

No. 1-11-3381

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

TRINA BLUNT,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 09 CH 30378
)	
THE COUNTY OF COOK,)	Honorable
)	Allen S. Goldberg,
Defendant-Appellee.)	Judge Presiding.

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

ORDER

¶ 1 *Held:* Circuit court properly dismissed plaintiff's second amended complaint against defendant for breach of contract. Plaintiff abandoned claims raised in prior complaints.

¶ 2 Plaintiff Trina Blunt appeals from the judgment of the circuit court of Cook County dismissing her second amended complaint against defendant Cook County for breach of contract. The circuit court ruled that plaintiff's second amended complaint did not allege sufficient facts to support a breach of contract claim. On appeal, plaintiff argues that her second amended complaint did state a cause of action for breach of contract. She also argues that the circuit court

erred in dismissing her prior complaints, which raised claims for fraudulent misrepresentation, negligent misrepresentation, and negligence. For the reasons that follow, we affirm the circuit court's judgment.

¶ 3 In August 2009, plaintiff filed a three-count complaint for specific performance, breach of contract, and fraud. In February 2010, in response to a motion from defendant, the circuit court dismissed the claim for specific performance with prejudice, and the breach of contract claim without prejudice. In April 2010, plaintiff filed an amended four-count complaint, which raised claims of breach of contract, fraudulent misrepresentation, negligent misrepresentation, and negligence. Defendant moved to dismiss all four counts, and, in September 2010, the circuit court dismissed three of the counts with prejudice and dismissed the breach of contract count without prejudice. In April 2011, the plaintiff filed her second amended complaint, which asserted only a breach of contract claim and made no mention of the previously dismissed claims.

¶ 4 According to plaintiff's second amended complaint, at the end of 2008 she was working for a dental center in Arnold, Missouri. At that time she applied for employment with defendant as a dentist at Cermak Health Services of Cook County (Cermak). On January 21, 2009, defendant mailed her an offer of employment. The terms in the letter included a job description, plaintiff's salary, the amount that salary would be increased for each of her first four years of employment, the number of vacation days she would receive, and other benefits. The letter also stated that plaintiff's employment was contingent on approval of her credentials. Finally, it stated that the "desired starting date" would be "proposed" for February 2009. Plaintiff emailed her acceptance on January 27, 2009, and stated that she was required to give her Missouri employer 90 days notice. Because she was concerned about giving notice before she had a "secure" starting date, she spoke to Dr. Ronald Townsend, Cermak's director of dental services. Townsend "indicated" that her start date would be March 9, 2009. However, because plaintiff

remained unsure of her starting date, she told her current employer in a February 19, 2009, letter of resignation that her last "estimated" date of employment would be June 19, 2009.

¶ 5 On March 27, 2009, plaintiff received a letter from Cermak, verifying her employment. The letter also stated that Cermak expected plaintiff to begin her employment "in approximately one month." However on May 4, 2009, plaintiff contacted one of defendant's employees, Cheryl Cazarez, to inquire if additional information was required and to ask if she had a start date. Cazarez asked for plaintiff's current address and cell phone number, but plaintiff does not allege that she was given a start date at that time. Plaintiff completed defendant's "credentialing application" and mailed it to defendant on February 3, 2009. But until the end of July 2009, defendant continued to ask plaintiff for credentialing information, including an additional reference, verification of plaintiff's graduation, renewal of plaintiff's Illinois controlled substance certification, and renewal of two licenses. Plaintiff completed furnishing all of this information "during or about the end of July." She alleged that after the filing date of her initial complaint, which was August 26, 2009, the credentialing process was "eventually completed." She also alleged, on "information and belief," that at that time defendant "was prepared to allow [her] to begin her employment," but she did not specify what her starting date was to be. Plaintiff also alleged that defendant breached its promise of employment to her.

¶ 6 Plaintiff alleged that her damages included: lost wages beginning June 19, 2009, which was the date she gave her prior employer as her last day of work; airline and train tickets to Chicago to complete fingerprinting and to look for housing; the cost of renting a hotel room in Missouri after she rented her condominium; relocation expenses; the cost of interviewing for part-time positions; and the cost of purchasing her own malpractice and health insurance. She also sought future damages for: lost wages; the cost of paying her own malpractice and health

insurance; and the loss of benefits, including paid vacations, a pension, life insurance, and disability insurance.

¶ 7 In support of her claim of breach of contract, plaintiff alleges that defendant's offer letter constituted an offer of employment, which she accepted by letter. She alleges that defendant breached the agreement by "failing to allow [her] to begin her employment within the stated and agreed upon time frame." She also alleges that the ability to complete the credentialing process in a timely fashion was within defendant's control and defendant failed to accomplish this. Finally, she alleges that by the time defendant completed the credentialing process and "indicated to [her] that it was prepared to allow her to begin her employment," defendant had breached its promise of employment. Plaintiff does not specify when the credentialing process was complete or when defendant "was prepared" to allow her to start work.

¶ 8 On motion from defendant, the circuit court dismissed plaintiff's second amended complaint for breach of contract. Plaintiff now timely appeals.

¶ 9 Although defendant moved to dismiss plaintiff's complaints pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)), defendant was challenging whether the facts alleged in those complaints stated a cause of action. Such a challenge is properly made pursuant to section 2-615 of the Code. 735 ILCS 5/2-615 (West 2010). Because plaintiff responded appropriately to defendant's motions to dismiss, as if defendant was challenging the sufficiency of the facts alleged in her complaints, we find no prejudice to plaintiff in considering these motions as though they had been filed pursuant to section 2-615. See *Wallace v. Smyth*, 203 Ill. 2d 441, 447 (2002). We consider whether dismissal was proper pursuant to section 2-615.

¶ 10 In considering a motion to dismiss pursuant to section 2-615, the trial court must determine whether the factual allegations of the complaint, viewed in the light most favorable to

the plaintiff, suffice to state a cause of action. *Borowiec v. Gateway 2000, Inc.*, 209 Ill. 2d 376, 382 (2004). Our review of the trial court's resolution of this issue is *de novo*. *Borowiec*, 209 Ill. 2d at 383.

¶ 11 With these principles in mind, we review the trial court's determination that plaintiff's second amended complaint failed to state a cause of action for breach of contract. A valid contract must have an offer, acceptance, and consideration. *Hubble v. O'Connor*, 291 Ill. App. 3d 974, 979 (1997). To state a cause of action for breach of contract, a plaintiff must allege the existence of a contract, substantial performance by the plaintiff, defendant's breach of the contract, and damages. *Roberts v. Adkins*, 397 Ill. App. 3d 858, 866-67 (2010). The terms of the contract must be clear. *McInerney v. Charter Golf, Inc.*, 176 Ill. 2d 482, 485 (1997). The terms must also be sufficiently definite that the court can determine whether the contract has been kept or broken. *Academy Chicago Publishers v. Cheever*, 144 Ill. 2d 24, 29 (1991).

¶ 12 The factual allegations in plaintiff's complaint establish that the offer she received was contingent on the approval of her credentials by defendant. This contingency did not occur until some time after plaintiff filed her initial complaint on August 26, 2009. Plaintiff alleges that defendant then told her she could start working. But plaintiff does not allege that she agreed to begin working. Nor does she allege that defendant refused to allow her to begin working. Without an acceptance of the offer of employment, no contract existed and there could be no breach of contract. Plaintiff also alleges that defendant failed to approve her credentials in a timely fashion. That claim does not involve an alleged breach of contract. Rather, it appears to be the same claim that plaintiff makes in the negligence count of her first amended complaint. Accordingly, we find that plaintiff's second amended complaint, which contained a single count for breach of contract, was properly dismissed.

¶ 13 Plaintiff also challenges the dismissal of the claims she raised in her original and first amended complaints. However, it is axiomatic that " 'a party who files an amended pleading waives any objection to the trial court's ruling on the former complaints,' and " 'where an amendment is complete in itself and does not refer to or adopt the prior pleading, the earlier pleading ceases to be a part of the record for most purposes, being in effect abandoned and withdrawn.' " *Bonhomme v. St. James*, 2102 IL 112393, ¶ 17 (quoting *Foxcroft Townhome Owners Ass'n v. Hoffman Rosner Corp.*, 96 Ill. 2d 150, 153-54, 449 N.E.2d 125 (1983) (quoting *Bowman v. County of Lake*, 29 Ill. 2d 268, 272, 193 N.E.2d 833 (1963))). Here, plaintiff's second amended complaint raised only a breach of contract claim; it did not incorporate, or mention, her prior complaints. Her second amended complaint therefore abandoned the claims raised in those prior complaints, and we cannot consider them on appeal.

¶ 14 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 15 Affirmed.