

No. 1-15-0389

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

ARTHUR RAMIREZ,)	
)	
Plaintiff-Appellant,)	Appeal from the
)	Circuit Court of
v.)	Cook County.
)	
CHICAGO JACKSON CURRENCY EXCHANGE, INC.,)	No. 14 L 1855
an Illinois Corporation,)	
)	
Defendant-Appellee.)	Honorable
)	Patrick J. Sherlock
)	Judge Presiding.
)	

JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in dismissing breach-of-contract action against defendant currency exchange. As agent of Western Union, defendant could not be held liable for contract to wire money between plaintiff and Western Union, and plaintiff failed to plead facts supporting existence of separate contract between plaintiff and defendant.

¶ 2 Plaintiff Arthur Ramirez sued defendant Chicago Jackson Currency Exchange, Inc., alleging that defendant had breached an oral contract to wire money for his mortgage payment.

The trial court granted defendant's motion to dismiss, finding that plaintiff had failed to allege

No. 1-15-0389

any consideration to support the existence of a contract between plaintiff and defendant. Rather, the trial court found that plaintiff's contract was with Western Union, the party actually making the wire transfer, and that defendant simply acted as Western Union's agent.

¶ 3 Plaintiff appeals, alleging that the trial court erred in dismissing his complaint. Plaintiff contends that the fee that Western Union paid to defendant constituted consideration to support the existence of a contract between plaintiff and defendant.

¶ 4 Because the uncontroverted evidence showed that defendant simply acted as Western Union's agent in the transaction, and that plaintiff's contract was with Western Union, defendant cannot be held liable for a breach of that contract. And plaintiff is incorrect that the fee defendant received from Western Union for acting as Western Union's agent could also serve as consideration for a separate contract. Separate contracts require separate consideration. We affirm the trial court's judgment.

¶ 5

I. BACKGROUND

¶ 6 On May 24, 2013, defendant went to a currency exchange operated by defendant in Joliet, Illinois. There, he ordered that money be wired to Bank of America in order to make a mortgage payment on his home in Alabama. According to the complaint, defendant entered an incorrect mortgage number, and the transfer never occurred. Because Bank of America never received the payment, plaintiff lost his home through foreclosure.

¶ 7 Defendant moved to dismiss the complaint. Defendant acknowledged that defendant had made an order to transfer funds but noted that the transfer was to be made via Western Union. Defendant also said that it acted solely as an agent for Western Union. Defendant included an affidavit from Pam Slepki, a manager of the currency exchange, which said that defendant was an agent for Western Union and that it "accept[ed] money from customers which Western Union

transmits to designated recipients pursuant to the customer's written direction and delivery of documents." Defendant also attached a copy of the agreement plaintiff had filled out, which was labeled as a Western Union form. The agreement also stated, "MONEY TRANSFER SERVICES *** ARE PROVIDED BY WESTERN UNION FINANCIAL SERVICES, INC. *** TYPICALLY THROUGH [AN] AGENT."

¶ 8 Plaintiff then filed an amended complaint, which was the same as his initial complaint, except for the following statement: "At the time and place of [sic] aforementioned Plaintiff and [defendant] entered into an oral agreement whereby [defendant] agreed to enter a certain mortgage account number into the Western Union system to make a mortgage payment."

¶ 9 Defendant moved to dismiss the amended complaint. It alleged that plaintiff had failed to plead sufficient facts to show the existence of a contract between him and defendant because the only fee plaintiff paid was Western Union's fee; there was no additional consideration between plaintiff and defendant to support the existence of a contract. Defendant again included an affidavit from Slepski, which laid out the relationship between defendant and Western Union:

"[Defendant] is an agent for Western Union. It accepts money on behalf of Western Union from customers to be sent to designated recipients. Western Union transmits the funds to designated recipients pursuant to the customer's written direction and delivery of documents. [Defendant] does not accept a fee from its customers for its services with regard to the transmission. It collects all fees due on behalf of Western Union for the services it provides. [Defendant] received an agent fee from Western Union for its service."

¶ 10 The trial court granted defendant's motion to dismiss the amended complaint, finding that plaintiff had failed to allege facts showing that he had provided consideration for a separate

No. 1-15-0389

contract between him and defendant: "As defendant's uncontradicted affidavit shows, the fee plaintiff paid for the wire transfer was paid to Western Union. There was no separate consideration paid to the defendant."

¶ 11 Plaintiff filed a motion to reconsider, arguing that defendant had received consideration in the form of its fee from Western Union. Plaintiff analogized the case to a situation where an insurance agent makes an error and secures a policy with incorrect limits for a customer.

¶ 12 The court denied plaintiff's motion to reconsider, rejecting the analogy that plaintiff drew with insurance:

"An agent for a disclosed principal is not personally liable for breach of that contract, even though the agent was the person who actually committed the breach. The only exception to this rule is where the agent contractually agrees to become personally liable on the contract. That is not the case here."

This appeal followed.

¶ 13

II. ANALYSIS

¶ 14 Defendant moved to dismiss the amended complaint pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2014)). Section 2-619.1 permits a party to file, in one combined motion, both a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2014)) and a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2014)). 735 ILCS 5/2-619.1 (West 2014). A section 2-615 motion to dismiss attacks the legal sufficiency of a pleading by alleging that the facts stated in the pleading are insufficient to state a cause of action on which relief may be granted. *Gatreaux v. DKW Enterprises, LLC*, 2011 IL App (1st) 103482, ¶ 10. A section 2-619 motion, by contrast, admits the legal sufficiency of the pleading but raises an affirmative

defense or other matter that defeats the claim. *Id.* Here, the trial court dismissed the amended complaint pursuant to section 2-619, as it relied on the affidavit presented by defendant—rather than just the pleadings—in finding that defendant was Western Union's agent and received no consideration for a separate contract.

¶ 15 In reviewing the grant of a section 2-619 motion, we examine the allegations of the pleading in the light most favorable to the non-moving party and take all well-pleaded facts as true, including any reasonable inferences from those facts. *Thurman v. Champaign Park District*, 2011 IL App (4th) 101024, ¶ 18. We apply *de novo* review. *Id.* ¶ 7.

¶ 16 Plaintiff contends that the trial court erred in concluding there was no consideration for a contract between him and defendant because defendant received a fee from Western Union to provide its services to plaintiff. Plaintiff argues that he "paid Defendant \$12.00 (the disadvantage) and *** Defendant received a fee from Western Union (the advantage)," and that "the advantage [did not have] to be paid by the other party to the contract."

¶ 17 Plaintiff misapprehends the definition of consideration. "Consideration is defined as a bargained-for exchange, whereby the *promisor* *** receives some benefit, or the *promisee* *** suffers detriment." (Emphases added.) *Vassilkovska v. Woodfield Nissan, Inc.*, 358 Ill. App. 3d 20, 26 (2005). In this case, plaintiff contends that defendant is the promisor—it promised to deliver his account information to Western Union—and that he was the promisee. And, he says, the \$12 he paid for the wire transfer was a disadvantage to him. But Slepiski's affidavit said, "[Plaintiff] paid only the \$12.00 fee *to Western Union* reflected on the Receipt." (Emphasis added.) Thus, the detriment plaintiff incurred flowed only to Western Union, and would only support a contract between him and Western Union. Plaintiff presented no counter-affidavits or other evidence to counter this notion. The trial court did not err in taking that assertion as true.

No. 1-15-0389

See *Zedella v. Gibson*, 165 Ill. 2d 181, 185 (1995) ("When supporting affidavits [for a 2-619 motion] have not been challenged or contradicted by counter-affidavits or other appropriate means, the facts stated therein are deemed admitted.").

¶ 18 Nor did the fee that defendant received from Western Union support the existence of a separate contract. According to Slepki's uncontradicted affidavit, defendant "received an *agent fee* from Western Union for its service." (Emphasis added.) That sworn testimony shows that there was a contract between defendant and Western Union—defendant offered its services as agent in exchange for a fee from Western Union—but does not also act as consideration supporting an alleged oral contract between defendant and plaintiff. Plaintiff's argument would have the consideration for the contracts between defendant and Western Union and plaintiff and Western Union also serve as consideration for a separate contract between him and defendant. But this argument runs counter to the principle that separate contracts must be supported by separate consideration. See, e.g., *Vassilkovska*, 358 Ill. App. 3d at 25-27 (arbitration agreement that was separate from contract to purchase car required separate consideration).

¶ 19 Plaintiff also argues that defendant should be liable for breaching the contract while serving as Western Union's agent. But "[i]t has been long settled in Illinois that, when an agent entering into a contract with another discloses both his agency status and the name of his principal or when the party dealing with the agent knows that the agent is acting for his principal in making a contract, the agent is not liable on the contract unless he agrees to become personally liable." *Storm & Associates, Ltd. v. Cuculich*, 298 Ill. App. 3d 1040, 1053 (1998). There is no dispute here that plaintiff knew that he was using Western Union's wire-transfer services. Nor does plaintiff argue that defendant agreed to be personally liable for any breach of plaintiff's

No. 1-15-0389

agreement with Western Union. Defendant, as Western Union's agent, was not liable for a breach of the contract between plaintiff and Western Union.

¶ 20 Plaintiff cites *Gateway Erectors Division of Imoco-Gateway Corp. v. Lutheran General Hospital*, 102 Ill. App. 3d 300 (1981), arguing that, once an agent undertakes work on behalf of its principal, the agent has a " 'duty to use reasonable care in the manner of executing it, so as not to cause any injury to third persons which may be the natural consequence of his acts.' " *Id.* at 301 (quoting *Baird v. Shipman*, 132 Ill. 16, 18 (1890)). According to plaintiff, defendant, as an agent for Western Union, failed to exercise reasonable care when it entered an incorrect account number to which Western Union should transfer the money.

¶ 21 But the portion of *Gateway Erectors* that plaintiff relies on had nothing to do with an agent's liability under a *contract* between the agent's principal and a third party. Rather, that passage discussed the agent's liability under a *tort* theory. *Gateway Erectors*, 102 Ill. App. 3d at 301-02. In fact, the court in *Gateway Erectors* went on to find that, while the agent in that case could be held liable under a tort theory, the agent could not be held liable for its acts under a breach of contract theory. *Id.* at 302-04. The court declined to find that the agent could be liable for breach of the contract even if the agent "actively participate[d] in violating a duty owed by the principal to a contracting party." *Id.* at 303. And the court reiterated that the *only* way that an agent may be liable under a principal's contract with a third party is if the agent agrees to become personally liable. *Id.* Thus, *Gateway Erectors* does not support the notion that defendant could be liable under plaintiff's contract with Western Union.

¶ 22 Plaintiff also cites *Lazzara v. Howard A. Esser, Inc.*, 802 F.2d 260 (7th Cir. 1986), and *Nixon v. United States*, 916 F. Supp. 2d 855 (N.D. Ill. 2013), but those cases have no bearing on this one. In *Lazzara*, the plaintiff directed an insurance broker to secure \$1 million in automobile

No. 1-15-0389

insurance, but the broker obtained a policy that left the plaintiff with a gap in coverage. *Lazzara*, 802 F.2d at 263. The plaintiff sued the insurance broker after he got into a car accident. *Id.* at 264. The court found that the insurance broker had acted as the plaintiff's agent, not the insurer's. *Id.* at 265. Thus, as the plaintiff's agent, the insurance broker owed him duties. *Id.* at 266. In this case, plaintiff does not contend that defendant was his agent. And the only evidence presented to the court—Slepski's affidavit—showed that defendant was *Western Union's* agent, not plaintiff's. *Lazzara* does not support plaintiff's claims.

¶ 23 And in *Nixon*, the issue was whether the federal government had a duty to maintain life insurance forms for federal employees under the Federal Employees' Group Life Insurance Act (FEGLIA) (5 U.S.C. § 8701 *et seq.* (2012)). *Nixon*, 916 F. Supp. 2d at 862-64. This case does not involve FEGLIA or any alleged statutory duty that defendant owed plaintiff. Plaintiff's reliance on *Nixon* is misplaced.

¶ 24 In sum, no benefit or detriment flowed between plaintiff and defendant to support the existence of a contract separate and distinct from the one plaintiff entered into with Western Union. And defendant, as Western Union's agent, cannot be held liable under the contract between Western Union and plaintiff. Because plaintiff failed to allege sufficient facts on which to base a breach-of-contract action against defendant, we affirm the trial court's dismissal of the complaint.

¶ 25 Affirmed.