2019 IL App (1st) 190073-U

SIXTH DIVISION
September 20, 2019

No. 1-19-0073

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

RALPH J. ROBBINS, As Parent and Next Best Friend of Rory Robbins, A Minor,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellant,	)	
v.	)	No. 17 M3 006167
DREAM BIG ATHLETICS, LLC d/b/a Illinois Patriot Baseball,	)	Honorable Thomas D. Roti, Judge Presiding.
Defendant-Appellee.	)	

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Presiding Justice Griffin and Justice Walker concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's dismissal of plaintiff's complaint with prejudice is affirmed. Plaintiff's allegations, which described a conditional promise of future conduct but no facts demonstrating that the condition was ever satisfied, failed to state a claim for breach of contract, fraud in the inducement, or consumer fraud.

¶ 2 This is a dispute between plaintiff Ralph J. Robbins, the father of Rory Robbins, and defendant Dream Big Athletics, LLC d/b/a/ Illinois Patriot Baseball (Dream Big) over the placement of Rory on one of Dream Big's baseball teams. Mr. Robbins argues on appeal that

Dream Big contracted with him to place Rory on a 12U A or 13U A baseball team in the spring of 2017. Rory, however, was placed on a 12U C team for that season and his father sued under the theory of breach of contract, fraud in the inducement, and consumer fraud.

¶ 3 I. BACKGROUND

¶ 4 Dream Big runs baseball program is divided by age and level of play, ranging from A to C. For example, 13U A describes a team with players who are thirteen and under, playing at the highest level (A), while 12U C describes a team with players who are twelve and under, playing at the lowest or introductory level (C).

¶ 5 In the summer of 2016 Rory played on a 12U B Illinois Patriot baseball team run by Dream Big. At the close of the season, Peter Miller, a representative of Dream Big, reached out via text message to Mr. Robbins to discuss Rory's experience on the team. Mr. Miller and Mr. Robbins continued to go back and forth via text message. Mr. Robbins texted, "Rory's biggest issue is that he wants to play higher level competition. He does not want to repeat 12U B, and does not wish to play only tournaments." Mr. Miller replied, "[w]ould you want Rory to play 13u next year?" Later, after some deliberation, Mr. Robbins replied by text, "Pete, if your offer for Rory to play 13U still stands, then he would like to continue with the Patriots again this year."

¶ 6 Mr. Miller replied:

> "He definitely has a spot in our organization. We've taken on quite a few new players between 12U and 13U over the past month. I feel it is in everyone's best interest to see how he does and develops in the fall and winter to see if 12U A or 13U A would be a better fit for his development. He will play 13U this fall."

¶ 7 Mr. Robbins then explained in his next text that, "Rory typically does not play fall baseball, as there are conflicts with other sports, most notably basketball," and that he could "get

[Rory] there some of the time during the fall, but he would not be able to make it regularly." Mr. Miller responded, "Ralph, fall baseball is included with the patriots program. As I mentioned, Rory has a spot for either 12U A or 13U A depending on his fall and winter progress amongst the remainder of our players." The complaint does not state whether Rory did in fact play baseball during the fall season. Mr. Robbins alleged that Rory was placed on a 12U C team for the spring/summer season of 2017, instead of a more competitive 12U A or 13U A team.

¶ 8 Mr. Robbins filed his first complaint on September 27, 2017 alleging breach of contract and a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West 2016)). That claim was dismissed without prejudice on July 27, 2018. On August 24, 2018, Mr. Robbins filed his second amended complaint—which now included a copy of the text messages—re-alleging the breach of contract claim and the violation of the Consumer Fraud Act. The second amended complaint also included a new claim of fraud in the inducement.

¶ 9 On September 17, 2018, Dream Big again moved to dismiss Mr. Robbins's claims pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)), arguing there was no breach of contract and that no fraudulent statement was made. On December 12, 2018, the circuit court dismissed the complaint with prejudice, stating, "it is clear that Rory needed to complete fall and winter baseball, and show improvement to be offered a spot on the 13U level."

¶ 10 Mr. Robbins appealed.

¶ 11 II. JURISDICTION

¶ 12 The circuit court granted Dream Big's motion to dismiss with prejudice on December 12, 2018. Mr. Robbins filed his timely notice of appeal on January 9, 2019. This court has

jurisdiction pursuant to Illinois Supreme Court Rules 301 (eff. Feb. 1, 1994) and 303 (eff. July 1, 2017), governing appeals from final judgments entered by the circuit court in civil cases.

¶ 13 III. ANALYSIS

¶ 14 As an initial matter, we must comment on the almost complete lack of cited authority in Mr. Robbins's brief. Illinois Supreme Court Rule 341(h)(7) requires an appellant's argument to "contain the contentions of the appellant and the reasons therefor, *with citation of the authorities* and the pages of the record relied on." (Emphasis added.) Ill. S. Ct. Rule 341 (eff. May 25, 2018). Failure to comply with this requirement results in forfeiture. *People ex rel. Illinois Department of Labor v. E.R.H. Enterprises, Inc.*, 2013 IL 115106, ¶ 56. And "[c]itations to authority that set forth only general propositions of law and do not address the issues presented do not constitute relevant authority for purposes of Rule 341(h)(7)." *Robinson v. Point One Toyota, Evanston*, 2012 IL App (1st) 111889, ¶ 54. In his ten-page brief Mr. Robbins cites two cases stating the standard of review for a section 2-615 dismissal, but not a single case in support of his arguments that he stated a claim for breach of contract, fraud in the inducement, or consumer fraud. Because the issues raised are straightforward and governed by settled law, however, we choose to overlook Mr. Robbins's forfeiture and decide this appeal on the merits. See *Pedersen v. Village of Hoffman Estates*, 2014 IL App (1st) 123402, ¶ 44 (noting that "[f]orfeiture *** is a limitation on the parties and not on this court").

¶ 15 A section 2-615 motion to dismiss is a challenge to the legal sufficiency of a complaint. *Wakulich v. Mraz*, 203 Ill. 2d 223, 228 (2008). "The critical inquiry is whether the allegations of the complaint, when considered in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted." *Jarvis v. South Oak Dodge, Inc.*, 201 Ill. 2d 81, 86 (2002). The court must accept all well-pleaded facts in the complaint as true. *Wakulich*,

203 Ill. 2d at 228. "Thus, a cause of action should not be dismissed pursuant to section 2-615 unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery." *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). The standard of review for section 2-615 dismissals is *de novo*. *Id.*

¶ 16 Mr. Robbins challenges the circuit court's dismissal with prejudice of his breach of contract, fraud in the inducement, and consumer fraud claims. We address each of these in turn.

¶ 17 A. Breach of Contract

¶ 18 Mr. Robbins argues that the exchange of text messages between him and Mr. Miller formed an unconditional contract guaranteeing Rory's placement on either a 12U A team or a 13U A team, whether or not he played well in the fall and winter of 2016 or even played for Dream Big at all that season. We disagree.

¶ 19 To properly plead a breach of contract claim, Mr. Robbins was required to allege the essential elements of the claim, specifically: "(1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) breach of the contract by the defendant; and (4) resultant injury to the plaintiff." *Gonzalzles v. American Express Credit Corp.*, 315 Ill. App. 3d 199, 206 (2000) (citing *Gallagher Corp. v. Russ*, 309 Ill. App. 3d 192, 199 (1999)).

¶ 20 The complaint alleges that "[Mr.] Robbins and Defendant Dream Big entered into a contract for Rory to play baseball with the Illinois Patriots on either a 12UA or 13UA level Illinois Patriot baseball team in the spring of 2017." The complaint further alleges that Dream Big breached this agreement when it placed Rory on a 12U C team in the spring/summer season of 2017.

¶ 21 Dream Big argues that, contrary to these allegations, the text messages themselves demonstrate that Mr. Miller did not unconditionally promise that Rory would play on a 12U A or

13U A team, but instead made it clear that "any such offer was conditioned on 1) Rory playing in the 2016 Fall/Winter session and 2) whether [Dream Big] deemed him developed or skilled enough to play at the higher levels," and that, "[i]n no way could the parties' exchange be construed to suggest that Rory would be given a free pass without the coaches at [Dream Big] first determining how competitive he would be in a competitive squad."

¶ 22 "Whether a contract is ambiguous is a question of law for the court to decide." *Monroe Dearborn Ltd. Partnership v. Board of Education of City of Chicago*, 271 Ill. App. 3d 457, 462 (1995). If the court determines the contract is clear, its interpretation is also a matter of law. *Chicago Investment Corp. v. Dolins*, 93 Ill. App. 3d 971, 974 (1981). However, if the court determines the contract is ambiguous, then it is a question of fact "which may not be decided on a motion to dismiss under section 2-615." *Monroe Dearborn*, 271 Ill. App. 3d at 642. The fact that the parties disagree on the meaning of the language in a contract does not necessarily make the contract ambiguous. *In re Marriage of Arkin*, 108 Ill. App. 3d 103, 108 (1982).

¶ 23 Here, the contract is not ambiguous. It is well established that exhibits attached to a complaint will control over allegations made by the plaintiff. *Huang v. Brenson*, 2014 IL App (1st) 123231, ¶ 47. It is clear to us from the text messages between Mr. Robbins and Mr. Miller that there was no unconditional promise that Rory would be placed on a 12U A or 13U A team in the spring without Dream Big first assessing his progress relative to other players who were also vying for the same spots. Mr. Robbins argues that Dream Big "promised that Rory would definitely be placed on either '12U A or 13U A' depending on which was 'a better fit for his development.' " But according to the texts themselves, the only unconditional promise was that Rory would play 13U in the fall. Mr. Miller warned that Dream Big would need "to see how he does and develops in the fall and winter." Mr. Miller made it expressly clear that spring

placement was contingent on Rory's fall performance.

¶ 24 Rory's progress was not only an express condition for his entry onto a competitive team, but was also an assumption underlying the entire agreement. It is clear from the complaint and the text messages that Dream Big operates a competitive league in which players earn their positions. It is also clear from the entire text exchange that Rory's participation in the fall and his progress was a condition underlying any agreement that he could be on an A team in the spring. Even where such a condition is not expressed as clearly as it was in this case, we have not hesitated to imply a condition, where that condition is implied by "the nature of the contracts involved." *Davies v. Arthur Murray, Inc.*, 124 Ill. App. 2d 141, 154 (1970) (implying a condition that the plaintiff would continue to be physically able to dance in a contract for dance lessons.) Given the nature of the league, and the express statements from Mr. Miller these texts in no way can be construed as an absolute and automatic guarantee of advancement to a high-performing team in the spring.

¶ 25 The only agreement that these texts reflect is that, in order to be placed on a 12U A or 13U A team, Rory needed to (1) participate in the fall and (2) based on his progress, Dream Big would determine where he should be placed in the spring. The complaint is silent on whether Rory played in the fall and whether he adequately progressed as a player. Mr. Robbins, therefore, failed to allege both performance on his part and breach on the part of Dream Big, as required to survive a section 2-615 motion.

¶ 26 B. Fraud in the Inducement

¶ 27 Mr. Robbins also argues the circuit court erred in dismissing his fraud in the inducement claim because he alleged sufficient facts to establish that Dream Big knowingly made a false statement. We again disagree.

¶ 28 Fraud in the inducement "is a form of common-law fraud," the elements of which are:

> "(1) a false statement of material fact; (2) knowledge or belief by the defendant that the statement was false; (3) an intention to induce the plaintiff to act; (4) reasonable reliance upon the truth of the statement by the plaintiff; and (5) damage to the plaintiff resulting from this reliance." *Avon Hardware Co. v. Ace Hardware Corp.*, 2013 IL App (1st) 130750, ¶ 15.

¶ 29 A plaintiff must "plead with sufficient particularity facts establishing these elements, including what misrepresentations were made, when they were made, who made the misrepresentations and to whom they were made." *Board of Education of City of Chicago v. A, C & S, Inc.*, 131 Ill. 2d 428, 496 (1989). Dream Big argues that there was no inducement because the text messages make clear that Rory's placement was dependent on his progress in the fall and winter. We agree with Dream Big on this point—the fraud claim fails for the same reason as the breach of contract claim, there was no false unconditional promise made.

¶ 30 Dream Big also argues that promises of future conduct cannot be the basis of a common law fraud claim in Illinois. As Mr. Robbins correctly notes, this argument was raised for the first time on appeal and could be considered forfeited. However, this court can affirm for any reason supported by the record (*Bell v. Louisville & Nashville R. Co.*, 106 Ill. 2d 135, 148 (1985)) and we agree with Dream Big that this is an additional reason to affirm.

¶ 31 Promissory fraud, or a promise of future conduct, is generally not actionable as fraud claims in Illinois. *Ault v. C.C. Services, Inc.*, 232 Ill. App. 3d 269, 271 (1992). To support a claim for fraud, any alleged misrepresentations must be of preexisting or present facts, not future conduct. *Id.* Here, the text exchange was entirely about future conduct and was therefore not actionable as fraud. An exception to this rule is that false promises or misrepresentations of

future conduct may be actionable if they are part of a scheme to defraud. *Henderson Square Condominium Ass'n v. LAB Townhomes, LLC*, 2015 IL 118139, ¶ 69. Such a scheme involves multiple statements of false promises, made at different times, and to different people. See, *e.g.*, *HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145, 169 (1989). There is nothing in this complaint that could possibly be viewed as a scheme by Dream Big to lure prospective players with false promises.

¶ 32 C. Consumer Fraud

¶ 33 Finally, we reject Mr. Robbins's argument that the circuit court erred when it dismissed with prejudice his claim that Dream Big violated the Consumer Fraud Act. The elements of a claim under the Consumer Fraud Act are: "(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 during a course of conduct involving trade or commerce, and (4) actual damage to the plaintiff (5) proximately caused by the deception." *Oliveria v. Amoco Oil Co.*, 201 Ill. 2d 134, 149 (2002).

¶ 34 Mr. Robbins alleges four acts of deception. Specifically, that Dream Big (1) represented to Mr. Robbins that Rory "would be placed on either a 12UA or 13UA level Illinois Patriot baseball team in the spring/summer of 2017;" (2) "failed to advise Robbins [or] Rory, before any games had been played in the spring/summer 2017, that there was no 12UA level Illinois Patriot baseball team that Rory could play on;" (3) "failed to advise Robbins and *** Rory that Rory would be playing in only approximately fifteen (15) baseball games as opposed to in excess of thirty (30) baseball games played by those on a 13U level Illinois Patriot baseball team ***;" and (4) "falsely claimed during the 2017 baseball season that Defendant Dream Big created a 12UA level baseball team for Rory to play on when it mainly consisted of 12UC level players and was

competing against 12UB and 12UC competition."

¶ 35 The deceptive acts listed above, however, are insufficient to support a claim of consumer fraud. As our supreme court has made clear, "a deceptive act or practice involves more than the mere fact that a defendant promised something and then failed to do it." (Internal quotation marks omitted.) *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 169 (2005). The only allegation that could possibly be construed as a false statement, rather than a "promise" is that Dream Big had created a 12UA-level team, when it had not. However, the complaint contains nothing that could be viewed as reliance by Mr. Robbins on that statement or as damages based on any reliance. Further, as noted above, the text message exchange, which controls over the allegations, shows that all promises were conditional on Rory's progress during the fall and winter. Mr. Robbins failed to allege a deceptive act or practice by Dream Big as required to survive a 2-615 motion to dismiss.

¶ 36 IV. CONCLUSION

¶ 37 For the above reasons, we affirm the circuit court's dismissal with prejudice of Mr. Robbins's complaint in its entirety.

¶ 38 Affirmed.