

FIRST DIVISION
FILED: October 3, 2011

No. 1-10-3465

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

OSCAR D. YOUNG,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 09 L 15756
)	
ALLSTATE INSURANCE COMPANY,)	Honorable
)	Charles R. Winkler,
Defendant-Appellee.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Where insurance agent alleged company's failure to pay various amounts upon the termination of his employment but complaint did not specify bases for claimed amounts, and payment of severance funds was established by record, complaint did not state breach of contract claim; the circuit court's dismissal of the complaint on defendant's motion was affirmed.

¶ 2 Plaintiff Oscar Young appeals *pro se* the circuit court's order granting the motion of defendant Allstate Insurance Company (Allstate) to dismiss Young's fifth amended complaint pursuant to sections 2-615 and 2-619(a)(9) of the Code of Civil Procedure (the Code) (735 ILCS 5/2-615, 2-619(a)(9) (West 2008)). On appeal, Young contends he should be allowed to again

amend his complaint and that Allstate committed breach of contract by failing to provide severance pay in a timely manner. We affirm.

¶ 3 The record establishes that Young worked as an agent for Allstate. On December 24, 2009, Young filed a *pro se* complaint stating he was employed by Allstate from 1977 to 1999 and resigned under duress and due to a hostile environment. Young asserted he was entitled to "renewal compensation" under the terms of a contract, and he sought \$662,000 in damages. No documents were attached to Young's first complaint.

¶ 4 On February 16, 2010, Allstate filed a combined motion to dismiss Young's complaint pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2008)). Allstate asserted that Young failed to state a valid claim for breach of contract because his complaint did not allege the terms of any contract or provide facts to show that Allstate breached those terms. In the alternative, Allstate argued the complaint should be dismissed because Young voluntarily terminated his employment with Allstate and because Young had acknowledged that he received the payment he was owed under the terms of a compensation agreement.

¶ 5 Allstate attached to its motion a copy of Young's compensation agreement that took effect May 29, 1977, and also attached various amendments to that agreement that were signed and dated by Young. Also attached to Allstate's motion was a copy of Young's letter of resignation dated December 24, 1999.

¶ 6 On March 2, 2010, Young filed an amended complaint seeking \$735,167 in damages, including profit sharing and retirement money of \$162,000, his last month's salary and vacation pay in 1999 of \$8,500, an annual renewal of \$80,000 per year from 2000 to 2009, and a pro-rated amount "to date" of \$6,667.

¶ 7 Young attached to that complaint a letter dated November 16, 2001, from Allstate human resource director Charles Bashaar to Young discussing a base severance payment of \$16,807 that

Young was owed at the time of his termination. Bashaar apologized for Allstate's delay in providing that payment to Young. Bashaar also referred to Young's stated desire to return to work at Allstate but noted an internal investigation conducted by Allstate's corporate security staff prior to Young's resignation.

¶ 8 The letter to Young went on to state, in relevant part:

"When you submitted your letter of resignation on December 24, 1999, you were reminded of [the option to receive enhanced severance pay equal to one year's pay as consideration for signing a general release and waiver upon termination.]

You chose, however, not to accept the enhanced severance pay option and instead elected the base severance pay option, which entitled you to a smaller severance payment (13 weeks of pay based on your 1998 earnings)."

¶ 9 A copy of a check payable to Young in the gross amount of \$16,807 and dated November 1, 2001, is included in the record. The record also includes several smaller checks payable to Young and endorsed by Young between January and April 2000.

¶ 10 On March 4, 2010, Young told the court he was in the process of retaining counsel, and the case was continued to allow Young to hire counsel and respond to Allstate's motion to dismiss. However, Young continued *pro se* and filed another amended complaint on March 29, 2010, that essentially restated his previous claims.

¶ 11 On April 14, 2010, Young filed a fourth amended complaint, alleging he was forced to resign from Allstate in 1999 "by lack of wages, inappropriate commission [and] termination of sublet lease from Allstate." The complaint asserted the letter from Bashaar acknowledged the money was not sent until almost two years after Young's resignation, causing great hardship to

Young and his family.

¶ 12 The complaint stated Young retained a lawyer in 2000 to assist him in electing a severance option and concluding his business relationship with Allstate. Accompanying the complaint was a May 2000 letter to Young from an attorney representing him, stating that she was awaiting a response from Allstate. Counsel advised Young in the letter, *inter alia*, to sign the enclosed waiver form "unless you only desire the base pay severance option." Allstate again moved to dismiss Young's complaint under sections 2-615 and 2-619(a)(9) of the Code.

¶ 13 On June 15, 2010, Young filed a fifth amended complaint seeking \$967,554.18 in damages. Young denied that he elected the base severance pay option and asserted that his claimed damages were supported by the documents executed in 2000. After several continuances, the circuit court granted Allstate's motion to dismiss with prejudice on October 29, 2010.

¶ 14 On appeal, Young contends the court erred in dismissing his complaint and asserts he should have been allowed to again amend his complaint. Young argues he was forced to resign from Allstate and the company did not provide his "separation funds" until 23 months after his employment ended, as shown by Bashaar's letter.

¶ 15 At the outset, we note that Young's arguments to this court consist of a disjointed recitation of facts and various legal theories. A *pro se* litigant is held to the same standards as a litigant represented by an attorney (*In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009)), and an appellant may not "foist the burden of argument and research" onto this court (*Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993)). However, the insufficiency of Young's brief does not affect this court's jurisdiction, and we elect to dispose of this appeal on its merits. See, e.g., *Tannenbaum v. Lincoln National Bank*, 143 Ill. App. 3d 572, 575 (1986) (reviewing court could decipher issues appellant intended to raise and also had benefit of opposing party's brief).

¶ 16 Allstate moved to dismiss Young's complaint under both section 2-615 and section 2-619 of the Code. A motion to dismiss pursuant to section 2-615 of the Code challenges the legal sufficiency of the complaint by alleging defects on the face of the complaint. *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81 (2004). The key inquiry is whether the allegations contained in the complaint, construed in the light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted. *Vitro*, 209 Ill. 2d at 81.

¶ 17 A motion to dismiss pursuant to section 2-619(a)(9), on the other hand, raises an "affirmative matter avoiding the legal effect or of defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2008). Such a motion is used to raise an affirmative matter that negates the claim, as opposed to challenging the essential allegations of the plaintiff's cause of action. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). A dismissal under either section 2-615 or section 2-619 of the Code is reviewed *de novo*. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006).

¶ 18 The record establishes that Young repeatedly amended his complaint to add additional theories of relief while at no point requesting leave from the circuit court to do so. However, even if we consider collectively every theory that Young set forth, he still did not plead facts sufficient to state a cause of action against Allstate.

¶ 19 The core of Young's complaints is that Allstate owed him money following his departure from the company and failed to pay him that money for almost two years. Young also asserts that Allstate was required to pay him additional amounts of money under various theories, including "profit sharing and retirement" and "annual renewal." In his most recent complaint, Young alleged that Allstate wrongfully discharged him from employment "in breach of contract" and committed civil conspiracy and intentional infliction of emotional distress.

¶ 20 The record establishes that Young resigned from Allstate in December 1999 and that he

received a base severance amount of \$16,807 in November 2001. While Allstate conceded the delivery of that money was untimely, it is uncontested that the money was received by Young. Young has not stated a legal theory under which he can recover damages for the tardy payment.

¶ 21 As to the additional legal theories and the damages claimed by Young, he has not stated facts to support those claims, despite the filing of multiple complaints. Although Young relies on the forms executed in 2000, those documents post-dated his 1999 resignation, and he has not explained how those documents support his claims for relief. Thus, even if those documents were part of a post-resignation negotiation between Young and Allstate, they do not establish that Young was owed any of the types of compensation that he now claims.

¶ 22 In sum, while Young amended his complaint numerous times to restate his theories of relief, he has not stated facts to support a cause of action for the late payment of his severance amount or for relief on any of his additional claims.

¶ 23 Accordingly, the circuit court's dismissal of Young's fourth amended complaint with prejudice is affirmed.

¶ 24 Affirmed.