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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FERNANDO MARTINEZ,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 10 CH 23662
)	
AMPCO SYSTEM PARKING, INC.,)	
an Illinois Corporation, and Rendered)	The Honorable
Services, Inc., an Illinois Corporation,)	Brigid Mary McGrath,
)	Judge Presiding.
Defendant-Appellee.)	

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Lavin and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* Circuit court order granting defendant corporation's motion for summary judgment on plaintiff's Illinois Consumer Fraud and Deceptive Business Practices Act claim reversed and the cause remanded where there were genuine issues of material fact regarding defendant's business practices that precluded summary judgment; circuit court order denying plaintiff's motion for Rule 137 sanctions against defendant affirmed where the court's ruling did not constitute an abuse of discretion.

¶ 2 Plaintiff Fernando Martinez appeals an order of the circuit court granting defendant AMPCO System Parking, Inc.'s (AMPCO) motion for summary judgment on his consumer fraud

and deceptive business practice claim brought pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act (Act) (815 ILCS 505/1 *et seq.* (West 2008)). Martinez also challenges the circuit court's denial of his motion to impose sanctions on AMPCO. For the reasons set forth herein, we reverse the circuit court's summary judgment order and remand for proceedings consistent with this disposition. We, however, affirm the circuit court's denial of Martinez's motion for sanctions.

¶ 3

BACKGROUND

¶ 4

On March 7, 2007, defendant AMPCO received a "school usage permit" from the Chicago Board of Education allowing AMPCO to lease parking spaces at the Frederick Funston Elementary School (Frederick School), located at 2010 North Central Park Avenue in Chicago, during non-school hours. Shortly after receiving the permit, AMPCO installed a 40" by 30" blue, yellow, and white sign at the Frederick School parking lot that provided as follows:

"Monthly Parking Available
\$40.00 per month
In after 4:30 p.m. – Out by 7:30 a.m.
All Day Sat., Sun., & School Holidays
For Information Call (312) 245-2757"

¶ 5

On July 21, 2009, Martinez entered into a "Monthly Parking Agreement" (Agreement) with AMPCO. Pursuant to the written Agreement, Martinez was furnished with a parking space at Frederick School in exchange for a \$40 monthly fee. The Agreement did not contain explicit language specifying that the parking space could only be used during non-school hours. Moreover, the Agreement did not explicitly incorporate by reference the sign located at the Frederick parking lot. It did, however, provide that the violation of any unspecified "operation procedures for monthly parking" could result in the immediate termination of one's parking

privileges. After signing the Agreement, Martinez began parking at the Frederick School parking lot.

¶ 6 In September 2009, Martinez discovered that his vehicle had been towed from the lot even though he had fulfilled his monthly payment obligation. Martinez contacted AMPCO and sought the immediate release of his vehicle and the waiver of the towing and storage fees; however, AMPCO refused because his vehicle had been parked in the lot during school hours. In response, Martinez filed a complaint and an amendment thereto, against AMPCO.¹ In his filing, Martinez alleged that AMPCO was engaging in consumer fraud and deceptive business practices in contravention of the Act (Act) (815 ILCS 505/1 *et seq.* (West 2008)).² In support of his claim, Martinez alleged “[AMPCO] is in the business of renting out parking spaces throughout the City of Chicago and the State of Illinois. *** [AMPCO] rents out parking spaces in some of its lots that have time restrictions, yet the form leases that [AMPCO] uses in no way indicate that the leased space may not be occupied by the lessee twenty-four hours a day. *** [AMPCO’s] use of form leases that do not inform lessees of the time restrictions on certain parking lots is either willful, or is a policy implemented with such gross negligence, as to indicate a wanton disregard of the rights of others” in contravention of the protections afforded by the Act.

¶ 7 In its answer, AMPCO acknowledged using form lease agreements that did “not identify time restrictions,” but indicated that Martinez’s Agreement “incorporate[d] the signs posted at the lot, which limit the time in which Plaintiff could park at the lot.” AMPCO denied that it was engaged in consumer fraud or that its use of lease form agreements constituted a deceptive business practice in contravention of the Act.

¹ Martinez also filed suit against the towing company; however, the company settled and is not a party to this appeal.

² Martinez also included a breach of contract claim against AMPCO in his complaint; however, that claim was disposed of via an earlier circuit court order and is not relevant to this appeal.

¶ 8 Thereafter, the parties engaged in discovery and various witnesses were deposed. Ryan Quinn, an area manager employed by AMPCO, testified that he managed seven properties, including the Frederick School parking lot. He testified that AMPCO used the same standard “monthly parking agreement” forms to lease parking spaces at each of its properties. Because AMPCO used the same standard monthly parking agreement forms for all of its properties, the Frederick School parking lot’s time restrictions were not included in Martinez’s Agreement. However, there was a sign located at the entrance to the lot that clearly set forth the temporal limitations. Moreover, Quinn testified that he verbally informed customers interested in obtaining a parking space at the Frederick School lot of the parking restrictions before sending them monthly parking agreement forms to sign. Quinn explained that individuals who wished to obtain a parking space at the Frederick School would call the telephone number contained on AMPCO’s sign located at the lot and speak to him. During this phone call, he would “explain the procedures of the lot and explain to them that because it is a school where the faculty parks, we’re restricted on our hours.” He would specify that “there was no parking from 7:30 a.m. to 4:30 p.m., Monday through Friday.” It was only after Quinn verbally informing interested parties of the time limitations unique to the Frederick School lot that he would then send them monthly parking agreement forms to sign.

¶ 9 Quinn testified that he could not specifically recall speaking with Martinez or sending him the Agreement; however, he explained that in order for Martinez to have signed the Agreement, Martinez would have had to have called him and expressed his interest in a parking space at the Frederick School. Moreover, “the only way” that Martinez would have obtained the phone number, would have been to have seen the number contained on AMPCO’s sign that was located at the school’s parking lot. The same sign that contained AMPCO’s phone number also

set forth the parking restrictions at the lot. Quinn testified that he speaks to every customer before sending out a form to complete. He does so because he has to find out which lot the customer is interested in obtaining a parking spot.

¶ 10 Sometime in September 2009, Quinn was notified that Martinez's vehicle was parked at the Frederick School lot during school hours in contravention of the Agreement. Quinn called Martinez to notify him about the violation; however, he did not recall if he actually talked to Martinez or if he simply left a message on Martinez's voice mail. Quinn later received a second notice that Martinez's vehicle was parked in the lot during school hours.³ Quinn placed another call to Martinez and Martinez's vehicle was subsequently towed. Quinn testified that written violation notices were also provided to Martinez before his vehicle was towed.

¶ 11 In his discovery deposition,⁴ Martinez testified⁵ that he observed the sign at Frederick School about available parking spaces and that he wrote down the phone number contained on the sign. Because he only speaks a little English, his ex-girlfriend called the phone number for him and requested an application. After Martinez received the Agreement, his cousin, Francisco Vasquez filled it out on his behalf and Martinez signed it. Martinez then mailed in his completed application and his first \$40 payment and he received his permit shortly thereafter. He testified that he allowed his uncle to use his truck, which they purchased together, and his permit to park the vehicle at the Frederick School parking lot. His vehicle was towed after his uncle parked it in the Frederick School lot.

³ Although Quinn did not recall the specific dates in his deposition, it appears that Martinez's vehicle was parked at the Frederick School lot during school hours on two consecutive school days: Friday, September 11, 2009, and Monday, September, 14, 2009.

⁴ We note that a full transcript of Martinez's deposition testimony is not contained in the record on appeal; the record only contains excerpts of his deposition attached to various filings.

⁵ The record reveals that Martinez testified through an interpreter during his discovery deposition. The fact that Martinez's native language is Spanish, however, is irrelevant to this appeal. His consumer fraud and deceptive business practice claim is not based on the fact that the sign was in English; rather, it is premised on AMPCO's failure to include language in the Agreement that reflected the temporal parking restrictions at the Frederick School.

¶ 12 After conducting the aforementioned discovery, AMPCO filed a motion for summary judgment on Martinez’s consumer fraud and deceptive business practice claim. In its motion, AMPCO argued there was no evidence that its actions with respect to the execution of Martinez’s Agreement were deceptive in any way. AMPCO noted that whether a practice is deemed deceptive depends upon the totality of the circumstances and all of the information available to Martinez at the time the Agreement was executed. In this case, AMPCO affixed a large sign at the entrance of the Frederick School parking lot that explicitly provided that parking was only authorized during non-school hours. There was no dispute that Martinez observed this sign or that Quinn routinely verbally relayed the same information to prospective customers prior to sending them monthly parking agreement forms. Given these facts, AMPCO argued that there was no evidence to support Martinez’s suggestion that it intended for him to believe that he had unfettered access to the Frederick School parking lot and could park there during school hours.

¶ 13 Martinez, in turn, urged the circuit court to deny AMPCO’s motion for summary judgment. In pertinent part, Martinez argued that AMPCO’s Agreement form “could easily reflect a time restriction;” however AMPCO’s failure to include one amounted to a deceptive business practice. He further argued summary judgment was particularly inappropriate given the “broad scope and purpose” of the Act, which is “to eliminate all forms of deceptive and unfair business practices.”

¶ 14 Upon review, the circuit court granted AMPCO’s motion for summary judgment. The court explained its rationale as follows:

“The court finds there is no genuine issue of material fact that the plaintiff can establish that the defendant acted defectively, unfairly, or otherwise committed intentional or intentional acts that fall under the [Act]. Even though the defendant

used a form lease that did not reflect the specific restrictions on parking hours, defendant provided that information through other means. The parking agreement referenced that a violation of the parking procedures may lead to termination of the agreement. The plaintiff testified that he saw the sign.”

¶ 15 Martinez sought reconsideration of the circuit court’s judgment; however, the court denied his amended motion to reconsider. Martinez and AMPCO also both filed cross-motions for sanctions. Each party accused the other of filing documents that were not well-grounded in fact or law in violation of Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. July 1, 2013)). The circuit, however, declined to impose sanctions on either party and denied both parties’ motions. This appeal followed.

¶ 16

ANALYSIS

¶ 17

Summary Judgment

¶ 18

On appeal, Martinez first argues that the circuit court erred in granting AMPCO’s motion for summary judgment. He asserts that the evidence established that AMPCO’s lease form was deceptive because it failed to include applicable parking time limit restrictions within the text of the Agreement. Martinez further asserts that there is evidence that AMPCO intended for plaintiff to rely on the omission in order to induce him into entering the Agreement.

¶ 19

AMPCO responds that the circuit court properly granted its motion for summary judgment because there was no evidence that it had “acted deceptively or unfairly, or otherwise committed intentional or unintentional acts that violate the Act.” Although the Agreement itself did not detail the temporal parking restrictions, AMPCO emphasizes that the restrictions were relayed to Martinez via other means. As such, AMPCO argues that circuit court properly found that it did not act deceptively.

¶ 20 Summary judgment is appropriate when “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” 735 ILCS 5/2-1005(c) (West 2008). In reviewing a motion for summary judgment, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the moving party to determine whether a genuine issue of material fact exists. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). A genuine issue of fact exists where the material relevant facts in the case are disputed, or where reasonable persons could draw different inferences and conclusions from the undisputed facts. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). To survive a motion for summary judgment, the nonmoving party need not prove his case at this preliminary stage of litigation; however, the plaintiff must present some evidentiary facts to support each element of his cause of action, which would arguably entitle him to a judgment. *Richardson v. Bond Drug Co. of Illinois*, 387 Ill. App. 3d 881 (2009); *Garcia v. Nelson*, 326 Ill. 2d 33, 38 (2001). Although summary judgment has been deemed a “drastic means of disposing of litigation” (*Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986)), it is nonetheless an appropriate mechanism to employ to expeditiously dispose of a lawsuit when the moving party’s right to a judgment in its favor is clear and free from doubt (*Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001)). A trial court’s ruling on a motion for summary judgment is subject to *de novo* review. *Weather-Tite, Inc. v. University of St. Francis*, 233 Ill. 2d 385, 389 (2009).

¶ 21 The Act is a regulatory and remedial statute intended to protect individuals against unfair methods of competition and unfair or deceptive business practices, and is to be liberally construed to effectuate that purpose. *Price v. Phillip Morris*, 219 Ill. 2d 182, 233-34 (2005). To prevail on an action brought pursuant to the Act, a plaintiff must allege and establish: (1) the

defendant engaged in a deceptive act or practice; (2) the defendant intended that the plaintiff rely on the deception; (3) the deception occurred during a course of conduct that involved either trade or commerce; (4) the plaintiff suffered actual damage; and (5) the damage suffered by plaintiff was proximately caused by the defendant's deceptive conduct. *Barbara's Sales, Inc. v. Intel Corp.*, 227 Ill. 2d 45, 72 (2007); *Platinum Partners Value Arbitrage Fund, Ltd. Partnership v. Chicago Board Options Exchange*, 2012 IL App (1st) 112903, ¶ 28.

¶ 22 A deceptive act or practice is one that employs “any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or *omission of any material fact*, with the intent that others rely upon the concealment, suppression or omission of such material fact.” (Emphasis added). 815 ILCS 505/2 (West 2008). An omission is deemed material if the plaintiff would have acted differently had he been aware of it or if the omission pertained to the type of information that a person would expect to rely upon in making his decision. *Connick v. Suzuki Motor Co., Ltd.*, 174 Ill. 2d 482, 504-05 (1996); *DOD Technologies v. Mesirow Ins. Services, Inc.*, 381 Ill. App. 3d 1042, 1052 (2008). In deciding whether an omission or other act is deceptive, one “must consider whether the act was deceptive as reasonably understood in light of *all the information* available to” the plaintiff. *Phillips v. DePaul University*, 2014 IL App (1st) 122817, ¶ 44 (citing *Bober v. Glaxo Wellcome PLC*, 246 F. 3d 934, 938-39 (7th Cir. 2001)).

¶ 23 In this case, there is no dispute that AMPCO used “form” documents to lease parking spaces at various locations and that Martinez's written parking Agreement did not specify that the Frederick School parking lot could only be used during non-school hours. Given that prospective customers would rely upon such information when deciding whether to enter into a parking agreement, we find that the failure to include the temporal restriction in the text of the

document is a material omission. *Connick*, 174 Ill. 2d at 504-05; *DOD Technologies*, 381 Ill. App. 3d at 1052. AMPCO, however, argues that the omission does not constitute a deceptive business practice or rise to the level of consumer fraud because the information was relayed to Martinez via other means before he elected to sign the Agreement. AMPCO emphasizes that a 40” by 30” sign was installed at the entrance of the Frederick School lot that provided: “In after 4:30 p.m. – Out by 7:30 a.m.” The sign further provided that parking was permitted “All Day Sat., Sun., & School Holidays.” There is also no dispute that Martinez observed this sign and wrote down the phone number contained on the sign and had his ex-girlfriend call the number to obtain the Agreement. Martinez, however, did not recall observing the time restrictions on the sign and we note that the time restriction is set forth in a noticeably small type when compared to other information contained on the sign, including AMPCO’s phone number and the monthly charge. AMPCO also emphasizes that Ryan Quinn, its Area Manager, testified that it was his customary practice to inform parties interested in a Frederick School parking space that the lot could only be used during non-school hours; however, we note that Quinn admitted that he could not recall the precise conversation that he had with Martinez’s ex-girlfriend.

¶ 24 Although AMPCO is correct that the deceptive nature of an act or omission must be considered in “light of *all the information* available to” the plaintiff, (*Phillips*, 2014 IL App (1st) 122817, ¶ 44), we do not believe that its sign or Quinn’s testimony concerning his regular business practice, precludes a finding that genuine issues of material fact exist regarding the arguably deceptive omission contained in Martinez’s written Agreement. In so finding, we emphasize that “in order for a defendant’s conduct to be considered deceptive under the [Act], it must, at the very least create the likelihood of confusion or misunderstanding.” *Aliano v. Ferriss*, 2013 IL App (1st) 120242, ¶ 26. Here, we find that the omission of the temporal

parking restrictions in the Agreement created the likelihood of confusion or misunderstanding as to the scope of permissible parking at the Frederick School lot. This is particularly true because Frederick School personnel parked at the lot during school hours. Therefore, even though AMPCO's sign limited parking to non-school hours, Martinez would have observed vehicles parked at the lot during school hours.

¶ 25 We are also unpersuaded by AMPCO's argument that summary judgment is proper because "the record does not support the inference that [it] omitted the parking hour restrictions with an intent to deceive" Martinez. Pursuant to the Act, a defendant need not have intended to deceive a plaintiff to be subject to liability; rather, "innocent misrepresentations or omissions intended to induce the plaintiff's reliance are actionable under the statute." *Capiccione v. Brennan Naperville*, 339 Ill. App. 3d 927, 934 (2003); see also *Cuculich v. Thomson Consumer Electronics, Inc.*, 709, 716 (2000) ("The 'intent' required by the statute is only the intent that the plaintiff in the primary action rely on the information that the defendant gave him, as opposed to any intent on the defendant's part to deceive"). We note that intent is generally a question best left to the trier of fact and conclude that there is a genuine issue of material fact as to whether AMPCO's use of a form agreement that omitted information pertaining to temporal parking restrictions at the Frederick School was intended to induce plaintiff to enter into the Agreement and to rely on the information contained in that Agreement. Given the existence of genuine issues of material fact in this case, we conclude that the circuit court erred in granting AMPCO's motion for summary judgment.

¶ 26 Sanctions

¶ 27 Martinez next argues that the circuit court erred in denying his motion for sanctions pursuant to Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. July 1, 2013)). He argues

that sanctions against AMPCO are warranted in light of AMPCO's use of "strawman arguments" in its circuit court filings as well its repeated misrepresentations of facts and law in those filings.

¶ 28 AMPCO responds that the "circuit court properly exercised its discretion in denying [Martinez's] motion for sanctions under Supreme Court Rule 137" given that it neither made misstatements nor improper arguments in any of its circuit court filings.

¶ 29 "Rule 137 was adopted as a means of preventing false and frivolous filings" (*Cult Awareness Network v. Church of Scientology International*, 177 Ill. 2d 267, 279 (1997)) and its purpose " ' is to prevent the abuse of the judicial process by penalizing claimants who bring vexatious and harassing actions' " (*Krautsack v. Anderson*, 223 Ill. 2d 541, 561 (2006) (quoting *Sundance Homes, Inc. v. County of DuPage*, 195 Ill. 2d 257, 285-86 (2001))). To effectuate that purpose, Rule 137 requires that every pleading filed by a party represented by an attorney be signed by that attorney certifying that the pleading is well grounded in fact and supported by law and is not intended for any improper purpose, such as to harass, delay or needlessly increase the cost of litigation. Ill. S. Ct. R. 137 (eff. July 1, 2013); *Kensington's Wine Auctioneers and Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 15 (2009). Rule 137 permits the circuit court to impose "an appropriate sanction" on a party who violates the rule. Ill. S. Ct. R. 137 (eff. July 1, 2013). It is incumbent upon the party requesting the circuit court to impose Rule 137 sanctions to prove to the court that the opposing party made false allegations absent reasonable cause. *Kensington*, 391 Ill. App. 3d at 15. Because 137 is penal in nature, however, it must be strictly construed. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998); *Addis v. Exelon Generation Co., L.L.C.*, 378 Ill. App. 3d 781, 796 (2007). Ultimately, the determination of whether to impose sanctions under the rule is left to the sound discretion of the circuit court. *Addis*, 378 Ill. App. 3d at 796. Accordingly, the circuit court's ruling on a motion

for Rule 137 sanctions will not be disturbed absent an abuse of discretion. *Dowd*, 181 Ill. 2d at 487; *Longo Realty v. Menard, Inc.*, 2016 IL App 151231, ¶ 44. An abuse of discretion will only be found where the circuit court's decision is unreasonable, arbitrary, or where no reasonable person would agree with its conclusion. *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 16.

¶ 30 Upon review, we cannot conclude that the circuit court's denial of Martinez's motion for Rule 137 sanctions amounted to an abuse of discretion. Having examined the parties' filings, it is evident that the underlying proceedings were spirited and contentious; however, we do not agree with Martinez that the arguments and statements included in AMPCO's summary judgment filings are sanctionable. Martinez cites numerous instances of AMCO's purported "misrepresentations" in his brief. For example, Martinez argues that AMPCO misrepresented the record when it asserted that there were certain facts that were undisputed, including the fact that the only way individuals could obtain a permit to park at Frederick School would be to place a call to Ryan Quinn, whose regular practice was to inform prospective parkers about the time limitations specific to that lot. Martinez, however, argues that there are disputed facts about the phone conversation his ex-girlfriend had with Quinn because Quinn could not recall any specifics about the call during his deposition. Based on this court's reading of AMPCO's summary judgment motion and its reply in support of its summary judgment motion, it does not appear that AMPCO referred to Quinn's specific phone call with Martinez's girlfriend as an undisputed fact; rather, AMPCO simply asserted that Quinn's statements pertaining to his standard operating procedure were undisputed. This is not, as Martinez suggests, a mischaracterization of the record. Indeed, notwithstanding Martinez's numerous arguments to the contrary, AMPCO's filings do not contain blatant misstatements of fact or law designed to

mislead the court or harass plaintiff. Although this court does not necessarily condone the tone and tenor of *both* parties' filings, we cannot conclude that the circuit court's decision to deny Martinez's motion for Rule 137 sanctions is unreasonable, arbitrary or otherwise amounts to an abuse of discretion.

¶ 31

CONCLUSION

¶ 32

We reverse the circuit court's order granting AMPCO's motion for summary judgment and remand for additional proceedings consistent with this disposition. We affirm the circuit court's order denying Martinez's motion for sanctions.

¶ 33

Reversed and remanded in part; affirmed in part.