



Williamson, who was the Randolph County State's Attorney from December 1988 until November 2004, breached a written employment agreement that he and Williamson entered into in 1988, when Williamson hired him as an assistant State's Attorney. The plaintiff alleged that the written employment agreement, in letter form, was not attached to his complaint because he no longer had it in his possession and had no access to the records of the County or the State's Attorney.

¶ 5 The plaintiff alleged in count I that he and Williamson agreed in the written letter that his employment would conform to a December 1988 written personnel manual that applied to Randolph County State's Attorney employees. The plaintiff alleged that he had failed to attach the personnel manual in existence in December 1988 because he no longer had a copy and had no access to the records of the County or the State's Attorney. The plaintiff alleged that he was provided with revised versions of the personnel manual, and he attached the personnel manual in effect on November 30, 2004, when the plaintiff resigned from the State's Attorney's office. The plaintiff requested the court to "enforce the payment of benefits \*\*\* pursuant to the provisions of the personnel policies and procedures for persons working for and employed by the" County.

¶ 6 The plaintiff directed count II of his first-amended complaint against the County. In count II, the plaintiff alleged that when he was hired as an assistant State's Attorney, he reasonably believed that the provisions contained in the County's personnel manual were included in the offer of employment that he accepted. The plaintiff alleged in count II that, pursuant to the personnel manual, he was entitled to creditable service toward his Illinois Municipal Retirement Fund (IMRF) account and the payment of 50 days of accumulated sick leave. The plaintiff alleged that the County's failure to pay these employee benefits breached the personnel manual. The plaintiff alleged that he had been damaged and requested \$15,417.05 in payment for accumulated sick leave, interest at 5% per annum on the

accumulated sick leave, and creditable service with the IMRF for unused and unpaid accumulated sick leave.

¶ 7 In count III, the plaintiff sought *mandamus* relief. The plaintiff alleged that the County refused to provide the benefits conferred to him by the personnel manual, which was adopted by the State's Attorney's office and administered by the County. The plaintiff requested that the County compensate the plaintiff for his accumulated sick leave, credit him with IMRF service for his unused, unpaid sick leave, and compensate him with 5% interest on the accumulated sick leave.

¶ 8 Pursuant to section 2-606 of the Code (735 ILCS 5/2-606 (West 2010)), the plaintiff attached an affidavit, dated March 24, 2010, to the first-amended complaint. In the affidavit, the plaintiff stated that in December 1988, he and Williamson exchanged the written letter that recited the main terms of his employment. The plaintiff stated that he was unable to find such contract and did not have access to County records. The plaintiff stated that in December 1988, he was also given a personnel manual and was told that the manual was part of his employment, in that the State's Attorney's office had adopted and followed it. The plaintiff stated that he also did not have the 1988 personnel manual in his possession and did not know its whereabouts.

¶ 9 The attached, revised personnel manual in existence when the plaintiff departed the State's Attorney's office on November 30, 2004, provided, in part, as follows:

"Illinois Municipal Retirement Fund. All full-time employees and part-time employees who work in excess of 1,000 hours per year are required to participate in the [IMRF]. This plan is coordinated with the Social Security Plan. Each individual employee's contributions are deducted from his/her paycheck. IMRF also offers disability benefits after twelve (12) months of participation.

Vesting period in IMRF is eight (8) years.

Retiring IMRF members may qualify for additional creditable service for unused, unpaid sick leave. Creditable service is earned at the rate of one month for every twenty (20) days of unused, unpaid sick leave or fraction thereof.

\* \* \*

\*\*\* Upon voluntary termination, employees will be paid for any accumulated sick leave, up to a maximum of fifty (50) days. Employees who are involuntarily terminated will receive no compensation for any accumulated sick leave."

¶ 10 The plaintiff also attached to his complaint a November 29, 2004, letter to the County requesting reimbursement for the allowed maximum of 50 unused sick days, for the creditable service towards IMRF, and for three weeks of unused vacation time. In its November 29, 2004, reply, the County stated the following:

"The position of Assistant State's Attorney for Randolph County is appointed and therefore does not accumulate vacation/comp or sick days. The County is not responsible for any payment due to you for such unused time."

¶ 11 On May 12, 2010, the defendants filed a motion to dismiss pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2010)). The defendants alleged that the plaintiff's first-amended complaint failed to state a cause of action and was deficient for failing to recite specific terms of the written contract. On July 21, 2010, the circuit court granted the motion to dismiss. The circuit court concluded that the plaintiff could provide little, if any, information regarding the terms of the alleged contract and that the plaintiff, as a former state employee, was not a county employee entitled to county benefits. The court held that there was no evidence of the County approving additional compensation for the plaintiff and that no set of facts could be proved to entitle the plaintiff to recover.

¶ 12 On August 18, 2010, the plaintiff filed a timely notice of appeal.

¶ 13

## ANALYSIS

¶ 14 The County argues that the circuit court properly dismissed the plaintiff's complaint because he failed to attach a copy of the written contract, because his affidavit regarding such failure was insufficient, and because the language of the revised personnel manual that the plaintiff attached to his complaint defeats his cause of action.

¶ 15 A motion to dismiss pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2010)) attacks the sufficiency of a complaint based on defects apparent on its face. *Behringer v. Page*, 204 Ill. 2d 363, 369 (2003). "When ruling on a section 2-615 motion to dismiss, the court must accept as true all well-pleaded facts in the complaint and reasonable inferences drawn therefrom." *Maag v. Illinois Coalition for Jobs, Growth & Prosperity*, 368 Ill. App. 3d 844, 848 (2006). A section 2-615 motion to dismiss should be granted if, after viewing the allegations in the light most favorable to the plaintiff, the complaint fails to state a cause of action on which relief can be granted. *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 86 (1996). "[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). We review *de novo* the circuit court's decision to dismiss the plaintiff's complaint pursuant to a section 2-615 motion. *Marshall*, 222 Ill. 2d at 429.

¶ 16 " 'An employee handbook or other policy statement creates enforceable contractual rights if the traditional requirements for contract formation are present.' " *Vickers v. Abbott Laboratories*, 308 Ill. App. 3d 393, 407 (1999) (quoting *Duldulao v. Saint Mary of Nazareth Hospital Center*, 115 Ill. 2d 482, 490 (1987)). Three requirements must be met for a personnel handbook or policy statement to form an employment contract.

"First, the language of the policy statement must contain a promise clear enough that an employee would reasonably believe that an offer has been made. Second, the

statement must be disseminated to the employee in such a manner that the employee is aware of its contents and reasonably believes it to be an offer. Third, the employee must accept the offer by commencing or continuing to work after learning of the policy statement." *Duldulao*, 115 Ill. 2d at 490.

When these requirements are met, "then the employee's continued work constitutes consideration for the promises contained in the statement, and under traditional principles a valid contract is formed." *Id.*

¶ 17 Viewing the complaint's allegations in the light most favorable to the plaintiff, the plaintiff alleged in count II that the County agreed in writing to award him employment benefits, as expressed in the written personnel manual, which was incorporated into his offer of employment pursuant to a written agreement with Williamson. The plaintiff alleged that the County breached its agreement to award him creditable service toward his IMRF account and to pay him for 50 days accumulated sick leave. Although not a model pleading, the plaintiff's allegations set forth the existence of an employment contract, embodied in the written letter between Williamson and the plaintiff and in the personnel handbook, and a breach by the County in the wrongful denial of benefits.

¶ 18 Section 2-612(b) of the Code provides in substance as follows:

"No pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim or defense which he or she is called upon to meet." 735 ILCS 5/2-612(b) (West 2010).

We cannot conclude that no set of facts can be proved that would entitle the plaintiff to recovery on count II of his first-amended complaint. *Marshall*, 222 Ill. 2d at 429.

¶ 19 The County argues that the language of the revised personnel manual attached to the plaintiff's complaint defeats the plaintiff's cause of action because it makes clear that it applies only to County employees, that it does not apply to an assistant State's Attorney, that

it is not an employment contract, and that it applies only to retiring, as opposed to resigning, IMRF members.

¶ 20 The plaintiff alleged that the terms of the 1988 personnel manual, combined with the County's and Williamson's actions, created contractual rights for him. See generally *Will County State's Attorney v. Illinois State Labor Relations Board*, 229 Ill. App. 3d 895, 897-99 (1992) (State's Attorney ratified local union and county board's collective bargaining agreement which purported to cover employees of all county offices, including listed clerical employees of the State's Attorney's office). Whether the limiting language contained in the revised personnel manual was also included in the 1988 personnel manual (*Doyle v. Holy Cross Hospital*, 186 Ill. 2d 104, 112-13 (1999) ("after an employer is contractually bound to the provisions of an employee handbook, unilateral modification of its terms by the employer to an employee's disadvantage fails for lack of consideration")) and whether any such language served to invalidate the contract or exclude the plaintiff from its provisions are issues not before us on appeal. See *Bell Fuels, Inc. v. Lockheed Electronics Co.*, 130 Ill. App. 3d 940, 947 (1985) ("[T]he defendant should have first challenged the legal sufficiency of the complaint and when, and only when, a sufficient legal cause of action had been stated should the court have entertained the motion to dismiss on an 'affirmative matter' (disclaimer) which was a defense which negated the cause of action completely."). A motion to dismiss pursuant to section 2-615 of the Code raises the question of whether the complaint states a claim upon which relief can be granted. See *Beahringer*, 204 Ill. 2d at 369. The plaintiff's allegations in count II, when taken as true, state a breach-of-contract claim upon which relief may be granted.

¶ 21 The County also argues that the circuit court properly dismissed the plaintiff's complaint because he failed to attach a copy of the written contracts and his affidavit fails to set forth a sufficient basis to avoid the requirement.

¶ 22 Section 2-606 of the Code states as follows:

"If a claim or defense is founded upon a written instrument, a copy thereof, or of so much of the same as is relevant, must be attached to the pleading as an exhibit or recited therein, unless the pleader attaches to his or her pleading an affidavit stating facts showing that the instrument is not accessible to him or her. In pleading any written instrument a copy thereof may be attached to the pleading as an exhibit. In either case the exhibit constitutes a part of the pleading for all purposes." 735 ILCS 5/2-606 (West 2010).

¶ 23 Here, the plaintiff did not attach the written personnel manual in existence in December 1988, nor did he attach the written letter memorializing his employment contract with Williamson. However, he attached an affidavit stating facts showing that the instruments were not accessible to him (see 735 ILCS 5/2-606 (West 2010)), and he sufficiently apprised the County of what provisions it was being asked to defend. See generally *In re Estate of Weiland*, 338 Ill. App. 3d 585, 604 (2003) (once proponent proves prior existence of original contract, its unavailability, and diligence in attempting to procure the original, "the existence of a contract or other writing may be proven by testimony or other indirect evidence when it is shown that the original writing was lost, destroyed, or otherwise unavailable"). Accordingly, we conclude that the circuit court erred in dismissing count II of the plaintiff's first-amended complaint.

¶ 24 We find, however, that the circuit court properly dismissed counts I and III of the plaintiff's first-amended complaint. In count I, the plaintiff's allegations regarding Williamson's improper denial of benefits related solely to Williamson's authority and duty as a State's Attorney to appoint and supervise employees. An action against a state employee is considered one against the State when (1) there are no allegations that the state agent acted beyond the scope of his authority, (2) the duty alleged to have been breached was not owed

by the employee independently of his state employment, and (3) the complained-of actions involve matters ordinarily within that employee's functions. See *Jenkins v. Lee*, 209 Ill. 2d 320, 330 (2004). In alleging his breach-of-contract action against Williamson, a state official acting in his official capacity, the plaintiff's suit is no different from a suit brought against the state itself. See *Office of the Lake County State's Attorney v. Human Rights Comm'n*, 235 Ill. App. 3d 1036, 1037 (1992) (office of State's Attorney is legal equivalent of state itself for purposes of employment discrimination suit against it).

¶ 25 In 1972, the legislature enacted the State Lawsuit Immunity Act (745 ILCS 5/1 (West 2010)), which states that the State of Illinois shall not be made a party or defendant in any court, except as provided by, *inter alia*, the Court of Claims Act. The Court of Claims Act gives the Court of Claims exclusive jurisdiction over all claims against the State founded upon any contract entered into with the State of Illinois. 705 ILCS 505/8(b) (West 2010). "[T]he prohibition 'against making the State of Illinois a party to a suit cannot be evaded by making an action nominally one against the servants or agents of the State when the real claim is against the State of Illinois itself and when the State of Illinois is the party vitally interested.'" *Healy v. Vaupel*, 133 Ill. 2d 295, 308 (1990) (quoting *Sass v. Kramer*, 72 Ill. 2d 485, 491 (1978)).

¶ 26 Because the plaintiff's breach-of-contract action in count I is directed against Williamson in his professional capacity, which is the State itself, the circuit court lacked subject-matter jurisdiction over the plaintiff's claim, which should have been brought in the Court of Claims instead. See *Welch v. Illinois Supreme Court*, 322 Ill. App. 3d 345, 358-59 (2001) (the plaintiff's complaint, alleging that the supreme court exceeded its authority by breaching the employment contract, is one against the State, barred by the doctrine of sovereign immunity, and must be brought in the Court of Claims). Because the circuit court lacked subject-matter jurisdiction over count I of the plaintiff's first-amended complaint, it

properly dismissed it. See *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 333-34 (2002) (the issue of subject-matter jurisdiction cannot be waived and may be raised at any time).

¶ 27 The circuit court also properly dismissed count III of the plaintiff's first-amended complaint, wherein he requested *mandamus* relief. "A writ of *mandamus* is issued as an exercise of judicial discretion only in those cases where the plaintiff can demonstrate a clear right to this extraordinary relief." *Walter v. Board of Education of Quincy School District No. 172*, 93 Ill. 2d 101, 105 (1982). "Where an administrative officer or board has arbitrarily failed to act, *mandamus* will lie to compel that officer or board to perform a duty which the plaintiff is entitled to have performed." *Id.* "[*M*]andamus will not lie when the only claim asserted is for a breach of contract." *Id.* at 107.

¶ 28 In count III, the plaintiff failed to allege facts that established a clear right to the relief requested or a clear duty of the defendants to act. The plaintiff's claim seeks damages for breach of contract, and therefore, his action in *mandamus* is inappropriate. *Id.* at 106. We therefore affirm the circuit court's dismissal of counts I and III of the plaintiff's first-amended complaint.

¶ 29 CONCLUSION

¶ 30 For the foregoing reasons, we affirm that part of the judgment of the circuit court of Randolph County that dismissed counts I and III of the plaintiff's complaint but reverse that part of the circuit court's judgment dismissing count II of the plaintiff's complaint. We remand for further proceedings consistent with this order.

¶ 31 Affirmed in part and reversed in part; cause remanded.