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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

WILLIAM C. JOHNSON and BEACON REALTY)	
CAPITAL, INC.,)	Appeal from
)	the Circuit Court
Plaintiffs-Appellants,)	of Cook County
)	
v.)	No. 06 CH 15052
)	
SISK COMPANIES, LLC, LAWRENCE SISK,)	
BULLHEAD ARIZONA DEVELOPMENT 223, LLC,)	
MANHATTAN COMMERCIAL INVESTMENTS I, LLC)	
and ROUTE 52 MANHATTAN, LLC,)	Honorable
)	Charles R. Winkler,
Defendants-Appellees.)	Judge Presiding.

JUSTICE SALONE delivered the judgment of the court.
Presiding Justice Steele and Justice Neville concurred in the judgment.

ORDER

Held: Managers and members of LLC's are not personally liable for debts of the LLC; the parties' written agreement controlled; there is no basis for a *quantum meruit* claim; dismissal with prejudice proper

¶ 1 This appeal arises from orders of the circuit court which granted a motion to dismiss the third amended complaint with prejudice pursuant to section 2-619 of the Code of Civil Procedure

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(Code) (735 ILCS 5/2-619 (West 2008)) and denied a motion for partial summary judgment pursuant to section 2-1005 of the Code (735 ILCS 5/2-1005 (West 2008)). For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 Procedural Background

¶ 4 Plaintiff Beacon Realty Capital, Inc. (Beacon), originally commenced this action in the Chancery Division of the circuit court of Cook County against defendant, Sisk Companies, LLC (Sisk Companies), seeking an accounting. Sisk Companies filed a section 2-619 motion to dismiss, which was denied by the trial court.

¶ 5 Subsequently, Beacon filed an amended complaint to incorporate other matters revealed during discovery and a motion for partial summary judgment. In a written memorandum and order on April 21, 2009, the trial court denied Beacon's motion. Beacon filed a second amended complaint, adding William Johnson, president of Beacon, as a plaintiff. Additionally, the second amended complaint added more defendants: Lawrence Sisk (Sisk), Bullhead Arizona Development 223, LLC (Bullhead), Manhattan Commercial Investments I, LLC (Manhattan), Tuscan Heights Investments I, LLC (Tuscan), and Route 52 Manhattan, LLC (Route 52). Defendants collectively filed a section 2-619 motion to dismiss the second amended complaint, which was denied on February 26, 2010. Beacon and Johnson subsequently filed a third amended complaint.

¶ 6 Defendants then moved to transfer the action to the Law Division, which was granted by agreement of all parties. Once the transfer was complete, defendants filed a section 2-619

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motion to dismiss the third amended complaint, which was granted on December 3, 2010, with prejudice. This timely appeal followed.

¶ 7 Factual Background

¶ 8 On September 13, 2005, Gene Guidici, the chief financial officer of the Sisk Companies, called Johnson, who was the president of Beacon. Guidici told Johnson that Sisk Companies had an option to purchase land in Bullhead City, Arizona, and made a non-refundable deposit of \$450,000 to secure the option. Guidici's firm was unable to obtain financing for the option within the requisite time frame of 10 days. Guidici inquired whether Johnson, through Beacon, could arrange for Sisk Companies to obtain a \$3,500,000 loan within 10 days so that the option would not be lost. After the call, Johnson made inquiries through his various contacts and determined that he would probably be able to arrange the loan through one or more "hard money lenders."¹ Johnson subsequently advised Guidici that Beacon would attempt to secure the financing for Sisk Companies within the 10-day time frame and that if a financing source introduced by Beacon was used to consummate the Bullhead City transaction, Beacon would be entitled to commission at the rate of 2 ½% of the amount of financing provided. Additionally, Johnson requested that Guidici's firm make a "tail commitment" to Beacon as follows:

"1. If a source introduced by Beacon and Johnson provided the financing the Sisk Companies and [Sisk] were then seeking, thereafter, at any time within a

¹A "hard money lender" is a firm that makes loans in excess of \$1,000,000 available within very short time periods and at a very high interest rate. The borrowers usually repay a "hard money loan" as quickly as possible through a lower interest loan from a conventional lender. Hard money loans are obtained only when the specific loan and time frame prevent the borrower from obtaining a loan from one of their usual sources.

period of three (3) years the Sisk Companies, [Sisk] or any entity associated with Sisk Companies or [Sisk] were to seek funding from the source introduced to them by Beacon and Johnson, Beacon would have the exclusive right to contact that source on their behalf to seek such funding; and

2. At any time during that three (3) year period when Beacon would have the exclusive right to approach that funding source on behalf of any [Sisk] or Sisk Companies entity, if that funding source issued a commitment to provide such financing substantially in accordance with the application therefor, Beacon would be entitled to a commission in an amount equal to two and one-half percent (2-1/2%) of the total amount of such financing commitment."

¶ 9 Later that same day, Guidici called Johnson and indicated that he had discussed the terms of the offer with Sisk, that he was accepting the terms of the tail commitment and authorized Johnson and Beacon to proceed on that basis.²

¶ 10 Upon receiving the authorization, Johnson contacted the Equity Funding Division of Centrum Financial Resources (Centrum), a hard money lender, and within two days determined that Centrum was a viable source of financing for Sisk and Sisk Companies. On September 15, 2005, Johnson sent a memorandum to Sisk, Guidici and Sisk Companies, briefly summarizing the agreement between the parties as of September 13, 2005, and identifying Centrum as the probable source of financing. Johnson subsequently worked on securing the financing for Sisk

²Both Guidici and Johnson averred that they entered into such oral contract on September 13, 2005.

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Companies, and spoke with Sisk several times between September 13 and September 16, 2005, and at no time was any issue raised regarding Johnson's memorandum. On September 16, 2005, Sisk signed and returned a copy of the memorandum to Johnson, and indicated therein that Bullhead would be the applicant for the financing. Centrum subsequently made a \$3,500,000 loan for the Bullhead City transaction within the requisite time period, which was personally guaranteed by Sisk. At the close of the financing, Beacon received commission per the terms of the parties' agreement.

¶ 11 In July 2006, Johnson and Beacon learned that Sisk and the Sisk Companies had obtained financing from Centrum for several other projects. The commencement of this litigation was the result.

¶ 12 ANALYSIS

¶ 13 On appeal, Johnson and Beacon contend that the order dismissing the third amended complaint in the law division should be vacated and that the prior orders denying defendants' motions to dismiss the complaint in the chancery division should be reinstated. Additionally, plaintiffs contend that: (1) dismissal of the alternate counts in the third amended complaint against Sisk, Bullhead, Manhattan, Tuscan and Route 52 based on a lack of privity was error; (2) Sisk Companies is bound by the September 13, 2005, oral agreement; and (3) denial of their motion for partial summary judgment was error.

¶ 14 Dismissal of the Third Amended Complaint

¶ 15 Plaintiffs first contend that the order dismissing the third amended complaint in the law division should be vacated and the prior orders which denied defendants' motions to dismiss the

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complaint in the chancery division should be reinstated.

¶ 16 A section 2-619 motion to dismiss admits the legal sufficiency of the complaint and raises defects, defenses, or other affirmative matters that appear on the face of the complaint or are established by external submissions that act to defeat the claim. *Krilich v. American National Bank and Trust Company of Chicago*, 334 Ill. App. 3d 563, 569-70 (2002). A section 2-619 proceeding permits a dismissal after the trial court considers issues of law or easily proved issues of fact. *Krilich*, 334 Ill. App. 3d at 570. The question on appeal is whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law. *Krilich*, 334 Ill. App. 3d at 370. Our standard of review of a motion to dismiss under section 2-619 of the Code is *de novo*. *Krilich*, 334 Ill. App. 3d at 569.

¶ 17 The third amended complaint essentially alleged that Sisk and Sisk Companies breached the parties' tail commitment of September 2005 by failing to pay Beacon any commission on financing for subsequent ventures secured through Centrum. Beacon sought damages in the amount of \$678,750.00, plus interest and penalties for the alleged breach. Defendants' 2-619 motion to dismiss the third amended complaint alleged that: (1) Beacon acted as broker for Bullhead only; (2) dismissal of Sisk as a defendant was warranted because as manager of a limited liability company (LLC), he was protected from personal liability; (3) dismissal of Sisk Companies was warranted because it was the managing member of Tuscan, which obtained financing from Centrum, and it was protected from personal liability; (4) Guidici did not have

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the authority to bind Sisk personally, or any of the other LLC defendants; (5) the written agreement reflected Beacon's intent to bind the borrower, not Sisk Companies; (6) the writing controls over the alleged oral agreement; (7) there was no meeting of the minds; (8) dismissal of Sisk was warranted because he had no contract with plaintiffs; (9) plaintiffs' contract was with Bullhead only; and (10) dismissal of the *quantum meruit* claim of Johnson was warranted because there was a written contract. The trial court granted defendants' motion to dismiss and concluded that the September 16, 2005, writing controlled the parties agreement and that Sisk signed it on behalf of Bullhead only.

¶ 18 We first note that we may affirm the judgment of the circuit court on any basis found in the record. *Piser v. State Farm Mutual Automobile Insurance Co.*, 405 Ill. App. 3d 341, 351 (2010). Accepting the legal sufficiency of the complaint, and upon examination of the record, we cannot conclude that any genuine issue of material fact exists that would have precluded dismissal and further find that dismissal was warranted as a matter of law.

¶ 19 First, we note that defendants Sisk and the Sisk Companies as managers or members of LLC's are shielded from personal liability. See *Puleo v. Topel*, 368 Ill. App. 3d 63, 70 (2006) (the Illinois Limited Liability Act does not provide for a member or manager's personal liability to a third party for an LLC's debts and liabilities). Thus, all claims against them for personal liability must fail.

¶ 20 Further, we find that the September 16, 2005, writing controlled the parties' agreement. According to plaintiffs' pleadings, the written agreement, prepared by Johnson, summarized the

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terms of the parties' oral agreement, and was signed by Sisk on behalf of Bullhead as applicant for the financing. It is established under the parol evidence rule that evidence of a prior or contemporaneous oral agreement is not admissible to vary or contradict the terms of a writing which is otherwise unambiguous on its face. *Land of Lincoln Savings and Loan v. Michigan Avenue National Bank of Chicago*, 103 Ill. App. 3d 1095, 1101 (1982). As there is no allegation of mutual mistake, conditional delivery, a lack of consideration or fraud (*Land of Lincoln*, 103 Ill. App. 3d at 1101) parol evidence is not admissible to construe the parties agreement in the case at bar. As such, we conclude that the written agreement constitutes the parties' whole agreement, and that written agreement was only between Beacon and Bullhead.

¶ 21 Additionally, we find that plaintiffs' *quantum meruit* claim must fail. *Quantum meruit* is based on the implied promise of a recipient of services to pay for valuable services because otherwise the recipient would be unjustly enriched. *Much Shelist Freed Denenberg and Ament, P.C. v. Lison*, 297 Ill. App. 3d 375, 379 (1998). This claim must fail because Beacon (and accordingly Johnson as president of Beacon) received the bargained for commission as agreed upon from its agreement with Bullhead.

¶ 22 Dismissal with prejudice is warranted where no amendment to the pleadings could cure any defects. *RBS Citizens, National Association v. RTG-Oak Lawn, LLC*, 407 Ill. App. 3d 183, 193 (2011). We therefore find that the trial court properly granted defendants' section 2-619 motion to dismiss plaintiffs' third amended complaint with prejudice.

¶ 23 Our conclusion makes it unnecessary to address plaintiffs' other issues.

¶ 24 CONCLUSION

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¶ 25 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 26 Affirmed.