2012 IL App (1st) 111836-U

FOURTH DIVISION
September 27, 2012

No. 1-11-1836

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MICHAEL CENTANNE,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 09 L 12425
	)	
CHICAGO ASSOCIATION OF REALTORS,	)	The Honorable
	)	Raymond W. Mitchell,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

HELD: Cause of action against the defendant cannot be sustained where the plaintiff has not suffered any legally cognizable injury.

¶ 1 Plaintiff-appellant Michael Centanne (plaintiff) brought a cause of action against defendant-appellee Chicago Association of Realtors (defendant) alleging breach of contract. Defendant moved to dismiss the cause, and the trial court granted its motion with prejudice. Plaintiff appeals, *pro se*, contending that the trial court erred in dismissing his cause and in denying him a jury trial on the matter. Defendant has chosen not to file a brief on appeal before

this Court. Therefore, we consider the instant appeal on plaintiff's brief only, pursuant to *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). For the following reasons, we affirm.

BACKGROUND

¶ 2 Plaintiff is a state-licensed real estate broker. In his second amended complaint, he alleged that he was sponsored by a corporation called "Coldwell Banker Stanmeyer Realtors, Inc.," and that he and this corporation had a membership in good standing with defendant beginning in November 2006 such that defendant was to list them in its Multiple Listing Service. Plaintiff further alleged that defendant refused to accept real estate listings from him, the corporation and their salespeople in the name of Coldwell Banker Stanmeyer Realtors, Inc., and instead, replaced its listing name with "Stanmeyer Realtors, Inc." Plaintiff asserted that defendant's actions were done unilaterally and that this prevented him from "properly and appropriately marketing real estate listings *** in breach" of the membership agreement and resulting in "lost substantial opportunities" and damages.

¶ 3 During the pendency of this litigation, Coldwell Banker filed a complaint in federal court against plaintiff and Coldwell Banker Stanmeyer Realtors, Inc., alleging that they were infringing on the Coldwell Banker trademark and intellectual property rights. On October 25, 2010, the United States District Court issued an agreed order stipulating that plaintiff and Coldwell Banker Stanmeyer Realtors, Inc. were to cease and desist using the Coldwell Banker trademark and were to contact all relevant third-parties to instruct them to remove any affiliation with the Coldwell Banker name.

¶ 4 Following the entry of the federal court's order, defendant filed a motion to dismiss plaintiff's complaint pursuant to section 2-619(9) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619(9) (West 2010)), and for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994). The trial court granted defendant's motion to dismiss with prejudice but denied its request for sanctions. In its order, the court outlined the requirements for a breach of contract claim and, after reviewing the facts presented, concluded that plaintiff had "no legally cognizable injury" because he was asserting a claim predicated on defendant's refusal to accept real estate listings under a name to which plaintiff had no legal right, pursuant to the federal court's order.[1]

¶ 5 ANALYSIS

¶ 6 On appeal, plaintiff claims that the trial court erred in failing to conduct a hearing on defendant's motion, in not submitting his case to a jury pursuant to his jury demand, and, ultimately, in dismissing his cause. He contends that, because there was no court order entered against him prohibiting his use of the Coldwell Banker trademark until the federal court issued its decision on October 25, 2010, he had every right to use the name Coldwell Banker Stanmeyer Realtors, Inc. until that time. Accordingly, he claims he asserted a viable cause of action for breach of contract by defendant for its refusal to list him as such during the period of November 2006, when he obtained membership to its Multiple Listing Service, to October 2010, when the federal order was issued. We disagree.

[1]The trial court also concluded that although plaintiff's claim was dismissed, it was not frivolous and, thus, it did not award sanctions to defendant.

¶ 7 While a motion to dismiss pursuant to section 2-619(a)(9) of the Code admits the legal sufficiency of the complaint, it raises affirmative matters either internal or external from the complaint that would defeat the cause of action. See 735 ILCS 5/2-619(a)(9) (West 2010). An "affirmative matter" is "something in the nature of a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." *Glisson v. City of Marion*, 188 Ill. 2d 211, 220 (1999). The affirmative matter must either appear on the face of the complaint or be supported by affidavits or other evidentiary materials of record. See *Van Meter v. Darien Park Dist.*, 207 Ill. 2d 359, 377 (2003). Once a defendant meets this burden, the plaintiff's right to recover is barred. See *Van Meter*, 207 Ill. 2d at 370. We review appeals from dismissals pursuant to section 2-619(a)(9) on a *de novo* basis. See *Van Meter*, 207 Ill. 2d at 368; *Griffith v. Wilmette Harbor Ass'n, Inc.*, 378 Ill. App. 3d 173, 180 (2007).

¶ 8 It is true that a section 2-619(a)(9) motion to dismiss should not be used where the affirmative matter is merely evidence upon which the defendant expects to contest an ultimate issue of fact, nor should such a motion be allowed if it cannot be determined with reasonable certainty that the alleged defense exists. See *Consumer Electric Co. v. Cobelcomex, Inc.*, 149 Ill. App. 3d 699, 703 (1986). However, a section 2-619(a)(9) motion provides a means to dispose not only of issues of law but also issues of easily proved fact, and a trial court may in its discretion properly decide questions of undisputed fact upon hearing such a motion. See *Consumer Electric Co.*, 149 Ill. App. 3d 703-04; see also *Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008) ("[t]he purpose of a section 2-619 motion is to dispose of issues of law and easily proved

issues of fact early in the litigation"); *Villanueva v. Toyota Motor Sales, U.S.A., Inc.*, 373 Ill. App. 3d 800, 802 (2007) (complaint is properly dismissed under this section if barred by affirmative matter and this matter defeats claim and avoids its legal effect); *Martinez v. Gutmann Leather, LLC*, 372 Ill. App. 3d 99, 101 (2007) (section 2-619(a)(9) allows for dismissal on basis of easily proven facts).

¶ 9 Under the circumstances of the instant cause, we find that the issue of whether defendant could be liable to plaintiff under a theory of breach of contract as he alleged in his second amended complaint comprises an easily proven factual and legal issue proper for resolution by a section 2-619(a)(9) motion without further hearing.

¶ 10 The elements of a breach of contract claim are well established. To recover, a plaintiff must show the existence of a valid contract, his performance under its terms, a breach by the defendant, and resulting injury to the plaintiff. See, *e.g.*, *Van Der Molen v. Washington Mutual Finance, Inc.*, 359 Ill. App. 3d 813, 823 (2005). Again, plaintiff here claims that his membership with defendant constituted a valid contract, that he performed under its terms as a real estate broker, that defendant breached the contract by refusing to include the Coldwell Banker trademark in its listing for him and his sponsoring corporation, and that this injured him because he lost sales opportunities among potential clientele. Plaintiff acknowledges the October 2010 federal court order entered against him mandating that he cease and desist using the Coldwell Banker trademark because he had no right to adopt it, but he insists that, until it was issued, defendant was required to list his name with the trademark.

¶ 11 Simply put, and as the trial court found, plaintiff has not suffered any legally cognizable

injury here. The federal court order, to which plaintiff himself stipulated, made clear that plaintiff did not, does not, nor ever had, a right to use the Coldwell Banker trademark as part of his real estate business. This would include the right to have himself or his sponsoring corporation listed as "Coldwell Banker Stanmeyer Realtors, Inc." in defendant's Multiple Listing Service *at any time*. That is, just because the federal court order declaring his use of the trademark as illegal was not issued until October 25, 2010, does not mean his use of the trademark prior to that date was somehow legal and vested in him a legal right which he could legally promote or defend. Therefore, plaintiff's lawsuit against defendant is wholly unsustainable: plaintiff is claiming a legal injury predicated on defendant's refusal to accept real estate listings under a name which plaintiff had no legal right to use. Under these circumstances, plaintiff clearly cannot recover. See *Glisson*, 188 Ill. 2d at 231 (trial court's grant of section 2-619 motion affirmed where the plaintiff suffered no injury to any legally cognizable interest and, therefore, could not sustain cause of action against the defendant); *City of Carbondale v. City of Marion*, 210 Ill. App. 3d 870, 875 (1991) (affirming grant of motion to dismiss where the plaintiff failed to demonstrate distinct and palpable injury to any legally cognizable interest); see, *e.g.*, *Hamer by Hamer v. Board of Educ. of Township High School Dist. No. 113, County of Lake*, 140 Ill. App. 3d 308 (1986).

¶ 12 CONCLUSION

¶ 13 Accordingly, for all the foregoing reasons, we affirm the judgment of the trial court.

¶ 14 Affirmed.