FIRST DIVISION
November 14, 2016

No. 1-15-2971

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DANIEL F. MIRANDA, Plaintiff-Appellee-Cross-Appellant, v. MB REAL ESTATE SERVICES LLC, a Delaware Limited liability company; PETER E. RICKER; JOHN T. MURPHY; HOWARD MILSTEIN; and DOES 1 through 50, inclusive, Defendants, (MB Real Estate Services LLC, Defendant-Appellant-Cross-Appellee).	)	Appeal from the Circuit Court of Cook County. No. 12 L 10199 Honorable Patrick J. Sherlock, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court
Presiding Justice Connors and Justice Mikva concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's grant of summary judgment in favor of plaintiff on his breach of contract claim is affirmed where the separation agreement was an enforceable contract with sufficient consideration for its terms and conditions, and the monthly payments at issue do not violate the License Act. We also affirm the court's dismissal of plaintiff's Wage Act claims and find that the monthly payments are not final compensation as defined by the statute.

¶ 2 Defendant MB Real Estate Services LLC (MBRE) appeals the order of the circuit court granting summary judgment in favor of plaintiff, Daniel F. Miranda (Miranda), on his breach of contract claim for monthly payments owed pursuant to the "Separation Agreement." On appeal, MBRE contends that the trial court erred (1) in awarding damages for a commission obligation that violates the Illinois Real Estate License Act of 2000 (License Act) (225 ILCS 454/1 *et seq.* (West 2014)); and (2) in enforcing the Separation Agreement without a finding of consideration to support the agreement, where a prior court ruling found no such consideration. On cross-appeal, Miranda argues that the trial court erred in dismissing with prejudice the counts in his complaint based on the Wage Payment and Collection Act (Wage Act) (820 ILCS 115/1 *et seq*. (West 2014)), and that the term "final compensation" should be construed more broadly to include his claim. For the following reasons, we affirm the trial court's judgment.

¶ 3 JURISDICTION

¶ 4 The trial court granted summary judgment in favor of Miranda on September 28, 2015. MBRE filed a notice of appeal on October 21, 2015. Miranda filed his notice of cross-appeal on October 23, 2015. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered below. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

¶ 5 BACKGROUND

¶ 6 MBRE is a company in Chicago that provides real estate investment and property management services. Miranda was hired on March 29, 2000, as MBRE's president and chief executive officer. While employed at MBRE, Miranda was a licensed real estate broker in Illinois and MBRE was his sponsoring broker as defined by the License Act. During his tenure at MBRE Miranda performed services, including licensed activities, which generated revenue.

¶ 7 In early 2003, Miranda and another MBRE employee, John Murphy, worked on a property located at 200 West Jackson in Chicago. In summary, Miranda and Murphy procured and structured a $47,000,000 sale of a 75% interest in the property, and transferred title to a newly formed limited liability company in which Miranda and Murphy personally invested. This "Recapitalization" included a provision, pursuant to a written property management agreement, that MBRE provide property management services for a proposed annual fee of $350,000. The recapitalization closed in May, 2003.

¶ 8 As compensation for their efforts in procuring and structuring the recapitalization, MBRE's chairman, Peter Ricker, offered Miranda and Murphy an on-going "success compensation" representing that portion of the annual fee exceeding the $250,000 MBRE would have accepted to manage the property. Since the property management agreement provided MBRE with a $350,000 annual fee, the success compensation amounted to $100,000 a year, split evenly between them. Miranda and Murphy received this compensation as monthly payments of $4,166.67 each for as long as MBRE managed the property. They agreed to an open-ended payment structure because no one could predict how long MBRE would manage the property.

¶ 9 Miranda's employment with MBRE ended on July 31, 2003. The parties executed a separation agreement and general release stating that "Miranda and [MBRE] desire to settle fully and finally any differences, rights and duties arising between them, including, but in no way limited to, any differences, rights, and duties that have arisen or might arise out of or are in any way related to Miranda's employment with [MBRE] of the termination thereof." The separation agreement further provided, in relevant part:

"NOW, THEREFORE, in consideration of the covenants and mutual promises herein contained, it is agreed as follows:

1. *** Effective August 1, 2003, [MBRE] shall pay Miranda a series of 12 monthly payments of $10,000 each, payable on the first day of August 2003 and on the first day of each month thereafter through July 1, 2004, totaling $120,000, as full consideration for making this Agreement (the "Enhanced Benefit"). In return for a more generous than normal Enhanced Benefit, Miranda agrees to abide by the terms of this Agreement. In the event that Miranda breaches in any material respect any of the terms of the Agreement, [MBRE] will have no further obligations to Miranda pursuant to this Agreement. In the event that [MBRE] breaches in any material respect any of its obligations under this Agreement, Miranda will be released from any obligation under this Agreement***."

The second paragraph outlined the terms and conditions of Miranda's status as an independent contractor of MBRE "[e]ffective August 1, 2003, and for a period of 12 months thereafter." The third paragraph provided:

"3. [MBRE] recognizes and hereby confirms its obligation to pay the following commissions and fees to Miranda (subject to consummation of any of the following transactions which are pending):

a) $4,166.67 each month commencing May 2003 and continuing as long as [MBRE], or its successor, manages the property at 200 West Jackson, Chicago, Illinois;

b) A commission due from a pending lease, anticipated to be signed within the next 90 days ***;

c) Commissions relating to the following potential transactions*** if completed:" (a list of specific transactions followed).

Paragraph 4 provided:

"4. In consideration of the Enhanced Benefit set forth in paragraph 1 of this Agreement, *** Dan Miranda *** releases and gives up any and all claims and rights which he may have against [MBRE] as of the date this Agreement is fully executed ***."

The agreement further stated that it "constitutes the complete understanding between Miranda and [MBRE] with respect to the subject matter hereof."

¶ 10 In January 2004, Miranda accepted a position as president of HAS Commercial and he so advised MBRE. As a result, Miranda's independent contractor relationship with MBRE ended, and the terms and conditions outlined in paragraph two of the separation agreement no longer applied. MBRE, however, continued to make the monthly payments in paragraph three.

¶ 11 In January 2007, the 200 West Jackson property was sold to a new ownership group and MBRE entered into a property management contract with the new owner containing substantially similar terms, including the fee provision, as its contract with the previous owners. However, starting in February 2007, MBRE ceased making the $4,166.67 monthly payments to Miranda. On July 16, 2012, Miranda sent a letter to Ricker asking about the monthly payments due under the separation agreement. Ricker responded that the "pending transaction the Separation Agreement refers to was the Management Agreement in existence at the time of the Separation Agreement, which terminated at the time of the sale in 2007." [Emphasis in the original.] Therefore, Miranda should have known that MBRE's "obligation to pay [him] ended when the entity sold the property in 2007." It is undisputed that MBRE continued to manage the property until January 2015.

¶ 12 On September 7, 2012, Miranda filed his original complaint against MBRE alleging a breach of contract based on MBRE's obligation to pay the $4,166.67 per month compensation contained in the separation agreement, and Miranda's continued compliance with the terms of the

agreement. MBRE filed a motion to dismiss Miranda's complaint pursuant to sections 2-615, 2-619(a)(9), and 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619(a)(9), 2-619.1 (West 2014)). The trial court granted the motion to dismiss, finding that "no consideration was given under this [Separation] Agreement for the promise to make monthly payments ***. Thus, without consideration, such obligation to make the monthly payments appears to be unenforceable based on this Agreement." The trial court, however, dismissed Miranda's complaint without prejudice, allowing him an opportunity to file an amended complaint.

¶ 13 Miranda filed an amended complaint, which he subsequently withdrew. He filed a second amended complaint in which he alleged breach of contract, tortious interference with contract, declaratory judgment, conversion, fraud, promissory estoppel, and breach of fiduciary duty. In his breach of contract claim, Miranda alleged that paragraph three of the separation agreement memorialized MBRE's continued obligation to pay him $4,166.67 per month, as deferred compensation, for as long as MBRE managed the property at 200 West Jackson. While Miranda has performed all of his obligations under the agreement, MBRE ceased the monthly payments to him as of January 31, 2007, even though it continued to manage the property. Therefore, Miranda claimed a breach of "the parties' deferred compensation agreement, as formally recognized and confirmed in their Separation Agreement." Upon MBRE's motion, the trial court dismissed all counts in Miranda's second amended complaint except the breach of contract and declaratory judgment counts.

¶ 14 Miranda filed his third amended complaint on September 12, 2014. In the complaint, he realleged the breach of contract and declaratory judgment counts in his second amended complaint, and added three additional claims based on the Wage Act. The trial court dismissed

Miranda's Wage Act claims pursuant to section 2-615 of the Code, ruling that the $4,166.67 monthly payment is not "final compensation" as defined by the statute because such compensation must be computed by the next pay period after Miranda's termination on July 31, 2003, and due to the ongoing nature of the compensation, such "amount could not be computed." His complaint proceeded on the breach of contract and declaratory judgment claims.

¶ 15 Miranda filed a motion for summary judgment on July 15, 2015, arguing that the clear language of paragraph three obligates MBRE to pay him $4,166.67 per month for as long as MBRE managed the property at 200 West Jackson, and MBRE failed to do so thereby breaching the terms of the agreement. On July 30, 2015, MBRE filed a cross-motion for summary judgment, arguing that Miranda's motion disregards the trial court's prior ruling dismissing the original complaint and that in the separation agreement, Miranda agreed to release all claims and rights existing prior to his termination date, including his right to the monthly payments which was "fully vested" in 2003. After a hearing held on September 25, 2015, the trial court granted Miranda's motion for summary judgment on his breach of contract claim, and denied MBRE's cross-motion for summary judgment. Miranda also nonsuited the declaratory judgment count. MBRE filed this timely appeal.

¶ 16 ANALYSIS

¶ 17 Summary judgment is proper where the pleadings, affidavits, depositions, admissions, and exhibits on file show that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2012). "The purpose of summary judgment is not to try a question of fact, but to determine whether one exists" that precludes entry of judgment as a matter of law. *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 421 (2002). Although the parties filed cross-motions for summary

judgment, the mere filing of such motions does not establish the absence of any question of material fact. *Zale Construction Co. v. Hoffman*, 145 Ill. App. 3d 235, 240 (1986). A reviewing court will reverse a summary judgment order if the record indicates that a material question of fact exists. *Id.* We review the trial court's grant of summary judgment *de novo*. *Bagent v. Blessing Care Corp*., 224 Ill. 2d 154, 163 (2007). Accordingly, this court may affirm the trial court's entry of summary judgment on any basis supported in the record, regardless of whether "the trial court relied on that basis or its reasoning was correct." *Freedberg v. Ohio National Insurance Co*., 2012 IL App (1st) 110938, ¶ 26.

¶ 18 I. Separation Agreement Claim

¶ 19 We first address MBRE's contention that the trial court should not have even considered Miranda's breach of contract claim because (1) the claim based on the separation agreement had been dismissed in a prior order as unenforceable due to a lack of consideration, and Miranda did not replead it in his amended complaint; and (2) MBRE had no opportunity to defend against the renewed claim when Miranda raised the issue in his motion for summary judgment. We address each contention in turn.

¶ 20 In his original complaint, Miranda alleged a breach of subsection 3(a) of the separation agreement when MBRE ceased making the $4,166.67 monthly payments to him after January 31, 2007, even though it continued to manage the 200 West Jackson property. The trial court dismissed the complaint without prejudice, finding that the monthly payments in the separation agreement lacked consideration, and allowed Miranda to replead his allegation in an amended complaint. An order dismissing a complaint but granting leave to replead is not a final order for purposes of *res judicata* until the trial court enters an order dismissing the suit with prejudice. *Smith v. Central Illinois Regional Airport*, 207 Ill. 2d 578, 588 (2003). However, allegations in a

former complaint that are not incorporated in the final amended complaint are deemed abandoned or withdrawn. *Foxcroft Townhome Owners Ass'n v. Hoffman Rosner Corp.*, 96 Ill. 2d 150, 154 (1983). This rule applies to factual allegations as well as theories of recovery. *Bilut v. Northwestern University*, 296 Ill. App. 3d 42, 46 (1998).

¶ 21 Although Miranda, in his third amended complaint, alleged that his right to receive the monthly payments was supported by documents and communications other than the separation agreement, he stated that the parties executed the separation agreement "to settle fully and finally any differences, rights and duties arising between [them], including *** [those] that have arisen or might arise out of or are in any way related to Miranda's employment with [MBRE] or the termination thereof ***." He alleged that subsection 3(a) of the separation agreement "recognizes and confirms" MBRE's obligation to pay $4,166.67 each month commencing May 2003 and continuing as long as [MBRE], or its successor, manages the property at 200 West Jackson." Miranda further alleged that MBRE's existing obligation as stated in paragraph 3(a) "was not gratuitous" and that he performed all of his obligations "as formally recognized and confirmed" in the separation agreement. Miranda did not abandon his allegation that the separation agreement was an enforceable contract with definite terms. Rather, he used the other evidence to bolster his argument that there was adequate consideration to support the separation agreement.

¶ 22 Likewise, MBRE should not have been surprised when Miranda argued in his motion for summary judgment that the terms of the separation agreement were clear, supported by proper consideration, and should be enforced. The case cited by MBRE, *Johnson v. Cypress Hill*, 641 F. 3d 867 (7th Cir. 2011), is inapposite. In that case, four years into the litigation, the plaintiff sought to amend his complaint to present two entirely new claims long after discovery had closed and after the defendant had filed a motion for summary judgment. *Id*. at 872-73. The

federal court in *Cypress Hill* determined that to allow the plaintiff to amend his complaint in this manner would be prejudicial to the defendant. *Id*. at 873. This case does not present the same procedural posture as *Cypress Hill*, nor is the issue raised in Miranda's motion entirely new to MBRE. We find that the trial court did not err in addressing Miranda's breach of contract claim in his motion for summary judgment.

¶ 23 MBRE next argues that the trial court erred in granting summary judgment because MBRE's promise to make the monthly payments to Miranda, found in subsection 3(a) of the separation agreement, was not supported by consideration. The elements of an enforceable contract are "(1) offer and acceptance; (2) definite and certain terms; (3) consideration; and (4) performance of all required conditions." *Tower Investors, LLC v. 111 East Chestnut Consultants, Inc.*, 371 Ill. App. 3d 1019, 1027 (2007). "Any act or promise that benefits one party or disadvantages the other is sufficient consideration to support the formation of a contract." *Kalis v. Colgate-Palmolive Co.*, 337 Ill. App. 3d 898, 900 (2003). It follows that if sufficient consideration exists to support the formation of the contract, then sufficient consideration exists to support the required terms and conditions of the contract without need for additional consideration. The separation agreement here is a contract and subsection 3(a) of the separation agreement sets forth a condition MBRE promised to perform. In order to address MBRE's concerns regarding subsection 3(a), we therefore determine whether there was sufficient consideration to support the separation agreement.

¶ 24 Miranda's employment with MBRE terminated on July 31, 2003, less than three months after the recapitalization of 200 West Jackson closed. Miranda and MBRE executed a separation agreement in which, as stated in paragraph one of the agreement, "[e]ffective August 1, 2003, [MBRE] agrees to pay Miranda a series of 12 monthly payments of $10,000 each,

payable on the first day of August 2003 and on the first day of each month thereafter through July 1, 2004, totaling $120,000, as full consideration for making this Agreement (the 'Enhanced Benefit')." In return, as stated in paragraph four, "[i]n consideration of the Enhanced Benefit set forth in paragraph 1 of this Agreement, *** Dan Miranda *** releases and gives up any and all claims and rights which he may have against [MBRE] as of the date this Agreement is fully executed ***." A promise to forego a legal claim is adequate consideration to support the formation of a contract, provided it is asserted in good faith. *Id*. at 900-01. Therefore, we find that sufficient consideration existed to support the formation of the separation agreement and the terms and conditions contained therein, including subsection 3(a).

¶ 25 MBRE briefly argues that MBRE's obligation in subsection 3(a) represents "in essence, a new (or amended) agreement" that required new consideration in order to be enforceable. We fail to see how a continuing obligation, borne by MBRE before Miranda's termination and clearly memorialized in the separation agreement, can be the basis of a new or amended agreement apart from the separation agreement. Furthermore, MBRE cites no cases in support of this position, in violation of Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016) (argument "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"). We are not persuaded by MBRE's argument here.

¶ 26 MBRE also argues that the language contained in paragraph three is ambiguous, and therefore extrinsic evidence is required to decipher the intent of the parties regarding the monthly payments. In general, where the language of a contract is unambiguous, the express provisions govern and no further construction or inquiry as to the intent of the parties is required. *Klemp v. Hergott Group, Inc.*, 267 Ill. App. 3d 574, 579 (1994). The contract's terms must be given their plain and ordinary meaning, and cannot be interpreted "in a way contrary to the plain and

obvious meaning of those words." *Id.* In the absence of ambiguity, courts cannot consider parol or extrinsic evidence to vary the meaning of the contract's clear terms. *McWhorter v. Realty World-Star, Inc.*, 171 Ill. App. 3d 588, 592 (1988).

¶ 27 Paragraph three of the separation agreement states that "[MBRE] recognizes and hereby confirms its obligation to pay the following commissions and fees to Miranda (subject to consummation of any of the following transactions which are pending):

a) $4,166.67 each month commencing May 2003 and continuing as long as [MBRE], or its successor, manages the property at 200 West Jackson, Chicago, Illinois;

b) A commission due from a pending lease, anticipated to be signed within the next 90 days ***;

c) Commissions relating to the following potential transactions*** if completed:"

¶ 28 MBRE argues that the phrase "transactions which are pending" is ambiguous, and "[a]t the very least," when extrinsic evidence is considered there are questions of fact precluding the grant of summary judgment. We do not find the language of paragraph three ambiguous. The phrase "transactions which are pending" refers to subsection 3(b)'s signing of a pending lease, and 3(c)'s listed potential transactions that had not been completed as of the date the parties executed the separation agreement. Therefore, MBRE's obligation to pay commission based on those transactions was subject to the consummation of those transactions.

¶ 29 Unlike subsections 3(b) and 3(c), subsection 3(a) does not refer to a pending transaction. Rather, it clearly and plainly states MBRE's obligation to pay a commission of $4,166.67 per month as long as MBRE or its successors manage the 200 West Jackson property. The only condition set forth is that MBRE continue to manage the property. MBRE disagrees, arguing that extrinsic evidence shows that the parties contemplated the pending transaction of 3(a) to be the

2003 property management contract, and when the property was sold to new owners in 2007 and MBRE subsequently negotiated a management contract with the new owners, the pending transaction no longer existed and therefore MBRE's obligation to pay Miranda the monthly commission in subsection 3(a) ceased.

¶ 30 We reiterate that we do not find the language found in paragraph three ambiguous. An ambiguous contract "is one capable of being understood in more than once sense." *McWhorter*, 171 Ill. App. 3d at 591. However, "[a] contract is not rendered ambiguous simply because the parties do not agree on its meaning." *Id*. Where the terms are clear, this court "will not rewrite a contract to suit one of the parties, but will enforce the terms as written." *Klemp*, 267 Ill. App. 3d at 581. The separation agreement contains no provision tying MBRE's obligation to make the monthly payment to the 2003 property management agreement. If that was the parties' intent, they could have simply included such a provision in the separation agreement. There is a strong presumption against provisions that could have easily been included in the contract and "[a] court will not add another term about which an agreement is silent." *Id*.

¶ 31 In sum, we find that the separation agreement, including the terms stated in paragraph 3, was supported by sufficient consideration, and the language of the agreement and its terms was not ambiguous.

¶ 32 II. The License Act Claim

¶ 33 MBRE contends that even if the separation agreement was a proper contract with sufficient consideration and clear terms, subsection 3(a) is unenforceable because the monthly payments violate the License Act. Section 10-5 of the License Act provides:

"(a) No licensee shall pay compensation directly to a licensee sponsored by another broker for the performance of licensed activities. *** However, a non-sponsoring broker may

pay compensation directly to a licensee sponsored by another or a person who is not sponsored by a broker if the payments are made pursuant to terms of an employment agreement that was previously in place between a licensee and the non-sponsoring broker, and the payments are for licensed activity performed by that person while previously sponsored by the non-sponsoring broker." 225 ILCS 454/10-5(a) (West 2014).

The final sentence of section 10-5(a) will be referred to as the "safe harbor" provision.

¶ 34 The parties do not dispute that MBRE was Miranda's sponsoring broker when the recapitalization of 200 West Jackson closed in 2003, and that starting in January 2004 HAS Commercial became his sponsoring broker. They also do not dispute that Miranda's work in connection with the recapitalization was a licensed activity, and that Miranda worked at MBRE and was compensated pursuant to an employment agreement. However, Miranda's complaint seeks payments from MBRE which he alleges were owed from 2007 to 2015, a period of time when MBRE was not his sponsoring broker. Therefore, to comply with section 10-5(a) of the License Act, the payments set forth in subsection 3(a) of the separation agreement must fall within that section's safe harbor provision.

¶ 35 Under the safe harbor provision, MBRE as a non-sponsoring broker can make the monthly payments to Miranda if "the payments are made pursuant to terms of an employment agreement that was previously in place" and "the payments are for licensed activity performed by that person while previously sponsored by the non-sponsoring broker." 225 ILCS 454/10-5(a) (West 2014). The fundamental principle of statutory construction is to ascertain and give effect to legislative intent. *Land v. Board of Education of the City of Chicago*, 202 Ill. 2d 414, 421 (2002). "The best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning." *Paris v. Feder*, 179 Ill. 2d 173, 177 (1997). If the

plain language of the statute is clear and unambiguous, courts must discern legislative intent from this language without resorting to other tools of statutory construction. *Id*.

¶ 36 MBRE argues that the payments do not fall within this safe harbor because they were made pursuant to a separation agreement rather than an employment agreement, and that after 2007, the payments to Miranda have no relation to any licensed activity he performed when MBRE was his sponsoring broker. We disagree.

¶ 37 First we consider whether the monthly payments that MBRE allegedly should have made from 2007 to 2015 are "pursuant to terms of an employment agreement that was previously in place" between MBRE and Miranda. The License Act does not define the term "employment agreement." In *Zabinsky v. Gelber Group, Inc.*, 347 Ill. App. 3d 243, 249 (2004), this court looked at the term in the Wage Act (820 ILCS 115/1 *et seq.* (West 2014)) and held that "[a]n 'agreement' is broader than a contract and requires only a manifestation of mutual assent on the part of two or more persons; parties may enter into an 'agreement' without the formalities and accompanying legal protections of a contract." Therefore, an agreement can exist when the parties simply manifest assent to the conditions of employment and terms of compensation. *Landers-Scelfo v. Corporate Office Systems, Inc.*, 356 Ill. App. 3d 1060, 1067 (2005). There is no dispute that Miranda began receiving the monthly payments while he was employed by MBRE and performed work for MBRE. It follows that the payments were made pursuant to an employment agreement "previously in place," the terms of which the separation agreement explicitly acknowledged in subsection 3(a).

¶ 38 Likewise, these monthly payments represent compensation to Miranda for licensed activity he performed while sponsored by MBRE. MBRE does not dispute that the work Miranda performed in the recapitalization of 200 West Jackson in 2003 was licensed activity. As

compensation for Miranda's work on the 200 West Jackson property, MBRE paid him $4,166.67 each month for as long as MBRE managed the property. Therefore, when the property was sold in 2007 to new owners, and MBRE continued to manage the property, Miranda was still entitled to receive the monthly payments as compensation for his past work under the terms of their agreement.

¶ 39 MBRE argues that after 2007, these payments would not be compensation to Miranda because he performed no licensed activity in selling the property to new owners, or in negotiating a new property management contract for MBRE. However, as discussed above, these monthly payments represent compensation for Miranda's work in the 2003 recapitalization of the property and the initial property management contract obtained by MBRE. According to the terms of that compensation, as explicitly stated in subsection 3(a) of the separation agreement, Miranda would receive payment for that work in the amount of $4,166.67 per month, for as long as MBRE managed the property. MBRE continued to manage the property from 2007 to 2015. We find that monthly payments from 2007 to 2015 would not violate the License Act because they would have been made pursuant to an employment agreement "previously in place" and for "licensed activity performed by" Miranda while he was previously sponsored by MBRE.

¶ 40 For the foregoing reasons, we affirm the trial court's grant of summary judgment in favor of Miranda on his breach of contract claim.

¶ 41 Miranda's Cross-Appeal

¶ 42 In his cross-appeal, Miranda contends that the trial court erred in dismissing the Wage Act counts in his third amended complaint. To withstand a section 2-615 motion to dismiss, a complaint must allege facts supporting the essential elements of the cause of action. *Urbaitis v. Commonwealth Edison*, 143 Ill. 2d 458, 475 (1991). In ruling on a section 2-615 motion to

dismiss, the court will liberally construe the pleadings in favor of the nonmoving party and must take as true all well-pled allegations of fact. *Visvardis v. Ferleger*, 375 Ill. App. 3d 719, 724 (2007). We review the trial court's dismissal under section 2-615 *de novo*. *Id*.

¶ 43 "The purpose of the Wage Act is to insure the prompt and full payment of wages due workers at the time of separation from employment, either by discharge, layoff, or quitting." *Armstrong v. Hedlund Corp.*, 316 Ill. App. 3d 1097, 1107 (2000). Section 2 states that "[p]ayments to separated employees shall be termed 'final compensation' and shall be defined as wages, salaries, earned commissions, earned bonuses, and the monetary equivalent of earned vacation and earned holidays, and any other compensation owed the employee by the employer pursuant to an employment contract or agreement between the 2 parties." 820 ILCS 115/2 (West 2014). Section 5 requires employers to "pay the final compensation of separated employees in full, at the time of separation, if possible, *but in no case later than the next regularly scheduled payday for such employee*." [Emphasis added.] 820 ILCS 115/5 (West 2014).

¶ 44 In his third amended complaint, Miranda alleged that the monthly payments owed for the period after 2007 when MBRE still managed the 200 West Jackson property constitute "final compensation," and that MBRE's refusal to make those payments violated the Wage Act. These payments fit under section 2's definition as "any other compensation owed *** pursuant to an employment contract or agreement between the 2 parties." 820 ILCS 115/2 (West 2014). However, the requirement in section 5 that "final compensation" be paid in full "at the time of separation, if possible, but in no case later than the next regularly scheduled payday" further defines the term. Taking both sections together, "final compensation" within the meaning of the Wage Act, is wages, salaries, earned commissions and bonuses, earned vacation and holidays, and any other compensation owed pursuant to an agreement between the parties, that the

employer must pay no "later than the next regularly scheduled payday." *Majmudar v. House of Spices (India), Inc.*, 2013 IL App (1st) 130292, ¶17. It follows that if any such compensation cannot be determined as of the "next regularly scheduled payday" after termination, it is not final compensation under the Wage Act. See *McLaughlin v. Sternberg Lanterns, Inc*., 395 Ill. App. 3d 536, 545 (2009) (determined that plaintiff's claim to a *pro rata* share of a bonus based on sales that "could not possibly be known" by the next scheduled pay period was not final compensation under the Wage Act). To find otherwise would nullify the provision in section 5, and this court will not construe a statute in a way that negates any part of the statute. *Madison Two Associates v. Pappas*, 227 Ill. 2d 474, 493 (2008).

¶ 45 Miranda disagrees, arguing that this interpretation impermissibly narrows the protection of the Wage Act when the legislature intended for the statute to provide broader protection.[1] He cites *Metropolitan Distributors, Inc. v. Illinois Dept. of Labor*, 114 Ill. App. 3d 1090 (1983) as support. In *Metropolitan*, this court found that severance pay consisting of one week of average weekly earnings for each year of employment up to a maximum of 10 weeks was "clearly final compensation" under the Wage Act. *Id*. at 1095. *Metropolitan* is distinguishable in that the severance pay at issue could be calculated and paid by the employer at the time of separation, or at the latest by the employee's next scheduled pay period, in conformance with the provisions of the Wage Act. The court in *Metropolitan* did not address the issue we have here, which is whether compensation that is not determinable by an employee's next scheduled pay period is "final compensation" under the Wage Act.

[1] In his reply brief on cross-appeal, Miranda makes arguments and cites cases not contained in his initial brief on cross-appeal, in violation of Rule 341(h)(7). Therefore, we do not consider these arguments or cases in reviewing his cross-appeal.

¶ 46 Miranda also relies on *Hess v. Kanoski & Associates*, 668 F. 3d 446 (2012), wherein the federal appeals court addressed the attorney plaintiff's claim under the Wage Act for bonuses on case settlements that occurred after his termination. The court in *Hess* noted the definition of final compensation under section 2 of the Wage Act but found that a question of fact existed as to whether plaintiff's employment agreement entitled him to the bonuses. *Id*. at 452. Some of the case settlements occurred more than one year after the plaintiff's termination, therefore bonus payments from those cases would have been made after the deadline of section 5. However, while the *Hess* court briefly noted section 2 of the Wage Act, it made no mention of section 5 nor did it interpret the term "final compensation" in the statute. The court did not analyze the Wage Act as it related to the plaintiff's claim. Rather, the court was focused on the definition of "generated" fees in the plaintiff's employment agreement and whether that term included the settlement bonuses at issue. Moreover, *Hess* is a federal court case interpreting Illinois state law and as such, we are not bound by that decision. *Sundance Homes, Inc. v. County of Du Page*, 195 Ill. 2d 257, 276 (2001) (this court is not bound by federal or out-of-state decisions, particularly where the interpretation of an Illinois statute is at issue). Likewise, this court need not consider the provisions of the Texas Wage Act which Miranda argues provides "a sensible approach to deadlines for payment of deferred compensation."

¶ 47 Miranda argues that he should be allowed to "opt out" of the deadline in section 5 by contractual agreement, and that a final payment conforming to section 5 of the Wage Act could have been the present value of an indefinite stream of cash flow calculated "by applying a risk-adjusted cap rate of 10%." Miranda does not point to any provision in his employment agreement indicating an intent to calculate a present value of the monthly payments using this formula, or his right to receive such an amount, in the event he is terminated. Regarding his

argument that section 5 allows parties to "opt out" of its provision, the fundamental rule of statutory interpretation is to give effect to legislative intent, and the words of a statute are the best indication of that intent. *County of Knox ex rel. Masterson v. Highlands, L.L.C.*, 188 Ill. 2d 546, 556 (1999). "In interpreting a statute, it is never proper for a court to depart from plain language by reading into a statute exceptions, limitations, or conditions which conflict with the clearly expressed legislative intent." *Id.* Section 5 is silent on the issue of whether parties can "opt out" of its deadline. To accept Miranda's argument here, this court would have to read exceptions into the provisions of the Wage Act that would conflict with the plain language of section 5 and we decline to do so. We also note Miranda's concerns that the definition of "final compensation" expressed in *Majmudar* and *McLaughlin* penalizes employees who agree to "post-separation deferred compensation" payments that are indefinite, by providing no protection in the event their employer "stiff[s]" them of this compensation in the future. These issues, however, are for the legislature to determine.

¶ 48 Miranda also argues that even if the monthly payments as a whole are not final compensation under the Wage Act, he is entitled to at least one more monthly payment of $4,166.67 as final compensation. He contends that MBRE's management contract could not be cancelled without 30 days' notice, and no such notice was pending when Miranda's employment ended. Therefore, "MBRE could have then anticipated with absolute certainty, based on facts then in existence, that Miranda had an unconditional right to receive at least one more Monthly Payment of $4,166.67 from MBRE." MBRE did not tender one more payment, but instead continued to make the monthly payments as agreed by the parties in the separation agreement. Miranda cites to no authority in support of his contention that he should receive an extra monthly payment, even though MBRE continued to pay this compensation after his termination. Although

Miranda states that he is "unconditionally entitled to at least one more Monthly Payment" as in the *Hess* case, he provides no further analysis of *Hess* or how it supports his position. Therefore, we do not consider his argument here.

¶ 49 For the foregoing reasons, we find that the $4,166.67 per month payments to Miranda for as long as MBRE managed the property are not final compensation within the meaning of the Wage Act, and the trial court properly dismissed Miranda's Wage Act claims.

¶ 50 Affirmed.