2019 IL App (2d) 190030-U
No. 2-19-0030
Order filed September 16, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

NICHOLAS BRASKI,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	
	)	No. 17-L-337
BOARD OF TRUSTEES OF COMMUNITY	)	
COLLEGE DISTRICT NO. 502,	)	Honorable
	)	Robert G. Kleeman,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: Where plaintiff did not submit employment application to defendant, no offer to contract was made, and the trial court did not err in dismissing plaintiff's second-amended complaint for breach of employment contract.

¶ 2 Plaintiff, Nicholas Braski, was employed as an independent contractor for defendant, Board of Trustees of Community College District No. 502, which exercises jurisdiction over matters related to the College of Du Page (the College), a public community college. The College hired plaintiff to participate as a "role player" in two live-action training exercises,

called "practicals," for law enforcement recruits at the Suburban Law Enforcement Academy (the Academy).

¶ 3 The College solicited plaintiff to submit an application for permanent employment as an adjunct faculty member, which would have entitled plaintiff to workers' compensation insurance and other benefits. Plaintiff did not submit an application. Two weeks after the invitation to apply, plaintiff participated in a third training exercise and was injured. The Academy denied benefits on the ground that plaintiff had again participated as an independent contractor and not as an employee.

¶ 4 Plaintiff filed a second-amended complaint alleging, *inter alia*, breach of contract. He alleged that his participation in the training exercises constituted acceptance of defendant's offer of employment and that defendant breached the agreement by denying benefits. The trial court dismissed the breach of contract claim with prejudice on the ground that no employment contract had been formed. The court determined that defendant's correspondence was an invitation to plaintiff to submit an employment application. In turn, the completed application would have constituted plaintiff's offer to defendant to be employed. Without an application from plaintiff, defendant had no offer to accept. And without a contract, the court concluded, plaintiff could not state a claim for a breach. Plaintiff filed motions to reconsider the dismissal and to reopen proofs, which the trial court denied.

¶ 5 In agreement with the trial court, we hold that the second-amended complaint failed to state a claim for breach of contract and that the denial of plaintiff's postjudgment motions was not an abuse of discretion. We affirm.

¶ 6 I. BACKGROUND

¶ 7 Plaintiff appeals the trial court's involuntary dismissal of his breach of contract claim under section 2-615(a) of the Code of Civil Procedure (the Code). 735 ILCS 5/2-615(a) (West 2016). In reviewing a dismissal pursuant to section 2-615, we construe the allegations in the complaint in the light most favorable to the plaintiff and accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). Thus, we recite the facts as alleged in the second-amended complaint.

¶ 8 At all relevant times, defendant and the College operated the Academy located on the College's campus. The Academy offered training for recruits in exchange for tuition paid by law enforcement and public safety agencies. Recruits were trained by instructors, role players, and supervisors, most of whom were employees of the College. Some nonemployees, like plaintiff, were used in the training. Personnel assigned to the Academy were purportedly responsible for vetting, instructing, and supervising the role players.

¶ 9 On September 23, 2014, Roy Newton, the Academy's program coordinator, solicited plaintiff, a Village of Des Plaines police officer, to participate as a role player for a practical called "OC spray" on the campus. Plaintiff agreed to participate and completed an independent contractor agreement prior to participation. The Academy sent plaintiff an email confirming the date, time, place, and clothing suggestions. No other instruction was provided prior to the practical. Plaintiff participated in the four-hour event, without incident.

¶ 10 On February 14, 2015, Newton confirmed via email that plaintiff was to participate as a role player for an exercise for recruits known as the "Red Man #3" practical on March 23, 2015. No other information was provided, such as the name of the supervisor or what to wear.

¶ 11 Sometime before March 2, 2015, Newton again solicited plaintiff to participate as a role player in an exercise involving traffic stops. The email correspondence confirmed the date, time, place, and name of the supervisor. Plaintiff agreed to participate and completed another independent contractor agreement when he arrived for the practical, on March 5, 2015. Plaintiff participated in the traffic stop practical without incident.

¶ 12 A week later, on March 12, 2015, Newton sent plaintiff another email, this time asking plaintiff to complete an application to be "placed in the system as a [College] employee," an adjunct faculty member who would receive benefits including workers' compensation insurance. The second-amended complaint alleged that "[d]ue to technical difficulties, plaintiff was not able to complete the form, but believed that the form would be available to be completed prior to participating in the 'Red Man #3' practical, as that was his previous experience at [the Academy]."

¶ 13 Before participating in the Red Man #3 practical on March 23, 2015, plaintiff "communicated" with Newton about completing the application, but the pleading does not specify the content of those communications. In response, Newton allegedly advised plaintiff that the application and related forms could be completed after the Red Man #3 practical. Plaintiff expected to complete the application after the exercise.

¶ 14 Although plaintiff had never participated in a practical like the Red Man #3 and was not given any paperwork to fill out, plaintiff agreed to participate. Newton was not present at the exercise, and plaintiff did not complete an application after the exercise.

¶ 15 In the Red Man #3 practical, role players, like plaintiff, pretend to be suspected offenders being confronted by the recruits who practice proper procedure during stop-and-frisk situations. Recruits are trained and encouraged to use physical force. While equipped with padded batons,

the recruits strike the role players. Plaintiff did not meet the supervisor in charge of the practical and received no prior instruction. No special word was designated to stop the exercise if it escalated beyond reasonable force and the role player felt endangered.

¶ 16 During the Red Man #3 practical, role players are provided padded clothing to prevent injury, but plaintiff's so-called "red man suit" was ill fitting and worn out. The suit required trousers with a belt to secure the protective padding. Plaintiff attempted to fasten the padding, but it provided limited protection and fell off during movement. Plaintiff watched other role players to learn how to perform and use the padding.

¶ 17 During the exercise, plaintiff grabbed and wrestled a recruit to the ground. While plaintiff was on the ground, the instructor yelled at a nearby recruit to assist. The second recruit performed a "knee strike" on plaintiff's left outer thigh. The instructor kept yelling at the recruit to perform knee strikes, at which point the padding slipped out of position and plaintiff was injured. Plaintiff yelled in pain, but the recruit repeatedly struck plaintiff with his knee. Plaintiff was eventually handcuffed.

¶ 18 It was only after plaintiff was released from the handcuffs that anyone realized that he had been injured. Plaintiff was offered ice but not medical treatment or an ambulance. Plaintiff drove himself to the hospital.

¶ 19 The breach of contract claim alleged that defendant's communications with plaintiff, including the request to submit an employment application, constituted a contract offer, which plaintiff accepted by participating as a role player in the Red Man #3 practical on March 23, 2015. Plaintiff alleged that his participation in the exercise was acceptable consideration to defendant for the formation of a contract under which plaintiff would be placed in the system as an adjunct faculty member of the College.

¶ 20 The parties disputed whether plaintiff was an employee or independent contractor for purposes of the Red Man #3 practical. Plaintiff claimed that he did not submit an independent contractor form for the Red Man #3 practical. Instead, defendant, without plaintiff's knowledge or consent, allegedly added the date of March 23, 2015, and the description "Red Man #3" to the independent contractor form that plaintiff had submitted for the traffic stop practical on March 5, 2015. The form specifying both the traffic stop and Red Man #3 practicals was attached to the second-amended complaint.

¶ 21 As a direct and proximate result of defendant's acts and omissions, plaintiff allegedly sustained severe injuries that caused great pain and suffering, hindered his activities, and resulted in medical and other expenses. Defendant denied plaintiff insurance coverage and workers' compensation benefits, allegedly in breach of the employment contract.

¶ 22 Plaintiff filed his original complaint on March 22, 2017, nearly two years after the incident. Plaintiff asserted claims for negligence, willful and wanton conduct, fraudulent inducement to contract, and breach of contract against the College and the Academy. In response to a motion to dismiss, plaintiff obtained leave to file an amended complaint, which he filed on June 17, 2017. The amended complaint asserted the same claims, and the College filed another motion to dismiss and a motion for summary judgment.

¶ 23 On April 3, 2018, the trial court dismissed the breach of contract claim in the amended complaint because plaintiff had not adequately alleged the existence of a contract:

> "With respect to the breach of contract, I have to confess I am persuaded by the defense argument here. [Plaintiff] adequately pled damage, I believe, and I can get into the weeds on that if we need to, but the question about a [2-]615 motion did he adequately plead offer and acceptance? The [March 12, 2015,] email as I understand it,

specifically said—I am paraphrasing—but if you want to be an employee, be placed as a [College] employee, I would ask that you fill out the forms and let me know that you are complete with them so that we can notify our staff. That is saying to somebody I want you to apply. That wasn't done.

I understand the plaintiff's response to that saying [the application forms] weren't attached to the documents, but, again, that may be, but to say fill out an application if you want to be an employee, and say I didn't see the application so I just showed up to work and, therefore, I am an employee, I'm not persuaded that that adequately pleads an offer and an acceptance of that offer.

I do agree with the defense that this is an invitation to offer for employment and that the offer was never made and was not, therefore, accepted by [the College]. And I find that the [2-]615 motion regarding breach of contract is granted."

¶ 24 The trial court granted plaintiff leave to file the second-amended complaint, and on May 24, 2018, plaintiff filed amended claims for fraudulent inducement to contract and breach of contract. The breach of contract claim was factually similar to the previous one.

¶ 25 On June 25, 2018, defendant sought dismissal of the second-amended complaint under sections 2-615 and 2-619 of the Code (735 ILCS 5/2-615, 2-619 (West 2016)) in a combined motion filed pursuant to section 2-619.1 (735 ILCS 5/2-619.1 (West 2016)). Defendant also requested sanctions pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013).

¶ 26 On September 20, 2018, the trial court dismissed the entire second-amended complaint with prejudice. The fraudulent inducement claim was dismissed under section 2-619 but is not at issue on appeal.

¶ 27 The appeal turns on the breach of contract claim, which was dismissed under section 2-615 for failure to state a claim. The court determined that plaintiff had not alleged the formation of a valid contract for employment:

> "[W]hat I have is somebody who can act as an independent contractor and participate in these training drills. There's somebody who can be an employee.
>
> And giving the plaintiff, as I must, the benefit of all of the factual allegations and all of the inferences, somebody, apparently, told him, you can be an independent contractor at some point in time. It's in the complaint. Show up to this training session, afterwards you can fill out an application, and we'll go forward. And that may be.
>
> * * *
>
> Asking for people to fill out an application is an invitation to make an offer and it's a contract claim. That application is an offer to be employed. It was never accepted."

¶ 28 On October 19, 2018, plaintiff filed a motion to reconsider the dismissal and a motion to reopen proofs. Plaintiff claimed that a "newly discovered" email and memorandum from Newton "substantiated his claims" that he was an employee of the College. He stated that he rediscovered the email after the second-amended complaint was dismissed.

¶ 29 Plaintiff was referring to an email received on September 23, 2014, before he participated in any of the training exercises. Attached to the email was a so-called "Role Play Entry Memo," which described the practicals and a role player's status as an independent contractor.

¶ 30 Plaintiff argued that the memorandum supports his theory that defendant made an offer of employment when Newton subsequently solicited the application. The Role Play Entry Memo states in relevant part as follows:

> "You are considered an independent contractor for [the Academy]. What this means is that initially, you will get paid by [the College], but you will not be afforded benefits, which would eventually include workman comp issues and pension contribution. To be blunt, in the event you sustain an injury, your work or personal insurance will have to cover expenses, not [the College]. After a few classes of role playing, you then are given an employment form, in which you will be able to participate as recognized by [the Academy]."

¶ 31 The motions to reconsider and to reopen proofs essentially asked the trial court to consider the Role Play Entry Memo when reevaluating the second-amended complaint. Plaintiff asked for leave to file a third-amended complaint "instanter" but did not submit a proposed pleading.

¶ 32 On December 12, 2018, the trial court denied plaintiff's motions to reconsider the dismissal and to reopen proofs. The court construed the motions as seeking reconsideration of the dismissal with prejudice. The court concluded that there were no proofs to reopen because the second-amended complaint had been dismissed under section 2-615 of the Code based on the failure to state a claim. The court also determined that the Role Play Entry Memo was not newly discovered evidence because plaintiff had possession of it during the entire pendency of the action. The court found the delayed disclosure not to be excusable inadvertence.

¶ 33 Furthermore, the court held that consideration of the Role Play Entry Memo would not change the result; the memorandum explicitly stated that plaintiff, as an independent contractor, would need to obtain his own insurance against physical injury, at the very least until he submitted an application for employment.

¶ 34 Accordingly, the trial court denied plaintiff's postjudgment motions, both on the merits and the dismissal with prejudice. The court also denied defendant's motion for sanctions. This timely appeal followed.

¶ 35 II. ANALYSIS

¶ 36 A. Express Contract

¶ 37 A motion to dismiss brought under section 2-615 attacks the legal sufficiency of claims based on defects apparent on the face of the pleading. *Wilson v. County of Cook*, 2012 IL 112026, ¶ 14. The issue turns on whether the allegations in the complaint, when viewed in the light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. *Bogenberger v. Pi Kappa Alpha Corp*., 2018 IL 120951, ¶ 23. In answering this question, we accept as true all well-pled facts and reasonable inferences from those facts. *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 47. A complaint should be dismissed only if it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief, and we review the circuit court's ruling *de novo*. *Wilson*, 2012 IL 112026, ¶ 14.

¶ 38 A section 2-615 motion requires consideration of only (1) those facts apparent from the face of the pleadings, (2) matters subject to judicial notice, and (3) judicial admissions in the record. *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill. 2d 381, 385 (2005). Exhibits relied upon by the complaint are considered part of it. *Gore v. Indiana Insurance Co.*, 376 Ill.App.3d 282, 289 (2007). Where allegations made in the body of the complaint conflict with facts disclosed in the exhibits, the exhibits control and the allegations will not be taken as true in evaluating the sufficiency of the complaint. *Bajwa v. Metropolitan Life Insurance Co*., 208 Ill. 2d 414, 431 (2004).

¶ 39 To state a cause of action for breach of contract, a plaintiff must allege: (1) the existence of a valid contract; (2) performance by the plaintiff; (3) breach of contract by the defendant; and (4) resultant injury to the plaintiff. *Burkhart v. Wolf Motors of Naperville, Inc*., 2016 IL App (2d) 151053, ¶ 14. To plead the existence of a valid contract, a plaintiff must allege facts sufficient to show "an offer, a strictly conforming acceptance to the offer, and supporting consideration." *Brody v. Finch University of Health Sciences*, 298 Ill. App. 3d 146, 154 (1998).

¶ 40 Plaintiff argues that Newton's email soliciting an employment application was a valid offer and that plaintiff accepted the offer by participating in the Red Man #3 practical. We disagree. Plaintiff has not stated a contract claim because there was neither an offer nor an acceptance by either party. First, Newton's invitation to submit an application was not an offer to contract, and plaintiff did not make an offer by submitting the application. Second, even if Newton's invitation was an offer, plaintiff failed to follow the procedure for accepting it. Plaintiff's participation in any or all of the practicals did not constitute his acceptance under the terms of the invitation.

¶ 41 On March 12, 2015, Newton sent an email to plaintiff and 26 other role players asking each to submit an application if he or she was interested in becoming an adjunct professor. An advertisement for prospective employees to apply is not an offer, but rather an invitation to make an offer by submitting an application. See *Steinberg v. Chicago Medical School*, 69 Ill. 2d 320, 329-30 (1977). Thus, Newton's email was an invitation to make an offer, not an offer itself.

¶ 42 Furthermore, Newton's solicitation was not an offer because it did not give plaintiff the power to make a contract. See *La Salle National Bank v. Vega*, 167 Ill. App. 3d 154, 161 (1988) (no offer is made if the communication does not give the offeree the power to make a contract). Newton asked plaintiff to offer his services to the College by completing an application, and the

College could then accept or reject that offer by extending employment. Simply submitting an application, without more, would not have made plaintiff an employee. We note that the second-amended complaint cryptically alleged that "other communications" from Newton constituted an offer to contract, but plaintiff does not describe those communications or how they conveyed an offer to contract. In any event, plaintiff did not make the offer by submitting the application as requested.

¶ 43 Even if Newton's solicitation constituted an offer to contract, plaintiff did not follow the protocol for accepting such an offer. Plaintiff was instructed to submit an application if he wished to become an employee, but he did not do so. He was informed that the College's staff would be notified to register plaintiff as an employee after the application was received, not before. There is no allegation that defendant told plaintiff that participating in the training exercises was a valid substitute for filing an application. Even if Newton's email constitutes an offer, plaintiff's conduct did not conform to the terms specified in the email, and therefore, does not constitute valid acceptance. Plaintiff failed to state a claim for breach of contract based on an express agreement.

¶ 44 B. Implied Contract

¶ 45 Plaintiff alternatively argues that the second-amended complaint alleges a claim of a contract implied in fact. Plaintiff contends that the application was merely paperwork to memorialize his status as a newly-hired employee; a status he claims was established by his participation in the practicals. Defendant argues that plaintiff has forfeited the theory by presenting it for the first time on appeal. See *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996) (an issue not presented to or considered by the trial court cannot be raised for the first

time on review). Forfeiture aside, the factual allegations in the second-amended complaint do not support the theory.

¶ 46 Generally, whether an implied contract exists is a question of law, which is reviewed *de novo*. *Wood v. Wabash County*, 309 Ill. App. 3d 725, 727-28 (1999). Like an express contract, a contract implied in fact must contain an offer, acceptance, and consideration; except an implied contract is inferred from the facts and conduct of the parties, rather than from an oral or written agreement. *In re Marriage of Bennett*, 225 Ill. App. 3d 828, 831 (1992). Thus, a contract implied in fact arises not by express agreement but by a promissory expression that may be inferred from the facts and circumstances that show the parties' intent to be bound. *Kohlenbrener v. North Suburban Clinic, Ltd.*, 356 Ill. App. 3d 414, 419 (2005). To sufficiently plead an implied-in-fact contract, plaintiff had to plead the essential elements of a contract, supplied by implication from the parties' conduct or actions. See *Marriage of Bennett*, 225 Ill. App. 3d at 831-32.

¶ 47 The second-amended complaint does not contain any allegations that Newton's solicitation email was merely referring to paperwork to record plaintiff's new status as an employee. Plaintiff does not explain how Newton's conduct or communications conferred authority to plaintiff to accept an offer of employment by participating in the training exercises.

¶ 48 In fact, the Role Play Entry Memo contradicts plaintiff's implied contract theory. The memorandum expressly declares him to be an independent contractor without benefits. Only "[a]fter a few classes of role playing," would plaintiff be given an employment application form to submit. Nothing suggests that plaintiff would be automatically elevated to employee status upon participating in some unspecified number of training exercises.

¶ 49 Accepting as true all well-pled facts and reasonable inferences from the allegations in the complaint, we conclude that the facts, when viewed in the light most favorable to the plaintiff, were not sufficient to state a cause of action for breach of contract. See *Bogenberger*, 2018 IL 120951, ¶ 23; *Khan*, 2012 IL 112219, ¶ 47. No set of facts can be proved that would entitle plaintiff to relief. See *Wilson*, 2012 IL 112026, ¶ 14. The trial court did not err in dismissing the contract claim as facially deficient.

¶ 50 C. Dismissal with Prejudice

¶ 51 Plaintiff concludes his appellate brief with a perfunctory request for a remand to file a third-amended complaint. Section 2-616(a) of the Code provides that "[a]t any time before final judgment amendments may be allowed on just and reasonable terms." 735 ILCS 5/2-616(a) (West 2016). Courts are encouraged to freely and liberally allow the amendment of pleadings, but the right to amend is not absolute and unlimited. *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 467 (1992). The trial court's decision to grant or deny leave to amend should not be reversed absent an abuse of discretion. *Hayes Mechanical, Inc. v. First Industrial, L.P.*, 351 Ill. App. 3d 1, 7 (2004).

¶ 52 The four factors to be considered are whether (1) the proposed amendment would cure a defective pleading; (2) the proposed amendment would surprise or prejudice the opposing party; (3) the proposed amendment was timely filed; and (4) the moving party had previous opportunities to amend. *Loyola Academy v. S & S Roof Maintenance, Inc*., 146 Ill. 2d 263, 273 (1992). If the proposed amendment does not state a cognizable claim, and thus, fails the first factor, courts of review will often not proceed with further analysis. *I.C.S. Illinois, Inc. v. Waste Management of Illinois, Inc*., 403 Ill. App. 3d 211, 220 (2010). Where it is apparent even after

amendment that no cause of action can be stated, leave to amend should be denied. *Hayes*, 351 Ill. App. 3d at 7.

¶ 53 Plaintiff did not propose an amendment in the trial court or on appeal, which leaves the impression that he has exhausted the combination of allegations that might support a contract claim. Plaintiff is not asking to change his cause of action or to claim a new one under section 2-616(a) of the Code. He has not shown how an amendment would cure the defective pleading, though he had many opportunities to do so in the trial court. The court did not abuse its discretion in dismissing the second-amended complaint with prejudice.

¶ 54 D. Motion to Reconsider

¶ 55 Plaintiff appeals both the original dismissal on September 20, 2018, and the denial of his motion to reconsider on December 12, 2018. Section 2-1203 of the Code provides that "[i]n all cases tried without a jury, any party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief." 735 ILCS 5/2-1203 (West 2016).

¶ 56 The purpose of a motion to reconsider is to bring to the trial court's attention a change in the law, an error in the court's previous application of existing law, or newly discovered evidence that was not available at the time of the prior hearing or decision. *Hachem v. Chicago Title Insurance Co.*, 2015 IL App (1st) 143188, ¶ 34; *Emrikson v. Morfin*, 2012 IL App (1st) 111687, ¶ 29; *Belluomini v. Zaryczny*, 2014 IL App (1st) 122664, ¶ 20.

¶ 57 In this case, plaintiff argues that his motion presented newly discovered evidence of the existence of an employment contract: the so-called Role Play Entry Memo, composed by

Newton. Plaintiff argues that the memorandum supports his theory that Newton's solicitation of an application was an offer of employment.

¶ 58 We must first determine whether the memorandum qualifies as newly discovered evidence. See *Emrikson*, 2012 IL App (1st) 111687, ¶ 30. When a motion to reconsider is based on new evidence, facts, or legal theories not presented in the prior proceedings, our standard of review is abuse of discretion. *Belluomini*, 2014 IL App (1st) 122664, ¶ 20. An abuse of discretion occurs when a trial court's decision is arbitrary, fanciful, unreasonable, or where no reasonable person would adopt the court's view. *Emrikson*, 2012 IL App (1st) 111687, ¶ 14.

¶ 59 For purposes of a motion to reconsider, newly discovered evidence in civil cases has been defined as evidence that was not available at the time of the prior order or hearing. *Emrikson*, 2012 IL App (1st) 111687, ¶ 30. "In the absence of a reasonable explanation regarding why the evidence was not available at the time of the original hearing, the circuit court is under no obligation to consider it." *Emrikson*, 2012 IL App (1st) 111687, ¶ 30 ("there was no reason for the circuit court to reconsider its decision on the basis of this evidence" where the plaintiff failed to provide an explanation as to why she was unable to learn of it prior to the original hearing).

¶ 60 A trial court should not allow litigants to stand mute, lose a motion, and then frantically gather evidentiary material to show that the court erred in its ruling. *Landeros v. Equity Property & Development*, 321 Ill. App. 3d 57, 65 (2001). In this case, the memorandum was readily discoverable prior to the original complaint, let alone before the filing of the second-amended complaint. As the trial court observed, plaintiff did not provide a reasonable explanation in his motion to reconsider as to why he could not have provided the memorandum sooner.

¶ 61 We conclude that the trial court was not arbitrary, fanciful, or unreasonable in denying the motion to reconsider based on newly discovered evidence. Plaintiff supplied the

memorandum for the first time as part of his motion to reconsider, without a reasonable explanation for the delay, and despite repeated opportunities to amend his complaint.

¶ 62 Furthermore, as discussed, the Role Play Entry Memo actually undermines plaintiff's theories of contract formation. It emphasized that his status was as an independent contractor until he submitted an application for consideration as an employee.

¶ 63 E. Motion to Reopen Proofs

¶ 64 Finally, defendant appeals the denial of his motion to reopen proofs, arguing that he should have been allowed to file the Role Play Entry Memo. A trial court's ruling on a motion to reopen proofs is reviewed for an abuse of discretion. *People v. Gliniewicz*, 2018 IL App (2d) 170490, ¶ 42. " 'In rendering its decision, the trial court should consider whether the moving party has provided a reasonable excuse for failing to submit the additional evidence during trial, whether granting the motion would result in surprise or unfair prejudice to the opposing party, and whether the evidence is of the utmost importance to the movant's case.' " *Gliniewicz*, 2018 IL App (2d) 170490, ¶ 42 (quoting *Dowd & Dowd, Ltd. v. Gleason*, 352 Ill. App. 3d 365, 389 (2004).

¶ 65 Here, the breach of contract claim did not proceed to trial or even summary judgment. The section 2-615 motion to dismiss addressed only the allegations of his pleading, which plaintiff obtained leave to amend several times. As the trial court observed, there were no proofs to reopen because plaintiff had failed to state a claim upon which relief could be granted. Moreover, the court considered the Role Play Entry Memo in denying the motion to reconsider. Under these circumstances, the court did not abuse its discretion in denying the motion to reopen proofs.

¶ 66 III. CONCLUSION

¶ 67 For the reasons stated, we affirm the dismissal of plaintiff's second-amended complaint with prejudice.

¶ 68 Affirmed.