

No. 1-10-1720

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
<i>ex rel.</i> THE ILLINOIS DEPARTMENT OF	)	Circuit Court of
HUMAN RIGHTS,	)	Cook County.
	)	
Plaintiff-Appellee,	)	
and	)	
	)	
DAVID W. WILEY,	)	No.    06 CH 20533
	)	
Intervenor-Appellant,	)	
	)	
v.	)	
	)	
THE CITY OF CHICAGO, CHICAGO	)	
FIRE DEPARTMENT,	)	Honorable
	)	Martin S. Agran,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Karnezis

**ORDER**

¶ 1 **HELD:** In an action by the Illinois Department of Human Rights to enforce an order of the Illinois Human Rights Commission, David Wiley intervened and filed his own complaint seeking prejudgment interest and attorney's fees. We affirmed the dismissal of Mr. Wiley's claims for prejudgment interest and attorney's fees pursuant to section 2-615 of the Code of Civil Procedure.

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¶ 2 In May 2007, the Illinois Department of Human Rights (the Department) filed a verified second-amended complaint for judicial enforcement against the City of Chicago, Chicago Fire Department (City). That action sought to enforce a September 1986 order from the Illinois Human Rights Commission (the Commission) finding that the City unlawfully discharged David Wiley from his position as a firefighter in the Chicago Fire Department and ordering the City to make Mr. Wiley "whole" by reinstating him with the rate of pay and the amount of seniority he would have had but for his unlawful discharge, as well as back pay and attorney's fees. The Department's verified second-amended complaint alleged the City had failed to make Mr. Wiley whole by failing to pay sufficient back pay and make appropriate pension contributions. Mr. Wiley intervened in the Department's enforcement action and filed his own amended-verified complaint seeking lost wages, benefits adjustments, prejudgment interest and attorney's fees. Mr. Wiley appeals from the circuit court's dismissal of his claims for prejudgment interest and attorney's fees. We affirm.

¶ 3 The City hired Mr. Wiley as a Chicago firefighter on February 19, 1980, during a labor strike. Because of the exigencies of the labor strike, Mr. Wiley began his duties without a complete medical examination. In January 1981, Mr. Wiley was hospitalized when a chest X-ray revealed spots on his lungs. Mr. Wiley was diagnosed with sarcoidosis. The City discharged Mr. Wiley on February 6, 1981. Mr. Wiley filed a charge with the Department alleging that the City had unlawfully terminated him based on his race (African-American) and on the basis of a physical disability (sarcoidosis). The Department investigated Mr. Wiley's charge and found substantial evidence to support his claim.

¶ 4 On June 14, 1982, the Department filed a complaint with the Commission alleging that the City's termination of Mr. Wiley constituted a civil rights violation pursuant to the Illinois Human

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Rights Act (IHRA) (775 ILCS 5/1-101 *et seq.* (West 2010)). The IHRA provides that it is a civil rights violation for any employer to discharge an employee on the basis of unlawful discrimination. 775 ILCS 5/2-102(A) (West 2010). The IHRA defines unlawful discrimination to include discrimination based on race or disability. 775 ILCS 5/1-103(Q) (West 2010).

¶ 5 Following a public hearing, the Administrative Law Judge (ALJ) issued a recommended order on November 7, 1985, that the Commission sustain Mr. Wiley's allegations with respect to disability discrimination and that he be reinstated "with full seniority" and back pay and such further relief as necessary to make him whole. On September 29, 1986, the Commission issued a final order affirming the ALJ's recommended order and finding that the City had violated Mr. Wiley's civil rights by improperly discriminating against him based on his physical disability. The Commission ordered the City to reinstate Mr. Wiley with the rate of pay and the amount of seniority he would have received had he not been unlawfully discharged in violation of his civil rights. The intent of the Commission's order was that Mr. Wiley's seniority should be calculated based on his original start date of February 19, 1980, as if there had been no break in service. The Commission also ordered the City to pay Mr. Wiley back pay, attorney's fees, and costs.

¶ 6 The City filed an appeal which was voluntarily dismissed on August 12, 1987. Meanwhile, the City reinstated Mr. Wiley as a firefighter on July 1, 1987, and he received an award of back pay, attorney's fees, and costs pursuant to the Commission's order of September 29, 1986. The City determined Mr. Wiley's seniority and rate of pay as if his service began on the date of his reinstatement, July 1, 1987.

¶ 7 In June 2004, Mr. Wiley prepared a grievance and submitted it to his union. Mr. Wiley's

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grievance concerned the failure of the City to reflect his correct seniority based on his original date of hire (February 19, 1980) in its employment records in violation of the Commission's order and in violation of the five collective bargaining agreements covering the period of January 1, 1984, through June 30, 2007. On June 22, 2004, the union submitted the grievance to the City. On June 23, 2004, the City denied the grievance as untimely.

¶ 8 On July 2, 2004, Mr. Wiley filed a petition with the Commission to enforce the September 29, 1986, order pursuant to section 8-111 of the IHRA, which states:

"When the Commission, at the instance of the Department or an aggrieved party, concludes that any person has violated a valid order of the Commission issued pursuant to this Act, and the violation and its effects are not promptly corrected, the Commission, through a panel of 3 members, shall order the Department to commence an action in the name of the People of the State of Illinois by complaint, alleging the violation, attaching a copy of the order of the Commission and praying for the issuance of an order directing such person, his or her or its officers, agents, servants, successors and assigns to comply with the order of the Commission." 775 ILCS 5/8-111(c) (West 2010).

¶ 9. Mr. Wiley claimed in his petition that, after reinstating him as a firefighter in 1987, the City violated the Commission's order of September 29, 1986, by erroneously treating him as if he was a new employee, hired on July 1, 1987, and by not granting him full seniority rights based on his original date of hire of February 19, 1980. Mr. Wiley noted that, the City's failure to accord him full seniority rights based on his original date of hire, had adversely affected him in several ways. First, under the current labor contract, firefighters receive "longevity pay" based on years of service. By

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treating him as if he had been hired on July 1, 1987, instead of February 19, 1980, the City erroneously deprived Mr. Wiley of seven years' of service when calculating his longevity pay. Second, the City's failure to grant Mr. Wiley full seniority rights based on his original date of hire has resulted in his loss of more desirable work assignments, overtime, and promotions, and has prevented him from receiving appropriate service credit toward his pension. The City also has failed to make appropriate pension contributions since he was receiving the incorrect salary.

¶ 10 On July 21, 2004, the Commission ordered the Department to commence an enforcement action. Prior to the commencement of the enforcement action, the City changed its records in May 2005 to reflect Mr. Wiley's correct hire date of February 19, 1980, and began compensating him accordingly.

¶ 11 On January 18, 2006, Mr. Wiley made a written demand to the City Clerk for back wages in the amount of \$90,991.42. The demand was expressly made to comply with the Attorney's Fees in Wage Actions Act (Fees Act), which provides for the allowance of attorney's fees where a written demand for "wages earned and due and owing according to the terms of the employment" is made "in writing at least 3 days before the action was brought, for a sum not exceeding the amount so found due and owing." 705 ILCS 225/1 (West 2010). The City did not pay Mr. Wiley the requested \$90,991.42.

¶ 12 On September 29, 2006, the Department filed an enforcement action in the circuit court against the City, seeking: back wages of \$90,991.42; retroactive pay (retro pay) of \$4,164 to reflect the salary increases Mr. Wiley had not received; interest on the back wages and retro pay at 5% per year; attorney's fees of \$59,312.50; and adjustments to his pension, retirement, and Medicare

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accounts. The City admitted Mr. Wiley was entitled to backpay, but not in the amount demanded in the complaint. The City denied that Mr. Wiley was entitled to retro pay, interest on the retro pay, or attorney's fees.

¶ 13 On December 6, 2006, the circuit court granted Mr. Wiley leave to intervene in the Department's enforcement action. Mr. Wiley filed a verified complaint in intervention alleging he was entitled to "back pay in the amount of approximately \$91,000" and retro pay "in an amount unknown at this time" calculated from July 1, 1987, to the present based on his original date of hire of February 19, 1980; prejudgment interest on both forms of pay; pension adjustments; and attorney's fees. The City admitted reinstating Mr. Wiley at the wrong seniority level, but stated that the mistake was inadvertent. The City also asserted that Mr. Wiley had failed to take timely action to call the mistake to the City's attention and that his complaint was barred by *laches*.

¶ 14 On May 15, 2007, the circuit court granted the Department leave to file a verified second-amended complaint changing its prayer for relief to omit a specific amount in back pay and to drop its demands for prejudgment interest and attorney's fees. Mr. Wiley moved to strike the Department's verified second-amended complaint for dropping the demands for prejudgment interest and attorney's fees. The Department responded that it had re-examined the law and concluded that Mr. Wiley was not entitled to recover prejudgment interest or attorney's fees under the IHRA, which governed the enforcement action. On July 27, 2007, the circuit court denied the motion to strike.

¶ 15 On November 2, 2007, the City filed a motion for summary judgment on Mr. Wiley's claims for prejudgment interest and attorney's fees. The City argued that Mr. Wiley's action was one for enforcement as an aggrieved party under the IHRA, and that prejudgment interest and attorney's fees

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were not available to Mr. Wiley under the IHRA.

¶ 16 In his response, Mr. Wiley stated he was not relying on the IHRA for an award of prejudgment interest. Rather, Mr. Wiley contended he was seeking prejudgment interest on equitable grounds because of the City's alleged bad conduct in discharging him in 1981 in violation of his civil rights and in failing to reinstate him at the proper seniority level based on his original date of hire. Alternatively, Mr. Wiley claimed he was entitled to prejudgment interest under the Interest Act, which provides: "[c]reditors shall be allowed to receive at the rate of five (5) per centum per annum for all moneys after they become due on any \*\*\* instrument of writing." 815 ILCS 205/2 (West 2010). Mr. Wiley argued that the collective bargaining agreements qualified as instruments of writing for purposes of awarding prejudgment interest. Mr. Wiley also asserted he was entitled to attorney's fees under the Fees Act.

¶ 17 On February 22, 2008, the circuit court granted the City's motion for summary judgment, but gave Mr. Wiley leave to file an amended complaint.

¶ 18 Mr. Wiley filed his amended-verified complaint intervening in the Department's enforcement action on March 28, 2008. In his amended-verified complaint, Mr. Wiley alleged that the City had violated the Commission's order of September 29, 1986, by failing to reinstate him at his proper seniority level. He alleged he had improperly received no service credit toward his pension from February 6, 1981, to June 30, 1987, and that the City had failed to pay him appropriate longevity pay as provided for in the five collective bargaining agreements that covered the relevant time period. Mr. Wiley sought unpaid back wages "in the amount of approximately \$91,000," adjustments to his pension account, recalculation of his retro pay based on his correct seniority level, and attorney's

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fees from the City pursuant to the Fees Act. Mr. Wiley sought prejudgment interest on his unpaid wages and on his unpaid retro pay pursuant to the Interest Act, or, alternatively, on equitable grounds.

¶ 19 On April 18, 2008, the City filed a combined motion to dismiss Mr. Wiley's claims in his amended-verified complaint for breach of the collective bargaining agreements, equitable and statutory interest, and attorney's fees pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 5/2-619 (West 2010)). Section 2-619.1, which provides for combined motions, states that they shall be in parts, with each part specifying the section of the Code under which it was made. 735 ILCS 5/2-619.1 (West 2010). The City's motion failed to comply with section 2-619.1 as it was not made in parts and did not specify which of its arguments were made pursuant to section 2-615 and which arguments were made pursuant to section 2-619. Instead, the City made all of its arguments for dismissal under a single section labeled "Argument." The City argued, therein, that Mr. Wiley's enforcement action could only be brought under the IHRA, and any claims "which go beyond the claims contemplated by the [IHRA] should be dismissed." The City argued that Mr. Wiley's claims for prejudgment interest and attorney's fees under the IHRA should be dismissed because the IHRA does not allow for the recovery thereof. The City also argued that Mr. Wiley's claims for prejudgment interest on equitable grounds and pursuant to the Interest Act should be dismissed because Mr. Wiley had failed to plead sufficient facts to support recovery. The City further argued that Mr. Wiley's claims for breach of the collective bargaining agreements should be dismissed for lack of standing. In addition, the City argued that Mr. Wiley's claims for attorney's fees pursuant to the Fees Act should be dismissed because the Fees Act does not apply to

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municipalities and does not apply where the plaintiff is subject to a collective bargaining agreement allowing for a grievance procedure for the redress of wage issues.

¶ 20 On May 20, 2008, Mr. Wiley filed his response to the City's motion to dismiss and asserted he was not suing under the IHRA, but, instead, was suing to enforce a Commission order. He argued he could recover interest under the Interest Act and on equitable grounds, and that he had complied with the requirements of the Fees Act.

¶ 21 On July 16, 2008, the circuit court granted the City's motion to dismiss in a written order that did not specify the basis for its decision or delineate the section of the Code upon which it was relying. The record on appeal contains no report of proceedings of the motion hearing of July 16, 2008, setting forth the court's rationale for granting the City's motion to dismiss.

¶ 22 Mr. Wiley filed a motion for reconsideration indicating that the circuit court had granted the City's motion to dismiss based on Mr. Wiley's failure to exhaust all his rights under the collective bargaining agreements. Mr. Wiley argued that the circuit court should reverse its dismissal because he had adequately pleaded exhaustion of his rights under the collective bargaining agreements. The circuit court denied Mr. Wiley's motion for reconsideration on October 3, 2008. The record on appeal contains no transcript of the hearing on the motion.

¶ 23 In February 2009, the parties reached agreement that Mr. Wiley had lost wages of \$94,634.16 between 1987 and May 2005. With an agreed offsetting adjustment of \$41,535.18 representing retro pay Mr. Wiley had received during the same period, he was due \$53,098.98. On June 16, 2009, Mr. Wiley filed a motion to compel the City to pay him his lost wages of \$53,098.98. The circuit court granted the motion, and ordered the City to pay Mr. Wiley \$53,098.98 in lost wages

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by July 31, 2009. Subsequent status orders reference continuing negotiations to resolve pension issues.

¶ 24 After all the outstanding issues were resolved, the court entered an order of voluntary dismissal on May 17, 2010. Mr. Wiley filed his timely notice of appeal on June 14, 2010, from the orders dismissing his claims for prejudgment interest and attorney's fees and denying his motion for reconsideration.

¶ 25 The City argues there is an inadequate record for appellate review of the circuit court's dismissal order because there is no report of proceedings of the motion hearing of July 16, 2008. Generally, the appellant has the burden of providing a sufficient record to support his claim of error, and in the absence of such a record, the reviewing court presumes that the circuit court's order was in conformity with established legal principles and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In the absence of a sufficient record, the reviewing court may dismiss the appeal or summarily affirm the judgment of the circuit court. *Marx Transport, Inc. v. Air Express International Corp.*, 379 Ill. App. 3d 849, 853 (2008). However, the "failure to present a report of proceedings does not require dismissal or affirmance where the issues can be resolved on the record as it stands." *Venturini v. Affatato*, 84 Ill. App. 3d 547, 552 (1980); see also *McGee v. State Farm & Casualty Co.*, 315 Ill. App. 3d 673, 679-80 (2000). Where the issues involve questions of law, the appellant's failure to provide the report of proceedings does not bar this court's review. *Byrne v. City of Chicago*, 215 Ill. App. 3d 698, 705 (1991). In the present case, the issue is whether dismissal was proper based on the motion and materials filed, a question of law subject to *de novo* review that does not require resort to specific arguments advanced at the motion to

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dismiss or specific reasons relied upon by the circuit court. See *e.g.*, *Venturini*, 84 Ill. App. 3d at 552.

¶26 We proceed to address whether the circuit court erred by granting the City's combined motion to dismiss under section 2-619.1. As discussed *supra*, the City failed to comply with section 2-619.1 because it did not label or delineate which arguments were made pursuant to section 2-615 and which arguments were made pursuant to section 2-619. "While a failure to properly label a combined motion to dismiss is not a pleading practice we encourage, a reversal for that deficiency is appropriate only when prejudice to the nonmovant results." *Burton v. Airborne Express, Inc.*, 367 Ill. App. 3d 1026, 1029 (2006); see also *Storm & Associates, Ltd. v. Cuculich*, 298 Ill. App. 3d 1040, 1046 (1998). Mr. Wiley raises no issue on appeal concerning the form of the motion, nor does he argue that he suffered any prejudice thereby; accordingly, any such issue is waived. *Burton*, 367 Ill. App. 3d at 1029-30.

¶27 Although the combined motion to dismiss was not properly labeled, and the dismissal order did not state upon which section of the Code it was based, review of the motion's grounds and its treatment by the parties indicate the City was arguing: (1) Mr. Wiley's claims for prejudgment interest and attorney's fees failed to state a cause of action pursuant to section 2-615; and (2) to the extent Mr. Wiley's claims are premised on breach of the collective bargaining agreements, they should be dismissed for lack of standing pursuant to section 2-619. We may review the dismissal on both bases. See *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 484 (1994). We also note the well-established rule that we may affirm on any basis in the record, regardless of the circuit court's rationale. *Sherman v. Township High School District 214*, 404 Ill. App. 3d 1101, 1109 (2010).

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¶ 28 We begin our analysis by reviewing the dismissal under section 2-615. Dismissal of a cause of action pursuant to section 2-615 is appropriate only when it clearly appears no set of facts could ever be proved under the pleadings that would entitle plaintiff to recover. *Mt. Zion State Bank & Trust v. Consolidated Communications, Inc.*, 169 Ill. 2d 110, 115 (1995). On review of an order granting a section 2-615 motion, all well-pleaded facts and all reasonable inferences from them are taken as true. *Id.* at 115. Whether a complaint states a valid cause of action is a question of law, and our review of a dismissal pursuant to a section 2-615 motion is *de novo*. *Majumdar v. Lurie*, 274 Ill. App. 3d 267, 268 (1995).

¶ 29 First, Mr. Wiley contends the circuit court erred in dismissing his claim for an equitable award of prejudgment interest. Generally, interest is not recoverable unless provided for by agreement of the parties or by statute. *City of Peoria Mun. Employees Ass'n v. City of Peoria*, 217 Ill. App. 3d 550, 556 (1991). However, prejudgment interest may be supported by equitable principles where there is an element of "bad conduct" constituting actual or constructive fraud or vexatious delay. *Zokoych v. Spalding*, 123 Ill. App. 3d 921, 938 (1984). See, also *Kozak v. Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago*, 128 Ill. App. 3d 678, 683 (1984) (defendant committed bad conduct sufficient to find an equitable basis for awarding prejudgment interest when it deliberately concealed its change in statutory construction that would decrease certain widows' annuities owed under the Illinois Pension Code); *Finley v. Finley*, 81 Ill. 2d 317, 333 (1980) (ex-husband committed bad conduct sufficient to find an equitable basis for awarding interest on past-due periodic support payments where he deprived his ex-wife of child support for over 10 years); *City of Peoria*, 217 Ill. App. 3d at 556 (during a nearly eight-year

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employment compensation dispute, the City of Peoria committed bad conduct supporting an equitable award of prejudgment interest where the City "changed its stand on basic facts even in light of express findings \*\*\* has twisted the arguments of the plaintiffs and continuously attempted to reopen issues previously determined \*\*\* [and] has caused delay and unreasonably complicated the issues.")

¶ 30 Mr. Wiley contends he was entitled to an equitable award of prejudgment interest because the City committed the requisite bad conduct when it intentionally violated his civil rights by terminating him on the basis of a physical disability. We disagree. The City's violation of Mr. Wiley's civil rights was addressed by the Commission on September 29, 1986, when it ordered Mr. Wiley's reinstatement with the rate of pay and the amount of seniority he would have received had he not been unlawfully discharged, and also ordered back pay sufficient to make Mr. Wiley "whole," as well as attorney's fees and costs. The Commission did not expressly order the payment of any interest thereon. The City filed an appeal of the Commission's order of September 29, 1986, but the appeal was voluntarily dismissed on August 12, 1987. There is no record of Mr. Wiley filing any appeal of the Commission's order. Thus, the Commission's September 29, 1986, order is not properly before us and may not be relitigated here. Rather, the only issue properly before us is whether the City committed bad conduct *subsequent* to the Commission's September 29, 1986, order that provides a basis for affording Mr. Wiley an equitable award of prejudgment interest.

¶ 31 Mr. Wiley contends the City engaged in bad conduct subsequent to the Commission's September 29, 1986, order when it failed to reinstate him with the rate of pay and the amount of seniority he would have had but for the civil rights violation, resulting in erroneous pension

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calculations, loss of retro pay, and violations of the collective bargaining agreements. However, Mr. Wiley never pleaded in his amended-verified complaint that the City intentionally reinstated him at the wrong pay rate and seniority level, or that the City's conduct was anything other than an accident or bureaucratic mix-up. In the absence of any intentional bad conduct rising to the level of fraud or vexatious delay on the part of the City, an equitable award of prejudgment interest may not be made. See *e.g.*, *Finley*, *Kozak*, and *City of Peoria* (in which equitable awards of interest were affirmed based on the respective defendants' intentional bad conduct amounting to actual or constructive fraud or vexatious delay.)

¶ 32 Mr. Wiley also contends the City engaged in bad conduct subsequent to the Commission's September 29, 1986, order when it failed to promptly take any corrective actions, even after Mr. Wiley filed his written grievance and made his written demand for unpaid wages. Mr. Wiley's written grievance, which he attached to his amended-verified complaint, concerned the City's failure to calculate his seniority based on his original date of hire of February 19, 1980, in violation of the Commission's order and the collective bargaining agreements. The firefighters' union submitted this grievance to the City on June 22, 2004. The City denied Mr. Wiley's grievance by letter the next day, June 23, 2004. The letter, which Mr. Wiley also attached to his amended-verified complaint, states that the grievance was denied because it was untimely filed under the collective bargaining agreement. Mr. Wiley made no allegations in his amended-verified complaint, and attached no documents thereto, disputing the city's finding that his grievance was subject to dismissal as being untimely filed. The City's denial of Mr. Wiley's grievance as untimely was not "bad conduct" constituting actual or constructive fraud or vexatious delay sufficient to justify an equitable award

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of prejudgment interest.

¶ 33 Mr. Wiley contends the City's delay in complying with his written letter demand for wages until July 2009 was indicative of bad conduct sufficient to justify an equitable award of prejudgment interest on his unpaid wages. We disagree. Mr. Wiley's written letter demand for unpaid wages, which he attached to his amended-verified complaint as "Exhibit 7," was dated January 18, 2006, and stated it was made to comply with the Fees Act. Mr. Wiley demanded \$90,991.42 as wages owed to him from July 1987 to May 2005, and referenced certain "accompanying documents, which demonstrate that Mr. Wiley was repeatedly paid at the wrong step rate as a fire fighter during this time frame." The only accompanying documents in "Exhibit 7" are City calculations indicating that \$90,991.42 represents the "unadjusted difference" between the wages Mr. Wiley received from 1987 to 2005 and the wages he should have received. Thus, from the face of the document attached to the amended-verified complaint, the \$90,991.42 was not conceded by the City to be the amount of wages actually due Mr. Wiley, but rather, it was an unadjusted amount potentially subject to downward modification based on further calculations. The City's failure to immediately pay Mr. Wiley's wage demand of \$90,991.42 prior to a determination of the appropriate adjustments was not improper or bad conduct amounting to fraud or vexatious delay entitling Mr. Wiley to equitable interest. Further, the City's reasonable defense to Mr. Wiley's amended-verified complaint did not constitute fraud or vexatious delay. See *e.g.*, *Jensen v. Chicago & Western Indiana R.R. Co.*, 94 Ill. App. 3d 915, 939 (1981); *Hamilton v. American Gage & Machine Corp.*, 35 Ill. App. 3d 845, 853 (1976).

¶ 34 Mr. Wiley argues he is entitled to an equitable award of prejudgment interest based on the City's initial failure to respond to Mr. Wiley's 2004 petition to enforce the Commission order, and

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based on the City's five-month delay from February to July 2009 in making the agreed-upon payment of back wages. Mr. Wiley failed to raise these allegations in his amended-verified complaint and, therefore, has waived review thereof. *Palen v. Daewoo Motor Co. Ltd.*, 358 Ill. App. 3d 649, 658 (2005).

¶ 35 In sum, Mr. Wiley failed to plead facts establishing that the City engaged in purposeful bad conduct amounting to actual or constructive fraud or vexatious delay when it failed to comply with a portion of the Commission order. Accordingly, as Mr. Wiley failed to plead the necessary elements for recovery of equitable interest, we affirm the circuit court's dismissal of Mr. Wiley's claim for equitable interest pursuant to section 2-615.

¶ 36 Next, Mr. Wiley contends the circuit court erred by dismissing his claim for statutory interest under section 2 of the Interest Act, which states: "Creditors shall be allowed to receive at the rate of five (5) per centum per annum for all moneys after they become due on any bond, bill, promissory note, or other instrument of writing." 815 ILCS 205/2 (West 2010). The Interest Act does not specifically authorize the assessment of interest against municipalities. *Kozak*, 128 Ill. App. 3d at 681. "An exception to this rule applies where a municipality has wrongfully exacted money and holds it without just right or claim." *Raintree Homes, Inc. v. Village of Long Grove*, 389 Ill. App. 3d 836, 871 (2009). Even assuming, without deciding, that the exception applies here, Mr. Wiley's claim for statutory interest still fails because he failed to plead all the requisite elements for recovery.

¶ 37 We have held "[t]o recover prejudgment interest under the Interest Act, there must be a fixed and easily calculated amount due from a debtor-creditor relationship that has come into existence by virtue of a written instrument." *Cress v. Recreation Services, Inc.*, 341 Ill. App. 3d 149, 195-96

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(2003). See also *Santa's Best Craft, L.L.C. v. Zurich American Insurance Co.*, 408 Ill. App. 3d 173, 191 (2010) ("[i]n order to recover prejudgment interest, the amount due must be liquidated or subject to an easy determination.") In his amended-verified complaint, Mr. Wiley pleaded for statutory interest on the amounts of his lost wages and retro pay, but he failed to plead that there was a fixed and easily calculated amount due from a debtor-creditor relationship that has come into existence by virtue of a written instrument. Mr. Wiley pleaded that the amount of wages owed him was "approximately" \$91,000 and that the amount of retro pay was "unknown" at that time. As the total amount due him was "unknown" at the time of the filing of his amended-verified complaint, and, therefore, not easily fixed and calculated, the circuit court did not err in dismissing his claim for statutory interest.

¶ 38 Further, Mr. Wiley failed to plead the other required element for the recovery of statutory interest under the Interest Act, specifically, that the amounts due him were from a debtor-creditor relationship that has come into existence by virtue of a written instrument. Although Mr. Wiley argues on appeal that the collective bargaining agreements constitute the written instruments creating the debtor-creditor relationship supporting the recovery of statutory interest under the Interest Act, Mr. Wiley failed to specifically plead those facts in his amended-verified complaint. Accordingly, Mr. Wiley has failed to state a cause of action under the Interest Act and, therefore, we affirm the dismissal of Mr. Wiley's claim for statutory interest pursuant to section 2-615.

¶ 39 Next, Mr. Wiley contends the circuit court erred by dismissing his claim for attorney's fees under the Fees Act, which states:

"Whenever \*\*\* [an] employee brings an action for wages earned and due and owing

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according to the terms of the employment, *and establishes by the decision of the court or jury that the amount for which he or she has brought the action is justly due and owing, and that a demand was made in writing at least 3 days before the action was brought, for a sum not exceeding the amount so found due and owing*, then the court shall allow to the plaintiff a reasonable attorney fee of not less than \$10, in addition to the amount found due and owing for wages, to be taxed as costs of the action." (Emphasis added.) 705 ILCS 225/1 (West 2010).

¶ 40 Mr. Wiley sought wages in the sum of \$90,991.42, but he never pleaded a decision of a court or jury that he was justly due and owed that amount, and therefore he is not entitled to the recovery of attorney's fees under the Fees Act. See *Anderson v. First American Group of Companies, Inc.*, 353 Ill. App. 3d 403, 413 (2004) ("[I]n order to recover under the Fee[s] Act, a plaintiff must strictly comply with its provisions.") Accordingly, Mr. Wiley has failed to state a cause of action for attorney's fees under the Fees Act and, therefore, we affirm the dismissal of Mr. Wiley's claim pursuant to section 2-615.

¶ 41 For the foregoing reasons, we affirm the circuit court. As a result of our disposition of this case, we need not address the arguments for dismissal pursuant to section 2-619.

¶ 42 Affirmed.