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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

NATARA MULTIMEDIA GROUP, INC.,)	Appeal from the
and EVENT LIFE, LLC,)	Circuit Court of
)	Cook County.
Plaintiffs-Appellants,)	
)	No. 15 L 7403
v.)	
)	Honorable
ERINEO "EDDIE" CARRANZA,)	Patrick J. Sherlock,
CONGRESS THEATRE INC., CONGRESS)	Judge, presiding.
CORPORATION, 2117-2139 N)	
MILWAUKEE PROPERTY LLC,)	
ALBERTO SOLORIO, DON SNOW,)	
TYLER DEROO, ATHEN/ATIEH)	
IRAYYAN, AHMAD MAHIDI, MAY DAY,)	
and TICKETFLY INC.)	
)	
Defendants.)	
)	
(Erineo "Eddie" Carranza, Alberto Solorio,)	
Don Snow, and Ticketfly, Inc., Defendants-)	
Appellees.))	

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's granting of defendant's motion to quash service was proper where it was uncontested that the process server left the documents on defendant's doorstep. Plaintiffs waived the argument that the trial court improperly dismissed their intentional misrepresentation claim where they did not raise it in their opening appellate brief. Trial court did not err in dismissing plaintiffs' conclusory allegations of conversion and civil conspiracy.

¶ 2 Plaintiffs Natara Multimedia Group NC. ("Natara") and Event Life LLC. appeal the trial court's granting of defendant Erineo Carranza's motion to quash service and defendants Ticketfly Inc., Alberto Solorio, and Don Snow's motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2014)). They contend that they provided *prima facie* evidence of proper service and that their amended complaint sufficiently set forth claims of intentional misrepresentation, conversion and civil conspiracy. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Natara is a closely held corporation that produces concerts in the Chicago area. It is owned and controlled by Nick Huminsky. Event Life is also a closely held corporation that produces concerts and music-related events in Chicago. It is owned and controlled by George Herrera. Both corporations produced concerts at the Congress Theater, a theater operated by Congress Corporation and Congress Theater, Inc. Carranza allegedly owned and operated the companies. Solorio, a relative of Carranza, worked as an "accountant/controller" for the theater. Snow was allegedly a ticket scalper who worked with Carranza. Ticketfly, a corporation domiciled in California, facilitated the sale of tickets to plaintiffs' concerts at the theater.

¶ 5 Plaintiffs initially filed a complaint against defendant-appellees and the remaining defendants in the U.S. District Court for the Northern District of Illinois. The complaint set

forth both federal and state-law claims asserting misconduct in the handling of three concerts produced by plaintiffs at Congress Theater. The federal court ultimately dismissed the federal counts with prejudice and dismissed the state-law claims without prejudice. On July 2, 2015, plaintiffs reasserted the state-law claims against defendants in a complaint filed in the circuit court of Cook County. They subsequently filed an amended complaint on October 7, 2015.

¶ 6

A. The Amended Complaint

¶ 7

1. Natara Concerts

¶ 8

In the amended complaint, plaintiffs assert that Natara entered into a written agreement with "Congress"¹ in August 2012 to produce a music concert at the theater on October 13, 2012. The contract, which was attached to the complaint, specified that Natara would have total control over ticket sales and receive "an amount equal to One Hundred percent (100%) of the gross proceeds from the door admission and ticket sales." On the afternoon of the concert, Huminsky visited the theater and noticed people selling tickets in its vicinity. That night, Huminsky employed a door staff to collect tickets from concertgoers. Pursuant to the contract, Congress was required to provide ticket scanners to track tickets as they were collected. However, the scanners provided were not charged and did not function properly. Natara's ticket collectors instead dropped used tickets into bag-lined garbage cans. The complaint alleged that Carranza's staff took the bags full of used tickets and resold them outside of the theater. Carranza, Snow, Solario, and another defendant not party to this appeal also allowed concertgoers without tickets to enter. Huminsky also personally observed these individuals selling tickets without Natara's permission. No "walk-up" tickets were

¹ Throughout the complaint, plaintiffs make no distinction between Congress Corporation and Congress Theater, Inc.

documented as sold on the night of the concert, despite the 4,700 capacity theater being filled and only 3,300 tickets being previously sold.

¶ 9 Weeks later, Carranza met with Huminsky to talk about planning a second concert. Huminsky demanded that Carranza return the "stolen" money from the initial concert, but received nothing. He eventually agreed in a written contract to produce a second concert at the theater on April 13, 2013. The contract, also attached to the complaint, specified that Natara would be compensated with "[a]n amount equal to fifty percent (50%) of the gross proceedings from the door admissions and all ticket sales and or charges and admissions to the Production" and "[a]n amount equal to fifty percent (50%)" all liquor and bar sales. The contract also indicated that Natara would receive a non-refundable "budget" of \$40,000 up front.

¶ 10 The complaint further alleged that Ticketfly "assisted and conspired with Carranza by adding additional hidden ticket fees and credit card charges to tickets" being sold for Natara's shows. Ticketfly "systematically increased credit card service fees" and then rebated Carranza without the promoters' knowledge. The complaint also states that Ticketfly did so to allow "Carranza to receive additional moneys to repay cash loans he made from Ticketfly."

¶ 11 Tickets for the April 13 show sold out in record time and Huminsky talked to Carranza about adding another show. Carranza originally stated that there could not be another show due to legal issues, but later assured Huminsky that another show would take place. That show never materialized.

¶ 12 On April 13, Carranza introduced Huminsky to Snow and stated that Snow was a scalper. Snow had already purchased tickets for the concert as well as past Natara shows. He called

Huminsky to ask for more tickets, but Huminsky refused to sell him any. Snow sold \$20 tickets for \$200 through a ticket resale website and a network of scalpers. Carranza told Huminsky that he was selling tickets too cheaply and that he was going to buy all the tickets and "make triple the money." Later that night, Huminsky notice Carranza printing out 500 tickets to the show. When Huminsky asked what Carranza was doing, he replied that the city was shutting the theater down and "he was going to keep all the money." Carranza refused Huminsky's repeated requests for Natara's share of the ticket and liquor sales. The complaint asserted that Carranza stole \$200,000 from Natara, though it did not indicate how that amount was calculated.

¶ 13

2. Event Life Concert

¶ 14

The complaint also alleged that Carranza and Event Life entered into a written contract to produce a concert at the theater on March 23, 2013, and May 11, 2013. Ticketfly was to administer the sale of tickets and the complaint alleged that there was an agreement that "100% of ALL ticket sales by Ticketfly were to be kept by Event Life." However, the written contract attached to the complaint contained no such agreement and purported to contain the parties' entire agreement. The tickets ranged in price from \$40 to \$75, with a special deal listed on the internet for \$42 tickets to seats in the theater's balcony. On March 22, 2013, Event Life was informed that the balcony was unavailable due to a failed city inspection. Event alleged that it had sold 200 tickets which needed to be upgraded to a better section, which caused a loss of \$6,600. It also had to cancel the deal which had 300 tickets remaining, for a loss of \$12,600 in projected sales.

¶ 15

On the day of the concert, the complaint alleged, Event Life arrived at the theater in the morning to begin setting up. Ticket scanners were requested several times throughout the

day, but they did not arrive until five minutes before the theater doors were scheduled to open. The scanners were not functional. Similarly to the earlier concert, Event Life's ticket collectors were forced to collect tickets and deposit them in garbage bags so that reconciliation could occur at a later time. Event Life could not maintain the pace of the entering concertgoers and Congress staff continued to push people into the venue. The complaint alleged that the Event Life unexpectedly did not receive many door ticket sales despite the presale of 2,000 tickets. An undercover worker hired by Event Life counted 3,300 people entering the concert using a clicker device. Eventually Event Life checked the box office and discovered that some of the bags containing collected tickets were missing. "Potential attendees" informed Event Life that an unidentified individual had offered to sell them tickets for \$20 in the parking lot. When the company requested a full report of ticket sales, it was told that the report could not be completed until after the show and did not ultimately receive a report until the following Monday. It also discovered 490 unauthorized complimentary tickets in the garbage bags that it attributed to defendants. Event Life received money from Carranza, although the complaint did not state what quantity, asserting only that it "could not be reconciled with tickets sold." Solorio, the theater's accountant, eventually emailed Event Life a breakdown of ticket sales. A month later, Event Life received a copy of Ticketfly's report regarding tickets, and the complaint alleged that it clearly demonstrated "a list of people who were given [complimentary tickets] to sell without Event Life's authorization." The report did not match the report provided by Solorio.

¶ 16

3. The Legal Claims

¶ 17

The amended complaint set forth four counts based upon the asserted facts. The first count alleged breach of contract against "Defendant Congress." The second count asserted

that all defendants had collectively made multiple intentional misrepresentations to plaintiffs. The third count asserted that each of the defendants had converted monies stolen from plaintiffs. Finally, the fourth count asserted that each of the defendants had agreed "to participate in a common scheme to use unlawful means, including but not limited to theft" in a conspiracy against plaintiffs.

¶ 18 Ticketfly and Snow filed motions to dismiss the amended complaint's counts alleging intentional misrepresentation, conversion and conspiracy for failure to state a cause of action. Solorio was subsequently granted leave to join Snow's motion. On December 30, 2015, the trial court granted the motions.

¶ 19 4. Service of Carranza

¶ 20 Carranza was allegedly served notice after the other defendants. An affidavit entered into the record by specially appointed process server Jeff Brown averred that he had personally served Carranza at his home on December 8, 2015. On January 8, 2016, Carranza filed a motion to quash service. He attached an affidavit to the motion in which he averred that he was never personally served with the complaint or a summons, but rather found a copy of the documents on his doorstep. Plaintiffs filed a response which indicated that a "Declaration" of Brown was attached; however, the copy of the motion in the trial record has no such document attached. The trial court granted the motion to quash, finding that plaintiffs had not contested Carranza's statement that the documents had been left on his doorstep.

¶ 21 Plaintiffs subsequently voluntarily dismissed the remaining defendants, who are not party to this appeal, and appealed the order granting the motions to dismiss and order quashing service of Carranza.

¶ 22 II. ANALYSIS

¶ 23

1. Motion Taken with the Case

¶ 24

Before we turn to the merits of plaintiffs' appeal, we first address a motion filed by Carranza, Solorio, and Snow that was taken with the case. In plaintiffs' opening appellate brief they argued that their amended complaint had sufficiently pled counts for conversion and civil conspiracy. For the first time in their reply brief, plaintiffs raised an argument that the amended complaint had also sufficiently pled a count of intentional misrepresentation. Carranza, Solorio, and Snow subsequently filed a motion to strike the portion of the reply brief discussing the misrepresentation count.

¶ 25

A party's reply brief "shall be confined strictly to replying to arguments presented in the brief of the appellee." Ill. S. Ct. R. 341(j) (eff. Feb.6, 2013). Any point not raised in the opening brief is "waived and shall not be raised in the reply brief." Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); see also *Franciscan Communities, Inc. v. Hamer*, 2012 IL App (2d) 110431, ¶ 19 (“[A]rguments may not be raised for the first time in reply briefs.”). Accordingly, we find that plaintiffs have waived any argument concerning the misrepresentation for review. As we will not consider the waived argument in plaintiffs' reply brief, the motion to strike is now rendered moot.

¶ 26

2. Service of Carranza

¶ 27

Plaintiffs contend that the trial court erred in quashing service of Carranza. Relying on the declaration signed by Brown, the process server, plaintiffs argue that the return of service is *prima facie* proof of service.

¶ 28

Initially, we note that Brown's declaration regarding service was not a part of the record on appeal, but only included in the appendix to plaintiffs' opening brief. It is well-settled that a party may not amend or supplement the record on appeal by reference to documents

included in the appendix. See, e.g., *Pikovsky v. 8440-8460 N. Skokie Blvd. Condominium Ass'n, Inc.*, 2011 IL App (1st) 103742, ¶ 16. Any such documents will not be considered by a reviewing court. *In re Parentage of Melton*, 321 Ill. App. 3d 823, 826 (2001). Once defendants raised the issue of the improperly appended document in their response brief, plaintiffs made a motion to supplement the record with the missing document, which this court granted. However, no supplementary record was ever filed.

¶ 29 There are additional factors regarding the document which call its legitimacy into question. It is clear from the record that the trial court never considered the document. It makes no reference to such a document and appears confused as to why plaintiffs' response to the motion to quash raises facts which are found therein. Moreover, the document is neither notarized nor file stamped. Regardless of the numerous problematic elements attached to the document, we need not decide whether it is properly before us because, even if it were presumed to be legitimate, it would not alter our determination.

¶ 30 An order granting a motion to quash service is a final and appealable order. See *Cavanaugh v. Lansing Municipal Airport*, 288 Ill. App. 3d 239, 243-44 (1997). The service of process protects the defendant's due process rights by providing notice of an action and an opportunity to be heard. *Bank of New York Mellon v. Karbowski*, 2014 IL App (1st) 130112, ¶ 12. Unless a party is properly served as required by law, a court is deprived of jurisdiction over that party. *Id.* Where there has been no evidentiary hearing, the sufficiency of service to a defendant presents a legal question, which we review *de novo*. *Sutton v. Ekong*, 2013 IL App (1st) 121975, ¶ 17; see also *Karbowski*, 2014 IL App (1st) 130112, ¶ 10.

¶ 31 The service of process must be in strict compliance with governing statutes. *Citimortgage, Inc. v. Cotton*, 2012 IL App (1st) 102438, ¶ 15. Personal service may be achieved by:

"(1) by leaving a copy of the summons with the defendant personally, (2) by leaving a copy at the defendant's usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards, and informing that person of the contents of the summons, provided the officer or other person making service shall also send a copy of the summons in a sealed envelope with postage fully prepaid, addressed to the defendant at his or her usual place of abode." 735 ILCS 5/2-203(a) (West 2012).

¶ 32 In order to determine whether the circuit court gained personal jurisdiction over a defendant, we consider the whole record. *Central Mortgage Co. v. Kamarauli*, 2012 IL App (1st) 112353, ¶ 28. A process server's return affidavit is prima facie evidence of proper service, and the affidavit of service should not be set aside unless impeached by "clear and convincing evidence." *Paul v. Ware*, 258 Ill. App. 3d 614, 617-18 (1994). A court indulges in every reasonable presumption in favor of the affidavit's validity, and an undetailed, uncorroborated denial by the party served does not suffice to set aside that evidence. *MB Financial Bank, N.A. v. Ted & Paul, LLC*, 2013 IL App (1st) 122077, ¶ 24.

¶ 33 Brown's return of service indicates that Carranza was served personally and not through abode service with another individual. Carranza, in his affidavit, did not merely deny ever being served, but rather averred that he found the documents in question on his doorstep. It is uncontested that the complaint was left upon the doorstep and not actually given to defendant. Although this court has found service adequate where the summons was slipped under a door to a party who explicitly acquiesced to service (*Hatmaker v. Hatmaker*, 337 Ill.

App. 175, 180-81 (1949)), there is no indication of acquiescence in the case at bar. Moreover, even if we accept Brown's unsworn declaration indicating that he saw an individual through a glass door and "believed" that individual was Carranza, his only basis for this belief was that there was no one else visibly present. Thus, even under the facts as asserted by plaintiffs, there is no indication that Carranza was personally served. Accordingly, we hold that the trial court did not err in quashing service.

¶ 34 3. The Motion to Dismiss

¶ 35 Plaintiffs contend that the trial court erred when it dismissed their claims against Solorio, Snow, and Ticketfly because the amended complaint sufficiently alleged claims of conversion and civil conspiracy.

¶ 36 Plaintiff's amended complaint against Solorio, Snow, and Ticketfly was dismissed pursuant to section 2-615 of the Code. A section 2-615 motion to dismiss attacks "the legal sufficiency of a complaint based on defects apparent on its face." *Pooh-Bah Enterprises, Inc. v. The County of Cook*, 232 Ill. 2d 463, 473 (2009). When ruling on a section 2-615 motion, the relevant question is whether the allegations in the complaint, construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted. *Canel v. Topinka*, 212 Ill. 2d 311, 317 (2004). Although well-pled facts are taken as true, mere conclusory allegations of fact and conclusions of law unsupported by specific facts are not deemed admitted. *Hanks v. Cotler*, 2011 IL App (1st) 101088, ¶ 17. We review a dismissal pursuant to section 2-615 *de novo*. *Beacham v. Walker*, 231 Ill. 2d 51, 57 (2008).

¶ 37 A. Conversion

¶ 38 In order to properly plead a cause of action for conversion "a plaintiff must establish that (1) he has a right to the property; (2) he has an absolute and unconditional right to the

immediate possession of the property; (3) he made a demand for possession; and (4) the defendant wrongfully and without authorization assumed control, dominion, or ownership over the property.” *Cruthis v. Firststar Bank, N.A.*, 354 Ill. App. 3d 1122, 1131 (2004) (citing *Cirrinzione v. Johnson*, 184 Ill.2d 109, 114 (1998)).

¶ 39 The fundamental concern of conversion "is the wrongful deprivation of one who has a right to the immediate possession of the object unlawfully held." *Bender v. Consolidated Mink Ranch, Inc.*, 110 Ill. App. 3d 207, 213 (1982). Although money may be the property at issue in an action for conversion where the funds constitute "specific chattel," the failure to meet one's obligation to pay money or repay a debt does not give rise to a conversion action. *In re Thebus*, 108 Ill. 2d 255, 260 (1985). In order to support a conversion claim, a plaintiff must show that "the money claimed, or its equivalent, at all times belonged to the plaintiff and that the defendant converted it to his own use." *Id.* at 261.

¶ 40 Plaintiffs' conversion claim characterizes the money from ticket sales as the property at issue. Yet we agree with the trial court that, even when taking all of plaintiffs' well-pled assertions as true, they have failed to assert that they at all times had an absolute and unconditional right to the immediate possession of the property. Natara's contracts explicitly state that the company was not entitled to the specific money taken in for each ticket, but rather they were to be compensated with "an amount equal to" either 50% or 100% of sale proceeds. Similarly, ticket sales for the Event Life were to be conducted by Ticketfly through its contract with the Congress defendants, and then Event Life would be subsequently compensated. Accordingly, the amended complaint does not sufficiently allege an immediate and absolute right to the ticket sales money, but rather the complaint sets forth an obligation

on behalf of some of the defendants to subsequently pay plaintiffs. Such an obligation is insufficient to support a conversion claim and the trial court's dismissal was therefore proper.

¶ 41

B. Civil Conspiracy

¶ 42

In order to state a claim for civil conspiracy, a complaint must set forth facts establishing: (1) an agreement by two or more persons to accomplish by concerted action either an unlawful purpose or a lawful purpose by unlawful means; (2) a tortious act committed in furtherance of that agreement; and (3) an injury caused by the defendant. *McClure v. Owens Corning Fiberglas Corp.*, 188 Ill. 2d 102, 133 (1999); *Reuter v. MasterCard International, Inc.*, 397 Ill. App. 3d 915, 927 (2010). The agreement is a "necessary and important" element of conspiracy. *McClure*, 188 Ill. 2d at 133. Civil conspiracy is an intentional tort and requires proof that a defendant "knowingly and voluntarily participates in a common scheme to commit an unlawful act or a lawful act in an unlawful manner." *Id.* A plaintiff's mere conclusion that some combination of acts constitutes "a conspiracy is insufficient to withstand a motion to dismiss." *Buckner v. Atlantic Plant Maintenance, Inc.*, 182 Ill. 2d 12, 23 (1998); see also *Farwell v. Senior Services Associates, Inc.*, 2012 IL App (2d) 110669, ¶ 22 (plaintiff must allege sufficient facts to bring his claim for civil conspiracy and "conclusory allegations that the defendants agreed to achieve some illicit purpose are insufficient to sustain his claim").

¶ 43

The amended complaint does not contain sufficient facts concerning an agreement between the defendants to accomplish an unlawful purpose or other purpose by unlawful means. Although plaintiffs set forth factual allegations of conduct by each of the defendants, they show little connection between the defendants. The only allegations regarding any agreement are conclusory in nature, stating that defendants "agreed to participate in a

common scheme" without any facts, whether direct or circumstantial, that support the plaintiffs' legal conclusion. The "mere[] characteriz[ation]" of a party's actions as conspiratorial is insufficient to avoid dismissal. *Reuter*, 397 Ill. App. 3d at 928.

¶ 44 Moreover, civil conspiracy is not an independent tort. *Indeck North American Power Fund, L.P. v. Norweb PLC*, 316 Ill. App. 3d 416, 432 (2000). Where the plaintiff fails to support an underlying cause of action as a foundation for its conspiracy allegations, the conspiracy claim must also fail. *Id.* Here, as already discussed, plaintiffs have waived any argument that their intentional misrepresentation claim was adequately pled and failed to sufficiently assert a claim for conversion. Therefore, dismissal of the conspiracy claim was also proper.

¶ 45

III. CONCLUSION

¶ 46

For the foregoing reasons, we find that the trial court properly quashed service of Carranza and dismissed plaintiffs' claims against Solorio, Snow, and Ticketfly. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 47

Affirmed.