

No. 1-14-1631

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 DISTRICT

BASSAM SAFFAF, SAHAR SAFFAF,)	Appeal from the Circuit Court
KHALID SAFFAF, OMAR SAFFAF and)	of Cook County.
ALAA SAFFAF,)	
)	
Plaintiff-Appellants,)	
)	
v.)	No. 2010-L-002753
)	
SKYBIRD TRAVEL & TOURS, INC.,)	Honorable
A Michigan Corporation,)	Raymond W. Mitchell,
)	Judge, Presiding.
Defendant-Appellee.)	

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

ORDER

- ¶ 1 *Held:* The judgment of the circuit court is affirmed, where the plaintiffs' complaint for the breach of a third-party beneficiary contract and tortious interference with a contract failed to state a claim upon which relief could be granted.
- ¶ 2 The plaintiffs, Bassam Saffaf, Sahar Saffaf, Khalid Saffaf, Omar Saffaf and Alaa Saffaf, brought suit against the defendant, SkyBird Travel & Tours, Inc. (SkyBird) alleging claims for breach of a contract to which the plaintiffs were third-party beneficiaries (Count I), and tortious interference with contractual relations (Count II). The circuit court dismissed the complaint with

prejudice under section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2010)), and the plaintiffs appealed. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 The fourth-amended complaint (complaint) set forth the following allegations. SkyBird is a Cook County business entity “the nature of which is unknown” to the plaintiffs. On some date between May 25, 2009, and August 6, 2009, SkyBird entered into an oral contract (contract) with either Farouk Khatib, d/b/a Khatib Travel, or with another person or business currently unknown to the plaintiffs, under which SkyBird agreed to “find and secure” airline reservations for the plaintiffs to fly from Damascus, Syria, to New York, New York. In exchange for this service, SkyBird was to receive monetary compensation from “the other contracting party” in an amount unknown to the plaintiffs. The plaintiffs alleged that the contract was made expressly to provide a service to them, so that the plaintiffs were to be the direct beneficiaries of the contract. The complaint also alleged that, “before the oral contract was agreed upon,” the plaintiffs “already had reservations” with Emirates Airlines for their return flight from Damascus to New York, departing on August 10, 2009. The plaintiffs contended that SkyBird breached its contract with Khatib or the unknown party by cancelling these existing reservations and then failing to secure alternative reservations for the plaintiffs to fly from Damascus to New York.

¶ 4 In Count II, the plaintiffs alleged that, in May of 2009, they flew from their home in the United States to Damascus, and had reservations with Emirates for their return flight from Damascus to New York departing on August 10, 2009. According to the complaint, SkyBird knew that the plaintiffs had a contract with Emirates for their return flights. However, at some point between May 25, 2009, and August 6, 2009, SkyBird contacted Emirates and, falsely

representing that it had authority from the plaintiffs, cancelled those return flights, causing Emirates to breach its contract with the plaintiffs.

¶ 5 The plaintiffs claimed that, as a result of SkyBird's breach of contract and tortious interference with their contract with Emirates Airlines, the plaintiffs were delayed for approximately one month in their return to the United States from Syria. They accordingly sought damages for additional living and travel expenses, and a loss of business income.

¶ 6 SkyBird filed a motion to dismiss the complaint pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2010)). The trial court granted the motion and dismissed the complaint with prejudice. The instant appeal followed.

¶ 7 The plaintiffs first argue that Count I of the complaint sufficiently states a cause of action for breach of an oral third-party beneficiary contract. In support of this argument, the plaintiffs simply assert that, as the terms of the contract required SkyBird to secure travel reservations for the plaintiffs' use, it is "self-evident" that they were intended to be the sole beneficiaries of the contract. Even assuming, *arguendo*, that the plaintiffs are correct in this observation, they fail to address other defects in Count I which are fatal to their cause of action.

¶ 8 In an appeal from a dismissal under section 2-615, our review is *de novo*. *Hirsch v. Feuer*, 299 Ill. App. 3d 1076, 1081 (1998). The question presented in a 2-615 motion is "whether the well-pleaded facts of the complaint, taken as true and construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted." *Loman v. Freeman*, 229 Ill. 2d 104, 109 (2008). In determining legal sufficiency, the court reviews the facts only from the face of the pleadings. *K. Miller Construction Co., v. McGinnis*, 238 Ill. 2d 284, 291 (2010). A complaint should be dismissed under section 2-615

only where it is clear that no set of facts could be proven to merit relief for the plaintiff. *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 161 (2009).

¶ 9 Illinois is a fact-pleading jurisdiction, and this means that plaintiffs may not rely simply upon conclusions of law or facts which are unsupported by specific factual allegations. *Vernon v. Schuster*, 179 Ill. 2d 338, 344 (1997); *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 408 (1996); *Hirsch*, 299 Ill. App. 3d at 1081. Rather, plaintiffs must set forth sufficient facts to bring their claims within the scope of the cause of action being asserted. *Anderson*, 172 Ill. 2d at 408; *Hirsch*, 299 Ill. App. 3d at 1081. Although the plaintiffs need not, at this stage of proceedings, prove their case or bring forth evidence (*Visvardis v. Eric P. Ferleger, P.C.*, 375 Ill. App. 3d 719, 724 (2007)), mere legal conclusions or unsupported factual assertions will not be deemed admitted in a motion to dismiss. *Baird & Warner Residential Sales, Inc. v. Mazzone*, 384 Ill. App. 3d 586, 590 (2008).

¶ 10 In order to state a claim for the breach of a contract to which the plaintiffs are third-party beneficiaries, the plaintiffs must show: (1) they were direct beneficiaries, (2) to an underlying contract between two other parties (3) which included express language demonstrating an intent to make the plaintiffs beneficiaries. See *Advanced Concepts Chicago, Inc. v. CDW Corp.*, 405 Ill. App. 3d 289 (2010). To state a claim for a breach of the underlying contract, the plaintiffs must allege: (1) an offer by one party to enter into a contract, and an acceptance by the offeree; (2) consideration between the parties; (3) definite and certain terms of the contract; (4) plaintiffs' performance of all required contractual conditions; (5) defendant's breach of the terms of the contract; and (6) damage resulting from the breach. *Hirsch*, 299 Ill. App. 3d at 1082.

¶ 11 In this case, the complaint fails to allege sufficient facts showing the existence of an underlying oral contract to which the plaintiffs were the beneficiaries. For an oral contract to be

binding and enforceable, the terms of the contract must be definite and certain. *Trittipo v. O'Brien*, 204 Ill. App. 3d 662, 672 (1990). Here, the complaint makes the simple assertion that SkyBird "entered into a contract," with Khatib or some other entity, under which SkyBird was to procure airline reservations for the plaintiffs to fly from Damascus to New York. There is no allegation regarding any offer or acceptance, and no specification as to the contractual terms or which party was to provide consideration to SkyBird. A mere statement of the existence of a contract, without at least some detail as to an offer or acceptance, is insufficient to withstand a motion to dismiss. *Pollack v. Marathon Oil Co.*, 34 Ill. App. 3d 861, 864 (1976) (general allegation that a contract exists without supporting facts is a legal conclusion which may not be admitted by a motion to dismiss); accord *Talbert v. Home Savings of America, F.A.*, 265 Ill. App. 3d 376, 379-80 (1994); *Wait v. First Midwest Bank/Danville*, 142 Ill. App. 3d 703, 707-08 (1986) (terms such as "offered," "accepted," and "breached its contract" suggest mere legal conclusions). Adding to the uncertainty is the allegation that, "before the oral contract was agreed upon," the plaintiffs "already had reservations" with Emirates Airlines to fly from Damascus to New York. Based upon this statement, it is unclear exactly what performance SkyBird had left to undertake under the contract.

¶ 12 Further, even accepting as true the assertion that SkyBird cancelled the plaintiffs' flight from Damascus to New York, there is no statement as to how this amounted to a breach of any agreement between SkyBird and Khatib or another unknown entity. Finally, there are absolutely no facts indicating how the cancellation caused the plaintiffs' return trip to be delayed by one month, or how this led them to incur increased living expenses, travel expenses, or lost business income. Therefore, as Count I fails to sufficiently allege the existence or breach of an underlying

contract, it was properly dismissed pursuant to section 2-615 for failure to state a claim for the breach of a third-party beneficiary contract.

¶ 13 The plaintiffs next argue that the court erred in dismissing Count II, because it sufficiently alleged that, by cancelling the plaintiffs' return flight from Damascus to New York, SkyBird tortiously interfered with their contract with Emirates Airlines. We disagree.

¶ 14 In order to state a claim for tortious interference, a plaintiff must show: (1) the existence of a valid and enforceable contract between it and a third party; (2) the defendant's awareness of the contract; (3) the defendant's intentional and unjustified inducement of a breach; (4) the defendant's wrongful conduct caused a subsequent breach of the contract by the third party; and (5) damages. *Purmal v. Robert N. Wadington and Associates*, 354 Ill. App. 3d 715, 727 (2004).

¶ 15 First, as with Count I, the plaintiffs have failed to allege the terms of their underlying contract with Emirates Airlines, and have not attached Emirates Airline tickets to the complaint. However, even if Count II had alleged the existence of such a contract, it does not provide any details regarding SkyBird's alleged interference with the plaintiffs' contractual rights. Specifically, it fails to state how SkyBird could have wrongfully "induced" Emirates to cancel the plaintiffs' tickets while not offering an alternative flight. Simply reciting that SkyBird acted "intentionally" and "without justification" is not sufficient to state a claim, because it merely states conclusions and is devoid of supporting facts. Such conclusions are insufficient to advise SkyBird of the claim against it, and will not be taken as true for purposes of a motion to dismiss. Because Count II fails to sufficiently plead a claim for tortious interference with any contract, therefore, it was properly dismissed under section 2-615 of the Code.

¶ 16 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County dismissing the plaintiffs' complaint under section 2-615 of the Code.

¶ 17 Affirmed.