2017 IL App (1st) 160347-U
No. 1-16-0347

THIRD DIVISION
February 22, 2017

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SNOW SYSTEMS, INC., and JAMES BIEBRACH	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	No. 14L967
v.	)	
THOMAS TANNER,	)	The Honorable William E. Gomolinski,
Defendant-Appellee.	)	Judge Presiding.

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

ORDER

¶ 1 *Held:* circuit court orders disposing of plaintiffs' defamation claims premised on two internet postings allegedly authored by defendant affirmed. One of the claims was time-barred, while the other did not support a valid cause of action for defamation *per se*.

¶ 2 Plaintiffs, Snow Systems, Inc. (Snow Systems) and James Biebrach (collectively, plaintiffs) filed a two-count defamation action against defendant Thomas Tanner after Tanner purportedly authored two internet postings that contained negative information about Snow Systems and its president, Biebrach. Tanner responded with a motion to dismiss plaintiffs' third

amended complaint in its entirety. Upon consideration, the circuit court granted the motion in part, finding that the second count contained in the plaintiffs' filing did not support a valid defamation claim. Thereafter, Tanner filed a motion for summary judgment with respect to the first count, which the circuit court ultimately granted. Plaintiffs seek review of both of the circuit court's orders. For the reasons set forth herein, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 James Biebrach is the president of Snow Systems, a snow removal company, based in Wheeling, Illinois. Tanner is a former employee of Snow Systems. He worked at the company from 2002 until 2005, when he resigned. Tanner's decision to resign was based upon a disagreement he had with Biebrach.

¶ 5 Thereafter, on September 10, 2010, a posting was uploaded to a consumer advocate website known as the Ripoff Report (http://www.ripoffreport.com)[1] (Ripoff Report Posting). The posting, which was captioned as a "Complaint" provided, in pertinent part, as follows:

> "Snow Systems Inc. Jim Biebrach Scumbag of the EARTH Wheeling Illinois
>
> Jim [B]iebrach is these [sic] biggest scumbag to walk the earth! He screws anyone who works for him, he screws ANYTHING that walks (his poor wife & 5 kids). His business is hanging by a thread! That[']s why he opened Winter Servicees out of Mc[H]enry. His bitch Krystof Lenart is the front man. They steal money, salt, use equipment of others without paying them. He had to open this other company because

[1] The home page of the website provides that "Ripoff Report is a worldwide consumer reporting Web site and publication, by consumers, for consumers, to file and document complaints about companies or individuals." http://www.ripoffreport.com (last visited January 2017).

his reputation is shit & he knows it! Now he has EPA issues, using off road diesel fuel in his salt trucks on road (no taxes to pay). That['s] how cheap this piece of shit is!

You should see him in public trying to buy women to hang out with him, throwing money around that[']s not his like it's going out of style!

All his illegal immagrants [sic] working for him driving his trucks with no licenses.

Your day will come Jimmy!! Good luck."

¶ 6 The author of the Ripoff Report posting was not named, but was merely identified as an "ex employee."

¶ 7 Thereafter, on November 28, 2013, an anonymous internet posting was made to Craigslist (http://craigslist.org), a classified advertisement website[2] (Craigslist Posting). The posting, entitled "Snow Systems (Wheeling)," contained the word "Beware" and an internet hyperlink that directed the reader to the Cook County Clerk of the Circuit Court's electronic docket that displayed a list of lawsuits in which Snow Systems has been named a defendant since its incorporation.

¶ 8 On January 30, 2014, plaintiff Snow Systems, having not ascertained the identity of the internet poster, filed a defamation action based on the Craigslist Posting against "John Doe ***, an unknown individual." Snow Systems alleged that the Craigslist Posting "wrongly and without justification cast a bad light on Snow Systems and its business practices" and constituted "defamation *per se* under Illinois law."

[2] Craigslist.org is a "community moderated" website containing "local classifieds and forums," pertaining to various topics including "jobs, housing, goods, services, romance, local activities, [and] advice." http://www.craigslist.org/about/factsheet (last visited January 2017).

¶ 9 Thereafter, on August 22, 2014, after receiving leave of court, Snow Systems filed an amended complaint, in which it named defendant Tanner as the author[3] of the defamatory Craigslist Posting as well as the Ripoff Report Posting. Snow Systems alleged that both postings were prejudicial because they "imputed a lack of ability on the part of Snow Systems in its business operations," and as such, constituted defamation *per se*.

¶ 10 Tanner responded by filing a motion to dismiss Snow Systems' first amended complaint. In the motion, Tanner argued that Snow Systems' defamation claim premised on the Ripoff Report Posting was time-barred because the complaint was not filed within one year of the internet posting and therefore, fell outside of the applicable statute of limitations. Tanner also argued that the Craigslist Posting did not, on its face, constitute defamation *per se* because it was subject to an "innocent construction." As such, Tanner argued that dismissal of Snow Systems' defamation claim premised on that posting was therefore also warranted.

¶ 11 "[I]n lieu of responding to" Tanner's motion to dismiss, Snow Systems sought leave of the circuit court to file a second amended complaint. Snow Systems alleged that the second amended complaint would "add[] James Biebrach as a party plaintiff" and would also "cure[] other minor technical pleading issues raised in [Tanner's] motion to dismiss."

¶ 12 The circuit court granted Snow Systems leave to file its amended pleading and the second amended complaint was filed on February 2, 2015. The second amended complaint set forth two defamation *per se* claims premised on the Ripoff Report Posting (Count I) and Craigslist Posting (Count II) and included Biebrach as a party plaintiff.

¶ 13 Tanner responded to the new filing with another motion to dismiss, in which he argued that the second amended complaint failed to address and remedy the deficiencies inherent in the

[3] It is unclear how Tanner was identified as the author of the two internet postings. Tanner has denied being the author of either posting.

earlier filings. He again argued that a defamation claim premised on the Ripoff Report Posting was time-barred and that the language contained in the Craigslist Posting did not provide the basis for a valid defamation *per se* claim.

¶ 14 The circuit court dismissed Count II of plaintiffs' second amended complaint premised on the Craigslist Posting pursuant to section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)), but provided plaintiffs with another opportunity to replead.

¶ 15 Plaintiffs responded by filing their third amended complaint, the complaint at issue in the instant appeal, on February 24, 2015. The third amended complaint mirrored the pleadings contained in the previous filings, and contained two defamation *per se* claims premised on the Ripoff Report Posting (Count I) and the Craigslist Posting (Count II).

¶ 16 On April 27, 2015, the circuit court entered a case management order permitting Tanner's motion to dismiss plaintiffs' second amended complaint "to stand as [his] motion" to dismiss the third amended complaint. The circuit court then continued the matter for a hearing on the motion to dismiss the third amended complaint.

¶ 17 On May 11, 2015, following that hearing, the circuit court again granted Tanner's motion to dismiss Count II of the amended complaint premised on the Craigslist Posting, but denied his motion to dismiss Count I, which was based on the Ripoff Report Posting. The court then ordered the parties to commence discovery.

¶ 18 In accordance with the circuit court's order, Tanner filed a timely response to Count I of the third amended complaint, in which he denied being the author of the Ripoff Report Posting. Moreover, as an affirmative defense, Tanner alleged that Count I was time-barred because it had been filed outside of the applicable one-year statute of limitations. In pertinent part, Tanner

alleged that "the claimed defamatory [Ripoff Report Posting] provides a date of September 10, 2010" and that plaintiffs' 2014 complaint was therefore untimely.

¶ 19 Thereafter, Tanner filed a motion for summary judgment, arguing that there was no genuine issue of material fact as to when the Ripoff Report Posting was published on the website and that plaintiffs' defamation claim based on the Ripoff Report Posting was therefore time-barred. In support of his motion, Tanner submitted the declaration of Justin Crossman, the Custodian of Records for Xcentric Ventures, LLC, and the operator of the Ripoff Report website.[4] In the declaration, Crossman states that the Ripoff Report Posting "was submitted by the Author on 9/10/2010 1:07 PM and was posted on Ripoff Report on 09/10/2010 1:11 PM and is a permanent record located here: http://www.ripoffreport.com/r/Snow-Systems-Inc/Wheeling-Illinois-Snow-Systems-Inc-Jim-Biebrach-Scumbag-of-the-EARTH-Wheeling-Illinois-639465." Given that the Ripoff Report Posting was published to the website on September 10, 2010, and that plaintiffs did not file suit until 2014, well after the expiration of the one-year statute of limitations, Tanner argued that plaintiffs' defamation *per se* claim was time-barred and that summary judgment was proper.

¶ 20 In response, plaintiffs invoked the discovery rule and argued that because "Jim Biebrach, President on Snow Systems, discovered the defamatory post on or about October 1, 2013," their defamation lawsuit, which was filed on January 30, 2014, fell within the applicable one-year statute of limitations and was therefore timely.

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[4] The "about us" section of the Ripoff Report website provides: "www.RipoffReport.com ("ROR") is an online forum created to help give consumers a voice and keep consumers informed. ROR is operated by Xcentric Ventures, LLC located at: Xcentric Ventures, LLC
Ripoff Report
P.O. Box 310
Tempe, AZ 85280
Tel.:(602)-359-4357"
http://www.ripoffreport.com/ConsumersSayThankYou/TermsOfService.aspx (last visited January 2017).

¶ 21 On January 11, 2016, following a hearing on Tanner's motion, the circuit court granted Tanner's motion for summary judgment on Count I of defendants' third amended complaint.

¶ 22 Plaintiffs' have appealed the circuit court's orders disposing of the two defamation *per se* claims advanced in their third amended complaint.

¶ 23 ANALYSIS

¶ 24 A. Ripoff Report: Summary Judgment

¶ 25 On appeal, plaintiffs first argue that the circuit court erred in granting Tanner's motion for summary judgment on their defamation claim based on the Ripoff Report Posting. They argue that there are genuine issues of material fact regarding the publication date of the Ripoff Report Posting and the applicability of the discovery rule to internet defamation claims. Given the existence of genuine issues of material fact, plaintiffs contend the circuit court's order should be reversed.

¶ 26 Tanner responds that the circuit court properly found that there were no genuine issues of material fact concerning the Ripoff Report Posting. Therefore, he argues that the circuit court's order granting his motion for summary judgment should be affirmed.

¶ 27 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 2012). 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 undisputed

facts. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). To survive a motion for summary judgment, the plaintiff need not prove its case at this preliminary stage of litigation; however, the plaintiff must some evidentiary facts to support each element of its cause of action, which would arguably entitle the plaintiff to a judgment. *Richardson v. Bond Drug Co. of Illinois*, 387 Ill. App. 3d 881, 885 (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)) and a reviewing court can affirm the circuit court's decision to grant a motion for summary judgment on any basis apparent in the record (*Mr. B's Inc. v. City of Chicago*, 302 Ill. App. 3d 930, 938 (1998)).

¶ 28 Defamation actions are subject to a one-year statute of limitations. 735 ILCS 5/13-201 (West 2010) ("Actions for slander, libel or publication of matter violating the right of privacy, shall be commenced within one year next after the cause of action accrued"); see also *Peal v. Lee*, 403 Ill. App. 3d 197, 207 (2010) ("The statute of limitations to file a defamation claim is one year"). "It has generally been held that in defamation cases the cause of action accrues and the statute of limitations begins to run on the date of publication of the defamatory material." *Tom Olesker's Exciting World of Fashion, Inc. v. Dun & Bradstreet, Inc.*, 61 Ill. 2d 129, 131-32 (1975).

¶ 29 Here, although plaintiffs suggest that there is a genuine issue of material fact as to date on which the Ripoff Report Posting was published, we disagree. Based on the evidence contained

in the record, including the declaration of Justin Crossman, the Custodian of Records for Xcentric Ventures, LLC., the operator of the Ripoff Report website, the Ripoff Report Posting was uploaded and published to the website on September 10, 2010. This was the date upon which the defamatory material first became available to the general public. See, *e.g.*, *Winrod v. Time, Inc.*, 334 Ill. App. 3d 59, 65 (1948) (the publication date for a magazine at the crux of a defamation action was the date upon which the magazine issue first became available to the general public). As such, plaintiffs had until September 10, 2011, to file their defamation based on the Ripoff Report Posting. Plaintiffs, however, failed to meet this deadline. In an effort to toll the statute of limitations, plaintiffs invoke the discovery rule and argue that because they did not discover the Ripoff Report Posting until 2013, their complaint, filed in 2014, was therefore timely.

¶ 30 The discovery rule is a mechanism that avoids the mechanical application of a statute of limitations period and postpones the commencement of the applicable limitations period until the plaintiff knows, or reasonably should have known, that he incurred an injury and that the injury was wrongfully caused. *Peal*, 403 Ill. App. 3d at 207; *Blair v. Nevada Landing Partnership*, 369 Ill. App. 3d 318, 326 (2006). With respect to defamation actions in particular, this court has noted that "there exists a degree of uncertainty as to when the discovery rule should apply," but that the general rule is that the discovery rule should not be applied unless the " 'publication [containing the purportedly defamatory material] was hidden, inherently undiscoverable, or inherently unknowable.' " *Peal*, 403 Ill. App. 3d at 207 (quoting *Blair*, 369 Ill. App. 3d at 326). For example, the discovery rule was applied to a defamation action in which the defamatory material was contained in a credit report available only to subscribers because the material was found to be essentially hidden from, and undiscoverable by, the general public. *Tom Olesker's*,

61 Ill. 2d 137-28; see also *Schweihs v. Burdick*, 96 F. 3d 917, 921 (7th Cir. 1996) (recognizing that "courts seem to apply the discovery rule in situations where the defamatory material is published in a manner likely to be concealed from the plaintiff, such as credit reports or confidential memoranda"). In contrast, defamation via "mass-media publications, including magazines, books, newspapers, radio and television programs are not subject to the discovery rule because they are readily accessible to the general public" and are thus not considered hidden, inherently undiscoverable or unknowable. See *Tom Olesker's*, 61 Ill. 2d at 137-38.

¶ 31 Here, plaintiffs argue that the discovery rule should apply "as a matter of law" to internet defamation postings because the voluminous scope of the internet makes a single posting inherently undiscoverable or unknowable. Given that the Ripoff Report website "is just one of over 100 million websites accessible over the [i]nternet," plaintiffs argue that the Ripoff Report Posting was "effectively a needle in a haystack of webpages" and therefore essentially "hidden" from them until their discovery in 2013. We disagree.

¶ 32 As a threshold matter, we decline plaintiffs' invitation to rule, "as a matter of law," that the discovery rule is applicable to all internet defamation claims, as it is well-established that the applicability of the discovery rule is made on a case-by-case basis. *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 78 (1995); *Hoffman v. Orthopedic Systems, Inc.*, 327 Ill. App. 3d 1004, 1009 (2002). Moreover, we conclude that the application of the discovery rule is not appropriate in the case at bar. Although the internet is vast, various search engines may be employed to conduct research on the internet and discover any potential defamatory statements. Indeed, there is nothing inherently undiscoverable about a posting on a publicly-accessible website, such as the Ripoff Report. Rather, an internet posting on a publicly accessible website like the Ripoff Report is, in essence, a type of "mass-media publication," and as such, is not

subject to the discovery rule. See *Tom Olesker's*, 61 Ill. 2d at 137-38 (listing magazines, newspapers, books, radio and television programs as examples of mass-media publications that are not subject to the discovery rule).[5]

¶ 33 Having concluded that the discovery rule does not apply to this case, it follows that plaintiffs' defamation claim premised on the Ripoff Report Posting is time-barred. The Posting was published in 2010 and the statute of limitations expired one-year later. Plaintiffs' 2014 complaint was therefore untimely. Accordingly, we affirm the circuit court's order granting Tanner's motion for summary judgment on Count I of plaintiffs' third amended complaint. See, *e.g.*, *Hoffman v. Orthopedic Systems, Inc.*, 327 Ill. App. 3d 1004, 1008 (2002) (recognizing that summary judgment is appropriate when a legal action has been filed outside of the applicable statute of limitations).

¶ 34 B. Craigslist Posting: Motion to Dismiss

¶ 35 Plaintiffs next argue that the circuit court erred in granting Tanner's motion to dismiss their defamation *per se* claim premised on the Craigslist Posting. They submit that Craigslist Posting contains a defamatory factual statement that "cannot be innocently construed."

¶ 36 Tanner responds that the content contained in the Craigslist Posting does not provide a basis for a valid defamation *per se* claim because the content is both true and capable of "many innocent constructions." As a result, he contends that the circuit court properly dismissed Count II of plaintiffs' third amended complaint.

[5] We note that other courts that have considered internet defamation claims have also concluded that defamatory material posted on a website should be treated in the same manner as defamatory material contained in traditional mass-media publications for statute of limitations purposes. See, *e.g.*, *Mayfield v. Fullhart*, 444 S. W. 3d 222, 230 (Tex. 2014) (recognizing that the discovery rule does not apply when a defamatory statement is disseminated via mass media and rejecting the plaintiff's argument that the discovery rule should apply to her internet libel claim); *Churchill v. State*, 378 N.J. Super. 471, 483 (2005) ("We find no principled basis in a situation like the one before us for treating the Internet differently than other forms of mass media."); *Firth v. State*, 98 N.Y. 2d 365, 370 (2002) ("Communications accessible over a public Web site resemble those contained in traditional mass media, only on a far grander scale").

¶ 37 A motion to dismiss filed pursuant to section 2-615 of the Illinois Code of Civil Procedure (Code) attacks the legal sufficiency of a complaint based on alleged defects that are apparent on the face of the document. 735 ILCS 5/2-615 (West 2010); *Kanerva v. Weems*, 2014 IL 115811, ¶ 33; *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 160-01 (2009); *Country Mutual Insurance Co. v. Olsak*, 391 Ill. App. 3d 295, 301-02 (2009). Because Illinois is a fact-pleading jurisdiction, plaintiffs are required to file legally and factually sufficient complaints to avoid dismissal. *Illinois Insurance Guarantee Fund v. Liberty Mutual Insurance Co.*, 2013 IL App (1st) 123345, ¶ 14. When reviewing a section 2-615 motion to dismiss, the circuit court must admit as true all well-pleaded facts as well as all reasonable inferences that may be drawn from those facts and disregard any conclusions that are unsupported by allegations of fact. *Tedrick*, 235 Ill. 2d at 161; *Illinois Insurance Guarantee Fund*, 2013 IL App (1st) 123345, ¶ 14. The relevant inquiry is whether the factual allegations contained in the complaint, when viewed in the light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009); *Illinois Insurance Guarantee Fund*, 2013 IL App (1st) 123345, ¶ 14. A motion to dismiss pursuant to section 2-615 of the Code should be granted only where it is clearly apparent that there are no set of facts that can be proved that would entitle the plaintiff to recovery. *Kanerva*, 2014 IL 11581, ¶ 33; *Green*, 234 Ill. 2d at 491. A circuit court order granting or denying a section 2-615 motion to dismiss is subject to *de novo* review. *Heastie v. Roberts*, 226 Ill. 2d 515, 531 (2007); *Kean v. Walmart Stores, Inc.*, 235 Ill. App. 3d 351, 361 (2009).

¶ 38 To plead a valid cause of action for defamation, a plaintiff must allege facts that establish that the defendant made a false statement about the plaintiff, published that false statement to a third party, and that the defendant's publication of that false statement caused the plaintiff to

suffer damages. *Hadley v. Doe*, 2015 IL 118000, ¶ 30; *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009); *Emery v. Northeast Regional Commuter R.R. Corp.*, 377 Ill. App. 3d 1013, 1021 (2007). A statement will be construed as defamatory *per se* when its harm is obvious and apparent on its face. *Hadley*, 2015 IL 118000, ¶ 30; *Green*, 234 Ill. 2d at 491; *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006). Given that harm is presumed in defamation *per se* cases, such claims must be pled with a heightened level of precision and particularity. *Green*, 234 Ill. 2d at 495; *Stone v. Paddock Publications, Inc.*, 2011 IL App (1st) 093386, ¶ 25. A true or "substantially true" statement cannot form the basis for a defamation claim. *Moore v. People for the Ethical Treatment of Animals, Inc.*, 402 Ill. App. 3d 62, 71 (2010); see also *Imperial Apparel, Ltd. v. Cosmo's Designer Direct, Inc.*, 227 Ill. 3d 381, 402 (2008) ("a statement is not actionable unless it is [both] factual and *false*"). Similarly, words or statements that are reasonably capable of an innocent construction will not form the basis for an actionable defamation *per se* claim. *Hadley*, 2015 IL 118000, ¶ 31; *Green*, 234 Ill. 2d at 499; *Solaia*, 221 Ill. 2d at 580. To determine whether an alleged defamatory statement is subject to an innocent construction, the court must consider the statement in its entirety and afford the words and implications derived therefrom with their natural and obvious meanings. *Tuite v. Corbitt*, 224 Ill. 2d 490, 503 (2006); *Moore*, 402 Ill. App. 3d at 70. " '[A] statement 'reasonably' capable of a nondefamatory interpretation, given its verbal or literary context should be so interpreted. There is no balancing of reasonable constructions.' " *Green*, 234 Ill. 2d at 500 (quoting *Mittelman v. Witous*, 135 Ill. 2d 220, 232 (1989)).

¶ 39 As set forth above, the Craigslist Posting contained a single word, "Beware" and a hyperlink that directed the reader to the Cook County Clerk of the Circuit Court's electronic docket, which contained a list of lawsuits in which Snow Systems has been a party since its

incorporation. Plaintiffs do not suggest that the information displayed on the electronic docket is in any way inaccurate. See generally *Imperial Apparel*, 227 Ill. 3d at 402 (recognizing that true or accurate statements will not form the basis for a defamation claim). Moreover, even when the docket list is construed in conjunction with the word "Beware," the Craigslist Posting is not inherently negative or defamatory. The word "Beware" is a very broad, non-specific admonishment, and as such, does not satisfy the heightened specificity and particularity requirement applicable to defamation *per se* claims. See, *e.g.*, *Green*, 234 Ill. 2d at 498-01 (recognizing that the terms "abuse" and "misconduct" were not sufficiently precise or particular to support a defamation *per se* claim because they were "words with very broad meanings"). Moreover, although the term "Beware" when read in context with the electronic docket list can be interpreted in a way that disparages Snow Systems as a business, it can also, as Tanner correctly observes, be subject to a number of innocent innocuous interpretations, "including a warning to other business regarding the litigiousness of society, a warning about conducting business in Cook County, and a warning about [the dangers] of operating a snow business in Chicagoland." Given that the admonishment may be reasonably innocently interpreted, it is not actionable *per se*. *Green*, 234 Ill. 2d at 500. As such, the circuit court did not err in dismissing Count II of plaintiffs' third amended complaint.

¶ 40 CONCLUSION

¶ 41 The judgment of the circuit court is affirmed.

¶ 42 Affirmed.