2015 IL App (2d) 141141-U
No. 2-14-1141
Order filed July 30, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MONEY MARKET PAWN, INC.,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 13-L-144
	)	
BOONE COUNTY SHERIFF DUANE, WIRTH, PATRICK IMRIE, and WILLIAM KAISER,	)	Honorable
	)	Eugene G. Doherty,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court properly dismissed plaintiff's claims under the Pawnbroker Regulation Act: as the purpose of the Act was to protect the public, not pawnbrokers, it did not provide an implied right of action for plaintiff; (2) the trial court properly dismissed plaintiff's claims for injunctive relief, as plaintiff's conversion claims, among other possible claims, provided an adequate remedy at law.

¶ 2 Plaintiff, Money Market Pawn, Inc., appeals the trial court's order dismissing five counts of its complaint against defendants, Duane Wirth, Patrick Imrie, and William Kaiser. Plaintiff contends that three of the counts stated a cause of action for injunctive relief because it has no

adequate remedy at law. Plaintiff further contends that two of the counts allege a private right of action under section 12 of the Pawnbroker Regulation Act (the Act) (205 ILCS 510/12 (West 2012)). We affirm.

¶ 3 The complaint alleges that plaintiff operates a pawnshop in Rockford. Wirth is the Boone County Sheriff. Imrie and Kaiser are Boone County deputy sheriffs.

¶ 4 The complaint further alleges that in October 2012 Jeremy Hunt pawned a Hobart welder and a Stihl chainsaw. Robert Rutledge informed Imrie and Kaiser that Hunt, his son, had stolen the items from him and pawned them. Rutledge asked Imrie to help him get the items back, but was reluctant to prosecute his son. Imrie and Kaiser went to the pawn shop and demanded the release of the items. Matthew Sigley, plaintiff's principal owner, told the deputies that they did not have the proper paperwork. He asked whether an arrest had been made or charges filed. Sigley explained that he would be happy to put a "hold" on the items until the officers were certain that charges would be filed. However, the deputies seized the items.

¶ 5 Sigley called the sheriff's department to report that Hunt had pawned the welder three previous times, leading to the conclusion that he was the owner. Sigley also expressed concern that Rutledge and Hunt had conspired to have the items returned without repaying the loan. Sigley later learned that the items had been returned to Rutledge, who had declined to press charges against his son.

¶ 6 Plaintiff then filed a multicount complaint against then-sheriff Dave Ernest, as well as Imrie and Kaiser. The complaint alleged federal claims pursuant to section 1983 (42 U.S.C. § 1983 (2012)), as well as state claims. Plaintiff alleged that it had a property interest in the pawned items and that defendants had deprived it of that interest without prior notice or an opportunity to be heard.

¶ 7 Defendants removed the case to federal court. That court dismissed the section 1983 claims and remanded the remaining claims to state court. *Money Market Pawn, Inc. v. Wirth*, 32 F. Supp. 3d 903 (N.D. Ill. 2014).

¶ 8 Following remand, plaintiff filed an amended complaint asserting claims for injunctive relief against Imrie (count III), Kaiser (count VI), and Wirth (count XII), for conversion (count XIII) and willful and wanton conversion (count XIV) against Imrie, and for violations of the Act (counts XV and XVI) against Imrie.

¶ 9 Defendants moved to dismiss. See 735 ILCS 5/2-619.1 (West 2012). The trial court dismissed the claims for injunctive relief and the claims under the Act, but declined to dismiss the conversion counts. The court ruled that plaintiff was not entitled to injunctive relief, because it had an adequate remedy at law via the conversion counts. The court further held that the Act did not create a private right of action in favor of pawnbrokers, and it granted Rule 304(a) language, finding no just reason to delay an appeal. Plaintiff timely appeals.

¶ 10 Plaintiff contends first that the trial court erred by dismissing its counts under the Act. Plaintiff argues that the Act implicitly creates a private right of action for pawnbrokers. Before turning to plaintiff's specific contentions, we consider the legal backdrop against which they are made.

¶ 11 The court granted in part defendants' motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-619.1 (West 2012)). Section 2-619.1 of the Code provides that motions pursuant to sections 2-615 and 2-619 of the Code may be filed as a single motion. 735 ILCS 5/2-619.1 (West 2012). A section 2-615(a) motion tests the legal sufficiency of the complaint, whereas a section 2-619(a) motion admits the legal sufficiency of the complaint but asserts an affirmative defense that defeats the claim. 735 ILCS 5/2-615(a), 2-

619(a) (West 2012); *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 578-79 (2006). Our review under either section is *de novo*. *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 12 (2005).

¶ 12 The overarching theme of plaintiff's complaint is that defendants took its property without prior notice or an opportunity to be heard. Plaintiff contends that, having taken the items in pawn, it had a possessory interest in them. See *Sanders v. City of San Diego*, 93 F.3d 1423, 1426-27 (9th Cir. 1996) (pawnbroker had standing to maintain action for seizure of allegedly stolen property); *Pease v. Ditto*, 189 Ill. 456, 465 (1901) (pawnbrokers have lien against pawned property and thus could maintain replevin action). Plaintiff then posits that, as the holder of a significant possessory interest in the property, it was entitled to notice and a meaningful opportunity to be heard prior to being deprived of that interest. See *Fuentes v. Shevin*, 407 U.S. 67, 81-82 (1972).

¶ 13 Plaintiff further argues that, to vindicate these rights, it may maintain a private right of action under section 12 of the Act. That section, added to the statute in 2010, allows law-enforcement officials to place a "hold order" on property in the possession of a pawnbroker and to obtain temporary custody of such property if necessary in the course of a criminal investigation. 205 ILCS 510/12 (West 2012). That section provides in its entirety:

> "(a) For the purposes of this Section, 'hold order' means a written legal instrument issued to a pawnbroker by a law enforcement officer commissioned by the law enforcement agency of the municipality or county that licenses and regulates the pawnbroker, ordering the pawnbroker to retain physical possession of pledged goods in the possession of the pawnbroker or property purchased by and in the possession of the

pawnbroker and not to return, sell, or otherwise dispose of such property as such property is believed to be misappropriated goods.

(b) Upon written notice from a law enforcement officer indicating that property in the possession of a pawnbroker and subject to a hold order is needed for the purpose of furthering a criminal investigation and prosecution, the pawnbroker shall release the property subject to the hold order to the custody of the law enforcement officer for such purpose and the officer shall provide a written acknowledgment that the property has been released to the officer. The release of the property to the custody of the law enforcement officer shall not be considered a waiver or release of the pawnbroker's property rights or interest in the property. Upon completion of the criminal investigation, the property shall be returned to the pawnbroker who consented to its release; except that, if the law enforcement officer has not completed the criminal investigation within 120 days after its release, the officer shall immediately return the property to the pawnbroker or obtain and furnish to the pawnbroker a warrant for the continued custody of the property.

The pawnbroker shall not release or dispose of the property except pursuant to a court order or the expiration of the holding period of the hold order, including all extensions.

In cases where criminal charges have been filed and the property may be needed as evidence, the prosecuting attorney shall notify the pawnbroker in writing. The notice shall contain the case number, the style of the case, and a description of the property. The pawnbroker shall hold such property until receiving notice of the disposition of the

case from the prosecuting attorney. The prosecuting attorney shall notify the pawnbroker and claimant in writing within 15 days after the disposition of the case." *Id.*

¶ 14 In the absence of statutory language expressly authorizing a right of action, courts may imply a private right of action for a violation of a statute when it is clear that the statute was enacted to protect a particular class of individuals. *D'Attomo v. Baumbeck*, 2015 IL App (2d) 140865, ¶ 35 (citing *Sawyer Realty Group, Inc. v. Jarvis Corp.*, 89 Ill. 2d 379, 386 (1982)). An implied right of action exists if: (1) the plaintiff is within the class of persons the statute is designed to protect; (2) implying a right of action is consistent with the statute's underlying purpose; (3) the plaintiff's injury is one the statute is designed to prevent; and (4) implying a right of action is necessary to effectuate the purpose of the statute. *Id.* ¶ 37.

¶ 15 The trial court here cited *Lane v. Fabert*, 178 Ill. App. 3d 698 (1989), in dismissing the counts under the Act. In *Lane*, the court held that, while the Act's purpose is to "protect the public from deceptive practices and fraud in consumer transactions," the statute nevertheless does not create a private right of action in favor of consumers. *Id.* at 703. The trial court here, while acknowledging that subsequent amendments to the Act appear to provide pawnbrokers with certain rights, nevertheless found it incongruous that the Act would provide a private right of action in favor of pawnbrokers but not in favor of consumers.

¶ 16 We agree with the trial court's reasoning. In considering whether the statute creates a private right of action, we must consider the statute as a whole and not isolated provisions. *Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455, 462-63 (1999). It is clear that the overall purpose of the Act is to protect the public from deceptive practices. *Lane*, 178 Ill. App. 3d at 703. Plaintiff narrowly focuses on a single provision of the Act that arguably benefits pawnbrokers to argue that the statute creates a private right of action in its favor. As the Act's

purpose is not to protect pawnbrokers, the factors do not favor the creation of a private right of action in plaintiff's favor.

¶ 17 Furthermore, the supreme court has found a private right of action only where the statute would be ineffective as a practical matter unless such a right were implied. *Davis v. Kewanee Hospital*, 2014 IL App (2d) 130304, ¶ 38 (citing *Fisher*, 188 Ill. 2d at 464). Here, even if the statute's primary purpose were the protection of pawnbrokers, the lack of a private remedy would not eviscerate the statute. This is so because, as we explain below in conjunction with plaintiff's second issue, plaintiff has other remedies available.

¶ 18 Plaintiff next contends that the trial court erred by dismissing the counts seeking injunctive relief. To be entitled to a permanent injunction, a party must demonstrate (1) a clear and ascertainable right in need of protection; (2) that it will suffer an irreparable harm if the injunction is not granted; and (3) that it has no adequate remedy at law. *Kopchar v. City of Chicago*, 395 Ill. App. 3d 762, 772 (2009).

¶ 19 Both the federal district court and the trial court below found that plaintiff has an adequate remedy at law. In dismissing plaintiff's federal due-process claims, the district court noted that plaintiff had not alleged the inadequacy or unfairness of state post-deprivation remedies. "On the contrary, plaintiff has alleged a state law claim for conversion against Deputy Imrie, thereby asserting the availability of such a remedy. Moreover, it is possible that such a claim could lie against the other defendants, and perhaps a breach of contract action against Hunt would also provide a remedy." *Money Market Pawn, Inc.*, 32 F. Supp. 3d at 908.

¶ 20 In the trial court, plaintiff alleged claims for both "ordinary" conversion (count XIII) and willful and wanton conversion (count XIV) against Imrie. In dismissing plaintiff's claims for

injunctive relief, the trial court noted that it had denied defendants' motion to dismiss the conversion claims, and thus plaintiff had a readily available legal remedy.

¶ 21 Plaintiff insists that the remedy of a conversion action is inadequate for several reasons. Plaintiff contends that the trial court was required to accept as true its allegation that the sheriff's department has an established policy of "acting in a judicial capacity determining the property rights of pawnbrokers and third persons in property that was pawned with the pawnbroker without providing notice and an opportunity to be heard." However, plaintiff has alleged no specific facts in support of this allegation. Mere conclusions of fact are insufficient to withstand a motion to dismiss. *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). Thus, the trial court properly disregarded this factual conclusion. Moreover, the mere possibility that defendants might engage in similar conduct in the future does not represent the type of continuing transgression that will justify the extraordinary remedy of an injunction. See *Bell Fuels, Inc. v. Butkovich*, 201 Ill. App. 3d 570, 572-73 (1990) (equitable relief will not be granted when there is only speculative possibility of injury).

¶ 22 Plaintiff argues that the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101 *et seq.* (West 2012)) immunizes defendants from liability for conversion. While it has been held that the Tort Immunity Act applies to conversion actions (*Martel Enterprises v. City of Chicago*, 223 Ill. App. 3d 1028, 1032-33 (1991)), plaintiff ignores that the trial court *denied* the motion to dismiss both conversion counts. In their motion, defendants referred to the Tort Immunity Act as a possible reason why plaintiff pleaded a count for willful and wanton conversion, but they did not raise statutory immunity as an independent reason to dismiss the ordinary conversion count. Plaintiff's willful-and-wanton count would remain viable in any event. See 745 ILCS 10/2-109, 2-202 (West 2012) (no immunity for willful

and wanton conduct); see also *Martel Enterprises*, 223 Ill. App. 3d at 1032 (same). We note further that plaintiff does not directly respond to the federal court's suggestion that simply suing Hunt for the balance due on the loan would be an adequate remedy.

¶ 23 Finally, plaintiff argues that a statutory claim for injunctive relief need not satisfy traditional equitable principles. Plaintiff cites section 0.05 of the Act, which provides that the Secretary of Financial and Professional Regulation, through the Attorney General, may sue to enjoin certain violations of the Act. 205 ILCS 510/0.05(a)(6.5) (West 2012). The obvious flaw in this argument is that plaintiff is neither the Secretary of Financial and Professional Regulation nor the Attorney General and thus may not invoke this provision.

¶ 24 The judgment of the circuit court of Winnebago County is affirmed and the cause remanded for further proceedings on the remaining counts.

¶ 25 Affirmed.