2014 IL App (1st) 120688-U

FOURTH DIVISION
November 13, 2014

No. 1-12-0688

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

TONY ENG,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Counterdefendant-Appellee,	)	Cook County, Illinois.
	)	
v.	)	No. 2010 CH 01526
	)	
LING LING TIN,	)	Honorable
	)	Kathleen M. Pantle,
Defendant-Counterplaintiff-Appellant.	)	Judge Presiding.

JUSTICE BILL TAYLOR delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

ORDER

HELD: Lender brought breach of contract suit against borrower, alleging that borrower had defaulted on loan and seeking enforcement of contract term providing that, in the event of default, the lender had the option to purchase a business owned by borrower. Trial court entered judgment for lender, and borrower appealed. We affirmed the trial court's denial of borrower's motion to dismiss and its denial of her motion to reconsider, since gaps in the record left us unable to adequately assess her claims. However, we reversed the dismissal of her counterclaim alleging that the loan contract was usurious in violation of the Interest Act (815 ILCS 205/1 *et seq.* (West 2010)).

¶ 1 This is a breach of contract lawsuit arising out of a dispute over two unpaid loans, where the parties' loan agreements contained a collateral note with an option for the lender, plaintiff Tony Eng, to purchase a restaurant owned by defendant Ling Ling Tin. When Tin defaulted on the loans, Eng filed the instant suit seeking specific performance against Tin for the sale of Tin's restaurant. Tin filed a counterclaim alleging that the interest rate on the loan was in excess of that permitted by the Interest Act (815 ILCS 205/1 *et seq.* (West 2010)). The trial court dismissed Tin's counterclaim, and, following a bench trial, the court ruled in favor of Eng. Tin now appeals. For the reasons that follow, we affirm the judgment in favor of Eng but reverse the dismissal of Tin's counterclaim.

¶ 2 I. BACKGROUND

¶ 3 Eng alleges the following facts in his complaint, filed on January 13, 2010. Eng has known Tin for several years and considers her to be a friend. On June 1, 2008, Tin asked Eng for a personal loan in the amount of $30,000. Eng loaned the requested money to Tin on June 12, 2008. The parties executed a promissory note memorializing the loan agreement, which provided that Tin would pay interest at a rate of 5% per annum.

¶ 4 On July 15, 2009, at Tin's repeated request, Eng loaned Tin an additional $40,000. At this point, Tin had not paid back any of the original loan, so her outstanding balance, including interest that had accrued on the prior loan, was $72,100. The parties memorialized this second agreement by signing a "Collateral Note with Option to Purchase Business Assets in the Event of Default by Borrower." This note provided that the entire sum of $72,100 was due on or before December 15, 2009, and that Tin would pay $700 in interest per month. The note further provided that if Tin was unable to repay the loan in its entirety by December 15, 2009, then Eng

would have the option to purchase "Wok N Roll," a Chinese restaurant owned by Tin, for the sum of $180,000.

¶ 5 By December 15, 2009, Tin was in default and had not made any payments toward the principal on the loans. Based upon Tin's assurances that she would repay the money in two weeks, the parties agreed to extend the repayment date until December 31, 2009. However, Tin did not make any payments by that date either. She additionally refused to sell her restaurant to Eng as provided for in their agreement. Accordingly, Eng sought an order for specific performance ordering Tin to sell her restaurant to him pursuant to the terms of their July 15, 2009, agreement.

¶ 6 In his answers to Tin's interrogatories, Eng gave the following account of the events leading up to the loan agreements between the parties. On June 7, 2008, a mutual friend of the parties, Carl Choi, asked whether Eng could lend Tin money for the lease deposit for her new Triple Crown restaurant. Eng spoke to Tin, who told him that she was currently in the process of borrowing money from Cathay Bank, but she was concerned that the loan would not be processed in time for her to pay the lease agreement. She told Eng that she would repay him in a few weeks once the Cathay Bank loan was processed. Eng agreed to loan her money, and on June 12, 2008, the parties entered into a loan agreement for $30,000.

¶ 7 Eng further stated that Tin called him multiple times during the week of June 29, 2009, asking to borrow more money. She told him that her loan from Cathay Bank had not been approved, and she had fallen behind in paying her bills for supplies and the monthly lease for her restaurant. She additionally told Eng that she would sell her Triple Crown restaurant and use the proceeds to repay him. Eng decided that he would loan her more money only on condition that she signed a collateral agreement. According to Eng, it was Tin who suggested that one of her

restaurants be used as collateral for the loan, and it was also Tin who suggested the purchase price of $180,000. Furthermore, Eng stated that Tin offered the interest rate of $700 per month, stating that it would be easy for her to keep track of. Both of them signed the loan agreement, and on July 16, 2009, Eng transferred the loan money to Tin's account.

¶ 8 On August 18, 2010, Tin apparently filed a motion to dismiss Eng's complaint pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2010)). In this motion, Tin argued that the terms of the collateral note were unconscionable and should not be enforced. However, the record does not contain a copy of Tin's motion. The trial court apparently denied Tin's motion, but its order has also been omitted from the record.

¶ 9 On August 19, 2010, Tin filed a motion for leave to file a counterclaim against Eng seeking damages under the Interest Act (815 ILCS 205/1 *et seq.* (West 2010)). The trial court granted Tin's motion. It is unclear from the record whether Tin's counterclaim was ever properly filed with the court. A copy of the counterclaim appears in the record, but it does not bear a file stamp.

¶ 10 In her counterclaim, Tin stated that, under the Interest Act, the maximum allowable interest rate on a loan was 9%. 815 ILCS 205/4 (West 2010). Tin stated that when Eng charged her $700 in interest per month on a loan of $72,100, this amounted to an interest rate of 11.65%, which was over the statutory maximum. Tin further argued that Eng "is obtaining additional interest on his loans because he is allowed to purchase for $180,000.00 Counter-Plaintiff's business whose actual value is believed to be $400,000.00." Tin asserted that the $220,000 difference between the purchase price and the purported value of her restaurant should be considered "interest" for purposes of the Interest Act. Tin therefore sought damages under section 6 of the Interest Act, which provides that if a creditor knowingly contracts for or receives

unlawful interest on a loan, the obligor may recover statutory damages equal to twice the interest paid. 815 ILCS 205/6 (West 2010).

¶ 11 Eng moved to dismiss Tin's counterclaim under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2010)), arguing that Tin had failed to state a cause of action for two reasons. First, Eng argued that forfeiture of collateral in a secured transaction does not become usurious merely because the borrower sets a value on the collateral that is greater than that of the obligation. Alternatively, he argued that, in the event of default, the parties to a loan may agree to terms that would otherwise be usurious but for the default. In support, he cited *Baker v. Loves Park Savings and Loan Association*, 61 Ill. 2d 119, 127 (1975), which provides that "the maker of a note may stipulate to pay a higher interest rate after maturity and the additional amount will not be considered a penalty but will be considered liquidated damages."

¶ 12 The trial court dismissed Tin's counterclaim in an order dated December 20, 2010, holding that under *Baker*, Tin did not have a cause of action under the Interest Act.

¶ 13 The case proceeded to a bench trial. The record does not contain any transcript or bystander's report regarding the trial. On November 21, 2011, the trial court ordered Tin to specifically perform under the collateral note and sell her restaurant to Eng for the stated purchase price. In this order, the trial court found that Eng was credible, whereas Tin was not.

¶ 14 Subsequent to trial, Tin brought a motion to reconsider and a motion for declaratory relief. Neither motion is contained in the record. In those motions, Tin apparently asserted that she was able to repay the loan, and she claimed that the court should deny Eng's action for specific performance and order him to accept payment of the judgment amount from Tin. Additionally, in her motion for declaratory judgment, she claimed for the first time that she had a

right of redemption under the Illinois Uniform Commercial Code (UCC) (810 ILCS 5/9-623 (West 2012)).

¶ 15 On February 14, 2012, the trial court entered a final order denying Tin's motion for reconsideration and Tin's motion for declaratory judgment. The court additionally entered judgment in favor of Eng and against Tin and directed the closing of the business to occur on March 6, 2012. Tin filed a motion for stay of judgment pending appeal. The court set a bond amount at $130,000, and Tin posted $130,000 cash bond. Tin now appeals.

¶ 16 II. ANALYSIS

¶ 17 On appeal, Tin raises three contentions of error. First, she contends that the trial court erred in denying her section 2-619 motion to dismiss, in which she claimed that the contract between the parties was unconscionable because it forced her to sell her restaurant for less than its actual value. Second, she contends that the trial court erred in denying her posttrial motion for declaratory judgment in which she attempted to assert a right of redemption. Third, she contends that the trial court erred in dismissing her counterclaim under the Interest Act.

¶ 18 At the outset, Tin has failed to provide this court with a complete record on appeal. In particular, the record is missing Tin's section 2-619 motion to dismiss and the trial court's order denying that motion, as well as Tin's posttrial motion for declaratory judgment. Additionally, there is no transcript of the trial, nor is there any bystander's report or agreed statement of facts. It is well established that the appellant has a duty to present the court with a proper record on appeal, so that the court has an adequate basis for reviewing the decision below. *Cooper v. United Development Co.*, 122 Ill. App. 3d 850, 860 (1984). If there is a gap in the record that could have a material impact on the case, the reviewing court will presume that the missing evidence supported the judgment of the trial court and resolve any doubts against the appellant.

In re Marriage of Rogers, 213 Ill. 2d 129, 140 n.2 (2004); *Cooper*, 122 Ill. App. 3d at 860; *Tekansky v. Pearson*, 263 Ill. App. 3d 759, 764 (1994). Only if the record contains all the evidence that the reviewing court needs to make a proper decision may the court undertake substantive analysis of the case even where the record is not fully complete. *Gonella Baking Co. v. Clara's Pasta Di Casa, Ltd.*, 337 Ill. App. 3d 385, 388 (2003); *In re Marriage of Ward*, 282 Ill. App. 3d 423, 430 (1996); see *Landau*, 262 Ill. App. 3d at 92 (declining to dismiss an appeal merely on the basis of an inadequate record, but nevertheless finding that the inadequacy made meaningful review of the appellant's arguments impossible and therefore affirming the judgment of the trial court). The relevant issue is whether "this court is in the same position as the trial court" with respect to the legally operative facts of the case. *Gonella Baking*, 337 Ill. App. 3d at 388.

¶ 19 We note that Tin has attached copies of her section 2-619 motion and her posttrial motion for declaratory judgment as appendices to her brief. However, attachments to briefs that are not included in the record are not properly before this court and cannot be used to supplement the record. *McGee v. State Farm Fire and Casualty Co.*, 315 Ill. App. 3d 673. 679 (2000) (citing *Barker v. Eagle Food Centers, Inc.*, 261 Ill. App. 3d 1068, 1069 (1994)). Accordingly, we shall not rely on these appendices in our review.

¶ 20 A. Tin's Section 2-619 Motion to Dismiss

¶ 21 Tin's first contention on appeal is that the trial court erred in denying her section 2-619 motion to dismiss, in which she claimed that the terms of the collateral note were unconscionable and should not be enforced. In particular, Tin argues that the agreement to sell her restaurant for $180,000 is oppressive and one-sided, since the actual value of her restaurant is approximately $400,000.

¶ 22 We would ordinarily review the trial court's denial of a section 2-619 motion *de novo*. *Joseph v. Chicago Transit Authority*, 306 Ill. App. 3d 927, 930 (1999). However, since the record on appeal lacks both Tin's section 2-619 motion to dismiss and the trial court's order denying that motion, this court cannot properly conduct a meaningful review of the trial court's denial of Tin's motion. For this reason alone, we must affirm the trial court's decision in this regard. See *Landau*, 262 Ill. App. 3d at 92 (affirming the judgment of the trial court where inadequacy of the record made meaningful review of the appellant's arguments impossible).

¶ 23 Moreover, in any event, we note that the record is devoid of any evidence regarding the actual value of Tin's restaurant. In fact, the only reference to the value of Tin's restaurant is in Tin's counterclaim, in which she asserts, without any supporting documentation, that the actual value of her restaurant "is believed to be $400,000.00." Where a defendant seeks section 2-619 dismissal on grounds that the claim is barred by "other affirmative matter" (735 ILCS 5/2-619(a)(9) (West 2010)), the motion must be supported by affidavit or other proof, unless the affirmative matter is apparent on the face of the pleading attacked. *Borowiec v. Gateway 2000, Inc.*, 209 Ill. 2d 376, 383 (2004). Accordingly, even if we could reach the merits of this issue, Tin's complete lack of evidence regarding the actual value of her business would seem to be fatal to her unconscionability claim.

¶ 24 B. Tin's Posttrial Motion for Declaratory Judgment

¶ 25 Tin next contends that the trial court erred in denying her posttrial motion for declaratory judgment, in which she sought a declaration that she had a right to redeem the collateral under section 9-623 of the UCC (810 ILCS 5/9-623 (West 2012)). For the reasons that follow, we find that in the absence of a trial transcript, bystander's report, or agreed statement of facts, we are unable to properly review this issue and must therefore affirm.

¶ 26 Section 9-623 of the UCC provides a debtor's right to redeem collateral as follows:

> "(a) Persons that may redeem. A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.
>
> (b) Requirements for redemption. To redeem collateral, a person shall tender:
>
> (1) fulfillment of all obligations secured by the collateral; and
>
> (2) the reasonable expenses and attorney's fees described in Section 9-615(a)(1).
>
> (c) When redemption may occur. A redemption may occur at any time before a secured party:
>
> (1) has collected collateral under Section 9-607;
>
> (2) has disposed of collateral or entered into a contract for its disposition under Section 9-610; or
>
> (3) has accepted collateral in full or partial satisfaction of the obligation it secures under Section 9-622." 810 ILCS 5/9-623 (West 2012).

¶ 27 However, without knowing what transpired at trial, we cannot know whether Tin's redemption rights under this section were compromised in any way. For instance, there may have been evidence indicating that Tin waived her right of redemption. See 810 ILCS 5/9-624(c) (West 2012) (debtor may enter into postdefault agreement to waive right to redeem collateral). Alternatively, there may have been evidence that Eng entered into a contract for the disposition of the subject property within the meaning of section 9-623(c)(2) (810 ILCS 5/9-623 (West 2012)), which would bring an end to the period of redemption. In the absence of a complete record on appeal, it is impossible for us to fully assess the merits of Tin's redemption claim.

Accordingly, we must assume that the evidence supported the trial court decision to deny Tin's motion for declaratory judgment. *Rogers*, 213 Ill. 2d at 140 n.2; *Cooper*, 122 Ill. App. 3d at 860.

¶ 28 C. Tin's Counterclaim under the Interest Act

¶ 29 Tin's final contention is that the trial court erred in dismissing her counterclaim, in which Tin sought statutory damages for usury pursuant to the Interest Act (815 ILCS 205/1 *et seq.* (West 2010)).

¶ 30 Initially, Eng argues that we cannot consider this claim because the copy of Tin's counterclaim in the record is not file-stamped, and, according to him, the counterclaim was never properly filed with the court. However, Eng did not raise any such objection in the proceedings below. Rather, both parties and the court treated Tin's counterclaim as if it had been properly filed, and the trial court dismissed it on its merits. Accordingly, we find that Eng has waived this issue and, as the trial court did, proceed to consider Tin's counterclaim on its merits. See *Belvidere National Bank and Trust Co. v. Leisher*, 83 Ill. App. 3d 179, 182-83 (1980) (party waived objection to use of deposition where party failed to raise any objection at the trial level).

¶ 31 Under section 4 of the Interest Act, the maximum allowable interest rate on a loan is 9% per annum, absent certain exceptions. 815 ILCS 205/4 (West 2010). Section 6 of the Interest Act provides for statutory damages in the event that this interest rate is exceeded:

> "If any person or corporation knowingly contracts for or receives *** unlawful interest *** in connection with any loan of money, the obligor may, recover by means of an action or defense an amount equal to twice the total of all interest, discount and charges determined by the loan contract or paid by the obligor, whichever is greater, plus such reasonable attorney's fees and court costs as may be assessed by a court against the lender." 815 ILCS 205/6 (West 2010).

Whether a loan is usurious under the Interest Act is a question of fact that depends on whether the parties intended to contract for unlawful interest. *Andrews v. Cramer*, 256 Ill. App. 3d 766, 770 (1993) (intent of the parties was a material issue of fact that precluded summary judgment on usury claim); *Saskill v. 4-B Acceptance*, 117 Ill. App. 3d 336, 340 (1983). In determining this question of fact, courts look to the nature and substance of the transaction, rather than its form, so that a lender may not evade the statute by labeling its charges as something other than interest. Saskill, 117 Ill. App. 3d at 340-41. To properly determine the parties' intent, the court may look to extrinsic or parol evidence, even where the contract is not ambiguous. *Andrews*, 256 Ill. App. 3d at 770.

¶ 32 In her counterclaim, Tin contended that her loan contract with Eng was usurious for two reasons. First, on its face, the contract provided that she would pay $700 in interest per month, which amounted to an interest rate of 11.65% – a higher amount than the statutory maximum. Second, the contract provided that, in the event of default, Eng would have the option of purchasing Tin's restaurant for $180,000. Tin argued that any profit that Eng made on this exchange should be considered "interest" for purposes of the Interest Act.

¶ 33 As noted earlier, the trial court granted Eng's section 2-615 motion to dismiss Tin's counterclaim. A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based upon defects that are apparent on its face. *K. Miller Const. Co., Inc. v. McGinnis*, 238 Ill. 2d 284, 291 (2010). Such a motion should not be granted unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief. *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). In ruling upon a section 2-615 motion, the court must accept as true all well-pleaded facts and reasonable inferences that may be drawn from those facts. *Id.* Additionally, the court may only consider facts apparent from the face of the

pleadings, matters of which the court may take judicial notice, and judicial admissions in the record. *Id.* We review the trial court's order granting a section 2-615 motion to dismiss *de novo*. *Wakulich v. Mraz*, 203 Ill.2d 223, 228 (2003).

¶ 34 Although Eng's brief is less than clear on this issue, he appears to argue that the trial court's dismissal of Tin's counterclaim should be affirmed for two reasons. First, he argues that Tin's claim of usury was properly classified as an affirmative defense, not a counterclaim, insofar as she does not allege that she incurred any damages beyond having to fulfill the terms of the contract as written. Thus, according to Eng, Tin's counterclaim was properly dismissed for failure to state a cause of action. Second, Eng argues that Tin's claim is barred under *Cohn v. Receivable Finance Co.*, 123 Ill. App. 2d 224 (1970), in which the court held that a debtor was estopped from raising a defense of usury because he initiated the loan transaction and helped draft the loan agreement.

¶ 35 With regard to Eng's first argument, Eng seeks to rely on section 7 of the Interest Act, which states:

> "The defense of usury shall not be allowed in any suit, unless the person relying upon such defense shall set up the same by plea, or file in the cause a notice in writing, stating that he intends to defend against the contract sued upon or set off, on the ground that the contract is usurious."

Eng contends that, under this section, Tin was required to bring her usury claim as an affirmative defense rather than as a counterclaim. We find no support for such an interpretation in the language of the statute. On its face, the statute sets up requirements for pleading usury as an affirmative defense, but it does not purport to prohibit a defendant from filing a counterclaim for usury. In fact, it does not mention counterclaims at all.

¶ 36 Moreover, Eng provides no case law to support his assertion that usury cannot be pled as a counterclaim but must be pled as an affirmative defense. On the contrary, usury counterclaims have been recognized by Illinois courts on numerous occasions. For instance, in *General Motors Acceptance Corp. v. Kettelson*, 219 Ill. App. 3d 871, 872 (1991), defendant entered into a retail installment sales contract to purchase a car. When defendant stopped making payments, plaintiff brought suit, and defendant filed a counterclaim for usury. *Id.* The *Kettelson* court rejected his claim on the merits, finding that the finance charge at issue was not usurious; however, it did not hold that debtors generally are precluded from bringing counterclaims under the Interest Act. *Id.* at 874-77; see also *Ehlers, for Use and Benefit of Chief Industries, Inc. v. Frey*, 109 Ill. App. 3d 1004 (1982) (resolving usury counterclaim on the merits despite the fact that it was brought as a counterclaim rather than as an affirmative defense). Accordingly, we reject Eng's argument that Tin's counterclaim must be dismissed under section 7 of the Interest Act.

¶ 37 Eng's second argument is that the instant case is governed by *Cohn*, 123 Ill. App. 2d 224, in which the court held that the defendant was estopped from raising a defense of usury. The *Cohn* defendant was a personal friend of the plaintiff and also her attorney. *Id.* at 226. He requested that she lend him money at a 10% interest rate, and she agreed. *Id.* When defendant defaulted on the loan and plaintiff brought suit to enforce it, defendant raised the defense of usury. *Id.* Despite the fact that the loan contract was "clearly usurious," the *Cohn* court found that defendant was stopped from raising usury as a defense. *Id.* at 229. The court explained:

> "[A] borrower who initiates a usurious transaction is estopped from setting up the defense of usury, as he will not be permitted to take advantage of his own wrong. In the instant case, the critical additional factor of defendant's clear fiduciary responsibility to plaintiff

as her attorney presents an even more persuasive reason for the working of such an estoppel." *Id.* at 227.

¶ 38 Eng argues that the *Cohn* decision is controlling here. As discussed earlier, in his answers to Tin's interrogatories, Eng alleged that Tin was the one who originally suggested that one of her restaurants be used as collateral for the loan and suggested that the purchase price be set at $180,000. Eng further alleged that Tin offered to pay an interest rate of $700 per month, stating that it would be easy for her to keep track of. Based upon these allegations, one might argue that Tin initiated the usurious transaction, as did the defendant in *Cohn*.

¶ 39 However, such factual allegations by the movant may not be considered in ruling upon a section 2-615 motion to dismiss. *Pooh-Bah Enterprises*, 232 Ill. 2d at 473 (in ruling upon a section 2-615 motion, the court may only consider facts apparent from the face of the pleadings, matters of which the court may take judicial notice, and judicial admissions in the record). Consequently, we reject Eng's contention that the trial court's decision must be affirmed under *Cohn*.

¶ 40 The trial court did not base its dismissal of Tin's claim on either of the foregoing arguments. Rather, it relied on our supreme court's decision in *Baker*, 61 Ill. 2d at 127, in determining that Tin failed to state a cause of action for usury. We find *Baker* to be inapposite, insofar as it did not deal with an allegedly usurious loan.

¶ 41 In *Baker*, plaintiffs took out a loan from defendants at 6% interest. The contract provided that, in the event of default, plaintiffs would pay an additional 1% interest. *Id.* at 121. Plaintiffs challenged this provision, arguing that it constituted a penalty and was therefore unenforceable. *Id.* at 127. The *Baker* court disagreed. It stated, "It is generally held that the maker of a note may stipulate to pay a higher interest rate after maturity and the additional amount will not be

considered a penalty but will be considered liquidated damages." *Id.* at 127. It additionally found that a 1% increase in interest rate was reasonable as liquidated damages, since actual damages would be difficult to ascertain and prove. *Id.* at 128.

¶ 42 However, the additional 1% interest at issue in *Baker* did not violate the statutory maximum. *Id.* at 127. Indeed, the *Baker* court explicitly noted that plaintiff's challenge to the additional interest did not involve the question of usury. *Id.* The *Baker* court was solely concerned with the issue of whether the additional interest should be characterized as a penalty or as liquidated damages – an issue which Tin did not purport to raise in her counterclaim. Accordingly, the *Baker* decision has no application to the instant case, in which usury is the issue before the court. The trial court's section 2-615 dismissal of Tin's counterclaim must be reversed.

¶ 43 As a concluding matter, we note that, in his arguments before the trial court, Eng pointed out that Tin cited no authority for the proposition that a forfeiture of collateral in a secured transaction becomes usurious when the borrower sets a value on the collateral that is greater than that of the obligation. Tin still has not cited any such authority in her briefs before this court. However, as discussed earlier, the question of whether the parties intended to contract for unlawful interest is a question of fact that may be dependent on extrinsic submissions. *Andrews*, 256 Ill. App. 3d at 770; *Saskill*, 117 Ill. App. 3d at 340. Consequently, we leave this matter to the trial court.

¶ 44 III. CONCLUSION

¶ 45 For the foregoing reasons, we affirm the trial court's denial of Tin's section 2-619 motion to dismiss the complaint and the denial of Tin's posttrial motion for declaratory judgment. We

reverse the trial court's dismissal of Tin's counterclaim under the Interest Act and remand for further proceedings.

¶ 46 Affirmed in part, reversed in part, and remanded.