2017 IL App (4th) 160756-U

NO. 4-16-0756

FILED
May 3, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

CARDINAL CATASTROPHE SERVICES, INC.,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Jersey County
RICHARD FRANCIS,	)	No. 16SC79
Defendant-Appellee.	)	
	)	
	)	Honorable
	)	Eric S. Pistorius,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Turner and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* While the trial court's rationale in granting defendant's motion to dismiss plaintiff's breach-of-contract claim was in error, we affirm on a different basis found in the record, *i.e.*, the written "contract" attached to the complaint is not valid on its face.

¶ 2 On June 16, 2016, plaintiff, Cardinal Catastrophe Services, Inc. (Cardinal), filed a small claims complaint for breach of contract against defendant, Richard Francis. In October 2016, the trial court granted Francis's motion to dismiss Cardinal's claim. Cardinal appeals, arguing the court erred by granting Francis's motion. We affirm but remand with directions.

¶ 3 I. BACKGROUND

¶ 4 In June 2016, Cardinal filed a one-count complaint against Francis, which alleged as follows:

"1. Plaintiff CARDINAL CATASTROPHE SERVICES, INC. ('Plaintiff') entered into a contract ('the contract') with defendant RICHARD FRANCIS ('Defendant'), a copy of which is attached hereto as Exhibit 'A' and incorporated herein.

2. Plaintiff complied with the terms of the contract.

3. Defendant breached the contract by not paying amounts owed under the contract and hiring another person or entity to perform the same or substantially similar construction services at 106 Jersey Street, Brighton, Illinois, proximately causing damage to Plaintiff owed on the contract, including lost profits and/or liquidated damages, interest, costs of suit, and a reasonable attorney's fee."

Cardinal attached a document entitled "Authorization of the Insured" to the complaint. One of the terms in the document states, "Insured expressly agrees that they will not have another person, entity, roofer or Contractor perform or conduct the work necessitated by the claim described herein."

¶ 5 On June 24, 2016, counsel for Francis entered an appearance and filed an answer, denying the allegations in Cardinal's complaint. On August 15, 2016, Francis filed a motion to dismiss Cardinal's complaint. The motion alleged the contract attached to Cardinal's complaint was not enforceable for several reasons, including: (1) Cardinal did not comply with section 15 of the Home Repair and Remodeling Act (Home Remodeling Act) (815 ILCS 513/15 (West 2014)), which requires a written contract stating the total cost with materials; (2) Cardinal did not comply with section 20 of the Home Remodeling Act (815 ILCS 513/20 (West 2014)) because it did not provide Francis with a copy of the "Home Repair: Know Your Consumer Rights" pamphlet prior to execution of the contract; and (3) Cardinal and Francis did not sign and date a

"Consumer Rights Acknowledgment Form," which also violates section 20 of the Home Remodeling Act.

¶ 6 On August 22, 2016, Cardinal filed a response to defendant's motion to dismiss. That same day, Cardinal filed a motion for leave to file a first amended complaint. The basis for the request was to include an insurance document it did not have when the complaint was filed. (The insurance document is dated May 26, 2016. The "contract" is dated May 4, 2016.) According to Cardinal, the inclusion of the insurance document would provide the court with a more complete contract. The trial court granted leave to file the first amended complaint at the hearing on Francis' motion to dismiss. Francis told the court his arguments in support of his motion to dismiss remained the same.

¶ 7 On October 12, 2016, the trial court granted Francis's motion to dismiss. According to the court's written order:

> "The question is whether or not plaintiff in this cause of action followed the rules required by the Illinois Home Repair and Remodeling Act. Specifically, whether or not a pamphlet was provided to defendant, whether the contract attached to plaintiff's Complaint is in accordance to Section 15 of the Act listing total cost, including parts and materials, etc., and whether the contract complied with Section 20 of the contract [*sic*] regarding Consumer Rights Acknowledgment Form. At the hearing counsel for plaintiff cited the court to Supreme Court case, *K. Miller [Construction] Co., Inc. v. McGinnis*, 238 Ill. 2d 284[, 938 N.E.2d 471] (2010), which purportedly holds that a contractor that fails to comply with the Act is not necessarily barred from seeking recovery. However, a review of that case

reveals it applied only to sub-contractors, which is not applicable to this case. As such, defendant's Motion to Dismiss is hereby granted."

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Cardinal argues the trial court erred by dismissing its claim against Francis. According to Cardinal, the trial court erred by ruling general contractors are barred from recovering under a breach-of-contract claim if the general contractor did not comply with the Home Remodeling Act (815 ILCS 513/1 to 999 (West 2014)). We apply a *de novo* standard of review to the trial court's dismissal of a claim. *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 47, 978 N.E.2d 1020.

¶ 11 When ruling on a motion to dismiss, a trial court must accept as true all well-pleaded facts in the complaint and any reasonable inferences that may arise therefrom. *Bonhomme v. St. James*, 2012 IL 112393, ¶ 34, 970 N.E.2d 1. A cause of action should not be dismissed pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2014)) unless no set of facts can be proved entitling plaintiff to recover. *Khan*, 2012 IL 112219, ¶ 47, 978 N.E.2d 1020.

¶ 12 Francis argued the contract was unenforceable because Cardinal did not comply with the terms of the Home Remodeling Act. However, our supreme court in *K. Miller*, 238 Ill. 2d at 294, 938 N.E.2d at 478, stated "the fact that there has been a statutory violation does not, in itself, automatically render a contract unenforceable." With regard to the Home Remodeling Act, the supreme court stated "the General Assembly did not intend for violations of the writing requirement under the Act to render oral contracts unenforceable." *Id.* at 298, 938 N.E.2d at 481. If an oral contract is not automatically unenforceable, we see no reason to find a written contract

is automatically unenforceable because Cardinal failed to comply with the Home Remodeling Act. Any remedy for Cardinal's alleged violation of the Home Remodeling Act lies elsewhere. See *Id.* at 300, 938 N.E.2d at 482. Moreover, the trial court's attempt to distinguish *K. Miller* on the basis it only applies to subcontractors is clearly error. The plaintiff in *K. Miller* was a general contractor.

¶ 13 However, we are not restricted to affirming on the basis of the trial court's reasoning. *Stoll v. United Way of Champaign County, Illinois, Inc.*, 378 Ill. App. 3d 1048, 1051, 883 N.E.2d 575, 578 (2008) ("this court may affirm the trial court's judgment on any basis that is supported by the record"). Cardinal's complaint seeks monetary damages based on Francis's alleged breach of contract. However, the document attached to the complaint is not a valid contract as a matter of law. The document is titled "Authorization of the Insured" and provides authority for Cardinal to discuss Francis's claim with the insurance company, among other things.

¶ 14 When signed by Francis, this document lacked any information with regard to Francis's definite financial obligations under the agreement or the scope of work to be performed by Cardinal. "A contract may be enforced even though some contract terms may be missing or left to be agreed upon, but if the essential terms are so uncertain that there is no basis for deciding whether the agreement has been kept or broken, there is no contract." *Academy Chicago Publishers v. Cheever*, 144 Ill. 2d 24, 30, 578 N.E.2d 981, 984 (1991). The essential terms of this document are too uncertain to enforce as a contract. In addition to the uncertain terms already discussed, the document does not contain a loss date or an insurance claim number. While we affirm the trial court's dismissal of Cardinal's claim based on the written

"contract," we remand this case and direct the trial court to allow Cardinal to file an amended complaint if Cardinal believes it can succeed under an alternative theory of relief.

¶ 15 III. CONCLUSION

¶ 16 We affirm the order granting Francis's motion to dismiss Cardinal's breach-of-contract claim. However, we remand this case and direct the trial court to allow Cardinal to file an amended complaint if Cardinal believes it can proceed under an alternative theory of relief.

¶ 17 Affirmed but remanded with directions.