

2018 IL App (1st) 181197-U
No. 1-18-1197
Order filed December 27, 2018

Fourth Division

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

ANTHONY STELMOKAS,)	
)	
Plaintiff-Appellant)	
)	Appeal from the
v.)	Circuit Court of
)	Cook County
STATE FARM FIRE AND CASUALTY CO., RUBY)	
BOWEN, KIMBERLY BOWEN, WELLS FARGO)	No. 17 M1 136319
BANK, AND BILL MURRAY)	
)	Honorable
Defendants.)	Catherine A. Schneider,
)	Judge Presiding.
(State Farm Fire and Casualty Co.,)	
)	
Appellee).)	

JUSTICE BURKE delivered the judgment of the court.
Justices Gordon and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the judgment of the circuit court where plaintiff's claims were barred by the statute of limitations.

¶ 2 Plaintiff Anthony Stelmokas, *pro se*, filed a complaint in the circuit court of Cook County in December 2017 contending that he was the holder in due course of a draft issued by defendant State Farm Fire and Casualty Co. Plaintiff asserted that he attempted to deposit that draft into his checking account in April 2012, but the draft was returned unpaid due to stop payment. Plaintiff's complaint sought to enforce payment on the draft. Defendant filed a motion to dismiss plaintiff's complaint contending that his claims were barred by the three-year statute of limitations of the Illinois Uniform Commercial Code (UCC). 810 ILCS 5/3-118(c) (West 2016). The court agreed and dismissed plaintiff's complaint.

¶ 3 On appeal, plaintiff contends that the court erred in applying the limitations period under subsection 3-118(c) of the UCC where the draft at issue was subject to the provisions of subsection 3-118(d). 810 ILCS 5/3-118(c), (d) (West 2016). Plaintiff asserts that under this section, the statute of limitations begins to run when demand for payment is made, which occurred when he filed this action in December 2017. Plaintiff thus maintains that the statute of limitations does not bar his claim. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 4 I. BACKGROUND

¶ 5 On December 29, 2017, plaintiff filed a complaint in the circuit court naming defendant, Ruby Bowen (Ruby), Kimberly Bowen (Kimberly), Wells Fargo Bank, and Bill Murray as defendants. Ruby, Kimberly, Wells Fargo Bank, and Murray are not parties to this appeal. In his complaint, plaintiff contended that on April 6, 2012, he cashed a draft issued by defendant to Ruby, Kimberly, and Wells Fargo, all of whom had endorsed the draft. Plaintiff asserted that Murray presented the draft to plaintiff and also endorsed the draft. Plaintiff maintained that he

believed Murray had been contracted to repair Ruby and Kimberly's residence and Wells Fargo was the mortgagee.

¶ 6 Plaintiff asserted that he attempted to deposit the draft into his checking account, but it was returned unpaid due to stop payment. Plaintiff received a substitute copy of the draft noting the stop payment on April 10, 2012. On September 20, 2017, he attempted to deposit the draft again, but it was returned as "stale dated." Plaintiff asserted that he was entitled to deposit the draft as the holder in due course. He maintained that defendant was liable for the amount of the draft because it both issued and signed the draft. Plaintiff sought a judgment requiring defendant to honor the draft.

¶ 7 In response, defendant filed a motion to dismiss plaintiff's complaint pursuant to section 2-619(a)(5) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(5) (West 2016)). In its motion, defendant contended that plaintiff's action should be dismissed because it was not commenced within the three-year statute of limitations of subsection 3-118(c) of the UCC. Defendant contended that under the UCC, plaintiff had three years from the date the draft had been dishonored, April 6, 2012, to file this claim. Defendant asserted that therefore the limitations period had expired on April 6, 2015, and his claim filed on December 29, 2017, was barred. Accordingly, defendant asserted that the court should dismiss plaintiff's complaint.

¶ 8 In response, plaintiff contended that subsection 3-118(c) of the UCC did not apply in this case because that subsection primarily applied to personal uncertified checks. Plaintiff asserted that this draft was "obviously not" a personal uncertified check, but was instead a draft that was "payable through drafts." Plaintiff maintained that therefore subsection 3-118(d) applied rather than subsection 3-118(c) and the statute of limitations did not bar his claims. Plaintiff asserted that under subsection 3-118(d), the statute of limitations does not begin to run until "a demand

for payment is made of the issuer or the acceptor resulting in dishonor.” Plaintiff contended that no demand was made until defendant was served with the complaint on January 4, 2018.

¶ 9 After further briefing by both parties, the circuit court granted defendant’s motion and dismissed plaintiff’s complaint with prejudice. This appeal follows.

¶ 10 **II. ANALYSIS**

¶ 11 On appeal, plaintiff contends that the court erred in granting defendant’s motion to dismiss his complaint where it improperly relied on subsection 3-118(c) of the UCC in finding that the statute of limitations barred his claims. Plaintiff asserts that the court should have applied the provisions of subsection 3-118(d) because the draft was payable through draft, which is treated as a cash equivalent. Plaintiff maintains that under this subsection, his complaint would not be barred by the three-year limitations period.

¶ 12 **A. Standard of Review**

¶ 13 Defendant filed its motion to dismiss plaintiff’s complaint pursuant to section 2-619(a)(5) of the Code, arguing that plaintiff’s complaint was barred by the applicable statute of limitations period. Section 2-619(a)(5) of the Code allows for the involuntary dismissal of an action that “was not commenced within the time limited by law.” 735 ILCS 5/2-619(a)(5) (West 2014). We review *de novo* whether the circuit court properly dismissed a cause of action under section 2-619(a)(5). *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 99 (2004).

¶ 14 **B. Plaintiff’s Brief**

¶ 15 We first must address the state of plaintiff’s brief before this court. As defendant points out, plaintiff’s brief fails to comply Supreme Court Rule 341(h) (eff. May 25, 2018). In particular, plaintiff’s brief fails to comply with subsections (h)(6) and (h)(7) of Rule 341. Rule 341(h)(6) requires the appellant’s brief to contain a statement of facts necessary to an

understanding of the case with appropriate reference to the pages of the record. Ill. S. Ct. R. 341(h)(6) (eff. May 25, 2018). The rule also requires the statement of facts to be stated accurately and fairly without argument or comment. *Id.* Similarly, Rule 341(h)(7) requires citation to the record in the argument section of an appellant’s brief. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018). Plaintiff does not cite to the record in any section of his brief and his statement of facts contains matters outside of the record and contains argument in violation of Rule 341(h). Our supreme court has stated that supreme court rules “are not aspirational. They are not suggestions. They have the force of law, and the presumption must be that they will be obeyed and enforced as written.” (Internal quotation marks omitted.) *Rodriguez v. Sheriff’s Merit Commission of Kane County*, 218 Ill. 2d 342, 353 (2006) (quoting *Roth v. Illinois Farmers Insurance Co.*, 202 Ill. 2d 490, 494 (2002)). We are cognizant of plaintiff’s *pro se* status, but recognize that *pro se* litigants must comply with the applicable court rules. See *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009) (“we note that *pro se* litigants are presumed to have full knowledge of applicable court rules and procedures and must comply with the same rules and procedures as would be required of litigants represented by attorneys.”). Where a party fails to comply with these procedural rules we may, in our discretion, strike the brief and dismiss the appeal. *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 12 (citing *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 77).

¶ 16 We recognize, however, that striking a brief or dismissing an appeal for failure to comply with supreme court rules is “a harsh sanction.” *North Community Bank v. 17011 South Park Ave., LLC*, 2015 IL App (1st) 133672, ¶ 14 (citing *In re Detention of Powell*, 217 Ill. 2d 123, 132 (2005)). Despite plaintiff’s failure to comply with the supreme court rules regarding briefs, we are able to discern the essence of his contentions. Furthermore, we are able to ascertain the

relevant facts from the defendant's response brief and the record filed on appeal. Accordingly, we choose to address the merits of this appeal. See *Twardowski v. Holiday Hospitality Franchising*, 321 Ill. App. 3d 509, 511 (2011) (the court may address the merits of an appeal as long as it understands the issues the appellant intends to raise and where it has "the benefit of a cogent brief of the other party").

¶ 17 C. The Circuit Court Properly Dismissed Plaintiff's Complaint

¶ 18 Plaintiff first contends that the court erred in dismissing his complaint where it erroneously applied the statute of limitations in subsection 3-118(c) of the UCC, rather than the conditions of subsection 3-118(d). Subsection 3-118(c) of the UCC provides that "[e]xcept as provided in subsection (d), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within 3 years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first." 810 ILCS 5/3-118(c) (West 2016). In turn, subsection 3-118(d) provides that "[a]n action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within 3 years after demand for payment is made to the acceptor or issuer, as the case may be." 810 ILCS 5/3-118(d) (West 2016). A "draft" is an instrument that is an order to pay a fixed amount of money. 810 ILCS 5/3-104(a), (e) (West 2016).

¶ 19 Plaintiff contends that the court erred in applying subsection 3-118(c) because it generally applies to uncertified personal checks, and the draft in this case is "[c]learly" not an uncertified personal check. Instead, plaintiff contends that this draft is subject to the provisions of subsection 3-118(d) because it orders payment to three named individuals, is drawn by an authorized agent of State Farm, and is in settlement of claims payable only through JP Morgan Chase Bank. Plaintiff asserts that thus the "[f]unds are prepaid or otherwise collected for

distribution pending authorization from State Farm and are effectively considered as collected or cash funds unlike personal checks which are considered credit instruments.” These contentions, like plaintiff’s other arguments before this court, are mostly unsupported by relevant authority other than general citations to the UCC. The authority plaintiff does cite consists of precedent from foreign jurisdictions, which are not binding on this court (*Kim v. Mercedes-Benz, U.S.A., Inc.*, 353 Ill. App. 3d 444, 455 (2004)), and, in any case, fail to support plaintiff’s contentions.

¶ 20 Despite plaintiff’s unsupported arguments, the draft at issue in this case is clearly not subject to the provisions of subsection 3-118(d). That section identifies four specific types of checks: certified checks, teller’s checks, cashier’s checks, and traveler’s checks. Those are the only types of checks that are covered by the subsection. The UCC defines a certified check as a “check accepted by the bank on which it is drawn.” 810 ILCS 5/3-409(d) (West 2016). The check may be “accepted” by the bank either by the “drawee’s signed agreement to pay the draft as presented” or by a writing on the check that indicates that the check is certified. 810 ILCS 5/3-409(a), (d) (West 2016). The draft in this case is not a certified check because there is no writing on the draft that identifies it as certified and no signed agreement by the drawee to pay the draft as presented. A teller’s check is a draft that is “drawn by a bank either on another bank, or payable at or through a bank.” 810 ILCS 5/3-104(h) (West 2016). In this case, the draft at issue was drawn and issued by defendant, which is not a bank.

¶ 21 A cashier’s check is a draft “with respect to which the drawer and drawee are the same bank or branches of the same bank.” 810 ILCS 5/3-104(g) (West 2016). Again, defendant, as the drawee, is not a bank. Finally, a traveler’s check “(i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term “traveler's check” or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a

person whose specimen signature appears on the instrument.” 810 ILCS 5/3-104(i) (West 2016). The draft at issue here is clearly not a traveler’s check, notably because it is not designated as one, nor does plaintiff suggest that there was a requirement that the draft be countersigned.

¶ 22 Plaintiff contends, however, that the draft is subject to the provisions of subsection 3-118(d) because it is “payable through drafts.” Setting aside the fact that this is not one of the four enumerated types of drafts identified in subsection 3-118(d), plaintiff is also incorrect in suggesting that the draft at issue is payable through drafts. Like a certified check and traveler’s check, a draft that is “payable through” a bank must state that it is “payable through,” the draft must designate the bank as a collecting bank, and the draft may be presented for payment only by or through the bank. 810 ILCS 5/4-106(a) (West 2016). The draft at issue here does not state that it is “payable through” and does not meet the other requirements of subsection 106(a).

¶ 23 Accordingly, the draft at issue is not subject to the terms of subsection 3-118(d), and the circuit court properly applied the provisions of subsection 3-118(c). As the circuit court found, plaintiff therefore had three years from the dishonor of the draft in April 2012 to file his claim. The statute of limitations thus expired in April 2015, more than two years before plaintiff filed his claim in December 2017. We therefore find that the court did not err in granting defendant’s motion to dismiss plaintiff’s complaint as barred by the statute of limitations.

¶ 24 We further observe, however, that even if the court applied subsection 3-118(d) as plaintiff suggests, his claim would still be time barred by that subsection’s statute of limitations. Like the three-year limitations period in subsection 3-118(c), subsection 3-118(d) provides that an action must be commenced within three years “after demand for payment is made to the acceptor or issuer.” 810 ILCS 5/3-118(d) (West 2016). Plaintiff asserts that he did not make a “demand for payment” on the draft until he filed this action in December 2017, and thus the

limitations period had not expired. This clearly contradicts the record and plaintiff's own admissions, however, that he initially attempted to deposit the draft on April 6, 2012. Thus, plaintiff made the demand for payment in April 2012. The draft was dishonored at that time and returned to him, and plaintiff then had three years from April 2012 to commence this action, just as he had under subsection 3-118(c). Plaintiff failed to commence an action within the limitations period and thus his claims are time barred.

¶ 25 Accordingly, we find that the circuit court did not err in granting defendant's motion to dismiss plaintiff's complaint because it was barred by the statute of limitations of subsection 3-118(c) of the UCC.

¶ 26

III. CONCLUSION

¶ 27 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.