

No. 1-10-3216

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

ARIES GROUP ENTERPRISES, INC., and)	Appeal from the Circuit Court
ALEXEI DOUBOVIK,)	of Cook County.
)	
Plaintiffs-Appellants,)	
)	
v.)	No. 07 L 006436
)	
FIRST BANK AND TRUST COMPANY OF)	
ILLINOIS,)	
)	Honorable Brigid Mary McGrath,
Defendant-Appellee.)	Judge Presiding.

Justice Murphy delivered the judgment of the court.

Presiding Justice Steele and Justice Neville concurred in the judgment.

ORDER

¶ 1 *HELD:* Where plaintiffs failed to provide legal and factual authority in support of issues presented on appeal and failed to seek leave to amend their complaint in the trial court, these arguments are considered waived and dismissal of the complaint must be affirmed.

¶ 2 This case is before this court on plaintiffs' appeal of the trial court's order granting defendant's motions to dismiss plaintiffs' two count complaint with prejudice. On January 3,

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2008, the trial court granted defendant's motion to dismiss count I of plaintiffs' complaint, sounding in breach of contract pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2006)). However, the trial court denied the motion as to plaintiffs' second count for aiding and abetting the commission of a fraud. On February 13, 2008, defendant filed a motion to dismiss count II pursuant to 2-619(a)(9) of the Code of Civil Procedure. 735 ILCS 5/2-619(a)(9) (West 2008). On September 27, 2010, the trial court granted defendant's motion to dismiss count II, including language that count I was also dismissed with prejudice.

¶ 3 Plaintiffs filed their notice of appeal on October 26, 2010. They assert on appeal that the trial court erred in dismissing count I of their complaint for failure to state a cause of action. Plaintiffs also contend that the trial court erroneously granted defendant's motion to dismiss count II based on its claims that Illinois does not recognize a cause of action for aiding and abetting common law fraud and that it was barred by the Illinois Credit Agreements Act. For the following reasons, we affirm the judgment of the trial court.

¶ 4 I. BACKGROUND

¶ 5 On June 21, 2007, plaintiffs, Aries Group Enterprises, Inc. (Aries) and Alexei Doubovik, filed their two count complaint against defendant First Bank and Trust Company of Illinois (First Bank) sounding in breach of contract and aiding and abetting the commission of a fraud. The complaint centered around the financing and development of Astoria Place. Astoria Place was a residential subdivision project consisting of the construction and sale of 15 single family residences.

¶ 6 Plaintiffs alleged that Astoria Place Venture, LLC was formed for the purpose of developing vacant land in Arlington Heights, Illinois. SLB Entereprises, LLC (SLB), owned

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100% of the beneficial interest of a land trust at First Bank that owned the vacant land.

According to the complaint, SLB arranged for the financing of the development and held a 50% ownership interest in Astoria Place. Aries and Doubovik each held 25% interests in Astoria Place. On September 30, 2002, SLB secured financing through First Bank under a construction loan agreement, revising a preexisting loan agreement in the amount of \$4.7 million and secured by a mortgage and guaranty of payment and performance by Norman M. Hassinger, Jr., who was manager of SLB. The 2002 financing was in the amount of \$7 million and was for construction of the 15 homes.

¶ 7 Plaintiffs attached an operating agreement for Astoria Place to their complaint. The agreement called for plaintiffs and SLB to contribute \$500,000 each for land development costs and attached the aforementioned ownership interests in Astoria Place to each. The return of capital contributions was subordinated to repayment of the \$7 million financing to First Bank and development costs, reimbursable expenses and management fees. Plaintiffs were to receive the first \$250,000 of net proceeds after the return of all capital and SLB was to receive the second \$250,000. Further net proceeds were to be distributed according to the parties ownership percentages.

¶ 8 In 2005 there remained three undeveloped and unsold lots and SLB, Aries and Doubovik amended the operating agreement. Around this time, Aries and Hassinger entered into negotiations to ensure Aries and Doubovik would receive money owed pursuant to the operating agreement. Hassinger assured that they would be paid, but no payment or accounting was made. Plaintiffs subsequently learned that Hassinger had not paid down the outstanding mortgage on the property.

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¶ 9 In their complaint, plaintiffs alleged that First Bank was aware of all agreements and obligations between the parties. Plaintiffs asserted that First Bank owes a duty of disclosure and to follow the terms of the contract with respect to the pay-down of the mortgage. Because First Bank did not require a pay-down upon the sale of each home and Hassinger was allowed to make alternative financing arrangements, plaintiffs alleged that First Bank breached its contractual obligations.

¶ 10 Plaintiffs also alleged that First Bank's actions constituted aiding and abetting the fraudulent activities of Hassinger. Despite First Bank's awareness of the contract and agreements between the parties, plaintiffs asserted that First Bank allowed Hassinger to change the arrangements and provided additional financing agreements. Plaintiffs claimed that their interests secured by the mortgage were rendered worthless by Hassinger's fraudulent conduct and First Bank's aiding and abetting that conduct.

¶ 11 On August 15, 2007, First Bank filed a motion to dismiss plaintiffs' complaint pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2006)) and for sanctions pursuant to Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. February 1, 1994)). First Bank argued that the complaint was legally and factually baseless and that there were no allegations that plaintiffs had any agreements or dealings with First Bank. Because plaintiffs failed to plead any elements of breach of contract against First Bank, it argued that count I must be dismissed. First Bank also argued that plaintiffs' second count for aiding and abetting common law fraud failed to state a claim as Illinois law does not recognize such a tort and because the claim was barred by the Illinois Credit Agreements Act. On January 3, 2008, the trial court granted the motion in part and denied it in part. The trial court dismissed count I, but

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denied the motion as to plaintiffs' second count for aiding and abetting the commission of a fraud.

¶ 12 On February 13, 2008, defendant filed a motion to dismiss count II pursuant to section 2-619(a)(9) of the Code of Civil Procedure. 735 ILCS 5/2-619(a)(9) (West 2008). First Bank argued that plaintiffs had no standing to bring the claim, the allegations were contrary to the terms of the loan agreement, and that the claim was barred by the Illinois Credit Agreements Act (815 ILCS 160/1 *et seq.* (West 2006)). On September 27, 2010, the trial court granted defendant's motion to dismiss count II, including language that count I was also dismissed with prejudice. The instant appeal followed.

¶ 13

II. ANALYSIS

¶ 14 Although plaintiffs sought extensions to file a reply brief, unfortunately they failed to do so and we are without the benefit of a response to defendant's well-reasoned and detailed brief. We begin by addressing defendant's argument that plaintiff's appeal of the dismissal of count II should be dismissed for its failure to comply with our Supreme Court rules. “ ‘A reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research.’ ” *In re Marriage of Auriemma*, 271 Ill. App. 3d 68, 72 (1995), quoting *Thrall Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986). Supreme Court Rules 341(h)(6) & (7) require a statement of the facts, with citation to the record, necessary for an understanding of the case and a clear statement of contentions with supporting citation of authorities and pages of the record relied on. Ill. S. Ct. R. 341(h)(6), (7) (eff. July 1, 2008). We will not sift through the record or complete legal research to find

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support for this issue. Ill-defined and insufficiently presented issues that do not satisfy the rule are considered waived. *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 855 (2007).

¶ 15 We agree with First Bank that plaintiffs failed to supply proper factual and legal support under the Rules and have waived arguments seeking reversal of the trial court's dismissal of count II. Plaintiffs argue that First Bank successfully argued that the Illinois Credit Agreements Act barred plaintiffs claim and the trial court improperly allowed such an affirmative defense to bar their complaint. The only authority cited by plaintiffs stands for the proposition that such an affirmative matter must be raised pursuant to section 2-619. As First Bank notes, count II was dismissed pursuant to section 2-619 and plaintiffs apparently concede the propriety of the motion. Furthermore, plaintiffs have not advanced any arguments addressing the stated grounds in First Bank's 2-619 motion, accordingly they are waived and dismissal of count II is affirmed.

¶ 16 With respect to the dismissal of count I, a motion to dismiss under section 2-615 of the Code of Civil Procedure challenges the legal sufficiency of a complaint based on facial defects of the complaint. *Borowiec v. Gateway 2000, Inc.*, 209 Ill. 2d 376, 413 (2004). This court conducts a *de novo* review of a trial court's ruling on the sufficiency of a motion to dismiss. *U.S. Bank National Ass'n v. Clark*, 216 Ill. 2d 334, 342 (2005). While allegations in the complaint are viewed in a light most favorable to the plaintiff, the decision to dismiss a case may be affirmed on any basis contained in the record. *Gallagher Corp. v. Russ*, 309 Ill. App. 3d 192, 196 (1999). This court, under a *de novo* standard of review, must determine whether a material issue of fact should have precluded dismissal or, absent a question of fact, whether the dismissal was proper as a matter of law. *Kedzie & 103rd Currency Exchange, Inc.*, 156 Ill. 2d at 116-117.

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This court may uphold a trial court's decision on any basis appearing in the record. *Arangold Corp. v. Zehnder*, 187 Ill. 2d 341, 359-60 (1999).

¶ 17 Plaintiffs argue on appeal that the trial court improperly placed the burden on them to prove that their complaint was sufficient. They assert that a motion to dismiss for failure to state a cause of action requires raising all defects with specificity such that a responding party may identify and readdress such issues. *Smith v. Chemical Personnel Search, Inc.*, 215 Ill. App. 3d 1078, 1084 (1991). Plaintiffs provide the conclusory argument that because First Bank failed to identify specific defects but just provided simple conclusions and the complaint "is in fact more than sufficient," the dismissal must be vacated.

¶ 18 While we agree with First Bank that specific defects were cited in the motion to dismiss, and their detailed recitation of those defects proves this, we need not discuss that issue. On appeal, plaintiffs only argue that they were not allowed to amend their complaint to cure the issues. However, as noted above, and similar to a motion to dismiss, a party must provide more than simple conclusions in an appeal - they must provide sufficient factual and legal support for their arguments. Plaintiffs have failed to do so and have waived this claim. Further, whether they could even cure the defects is immaterial as they did not request leave to amend their complaint in the trial court and waived any right to argue for that remedy on appeal. *Harlin v. Sears Roebuck and Co.*, 369 Ill. App. 3d 27, 37 (2006).

¶ 19 III. CONCLUSION

¶ 20 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 21 Affirmed.