



1-11-0963, 1-11-0964 (Cons.)

|   |   |                  |
|---|---|------------------|
| STAHN COHEN CROWLEY, LLC, an Illinois Limited       | ) |                  |
| Liability Company, and CLARK HILL PLC, and Illinois | ) |                  |
| Professional Liability Company,                     | ) |                  |
| Defendants-Appellees                                | ) |                  |
|   | ) |                  |
| (JTTR Law Group, LLC, an Illinois Limited Liability | ) |                  |
| Company, John Joyce, an individual, and             | ) |                  |
| Affordable Housing Investment Group, LLC, an        | ) | HONORABLE        |
| Illinois Limited Liability Company,                 | ) | LYNN M. EGAN,    |
| Defendants).  | ) | JUDGE PRESIDING. |

PRESIDING JUSTICE STEELE delivered the judgment of the court.  
Justices Neville and Murphy concurred in the judgment.

**ORDER**

¶ 1 *HELD*: The circuit court dismissed claims of professional malpractice and breach of fiduciary duty brought by two groups of real estate investors as too vague and conclusory to state claims for which relief may be granted. In this consolidated appeal, the circuit court's orders are affirmed.

¶ 2 In these consolidated appeals, plaintiffs Michael Caplice, John Rudolph, James McQuaid, Anthony Dohse, William Rogers, Kevin Rogers, Frank Voltarel, G.P. Hartnett, Doug Labuda, Marty Krasnitz, John Boderman, Jack Shea, Gary Silverman, Rochelle Friedman, Noel Dalzell, and Dave Grove (the Caplice plaintiffs) and plaintiff Affordable Investors, LLC (AI) appeal an order of the circuit court of Cook County dismissing count III of the Caplice plaintiffs' third amended complaint and count III of AI's second amended complaint (both alleging professional malpractice) and count VI of both complaints (alleging breach of fiduciary duty) against defendant Clark Hill PLC (Clark Hill). Plaintiffs also appeal a circuit court order dismissing count I of both complaints (alleging professional malpractice) and count IV of both complaints

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(alleging breach of fiduciary duty) against defendant Stahl Cohen Crowley, LLC (Stahl).

Defendants John Joyce, JTTR Law Group, LLP (JTTR), Affordable Housing Investment Group, LLC (AHIG), and Two South Leavitt, LLC (Leavitt), are not parties to these consolidated appeals. The circuit court ruled plaintiffs' allegations against Stahl and Clark Hill were too vague and conclusory to state a claim for which relief could be granted and established no genuine issue of material fact regarding the claim of breach of fiduciary duty brought against Clark Hill. For the following reasons, we affirm the orders of the circuit court.

¶ 3 BACKGROUND

¶ 4 The Caplice Complaint

¶ 5 The Caplice plaintiffs' third amended complaint, filed on May 7, 2010, alleges the following facts. The Caplice plaintiffs hold non-managing minority interests in Leavitt, which was formed on May 21, 2003 to develop and sell residential and commercial condominium units in the Two South Leavitt building in Chicago. Joyce, an Illinois lawyer, was a managing member of Leavitt and owned a 37.5% interest in the company. Joyce was also legal counsel for Leavitt. Joyce practiced law with the following law firms: Stahl from January 2003 until June 2006; JTTR from June 2006 until July 2008; and Clark Hill from July 2008 to the present. These firms also rendered professional services to Leavitt and maintained attorney-client relationships with Leavitt.

¶ 6 In 2003, Joyce and business partner James Pattison formed Leavitt, in which Pattison also acted as a manager and 37.5% owner. Leavitt issued a private placement memorandum (PPM) to solicit investors, guaranteeing a 12% per annum preferred return and (from projected profits)

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sufficient cash flow equal to the investors' capital contributions with any excess to be distributed to the members (including Joyce and Pattison) according to their interests. In total, 23 investors contributed \$757,000 to Leavitt, with the remainder of the project funded through bank financing. Neither Joyce nor his firms contributed any funds to Leavitt.

¶ 7 In August 2004, Leavitt entered into a general construction contract with Pattison's company, Pattison Associates LLC (PA). Joyce and Stahl served as Leavitt's counsel in the negotiation and execution of the contract. Joyce approved the contract in his capacity as a Leavitt manager. Under the contract, PA would provide construction services and would receive the "construction cost," not to exceed \$5,918,575, through a loan secured by the project and Joyce's personal guarantee. The construction costs included a \$500,000 management fee to be paid to PA in equal monthly installments.

¶ 8 Construction began on the Leavitt project in late 2004, but experienced significant delays. Although the Two South Leavitt building was originally projected to be finished by the end of 2005, it remained uncompleted when this suit was filed. By 2007, the projected cost of the building had risen to \$10 million. Leavitt paid PA \$1,350,000 in fees, but failed to pay various subcontractors, who then filed mechanics liens against the Two South Leavitt building.

¶ 9 The Caplice plaintiffs allege that from 2004 through 2008, Joyce or Pattison commingled Leavitt funds with other ventures they owned or controlled and misused these funds for unrelated purposes. Joyce or Pattison, with Joyce's consent, allegedly freely granted interests in Leavitt. Joyce, as Leavitt's manager and counsel, allegedly placed hundreds of thousands of dollars in

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debt against Leavitt and the Two South Leavitt building to raise funds for unrelated projects benefitting Joyce and Pattison.

¶ 10 In 2005, Joyce allegedly granted an entity called FGLO, Inc. a mortgage on the Two South Leavitt building in connection with a \$500,000 loan. The loan bore a 24% interest rate, with monthly interest payments of approximately \$10,000. Leavitt did not receive the proceeds of the loan, which were allegedly funneled to other projects. Joyce allegedly concealed the loan from the Caplice plaintiffs while causing Leavitt to pay interest on the loan through at least November 2008.

¶ 11 The Caplice plaintiffs further allege improper disbursements were deducted from Leavitt to Quality Homes and 14 South Leavitt, projects separate and distinct from Leavitt. Also, \$277,000 in earnest money held to pay sales broker commissions were allegedly removed from Leavitt's bank account. Moreover, Leavitt made unsecured loans to Joyce and Pattison's friends and relatives, with no benefit accruing to Leavitt.

¶ 12 In late 2006 and early 2007, the investors demanded information about Leavitt's operations. In February 2007, Leavitt provided the investors' accountant with incomplete books and records. These records allegedly contained numerous irregularities and questionable entries, including the commingling of Leavitt funds with non-Leavitt projects and the payment of obligations unrelated to Leavitt.

¶ 13 When questioned by the investors about the irregularities and questionable entries in the record, Joyce blamed Pattison, but refused to produce Leavitt's complete books and records. The Caplice plaintiffs believe Joyce is unable to locate Leavitt's books and records and failed to

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maintain them properly. Pattison denied Leavitt funds were misused, but refused to explain or document the \$850,000 in fees PA received beyond the \$500,000 in management fees specified in the general construction agreement.

¶ 14 Leavitt subsequently filed suit against Pattison and PA; Joyce was one of Leavitt's counsel in this lawsuit. In February 2008, Joyce voluntarily dismissed this lawsuit, stating that Leavitt was able to regain control of the property (ostensibly by having Pattison removed as co-manager and developer, but not a member, of Leavitt) and secure Leavitt's records. Pattison's counterclaim that Joyce committed legal malpractice and breached his fiduciary duties to Pattison and PA was also voluntarily dismissed.

¶ 15 From May 2007 through April 2008, Tim McGrath, an investment advisor and friend of Joyce, was installed as a co-manager of Leavitt. McGrath allegedly uncovered numerous and repeated instances of Joyce's misconduct, despite Joyce's refusal to produce all of Leavitt's records. McGrath was unable to persuade Joyce to take corrective action, including the suggestion that Joyce resign to leverage a change in management in seeking terms from the banks that would soon force Leavitt into bankruptcy. McGrath resigned.

¶ 16 In July 2008, Joyce allegedly permitted an entity owned in whole or part by Pattison to purchase the commercial condominium unit of the Two South Leavitt building for a below-market price. The Caplice plaintiffs believe Joyce cancelled a prior contract with a third-party for this unit to permit Pattison to purchase and occupy the unit on extremely favorable terms.

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¶ 17 Moreover, the Caplice plaintiffs allege that during the entire relevant time period, Joyce and the firms for which he worked collected fees to which they were not entitled, ostensibly for services rendered to Leavitt.

¶ 18 Count I of the Caplice plaintiffs' third amended complaint alleged Joyce and Stahl were professionally negligent. The Caplice plaintiffs alleged that Joyce and Stahl breached the duty of care owed to Leavitt by allowing Leavitt to become encumbered with debt and other obligations in violation of Leavitt's operating agreement for purposes other than the advancement of Leavitt's business. The Caplice plaintiffs cited the FGLO loan as a "prime example of Stahl's professional negligence." They further alleged Joyce and Stahl continued to represent Leavitt when obvious and patent conflicts of interest denied Leavitt the benefit of competent advice.

¶ 19 Count III of the Caplice plaintiffs' third amended complaint alleged Joyce and Clark Hill were professionally negligent. The Caplice plaintiffs alleged that Joyce and Clark Hill breached the duty of care owed to Leavitt by continuing to represent Leavitt in light of conflicts of interest. The Caplice plaintiffs also alleged that Joyce and Clark Hill continued to approve payments from Leavitt's proceeds without proper authorization and disclosure to the investors. They claimed upon information and belief that Joyce and Clark Hill negligently approved interest payments and other disbursements from Leavitt's proceeds to lienholders and others holding personal guarantees from Joyce. The Caplice plaintiffs further alleged that Joyce and Clark Hill failed to provide the investors with timely information, claiming they did not learn Leavitt had been placed in receivership in November 2008 until Joyce filed for bankruptcy in March 2009.

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¶ 20 Count IV of the Caplice plaintiffs' third amended complaint alleged Joyce and Stahl breached their fiduciary duties to Leavitt by demanding and collecting legal fees for work that was not performed, so inadequately performed that the fees were unfair and unreasonable, and held out as work for Leavitt, but was actually non-legal business, including the misuse and theft of Leavitt's assets.

¶ 21 Count VI of the Caplice plaintiffs' third amended complaint alleged Joyce and Clark Hill breached their fiduciary duties to Leavitt in the same terms alleged in count IV.

¶ 22 The AI Complaint

¶ 23 AI's second amended complaint, also filed on May 7, 2010, was brought derivatively on behalf of AHIG pursuant to section 40-1 of the Limited Liability Company Act (805 ILCS 180/40-1 (West 2008)). AI, organized for the purpose of purchasing and developing real estate in the Chicagoland area, holds a 45% interest in AHIG. AHIG was formed on May 19, 2003, for the purpose of purchasing, owning, trading in, holding, developing, leasing, managing, subdividing and otherwise dealing in real estate properties and to qualify said properties as Section 8 housing under the Quality Housing and Work Responsibility Act of 1988 (42 U.S.C. §1437f (2002)).

¶ 24 Until at least March 2009, Joyce was a managing member and owned a 22.5% interest in AHIG. Joyce also served as legal counsel to AHIG. The AI complaint contains substantially identical allegations to the Caplice complaint regarding Joyce's association with Stahl, JTTR and Clark Hill.



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¶ 25 Joyce issued a PPM soliciting investors for AHIG, of which Pattison was a co-manager. In total, 23 investors contributed over \$1 million to AI, which subsequently invested in AHIG. Approximately \$500,000 of the investors' funds were used to purchase Joyce's and Pattison's interests in three existing apartment buildings or those under construction. Approximately \$500,000 of the investors' remaining funds were made available to Joyce to acquire properties for the construction of residential apartments. In addition, Joyce represented that AHIG funds were used to purchase a fire-damaged hotel at 2120-24 West Washington Street in Chicago (the 2120-24 West Washington Building), for conversion to a 26-unit apartment building.

¶ 26 Joyce, on behalf of AHIG and pursuant to AHIG's operating agreement, entered into a general construction contract with PA. Upon information and belief, in January 2004, Joyce signed a construction contract with PA regarding the 2120-24 West Washington Building. Under this agreement, PA was to be paid the construction cost of \$2,448,186 through a loan and provided the total construction cost was not to exceed this figure. Of this amount, PA was to be paid \$298,000 (later increased to \$310,000) as a general contracting fee.

¶ 27 AHIG's PPM anticipated that the rent generated from all of its properties would be distributed quarterly to the members. The PPM projected monthly income from the rental units in the range of \$350-450 per unit. The actual income from the units was significantly less than projected.

¶ 28 In January 2005, McGrath and Jorge Perez, representing AI's investors, met with Joyce and Pattison to discuss the progress of AHIG's investments. Joyce and AI agreed that in light of the reduced rental income, new construction properties would be sold as condominiums. Joyce

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agreed that to the extent the investors were not fully paid by December 31, 2005, AHIG would owe AI and its investors the remaining balance of their capital contributions plus a preferred return as of that date, as well as 12% interest on that amount going forward. In 2005, \$139,500 was returned to AI's investors. In 2006, no monies were returned to the investors. As of December 31, 2006, AI and its investors were owed \$1,303,960.

¶ 29 In January 2007, AI met with Joyce and Pattison and demanded Joyce make AHIG's books and records available for audit and review pursuant to AHIG's operating agreement. Joyce initially refused, but belatedly produced a copy of a Quickbooks file. In preparing AHIG's 2006 income tax returns, a certified public accountant determined AHIG's books and records showed \$575,248.48 in net receivables owed by PA. In response to AI's demands for more information, Joyce represented that Pattison alone had breached his duties to AHIG. In April 2007, Pattison was removed as co-manager of AHIG.

¶ 30 In May 2007, pursuant to Joyce's advice, AHIG filed suit against Pattison and PA. Joyce acted as counsel, along with the firm of Bell, Boyd & Lloyd. Pattison filed a counterclaim, alleging Joyce and his firms served as counsel to Pattison and PA and committed professional malpractice and breach of fiduciary duty by commingling Pattison's funds with those of unrelated clients, including AHIG. In February 2008, Joyce voluntarily dismissed AHIG's suit against Pattison and PA, stating that AHIG was able to regain control of the property (although Pattison already was removed as co-manager) and secure AHIG's records. The record fails to reveal whether Pattison's counterclaim that Joyce committed legal malpractice and breached his fiduciary duties to Pattison and PA was also voluntarily dismissed; AI believes it was dismissed.

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¶ 31 McGrath stepped in as a co-manager in April 2007, but resigned a year later. McGrath attempted to investigate AHIG's financial status and the conduct of Joyce and Pattison. Despite various evasions by Joyce, McGrath's efforts allegedly uncovered instances of Joyce's misconduct. Joyce allegedly improperly commingled AHIG funds and proceeds with those of unrelated projects. Joyce also allegedly allowed AHIG to become encumbered with mortgages and other debt instruments without the knowledge or approval of the investors and in violation of AHIG's operating agreement. The debt included a \$500,000 obligation to FGLO, the proceeds of which Joyce allegedly funneled to non-AHIG projects.

¶ 32 Further, Joyce allegedly continued to act as AHIG's counsel long after obvious and debilitating conflicts of interests required he withdraw from representing AHIG. Moreover, Joyce allegedly concealed his wrongdoing from AI and evaded efforts to uncover the financial status of AHIG.

¶ 33 Moreover, Joyce failed to answer serious title questions on AHIG's properties that surfaced during the lawsuit against Pattison and PA, including properties allegedly converted from AHIG ownership to a sole-member LLC controlled by Joyce. As recently as July 2008, Joyce represented to AI that the properties listed in an exhibit attached to the complaint were owned by AHIG, but represented in his bankruptcy filings that certain properties were owned in whole or part by Joyce individually. For example, in July 2008, Joyce represented that two 3-flats known as the Dante Dorchester property were 100% owned by AHIG, but stated in his bankruptcy filing that Joyce owned a 50% interest in the property. Joyce previously represented that the 2120-24 West Washington Building was 75% owned by AHIG and 25% owned by the

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seller, but stated in his bankruptcy filing he owned 37.5% of the property and denied to creditors that AHIG held any ownership interest in the building. Lastly, regarding a property at 37th and Calumet, Joyce once discussed transferring the property into an LLC for the benefit of AHIG investors to remove it from Pattison's control, but represented in his bankruptcy filing he owned the property in his individual capacity.

¶ 34 AI further alleges that during the entire relevant time period, Joyce and the firms for which he worked collected fees exceeding \$100,000 to which they were not entitled, ostensibly for services rendered to AI.

¶ 35 Count I of the AI complaint alleged Joyce and Stahl were professionally negligent. AI alleged that Joyce and Stahl breached the duty of care owed to AHIG by allowing AHIG to become encumbered with debt and other obligations in violation of AHIG's operating agreement for purposes other than the advancement of AHIG's business. AI cited the FGLO loan as a "prime example of Stahl's professional negligence." AI also alleged Joyce and Stahl failed to provide AHIG and its investors with timely, accurate and complete information. They further alleged Joyce and Stahl continued to represent AHIG when obvious and patent conflicts of interest denied AHIG the benefit of competent advice.

¶ 36 Count III of the AI complaint alleged Joyce and Clark Hill were professionally negligent. AI alleged that Joyce and Clark Hill breached the duty of care owed to AHIG by continuing to represent AHIG in light of conflicts of interest. AI also alleged that Joyce and Clark Hill continued to approve payments from AHIG's proceeds without adequate authorization and disclosure to the investors. They claimed upon information and belief that Joyce and Clark Hill

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negligently approved interest payments and other disbursements from AHIG's proceeds to lienholders and others holding personal guarantees from Joyce. AI further alleged that Joyce and Clark Hill failed to provide the investors with timely information.

¶ 37 Count IV of the AI complaint alleged Joyce and Stahl breached their fiduciary duties to AHIG by demanding and collecting legal fees for work that was: (1) not performed; (2) so inadequately performed that the fees were unfair and unreasonable; and (3) held out as work for AHIG, but was actually non-legal business, including the misuse and theft of AHIG's assets.

¶ 38 Count VI of the AI complaint alleged Joyce and Clark Hill breached their fiduciary duties to AHIG in the same terms as Count IV.

¶ 39 The Dismissals

¶ 40 On June 4, 2010, Clark Hill and Stahl filed motions to dismiss the Caplice plaintiffs' and AI's complaints. Clark Hill filed a combined motion to dismiss counts III and VI of both complaints pursuant to section 2-619.1 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2010)). Clark Hill argued that count III of each complaint failed to state a claim for negligence by failing to plead how any conduct by Clark Hill caused damages. Clark Hill also argued that count VI of each complaint, alleging breach of fiduciary duty, were defeated by the affidavit of Edward J. Hood, Clark Hill's general counsel, stating that Clark Hill never issued bills to the Caplice plaintiffs and AI, never collected money from the plaintiffs, or provided legal services to the plaintiffs. Stahl filed a motion to dismiss counts I and IV of both complaints pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2010)), arguing the allegations

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in these counts were too vague or conclusory to state a claim for negligence or breach of fiduciary duty.

¶ 41 On August 2, 2010, the Caplice plaintiffs and AI filed responses to the motions to dismiss. Stahl filed a reply on August 24, 2010. Clark Hill filed its reply on September 7, 2010.

¶ 42 On February 10, 2011, following oral argument, the circuit court entered a memorandum decision and order dismissing counts III and VI of both complaints against Clark Hill. On February 28, 2010, following oral argument, the circuit court entered a memorandum decision and order dismissing counts I and IV of both complaints against Stahl, except for the allegations in count I addressing the FGLO loan, and finding no just reason to delay enforcement or appeal of the order pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). The Caplice plaintiffs and AI both filed timely Notices of Appeal to this court on March 25, 2011. This court subsequently consolidated the appeals.

¶ 43

## DISCUSSION

¶ 44

### I. Standards of Review

¶ 45 On appeal the Caplice plaintiffs and AI contend the circuit court erred in dismissing counts III and VI of both complaints pursuant to section 2-619.1 of the Code, and counts I and IV of both complaints pursuant to section 2-615 of the Code. Section 2-619.1 of the Code allows a party to combine in one motion a section 2-615 motion to dismiss for substantially insufficient pleadings with a section 2-619 motion for involuntary dismissal based upon defects or defenses. 735 ILCS 5/2-619.1 (West 2010). A motion to dismiss pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2010)) challenges the legal sufficiency of a complaint based on defects

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apparent on its face. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). In reviewing the sufficiency of a complaint, we accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts and we construe the allegations in the complaint in the light most favorable to the plaintiff. *Id.* A cause of action should not be dismissed pursuant to section 2-615 of the Code unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *Canel v. Topinka*, 212 Ill. 2d 311, 318 (2004). "Illinois is a fact-pleading jurisdiction. [Citation.] While the plaintiff is not required to set forth evidence in the complaint [citation], the plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action [citation], not simply conclusions [citation.]" *Marshall*, 222 Ill. 2d at 429-30.

¶ 46 While a motion to dismiss under section 2-615 of the Code tests the legal sufficiency of a plaintiff's claim, a motion to dismiss under section 2-619 of the Code (735 ILCS 5/2-619 (West 2010)) admits the legal sufficiency of a plaintiff's claim but asserts certain defects or defenses outside the pleading that defeat the claim. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006). "The purpose of a section 2-619 motion to dismiss is to dispose of a case on the basis of issues of law or easily proved issues of fact." *Hertel v. Sullivan*, 261 Ill. App. 3d 156, 160 (1994). Although the circuit court dismissed count VI of both complaints under section 2-619 of the Code, this court can affirm a judgment for any reason the record supports, even if the trial court never relied on that reason. *Holtkamp Trucking Co. v. David J. Fletcher, M.D., LLC*, 402 Ill. App. 3d 1109, 1115 (2010). Our standard of review for rulings under either section is *de novo*. *Solaia*, 221 Ill. 2d at 579.

¶ 47

## II. Professional Negligence

¶ 48 A cause of action based on professional negligence requires the following elements: "(1) the existence of a professional relationship, (2) a breach of duty arising from that relationship, (3) causation, and (4) damages." *SK Partners I, LP v. Metro Consultants, Inc.*, 408 Ill. App. 3d 127, 129 (2011) (quoting *MC Baldwin Financial Co. v. DiMaggio, Rosario & Veraja, LLC*, 364 Ill. App. 3d 6, 14 (2006)). The circuit court dismissed the claims of professional malpractice in counts I and III of both complaints on the grounds that the plaintiffs generally failed to allege specific breaches of duty by Stahl and Clark Hill or how the defendants' alleged misconduct caused plaintiffs' damages, deficiencies that were particularly acute in light of the fact that Joyce was affiliated with Stahl and Clark Hill at different times during the time period at issue.

¶ 49

### A. Stahl

¶ 50 On appeal, the Caplice plaintiffs and AI assert Stahl breached duties owed to them by permitting Leavitt and AHIG to become encumbered with debt and other obligations in violation of their operating agreements and for purposes other than the advancement of Leavitt and AHIG's businesses. However, plaintiffs generally fail to specifically identify which debts or other obligations they believe to be improper encumbrances or the relevant provisions of the operating agreements they believe were violated. Plaintiffs cite the FGLO loan as a "prime example" of Stahl's alleged negligence. However, the circuit court did not dismiss the claim of professional negligence based on the FGLO loan, precisely because those allegations contain specific facts upon which relief might be granted.



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¶ 51 Plaintiffs claim Joyce's other projects – and his personal guarantees thereto – created debilitating conflicts of interest. However, as the circuit court noted, plaintiffs' allegations are devoid of facts describing how such conflicts occurred when Joyce was employed by Stahl or how the alleged conflicts caused the Two South Leavitt building to remain unfinished. Plaintiffs also failed to sufficiently allege how the alleged conflicts caused Leavitt and AHIG's ownership and interests in certain properties to be inadequately documented and recorded. Plaintiffs further failed to sufficiently allege how conflicts of interest resulted in Leavitt and AHIG being saddled with arguable claims that Pattinson remains a member of both projects.

¶ 52 B. Clark Hill

¶ 53 In dismissing the claims against Clark Hill, the circuit court noted that virtually all of the allegations forming the basis for the claims of professional negligence and breach of fiduciary duty are limited to the 2003-07 time period, while Joyce did not join Clark Hill until July 2008. On appeal, plaintiffs assert Joyce, while a partner at Clark Hill, continued to approve payments on the FGLO loan. However, the claims against Clark Hill do not allege specific facts showing that mere approval of payments on the FGLO loan from July through November 2008 – as opposed to Joyce's alleged taking the loan and depositing the proceeds in a separate account – constituted a breach of a professional duty.

¶ 54 Plaintiffs also maintain Clark Hill failed to provide them with timely information. The sole specific example plaintiffs identify is the failure to inform the Caplice plaintiffs Leavitt was put into receivership in November 2008 until Joyce filed for bankruptcy in March 2009. Plaintiffs fail to allege how the failure to provide that information resulted in damages to them.

¶ 55 Lastly, plaintiffs similarly claim Joyce's conflicts of interest damaged them. Again, plaintiffs' allegations are devoid of facts describing how such conflicts occurred when Joyce was employed by Clark Hill, how the alleged conflicts caused the Two South Leavitt building to remain unfinished. Plaintiffs also failed to sufficiently allege how the alleged conflicts caused Leavitt and AHIG's ownership and interests in certain properties to be inadequately documented and recorded. Plaintiffs further failed to sufficiently allege how conflicts of interest resulted in Leavitt and AHIG being saddled with arguable claims that Pattinson remains a member of both projects.

¶ 56 In sum, plaintiffs were required to allege facts, not simply conclusions, sufficient to assert a claim within a legally recognized cause of action. *Marshall*, 222 Ill. 2d at 429-30. Plaintiffs' professional negligence claims failed to provide sufficient facts, with the exception of the allegation regarding the FGLO loan during Joyce's tenure with Stahl. Accordingly, the circuit court did not err in dismissing those claims, except for the claim regarding the FGLO loan the circuit court allowed to proceed.

¶ 57 III. Breach of Fiduciary Duty

¶ 58 In order to state a cause of action for breach of fiduciary duty, a plaintiff must allege and ultimately prove: (1) a fiduciary duty on the part of the defendant; (2) a breach of that duty; (3) an injury; and (4) a proximate cause between the breach and the injury. *Alpha School Bus Co., Inc. v. Wagner*, 391 Ill. App. 3d 722, 747 (2009). In this case, counts IV and VI of plaintiffs' complaints alleged Stahl and Clark Hill breached their fiduciary duties to Leavitt and AHIG by demanding and collecting legal fees for work that was: (1) not performed; (2) so inadequately

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performed that the fees were unfair and unreasonable; and (3) held out as work for Leavitt and AHIG, but was actually for non-legal business, including the misuse and theft of Leavitt and AHIG's assets. However, these conclusions were unsupported by specific allegations about the work performed, not performed or misrepresented, or the fees charged by either Stahl or Clark Hill. Thus, the circuit court properly dismissed these claims. *Marshall*, 222 Ill. 2d at 429-30.

¶ 59

#### IV. Knowledge of the Facts

¶ 60 The plaintiffs urge this court to ignore the deficiencies in their pleadings, and argue the evidence to support their allegations are principally within the defendants' knowledge and can be further developed through discovery. See *Bryson v. News America Publications*, 174 Ill. 2d 77, 110 (1996). Where the defendants have most of the relevant information in their possession, they have no need to rely primarily on facts stated in the plaintiffs' complaint to formulate an answer and responsive motions since they are aware of and can easily determine the specific details for themselves. *Id.*

¶ 61 The plaintiffs rely on *John Burns Construction Co. v. City of Chicago*, 234 Ill. App. 3d 1027 (1992); *Christoffel v. Country Mutual Insurance Co.*, 183 Ill. App. 3d 32 (1989); *Ingram v. Little Company of Mary Hospital*, 108 Ill. App. 3d 456 (1982); and *Holton v. Resurrection Hospital*, 88 Ill. App. 3d 655 (1980). In *Burns Construction*, the plaintiff argued on its motion for reconsideration that it needed to conduct discovery in order to make more specific allegations. *Burns Construction*, 234 Ill. App. 3d at 1033. In *Christoffel*, the missing information was a copy of the insurance policy, which policy the defendant insurer obviously had knowledge of. *Christoffel*, 183 Ill. App. 3d at 37. In *Ingram*, the complaint contained highly

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detailed factual allegations of the acts committed by agents and servants of the hospital and sufficient allegations of the hospital's breach of its independent duties to review and supervise. *Ingram*, 108 Ill. App. 3d at 459. In *Holton*, the court found that the "defendant did not have to rely primarily on plaintiff's complaint to formulate an answer and prepare for trial." *Holton*, 88 Ill. App. 3d at 659. The defendant was a hospital that retained copies of treatment records. One of the primary shortcomings of the complaint was that it failed to identify the hospital employees who treated the deceased on the date in question. *Id.* at 657.

¶ 62 In this case, the plaintiffs briefly mentioned the *Bryson* holding when opposing the motions to dismiss, but have not argued they formally sought discovery, which is problematic when attempting to rely on the *Bryson* rule. See *People ex rel. Madigan v. Tang*, 346 Ill. App. 3d 277, 290 (2004). Moreover, this is not a case where the issue concerns a specific document like an insurance policy or hospital records to obtain information for a specific date. Rather, plaintiffs' allegations span several years and a wide array of records. Indeed, plaintiffs' allegations involve records which may be in Joyce's possession, but not in the possession of either Stahl or Clark Hill, which affects the defendants' ability to formulate an answer and responsive motions. Furthermore, plaintiffs' complaints contain allegations suggesting they should have been able to allege more specific facts than those that appear in their pleadings. For example, both complaints allege McGrath uncovered numerous and repeated instances of Joyce's misconduct *despite* Joyce's evasions. Yet, neither complaint alleges specific facts as to any of these instances of misconduct (possibly except for the FGLO loan). Both complaints allege Joyce allowed Leavitt and AHIG to become encumbered with mortgages and other debt

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instruments, but with the exception of the FGLO loan, fail to allege specific facts about these loans and other encumbrances. The Caplice plaintiffs' complaint alleges Leavitt provided the investors' accountant with incomplete books and records, which contained numerous irregularities and questionable entries, including the commingling of Leavitt funds with non-Leavitt projects and the payment of obligations unrelated to Leavitt. However, the Caplice plaintiffs' complaint fails to provide specific facts about the alleged irregularities and questionable entries the investors' accountant supposedly discovered. The only specific facts alleging commingling relate to the FGLO loan. The AI complaint alleged properties were converted from AHIG ownership to a sole-member LLC controlled by Joyce, but does not identify the properties or the LLC.

¶ 63 Plaintiffs have a marginally stronger argument regarding the breach of fiduciary duty claims, as Stahl and Clark Hill may be in possession of their billing records relating to Leavitt and AHIG. On this point, we note Clark Hill's general counsel stated by affidavit that Clark Hill never issued bills to the plaintiffs or collected money from the plaintiffs. However, it is more significant that plaintiffs' breach of fiduciary duty claims are even more conclusory than their negligence claims. Despite the circuit court offering plaintiffs multiple opportunities to clarify their allegations, the dismissed claims fail to specify a single example of improper billing by either Stahl or Clark Hill, thereby making it impossible for either defendant to formulate an answer or other responsive motions. Thus, we conclude the circuit court did not err in dismissing the claims at issue with prejudice.

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¶ 64

#### CONCLUSION

¶ 65 In sum, we find the circuit court did not err in dismissing counts III and VI of both complaints against Clark Hill. The circuit court also did not err in dismissing counts I and IV of both amended complaints against Stahl, except for the allegations in count I addressing the FGLO loan. Accordingly, we affirm the orders of the circuit court of Cook County.

¶ 66 Affirmed.