2019 IL App (1st) 18-0075-U

THIRD DIVISION
May 22, 2019

No. 1-18-0075

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

HIGH CONCEPT HOLDINGS, INC.,	)	
	)	Appeal from the Circuit Court
Plaintiff-Appellant,	)	of Cook County, Illinois,
	)	Law Division.
v.	)	
	)	No. 14 L 2849
CARMEDIX, INC. and ELITE MOTORS, INC.,	)	
	)	The Honorable
Defendants-Appellees.	)	Patrick J. Sherlock,
	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Ellis and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted the defendants' section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2016)) the plaintiff's second amended complaint, where that complaint failed to allege sufficient facts to state claims of breach of contract, unjust enrichment, *quantum meruit*, and civil conspiracy.

¶ 2 This cause of action arises from four finder's fee agreements entered into between the plaintiff, High Concept Holdings, Inc. (HCH) and the defendant, CarMedix, Inc. (CarMedix), under which HCH was to bring CarMedix into contact with insurance companies for the purpose

of securing automobile repair agreements, in exchange for ten percent (10%) commission of the gross amount paid to CarMedix by each of the insurance companies. After CarMedix stopped paying HCH the commission, the plaintiff filed a five-count complaint against it, alleging: (1) breach of contract; (2) fraudulent misrepresentation; (3) declaratory judgment; (4) unjust enrichment and (5) *quantum meruit*. The plaintiff subsequently added Elite Motors, Inc. (Elite), as a defendant to the cause of action, and filed an amended complaint, additionally alleging civil conspiracy against both Elite and CarMedix. In this appeal, the plaintiff seeks reversal of the trial court's order entering judgment in favor of the defendants. On appeal, the plaintiff first contends that the trial court erred when it dismissed its breach of contract claim and entered judgment on the pleadings on its declaratory judgment action because it incorrectly found that under the "perpetual duration" clause of the finder's fee agreements, CarMedix could terminate the agreements at will. The plaintiff further argues that the trial court erred when it found that the plaintiff had failed to allege sufficient facts to state claims of unjust enrichment, *quantum meruit*, and civil conspiracy against both of the defendants. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The record before us reveals the following undisputed facts and procedural history. The plaintiff, HCH, is a Florida corporation doing business in Oakbrook Terrace, Illinois, with business contacts and relationships with various insurance companies. The defendant, CarMedix is an Illinois corporation that operates an automobile repair shop in Mundelein, Illinois. The defendant, Elite, is an Illinois corporation whose principal place of business is located at the same address as CarMedix.

¶ 5 It is undisputed by the parties that in 2008 and 2009, HCH and CarMedix entered into four

separate agreements titled "Finder's Fee Agreement" (hereinafter fee agreements). Under each fee agreement, CarMedix retained HCH to "serve as an intermediary, who shall find, introduce and bring together" CarMedix with certain insurance companies (namely Progressive, Liberty Mutual and Nationwide), to permit CarMedix to enter into auto repair service agreements (repair agreements) with those insurers. Under the fee agreements, in return for its services, HCH was to be paid 10% of the gross amounts CarMedix received from the insurance companies "during the term" of the fee agreements. The fee agreements all provided that the "term" was "for a perpetual duration."

¶ 6 Under the fee agreements CarMedix also agreed "to keep a separate, but complete and fully accurate record covering only those transactions relating" to the fee agreements, and to permit HCH, upon reasonable prior notice, to examine those records.

¶ 7 On March 10, 2014, HCH filed a five-count complaint against CarMedix. According to the complaint, as a result of HCH's performance under the fee agreements, CarMedix negotiated and consummated repair agreements with all three insurance companies (Progressive, Liberty Mutual and Nationwide) thereby generating and continuing to generate, millions of dollars of revenue from those insurers. The complaint further alleged that from the inception of the fee agreements until May, 2012, CarMedix made payments to HCH. At that time, however, CarMedix informed HCH that it was experiencing financial difficulty and that it would need to reduce its commission payments by half (*i.e.*, from 10% to 5% of the gross amounts received by CarMedix from the insurance companies) for a short period of time. CarMedix assured HCH that the unpaid amounts would subsequently be paid and that full payments would resume eventually. According to the complaint, HCH verbally agreed to the receipt of 5% commission in the short-

term.

¶ 8 The complaint further alleged that between May 2012 and November 2013, CarMedix continued to pay half the amount due to HCH under the fee agreements. On December 19, 2013, however, CarMedix advised HCH that it would no longer make any payments. As a result, HCH made a written demand for all amounts due and owing and gave notice of an audit to CarMedix. CarMedix refused the audit, and six days later, sent HCH's attorney a letter confirming that CarMedix was terminating "any and all agreements with" HCH, effective December 2013.

¶ 9 Based on the foregoing, in its complaint HCH, alleged: (1) breach of the fee agreements, on the basis of CarMedix's failure to pay the amounts owed and its refusal of the audit (count I), (2) fraudulent misrepresentation for CarMedix's underreporting of the gross amounts paid by the insurance companies (count II), (3) a request for declaratory judgment that CarMedix remained bound by the fee agreements while it continued to do business with the insurance companies (count III), and both (4) unjust enrichment (count IV) and (5) *quantum meruit* (count V) on the basis of CarMedix's retention of the benefit of the fee agreements without any compensation of HCH for services performed.

¶ 10 On May 16, 2014, CarMedix answered the complaint and filed a counterclaim against HCH seeking a declaratory judgment that the fee agreements were terminable at will, *inter alia*, on account of their perpetual duration. On June 13, 2014, CarMedix moved for partial summary judgment on HCH's declaratory judgment claim (count III) on this same basis.

¶ 11 After HCH filed its answer to the counterclaim and a response to the partial summary judgment motion, on September 11, 2014, the trial court denied CarMedix's motion for partial summary judgment on the declaratory judgment action (count III). In its written order, relying on the decision of the Supreme Court of Maine in *McDonald v. Scitec, Inc*., 79 A.3d 374, 379

(Maine 2013), the trial court distinguished between the disfavor of perpetual contracts in Illinois and the obligation to pay commissions already earned. Accordingly, the trial court held that CarMedix could not avoid paying HCH commission for services already performed, by terminating the fee agreements at will.

¶ 12 On November 14, 2014, HCH moved for partial judgment on the pleadings on its declaratory judgment action (count III). After CarMedix responded to this motion, on February 27, 2015, the trial court granted HCH's partial motion for summary judgment. In doing so, the trial court again relied on the rationale of *McDonald*, and held that "[w]hile it is true that Illinois has long disfavored contracts that are of a perpetual duration and may be terminable at will; there remains a distinction between the agreement itself and the obligation to pay commissions created by the agreement." The trial court found that HCH "fully performed its obligations" under the fee agreements "when it facilitated the insurance contracts for CarMedix," and that as such, it was "entitled to those commissions." The court further distinguished between payment of commission for services already rendered, and obligations that were for prospective performance.

¶ 13 After discovery, on March 8, 2016, HCH filed a motion for leave to add Elite as a defendant to the cause of action, alleging that Elite had the same control and ownership, registered agent, and address as CarMedix, and was therefore involved in CarMedix's failure to perform on the fee agreements. The trial court granted HCH's motion and it was given until March 18, 2016, to file an amended complaint.

¶ 14 On that date, HCH filed its first amended complaint, adding Elite as a defendant to the previously alleged counts and additionally alleging a civil conspiracy claim against both CarMedix and Elite (count VI). In support of this claim, the first amended complaint alleged that

"upon information and belief" Elite had "directly received millions of dollars in revenues for repair services actually rendered by CarMedix." In addition, "upon information and belief" CarMedix frequently and continuously redirected revenues from one or more of the insurance companies to Elite, and back and forth from CarMedix and Elite, to artificially and fraudulently inflate Elite's revenues, and to benefit one or both of the companies and/or their shareholders.

¶ 15 On April 25, 2016, Elite appeared in court and moved for a substitution of judge as a matter of right. This motion was allowed. On June 9, 2016, Elite filed a section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2016)) the first amended complaint in its entirety, arguing, *inter alia*, that it had no contractual relationship with HCH, and that HCH had failed to identify any misrepresentation or to allege sufficient facts to substantiate any of its other claims against Elite. On June 15, 2016, CarMedix filed its own section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2016)), again asserting, *inter alia*, that as contracts of perpetual duration, the fee agreements were terminable at will.

¶ 16 After both motions were fully briefed by all of the parties, on September 26, 2016, the trial court entered a written order dismissing several counts with prejudice, but permitting HCH to file its second amended complaint with respect to the remainder of its claims.

¶ 17 Specifically, upon its own motion, the trial court granted judgment on the pleadings on the declaratory judgment action (count III) against both CarMedix and Elite. In doing so, departing from the initial trial court's rulings, the substituted trial court described the Maine Supreme Court's analysis in *McDonald* as "approaching sophistry." The court held that it is axiomatic that under Illinois law, contracts in perpetuity are terminable at will. Accordingly, the court held that since it was undisputed that CarMedix terminated the fee agreements in December 2013,

CarMedix was not required to continue to pay HCH commission for as long as it continued to do business with the three insurance companies.

¶ 18 Applying this same rationale, the trial court found that to the extent that HCH had any claim for breach of contract (count I) against CarMedix, that claim was limited to commission fees earned prior to the termination of the fee agreements in December 2013. Accordingly, the trial court dismissed the breach of contract claim against CarMedix without prejudice.

¶ 19 With respect to Elite, the trial court dismissed the breach of contract claim (count I) with prejudice, finding that Elite was not a party to the fee agreements, and that there was no language in the fee agreements that could remotely be interpreted to include Elite as a party to those agreements.

¶ 20 Next, the trial court dismissed with prejudice the fraudulent misrepresentation claim (count II) against both CarMedix and Elite. In this respect, the court found that any alleged underreporting of the gross payment amounts was an allegation of breach of contract, and not of misrepresentation.

¶ 21 The trial court next considered HCH's two equitable claims: *quantum meruit* (count IV) and and unjust enrichment (count V). With respect to CarMedix, the trial court first held that to be properly pleaded, both equitable doctrines should have been alleged in the alternative to the breach of contract claim. Nonetheless, the trial court decided to dismiss the counts without prejudice, finding that because CarMedix terminated the fee agreements in December 2013, there was no "conceptual bar" to either cause of action for the period of time, following that termination, when there were no contracts binding the parties.

¶ 22 With respect to Elite, the court dismissed with prejudice the *quantum meruit* claim (count

IV), holding that HCH had never provided any services directly to Elite. The court also dismissed the unjust enrichment count (count V) as to Elite, but without prejudice, holding that HCH had not alleged any facts to support the conclusion that Elite retained money that in all good conscience, should have belonged to HCH.

¶ 23 Finally, the court dismissed count VI (civil conspiracy) without prejudice as to both of the defendants, finding that HCH had failed to allege facts to support a conclusion that there was an agreement between Elite and CarMedix to commit the unlawful conspiracy.

¶ 24 On December 5, 2016, HCH filed a motion to reconsider. This motion was denied on February 28, 2017. On March 29, 2017, HCH filed its second amended complaint, realleging for the purpose of preserving the issues for appeal those claims that the trial court had dismissed or entered judgment upon, including: (1) breach of contract (count I); (2) fraudulent misrepresentation (count II); (3) declaratory judgment (count III); and (4) civil conspiracy (count VI). HCH also amended its unjust enrichment and *quantum meruit* claims (counts IV and V) with respect to CarMedix, as well as added a separate claim for breach of contract against CarMedix through December 2013 (count VII).

¶ 25 CarMedix and Elite both moved to dismiss. On July 17, 2017, the trial court allowed the motions in part, dismissing with prejudice HCH's unjust enrichment and *quantum meruit* claims (counts IV and V). With respect to these counts, the court noted that it had invited HCH to amend its complaint to include allegations limited only to actions taking place after the termination of the fee agreements in December 2013. The court found that the second amended complaint contained no allegations whatsoever of actions or services rendered by HCH after that date from which CarMedix or Elite had benefitted, so as to be able to succeed on either claim.

¶ 26 The trial court also, *sua sponte*, dismissed Elite with prejudice. The trial court denied

CarMedix's motion to dismiss solely as to count VII (breach of contract for underpayment through December 2013), and that claim proceeded forward.

¶ 27 Count VII was subsequently resolved by an agreed judgment order entered on December 5, 2017, by which CarMedix agreed to pay HCH $75,000 exclusively in satisfaction for its breach of the fee agreements through December 2013. HCH now appeals from the dismissal of all of its claims.

¶ 28 II. ANALYSIS

¶ 29 We begin by setting forth the well-established rules regarding motions to dismiss. A motion to dismiss pursuant to section 2-615 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)) attacks the legal sufficiency of a complaint based on defects apparent on its face. *Bogenberger v. Pi Kappa Alpha Corporation, Inc.*, 2018 IL 120951, ¶ 23; *DeHart v. DeHart*, 2013 IL 114137, ¶ 18; *Marshall v. Burger King Corp*., 222 Ill. 2d 422, 429 (2006). Illinois is a fact-pleading jurisdiction, and while a plaintiff is not required to set forth evidence in the complaint, he or she "must allege facts, not mere conclusions, to establish his or her claim as a viable cause of action." *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305 (2008); *Weiss v. Waterhouse Securities, Inc*., 208 Ill. 2d 439, 451 (2004); *Beahringer v. Page*, 204 Ill. 2d 363, 369 (2003); see also *Pooh–Bah Enterprises, Inc., v. County of Cook*, 232 Ill. 2d 463, 473 (2009) (In opposing a motion for dismissal under section 2-615, "a plaintiff may not rely on mere conclusions of law or fact unsupported by specific factual allegations."). When reviewing a section 2-615 motion to dismiss, we must accept as true all well-pleaded facts and reasonable inferences that can be drawn therefrom, and interpret the allegations in the complaint in the light most favorable to the plaintiff. *Bogenberger*, 2018 IL 120951, ¶ 23; *DeHart*, 2013 IL 114137, ¶ 18; *Simpkins v. CSX Transportation, Inc*., 2012 IL 110662, ¶ 13. Where the facts are insufficient

to state a cause of action upon which relief may be granted dismissal pursuant to section 2-615 is appropriate. *Gatreaux v. DKW Enterprises, LLC*, 2011 IL App (1st) 103482, ¶ 10.

¶ 30 Our review of the trial court's section 2-615 dismissal is *de novo*. *Bogenberger*, 2018 IL 120951, ¶ 23; *DeHart*, 2013 IL 114137, ¶ 18. In addition, because we "review the judgment, not the reasoning, of the trial court," we may affirm "on any grounds in the record, regardless of whether the trial court relied on those grounds or whether the trial court's reasoning was correct." *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 24 (citing *Leonardi v. Loyola University of Chicago*, 168 Ill. 2d 83, 97 (1995)).

¶ 31 A. Breach of Contract (count I) and Declaratory Judgment (count II) Actions

¶ 32 On appeal, HCH first contends that the trial court erred when it dismissed its breach of contract claim (count I) and entered judgment on the pleadings on its declaratory judgment action (count III) against CarMedix. HCH contends that the trial court incorrectly held that because the "perpetual duration" clause in all of the fee agreements was contrary to Illinois public policy, CarMedix had the right to terminate the agreements at will, and therefore had no obligation to pay HCH commission after December 2013, even though HCH had already fully performed on those agreements. For the reasons that follow, we disagree.

¶ 33 Both the Illinois Supreme Court and our appellate courts have repeatedly recognized that "[c]ontracts of indefinite duration are terminable at the will of either party." *Jespersen v. Minnesota Mining & Manufacturing Co*., 183 Ill. 2d 290, 291 (1998); see also *Rico Industries, Inc., v. TLC Group Inc.*, 2014 IL App (1st) 131522, ¶ 19 ("we find that perpetual contracts are contrary to public policy"). The rationale has been twofold. *Jespersen*, 183 Ill. 2d at 295; see also *Rico*, 2014 IL App (1st) 131522, ¶ 19. First, contracting parties "should be free to order

their affairs subject to important qualifications for instances of fraud, duress, or undue influence." *Id*. Second, "perpetual contracts are disfavored" because:

> " '[f]orever' is a long time and few commercial concerns remain viable for even a decade. Advances in technology, changes in consumer taste and competition mean that once-profitable businesses perish-regularly. Today's fashion will tomorrow or the next day inevitably fall the way of the buggy whip, the eight-track tape and the leisure suit. Men and women of commerce know this intuitively and achieve the flexibility needed to respond to market demands by entering into agreements terminable at will." *Jespersen*, 183 Ill. 2d at 295.

¶ 34 The ability of parties to terminate contracts of perpetual duration at will was first addressed by our supreme court in *Jespersen*. In that case, a distributor brought an action against a manufacturer for breach of contract. *Id*. at 291. The contract had no duration but did have some permissive grounds to terminate for enumerated instances of material breach. *Id*. at 291-92. The lower courts held that the contract was terminable at will and our supreme court affirmed, holding that the agreement was of an indefinite duration because it lacked a specific terminating event and was therefore terminable at will. *Id*. at 295. In so ruling, our supreme court reasoned that the parties in that case had "expressly drafted a contract that was to last 'indefinitely,' which our courts have always construed to mean terminable at will." *Id*. at 296.

¶ 35 In coming to this decision, our supreme court in *Jespersen* relied on the decision in *R.J.N. Corp. v. Connelly Food Products, Inc.*, 175 Ill. App. 3d 655, 660 (1988). *Id*. at 293. In that case, an ice cream broker and a distributor entered into a written agreement under which the distributor agreed to make ice cream deliveries to the broker's customers in exchange for which the broker would receive a percentage of all net dollar sales. *R.J.N.*, 175 Ill. App. 3d at 657. The

contract provided that the agreement would "remain in effect for as long as [the distributor] serve[d] [the broker's] customers." *Id*. The distributor terminated the agreement, and the broker filed a breach of contract claim against him. *Id*. The appellate court held that, as a matter of law, the distributer had not breached the agreement when he terminated the agreement because the contract was terminable at will. *Id*. at 658-59. As the court explained:

> "The contract would remain in effect *only as long as* [the distributor] served [the broker's] customers, and therefore, *when* [the distributor] would decide to no longer serve [the broker's] customers could not be ascertained, making the duration of the contact indefinite and terminable at will." (Emphasis in original). *Id*. at 660.

The court in *R.J.N*. therefore explicitly held that where it was impossible to determine when the distributor would decide to trigger the purported "terminating event," the contract was of an indefinite duration, and therefore terminable at will. *Id*.

¶ 36 In the present case, there can be no doubt that the fee agreements were contracts of perpetual duration. The language of the agreements could not be clearer. It explicitly provides that the "term" for each agreement "shall be for a perpetual duration." Under the plain language of the "term" provision, CarMedix was expressly obligated to pay HCH commission for a "perpetual duration," *i.e*., for as long as CarMedix continued to service the customers of the insurance companies to which HCH had introduced it. As such, applying the rationale of *Jespersen* and *R.J.N*. to the facts of this case, there can be no doubt that the fee agreements qualify as contracts of perpetual duration, and were therefore terminable at the will of either party. Therefore, contrary to HCH's position, CarMedix had every right to terminate the fee agreements in December 2013, and was not obligated to pay any further commissions to HCH after that date.

¶ 37 In coming to this conclusion, we have considered the decision of the Maine Supreme Court

in *McDonald*, 79 A. 3d 374, cited to by HCH for the proposition that where a party has already performed on the contract, but has not been compensated for that performance, the general rule against contracts of perpetual duration, does not apply, and find it inapposite.

¶ 38 In *McDonald*, the Maine Supreme Court, applying Illinois law, held that a telephone supplier could not unilaterally terminate a sale representative's entitlement to a commission based on performance rendered by the sales representative before the agreement was terminated. *McDonald*, 79 A. 3d 378-79. In that case, the parties entered into a commission agreement where the sales representative would receive a percentage of product sales when the telephone supplier sold products to "contacts" that the sales representative introduced the telephone supplier to and the supplier pre-approved. *Id*. at 376. On appeal, the telephone supplier argued that requiring it to pay ongoing commissions violated the Illinois rule against contracts of indefinite duration. *Id*. at 378. The *McDonald* court disagreed, holding that the telephone supplier had "failed to appreciate the distinction between the agreement itself and the obligation to pay commissions created by the agreement." *Id*. at 378. The court held that the rule against indefinite duration applied only to contracts concerning "prospective performance," but did not apply to "payment" obligations for services already performed, which in that case included the introduction of the telephone supplier to a "contact." *Id*. at 379.

¶ 39 While not binding on this court[1], the Maine supreme court's decision in *McDonald* correctly states Illinois law when it recognizes a distinction between a perpetual contract and the obligation to pay commissions already earned. *Id*. at 379. That distinction must exist, unless otherwise provided by contract, because once Party A, the "finder" (here HCH) has "found" a client that will send business to Party B (here CarMedix) the "finder" has fully performed its end

[1] "Decisions from foreign jurisdictions do not bind this court." *Aguirre v. City of Chicago*, 382 Ill. App. 3d 89, 103 (2008).

of the obligation. And if Party B's obligation is to give a commission to Party A for each subsequent business transaction obtained as a result of the "found" client (*i.e.*, each repair job), it should have to honor that commitment for as long as it continues to receive business form that client.

¶ 40 To hold otherwise would be to say that one party may fully perform on an obligation under the contract, but the other party need not reciprocate with full performance (or, for that matter, *any* performance). In other words, Party A could "find" a client for Party B with the promise of a commission for each job Party B gets from that client, but then Party B could turn around and terminate the contract the next day, shutting Party A out of any commission whatsoever. So Party A has fully performed its end of the contract, but Party B walks away without one scintilla of counter-performance and the law gives Party B a complete pass. The law should not and does not allow that result.

¶ 41 Barring something different in the language of the contract, a commission contract that is deemed "terminable at will" under Illinois law, because it has an infinite duration, should be read to allow commissions *already earned* to continue to be paid. The contract is "terminable" in that one party can cut off the contractual relationship going forward—meaning no more "finding," no more new clients—but *not* cut off an obligation *already* incurred.

¶ 42 Accordingly, while we agree with the reasoning of *McDonald*, we nonetheless find that it is factually distinguishable from the present case. In *McDonald* the commission contract provided that the finder's commissions were unlimited in time and amount. There the contract not only placed no time or monetary cap on commissions but explicitly provided that the right to commissions " 'shall survive any termination or expiration of this Agreement.' " *Id.* at 378.

¶ 43 Here, in contrast, the fee agreements did not state that the right to commissions would

survive the contract's term. Nor did they remain silent on that question. Instead, the fee agreements explicitly put a time restriction on the right to HCH's commissions. CarMedix agreed to give HCH a ten percent commission of the "gross amount paid to [CarMedix] by the Insurance Entity during the Term." The "term," of course, was defined as perpetual in duration, but *Jespersen* steps in to permit the "perpetual" contracts to be terminable at will. Thus, by the terms of the fee agreements, although HCH probably did not realize it, there was in fact, a time restraint placed on its right to commissions—*i.e.*, whenever either party decided to terminate.

¶ 44 Since it is axiomatic that the language of the contract governs over all else (*Intersport Inc. v. National Collegiate Athletic Ass'n*, 381 Ill. App. 3d 312, 318-18 (2008)), and given the difference in the commissions language in the fee agreements here versus the contract in *McDonald*, the *McDonald* decision does not dictate the outcome of this appeal.

¶ 45 For similar reasons, we reject HCH's reliance on the decision in *Yale Security Inc., v. Freedman Sales, Ltd.*, 165 F.3d 34 (1998). Initially, it is worth noting that as an unreported decision of the Seventh Circuit (which relies on case law from the Pennsylvania Supreme Court), *Yale* is not binding on either this court or the federal circuit court. See *State Farm Mut. Auto. Ins. Co. v. Progressive Northern Ins. Co.*, 2015 IL App (1st) 140447, ¶ 101 ("Unreported decisions have no precedential value, and this is even more true for decisions from foreign jurisdictions" (internal quotation marks omitted.)); *County of Du Page v. Lake Street Spa, Inc.*, 395 Ill. App. 3d 110, 122 (2009) ("unreported federal court orders are not any kind of authority before Illinois courts.").

¶ 46 Moreover, *Yale* does not apply to the facts of this case. In *Yale*, the Seventh Circuit explicitly distinguished the commission agreement that arose in that case from the agreement in *Jespersen*. See *Yale*, 165 F.3d at *3 (citing Jespersen, 183 Ill. 2d at 295). The *Yale* court held

that in *Jespersen*, the terminating events specified in the agreement were "too vague" and "far more amorphous than those specified in the contract between" the parties in *Yale*, "to have an objectively ascertainable duration." *Yale*, 165 F.3d at *3. The court held that, as such, the court in *Jespersen* correctly concluded that a contract in perpetuity violated Illinois public policy and was terminable at will. *Id*. On the other hand, the *Yale* court noted that "the terms of the contract's durational paragraph" in that case "len[t] themselves to only one reasonable construction: that far from creating a contract terminable at will, [the parties] agreed they would measure their obligation by reference to specific, external events." *Id*. at *3. These specific events were the earlier of either: (1) "[t]he cessation of the business transacted by [the plaintiff] with [the contact obtained as a result of the defendant's performance on the commission agreement] for any reason whatsoever;" or (2) "[s]ix months after [the plaintiff's] PRODUCTS [were] no longer displayed or shown in [the contact's] Motorbook." *Id*.

¶ 47 In contrast to the facts of *Yale*, in the present case, the fee agreements all uncontrovertibly and unambiguously stated that that their "term" was for a "perpetual duration." The fee agreements contained no other "durational paragraph" by which one could measure CarMedix's "obligation by reference to specific, external events." This is precisely why the instant case differs from *Yale*, and why the contracts at issue here contravene Illinois public policy and are terminable at will. *Id*.

¶ 48 Accordingly, for the reasons articulated above, we find that the trial court properly dismissed HCH's breach of contract claim (count I) and granted judgment on the pleadings on its declaratory judgment action (count III) as to both of the defendants.[2]

[2] In this respect, we note that in the statement of facts of its brief HCH peripherally states that it is appealing from the dismissal of the declaratory judgment action (count III) as to both Elite and HCH, and from the trial court's *sua sponte* dismissal of Elite from the entire case. Nonetheless,

¶ 49 B. Unjust Enrichment Claim (count IV)

¶ 50 On appeal, HCH next argues that the trial court erred when it dismissed its unjust enrichment Claims (count IV) against CarMedix and Elite. HCH contends that it alleged that CarMedix and Elite unjustly retained the benefit of HCH's service in procuring the repair agreements by failing to fully compensate HCH for that service, and making no payments after December 2013, despite the continued receipt of revenue under the procured repair agreements. According to HCH, these allegations were sufficient to state a claim of unjust enrichment against both of the defendants. For the reasons that follow, we disagree.

¶ 51 To state a cause of action based on a theory of unjust enrichment, a plaintiff must allege that: (1) the defendant has unjustly retained a benefit to the plaintiff's detriment; and (2) the defendant's retention of the benefit violates the fundamental principles of justice, equity, and good conscience. *Cuevas v. Berrios*, 2017 IL App (1st) 151318, ¶ 29 (citing *HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145, 160 (1989)). "Unjust enrichment is not an independent cause of action." *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 25 (citing *Martis v. Grinnell Mutual Reinsurance Co*., 388 Ill. App. 3d 1017, 1024 (1989)). Rather, "it is a condition that may be brought about by unlawful or improper conduct as defined by law, such as fraud, duress, or undue influence" (internal quotation marks omitted) (*Alliance Acceptance Co. v. Yale Insurance Agency, Inc*., 271 Ill. App. 3d 483, 492 (1995)), or, alternatively, it may be based on contracts which are implied in law (*Perez v. Citicorp Mortgage, Inc.*, 301 Ill. App. 3d 413,

---

in the argument section of its brief, HCH does not include Elite in its argument regarding perpetual agreements, nor does it make a separate argument as to the dismissal of the breach of contract claim against Elite (count I). Regardless, we hold that our analysis regarding the disfavor of perpetual contracts applies equally to Elite. In addition, we hold that the dismissal of the breach of contract claim (count I) as to Elite was also proper because Elite was not a party to any of the fee agreements, and nothing in the language of those fee agreements, or in HCH's pleadings, even remotely establishes that Elite was a party to or an intended third-party beneficiary of those agreements.

425 (1998)). While a plaintiff is permitted to plead unjust enrichment in the alternative to a breach of contract claim, unjust enrichment "is inapplicable where an express contract, oral or written, governs the parties' relationship." *Gagnon*, 2012 IL App (1st) 120645, ¶ 25. "[A]lthough a plaintiff may plead claims alternatively based on express contract and an unjust enrichment, the unjust enrichment claim cannot include allegations of an express contract." *Id*. The rationale is that contracting parties should be held to their agreement and a party who "made a bad business decision" should not be permitted to ask the court "to restore his [or her] expectations." *Prodromos v. Poulos*, 202 Ill. App. 3d 1024, 1032 (1990).

¶ 52 In the present case, there can be no doubt that the basis of HCH's claim of unjust enrichment is the service provided by HCH to procure the relationship with the three insurance companies to CarMedix, as defined under the fee agreements, and which occurred prior to the termination of those fee agreements in December 2013. Taken in the light most favorable HCH, the second amended complaint contains no allegations of actions or services that HCH provided since that termination date and from which CarMedix or Elite have benefited. Instead, that pleading establishes that the benefits received by CarMedix and Elite all flow from HCH's introduction of the three insurance companies to CarMedix prior to December 2013. Because HCH is unable to allege actions taken after the termination of the express fee agreements, dismissal of the unjust enrichment claims against both of the defendants was proper.

¶ 53 C. *Quantum Meruit* Claim (count V)

¶ 54 For this same reason, we find that dismissal of the *quantum meruit* claims (count V) was also proper. To state a claim for *quantum meruit*, a plaintiff must present facts establishing that: (1) the plaintiff performed a service to benefit the defendant; (2) the plaintiff performed that service nongratuitously; (3) the defendant accepted the service; and (4) no contract existed to prescribe

payment of the service. *Rubin and Norris, LLC v. Panzarella*, 2016 IL App (1st) 141315, ¶ 36 (citing *Owen Wagener & Co. v. U.S. Bank*, 297 Ill. App. 3d 1045, 1053 (1998)). "Where services are rendered under an express contract, there can be no quasi-contractual recovery." *Installco Inc. v. Whiting Corp.*, 336 Ill. App. 3d 776, 781 (2002). When a contract exists between the parties concerning the same subject matter on which the quasi-contractual claim rests, the quasi-contractual claim cannot proceed. *Id*.

¶ 55 In the present case, as already explained above, any allegations regarding the services that HCH performed for CarMedix or by extension Elite stem from the original fee agreements, under which HCH introduced CarMedix to the three insurance companies before December 2013. HCH has not alleged any services that were rendered after December 2013. In fact, in its pleadings, HCH has consistently taken the position that it "fully performed" when it introduced CarMedix to the insurance companies in 2008 and that this gave it the right to indefinite receipt of commission payments. HCH cannot now argue that somehow that alleged "fully performed" service, was not in fact fully performed but rather extended beyond December 2013, so as to recoup its losses under a *quantum meruit* theory.

¶ 56 In addition, with respect to Elite, we find that dismissal was proper because the second amended complaint nowhere alleged that Elite accepted any services from HCH. Nor could it, since Elite was not part of any of the fee agreements. For this same reason, HCH has failed to sufficiently allege that any services were performed nongratuitiously, since there was no expectation either under the fee agreements, or by any other allegation, that Elite would pay commissions to HCH.

¶ 57 D. Civil Conspiracy Claim (count VI)

¶ 58 Lastly, on appeal HCH argues that the trial court erred in dismissing its civil conspiracy

claim (count VI) against both of the defendants because it sufficiently alleged all the elements of that cause of action. For the reasons that follow, we disagree.

¶ 59 "Civil conspiracy is an intentional tort." *Reuter v. MasterCard Intern., Inc.* 397 Ill. App. 3d 915, 927 (2010); see also *McClure v. Owens Rogin Fiberglas Corp.*, 188 Ill. 2d 102, 133-34 (1999). It is defined as " 'a combination of two or more persons for the purpose of accomplishing by concerted action either an unlawful purpose or a lawful purpose by unlawful means.' " *McClure*, 188 Ill. 2d at 133 (quoting *Buckner v. Atlantic Plant Maintenance, Inc.*, 182 Ill. 2d 12, 23 (1998)). In order to state a claim for civil conspiracy, a plaintiff must allege facts establishing both: (1) an agreement to accomplish such a goal; and (2) a tortious act committed in furtherance of that agreement. *McClure*, 188 Ill. 2d at 133. In addition, the plaintiff must allege an injury caused by the defendant. *Reuter*, 397 Ill. App. 3d at 927. Because a conspiracy is by its very nature secretive, it is rarely susceptible to "direct proof." *Id.* at 928. Nonetheless, Illinois is a fact-pleading jurisdiction, and a plaintiff must allege sufficient facts to bring the claim within the cause of action. *Id.* Accordingly, conclusory allegations that the defendants agreed with each other to achieve some illicit purpose are not sufficient. *Id.*

¶ 60 In the present case, HCH failed to set forth any facts showing that CarMedix and Elite entered into an agreement to conspire against HCH, nor any facts surrounding the acts that the two defendants purportedly took in furtherance of that alleged agreement. In fact, Count VI does not even describe the relationship between the two defendants, let alone allege facts to support a conclusion that there was an agreement between the two of them to commit an unlawful conspiracy. HCH pleads no facts to show what specific "steps" either CarMedix or Elite took to commit the fraud. Instead, count VI merely states that CarMedix and Elite "entered into one or more agreement[s] to participate in one or more unlawful acts ***" to redirect revenues from one

or more of the insurance companies to Elite. Such conclusory pleadings, without more, even when taken in the light most favorable to HCH, are not sufficient to state a claim for civil conspiracy. See *Reuter*, 397 Ill. App. 3d at 928; see also *Chandler v. Ill. Cent. R.R. Co*., 207 Ill. 2s 332, 348 (2003); see also *Pooh–Bah Enterprises,* , 232 Ill. 2d at 473 (In opposing a motion for dismissal under section 2-615, "a plaintiff may not rely on mere conclusions of law or fact unsupported by specific factual allegations."). We therefore conclude that the trial court properly dismissed the civil conspiracy action against both of the defendants.

¶ 61 III. CONCLUSION

¶ 62 For all of the aforementioned reasons, we affirm the judgment of the circuit court.

¶ 63 Affirmed.