2015 IL App (1st) 142824-U

No. 1-14-2824

June 30, 2015

FIFTH DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

DR. STEVEN BROWN, Plaintiff-Appellant, v. SAINT XAVIER UNIVERSITY, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 13 L 11724 The Honorable Thomas R. Mulroy, Jr., Judge, presiding.

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

O R D E R

Held: The trial court's dismissal of plaintiff's complaint is affirmed where the statute of frauds barred plaintiff's claims for breach of contract and promissory estoppel, and where plaintiff failed to sufficiently allege a claim for *quantum meruit*.

¶ 1 Plaintiff, Dr. Steven Brown, appeals the trial court's dismissal of his first amended complaint with prejudice. On appeal, plaintiff contends the court erred by dismissing his complaint where (1) he sufficiently pled that he formed an oral contract with SXU and the statute

of frauds did not preclude his breach of contract claim, (2) the statute of frauds did not preclude his promissory estoppel claim, and (3) he sufficiently set forth a claim for *quantum meruit*. For the reasons that follow, we affirm.

¶ 2 I. BACKGROUND

¶ 3 In October 2013, plaintiff filed a verified complaint against SXU and Mitra Fallahi, an SXU faculty member. Upon SXU and Fallahi's motion, the trial court dismissed plaintiff's claims against Fallahi without prejudice and granted plaintiff leave to amend his claims against SXU.

¶ 4 In March 2014, plaintiff filed an amended verified complaint against SXU. Plaintiff alleged that at various times in 2012, plaintiff and Beverly Gulley, the dean of SXU's School of Education, discussed plaintiff's desire to obtain a full-time faculty position with SXU. From January 2013 to August 2013, plaintiff served as an associate professor in SXU's School of Education pursuant to a written contract with SXU. On March 25, 2013, associate dean Christopher McCullough distributed plaintiff's fall 2013 teaching schedule, which reflected that five courses had been tentatively assigned to plaintiff. On April 11, 2013, SXU, through Gulley, made two separate verbal offers of employment to plaintiff: (1) an associate professor position for the 2013-2014 school year, and (2) a position as the "Program Leader for Educational Leadership." Plaintiff believed that Gulley had the ability to make hiring and firing decisions based on her position as dean of the School of Education and the previous employment-related discussions she had with plaintiff.

¶ 5 The complaint further alleged that on April 11, 2013, plaintiff verbally accepted SXU’s offer of an associate professor position. With respect to the "Program Leader" position, plaintiff wanted SXU's assurance that he would be moved into a tenure-track position at a later date. The annual full-time salary offered to plaintiff was $84,000. Based on SXU's offer of employment,

plaintiff refrained from searching for a teaching position for the 2013-2014 academic year. He also started formulating lesson plans.

¶ 6 Further, on May 3, 2013, plaintiff attended a faculty-wide retreat, during which he and Fallahi had a disagreement and Fallahi "verbally accosted" him. On May 6, 2013, Gulley informed plaintiff that a position might not exist for him for the 2013-2014 school year. On May 21, 2013, Provost Angela Durante notified plaintiff via letter that SXU would not be offering him employment for the 2013-2014 academic year. By the time SXU retracted its offer of employment to plaintiff, the "prime hiring season for teaching positions had already expired" and plaintiff could no longer secure a teaching position for the 2013-2014 academic year.

¶ 7 Plaintiff's complaint alleged three counts: (1) breach of oral contract, (2) promissory estoppel, and (3) *quantum meruit*. With respect to his breach of contract claim, plaintiff alleged that SXU, through Gulley, made an unambiguous offer of employment as an associate professor that he verbally accepted. In consideration for his promise to serve as an associate professor, SXU promised to compensate plaintiff in accordance with SXU's salary payments for similarly-situated associate professors. Plaintiff further alleged SXU breached the parties' oral contract in May 2013 by failing to offer plaintiff the promised position, and that he suffered monetary damages as a result. As to his promissory estoppel claim, plaintiff alleged that in light of his expressed interest in a teaching position with SXU and the fact that Gulley was a high-ranking faculty member in April 2013, it was reasonable and foreseeable for plaintiff to rely on SXU's promise. Furthermore, plaintiff asserted, he abstained from looking for other employment in reliance on SXU's promise, and by the time SXU failed to honor its promise, the prime hiring period had already expired and he was unable to secure a similar full-time teaching position. Thus, he alleged he suffered financial damages as a consequence of relying on SXU's promise.

¶ 8 Finally, plaintiff's *quantum meruit* claim alleged that based on SXU's promise of employment and distribution of his tentative course schedule, he started preparing lesson plans for his assigned classes. Between April 12, 2013, and May 21, 2013, he performed the following tasks: preparing new course syllabi, reviewing all supplementary materials and course textbooks, creating PowerPoint presentations, researching and obtaining (and downloading and editing, if necessary) online video materials, arranging for special "in class" guests who would either appear live or via the internet, and creating all assessment materials such as in-class writing assignments and exams. Plaintiff alleged he spent 50 hours performing such tasks, he did not perform them gratuitously, and he performed them under circumstances in which SXU should compensate him.

¶ 9 In May 2014, SXU moved to dismiss plaintiff's claims. With respect to plaintiff's breach of contract claim, SXU asserted that no enforceable contract existed. Further, SXU argued that even if a contract did exist, it was barred by the statute of frauds given that it could not be performed within a year, as the contract was purportedly formed on April 11, 2013, and SXU's academic year did not end until May 2014. For this same reason, SXU asserted that the statute of frauds barred plaintiff's claim for promissory estoppel. SXU attached to its motion an affidavit from Kathy McElligot, executive secretary in the Office of the Provost at SXU, in which McElligot averred that SXU's 2013-2014 academic year began on August 26, 2013, and ended on May 9, 2014. Finally, SXU argued that plaintiff's *quantum meruit* claim failed as a matter of law, as plaintiff failed to allege facts establishing SXU received any benefit from the tasks plaintiff purportedly performed or that SXU asked him to perform such tasks.

¶ 10 In June 2014, plaintiff filed a response to defendant's motion in which he alleged, among other things, that the purpose of the statute of frauds would not be served by dismissing his

breach of contract claim and that a question of fact existed as to whether he could complete his associate professor duties within a year. He attached to his response an affidavit in which he averred SXU's fall semester began on August 26, 2013, and the spring semester ended on May 9, 2014, with commencement taking place on May 10. In his response, plaintiff also argued that his detrimental reliance on SXU's promise of employment defeated SXU's statute of frauds claim. Furthermore, plaintiff alleged that he was not required to allege that SXU benefitted from or used his course materials at the pleading stage in order to survive dismissal on his *quantum meruit* claim.

¶ 11 In July 2014, SXU filed a reply, again arguing that plaintiff and SXU did not form a valid contract, plaintiff's breach of contract and promissory estoppel claims were barred by the statute of frauds, and his *quantum meruit* claim was legally insufficient.

¶ 12 Following a hearing later that month, the trial court granted defendant's motion to dismiss, dismissing plaintiff's case without prejudice and granting plaintiff leave to file a second amended complaint on or before August 28, 2014. After plaintiff chose not to do so, the court dismissed plaintiff's complaint with prejudice in September 2014 pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2014)). This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, plaintiff asserts the trial court erred by dismissing his complaint where (1) he sufficiently pled that he formed an oral contract with SXU and the statute of frauds did not preclude his breach of contract claim, (2) the statute of frauds did not preclude his promissory estoppel claim, and (3) he sufficiently set forth a claim for *quantum meruit*.

¶ 16 A. Standard of Review

¶ 17 The trial court dismissed plaintiff's complaint pursuant to section 2-619.1 of the Code.[1] Section 2-619.1 allows a party to combine a section 2-615 motion to dismiss with a section 2-619 motion to dismiss. 735 ILCS 5/2-619.1 (West 2014); *Bjork v. O'Meara*, 2013 IL 114044, ¶ 21. A section 2-615 motion to dismiss tests the legal sufficiency of a pleading, while a section 2-619 motion to dismiss admits the legal sufficiency of the pleading but asserts an affirmative matter defeats the claim. *Bjork*, 2013 IL 114044, ¶ 21. Dismissal based on a failure to state a cause of action under section 2-615 is appropriate only where "it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief." *Wilson v. County of Cook*, 2012 IL 112026, ¶ 14. A court must accept as true all well-pleaded facts and all reasonable inferences that can be drawn from those facts. *Pooh-Bah Enterprises*, 232 Ill. 2d 463, 473 (2009). Similarly, when ruling on a section 2-619 motion, a court must interpret all pleadings and supporting materials in favor of the nonmoving party. *Id.* We review a combined section 2-619.1 motion to dismiss *de novo*. *Gatreaux v. DKW Enterprises, LLC*, 2011 IL App (1st) 103482, ¶ 10; see also *Bjork*, 2013 IL 114044, ¶ 21 (review of a dismissal under section 2-615 or section 2-619 is *de novo*).

[1] SXU originally moved to dismiss plaintiff's complaint under section 2-619 of the Code; however, its argument as to plaintiff's *quantum meruit* claim was that the claim was insufficient as a matter of law. After plaintiff noted in its response to SXU's motion that such a claim is properly brought under section 2-615, SXU subsequently captioned its reply a "Reply In Support Of Motion To Dismiss Pursuant To 735 ILCS 5/2-619.1," although its subheading as to the *quantum meruit* claim continued to cite section 2-619. In its brief to our court, SXU characterizes its motion to dismiss as a section 2-619.1 motion, and the court's order indicates it dismissed plaintiff's complaint on SXU's section 2-619.1 motion to dismiss. Thus, it is clear that both parties and the court treated plaintiff's motion as a combined motion to dismiss under section 2-619.1 of the Code.

¶ 18 B. Breach of Contract Claim

¶ 19 Plaintiff first argues the trial court erred by dismissing his breach of contract claim, as he sufficiently pled that he formed an oral contract with SXU and the statute of frauds did not preclude his claim. We need not address plaintiff's contentions concerning the validity of the contract, however, because even assuming a valid contract was formed, the court correctly found it was barred by the statute of frauds.

¶ 20 The statute of frauds provides that, "[n]o action shall be brought * * * upon any agreement that is not to be performed within the space of one year from the making thereof, unless the promise or agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing." 740 ILCS 80/1 (West 2014). In other words, the statute of frauds prohibits oral contracts that cannot be performed within one year of their formation. *Robinson v. BDO Seidman, LLP*, 367 Ill. App. 3d 366, 370 (2006). The relevant test is whether the contract is capable of being performed within one year of its making, not whether such occurrence is likely. *Id.*

¶ 21 Plaintiff alleged that he entered into an oral contract with SXU on April 11, 2013, for the 2013-2014 academic year. However, SXU's academic year did not end until May 9, 2014. Accordingly, the trial court properly found the statute of frauds precluded plaintiff's breach of contract claim, as plaintiff could not perform the purported contract within one year from the date of its formation. See *Sinclair v. Sullivan Chevrolet Co.*, 31 Ill. 2d 507, 509-10 (1964) (where the plaintiff entered into a one-year oral contract on May 30 or May 31 to begin employment on June 6, the contract could not be performed within one year and thus fell within the ambit of the statute of frauds).

¶ 22 Nonetheless, plaintiff argues that barring his action based on the fact that the school year ended 13 months after the contract was purportedly formed would be elevating form over substance. We disagree. While plaintiff may believe the statute of frauds should provide an exception for a 13-month contract, the plain language of the statute makes no such exception. To the contrary, the statute provides that "[n]o action shall be brought * * * upon any agreement that is not to be performed within the space of one year from the making thereof," unless it is in writing. 740 ILCS 80/1 (West 2014). It is not our function to "depart from the plain statutory language by reading into it exceptions, limitations, or conditions that conflict with the expressed intent of the legislature." (Internal quotation marks omitted.) *Brunton v. Kruger*, 2015 IL 117663, ¶ 24. Notably, plaintiff has cited no authority suggesting that other courts have made an exception for 13-month contracts. We refuse to read into the statute a case-by-case exception to the one-year rule at the expense of ignoring the legislature's clear intent.

¶ 23 Equally unpersuasive is plaintiff's argument that "rigidly" applying the one-year rule to his claim would do nothing to advance the policy reasons behind the statute of frauds. Plaintiff observes that in *McInerney v. Charter Golf, Inc.*, 176 Ill. 2d 482, 496 (1997), Justice Nickels stated in his dissent that the statute of frauds' one-year provision is "poorly suited" to protect against the dangers of stale evidence and faded memories. Plaintiff notes that, in his case, the parties' contract had a definite start and stop date; accordingly, he posits SXU was not at risk of forgetting the contract's substance or of being liable for an interminable time span. However, our supreme court in *McInerney* explained that the statute of frauds exists "to protect not just the parties to a contract, but also—perhaps most importantly—to protect the fact finder from charlatans, perjurers and the problems of proof accompanying oral contracts." *McInerney*, 176 Ill. 2d at 489. As such, the statute seeks to prevent the fraudulent enforcement of alleged

contracts that were, in actuality, not made. *Rose v. Mavrakis*, 343 Ill. App. 3d 1086, 1097 (2003). By applying the statute of frauds to the alleged contract between SXU and plaintiff, we are safeguarding against the possibility of fraudulent claims, thereby advancing the policy reason behind the one-year rule.

¶ 24 Plaintiff also cites *K. Miller Construction Co., Inc. v. McGinnis*, 238 Ill. 2d 204 (2010), for the proposition that a "technical statutory violation" does not merit wholesale dismissal of his claim. However, *K. Miller* involved portions of the Home Repair and Remodeling Act (815 ILCS 513/15, 513/30 (West 2006)), which required a person engaged in home repair or remodeling to obtain a written contract before engaging in certain projects. *K. Miller*, 238 Ill. 2d at 296. The statute did not, however, explicitly state that violating the statute rendered a contract unenforceable. *Id.* at 297-98. Thus, the supreme court concluded the appellate court should have conducted a balancing analysis and considered the facts and public policies before concluding the plaintiff could not pursue relief for breach of contract. *Id.* at 298. Unlike the statutory provisions in *K. Miller*, the statute of frauds is explicitly clear that no action may be brought upon any agreement not to be performed within one year, unless it is in writing. 740 ILCS 80/1 (West 2014).

¶ 25 Finally, we find meritless plaintiff's contention that a factual dispute existed as to whether he could have completed his associate professor duties within one year. It is uncontested that the school year started in August 2013 and finished in May 2014—a time frame that is less than a year. However, the fact that plaintiff could have fully completed his associate professor duties within a one-year time frame is irrelevant. The relevant test is whether the contract is capable of being performed within one year of its making. *Robinson*, 367 Ill. App. 3d at 370. Where the contract was allegedly formed in April 2013, and the 2013-2014 school year did not end until

May 2014, plaintiff could not perform the contract within one year of its purported making. Accordingly, the trial court properly dismissed plaintiff's breach of contract claim.

¶ 26 C. Promissory Estoppel Claim

¶ 27 Plaintiff next argues the trial court erred by finding his promissory estoppel claim was barred by the statute of frauds. We disagree.

¶ 28 Under Illinois law, a plaintiff cannot avoid the application of the statute of frauds by pleading promissory estoppel. *Dickens v. Quincy College Corp.*, 245 Ill. App. 3d 1055, 1063 (1993). Instead, "[i]n order to trump the statute of frauds, a party must invoke the doctrine of equitable estoppel, which differs from promissory estoppel in that the party asserting it must additionally allege words or conduct amounting to a misrepresentation or concealment of material facts." *Cohn v. Checker Motors Corp.*, 233 Ill. App. 3d 839, 845 (1992). As plaintiff has not alleged that SXU misrepresented or concealed material facts, the trial court properly dismissed his promissory estoppel claim.

¶ 29 Nonetheless, plaintiff contends the statute of frauds does not defeat a promissory estoppel action where a plaintiff detrimentally relies on an oral promise, citing *George J. Johnson v. Ball, Inc.*, 248 Ill. App. 3d 859 (1993), and *Werner v. Timm*, 4 Ill. App. 3d 573 (1972). First, as SXU has stated in its brief, plaintiff's argument is merely tautological because, by its very definition, promissory estoppel requires detrimental reliance. See *Newton Tractor Sales v. Kubota Tractor Corp.*, 233 Ill. 2d 46, 51 (2009) (to establish a promissory estoppel claim, "the plaintiff must prove that (1) defendant made an unambiguous promise to plaintiff, (2) plaintiff relied on such promise, (3) plaintiff's reliance was expected and foreseeable by defendants, and (4) plaintiff relied on the promise to its detriment."). Second, neither *Johnson* nor *Werner* supports plaintiff's position, as neither case involved the application of the statute of frauds to a promissory estoppel

claim. Rather, the plaintiff in *Johnson* alleged claims for breach of contract and fraud, and the appellate court addressed the statute of frauds in relation to his breach of contract claim, noting the statute does not bar enforcement of a contract where there has been part performance by one party in reliance on the promise of another and that allegations of fraud may estop a party from relying on the statute of frauds. *Id.* at 861, 866. In *Werner*, the court estopped the defendants from raising a statute of frauds defense where they induced an oral modification to a written agreement and then attempted to bar the oral modification. *Werner*, 4 Ill. App. 3d at 575-76. Thus, neither case supports plaintiff's argument that the statute of frauds should not preclude his promissory estoppel claim.

¶ 30 Citing *Janda v. United States Cellular Corp.*, 2011 IL App (1st) 103552, ¶¶ 87–89, plaintiff also argues that "promissory estoppel allows a party to recover where the action taken in reliance on an oral promise differs from the contracted for performance." He contends the preparatory steps he took differ from the performance called for by his contract, *i.e.* teaching at SXU. However, whether plaintiff performed acts different than those he contracted for is irrelevant to whether the statute of frauds applies to his claim.

¶ 31 In sum, the trial court properly dismissed plaintiff's promissory estoppel claim.

¶ 32 D. *Quantum Meruit* Claim

¶ 33 Finally, plaintiff alleges the trial court erred by dismissing his *quantum meruit* claim, as he sufficiently pled the requisite elements to support that claim. We disagree.

¶ 34 The term *quantum meruit* literally means “as much as he deserves.” *Bernstein and Grazian, P.C. v. Grazian and Volpe, P.C.*, 402 Ill. App. 3d 961, 979 (2010). The principle behind recovery in *quantum meruit* is that the defendant has received a benefit and it would be unjust for the defendant to retain the benefit without compensating the plaintiff. *Van C. Argiris & Co. v.*

FMC Corp., 144 Ill. App. 3d 750, 753 (1986). Therefore, in order to recover in *quantum meruit*, it is critical that the defendant received some measurable benefit from the services performed by the plaintiff. *Id.* To successfully allege *quantum meruit*, plaintiff must allege facts showing that (1) he performed a service to benefit defendant, (2) he did not perform this service gratuitously, (3) defendant accepted this service, and (4) no contract existed to prescribe payment for this service. *Bernstein*, 402 Ill. App. 3d at 979.

¶ 35 Here, plaintiff alleged that in anticipation of the 2013-2014 school year, he spent about 50 hours performing such tasks as preparing new course syllabi, creating PowerPoint presentations, and designing assessment materials. He also alleged he did not perform the tasks gratuitously. However, plaintiff did not allege that SXU used or received any benefit from the materials he purportedly prepared. Thus, the trial court properly dismissed his *quantum meruit* claim. See *First National Bank of Springfield v. Malpractice Research, Inc.*, 179 Ill. 2d 353, 365 (1997) (where the defendants, an expert-search firm, performed work for the plaintiffs' malpractice action but the plaintiffs' attorney testified he did not use their work, the defendants failed to show its activities conferred any benefit on the plaintiffs; accordingly, the defendants' *quantum meruit* claim "necessarily" failed). We note that plaintiff claims he was not required to allege SXU used his materials at the pleading stage. However, he cites no authority to support his claim. Accordingly, we reject his argument that dismissal of his *quantum meruit* claim was erroneous.

¶ 36 CONCLUSION

¶ 37 For the reasons stated, we affirm the trial court's judgment.

¶ 38 Affirmed.