

FIRST DIVISION
March 19, 2018

No. 1-17-0690

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ADRIENNE JETT,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 14 M6 000730
)	
ZEMAN HOMES, INC.,)	Honorable
)	Laurence J. Dunford,
Defendant-Appellee.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Pierce and Justice Simon concurred in the judgment.

ORDER

¶ 1 **Held:** We affirm the grant of summary judgment in favor of defendant-appellee, Zeman Homes, Inc.

¶ 2 Plaintiff-appellant, Adrienne Jett, filed a verified complaint alleging common law fraud, violation of the Illinois Consumer Fraud Act, and negligence. Plaintiff’s allegations stemmed from the purchase of a manufactured home (“mobile home”) owned by defendant and the representations made by the selling agent. During the course of the litigation, the selling agent whom plaintiff had dealt with died. After the death, defendant moved for summary judgment. It

argued that under section 8-301 of the Code of Civil Procedure (735 ILCS 5/8-301 (West 2016)), plaintiff, as an interested party, was incompetent to testify as to the statements or representations made by the agent prior to the agent's death. After reviewing the record, the circuit court agreed with the defendant and granted it summary judgment on all counts.

¶ 3 Plaintiff appeals the grant of summary judgment in favor of defendant to this court. For the reasons stated below, we affirm.

¶ 4 JURISDICTION

¶ 5 The circuit court granted defendant's motion for summary judgment on February 16, 2017. On March 3, 2017, plaintiff filed her notice of appeal. Accordingly, this court has jurisdiction over this matter pursuant to Article VI, Section 6 of the Illinois Constitution, and Illinois Supreme Court Rules 301 and 303. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); Ill. S. Ct. R. 303 (eff. May 30, 2008).

¶ 6 BACKGROUND

¶ 7 In February 2010, plaintiff began to look at mobile homes located in the Alpine Village mobile home park in Lynwood, Illinois. One of the homes plaintiff looked at was owned by defendant-appellee, Zeman Homes, Inc. The mobile home was located at 477 Linda Lane, Lot 477.¹

¶ 8 Prior to the purchase, plaintiff performed three walk-throughs of the home with defendant's agent, Lynette Richey. During the second walk-through, plaintiff noticed what she suspected to be a large spot of mold in the laundry room. Richey did not deny the spot was mold. Plaintiff also noticed the home had a strange odor. After indicating she wished to purchase the unit, plaintiff hired a home inspector to review the unit. The home inspector informed the

¹ While defendant owned the mobile home, the land on which it was located was owned by a different entity, Alpine Village Mhc, LLC.

plaintiff the black spot in the laundry room was mold and performed some remediation. Despite what she saw and smelled, plaintiff proceeded with the purchase of the home. After the purchase, plaintiff had numerous issues with the unit. She observed more mold and the odor increased in intensity as the weather warmed. The unit was also apparently prone to flooding. Plaintiff made numerous complaints to the property management company, but it was unresponsive to her. At a certain point plaintiff ceased paying the rent on the real property on which the unit sat. This ultimately led to plaintiff's eviction from the unit. *Mobile Management, Inc. v. Jett*, 2014 IL App (1st) 130113-U.

¶ 9 On February 27, 2014, plaintiff filed a verified complaint against defendant and several other entities. On October 8, 2014, the circuit court granted a motion to dismiss. Plaintiff was given leave to replead against defendant-appellant, but the other entities were dismissed from the suit with prejudice. On February 13, 2015, plaintiff filed an amended verified complaint. This complaint, which only named defendant, alleged claims of common law fraud, violation of the Illinois Consumer Fraud Act, and common law negligence.

¶ 10 The common law fraud count alleged that in the course of negotiations for the sale of the mobile home, defendant's agent, Lynette Richey, made two false statements of material fact: (1) "the mobile home had just come on the market," and (2) "that the mold found on one spot behind a table was probably the only mold in the mobile." In the consumer fraud count, plaintiff alleged defendant: (1) failed to disclose to plaintiff the history of the mobile as installed on Lot 477; (2) failed to disclose the fact that the mobile had mold in more places than the one spot mentioned; (3) failed to disclose the lot on which the mobile sat was in an area prone to flooding; and (4) failed to disclose the mobile was not installed on a concrete foundation and therefore was in contact directly with water when the site experienced flooding. The negligence count alleged defendant owed a duty to plaintiff based on section 21 of the Mobile Home Landlord and Tenant

Rights Act. 765 ILCS 745/21 (West 2016). Plaintiff alleged defendant breached its duty to her by (1) showing and selling to plaintiff a home with a history of mold infestation when they already knew plaintiff was sick, (2) failing to alleviate the conditions which created the hazardous condition when notified by plaintiff before August 24, 2011, and (3) failing to alleviate the conditions which created the hazardous condition when notified by plaintiff on or about September 24, 2011, when the EPA came and removed half of her possessions. A copy of the mobile unit sales agreement and the real property lease were attached to plaintiff's verified amended complaint.

¶ 11 Defendant took plaintiff's deposition on March 3 and March 10, 2016. Defendant's agent, Lynette Richey, whom plaintiff had dealt with during the negotiations for the purchase of the unit died on September 9, 2016. Richey was never deposed and plaintiff never took the deposition of any other agent of defendant. On October 3, 2016, defendant moved for summary judgment. The motion argued plaintiff would be unable to prove her claims because of the death of Lynette Richey. At her deposition, plaintiff acknowledged that statements about the house and property came only from Richey. Defendant argued that since Richey was deceased and plaintiff had not pointed to any other agent of defendant having knowledge of the statements made by Richey, plaintiff was incompetent to testify as to those statements. Since those statements represented the basis of plaintiff's claims and plaintiff could no longer prove them, summary judgment in favor of defendant was appropriate. The circuit court agreed with defendant's argument and entered summary judgment on all counts on February 16, 2017. Plaintiff timely appealed to this court.

¶ 12 ANALYSIS

¶ 13 Before turning to the merits of the appeal, we must admonish plaintiff for her failure to comply with Illinois Supreme Court Rule 341(h)(6) (eff. July 1, 2017). Plaintiff's statement of

facts contains zero details regarding the actual facts of this case. Instead, it simply recites a procedural history. A statement of facts “shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal.” Plaintiff’s statement of facts contributes nothing to this court’s understanding of the case. Defendant does not ask us to strike plaintiff’s brief and its brief contains a sufficient statement of facts to allow this court to dispose of this appeal on the merits.

¶ 14 This case is before us after the circuit court granted summary judgment in favor of defendant all on three counts. Summary judgment is proper where, when viewed in the light most favorable to the nonmoving party, the pleadings, depositions, admissions, and affidavits on file reveal 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. *Progressive Universal Ins. Co. of Illinois v. Liberty Mut. Fire Ins. Co.*, 215 Ill. 2d 121, 127-28 (2005). Whether the entry of summary judgment was appropriate is a matter we review *de novo*. *General Casualty Ins. Co. v. Lacey*, 199 Ill. 2d 281, 284 (2002). Under this standard of review, we are not bound by the circuit court’s reasoning or decision. *State Automobile Mut. Ins. Co. v. Habitat Construction Co.*, 377 Ill. App. 3d 281, 291 (2007).

¶ 15 We first address the effect Lynette Richie’s death had on this litigation. Section 301 of the code of civil procedure states in relevant part,

“[I]n every action or proceeding a party to the same who has contracted with an agent of the adverse party--the agent having since died--shall not be a competent witness as to any admission or conversation between himself or herself and such agent, unless such admission or conversation with the deceased agent was had or

made in the presence of a surviving agent or agents of such adverse party.” 735

ILCS 5/8-301 (West 2016).

The section states a party who has contracted with a now deceased agent of the adverse party is incompetent to testify as to any admission or conversation with the deceased agent unless the admission or conversation took place in front of another agent of the adverse party. In this case the effect of this provision would be to bar plaintiff from testifying as to any conversation she had with Richey unless the conversation occurred in the presence of another agent of the defendant. With this in mind, we turn to whether the circuit court properly granted summary judgment in favor of defendant.

¶ 16 In her fraud count, plaintiff alleges that during the course of the negotiations defendant’s agent, Richey, made two false statements of material fact. A plaintiff alleging common law fraud must establish each of the following elements: “(1) a statement by defendant; (2) of a material nature as opposed to opinion; (3) that was untrue; (4) that was known or believed by the speaker to be untrue or made in culpable ignorance of its truth or falsity; (5) that was relied on by the plaintiff to his detriment; (6) made for the purpose of inducing reliance; and (7) such reliance led to the plaintiff’s injury.” *Duran v. Leslie Oldsmobile, Inc.*, 229 Ill. App. 3d 1032, 1039 (1992).

¶ 17 At her deposition, plaintiff was asked the following question and gave the following answer:

“Q. So as far as statements made about the house, statements about the property, if she made any, those all came from Lynette [Richey]?”

A. Uhm-hmm – Yes. I’m sorry. I wasn’t trying to be disrespectful.

Q. Don’t worry about it. And all Belinda² was there was at the very end to oversee signing of the paperwork?”

² Belinda Hutton is identified as another agent of the defendant and appears to have been Richey’s supervisor.

A. Yes.

Based on the above depositions answers, the alleged statements came solely from defendant's agent, Richey. Plaintiff did not identify any other agent being present when the statements were made. Plaintiff also stated only Richey was present during the three walk-throughs. We agree with the circuit court that section 301 would bar plaintiff from testifying about these statements. Since plaintiff cannot prove the two allegedly false statements were ever made, she cannot establish the first element of her fraud claim. Accordingly, the circuit court did not err in granting summary judgment in favor of the defendant on plaintiff's fraud count.

¶ 18 In her second count, plaintiff alleges a violation of the Illinois Consumer Fraud Act. 815 ILCS 505/2 (West 2016). A plaintiff alleging a cause of action under section 2 of the Act must demonstrate: "(1) a deceptive act or practice by the defendant, (2) the defendant's intent that the plaintiff rely on the deception, (3) the occurrence of the deception in the course of conduct involving trade or commerce, and (4) actual damage to the plaintiff (5) proximately caused by the deception." *Oliveira v. Amoco Oil Co.*, 201 Ill. 2d 134, 149 (2002).

¶ 19 We agree with the circuit court that the death of Richey requires summary judgment in favor of defendant on this count. Plaintiff admitted that she only interacted with Richie prior to signing the contract for the purchase of the mobile. Since she cannot testify as to this interaction, she will be unable to prove the first element – "a deceptive act or practice by the defendant." Plaintiff argues "the other facts needed do not involve just Richey but all the agents of Zeman in the transaction." This argument contradicts plaintiff's admission that the only agent she dealt with during the transaction for the sale of the mobile was Richey. Plaintiff's possible interactions with other agents of the defendant after the purchase have no bearing on whether fraud was committed prior to the signing of the contract. Accordingly, the circuit court did not err in granting summary judgment on this count.

¶ 20 Plaintiff's final count alleged negligence on the part of defendant. A plaintiff alleging negligence must establish three elements: (1) the existence of a duty of care owed to the plaintiff by the defendant; (2) a breach of that duty, and (3) an injury proximately caused by that breach. *Calles v. Scripto-Tokai Corp.*, 224 Ill. 2d 247, 270 (2007). In order to establish the duty element of her negligence claim plaintiff relies on section 21 of the Mobile Home Landlord and Tenant Rights Act. 765 ILCS 745/21 (West 2016). Section 21 deals with a "park owner" who "fails to substantially conform to the lease agreement or fails to substantially comply with any code, statute, ordinance or regulation governing the operation of a mobile home park or the maintenance of the premises." *Id.*

¶ 21 We find plaintiff's reliance on section 21 misplaced. The lease agreement attached to plaintiff's complaint demonstrates another entity, Alpine Village Manufactured Home Community, to be the owner/lessor. Since defendant is not the owner/lessor, plaintiff's reliance on this section to establish the duty element of her negligence claim fails. Accordingly, the circuit court did not err in granting summary judgment on this count.

¶ 22

CONCLUSION

¶ 23 For the reasons stated above, the judgment appealed from is affirmed.

¶ 24 Affirmed.