2017 IL App (1st) 15-3671-U

THIRD DIVISION
April 26, 2017

No. 1-15-3671

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

RANDY M. BROWN, Plaintiff-Appellant, v. ELIZABETH BACON, an individual, and BROOKS, TARULIS & TIBBLE, L.L.C., a Limited Liability Company, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County, Illinois, County Department, Law Division. No. 14 L 7036 The Honorable Brigid Mary McGrath, Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Lavin and Cobbs concurred in the judgment.

ORDER

Held: The trial court's dismissal of the plaintiff's first amended complaint was proper where the plaintiff's complaint failed to sufficiently plead the proximate cause element required to sustain his cause of action for legal malpractice.

¶ 1 The plaintiff, Randy M. Brown, appeals from the circuit court's order dismissing with prejudice his first amended complaint alleging legal malpractice against the defendants, attorney Elizabeth Bacon (hereinafter Bacon) and the law firm she worked for Brooks, Tarulis & Tibble, L.L.C (hereinafter BTT). On appeal, the plaintiff asserts that dismissal of his amended

complaint pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)) was improper where he sufficiently alleged all of the elements of a legal malpractice claim, including that the defendants' actions proximately caused his damages. In addition, the plaintiff argues that any dismissal pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2012)) was also improper because, contrary to the defendants' position, the defendants failed to present undisputed evidence that his claim was time-barred. For the reasons that follow, we affirm.

¶ 2 II. BACKGROUND

¶ 3 The record before us reveals the following relevant facts and procedural history. On July 2, 2014, the plaintiff filed a one count complaint against the defendants, alleging legal malpractice. The defendants filed a section 2-619.1 motion to dismiss (735 ILCS 5/2-619.1 (West 2012)), and the trial court dismissed the complaint but granted the plaintiff leave to file an amended complaint.

¶ 4 On April 23, 2015, the plaintiff filed his first amended complaint against the defendants, again alleging legal malpractice. In his amended complaint, the plaintiff alleged that on June 19, 2000, he signed a licensing agreement with Harold's Chicken Shack, Inc. (hereinafter Harold's) for the right to operate Harold's Chicken #76. In order to do so, the plaintiff rented a storefront location at a small shopping center located at 2139 South 17th Avenue, in Broadview, Illinois. According to the licensing agreement with Harold's, which the plaintiff attached to his amended complaint, numerous events would result in the default of the licensing agreement, including, *inter alia*, "[f]ailure to open for business on twenty-on (21) successive business days without notice to Licensor." In addition, the licensing agreement provided:

> "In the event of a default of this Agreement by Licensee, and after seven (7) days prior written notice of such default given, to Licensee at the location as stated above by

> Licensor, Licensee's license to display Licensor's name and trademark, to sell products bearing the trademark, 'Harold's Chicken Shack' shall terminate."

¶ 5 According to the plaintiff, nine years after the licensing agreement was signed, on January 15, 2009, due to inclement weather and the shopping center owner's failure to maintain the shopping center, the roof of the building collapsed, physically demolishing Harold's Chicken #76 and all the property inside it. As a result, the plaintiff was unable to operate his business in any fashion.

¶ 6 According to the first amended complaint, the plaintiff immediately notified the president of Harold's by way of letter, dated January 16, 2009, stating:

> "Unfortunately on January 15, 2009, the Building collapsed at the corner of 17th and Roosevelt. As a result, Store #76 was directly impacted causing an immediate interruption of business. I do plan to reopen at this location, if feasible. I will immediately begin the process of identifying a new location and reopen as soon as possible, whichever comes first. I will keep you informed of my progress."[1]

¶ 7 On June 29, 2009, the plaintiff retained the defendant, Bacon, to represent him in a lawsuit for property damages against the owner of the shopping center and "to provide general business advice concerning his rights and obligations." According to the amended complaint, Bacon's

[1] We note that this letter, attached to the plaintiff's amended complaint, was originally obtained as a result of a subpoena issued to Harold's by the defendants prior to their filing the first motion to dismiss the plaintiff's original complaint.

engagement letter provided "the firm has been engaged to provide the following services: Research, negotiation, business counseling and litigation or dispute resolution."[2]

¶ 8 The plaintiff acknowledged that on August 4, 2010, on his behalf, Bacon filed a lawsuit for property damages against the shopping center owner in case No. 2810 L 8953 (*Brown v. Universal Realty Group*). The plaintiff alleged, however, that despite her agreement to provide general business advice and "business counseling," Bacon failed to advise him of his rights and duties under the licensing agreement, particularly with regard to the provisions relating to an event constituting default.

¶ 9 According to the amended complaint, in October 2011, Bacon joined the law firm of BTT as an attorney. The defendant BTT did not prepare a separate engagement letter for the plaintiff. Instead, Bacon and BTT entered into an oral agreement with the plaintiff that they would continue to represent him under the terms of the June 29, 2009, engagement letter that he had entered into with Bacon.

¶ 10 In his amended complaint, the plaintiff alleged that both Bacon and BTT had a duty to inquire as to the terms of the licensing agreement and knew or should have known that reviewing that agreement and advising the plaintiff of its provisions was "encompassed within their representation" of his property damage suit against the shopping center owner. Accordingly, the plaintiff alleged that the defendants knew or should have known of the 21-day default provision in the licensing agreement and the repercussions facing the plaintiff if he did not abide by that provision.

[2] We note that the plaintiff did not attach a copy of the engagement letter to his amended complaint, and it is not part of the record on appeal.

¶ 11 Nonetheless, according to the plaintiff, during the pendency of the property damages case, neither Bacon or BTT advised him that he had to reopen his restaurant within 21 days and that if he failed to do so, his licensing agreement would be terminated and he would lose the right to operate the store. The plaintiff further alleged that the defendants knew that the plaintiff could not reopen the store at the shopping center, but failed to advise him to seek alternative locations for the store, and instead, discouraged him from reopening the store, by telling him that if he chose to do so, the damages recoverable against the shopping center owner would be reduced.

¶ 12 Based on the aforementioned facts, in his amended complaint, the plaintiff alleged that the defendants had a duty to protect his business enterprise by: (1) reviewing pertinent agreements that were relevant to the litigation; (2) advising him of the meaning of those agreements; or (3) advising him to seek other representation concerning his licensing agreement with Harold's. The plaintiff alleged that the defendants breached their professional duties by failing to seek a waiver or modification of the 21-day provision in the licensing agreement, asking that Harold's hold the provision in abeyance, or taking other action to protect his interest in the store. The plaintiff alleged that had the defendants performed any of the aforementioned acts, Harold's would have waived the requirement that the store be reopened within 21 days and the plaintiff would have been able to reopen the store at a late time.

¶ 13 Instead, according to the amended complaint, as a direct and proximate result of the defendants' failures, the plaintiff sustained economic damages by losing his right to operate Harold's Chicken #76, and any income he could have derived there from. In that respect, the plaintiff alleged that on August 14, 2012, Harold's sent him a letter terminating the licensing agreement. That letter, which is attached to the amended complaint, states in pertinent part:

"[The plaintiff] was issued a license June 2000 to operate Harold's Chicken [#76] ***. On January 15, 2009 [that restaurant] collapsed and caused an immediate and long term interruption in service. As a result of the long term interruption, pursuant to the License Agreement (Section 11.H) the license was terminated.

- Section 11 Default

Any of the following events will constitute a default of this agreement.

(H) Failure to open for business on twenty one (21) successive days.

As stated above, the License Agreement terminated over 2 years ago and is not being considered for a new License at this time. Please let me know if you have any additional questions or concerns regarding this notice."

¶ 14 In the amended complaint, the plaintiff further alleged that he was unaware of the defendants' failures until March 11, 2013, when he retained new counsel to assist him with the property damage case and corollary issues.

¶ 15 On May 21, 2015, the defendants filed a combined motion to dismiss the plaintiff's amended complaint pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2012)). The defendants argued that the complaint should be dismissed pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)) because the plaintiff failed to plead sufficient facts to establish proximate cause, which is a necessary element of a legal malpractice claim. Specifically, the defendants pointed out that the plaintiff's own exhibits established that he retained Bacon to represent him four and a half months after he had already defaulted on the licensing agreement and informed Harold's of that default by letter, so that he could not now assert that the defendants' actions or omissions had proximately caused that default.

¶ 16 The defendants also argued that the amended complaint should be dismissed pursuant to

section 2-619 of the Code (735 ILCS 5/2-619 (West 2012)) because, *inter alia*, as a matter of law: (1) they had no duty to cure the default that had occurred long before they were retained to represent the plaintiff; and (2) any claim against them was barred by the the two-year statute of limitations applicable to claims brought against attorneys (735 ILCS 5/13-214.3 (West 2012)) because according to the August 2012 letter from Harold's to the plaintiff stating that the agreement had been terminated "two years ago" any legal malpractice claim would have accrued the latest in August 2010, when the plaintiff would have been placed on notice of the termination.

¶ 17 The plaintiff filed a response to the defendants' combined motion to dismiss on July 14, 2015. In that response, he now argued that the licensing agreement had not been defaulted before he retained the defendant, Bacon. According to the plaintiff, under the plain language of section 11.H of the licensing agreement the "[f]ailure to open for business" on 21 successive business days "triggered default" only if such failure was "without notice to Licensor [*i.e.*, Harold's]." The plaintiff argued that because he notified Harold's by letter the day after the roof had collapsed, he had provided the requisite notice so as to avoid default even if the business was closed for 21 successive business days. As such, the plaintiff asserted that he had sufficiently alleged proximate cause by stating that the defendants had failed to: (1) advise him on how to proceed to protect his license; and/or (2) directly contact Harold's to ensure that the licensing agreement was maintained so that he could reopen his store.

¶ 18 In his response, the plaintiff also argued, that he timely filed his legal malpractice action within the requisite two-years statute of limitations. The plaintiff pointed out that according to the licensing agreement, in the event of a default by the plaintiff, the agreement is not terminated until seven days after written notice is provided to the plaintiff by Harold's. The plaintiff argued

that because Harold's did not give him a written notice until August 14, 2012, the license was not effectively terminated until August 21, 2012, at which point he would have been effectively put on notice of the injury. Accordingly, the statute of limitations did not start running until 2012, so that his filing of the lawsuit was timely.

¶ 19 On November 30, 2015, the trial court granted the defendants' combined motion and dismissed the plaintiff's amended complaint with prejudice. In doing so, the trial court did not explain the reasons for its dismissal, nor did it indicate under which section of the Code the dismissal was being entered. The plaintiff now appeals.

¶ 20 II. ANALYSIS

¶ 21 On appeal, the plaintiff argues that the trial court erred when it dismissed his malpractice complaint with prejudice. He argues that dismissal pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)) was improper because, contrary to the defendants' position, he sufficiently alleged all of the elements of a legal malpractice claim, including that the defendants' actions proximately caused his damages. In addition, the plaintiff argues that dismissal pursuant to section 2-619 of the Code (735 ILCS 5/2-615 (West 2012)) was improper because the defendants failed to present undisputed evidence that his claim was time-barred. [3]

¶ 22 Before turning to the merits, we set forth the well-established principles regarding motions to

[3] We note that while in the circuit court the plaintiff also argued that the defendants had committed malpractice by failing to file a *lis pendens* in the underlying property damages case so as to ensure a better settlement offer in that case, on appeal, he concedes that this portion of his argument has no merit and was properly dismissed.

dismiss. A section 2-615(a) motion to dismiss tests the legal sufficiency of the complaint based on defects apparent on its face. *Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 15. "In other words, the defendant in such a motion is saying, 'So what? The facts the plaintiff has pleaded do not state a cause of action against me.' " *Winters v. Wangler*, 386 Ill. App. 3d 788, 792 (2008). In reviewing the grant of a section 2-615 motion to dismiss, we must determine whether the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, and taking all well-pleaded facts and all reasonable inferences that may be drawn from those facts as true, are sufficient to state a cause of action upon which relief may be granted. *Doe–3*, 2012 IL 112479, ¶ 16; *Winters*, 386 Ill. App. 3d at 793; see also *In re Estate of Powell*, 2014 IL 1159997, ¶ 12. Dismissal pursuant to section 2-615 is proper if no set of facts can be proved that would entitle the plaintiff to recovery. *Powell*, 2014 IL 1159997, ¶ 12; *Marshall v. Burger King Corp*., 222 Ill. 2d 422, 429 (2006). In ruling on a section 2-615 motion, the court only considers (1) those facts apparent from the face of the pleadings, (2) matters subject to judicial notice, and (3) judicial admissions in the record. *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill. 2d 381, 385 (2005). A plaintiff's conclusions of law and factual conclusions that are not supported by allegations of specific facts will not be considered as supportive of his cause of action. *Visvardis v. Eric P. Ferleger, P.C.*, 375 Ill. App. 3d 719, 724 (2007); see also *Powell*, 2014 IL 1159997, ¶ 12 ("a court cannot accept as true mere conclusions unsupported by specific facts"). Our review of the trial court's grant of a section 2-615 motion to dismiss is *de novo*. *Doe–3*, 2012 IL 112479, ¶ 15.

¶ 23 Unlike a section 2-615 motion to dismiss, a motion for dismissal pursuant to section 2-619 of the Code admits the legal sufficiency of the complaint, admits all well-pleaded facts and all reasonable inferences therefrom, but asserts that an affirmative matter outside the complaint bars

or defeats the cause of action. *Kean v. Wal–Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009); *Smith v. Waukegan Park District*, 231 Ill. 2d 111, 120 (2008); *Snyder v. Heidelberger*, 2011 IL 111052, ¶ 8. In other words, in a section 2-619 motion, the defendant is essentially saying " 'Yes, the complaint was legally sufficient, but an affirmative matter exists that defeats the claim.' " *Winters*, 386 Ill. App. 3d at 792. A section 2–619(a)(9) motion dismissal is reviewed *de novo*. *Kean*, 235 Ill. 2d at 361,

¶ 24 With these principles in mind, we turn to the merits of the plaintiff's complaint and consider first whether dismissal of his malpractice action was proper pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)).

¶ 25 The plaintiff argues that his first amended complaint presented sufficient facts to state a cause of action for legal malpractice against the defendants. The defendants, on the other hand, argue that the amended complaint failed to allege sufficient facts to properly plead and prove all the elements of a malpractice action, namely, proximate cause. For the reasons that follow, we agree with the defendants.

¶ 26 It is well-established that Illinois is a fact-pleading jurisdiction that requires a plaintiff to present a legally and factually sufficient complaint, alleging sufficient facts to state all the elements of the cause of action raised. See *Purmal v. Robert N. Wadington and Associates*, 345 Ill. App. 3d 715, 720 (2004).

¶ 27 In the context of a legal malpractice action, such as the one here, the plaintiff must sufficiently plead that: (1) the defendants owed him a duty arising from an attorney-client relationship; (2) the defendants breached that duty; and (3) that as a proximate result of that breach; (4) he suffered actual monetary damages. *Nelson v. Quarles and Brady, LLP*, 2013 IL App (1st) 123122, ¶ 27; *Powell*, 2014 IL 115997, ¶ 13; *Purmal*, 354 Ill. App. 3d at 720-21.

¶ 28 With respect to proximate cause, at issue here, the plaintiff must plead and prove a "case within a case." *Fabricare Equipment Credit Corp. v. Bell, Boyd & Lloyd*, 328 Ill. App. 3d 784, 788 (2002). This is because, since a legal malpractice claim is wholly predicated upon an unfavorable result in the plaintiff's underlying suit, no malpractice can exist unless counsel's negligence resulted in a loss in that underlying suit. See *Fabricare*, 328 Ill. App. 3d at 788, citing *Ignarski v. Norbut*, 271 Ill. App. 3d 522, 525–26 (1995).

¶ 29 Proximate cause consists of two elements: cause-in-fact and legal cause. *Young v. Bryco Arms*, 213 Ill. 2d 433, 446 (2004); *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 455 (1992). "Cause in fact exists where there is a reasonable certainty that a defendant's acts caused the plaintiff's injury." *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 226 (2010) (citing *Young*, 213 Ill. 2d at 466); see also *Lee*, 152 Ill. 2d at 455. Under the traditional "but for" test, a plaintiff must plead facts establishing that, but for the attorney's malpractice, the plaintiff would have prevailed in the underlying action (*i.e.*, would not have lost the licensing agreement). *Huang v. Brenson*, 2014 IL App (1st) 12321, ¶ 26 (citing *Estate of Powell v. John C. Wunsch, P.C.*, 213 IL App (1st) 121854, ¶ 29). Under the second, "substantial factor" test, the relevant question becomes "whether the defendant's conduct is a material element and a substantial factor in bringing about the injury." *Krywin*, 238 Ill. 2d at 226. Our supreme court has explained that under this test "[c]onduct is a material element and a substantial factor if, absent the conduct, the injury would not have occurred." *Krywin*, 238 Ill. 2d at 226; see also *Simmons v. Garces*,198 Ill. 2d 541, 558 (2002) ("Actual cause, or cause in fact, can be established only where 'there is a reasonable certainty that a defendant's acts caused the injury or damage.' [Citation.]"). In other words "[i]f the plaintiff's injury would not have occurred absent the defendant's conduct, then the

conduct is a material element and substantial factor in bringing the injury." *Garest v. Booth*, 2014 IL App (1st) 121845, ¶ 41 (citing *Abrams v. City of Chicago*, 211 Ill. 2d 251, 258 (2004).

¶ 30 The second prong of proximate cause is legal cause, which is " 'essentially a question of foreseeability: a negligent act is a proximate cause of an injury if the injury is of a type which a reasonable man would see as a likely result of his conduct. [Citation.]' " *Bell ex rel. Street v. Bakus*, 2014 IL App (1st) 131043, ¶23 (citing *Lee*, 152 Ill. 2d at 455). Our courts have repeatedly held that an injury will be found not to be within the scope of the defendant's duty if it appears "highly extraordinary" that the breach of the duty should have caused the particular injury. *Bell ex rel. Street v. Bakus*, 2014 IL App (1st) 131043, ¶23 (citing *Lee*, 152 Ill. 2d at 455). If a defendant's conduct does nothing other than furnish a condition by which the injury is made possible, and the condition causes an injury by the subsequent, independent act of a third person, the creation of the condition is not the proximate cause of the injury. *Garest*, 2014 IL App (1st) 121845, ¶ 41 (citing *Abrams*, 211 Ill. 2d at 259).

¶ 31 While proximate cause is generally an issue of fact to be decided by the jury, a court can rule as a matter of law that proof of proximate cause was inadequate where "the facts are undisputed and reasonable men could not differ as to the inferences to be drawn from those facts." *Harrison v. Hardin County Community Unit School District No. 1*, 197 Ill. 2d 466, 476 (2001).

¶ 32 In the present case, we find that as a matter of law, the plaintiff has failed to present sufficient facts to establish proximate cause. The record reveals that before the trial court, the plaintiff asserted contradictory positions as to how the defendants' failure to advise him on the terms of the licensing agreement resulted in his loss of his right to operate Harold's Chicken #76. As shall be explained below, however, under each theory, he failed to set forth facts showing that the defendants did anything to cause him that loss.

¶ 33 In his first amended complaint, the plaintiff initially alleged that he breached the licensing agreement by failing to comply with the requirement that he reopen the restaurant within 21-days and that the defendants' failure to advise him of this requirement or in the alternative seek a waiver or modification of that 21-day requirement resulted in the loss of his ability to operate the restaurant. However, the defendants were not retained to represent the plaintiff until after the 21-days had expired, and the plaintiff had already defaulted on the licensing agreement. Specifically, defendant, Bacon was retained more than four months after the 21-day period had expired, and her law firm was retained more than two years after that. As such, under this theory, the plaintiff failed to allege sufficient facts to establish how "but for" the defendants failure to seek modification or waiver, the default would have been avoided, or how any omission by the defendants was a substantial factor contributing to that default.

¶ 34 What is more, in his first amended complaint, the plaintiff failed to allege that he ever informed the defendants about the licensing agreement, or gave them a copy of the licensing agreement to examine. Even assuming that the plaintiff gave the licensing agreement to the defendants, there is also no allegation as to when this occurred (*i.e.*, one month or one year into the representation), so as to establish a connection between the default and any acts or omissions by the defendants. In addition, the plaintiff has pleaded no facts showing that Harold's would have agreed to waive or modify the 21-day requirement had the defendants ever been in a position to make such a request on behalf of the plaintiff. In fact, the plaintiff's own exhibit of Harold's letter reveals that Harold's regarded the plaintiff's failure to reopen the restaurant on the date of the roof collapse, as the termination of the licensing agreement. Taking as we must the allegations in the light most favorable to the plaintiff, the only inference that can be drawn from

the plaintiff's own allegations and Harold's letter, is that waiver or modification of the agreement after the collapse would have been futile.

¶ 35 The plaintiff's second theory similarly fails to state sufficient facts to establish proximate cause. The record reveals that after the defendants filed their motion to dismiss the first amended complaint, the plaintiff changed his theory of the case, arguing that he had not defaulted under the 21-day reopening provision of the licensing agreement because he gave Harold's notice on the day after the roof collapsed, and such notice barred any default. In order to prevail on this theory of malpractice, however, the plaintiff necessarily would have had to plead on what basis the licensing agreement was terminated and at what point in time it was terminated so as to show that the defendants were responsible for any loss he suffered. However, the plaintiff has done no such thing. In fact, since Harold's letter, cited to by the plaintiff, states that the plaintiff's licensing agreement was terminated because of the plaintiff's failure to reopen the restaurant 21 days after the roof collapsed, and the plaintiff alleges that under the licensing agreement his notice to Harold's trumps any default, under this theory of the case, the plaintiff has never breached the licensing agreement. Harold's has. Accordingly, the plaintiff still has a viable cause of action against Harold's and has lost nothing as a result of the defendants' representation. As such, the plaintiff has again failed to allege any facts showing that the defendants contributed to the loss of his license.

¶ 36 The plaintiff's decision to discharge the defendants and retain new counsel while his cause of action was still viable breaks the chain of proximate causation. See *e.g., Land v. Greenwood*, 133 Ill. App. 3d 537, 540 (1985) (holding that, as a matter of law, the alleged negligence of an attorney who is discharged by the client before the client's rights and remedies have been lost cannot be deemed to be the proximate cause of the plaintiff's claimed damages); see also *McGee*

v. Danz, 261 Ill. App. 3d 232, 237 (1994) (where plaintiff discharged defendant prior to the running of the applicable statute of limitations, as a matter of law, defendant was not liable for legal malpractice for failing to file a claim against third parties prior to expiration of statute of limitations); *Harvey v. Mackay*, 109 Ill. App. 3d 582, 587 (1982) (holding that an attorney who fails to file a suit within the applicable statute of limitations may not be sued for malpractice when the attorney withdrew more than a year before the limitations period ran); see also *Mitchell v. Schain, Fursel & Burney, Ltd*., 332 Ill. App. 3d 618, (2002) (the client's action against his neighbor in a property dispute was still viable at the time the client discharged his first attorneys, and thus, the first attorneys were not the proximate cause of the client's damages that resulted from the successor attorney's failure to refile the complaint after it was dismissed with prejudice); see also *Rocha v. Rudd*, 826 F. 3d 905, 909 (7th Cir. 2016) (Under Illinois law, if a cause of action was viable at the time of an attorney's discharge, then the plaintiff suing for legal malpractice can prove no set of facts which connect the attorney's conduct with any damage sustained by the plaintiff).

¶ 37 Accordingly, while the plaintiff has alleged various ways in which the defendants might have given him different business consulting advice had they been advised of the licensing agreement, he has failed to allege any facts that would show how "but for" that business advice he would not have suffered the loss of his business license, or how the lack of that business advice constituted a "substantial factor" in bringing about his loss. Accordingly, the plaintiff has failed to allege proximate cause and the trial court properly dismissed his case.

¶ 38 Since we find dismissal was proper pursuant to section 2-615 (735 ILCS 5/2-615 (West

2012)), we need not address whether dismissal was also proper under section 2-619 (735 ILCS 5/2-619 (West 2012)).[4]

¶ 39 III. CONCLUSION

¶ 40 For all of the aforementioned reasons, we affirm the judgment of the circuit court.

¶ 41 Affirmed.

[4] At the conclusion of his brief, the plaintiff peripherally notes that "even if there is some infirmity in the way the action was pleaded that [he] did not grasp in the trial court, leave to replead should have been allowed." As such, he seems to argue that, even if dismissal was proper, it should have been done without prejudice so at to permit him to file another amended complaint. However, we need not consider this argument, since the record before us reveals that in his pleadings before the trial court the plaintiff never sought to amend his complaint for a second time, either as part of his response to the defendants' motion to dismiss, or in a motion to reconsider the dismissal order. As such, his argument on appeal is waived. See *Haudrich v. Howmedica, Inc*., 169 Ill. 2d 525, 536 (1996) ("It is well settled that issues not raised in the trial court are deemed waived and may not be raised for the first time on appeal."); see also *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 85 (issues not raised in the trial court are deemed forfeited and may not be raised for the first time on appeal).