

No. 1-17-1183

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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|------------------------------|---|------------------|
| JOSE BALMADRID,              | ) | Appeal from the  |
|                              | ) | Circuit Court of |
| Plaintiff-Appellant,         | ) | Cook County      |
|                              | ) |                  |
| v.                           | ) | No. 15 L 5084    |
|                              | ) |                  |
| NAWAL GUPTA and SATYA GUPTA, | ) | The Honorable    |
|                              | ) | Diane M. Shelly, |
| Defendants-Appellees.        | ) | Judge Presiding. |

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PRESIDING JUSTICE PIERCE delivered the judgment of the court.  
Justices Mikva and Griffin concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court properly dismissed plaintiff’s claims against defendant Nawal Gupta, as plaintiff failed to allege that Nawal was a party to any contract under which plaintiff sought relief. Plaintiff, however, alleged sufficient facts to state a cause of action for breach of contract against Satya Gupta. We therefore affirm in part, reverse in part, and remand.

¶ 2 Plaintiff Jose Balmadrid, acting *pro se*, initiated this action and ultimately filed a third amended complaint against defendants Nawal Gupta and Satya Gupta. The third amended complaint did not contain any separate counts but purported to assert claims for breach of an oral contract and breach of fiduciary duties under an alleged partnership agreement. Defendants filed

a combined motion to dismiss plaintiff's complaint pursuant to sections 2-615, 2-619, and 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-615, 2-619, 2-619.1 (West 2016)). The circuit court granted defendants' motion and dismissed plaintiff's third amended complaint with prejudice. Plaintiff's motion to reconsider was denied. Plaintiff, now represented by counsel, appeals the judgment of the circuit court. For the following reasons, we affirm in part, reverse in part, and remand for further proceedings.

¶ 3 BACKGROUND

¶ 4 For the purposes of this appeal, we accept as true all the well-pleaded facts in plaintiff's third amended complaint and draw all reasonable inferences in his favor. *Edelman, Combs & Lattuner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 164 (2003). Plaintiff's third amended complaint contained the following allegations.

¶ 5 Plaintiff operated a real estate brokerage business out of a multi-unit residential building at 2454-60 West Peterson Avenue in Chicago (Peterson property), and plaintiff resided at the Peterson property with his family. Between February 2001 and November 2002, plaintiff provided Om Gupta (now deceased) with professional real estate brokerage services for various properties. The two did not have any contact from after November 2002 until July 2008, when plaintiff, Om, and Satya (Om's wife) conducted "intermittent business" together. In March 2009, Om and Satya offered plaintiff the opportunity to join a "real estate investment venture" for the purpose of purchasing various properties. Plaintiff's role was to investigate, evaluate, and inspect the properties' physical and financial conditions and to conduct other analyses. Plaintiff agreed and began providing those services.

¶ 6 In October 2009, plaintiff orally proposed that Om and Satya acquire the Peterson property, which was the subject of a pending mortgage foreclosure proceeding initiated by the

now closed Broadway Bank in the circuit court of Cook County.<sup>1</sup> Om and Satya allegedly orally accepted plaintiff's offer and plaintiff drafted a proposed written agreement. Plaintiff's complaint, however, is silent as to whether Om and Satya ever executed the agreement and the draft agreement attached to plaintiff's complaint is not signed. According to plaintiff's complaint, Broadway Bank foreclosed on the Peterson property in November 2009 and scheduled a judicial sale. In December 2009, Om emailed plaintiff a proposal to form a limited liability company (LLC) and allegedly requested that plaintiff prepare an "LLC Partnership Agreement." The complaint and record on appeal are silent as to whether plaintiff, Om, or Satya ever filed articles of organization to create an LLC or executed a written operating agreement, and there is nothing in the record to reflect any written partnership agreement.

¶ 7 Also in December 2009, plaintiff, Om, and Satya attended the judicial sale of the Peterson property. Om was the highest bidder. Plaintiff alleged that Om then asked plaintiff to "take over management of the Peterson [p]roperty on behalf of the LLC Partnership in consideration of a fee of [4%] monthly rental income." On December 21, 2009, Om, Satya, and plaintiff orally agreed that plaintiff would manage and maintain co-ownership of the Peterson property. Om and Satya promised to provide plaintiff with a year-end accounting of the Peterson property, "with net proceeds to be distributed equally among the partners involved in the LLC Partnership."

¶ 8 In March 2010, plaintiff, "acting pursuant to his duties under the LLC Partnership Agreement, began work for the purchase and acquisition of an uninhabited property for the LLC, located at 8156 S[outh] Kingston Ave[nue]" (the Kingston property). Om signed "an offer to

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<sup>1</sup>Plaintiff did not attach copies of any documents related to the foreclosure action to his third amended complaint.

purchase the Kingston [p]roperty under the name Nawal Gupta [(Om's daughter)] with the authorization of \*\*\* Nawal.”

¶ 9 Plaintiff asserted that in November 2010, Om filed an eviction complaint in the circuit court seeking to evict plaintiff from the Peterson property.<sup>2</sup> Nawal then posted letters on all of the apartment unit doors at the Peterson property informing tenants of a change in management. Plaintiff alleged that, as a result of the eviction complaint, he “was forced to submit his resignation as Property Manager” to Om and defendants. Plaintiff further alleged that Om and defendants failed to provide him with a year-end accounting of the Peterson property “in accordance with the parties’ December 21, 2009[,] agreement.” Plaintiff claimed that “Om Gupta and [d]efendants’ actions constituted a breach of contract and fiduciary duty owed to [p]laintiff as partner to the LLC,” and that plaintiff lost “his principal office to conduct business and generate income in the operation of [his business] within the Peterson [p]roperty,” his family’s residence, and “all value of work rendered from both the Peterson and Kingston [p]roperties, his share of ownership in said properties, as well as and [sic] rental income derived from said properties.”

¶ 10 Defendants moved to dismiss plaintiff’s third amended complaint pursuant to sections 2-615 and 2-619 of the Code. Defendants argued that plaintiff failed to assert sufficient facts to establish the existence of a partnership, LLC, or any other oral contract with any definite terms with defendants or that defendants had any involvement in plaintiff’s business relationship, proposed partnership, or LCC with Om. Defendants further argued that plaintiff failed to allege sufficient facts to state causes of action for breach of contract or breach of fiduciary duty against

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<sup>2</sup>Plaintiff did not attach copies of any documents related to the eviction to his third amended complaint.

defendants, as the complaint was devoid of any allegations that plaintiff had a partnership agreement or that he was part of any LLC with defendants.

¶ 11 Defendants' motion to dismiss was fully briefed. The circuit court heard oral argument on February 28, 2017. The record does not contain any transcript or other report of proceedings for the February 28, 2017, hearing. On March 7, 2017, the circuit court entered a handwritten order granting defendants' motion to dismiss with prejudice. The circuit court's order did not indicate whether the dismissal was pursuant to section 2-615 or 2-619 of the Code. Plaintiff, still acting *pro se*, filed a timely motion to reconsider. On April 6, 2017, the circuit court entered a handwritten order denying the motion to reconsider, which stated "[t]his order is final and appealable pursuant to Supreme Court Rule 304(a)." Plaintiff, through counsel, filed a timely notice of appeal on March 5, 2017.

¶ 12

#### ANALYSIS

¶ 13 Initially we note that defendants did not file an appellee's brief within the time permitted by Supreme Court Rule 343(a) (eff. July 1, 2008). We subsequently entered an order that this case be taken on the appellant's brief alone.

“[I]f the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal. In other cases if the appellant's brief demonstrates *prima facie* reversible error and the contentions of the brief find support in the record the judgment of the trial court may be reversed.” *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 14 We also note that plaintiff's brief violates a number of our supreme court's rules. First, plaintiff's statement of jurisdiction asserts that the basis of this court's jurisdiction is Supreme

Court Rule 304(a) (eff. Mar. 8, 2016). This is incorrect. Although the circuit court's April 6, 2017, order denying plaintiff's motion to reconsider says that is "final and appealable pursuant to Supreme Court Rule 304(a)," the circuit court's March 7, 2017, order dismissed plaintiff's third amended complaint in its entirety and with prejudice. Therefore, the circuit court's April 6, 2017, order was a final and appealable judgment and this court has jurisdiction pursuant to Supreme Court Rules 301 and 303(a). Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); Ill. S. Ct. R. 303(a) (eff. Jan. 1, 2015).

¶ 15 Second, plaintiff's statement of facts contains no citations to the record on appeal, in violation of Supreme Court Rule 341(h)(6) (eff. July 1, 2017). The section of plaintiff's brief entitled "Nature of the Case" contains numerous citations to the record on appeal, which are not required by our supreme court's rules. See Ill. S. Ct. R. 341(h)(2). The rules, however, do require that the appellant's statement of facts contain citations to the record. Third, the appendix to plaintiff's brief runs afoul of Supreme Court Rule 342 (eff. July 1, 2017), which states "[t]he pages of the appendix shall be numbered consecutively with the letter 'A' preceding the number of each page." Here, the pages of plaintiff's appendix are not numbered at all. Plaintiff's violations of our supreme court's rules have hampered our review of his arguments on appeal. We remind plaintiff's counsel that compliance with our supreme court's rules is mandatory, and we note that future violations of the rules of appellate procedure will not be tolerated and may result in forfeiture of issues on appeal or outright dismissal of an appeal in its entirety. However, the record before us is simple and we are fully capable of reviewing the sufficiency of plaintiff's third amended complaint.

¶ 16 Turning to the merits of plaintiff's appeal, plaintiff argues that the circuit court should not have dismissed his complaint under section 2-615 of the Code because the third amended

complaint stated a cause of action against defendants for breach of contract. Furthermore, plaintiff argues that defendants failed to come forward with any affirmative matter that would warrant dismissal of his complaint pursuant to section 2-619 of the Code. Plaintiff, however, does not advance any argument on appeal that his complaint asserted a valid claim for breach of fiduciary duty and has therefore forfeited any challenge to the circuit court's dismissal of his breach of fiduciary duty claims against defendants. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) ("Points not argued are forfeited \*\*\*."). Therefore, the circuit court's dismissal of plaintiff's breach of fiduciary duty claims against defendants is affirmed.

¶ 17 Section 2-619.1 of the Code permits a party to file a motion to dismiss that combines a motion under sections 2-615 and section 2-619 of the Code. 735 ILCS 5/2-619.1 (West 2016). A motion to dismiss pursuant to section 2-615 challenges the legal sufficiency of a complaint, and inquires whether the allegations state a cause of action upon which relief may be granted. *Bonhomme v. St. James*, 2012 IL 112393, ¶ 34. All well-pleaded facts must be taken as true, but conclusions of law will not be taken as true unless supported by specific factual allegations. *Id.* Section 2-619(a)(9) of the Code permits the involuntary dismissal of a claim where the claim asserted is "barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2016). An affirmative matter is "something in the nature of a defense which negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." *Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 486 (1994). "Unless the affirmative matter is already apparent on the face of the complaint, the defendant must support the affirmative matter with an affidavit or with some other material that could be used to support a motion for summary judgment." *Pleasant Hill Cemetery Ass'n v. Morefield*, 2013 IL App (4th) 120645, ¶ 21. Our review of a

dismissal under either section 2-615 or 2-619 of the Code is *de novo*. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31.

¶ 18 We first look to the allegations set forth in plaintiff's complaint to determine whether he alleged sufficient facts to state a cause of action for breach of contract against defendants. In order to state a claim for breach of contract, a plaintiff must plead sufficient facts that, if true, would establish the existence of an enforceable contract; that the plaintiff substantially performed his obligations under the agreement; that the defendants breached the contract; and that the plaintiff suffered damages as a result of the defendants' breach. *W.W. Vincent & Co. v. First Colony Life Insurance Co.*, 351 Ill. App. 3d 752, 759 (2004). The formation of a valid contract includes an offer and acceptance, consideration, and definite and certain terms. *Zirp-Burnham, LLC v. E. Terrell Associates, Inc.*, 356 Ill. App. 3d 590, 600 (2005).

¶ 19 First, it is clear that plaintiff failed to allege sufficient facts to establish that he had an oral contract with Nawal. He alleged no facts that, if true, would tend to show that Nawal was a party to any agreement identified in the complaint. At most, plaintiff alleged that Om purchased the Kingston property in Nawal's name and that Nawal posted the change of management letters on the tenants' doors at the Peterson property, presumably on behalf of her parents. Those events, however, are not enough to establish that Nawal was a party to an agreement with plaintiff or that Nawal was part of Om, Satya, and plaintiff's real estate investment venture. Plaintiff failed to allege sufficient facts to show that Nawal was a party to any agreement with plaintiff. Therefore, the portion of the circuit court's judgment dismissing plaintiff's claims against Nawal is affirmed.

¶ 20 Plaintiff's complaint, however, did allege sufficient facts to assert a breach of contract claim against Satya. Taking all of plaintiff's factual allegations as true and drawing all

reasonable inferences in his favor, plaintiff's complaint, although at times inartfully drafted, alleged the existence of an oral March 2009 partnership agreement between himself, Om, and Satya to engage in a real estate investment venture. Plaintiff alleged that he was responsible for investigating, evaluating, and inspecting the properties' physical and financial conditions and to conduct other analyses. It can be inferred from plaintiff's factual allegations that Om and Satya agreed to finance the purchases made on behalf of the partnership. Plaintiff further alleged that Om purchased the Peterson property in December 2009 as part of the partnership's business and that plaintiff, as part of the partnership, was to manage and maintain co-ownership of the Peterson property. In addition to receiving 4% of the net monthly rental for his management fee, Om and Satya promised to provide plaintiff with a year-end accounting of the Peterson property, "with net proceeds to be distributed equally among the partners involved in the LLC Partnership," but instead evicted plaintiff from the Peterson property and failed to provide him with either an accounting or his share of the net proceeds. Plaintiff's complaint sufficiently alleged the existence of an oral partnership agreement with Satya, Satya's breach of the agreement, and that plaintiff suffered damages in the form of his lost share of the net proceeds as a result.<sup>3</sup>

¶ 21 Finally, to the extent that plaintiff's complaint failed to allege that he performed all of his obligations under the contract, this is a mere pleading defect that may be cured by amendment on remand (see Ill. S. C. R. 133(c) (eff. Jan. 1, 1967) ("In pleading the performance of a condition precedent in a contract, it is sufficient to allege generally that the party performed all the conditions on his part \*\*\*."), and we direct the circuit court to allow plaintiff to amend his

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<sup>3</sup>We express no opinion as to whether plaintiff may be able to recover damages resulting from his eviction since plaintiff has not provided this court with any documents related to the eviction case or any judgments entered against him.

complaint if he requests to do so. We therefore reverse the circuit court's judgment dismissing plaintiff's breach of contract claim against Satya and remand for further proceedings.

¶ 22 Finally, in light of our disposition, we need not address plaintiff's additional contention that defendants' motion to dismiss failed to advance an affirmative matter sufficient to defeat plaintiff's breach of an oral partnership agreement claim.

¶ 23 **CONCLUSION**

¶ 24 For the foregoing reasons, the judgment of the circuit court is affirmed in part and reversed in part, and we remand for further proceedings.

¶ 25 Affirmed in part; reversed in part; remanded.