2015 IL App (1st) 121265-U

SECOND DIVISION
March 24, 2015

No. 1-12-1265

WORKFORCE SOLUTIONS, an Illinois not-for-profit Company, Plaintiff-Appellant, v. SARA L. PETTINGER, and SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, P.C., an Indiana professional corporation, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County No. 10 L 12948 Honorable Sanjay T. Tailor, Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Justices Neville and Liu concurred in the judgment.

ORDER

¶ 1 *Held*: The first amended complaint was properly dismissed with prejudice for failure to state a cause of action for fraud and civil conspiracy where the alleged proximate cause was speculative and plaintiff could not show reasonable reliance on the alleged fraud.

¶ 2 Plaintiff, Workforce Solutions, appeals from the circuit court's dismissal of its first amended complaint with prejudice pursuant to section 2-615 of the Code of Civil Procedure

(Code) (735 ILCS 5/2-615 (West 2010)) and the denial of plaintiff's motion to reconsider the dismissal. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 In November 2010, Workforce filed the instant lawsuit against an attorney, defendant Sara L. Pettinger, and her employer, defendant Scopelitis, Garvin, Light, Hanson & Feary, P.C. (the Firm), for committing fraud and civil conspiracy during the course of a prior litigation. Specifically, plaintiff alleged that in 2006 Workforce brought suit against Pettinger's former client, Urban Services of America, Inc. (Urban), for breach of contract in that Urban failed to pay for services rendered in the amount of $573,000 plus interest and costs. In 2008, Workforce obtained a default judgment against Urban which has not been satisfied and is uncollectable due to Urban's insolvency. Workforce alleges in this 2010 action that Pettinger and the Firm fraudulently conspired with Urban to delay the proceedings in order to prevent Workforce from obtaining recovery of its 2008 judgment.

¶ 5 *Underlying litigation*

¶ 6 The relevant facts involving the 2006 action are as follows. In 2003, Workforce and Urban entered into a contract whereby Workforce would provide Urban with temporary contract employees for an agreed upon fee. By July 25, 2003, plaintiff claimed Urban owed approximately $275,510 on its contractual payments. Workforce threatened Urban with a lawsuit for the unpaid fees. Urban engaged Pettinger and the Firm to represent it in connection with the fee dispute. Over the course of two years, Pettinger and the Firm communicated with Workforce on behalf of Urban and represented that Urban's external accountant was preparing a "reconciliation" of plaintiff's past due invoices. In 2005, pending the completed reconciliation,

Urban delivered two $10,000 checks to Workforce for partial payment of the past due amounts. The full amount of the claimed fees remained unpaid and the parties communicated from time-to-time with Urban essentially informing plaintiff that it was working on the problem and would advise plaintiff of what it believed it owed when it completed its review. Urban never paid what plaintiff believed was due and, in April 2006, Workforce filed the underlying breach of contract action in the circuit court of Cook County (Workforce Solutions v. Urban Services of America, 06 L 003551 (the Urban litigation)) claiming damages in excess of $573,000, exclusive of interest and costs. Attached to the complaint was an exhibit showing Workforce's summary of the cost of services billed to Urban and the amount Urban paid over the course of the relationship.

¶ 7 Pettinger and the Firm defended Urban in that litigation. The parties engaged in protracted discovery with the primary dispute, relevant to this appeal, concentrating on Urban's purported reconciliation documents and its records relating to what was owed. In May 2006, Urban through Pettinger and the Firm, responded to an interrogatory request and stated that "[Urban] does not presently have a detailed accounting of any amount owed." Plaintiff contends this is a false statement because Urban's accountant allegedly shared with Urban and Pettinger a spreadsheet it had prepared for Urban showing it owed plaintiff roughly $354,000. Defendants continued claiming that no records existed and after a motion to compel production was filed, defendants again represented that responsive documents did not exist and that it had no obligation to create documents in order to be responsive to the production request. After Workforce filed a motion to compel production of the reconciliation, the trial court allowed Urban to review plaintiff's records. Pettinger and the Firm later represented to the Urban trial

court that the reconciliation was "contained on an Excel spreadsheet which was lost when Defendant revised its computer system." In December 2006, Urban answered an interrogatory stating "reconciliation of its records and documents produced in discovery reveals that [plaintiff] would have been entitled to an additional $75,169.29 over the amounts that [Urban] already paid [plaintiff]." In May 2007, Pettinger again represented that the spreadsheet was lost when Urban changed computer systems. According to plaintiff, after "delaying the progress of the case and delaying discovery for over two years" and after Urban transferred its assets to insiders, in May 2008, upon motion, Pettinger and the Firm withdrew their representation of Urban. One month later, Workforce moved for a default judgment against Urban and was awarded a judgment of $1,305,668.56 ($573,040.81 in compensatory damages, $106,287.29 in interest and $347,392 for lost business). During postjudgment citation proceedings, a copy of Urban's reconciliation "lost" spreadsheet was recovered which indicated that Urban owed Workforce $353,000 for the unpaid invoices.

¶ 8 In the course of the supplementary proceedings, Workforce discovered that during the course of the Urban litigation, Urban transferred all of its assets to "insiders" (either individuals who owned or controlled Urban or other entities owned or controlled by these individuals) leaving Urban insolvent and unable to satisfy Workforce's judgment. The last "insider" transfer occurred in May 2008, when the entirety of Urban's assets were transferred to a corporation indirectly owned by the two majority owners of Urban. Workforce unsuccessfully brought a motion to turnover assets against Urban and the "insiders" as third-party citation respondents. At the same time, Workforce also filed a separate action directly against Urban and the third parties named in the supplementary proceeding alleging, among other things, fraudulent transfer. The

circuit court denied the motion for turnover and dismissed five of the counts alleged in the separate fraudulent transfer action. We reviewed and affirmed these circuit court orders in *Workforce Solutions v. Urban Services of America*, 2012 IL App (1st) 111410. Workforce has **not** recovered on the 2008 Urban judgment.

¶ 9 *Instant lawsuit*

¶ 10 In the instant suit, Workforce alleges that Pettinger and the Firm obtained a copy of the reconciliation spreadsheet in 2005 and refused to produce it during the Urban litigation which gave Urban the necessary time to transfer its assets and become insolvent or "judgment proof." Workforce alleges that if the defendants had produced the reconciliation, Workforce could have moved for and obtained summary judgment against Urban many months prior to the 2008 default judgment, and could have recovered its judgment from Urban before Urban became insolvent. Workforce's claims against Pettinger and the Firm include breach of duty and disclosure (count I) which was previously dismissed and incorporated for purposes of appeal only, common law fraud (count II) and civil conspiracy (count III).

¶ 11 Defendants moved to dismiss Workforce's first amended complaint pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2010)), asserting arguments under both sections 2-615 and 2-619 (735 ILCS 5/2-615, 2-619 (West 2010)). Pettinger and the Firm argued that Workforce failed to and could not state a cause of action for fraud and civil conspiracy to survive section 2-615 scrutiny. Specifically, count II failed because: (1) Workforce could not establish a duty to disclose the accounting; (2) the allegations of detrimental reliance fail; and, (3) the proximate cause alleged was speculative. Count III, necessarily fails because it relied on the insufficiently alleged count II. Lastly, Pettinger and the Firm argued that the civil conspiracy

claim must be dismissed pursuant to section 2-619 of the Code, because they acted as agents for Urban and as a matter of law they could not have conspired with Urban.

¶ 12 On February 10, 2012, the circuit court granted Pettinger and the Firm's section 2-615 motion to dismiss with prejudice, finding the allegations of proximate cause were "nothing more than speculation." The court did not rule on the section 2-619 arguments. Thereafter, Workforce filed a motion to reconsider the dismissal arguing that the circuit court erred in its application of existing law. The circuit court denied the motion to reconsider in a comprehensive memorandum opinion and order. In its order, the circuit court found that Workforce could not state a cause of action for fraud because the proximate cause alleged was too speculative and the alleged reliance was "inherently unjustified and unreasonable."

¶ 13 ANALYSIS

¶ 14 Workforce contends the circuit court erred in granting the section 2-615 motion to dismiss and denying Workforce's motion to reconsider.[1] The circuit court initially dismissed the first amended complaint with prejudice finding that Workforce's allegation of proximate cause was speculative. In ruling on the motion to reconsider that dismissal, the circuit court also found Workforce failed to alleged reasonable reliance to state a cause of action for fraud. We review the dismissal of a complaint *de novo*. *Bell v. Hutsell*, 2011 IL 110724, ¶ 9. In this case, because Workforce moved to reconsider the dismissal of its claims arguing the circuit court erred in its previous application of existing law, we also review the denial of the motion to reconsider *de*

[1] As a preliminary matter, the original complaint alleged a claim in count I for breach of the duty of disclosure. Upon motion, count I was dismissed with prejudice and was later restated in the first amended complaint "for purposes of appeal." However, its dismissal was not raised in this appeal therefore, its dismissal was abandoned for review and will not be considered. *Reynolds v. Jimmy John's Enterprises*, 2013 IL App (4th) 120139, ¶ 55.

novo. *Bank of America, N.A. v. Ebro Foods*, 409 Ill. App. 3d 704, 709 (2011); *People v. $280,020 United States Currency*, 372 Ill. App. 3d 785, 791 (2007). Because both orders found that Workforce could not state the causes of action alleged, and our review is *de novo*, we will address these orders concerning the sufficiency of the complaint at the same time. In addition, as a reviewing court, we may affirm the proper dismissal of a complaint by the trial court for any reason appearing in the record. *Aida v. Time Warner Entertainment Co., L.P.*, 332 Ill. App. 3d 154, 158 (2002).

¶ 15 *Count II - Common Law Fraud*

¶ 16 In count II, Workforce alleged that Pettinger and the Firm committed fraud by making false representations of material fact in response to Workforce's interrogatories and production requests made in the Urban litigation.

¶ 17 A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face. *Beacham v. Walker*, 231 Ill. 2d 51, 57 (2008). A cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *Tedrick v. Community Resource Center, Inc*., 235 Ill. 2d 155, 161 (2009); *Brown-Seydel v. Mehta*, 281 Ill. App. 3d 365, 368 (1996). Although we accept as true all well-pleaded facts in the complaint, and view those facts in the light most favorable to a plaintiff, we "cannot accept as true mere conclusions unsupported by specific facts." *Estate of Powell v. John C. Wunsch, P.C.*, 2014 IL 115997, ¶ 12.

¶ 18 To sufficiently plead a cause of action for fraud, a plaintiff must allege facts in support of the following elements: (1) a false statement of material fact; (2) defendant's knowledge that the statement was false; (3) defendant's intent that the statement induce the plaintiff to act; (4)

plaintiff's reliance upon the truth of the statement; and (5) plaintiff's damages resulting from reliance of the statement. *Connick v. Suzuki Motor Co.*, 174 Ill. 2d 482, 496 (1996); *Wernikoff v. Health Care Service Corp.*, 376 Ill. App. 3d 228, 233 (2007). A high standard of specificity is required for allegations asserting fraud. *Chatham Surgicore, Ltd. v. Health Care Service Corp.*, 356 Ill. App. 3d 795, 803 (2005).

¶ 19 On appeal, Workforce contends that it was unable to collect its judgment in the Urban litigation because Pettinger and the Firm delayed discovery by fraudulently misrepresenting the existence of the reconciliation spreadsheet allowing Urban to dissipate its assets and become "judgment proof" before Workforce could obtain a judgment. Had Pettinger and the Firm admitted that the reconciliation existed and produced it in the Urban litigation, Workforce could have obtained a judgment against Urban sooner and before Urban dissipated its assets. Workforce contends that its injury was the foreseeable result from Pettinger and the Firm's misrepresentations.

¶ 20 Defendants respond and argue that Workforce's allegation of proximate cause is not supported by any facts to substantiate the theory that had Workforce received the reconciliation during discovery in the Urban litigation, it could have obtained a judgment before Urban dissipated its assets. This allegation is based on a conclusory allegation that Workforce would have immediately and successfully obtained summary judgment against Urban and thereafter Workforce would have successfully enforced and collected the judgment. Defendants argue that Workforce supplied no facts to support any of these conclusions and the allegations are mere speculation. Workforce's theories do not take into account, among other things, that Urban would have contested these theoretical proceedings, Workforce would not have accepted the validity

and accuracy of Urban's reconciliation, or that no third-party creditors would have intervened in the collection proceedings.

¶ 21 Before we address the issue of proximate cause, it is clear that the gist of plaintiff's case is that defendants intentionally and fraudulently misrepresented the existence of a spreadsheet that, according to plaintiff, contained Urban's calculation(s) of the amount of unpaid fees it actually owed plaintiff under their contract. Although defendants claimed, during discovery in the Urban litigation, that the spreadsheet was lost when Urban changed computer systems, it surfaced during supplemental enforcement proceedings when plaintiff was trying to collect its $1.3 million judgment. What plaintiff does not explain, either before the circuit court or on appeal, is how the spreadsheet was *material* to proving its breach of contract claim. Plaintiff claimed in excess of $573,000 was due based upon its own records. There can be no question that plaintiff would have used its own records to establish the value of the services provided and the payments made by defendant. There is no evidentiary reason, or fact alleged, that plaintiff needed Urban's records to prove its claim ($573,000), especially where the "missing spreadsheet" indicated a substantially lower unpaid amount ($353,000). Thus, the spreadsheet would not be material to proving its underlying case. At best, the missing spreadsheet would have alerted plaintiff that Urban might be able to reduce the claim if it could successfully prove to the trier of fact that its internal records showed plaintiff's claim was inflated. Also, plaintiff proves the point when it admitted in its response to defendants' motion to dismiss that even had the spreadsheet been produced it would not have been accepted or accepted as true. In short, there appears to be no causal connection between the defendants' conduct and plaintiff's failure to seek summary judgment earlier as alleged in its complaint.

¶ 22 Also unexplained through any factual allegations is a causal connection between the defendants' alleged delay of discovery and any effort by plaintiff to move the litigation towards a conclusion. Plaintiff waited three years before filing suit on a claim based on its own records. Through discovery it clearly sought Urban's accounting records including information that would identify any defense Urban had to the liquidated damages plaintiff sought. Although plaintiff frequently sought production of financial documents and to compel responsive answers to interrogatories related to the spreadsheet, plaintiff also had various procedural tools at its disposal, including sanctions, protective orders, motions to bar defendant's financial records or related defenses, when those requests were not forthcoming. See Ill. S. Ct. Rs. 201, 291(c) (eff. July 1, 2002). Plaintiff's failure to seek such relief calls into question whether the complained of delay on Urban's part was deliberate or to be expected in this type of litigation. Lastly, also absent from plaintiff's argument is any discussion about the extent of discovery initiated by Urban at the time defendants withdrew from the case. Plaintiff has not sufficiently pled facts to address the element of materiality of the fraudulent conduct attributed to defendants.

¶ 23 "An essential element of a plaintiff's cause of action for any tort is that there be a proximate causal relationship between the act or omission of the defendant and the damages which the plaintiff has suffered." *Lewis v. Lead Industries Ass'n*, 342 Ill App. 3d 95, 102 (2003). Proximate cause is the natural or probable sequence which produced the injury complained of by the plaintiff. *Capiccioni v. Brennan Naperville, Inc*., 339 Ill. App. 3d 927, 937 (2003). Proximate cause limits a complainant's recovery to only the damages which might be foreseeable as an expected consequence of the alleged fraud (*Giammanco v. Giammanco*, 253 Ill. App. 3d 750253 Ill. App. 3d 750, 767 (1993)) and can only be established in cases where there is reasonable

certainty that a defendant's actions caused the injury (*Salinas v. Werton*, 161 Ill. App. 3d 510, 514 (1987)); *Newsom-Bogan v. Wendy's Old Fashioned Hamburgers of N.Y., Inc*., 2011 IL App (1st) 092860, ¶ 16).

¶ 24 Here, Workforce alleged that "[b]y virtue of Defendants' false representations and omissions of material facts, Workforce was damaged in that its judgment was delayed, giving Urban sufficient time to dissipate its assets through a series of transfers to insiders." This one-sentence allegation of proximate cause lacks specificity and was unsupported by facts alleged in the complaint. Workforce did not identify facts relevant to establish how its injury, the inability to collect the Urban judgment, is attributable to and proximately caused by Pettinger and the Firm's conduct.

¶ 25 Workforce argues that its alleged proximate cause may be speculative, but it is not *too* speculative and the trial court is obligated to determine whether an earlier judgment would have been entered against Urban, had Pettinger and the Firm disclosed the existence of the reconciliation. Plaintiff relies on *Shehade v. Gerson*, 148 Ill. App. 3d 1026 (1986) to support its position.

¶ 26 In *Shehade*, a client sued her former lawyer alleging legal malpractice. *Id*. at 1027. The client and her estranged husband were involved in a contentious divorce and child custody case when Shehade became concerned that her husband would abduct their child and remove him from the country. *Id*. at 1027-1028. She informed her attorney, Gerson, of this concern and a previous attempt by the husband to keep the child from Shehade. *Id*. Shehade requested Gerson obtain a court order barring the father from any visitation with the child. *Id*. Gerson did not petition the court for such an order. *Id*. at 1028. Later that year, during a scheduled visit, the

estranged husband took the child and fled the country. *Id*. The child was not returned to the United States. *Id*. Shehade then filed a complaint against Gerson alleging several causes of action including legal malpractice. *Id*. at 1027. Her complaint was dismissed by the trial court finding the alleged proximate cause was too speculative. *Id*. This court reversed the trial court's dismissal and found that as alleged, it was reasonable under Shehade's circumstances, that the child custody judge would have and could have issued an order barring visitation and that it was foreseeable that in the absence of such a court order, that the estranged husband would kidnap the child. *Id*. at 1027-31.

¶ 27 We find Workforce's comparison of the instant suit to *Shehade* is misplaced. The claims here and in *Shehade* are different causes of action with different pleading standards. In *Shehade*, a client sued her former attorney for legal malpractice. Legal malpractice claims require a case within a case analysis of what would have happened if the attorney did not breach their duty to their client. See *Cedeno v. Gumbiner*, 347 Ill. App. 3d 169 (2004). As such, some degree of speculation will result from the action pled and the damages alleged however, the degree of speculation cannot be overwhelming. *Glass v. Pitler*, 276 Ill. App. 3d 344, 354 (1995).

¶ 28 In the instant case, Workforce alleged a claim for fraud against its adversary's former attorneys for actions the attorneys took in defending their client in prior litigation. A claim for fraud must be done with specificity and particularity for all facts and required elements alleged. *Chatham Surgicore, Ltd. v. Health Care Service Corp.*, 356 Ill. App. 3d 795, 803 (2005). In addition, "[l]iability cannot be predicated upon surmise or conjecture as to the cause of injury." *Olson v. Williams All Seasons Co.*, 2012 IL App (2d) 110818, ¶ 26. Workforce cannot aver insufficient factual allegations and theorize a connection between what did occur and what

should have or could have occurred to infer proximate cause between the alleged tortious conduct and the injury. *Id*.

¶ 29 In its appellant brief, Workforce suggests that we make the following assumptions to understand its theory of proximate cause in this case. The assumptions are: (1) if plaintiff had received the reconciliation it would have immediately moved for summary judgment; (2) in response Urban would have presented its in-house bookkeeper, who could easily be impeached, to testify as to the amounts due; (3) the Urban trial court would have immediately granted summary judgment; and (4) Urban would not have dissipated its assets, or become otherwise insolvent, before judgment or the initiation of collection proceedings. These assumptions afford plaintiff no support. First, as earlier discussed, plaintiff did not need Urban's spreadsheet to move for summary judgment. Second, had plaintiff moved for summary judgment, and it did not, a defendant in Urban's position would have moved to depose any relevant witness that was offered in support of the motion and would have likely moved to submit its own evidence to create a factual dispute on the amount owed, at the very least. Third, even if no discovery ensued, a briefing schedule would likely have been requested and granted. Other delays would not be unusual and, in any event, there is nothing factually pled that would address a comparison between the time involved in plaintiff's hypothetical, speculative summary judgment order and the default judgment it actually obtained. Without these or similar factual allegations relating to the causal connection between defendants' alleged discovery delays and the dissipation of Urban's assets, the trial court correctly concluded the pleadings lacked the heightened specificity required in pleading a fraud claim. Therefore, we find that Workforce's allegation of proximate

cause was pled in a conclusory manner that promotes speculation and thus, cannot state a cause of action for fraud.

¶ 30 We also find that Workforce's fraud claim cannot stand where the allegation of reasonable reliance fails. Reliance on an alleged misrepresentation must have been reasonable or justified under the circumstances. *Atherton v. Connecticut General Life Insurance Co.*, 2011 IL App (1st) 090727, ¶ 17. In assessing whether reliance was justifiable, all of the facts known to the plaintiff as well as those facts that the plaintiff could have learned through the exercise of ordinary prudence must be taken into account. *Adler v. William Blair & Co.*, 271 Ill. App. 3d 117, 125 (1995). If Workforce's own factual allegations establish that the alleged reliance was unreasonable as a matter of law, then dismissal in accordance with section 2-615 was warranted. *Neptuno Treuhand-Und Verwaltungsgesellschaft MBH v. Arbor*, 295 Ill. App. 3d 567, 575-76 (1998).

¶ 31 Workforce alleged, without the support of any facts, that it "justifiably relied on the false representations and omissions of material facts by Defendants" in the Urban litigation. This allegation alone is insufficient to support a cause of action for fraud. *Dloogatch v. Brincat*, 396 Ill. App. 3d 842, 850 (2009) (a plaintiff must allege specific factual allegations and not mere conclusions of law to show that the plaintiff relied on the alleged misrepresentations to withstand a section 2-615 motion to dismiss). Workforce contends that it relied on Pettinger and the Firm's misrepresentations that Urban's reconciliation did not exist by engaging in a long-term discovery dispute over its production, which would not have occurred if Pettinger and the Firm had simply produced the reconciliation it already had. Plaintiff's pleading demonstrates an extraordinary level of patience and an unrealistic belief that its adversary was going to produce something that

it stated it either did not possess, did not exist or had been destroyed. At that point, it realistically could have moved to bar such evidence and it is almost a certainty that Urban would have been denied any effort to defend the claim with its own financial records. Without that evidence, defendant would have been facing the judgment it ultimately received when and if plaintiff presented its evidence.

¶ 32 Eventually, without the benefit of the reconciliation, Workforce obtained a judgment for several hundred thousand dollars more than the "admitted" amounts listed in the reconciliation based on plaintiff's own accounting. As such, Workforce received the very judgment it requested regardless of the alleged misrepresentations and without the reconciliation. Therefore, we find Workforce has failed to allege justifiable reliance on defendants' alleged fraudulent statements.

¶ 33 Finally, plaintiff's fraud claim finds no support in the law. As previously discussed, the gist of the complaint is that defendants' conduct during the course of the Urban litigation amounted to fraud and that fraud caused plaintiff to be unable to collect its judgment against Urban. We are aware of no precedent, and none has been cited, where the attorney for an adverse party is liable in tort for arguably untruthful statements made during discovery. Supreme court rules (Ill. S. Ct. R. 201 *et seq.*) govern the conduct of discovery and, along with the discovery provisions of the Code of Civil Procedure (See 735 ILCS 5/2-1003 *et seq.*), the trial court presides over all aspects of civil discovery. Attorney misconduct is brought to the attention of the trial court and appropriate orders and sanctions are available on motion and upon order of the court. No private cause of action has been established for violation of either the discovery rules, the Code of Civil Procedure or Rules of Professional Regulation. Defendants alleged misconduct during discovery in a pending judicial matter is the basis for the alleged fraud, and absent a

recognized cause of action in tort, it remains a matter for court supervision and professional regulation and is not grounds for a private cause of action.

¶ 34 In sum, viewing the allegations of the first amended complaint in the light most favorable to plaintiff and taking as true all well-pleaded facts and drawing all reasonable inferences therefrom, we find the circuit court correctly held that Workforce cannot state a cause of action for fraud.

¶ 35 *Count III - Civil Conspiracy*

¶ 36 In count III, Workforce alleged that Pettinger and the Firm committed civil conspiracy with Urban by making false representations to the Urban trial court about the existence of the reconciliation.

¶ 37 Conspiracy is not an independent tort. *Illinois State Bar Ass'n Mutual Insurance Co. v. Cavenagh*, 2012 IL App (1st) 111810, ¶ 37. Where a plaintiff fails to state an independent cause of action, underlying the conspiracy allegations, the conspiracy claim also fails. *Indeck North American Power Fund, L.P. v. Norweb PLC*, 316 Ill. App. 3d 416, 432 (2000). Here, Workforce's claim for civil conspiracy is premised on the same alleged fraudulent acts recited in count II. From the foregoing discussion, it is clear that Workforce did not and cannot state a viable cause of action for fraud. Therefore, the civil conspiracy claim cannot stand and the circuit court's dismissal of count III was proper.

¶ 38 Workforce raises additional arguments as to the sufficiency of the civil conspiracy and fraud claims, however, based on our finding that Workforce cannot state causes of action for fraud and civil conspiracy, we need not reach those additional arguments.

¶ 39 Lastly, Workforce argues that the complaint should stand in the face of the section 2-619 motion to dismiss. However, the circuit court did not rule on the section 2-619 arguments but rather dismissed the first amended complaint pursuant to section 2-615 of the Code. Accordingly, without an order from the circuit court evidencing a ruling on the section 2-619 arguments, we are not permitted to dispose of these arguments on appeal. *Estate of Powell*, 2013 IL App (1st) 121854, ¶ 32.

¶ 40 CONCLUSION

¶ 41 For the reasons stated above, we affirm the decision of the circuit court dismissing counts II and III of plaintiff's first amended complaint with prejudice.

¶ 42 Affirmed.