Kalpakes suffered damages as a result of defects in the nature and quality of the HVAC and radiant heating systems that they contracted for. Specifically, according to the pleadings the Regas defendants breached their agreement with the Kalpakes "by failing to perform the agreed upon services of architect, interior designer, project manager and construction manager \*\*\* which included the design, selection and supervision of the HVAC and radiant heating systems." Although it is further alleged that the Regas defendants claimed to be "experts" in such services, the plaintiff makes absolutely no allegation that the Regas defendants made any representations as to their expertise to the market generally or to anyone other than the Kalpakes. The complaint therefore improperly attempts to conflate an isolated breach of contract claim with a claim under the Consumer Fraud Act. See *Brody*, 298 Ill. App. 3d at 159.

¶ 45 The plaintiff nonetheless contends that she should be permitted to proceed with her Consumer Fraud Act count, because in the very least she sufficiently alleged a violation of the Home Repair and Remodeling Act (Home Repair Act) (815 ILCS 513/15, 20 (West 2014)), which is actionable under the Consumer Fraud Act. Under the Home Repair Act, "[p]rior to initiating home repair or remodeling work for over \$1,000, a person engaged in the business of home repair or remodeling" must "furnish to the customer for signature a written contract or work order that states the total cost," and the name and address of the person engaged in such a business (815 ILCS 513/15 (West 2014)), as well as a consumer rights pamphlet 815 ILCS 513/20 (West 2014)). The Home Repair Act further provides that a consumer who suffers actual

damages as a result of the failure to supply the pamphlet can bring an action under the Consumer Fraud Act (815 ILCS 513/30 (West 2014)).

¶ 46 In the present case, the complaint alleges that the Regas defendants did not provide the Kalpakes with a written contract, or the consumer rights pamphlet. These allegations are insufficient, however, where, as set forth above, the complaint failed to sufficiently allege the formation of a contract with the Regas defendants, including the price (consideration) for any remodeling/renovation services, or, for that matter, that this price (consideration) exceeded \$1,000. Additionally, the complaint does not allege any facts establishing actual causation of damages. The only damages alleged are those arising from the removal and replacement of the HVAC and radiant heating systems, which the Kalpakes directly hired Starstone and Custom Climate to purchase and install. The complaint nowhere alleges facts demonstrating how the failure of the Kalpakes to receive a consumer rights pamphlet or a written contract from the Regas defendants caused the alleged defects in the HVAC and radiant heating systems. Accordingly, the complaint does not allege facts demonstrating actual causation, and the trial court properly dismissed the Consumer Fraud Act count. See 815 ILCS 505/10(a) (West 2014).

¶ 47 III. CONCLUSION

¶ 48 For all of the aforementioned reasons, we conclude that dismissal of all three counts was proper both as to the plaintiff, individually and as special administratrix of Paul Kalpake's estate.

¶ 49 Affirmed.