

No. 1-18-0481

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 DISTRICT

MICHELLE GONZALEZ,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
)	
v.)	No. 17 M3 002353
)	
)	
ROMANUCCI & BLANDIN LLC and MICHAEL)	
HOLDEN,)	Honorable
)	Thomas David Roti,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held:* We reverse that part of the circuit court’s order which dismissed the plaintiff’s claim for breach of contract on statute of frauds grounds where the facts alleged in her complaint support the inference that she rendered complete performance. However, we affirm that part of the circuit court’s order which dismissed the plaintiff’s claim for detrimental reliance, which is not a recognized cause of action in Illinois. Cause remanded.

¶ 2 The plaintiff, Michelle Gonzalez, appeals from orders of the Circuit Court of Cook County that (1) granted the motion to dismiss her complaint for breach of contract pursuant to section 2-619(a)(7) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(7) (West 2016)) filed by the defendants, Romanucci & Blandin LLC (Romanucci & Blandin) and Michael Holden (collectively, the Romanucci attorneys); and (2) denied her motion to vacate that order. For the following reasons, we affirm in part, reverse in part, and remand this matter back to the circuit court for further proceedings.

¶ 3 The following factual and procedural history is derived from the pleadings, exhibits, and the parties' agreed statement of facts. We set forth only the background that is relevant to this appeal.

¶ 4 In February 2015, the plaintiff, an attorney, entered into an agreement with Regina Neubel to represent her husband, Wade Neubel, in a criminal matter in exchange for \$7000. Regina promised to pay the plaintiff using proceeds that she expected to receive from the settlement of a lawsuit (Regina's lawsuit) in which she was represented by Romanucci & Blandin. The plaintiff sent a notice of attorney's lien to Romanucci & Blandin and spoke by telephone with one of the firm's lawyers, Holden. Subsequently, Regina's lawsuit was settled but the Romanucci attorneys did not pay the plaintiff the \$7000 from the proceeds as promised by Regina. On March 24, 2015, the circuit court in Regina's lawsuit granted Romanucci & Blandin's motion to declare the plaintiff's attorney's lien invalid, and adjudicated it to "\$0."

¶ 5 On April 9, 2017, the plaintiff filed a "Complaint for Breach of Contract/Detrimental Reliance" against the Romanucci attorneys. In her complaint, she alleged that Regina "agreed to pay" her attorney fees for representing Wade from the "proceeds" of Regina's lawsuit. The plaintiff further claimed that: (1) during her telephone conversation with Holden, he "assured"

her that her attorney's lien "would be honored" and that the Romanucci attorneys "would guarantee that [she] was paid the \$7,000 for representing Wade;" (2) "she represented Wade *** at trial" in reliance on that assurance; (3) the Romanucci attorneys refused to pay her; and (4) due to their "deliberate or negligent breach of the contract," she incurred a loss of \$7000.

¶ 6 On August 15, 2017, the parties appeared in the circuit court before Judge Thomas David Roti. Prior to ruling on any substantive matters, Judge Roti informed the parties that his cousin was the mother of an attorney at Romanucci & Blandin, and offered to recuse himself upon the motion of either party. Neither party sought a recusal.

¶ 7 Subsequently, the Romanucci attorneys filed a motion to dismiss the plaintiff's complaint pursuant to section 2-619(a)(7) of the Code (735 ILCS 5/2-619(a)(7)). They argued that their alleged promise to pay the plaintiff was "purely collateral" to her agreement with Regina, did not involve "new and independent consideration," and was not reduced to a signed writing. As such, they maintained that the plaintiff's breach of contract claim was barred by section 1 of the Frauds Act (statute of frauds) (740 ILCS 80/1 (West 2016)), which requires that a promise to pay for the debt of another must be in writing and signed by the promisor. The Romanucci attorneys further argued that, because the statute of frauds bars the plaintiff's contract claim, recovery is also unavailable under a theory of promissory estoppel. In an affidavit attached to the motion, Holden averred that he told the plaintiff that Romanucci & Blandin "would satisfy all *valid and enforceable* liens out of the proceeds" (emphasis in original) from Regina's lawsuit, but denied that he promised, orally or in writing, "to satisfy, assume, or otherwise pay the debt incurred by Wade." The plaintiff did not file a response to the motion to dismiss.

¶ 8 A hearing on the Romanucci attorneys' motion was scheduled for November 8, 2017. On November 7, 2017, the plaintiff and her attorney learned that a murder trial, in which they both

were engaged, had been rescheduled to begin that day instead of the following week. They informed Holden that they could not attend the November 8, 2017 hearing on the Romanucci attorneys' motion to dismiss. Holden apprised Judge Roti of such on November 8, 2017. When the motion to dismiss came on for hearing, Judge Roti entered a written order granting the Romanucci attorneys' motion to dismiss the plaintiff's complaint with prejudice on the basis that "the statute of frauds requir[es] any such contract, as alleged by [the plaintiff] to be in writing to be enforceable in law or equity." In the order, Judge Roti stated that the plaintiff neither filed a response to the motion to dismiss nor appeared in court for the hearing thereon, and noted that she and her attorney were "engaged in trial *** on a homicide case."

¶ 9 On December 8, 2017, the plaintiff filed a motion to vacate the November 8, 2017 order, arguing that the circuit court erred by dismissing her complaint "without any oral argument" and that it should have "continu[ed] the hearing to a future date." On February 8, 2018, Judge Roti *sua sponte* entered a written order recusing himself due to his family relationship with the attorney at Romanucci & Blandin. The case was transferred to another judge, who declined to rule upon the plaintiff's motion and returned the case to Judge Roti's call. On February 23, 2018, Judge Roti entered a written order denying the plaintiff's motion to vacate. This appeal followed.

¶ 10 Before reaching the merits of this appeal, we must admonish the plaintiff for her failure to comply with Illinois Supreme Court Rule 341(h)(6) (eff. Nov. 1, 2017), which requires that an appellant's brief include a statement of the facts "necessary to an understanding of the case, stated accurately and fairly *** and with appropriate reference to the pages of the record on appeal." The plaintiff's brief lacks a fact section and, although certain facts and procedural history appear in a paragraph discussing the nature of the action, the discussion is incomplete and out of place. See Ill. S. Ct. R. 341(h)(2) (eff. Nov. 1, 2017). Supreme court rules "are not

suggestions,” but “have the force of law, and the presumption must be that they will be obeyed and enforced as written.” *Bright v. Dicke*, 166 Ill. 2d 204, 210 (1995). This court has the discretion to strike an appellant’s brief and dismiss an appeal for failure to comply with the rules of our supreme court. See *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 77. However, as the issues are simple and we have the benefit of a cogent brief from the appellees, we will consider the plaintiff’s appeal on the merits.

¶ 11 For her first assignment of error, the plaintiff contends that the circuit court erred by dismissing her complaint for breach of contract where she “had an agreement” with the Romanucci attorneys that they would “withhold \$7,000” from Regina’s settlement proceeds “if [the plaintiff] represented Wade” in his criminal proceeding. As the plaintiff rendered complete performance by representing Wade at trial, she maintains that her claim is not barred by the statute of frauds even though the alleged contract was not in writing.

¶ 12 A section 2-619 motion to dismiss “admits the legal sufficiency of the complaint, but raises defects, defenses, or other affirmative matters appearing on the face of the complaint or established by external submissions, which defeat the action.” *Nourse v. City of Chicago*, 2017 IL App (1st) 160664, ¶ 14. “In deciding a section 2-619 motion, a court accepts all well-pleaded facts and their inferences as true and construes all pleadings and supporting documents in favor of the non-moving party.” *Estate of Alford v. Shelton*, 2017 IL 121199, ¶ 21. The issue on appeal is “whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law.” *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993). Our review is *de novo*. *Bjork v. O’Meara*, 2013 IL 114044, ¶ 21.

¶ 13 Pursuant to section 2-619(a)(7) of the Code (735 ILCS 5/2-619(a)(7) (West 2016)), a claim will be involuntarily dismissed when it is “unenforceable under the provisions of the Statute of Frauds.” Section 1 of the statute of frauds (740 ILCS 80/1 (West 2016)) provides that “a party may not bring an action based on one’s promise to pay the debts of another unless that promise is in writing.” *Greenberger, Krauss & Tenenbaum v. Catalfo*, 293 Ill. App. 3d 88, 94 (1997). Thus, “[a] promise to pay for the debt of another, which is not both written and signed by the promisor, has been held unenforceable either at law or in equity.” *Id.* As an exception to the statute of frauds, “where one party completely performs a contract, the contract is enforceable and the statute of frauds may not be used as a defense to enforcement.” *Goldwater v. Greenberg*, 2017 IL App (1st) 163003, ¶ 13. The rationale for this exception is that, “when one party performs all his obligations in reasonable reliance on the contract, the other party will not be permitted to utilize the statute of frauds to avoid her obligations” because “full performance constitutes strong evidence that a contract existed.” *Greenberger, Krauss & Tenenbaum*, 293 Ill. App. at 96.

¶ 14 In this case, the Romanucci attorneys’ section 2-619 motion raised the statute of frauds as the basis upon which they sought the dismissal of the plaintiff’s claims for breach of contract and “detrimental reliance,” and it was on that ground that the circuit court dismissed her complaint. Had the Romanucci attorneys sought to contest whether the complaint stated a cause of action, the proper vehicle for such argument would have been a motion to dismiss filed pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2016)), which “challenge[s] the legal sufficiency of a complaint based on defects apparent on its face.” *Ferris, Thompson & Zweig, Ltd. v. Esposito*, 2017 IL 121297, ¶ 5. Having filed a section 2-619 motion to dismiss, however, the Romanucci attorneys admitted the legal sufficiency of the plaintiff’s complaint. *Nourse*, 2017 IL App (1st) 160664, ¶ 14; see also *National Advertising Co. v. City of Rolling Meadows*, 789

F.2d 571, 574 (7th Cir. 1986) (noting that “[l]itigants in civil cases are bound by their litigating strategies”). Therefore, in the instant appeal, our analysis will proceed based on the Romanucci attorneys’ concession that the plaintiff’s complaint stated a cause of action.

¶ 15 Turning to the complaint, the plaintiff alleged that she entered into an agreement with Regina to represent her husband, Wade, in a criminal matter in exchange for \$7000. Regina promised to pay that sum using proceeds from the settlement of a lawsuit in which she was represented by the Romanucci attorneys. The plaintiff claimed that Holden, one of the Romanucci attorneys, “assured” her that the firm “would guarantee that [she] was paid the \$7,000 for representing Wade.” According to the plaintiff, she represented Wade at trial in reliance on that assurance but was not paid.

¶ 16 Taking these allegations as true, as we must for purposes of our analysis, we may reasonably infer from the facts alleged that the plaintiff fully performed her agreement to represent Wade in his criminal matter. As such, even if we assume that the circuit court correctly determined that the alleged agreement between the plaintiff and the Romanucci attorneys was a promise to pay the debt of another, as contemplated by section 1 of the statute of frauds (740 ILCS 80/1 (West 2016)), the plaintiff’s full performance would preclude the use of the statute of frauds as a defense to enforcement. See *Goldwater*, 2017 IL App (1st) 163003, ¶ 15 (finding that the statute of frauds did not bar an attorney’s suit against a third party who promised to pay a client’s legal fees where, in his complaint, the attorney alleged that he rendered complete performance by representing the client through the conclusion of proceedings).

¶ 17 Based on the foregoing, we find that the circuit court erred in dismissing the plaintiff’s claim for breach of contract on statute of frauds grounds. In so holding, we make no factual determinations regarding the existence and enforceability of the alleged agreement, which are

questions of fact to be decided by the trier of fact. See *Pepper Construction Co. v. Palmolive Tower Condominiums, LLC*, 2016 IL App (1st) 142754, ¶ 81. However, to the extent that the plaintiff's complaint also purported to raise a claim for "detrimental reliance," it is well-established that detrimental reliance is not a recognized cause of action under Illinois law. See *Jordan v. Civil Service Comm'n*, 246 Ill. App. 3d 1047, 1048 (1993) ("Illinois law provides no cause of action under a theory of detrimental reliance."). Consequently, the circuit court's order dismissing the plaintiff's complaint was not improper with respect to her claim for detrimental reliance.

¶ 18 Because we reverse the circuit court's order and remand for further proceedings, we need not address the plaintiff's further contention that Judge Roti improperly ruled upon her motion to vacate after recusing himself from the case, and that the circuit court abused its discretion by failing to continue the November 8, 2017 hearing and subsequently denying her motion to vacate the dismissal order.

¶ 19 In summary, we: (1) affirm that part of the circuit court's order dismissing the plaintiff's claim for detrimental reliance; (2) reverse that part of the circuit court's order dismissing the plaintiff's claim for breach of contract; and (3) remand this matter back to the circuit court for further proceedings.

¶ 20 Affirmed in part, reversed in part, and remanded.