No. 1-10-1895

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FIRST DIVISION
FILED: February 14, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JAMES C. HO,	)	APPEAL FROM THE
	)	CIRCUIT COURT OF
Plaintiff-Appellant,	)	COOK COUNTY.
	)	
v.	)	No. 07 L 012185
	)	
MOTOROLA, INC.,	)	HONORABLE
	)	DANIEL J. PIERCE,
Defendant-Appellee.	)	JUDGE PRESIDING.

JUSTICE HOFFMAN delivered the judgment of the court. Presiding Justice Hall and Justice Lampkin concurred in the judgment.

O R D E R

HELD: The circuit court did not abuse its discretion in dismissing the plaintiff's third amended complaint with prejudice based on the plaintiffs' failure to allege a clear and concise statement of his causes of action against the defendant.

The plaintiff, James C. Ho, brought this action against the defendant, Motorola, Inc. (Motorola), seeking recovery for breach of contract and common law fraud. After granting the plaintiff leave to file three successive amended complaints, the circuit court dismissed the action with prejudice because the plaintiff had

failed to allege a clear and concise statement of either of the causes of action asserted against Motorola and because he would not be able to allege such a statement. For the reasons that follow, we affirm the judgment of the circuit court.

The record establishes the following undisputed facts. In 2000, the plaintiff, who was represented by counsel, filed a federal discrimination action against Motorola, seeking damages and injunctive relief pursuant to Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e, *et seq*.). That lawsuit was settled in 2001. At the time, the plaintiff was receiving disability benefits under a disability plan governed by the federal Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. § 1001 *et seq.* (2000)). The settlement agreement provided for the payment of a cash amount and also provided that the plaintiff "will continue to be covered under Motorola's long-term disability plan and other health and benefit plans pursuant to the terms of the applicable plans and based on his ability to demonstrate that he is disabled." In addition, Motorola agreed not to inquire into the plaintiff's eligibility for past and continued disability benefits based on the allegations in the complaint. Motorola later amended the long-term disability plan to restrict coverage to 24 months.

In 2007, the plaintiff, appearing *pro se*, filed suit in the circuit court of Cook County for breach of contract and fraud.

Motorola removed the 2007 action to federal court, asserting federal jurisdiction based on complete preemption by ERISA. The federal court subsequently determined that, based on a perceived ambiguity in the settlement agreement, federal jurisdiction premised on ERISA preemption was not clear on the face of the complaint. Accordingly, the cause was remanded back to the circuit court.

Upon remand, Motorola moved for dismissal of the action pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-615, 2-619 (West 2008)). Motorola claimed, *inter alia*, that the plaintiff's complaint, which consisted of 72 pages and 370 paragraphs, did not comply with section 2-603(a) of the Code (735 ILCS 5/2-603(a) (West 2008)), which requires that a pleading "contain a plain and concise statement of the pleader's cause of action." The circuit court dismissed the complaint without prejudice, finding that it was "overly verbose and convoluted" and "repetitive and incomprehensible," in violation of section 2-603. Thereafter, the plaintiff filed an amended complaint and a second amended complaint, both of which were similarly dismissed based on the failure to comply with section 2-603(a).

After dismissing the second amended complaint, the court again granted the plaintiff leave to replead. The plaintiff's third

amended complaint consisted of 132 pages and 93 paragraphs. Count 1 of that complaint purported to assert a claim for breach of contract, and count 2 purported to allege a claim for common law fraud in the inducement.

On Motorola's motion, the circuit court dismissed the third amended complaint with prejudice, finding that it failed to comply with the pleading requirements set forth in sections 2-603(a) and 2-615(735 ILCS 5/2-603(a), 2-615 (West 2008)). In reaching this conclusion, the court observed that paragraph 2 of the third amended complaint "spans 22 pages and utilizes numerous nonsensical parentheticals and quotations." In addition, the court stated that it could not "decipher precisely what paragraph 2 alleges," that several other paragraphs "are equally lengthy and unintelligible," and that it could not determine from the plaintiff's allegations precisely how Motorola had allegedly breached the settlement agreement. The court concluded that any attempt to answer the plaintiff's final pleading "would be futile because its allegations are complex, nonsensical, run-on sentences that are impossible to understand."

The circuit court noted that the plaintiff, a *pro se* litigant, had filed three prior complaints, each of which had been dismissed because the court found them to be "incomprehensible." Considering the fact that the plaintiff had been granted multiple opportunities

to replead his causes of action in compliance with the Code, the court determined the plaintiff "was unable to do so, and will continue to be unable to do so." Moreover, the court observed that it had encouraged the plaintiff to obtain counsel and had offered him the opportunity to delay ruling on the motion to dismiss until he did so, but the plaintiff had refused that opportunity. Consequently, the court dismissed the plaintiff's third amended complaint with prejudice, and the plaintiff has appealed.

On appeal, the plaintiff contends that the trial court erred in dismissing his third amended complaint with prejudice. We cannot agree.

A motion to dismiss filed under section 2-615 of the Code, challenges the legal sufficiency of a complaint by asserting that it is substantially insufficient in law and does not state a legally cognizable claim. 735 ILCS 5/2-615(a) (West 2008). In deciding whether to grant a motion under section 2-615, substantial defects in prior pleadings may be considered, and the court may either authorize the plaintiff to file an amended pleading or terminate the litigation in whole or in part. 735 ILCS 5/2-615(c), (d) (West 2008).

In general, review of a dismissal pursuant to section 2-615 is *de novo*. *Morris B. Chapman & Associates, Ltd. v. Kitzman*, 193 Ill. 2d 560, 568, 739 N.E.2d 1263 (2000). However, the circuit court

has discretion in determining whether to allow an amendment to a complaint, and a reviewing court will not reverse the circuit court's decision absent an abuse of that discretion. *Clemons v. Mechanical Devices Co.*, 202 Ill. 2d 344, 351, 781 N.E.2d 1072 (2002). Thus, where an appeal challenges the dismissal of a complaint with prejudice based on repeated failures to comply with section 2-603(a), the circuit court's decision is reviewed for an abuse of discretion. See generally *Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 22, 919 N.E.2d 383 (2009). A reviewing court will find an abuse of discretion only where no reasonable person would take the view adopted by the trial court. *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 177, 797 N.E.2d 687 (2003).

Section 2-603(a) of the Code specifically mandates that "[a]ll pleadings shall contain a plain and concise statement of the pleader's cause of action." (735 ILCS 5/2-603(a) (West 2008)). It is established that a complaint may be dismissed for failure to meet statutory pleading requirements. *Rubino v. Circuit City Stores, Inc.*, 324 Ill. App. 3d 931, 940, 758 N.E.2d 1 (2001). Also, a complaint may be dismissed if it is drafted in such a manner as to render any attempt to answer futile. *Rubino*, 324 Ill. App. 3d at 940.

In this case, the circuit court determined that the

plaintiff's third amended complaint, comprising 132 pages and 93 paragraphs, failed to comply with section 2-603(a) of the Code. Our own review of that pleading confirms the circuit court's assessment that it consists of sentences and paragraphs that are excessively long and virtually unintelligible. In addition to the deficiencies specifically pointed out by the circuit court, we observe that count 1, which purports to allege a claim for breach of contract, comprises 15 pages but never alleges with any particularity in what manner Motorola allegedly breached the terms of the settlement agreement. In addition, count 2, purporting to allege common law fraud in the inducement, comprises 22 pages and asserts that the settlement agreement contains ambiguous language but fails to specifically explain the alleged material fact that was either intentionally made or not disclosed by Motorola. In light of these circumstances, we find no error in the circuit court's determination that the third amended complaint violates section 2-603(a) of the Code and that any attempt by Motorola to answer the third amended complaint would be futile.

In reaching this conclusion, we reject the plaintiff's argument that his third amended complaint should not have been dismissed with prejudice because it must be liberally construed and is subject to dismissal only if it appears that he could not recover under any set of facts. See *Illinois Graphics Co. v.*

Nickum, 159 Ill. 2d 469, 488-89, 639 N.E.2d 1282 (1994). Although we agree that this argument reflects the general rule governing the dismissal of defective pleadings, we are unpersuaded that the circuit court committed reversible error in this case, where the third amended complaint was dismissed after three prior pleadings had been dismissed on the same ground. See *Cable America, Inc.*, 396 Ill. App. 3d at 22; *Rubino*, 324 Ill. App. 3d at 940-41. Finally, we note that, although the plaintiff is a *pro se* litigant, he is obligated to comply with the same rules of procedure required of litigants who are represented by an attorney. See *Fiallo v. Lee*, 56 Ill. App. 3d 649, 657, 826 N.E.2d 936 (2005).

For the foregoing reasons, the judgment of the circuit court is affirmed.

Affirmed.