

No. 1-14-2062

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

VICTOR ANTHONY CLARK,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 13 L 11260
)	
ASSET ACCEPTANCE, LLC,)	Honorable
)	Eileen O'Neil Burke,
Defendant-Appellee.)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Palmer and Justice Reyes concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Dismissal of amended complaint under section 2-619.1 of the Code of Civil Procedure, (735 ILCS 5/2-619.1 (West 2012)), was proper where complaint was largely incoherent and failed to set forth legally relevant factual assertions.
- ¶ 2 Plaintiff Victor Clark appeals from a dismissal of his amended complaint under section 2-619.1 of the Code of Civil Procedure ("the Code") (735 ILCS 5/2-619.1 (West 2012)). We affirm.

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¶ 3 The defendant in the present case is Asset Acceptance, LLC, ("Asset"). Asset filed a complaint against plaintiff in relation to an unpaid debt in July 2007. Subsequently, an agreed order was entered reflecting that the parties had settled. The initial case was dismissed with prejudice in December 2008.

¶ 4 In October 2013, plaintiff filed the complaint in the present case against Asset seeking more than \$16 million in damages. The complaint appeared to assert claims of "fraudulent concealment" and "fraud of court" against Asset; however, its allegations are confusing and largely incoherent. In December 2013, Asset filed a motion for a more definite statement. Following a hearing, the trial court *sua sponte* struck plaintiff's complaint without prejudice, and directed plaintiff to replead.

¶ 5 In February 2014, plaintiff filed an amended complaint. It appears to assert claims of "Fraudulent Concealment and Fraudulent Inducement" against Asset for reinstating the initial 2007 lawsuit. The amended complaint recites various disconnected facts and sporadic legal citations without a cogent explanation of how the allegations and references are relevant to plaintiff's claims.

¶ 6 In March 2014, Asset filed a motion to dismiss under section 2-619.1 of the Code, (735 ILCS 5/2-619.1 (West 2012)). Asset argued that dismissal under section 2-615 of the Code, (735 ILCS 5/2-615 (West 2012)), was proper because the amended complaint was "largely incomprehensible" and plaintiff had failed to allege facts supporting his claims of fraud. It also argued that section 2-619 of the Code, (735 ILCS 5/2-619.1 (West 2012)), supported dismissal because the record clearly showed that the 2007 case had been dismissed with prejudice. The trial court dismissed the complaint with prejudice. Relying on section 2-615, the court found plaintiff had failed to allege any facts supporting his claims of fraud. The court also found

section 2-619 of the Code applicable, because plaintiff's underlying contention that the 2007 case had been reinstated was belied by the record. Plaintiff appeals.

¶ 7 Initially, we note that plaintiff's brief fails to adhere to the supreme court rules governing appellate review. The brief is incoherent and generally indecipherable. It does not contain a proper summary statement, introductory paragraph or statement of the issue presented for review as required by Supreme Court Rule 341(h) (eff. Feb. 6, 2013) It contains no appendix and no index to the record as required by Supreme Court Rule 342 (eff. Jan. 1, 2005). However, we may address the merits of an insufficient brief, where we have the benefit of a cogent appellee's brief and can glean the issue plaintiff intends to raise. See *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 510-11(2001); see also *Associated Underwriters of America Agency, Inc. v. McCarthy*, 356 Ill. App. 3d 1010, 1016 (2005). We therefore address plaintiff's claim on the merits.

¶ 8 Section 2-619.1 permits a party to combine a section 2-615 motion to dismiss based upon a plaintiff's substantially insufficient pleadings with a section 2-619 motion to dismiss. *Edelman, Combs & Lattuner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 164 (2003). Under either section 2-615 or section 2-619 a court must accept all well-pleaded facts in the complaint as true and draw all reasonable inferences in favor of the nonmovant. *Lykowski v. Bergman*, 299 Ill. App. 3d 157, 162 (1998). Our review is *de novo* under both sections. *Id.*

¶ 9 Illinois is a fact-pleading jurisdiction. *Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 426-27 (1981). In order to survive a motion to dismiss pursuant to section 2-615, a complaint must be both legally and factually sufficient. *Edelman*, 338 Ill. App. 3d at 167-68. The complaint must set out all ultimate facts that support the plaintiff's cause of action. *People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill. 2d 300, 308 (1981).

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¶ 10 Having conducted a thorough review of plaintiff's complaint, we find that it did not sufficiently plead facts to support plaintiff's claims of fraud. The amended complaint is for all practical purposes incomprehensible, laying out seemingly random factual assertions without any logical argument for why the allegations are relevant to plaintiff's claims. For example, plaintiff states that in March 2009, " *person* arrives unannounced at 6:00 p.m. *** The contact is short and brief, but '*person*' details a near death violent altercation by stabbing upon a mutual family member." (Emphasis in original.) The statement has no connection to the paragraph before or after it and plaintiff offers no explanation as to why it is germane to his lawsuit. As the complaint contains no decipherable allegations of fact that indicate any legal claim against Asset, we find the trial court did not err in dismissing the complaint pursuant to section 2-615. As we find dismissal was proper under section 2-615, we need not consider the trial court's alternative reasoning under section 2-619.

¶ 11 For the foregoing reasons, we find that plaintiff's complaint failed to set forth any relevant facts in support of his claims, and therefore dismissal under section 2-619.1 was proper. Accordingly, the judgment of the circuit court of Cook County is affirmed.

¶ 12 Affirmed.