

Technologies, LLC (Forza). Plaintiff filed a motion to quash these subpoenas, which the federal district court denied without prejudice. Rather than amending its motion to quash, plaintiff brought this case in the circuit court of Cook County against Premier, Marshall and their attorneys (collectively defendants) for abuse of process and tortious interference with business relations and prospective economic advantage. Plaintiff claimed defendants improperly issued the subpoenas to damage plaintiff's business reputation and to force plaintiff out of business. The circuit court dismissed plaintiff's original and amended complaints without prejudice. Although plaintiff was permitted to file a second amended complaint, it instead requested a final order dismissing the amended complaint with prejudice. The circuit court issued that order, from which plaintiff now appeals. For the following reasons, we affirm the dismissal of the amended complaint.

¶ 3

BACKGROUND

¶ 4 Because the issue here is whether plaintiff's amended complaint was properly dismissed for failure to state a cause of action, we provide a general background of the dispute taken from the pleadings to frame our disposition of this appeal. Plaintiff contracted with defendants Premier and Marshall to manufacture plaintiff's nutritional supplement products and paid approximately \$500,000 for an initial supply. The products were delivered 10 months late, had inaccurate labels, and were allegedly contaminated with DHEA, a banned substance. Thus, on October 2, 2012, plaintiff filed a lawsuit in the federal district court for fraud and breach of contract against Premier and Marshall. During discovery, defendants issued 28 subpoenas *duces tecum* to non-party witnesses (Respondents). On April 5, 2013, defendants served subpoenas on 14 additional respondents, requesting the production of certain documents within 21 days. On May 31, 2013,

defendants served subpoenas on an additional nine respondents, giving them 10 days to produce documents.

¶ 5 On June 5, 2013, plaintiff filed a motion to quash the subpoenas.² The federal court denied this motion without prejudice and allowed plaintiff to amend its motion. Instead, on June 13, 2013, plaintiff filed this action in the circuit court of Cook County against defendants for damages stemming from the issuance of the subpoenas. Plaintiff alleged claims for abuse of process in count I and tortious interference with business relations and prospective economic advantage in count II. Plaintiff alleged that as a result of defendants' misconduct, it suffered damages including loss of business, reputation, and opportunity, and damages to its standing and reputation. Plaintiff sought compensatory and punitive damages. The circuit court dismissed plaintiff's complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2012)), finding the complaint did not allege sufficient facts to support the asserted causes of action. Thereafter, plaintiff filed an amended complaint, adding a few factual assertions to the original complaint.

¶ 6 In the amended complaint, plaintiff reasserts its claims for abuse of process and tortious interference with business relations and prospective economic advantage. Plaintiff pled that although the subpoenas "appear to be proper in form and an appropriate use of the discovery process," defendants issued them to drive plaintiff out of business. Both claims rest on the premise that defendants issued their "avalanche" of subpoenas to damage plaintiff's reputation and burden its "customers, suppliers, manufacturers, sponsors, vendors, potential investors, associates and competitors" with production expenses, causing them to view their relationship

² Plaintiff's motion to quash only concerned the first 23 subpoenas filed.

with plaintiff as costly. Plaintiff alleges defendants did not timely serve 9 of the 28 subpoenas on plaintiff or its lawyers and may have "deliberately concealed" them, and this alone is sufficient to show defendants' malicious intent in issuing and serving the subpoenas. Furthermore, many of the documents defendants sought through the subpoenas were "entirely irrelevant to the [federal] breach of contract claim" and some sought privileged documents purportedly not subject to disclosure. Plaintiff also alleges "Marshall has threatened actual and potential witnesses in an effort to coerce favorable testimony for him" and Premier.

¶ 7 In its abuse of process claim, plaintiff alleges defendants abused the legal process by serving the 28 subpoenas for purposes outside the legal process. These purposes were to: (1) destroy plaintiff's relationship with potential manufacturers, customers, sponsors, suppliers and investors; (2) prevent plaintiff from obtaining management, investments, financing and sales; (3) coerce plaintiff into abandoning its business; and (4) influence witnesses to give false testimony. Plaintiff claims Marshall has told litigants in other cases that "his ultimate goal is to destroy Forza *** and its business through his superior economic resources." Plaintiff also alleges defendant Marshall once stated "he has more money than Forza and its principals and that *** whoever spends the most money will normally be able to eliminate competition by driving potential competitors out of business." Overall, plaintiff alleges defendants' ulterior motive is apparent through the number of subpoenas served, the entities served, the deadlines for responding to the subpoenas, the untimeliness of some subpoenas, and the allegedly duplicative and irrelevant nature of the documents sought by the subpoenas.

¶ 8 In its tortious interference with business relations and prospective economic advantage claim, plaintiff alleges it had valid and established business relationships with its customers,

suppliers, sponsors, and others. Defendants knew of these relationships and they knowingly interfered with and attempted to destroy them by issuing the subpoenas. Further, defendants did this knowing of plaintiff's reasonable expectation of maintaining its business relationships. As a result, plaintiff alleges it has "lost substantial future business opportunities," and defendants' actions have "permanently and irreparably injured plaintiff and have effectively destroyed its business."

¶ 9 Following briefing and hearing, the circuit court dismissed plaintiff's amended complaint without prejudice pursuant to section 2-615 of the Code. The circuit court found plaintiff's abuse of process claim did not allege sufficient facts showing defendants issued subpoenas for any purpose beyond obtaining discovery to defend against plaintiff's federal claims. The number of subpoenas, and the time Respondents were given to respond to them, did not establish an improper purpose or ulterior motive. The circuit court also found plaintiff insufficiently pled a cause of action for tortious interference with business relations and prospective economic advantage.

¶ 10 Upon dismissing the amended complaint, the circuit court granted plaintiff leave to file another amended complaint. However, instead of filing another amended complaint, plaintiff moved for a final order dismissing the amended complaint with prejudice so it could appeal the dismissal. On August 14, 2014, the circuit court granted plaintiff's motion and entered a final order dismissing the amended complaint with prejudice. This timely filed appeal followed.

¶ 11 ANALYSIS

¶ 12 Initially, defendants take plaintiff to task for certain deficiencies in its appellant's brief, including its contention that the amended complaint was dismissed pursuant to section 2-619.1 of

the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2012)) and not section 2-615 of the Code. Defendants should temper their criticisms and focus on objective argument, especially where the trial court's written order of dismissal clearly states it issued pursuant to section 2-615.

¶ 13 A section 2-615 motion to dismiss challenges a complaint's legal sufficiency based on defects apparent on its face. *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). The proper inquiry for a section 2-615 motion is whether the complaint's well-pleaded facts, "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). "The plaintiff is not required to prove his or her case, but must allege sufficient facts to state all the elements of the asserted cause of action." *Kumar v. Bornstein*, 354 Ill. App. 3d 159, 165-66 (2004). In ruling on a section 2-615 motion, a circuit court may only consider the complaint's allegations. *Id.* at 317-318. Although we will accept as true all well-pleaded facts and inferences to be drawn from those facts (*Fellhauer v. City of Geneva*, 142 Ill. 2d 495, 499, (1991)), we will not accept mere conclusions of law or fact which are unsupported by specific factual allegations (*Groenings v. City of St. Charles*, 215 Ill. App. 3d 295, 299 (1991)). We review a circuit court's section 2-615 dismissal of a complaint *de novo*. *Elderman, Combs & Latturner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 164 (2003).

¶ 14 Viewing the amended complaint in a light most favorable to plaintiff, we find the circuit court properly dismissed plaintiff's amended complaint under section 2-615 of the Code.

¶ 15 Plaintiff first argues it stated a cause of action for abuse of process because it adequately alleged defendants sought to destroy plaintiff's business by issuing the 28 subpoenas.

¶ 16 To state a claim for abuse of process, a plaintiff must allege "(1) the existence of an ulterior purpose or motive and (2) the use of legal process not proper in the regular prosecution of the proceedings." *Reed v. Doctor's Associates, Inc.*, 355 Ill. App. 3d 865, 875 (2005). To satisfy the first element, a plaintiff must plead facts showing the defendant instituted proceedings against the plaintiff for an improper purpose, such as extortion, intimidation, or embarrassment. *Farwell v. Senior Services Associates, Inc.*, 2012 IL App (2d) 110669, ¶ 21. Under the second element, a plaintiff must show a misapplication of process or, in other words, that the process was used to accomplish some result beyond the process's purview. *Neurosurgery & Spine Surgery, Service Corp. v. Goldman*, 339 Ill. App. 3d 177, 183 (2003). When process is used only for its intended purpose, there can be no abuse of process, even if an ulterior purpose or motive is shown to exist. *Id.*; *Reed*, 355 Ill. App. 3d at 875-76 (mere use of legal process, "even with a malicious intent or motive, does not alone constitute abuse of process"). To show abuse of process, the defendant must have intended to use the action to accomplish some result the suit itself could not accomplish. *Landau v. Schneider*, 154 Ill. App. 3d 875, 878 (1987). Abuse of process is not a favored tort. *Erllich v. Lopin-Erllich*, 195 Ill. App. 3d 537, 539 (1990). When analyzing whether allegations sufficiently establish an abuse of process claim, we must ignore conclusions of law or fact unsupported by allegations of specific facts. *Kumar*, 354 Ill. App. 3d at 164.

¶ 17 From its amended complaint, taken as true and construed in a light most favorable to plaintiff, plaintiff has alleged facts in a conclusory manner that defendants held an ulterior motive against plaintiff. *Loman*, 229 Ill. 2d at 109. According to plaintiff, Marshall has stated during the course of *other* litigation that "his ultimate goal is to destroy Forza *** and [its]

business through his superior economic resources." Plaintiff also alleges Marshall has stated "he has more money than Forza and its principals and that *** whoever spends the most money will normally be able to eliminate competition by driving potential competitors out of business."

¶ 18 Plaintiff fails to factually connect these allegations to the elements of the claims asserted. Rather, plaintiff's amended complaint relies solely on conclusory language. It claims the "sheer volume of subpoenas," "the entities targeted," the deadlines for responding to them, the alleged untimeliness of some subpoenas (which had been corrected through re-served subpoenas), and the alleged "duplicative" and irrelevant nature of the information sought by the subpoenas somehow inherently reveal an actionable ulterior motive and thus an abuse of process. Even taken as true, none of these claims alone reveal an actionable ulterior motive. Premier and Marshall were defendants in plaintiff's lawsuit for breach of contract and fraud which sought monetary damages. Broad discovery efforts, including the issuance of subpoenas to third parties, can be expected in the course of such litigation. Plaintiff admits, "though [defendants'] subpoenas appear to be proper in form and an appropriate use of discovery, Marshall has made clear that he intends to use his superior economic power to drive [plaintiff] out of business at any cost." In other words, plaintiff acknowledges the subpoenas are facially proper but requests that we read an ulterior motive into their issuance. The abuse of process doctrine requires us to reject such a conclusion. *Kumar*, 354 Ill. App. 3d at 164.

¶ 19 Plaintiff also argues Illinois law has not found the issuance of discovery subpoenas alone may constitute an abuse of process. Rather, plaintiff urges us to follow case law from New York. We are not inclined to do so. While Illinois law has yet to address the issuance of subpoenas specifically as a basis for an abuse of process claim, Illinois law nonetheless clearly requires

allegations of "some act in the use of legal process not proper" in order to sufficiently allege a cause of action for abuse of process. *Kumar*, 354 Ill. App. 3d at 165. This is an element of the tort itself, and any otherwise proper procedural act, including issuing subpoenas, cannot alone constitute an abuse of process. *Id.* As discussed, plaintiff has admitted in its amended complaint that defendants' subpoenas appear proper in form. Plaintiff has failed to show how defendants' mere issuance of the subpoenas in defending a federal lawsuit brought by plaintiff constitutes an ulterior motive sufficient to state an abuse of process claim. Especially where plaintiff had raised, but failed to pursue, a motion to quash the subpoenas with the federal district court, which has the inherent authority to monitor and regulate the discovery in the litigation pending before it. Therefore, we affirm the dismissal of plaintiff's claim for abuse of process.

¶ 20 Second, plaintiff argues it has stated a claim for tortious interference with business relations and prospective economic advantage because the facts of its amended complaint, taken as true, show defendants intentionally harmed plaintiff's business.

¶ 21 To state a cause of action for tortious interference with business relations and prospective economic advantage, a plaintiff must allege: (1) the existence of a valid business relationship or "reasonable expectancy of entering into a valid business relationship, (2) the defendant's knowledge of the expectancy, (3) an intentional and unjustified interference by the defendant that induced or caused a breach or termination of the expectancy, and (4) damage to the plaintiff resulting from the defendant's interference." (Internal quotation marks omitted.) *Voyles v. Sandia Mortgage Co.*, 196 Ill. 2d 288, 300-301 (2001); *O'Brien v. State Street Bank & Trust, Co.*, 82 Ill. App. 3d 83, 85 (1980). Additionally, the defendant's interference must be directed toward a third party. *Douglas Theater Corp. v. Chicago Title & Trust Co.*, 288 Ill. App. 3d 880, 888-89 (1997).

This cause of action is an intentional tort and plaintiff must show the defendant acted with the purpose of injuring plaintiff's expectancies. *J. Eck & Sons, Inc. v. Reuban H. Donnelley Corp.*, 213 Ill. App. 3d 510, 513 (1991).

¶ 22 In its tortious interference count, plaintiff alleges in a conclusory fashion the above elements of the tort with no specific facts supporting each element. As discussed, it is unclear from plaintiff's amended complaint that defendants have done anything constituting tortious interference outside of issuing the subpoenas—a process which plaintiff admits "appear[s] to be proper in form and an appropriate use of the discovery process." The issuance and enforcement of subpoenas is the only action plaintiff claims defendants took to "[interfere] with and [attempt] to destroy" plaintiff's business relationships. As for the remaining elements, plaintiff merely pleads: (1) it "has valid and established business relationships"; (2) "[d]efendants are fully aware of those relationships"; (3) "defendants knowingly interfered with and attempted to destroy those relationships"; and (4) defendants' actions have caused plaintiff to lose "substantial future business opportunities" and have "permanently and irreparably injured plaintiff and have effectively destroyed its business." In reviewing a dismissal pursuant to section 2-615, we cannot accept these mere conclusions of law or fact which are unsupported by specific factual allegations. *Groenings*, 215 Ill. App. 3d at 299. Therefore, we affirm the circuit court's dismissal of plaintiff's cause of action for tortious interference with prospective economic advantage.

¶ 23 In sum, plaintiff failed to allege sufficient facts to support the causes of action asserted in the amended complaint. Plaintiff was given leave to correct these deficiencies and chose not to replead. Viewing the allegations of the amended complaint in the light most favorable to plaintiff, taking as true all well-pleaded facts, and drawing all reasonable inferences therefrom,

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we hold the circuit court correctly found the amended complaint was pled with insufficient facts to support the elements of a cause of action for abuse of process or tortious interference with business relations and prospective advantage.

¶ 24

CONCLUSION

¶ 25 For the reasons stated above, we affirm the circuit court's dismissal of plaintiff's amended complaint.

¶ 26 Affirmed.