2014 IL App (1st) 120825-U
No. 1-12-0825

THIRD DIVISION
NOVEMBER 19, 2014

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* ANITA ALVAREZ, State's Attorney of Cook County, Illinois,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	No. 09CH7648
v.	)	
ROAD AMERICA AUTOMOTIVE, INC., TAREQ AL-HINDI, AZZAM AL-HINDI, ZIYAD AL-HINDI, SALAH AL-HINDI, & CARRIE BARGER,	)	The Honorable Kathleen M. Pantle, Judge Presiding.
Defendants-Appellants.	)	

PRESIDING JUSTICE Pucinski delivered the judgment of the court.
Justices Lavin and Mason concurred in the judgment.

ORDER

¶ 1 *Held*: judgment of the circuit court in a consumer fraud and deceptive trade practice action affirmed where the court did not err in: denying the defendants' motion to dismiss the State's amended complaint; entering a judgment of default against defendants in response to repeated discovery violations; denying the defendants' motion to strike the State's interrogatory responses; or allowing the State to prove-up its request for injunctive relief and restitution through affidavits rather than through live witness testimony.

¶ 2 Defendants Road America Automotive, Inc., Tareq Al-Hindi, Azzam Al-Hindi, Ziyad Al-Hindi, Salah Al-Hindi, and Carrie Barger (collectively "defendants") appeal various orders entered by the circuit court in the consumer fraud and deceptive trade practice action filed against them by the State of Illinois. On appeal, defendants argue that the circuit court erred in: denying their motion to dismiss and strike the State's amended complaint; entering a judgment of default as a sanction for discovery violations; denying their motion to strike the State's interrogatory responses; and allowing the State to prove-up its request for injunctive relief and restitution through affidavits. For the reasons set forth herein, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 On February 23, 2009, the State initiated legal action against several towing companies and individuals, advancing claims of consumer fraud and deceptive trade practices. On May 7, 2009, the State filed the 11-count amended complaint at issue in the instant appeal. Three towing companies were named as defendants in the State's complaint, including Road America Automotive, Inc. ("Road America"), City Wide Auto Rovery, Inc. ("City Wide"), and Pro Auto Recovery, Inc., ("Pro Auto"). The State also brought suit against six individuals, including Carrie Barger ("Barger"), Adel Suhail ("Adel"), and Azzam Al-Hindi ("Azzam"), and his three sons: Tareq Al-Hindi ("Tareq"), Ziyad Al-Hindi ("Ziyad"), and Salah Al-Hindi ("Salah"), all of whom were alleged to be agents of the aforementioned companies.[1] In its amended complaint, the State alleged that defendants were engaged in business practices that were conducted in

[1] The complaint identifies Tareq as the President of Road America as well as an agent of Road America, City Wide and Pro Auto. Azzam is identified as the former president of Road America and a current agent and trustee of Road America. Adel is cited as an agent of City Wide Auto, Road America and Pro Auto. Ziyad is alleged to be an agent of Road America and Pro Auto and Salah is identified as an agent of Pro Auto. Barger is identified as the receptionist and agent of both Road America and City Wide. City Wide, Pro Auto and Adel are not parties to this appeal.

violation of the Illinois Consumer Fraud Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq*. (West 2010)) and the Uniform Deceptive Trade Practices Act (Deceptive Practices Act) (815 ILCS 510/1 *et seq*. (West 2010)). The basis for the State's complaint was its allegation that defendants had engaged in a common plan and scheme to defraud Cook County consumers by using deception to obtain the consent of vehicle owners to tow their vehicles to defendants' tow yards and then charging those owners arbitrary and fraudulent fees in order to release their vehicles. In pertinent part, the State alleged:

> "As part of their regular business practices, the Defendants' tow truck operators intercept police radio band widths and learn about vehicle collisions immediately after they occur. Defendants' tow truck operators 'chase' these accidents and arrive at the scene on the heels of, and sometimes before, police. This practice often creates confusion and the false impression to members of the public that the police had summoned Defendants to the scene. * * *
>
> As part of their regular business practices, the Defendants' tow truck operators are prohibited from disclosing the Defendants' true charges for towing and related services to consumers. * * *
>
> As part of their plan or scheme to defraud consumers, the Defendants tow consumers' wrecked vehicles directly to their storage lots so they can assert a possessory lien over the vehicle. At times, the Defendants obtain authorization to tow consumers' wrecked vehicles to their lots by falsely representing that they maintain an auto repair shop on their premises. At other times, the Defendants obtain authorization to tow but disregard consumers' instructions and tow their vehicles to Defendants' storage lots instead of to their homes or their preferred auto repair shops, as requested. * * *

Once consumers' vehicles are stored on Defendants' properties, the Defendants' routinely demand anywhere from $1,200.00 to $6,000.00 in towing and related fees for the release of consumers' towed vehicles. * * *

Because the Defendants retain possession of consumers' vehicles until they receive payment, consumers are left with no alternative other than to pay Defendants' excessive fees for the release of their vehicles. * * *

Often times, the Defendants' towing and related fees are so excessive that consumers cannot afford to pay for the immediate release of their vehicles, and must obtain a loan or wait until their next paycheck to obtain their vehicles from the Defendants. * * *

In general, consumers' insurance companies find the Defendants' charges so unreasonable that they object to paying Defendants' quoted fees. While consumers and/or insurance agents seek additional time to come up with the demand payment, or investigate the Defendants' excessive charges, the Defendants' storage fees continue to accrue. * * *

In some cases, insurance companies pay the Defendants' demanded fees so that the vehicle can be released. In other cases, insurance companies only pay a portion of the fees demanded, leaving the consumer to pay the remainder out of their own pocket. * * *

In cases where insurance companies pay the Defendants' demanded fees, they later seek to recover their losses by setting-off consumers' insurance pay out amounts, or by increasing consumers' insurance premiums. In both cases, consumers incur increased out-of-pocket costs and substantial money losses. * * *

Consumers would not have consented to the tows had they known the actual towing charges and not been deceived by Defendants' misrepresentations * * * .

> In addition to the unfair and deceptive towing practices described above, the Defendants fraudulently charge and collect fees for services they do not provide. For example, the Defendants often charge a $1445.00 winch fee and a $595.00 clean-up fee for the release of a vehicle that was towed without the use of a winch, and for which no clean up services were provided at the accident scene. * * *
>
> Additionally, the Defendants often charge and collect duplicate fees for providing the same towing service. For example, Defendants often assess separate, large fees for 'towing,' 'labor,' and 'tow truck usage,' and require consumers to pay these duplicative fees to get their vehicles back."

¶ 5 The State's amended complaint identified nine consumer victims who were fraudulently induced to consent to the tow of their vehicles by Road America, City Wide or Pro Auto based upon the misrepresentations made by defendants. In addition, the amended complaint set forth facts pertaining to two automobile accidents that were staged by Cook County State's Attorney Investigators on April 10, 2008, and June 6, 2008, respectively, during an investigation into defendants' fraudulent and deceptive business practices. Because defendants' unlawful and deceptive business practices were alleged to be ongoing, the State reserved the right to offer proof of additional instances in which other consumers sustained injuries as a result of those practices.[2] The State's amended complaint was supported by accompanying documentation.

¶ 6 Defendants sought to dismiss and strike the State's amended complaint, arguing that it did not comply with relevant pleading requirements set forth in the Illinois Code of Civil Procedure (735 ILCS 5/1-101 *et seq*. (West 2008)). The circuit court rejected defendants' arguments and ordered defendants to answer the State's amended pleading. On October 1, 2009, defendants

[2] After filing the amended complaint, the State received complaints from 57 additional Illinois consumers about defendants' deceptive business practices, bringing the total of alleged victimized consumers to 66.

filed a joint answer, in which the individuals admitted to agency relationships with Road America, but either denied the substantive allegations, or alleged that they lacked sufficient information with which to answer the allegations contained in the State's amended complaint.

¶ 7 The State, in turn, sought to strike defendants' joint answer, arguing that the factual allegations contained in its amended complaint "are directed at specific, individually named Defendants, and are not directed to the collective whole" and argued that the defendants' joint answer was insufficient as a matter of law "insofar as the court cannot determine which facts are being admitted, denied, or otherwise responded to by each named Defendant." The circuit court agreed, and subsequently struck defendants' joint answer and ordered defendants to file individual answers to the State's amended complaint. Defendants filed individual answers and amended answers at various intervals, which were all stricken by the circuit court. Defendants' second amended answers were filed on June 28, 2010. In their second amended answers, each of the defendants, except for Tareq, denied all factual allegations relating to the nine specific consumer transactions set forth in the State's amended complaint. Tareq, in turn, only admitted to "hook[ing] up," one of the consumer's vehicles to a tow truck. All other substantive allegations were largely denied.

¶ 8 On June 25, 2009, while the parties were disputing the propriety of each other's pleadings, the State served individual interrogatory and production requests upon defendants. In the State's discovery request to Road America, it sought business records, including: tow slips and invoices pertaining to the 66 individual victimized consumers that the State had thus far identified; payroll and employee information; identification of bank and currency accounts utilized by the company; state and federal income tax statements; corporate solicitation policies and business rates; identification of any tow trucks and real estate owned by the company; and

information pertaining to Road America's affiliations with Pro Auto, City Wide and other towing companies. The individual interrogatory and production requests that the State served upon Tareq, Azzam, Salah, Ziyad and Barger sought basic information and documentation pertaining to their employment histories, including: their business affiliations; their employment positions and the duties associated with those positions; documentation of earnings; tax forms; and the identification of any property, bank or currency exchange accounts held in their names.

¶ 9 As of August 6, 2009, the State had not received responses to its discovery requests from any of the defendants and sent a letter to defendants' counsel in accordance with Supreme Court Rule 201(k) (Ill. S. Ct. R. 201(k) (eff. July 1, 2002)). The State accommodated defense counsel's request for additional time and the parties agreed on August 28, 2009, as the new response date. Discovery compliance was not forthcoming, however, and the State sent a second Rule 201(k) letter to defense counsel on September 17, 2009. The parties agreed to a new response date of October 1, 2009. On that date, the parties appeared before the circuit court for a status hearing, and at that time, the court was apprised that none of the defendants had filed any responses to the State's interrogatory and production requests. The circuit court subsequently ordered defendants to respond to the State's discovery requests by October 29, 2009. This date also passed without any discovery responses provided by defendants and the State sent defense counsel a third Rule 201(k) letter, advising counsel that an "appropriate motion w[ould] be noticed," due to his clients' repeated failures to comply with its discovery requests.

¶ 10 On November 12, 2009, shortly after the third Rule 201(k) letter, the State filed its first motion to compel discovery pursuant to Illinois Supreme Court Rule 219 (Ill. S. Ct. R. 219 (eff. July 1, 2002)). In the motion, the State recounted its difficulties in obtaining discovery responses from defendants, advised the court that "none of the Defendants at issue ha[d] complied with

th[e] court's order of October 1, 2009," and that defense counsel had "not contacted the [State] to explain the Defendants' inability to comply with th[e] court's order, or to request additional time to respond." The State alleged that defendants' failure to respond was both "willful[] and unreasonabl[e]" as well as prejudicial to its case, and requested the court to sanction defendants in accordance with Rule 219 by striking defendants' pleadings or by "grant[ing] such other relief the Court deems necessary and just."

¶ 11 The following day, defendants Azzam, Tareq, and Ziyad filed their individual interrogatory responses, but did not respond to the State's production requests. In their responses, each defendant named the others as potential trial witnesses, but did not detail the subject matter of the expected testimony. In addition, Azzam, Tareq and Ziyad objected to providing the financial information that the State requested, citing a lack of relevance to the lawsuit. Moreover, in response to questions concerning Road America's ownership of any tow trucks and the custodian of Road America's business records, defendants Azzam and Tareq referred the State to "attached documents;" however, no documents were attached. Both Azzam and Tareq also asserted that Road America was no longer in business, but did not provide any details or documentation pertaining to Road America's business presence, or lack thereof. The remaining defendants, Road America, Salah, and Barger did not file interrogatory responses at that time.

¶ 12 At a subsequent November 24, 2009, court date, the circuit court continued the State's motion to compel and ordered Road America, Salah and Barger to file their interrogatory responses by December 8, 2009. The court further ordered all of the defendants to file their individual production responses by the same date. Defendants filed no responses until December 20, 2009. On that date, during a status hearing, each of the defendants responded to the States'

production requests. Azzam, Ziyad, Salah and Barger tendered no documents when they filed their production request responses. They did, however, attach affidavits of completeness acknowledging their affiliations with Road America. Tareq and Road America's production requests, however, were accompanied by a small number of documents. Specifically, Road America tendered documents totaling 99 pages, which included its Articles of Incorporation, corporate meeting minutes, and invoices relating to only 3 of the 66 consumers that the State had identified as victims. Tareq, in turn, produced documents totaling 32 pages, all of which were duplicative of the documents that Road America had produced. Tareq and Road America both answered "none" in response to the State's request for employment, financial and tax records.

¶ 13 During a February 8, 2010, court date, Road America, Salah and Barger each filed their interrogatory responses. In its interrogatory response, Road America objected to providing financial information, including bank account and currency exchange information. Road America answered other requests by citing to "attached documents" that did not exist. Salah and Barger similarly objected to disclosing employment and financial records on the grounds of relevance. No documentary evidence was attached to either of their interrogatory responses.

¶ 14 After reviewing the documents and responses that defendants had thus far provided, the State advised the circuit court during a March 10, 2010, status hearing that the tendered discovery was deficient, and the court ordered the parties to conduct a 201(k) conference to resolve their discovery disputes.

¶ 15 In accordance with the circuit court's order, the parties conducted a 201(k) conference on two dates in April: April 23, 2010 and April 28, 2010. In response to the conference, defense counsel issued a letter to the State on May 4, 2010, advising the State that additional tow slips and invoices were available for review. Defense counsel further advised the State that Road

America's corporate records were in the possession of its corporate accountant, Benjamin Galal, and that Road America did not have access to those records. The following week, the State reviewed 440 additional pages of discovery tendered by Road America. The new discovery consisted of tow slips and invoices; however, none of the invoices provided by defendants pertaining to the two accidents staged by the State during its investigation into defendants' business practices or the 66 victimized consumers identified by the State. As a result of these and other discovery deficiencies, the State sent three additional 201(k) letters to defense counsel. In a letter dated May 18, 2010, the State detailed specific existing discovery deficiencies and requested immediate compliance.

¶ 16 Thereafter, on June 15, 2010, the State filed its second Rule 219 motion to compel discovery. In its motion, the State again advised the court that it defendants had provided "either no answers, or substantially incomplete answers to the majority of [its] discovery requests." The State detailed the deficiencies that existed with respect to the defendants and argued that defendants "willfully and unreasonably failed to respond to [its] discovery requests" and that "[d]efendants' piece-meal responses to discovery and a failure to squarely answer the majority of the People's requests illustrate the [d]efendants' efforts to delay and evade discovery."

¶ 17 On September 10, 2010, after hearing argument on the State's motion to compel, the circuit court issued a written order granting the State's request for sanctions, and barred defendants from presenting testimony or affidavits relating to matters to which they failed to respond. In addition, the court ordered defendants to immediately respond to the State's interrogatory and production requests to which defendants had objected to answering. In issuing the sanctions, the circuit court specifically found:

"The answers to interrogatories of the Defendants are not complete. For example, addresses, phone numbers, and other information about witnesses are not provided by Defendants. Though Defendants identify witnesses, they do not answer that part of the interrogatory which calls for the substance of their testimony. * * *

Defendants' contention that they do not control the material is also meritless. The materials sought by the [State] are materials which are, or should be, in the Defendants' possession or control, e.g. business records Road America used in the regular course of business, ownership of shares in Road America, and who owned and managed the company when it ceased doing business. Defendants' objection that they cannot produce certain materials rings hollow. * * *

It is apparent that the Defendants are purposefully evading their discovery responsibilities. They refuse to answer relevant questions or to produce relevant documents despite court Orders to do so. The court has granted numerous extensions and the [State] ha[s] engaged in 201(k) conferences in an attempt to gain compliance from Defendants, but these efforts are fruitless. Sanctions are therefore appropriate."

¶ 18 Defendants, however, failed to supplement their discovery responses by the court-ordered September 28, 2010, status date. At that time, the circuit court again ordered defendants to supplement their discovery responses and comply with their discovery obligations by October 29, 2010. In addition, the court also warned defendants that they would be subject to further Rule 219 sanctions if their discovery obligations remained unfulfilled. Following the circuit court's warning, Road America and Tareq supplemented their discovery responses by providing 12-pages of Road America's bank statements, reflecting cash deposits made during March 2009 to May 2009. No additional responses or documents were produced by the other defendants.

During a November 16, 2010, status hearing, defense counsel informed the circuit court that his clients were unable to produce any of the other records sought by the State because the records were in the possession of Road America's accountant, who refused to turn over the documents due to his clients' failure to pay their bills. In response, the circuit court suggested defendants subpoena the accountant to obtain the records. Moreover, the court ordered defendants to satisfy the State's outstanding discovery requests by December 14, 2010, and cautioned defendants that if they remained non-compliant, "this court will strike the Defendants' pleadings and enter default judgments as to each non-compliant Defendant." The only additional discovery provided by defendants by that date was a list of 6 tow trucks that had once been owned by defendants but that had since been sold or traded and were no longer in their possession or control.

¶ 19 Consequently, during a December 17, 2010, court date, the circuit court entered a default judgment against defendants. In open court, the court explained its ruling as follows:

> "This is a corporation that we're dealing with. Basic corporate documents that should have been produced, have not been produced. A lot of information within the defendants control. Maybe not in their possession, but in their control, is missing. We're missing identifications—I'm sorry, we're missing addresses of tow truck drivers and witnesses.
>
> * * *
>
> It's not burden shifting for a defendant to go to his or her own bank or the corporation's bank and get the statements, it's not the [State]'s obligation to subpoena the bank records of the defendants, the defendants have access to their own records, they have control. It's not just possession, it's control over the information.
>
> And the defendants have refused to comply with discovery. They are doing this trickle effect, and once again they did it today. My last order was real clear: Defendants

> shall comply with discovery requests by producing outstanding—by answering outstanding discovery within 28 days, or the Court will strike the defendants pleadings and enter default judgments as to each non-compliant defendant.
>
> And what happens? Oh, once again we do the trickle effect. We'll send the [State] five meaningless documents * * *. Nothing but games playing. And that's been the whole history of discovery, that's been the whole history of the case. The [State is] seeking not just money damages, but [it is] seeking injunctions, and that's the reason why the defendants' are playing these games, to drag out this litigation, to stop the [State] from seeking what it is they need to see in order to prove their case. And therefore, I'm going to enter a default order, and then we'll continue the case for prove-up."

¶ 20 A written order was entered following the circuit court's oral ruling. Following the court's default order, the State moved for the matter to be set for a hearing to prove-up its request for restitution, injunctive relief, and civil penalties. The State requested that the hearing proceed by way of affidavit rather than live witness testimony. Defendants objected to the State's request to have the prove-up hearing without witness testimony. In doing so, defendants argued that the penalties sought by the People under the Consumer Fraud Act were "criminal penalties or quasi-criminal penalties," and thus prove-up via affidavit would violate their rights under the sixth amendment of the United States Constitution. The circuit court rejected defendants' assertion that the penalties being sought by the State were criminal or quasi criminal. In a detailed written order, the court reasoned:

> "The instant case is not one which arises under the Criminal Code; instead, the People have alleged violations under Section 505/1 *et seq*. of the Consumer Fraud Act ("the Act"). Section 505/7 provides that the Attorney General or State's attorney may request

that the Court impose a civil penalty in a sum not to exceed $50,000 against any person found by the Court to have engaged in any act declared unlawful under the Act. 815 ILCS 505/7(b). The Act further provides that an action may be brought in the name of the People of the State against a person thought to be in violation of this Act to restrain the offender by preliminary or permanent injunction. 815 ILCS 505/7. The Court may also, in its discretion, exercise all powers necessary in enforcing the Act. [Citation.] This includes but is not limited to: injunction, revocation, forfeiture, suspension of license or other evidence of authority to conduct business in this State, and appointment of a receiver. [Citation.] * * * In this matter, the [State] seek[s] injunctive relief, including a five-year ban from providing emergency safety towing services, and an injunction that prohibits Defendants from engaging in specific unfair and deceptive practices when providing emergency safety tows. The [State] do[es] not seek to place Defendants' business and related assets into a receivership. * * * [T]he Act and its remedial provisions are not penal in nature."

¶ 21 Accordingly, the circuit court ordered that the matter proceed by way of prove-up via affidavits. On March 7, 2012, after receiving documents from the parties and presiding over a prove-up hearing, the court entered a written final default order against defendants. In its order, the court made the following findings:

"The Defendants, acting individually and in concert with one another, knowingly and intentionally engaged in a common plan or scheme to defraud consumers by making material misrepresentations and omissions to obtain consumers' consent to tow; charging fraudulent, duplicative, and inflated fees for the release of consumers' vehicles; and using

deceptive acts or practices to circumvent and evade the pre-tow disclosure requirements under Illinois law; * * *

The affidavits submitted in evidence establish the Defendants' unlawful and deceptive conduct has been on-going in nature from January 2007 through October 2010; * * *

The Defendants have a pattern or practice of incorporating multiple towing businesses, both directly or indirectly through the participation of Defendants' employees, relatives, or associates, and directing these entities to engage in a pattern of deceptive and unlawful practices in the conduct of trade or commerce[.]"

¶ 22 Accordingly, the circuit court enjoined defendants from "owning, operating, managing or working for any person or entity engaged in the business of removing damaged or disabled vehicles from public highways, roadways, and street by means of towing and thereafter relocating and storing such vehicles" and from "[c]onducting business in Illinois as a corporation" for a period of five years. In addition, the court entered a monetary judgment in the amount of $2,314,301.90 against defendants, explaining that "[t]his judgment consists of $59,926.16 in Restitution; $29,208.30 in State[s] Attorney's investigative costs; $2,200,000.00 in Civil Penalties * * *; and $25,167.50 to be disgorged and paid into [a] *cy pres* account for consumer education purposes."

¶ 23 Defendants' appeal followed.

¶ 24 ANALYSIS

¶ 25 Motion to Dismiss

¶ 26 Defendants first argue that the circuit court erred in denying their motion to dismiss and strike the State's amended complaint. Specifically, they argue that the State's amended complaint "failed to comply with [s]ection 2-603 of the Illinois Code of Civil Procedure" because the

document, which contains "over 236 paragraphs and 11 Counts, * * * essentially [alleges] one cause of action against multiple defendants." Defendants assert that "many of the paragraphs included [in the complaint] are incorporated by reference, and each actual count for each separate Defendant includes all of the paragraphs [that contain] allegations against all Defendants." Based on the manner in which the amended complaint was drafted, defendants argue that the State's filing was "unanswerable," and thus the circuit court improperly denied their motion to dismiss and strike the amended complaint.

¶ 27 The State, in turn, argues that it "pled ultimate facts to describe defendants' common plan or scheme to defraud and set forth specific facts describing the nature of the common scheme, who was involved, and when, where, how and why the scheme was implemented. These allegations adequately informed each defendant of the claims against them." Accordingly, the State argues that the circuit court "properly found the amended complaint stated a cause of action against each defendant," struck defendants' joint answer, and denied defendants' motion to dismiss and strike its amended complaint.

¶ 28 A motion to dismiss filed pursuant to section 2-615 of the Illinois Code of Civil Procedure (Civil Code) attacks the legal sufficiency of a complaint based on alleged defects that are apparent on the face of the document. 735 ILCS 5/2-615 (West 2010); *Kanerva v. Weems*, 2014 IL 115811, ¶ 33; *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 160-01 (2009); *Country Mutual Insurance Co. v. Olsak*, 391 Ill. App. 3d 295, 301-02 (2009). Because Illinois is a fact-pleading jurisdiction, plaintiffs are required to file legally and factually sufficient complaints to avoid dismissal. *Illinois Insurance Guarantee Fund v. Liberty Mutual Insurance Co.*, 2013 IL App (1st) 123345, ¶ 14. When reviewing a section 2-615 motion to dismiss, the circuit court must admit as true all well-pleaded facts as well as all reasonable inferences that

may be drawn from those facts and disregard any conclusions that are unsupported by allegations of fact. *Tedrick*, 235 Ill. 2d at 161; *Illinois Insurance Guarantee Fund*, 2013 IL App (1st) 123345, ¶ 14. The relevant inquiry is whether the factual allegations contained in the complaint, when viewed in the light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009); *Illinois Insurance Guarantee Fund*, 2013 IL App (1st) 123345, ¶ 14. A motion to dismiss pursuant to section 2-615 of the Code should be granted only where it is clearly apparent that there is no set of facts that can be proved that would entitle the plaintiff to recovery. *Kanerva*, 2014 IL 11581, ¶ 33; *Green*, 234 Ill. 2d at 491. A circuit court order granting or denying a section 2-615 motion to dismiss is subject to *de novo* review. *Heastie v. Roberts*, 226 Ill. 2d 515, 531 (2007); *Kean v. Walmart Stores, Inc.*, 235 Ill. App. 3d 351, 361 (2009).

¶ 29 Section 2-603 of the Civil Code mandates that "[a]ll pleadings shall contain a plain and concise statement of the pleader's cause of action" and that "[e]ach separate cause of action upon which a separate recovery might be had shall be stated in a separate count * * * and each [count] shall be divided into paragraphs numbered consecutively, each paragraph containing as nearly as may be, a separate allegation." 735 ILCS 5/2-603(a), (b) (West 2008). The purpose of section 2-603 is to provide notice to the parties involved and to the court of the claims being advanced in the complaint. *Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 19 (2009). A violation of section 2-603's pleading requirements may warrant the dismissal of the complaint. *Cable America*, 396 Ill. App. 3d at 19; *Rubino v. Circuit City Stores, Inc.*, 324 Ill. App. 3d 931, 938 (2001). Dismissal of a complaint may also be warranted if it is drafted in such a manner that it renders any attempt to answer futile. *Rubino*, 324 Ill. App. 3d at 940.

¶ 30 Here, the State's amended complaint invoked sections 2 of the Consumer Fraud Act and Deceptive Practices Act. Section 2 of the Consumer Fraud Act, in pertinent part, prohibits the use of "[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretenses, false promise, misrepresentation or the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the [Deceptive Practices Act] * * * in the conduct of any trade or commerce." 815 ILCS 505/2 (West 2008). Section 2 of the Deceptive Practices Act, in turn, provides in pertinent part, that "(a) A person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, the person: (9) advertises goods or services with intent not to sell them as advertised; * * * (12) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding." 815 ILCS 510/2(a)(9), (12) (West 2008).

¶ 31 A review of the State's amended complaint reveals that it contains specific factual allegations against each named defendant and identifies specific actions undertaken by those defendants in contravention of the provisions of the Consumer Fraud Act and the Deceptive Practices Act. Specifically, the State alleged that Azzam, the founder and former president of Road America, and his son, Tareq, the subsequent president of Road America, devised a plan to obtain consumers' consent to tow their vehicles through deception and to charge those consumers excessive and fraudulent fees prior to releasing their towed vehicles. The State further alleged that Azzam and Tareq directed the other defendants to take part in this scheme by engaging in various deceptive behaviors, including misrepresenting towing costs to consumers, charging consumers fees for services that Road Auto did not provide, and charging duplicative and excessive fees. The State further alleged that Ziyad and Salah knowingly implemented and

participated in Azzam and Tareq's scheme by operating tow trucks, and making misrepresentations to consumers about fees and insurance coverage in order to induce consumers to consent to the tow of their vehicles to Road America's premises. Ziyad and Salah also allegedly charged consumers duplicative fees as well as fraudulent fees for services that were not provided. With respect to Barger, the State alleged in its amended complaint that she was the office manager of Road America and participated in the scheme by using aliases when conversing with vehicle owners and insurance companies, and by collecting duplicate towing fees, fees for non-rendered towing services, and improper storage fees prior to releasing towed vehicles to their owners.

¶ 32 The State specified the time, dates and places where defendants engaged in deceptive conduct in relation to the nine individual consumers identified in the amended complaint and the two vehicle accidents that were staged by investigators during the State's investigation into defendants' deceptive business practices. Although there were common factual allegations that pertained to all of the defendants, the State's amended complaint appropriately apprised each of the named defendants of the nature of the claims against them. Moreover, the State's amended complaint separated causes of actions for violations of the Consumer Fraud Act and Deceptive Trade Practices Act against each named defendant. *Cf. Hartshorn v. State Farm Insurance Co.*, 361 Ill. App. 3d 731, 735 (2005) (finding that a complaint did not comply with section 2-603 of the Civil Code where it "mixed together" separate causes of action against different defendants). Accordingly, we find that the circuit court properly rejected defendants' claims that the State's amended complaint was unanswerable and denied their motion to dismiss and strike the amended pleading.

¶ 33 Discovery Rulings

¶ 34 Defendants next argue that the circuit court erred in entering a judgment of default against them as a sanction for their purported discovery violations. They maintain that they turned over all of the documents in their possession and control and that the court improperly punished them for not turning over documents in the possession of a third party, accountant Benjamin Galal. Defendants further assert that the court's sanction was not "in tune with the spirit of Rule 219" because it was not designed to ensure or facilitate the flow of discovery; rather, the court's sanction was essentially pecuniary and was merely a "way to punish [them] by stripping them of an opportunity to defend themselves at [a] trial on the merits."

¶ 35 The State, in turn, responds that the circuit court did not abuse its discretion in entering the sanction of default for defendants following their "willful and repeat violations of discovery orders." In support of its argument, the State observes that prior to the default sanction, defendants "were notified of discovery deficiencies, were afforded multiple opportunities to comply over an 18 month period, repeatedly ignored the [circuit] court's discovery orders, purposefully evaded and delayed the discovery process, [and] willfully refused to produce material documents in their possession or control * * *." Given that defendants had ample opportunity to comply with their discovery requirements and received advanced warning that their continued lack of compliance would result in a default judgment sanction, the State contends that defendants' argument lacks merit.

¶ 36 As a general rule, the circuit court is " 'vested with wide discretionary powers in pretrial discovery matters.' " *Gonzalez v. Nissan North America, Inc.*, 369 Ill. App. 3d 460, 464 (2006) (quoting *Nehring v. First National Bank in DeKalb*, 143 Ill. App. 3d 791, 796-97 (1986)). Illinois Supreme Court Rule 219(c) "authorizes a trial court to impose a sanction * * * upon any party who unreasonably refuses to comply with any provisions of this court's discovery rules or

any order entered pursuant to these rules." *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 120 (1998). The rule sets forth a " 'nonexclusive list of sanctions' " (*Cronin v. Kottke Associates, LLC.*, 2012 IL App (1st) 111632, ¶ 35 (quoting *Donner v. Deere & Co.*, 255 Ill. App. 3d 837, 841 (1993)), that may be imposed against an offending party, including a "judgment by default" or an order dismissing a party's cause of action with or without prejudice (Ill. S. Ct. R. 219(c)(v) (eff. July 1, 2002)). Ultimately, the sanction that the circuit court chooses to impose on a party that has not reasonably complied with discovery procedures "must be just and proportionate to the offense" and the appropriateness of a sanction is " 'circumstance-specific.' " *Gonzalez*, 369 Ill. App. 3d at 464-65 (quoting *Smith v. City of Chicago*, 299 Ill. App. 3d 1048, 1052 (1998)). As a general rule, although "[a] just order of sanctions under Rule 219(c) is one which, to the degree possible, insures both discovery and a trial on the merits," (*Shimanovsky*, 181 Ill. 2d at 123), "[w]here it becomes apparent that a party has willfully disregarded the authority of the court, and such disregard is likely to continue, the interests of that party in the lawsuit must bow to the interest of the opposing party." *Sander v. Dow Chemical Co.*, 166 Ill. 2d 48, 69 (1995). Because a default judgment or an order of dismissal with prejudice are drastic sanctions, they should only be applied "in those cases where the party's actions show a deliberate, contumacious or unwarranted disregard of the court's authority" (*Shimanovsky*, 181 Ill. 2d at 123) and where "all other enforcement measures have failed" (*Gonzalez*, 369 Ill. App. 3d at 465). The imposition of a Rule 219 sanction will not be reversed absent a clear abuse of discretion. *Shimanovsky*, 181 Ill. 2d at 123; *Locasto v. City of Chicago*, 2014 IL App (1st) 113576, ¶ 26. The factors to be considered in making this determination are: (1) the surprise to the adverse party; (2) the prejudicial effect of the proffered evidence; (3) the nature of the evidence being sought; (4) the diligence of the adverse party in seeking discovery; (5) timeliness

of the adverse party's objection to the testimony or evidence; and (6) the good faith of the party offering the evidence. *Shimanovsky*, 181 Ill. 2d at 124; *Locasto*, 2014 IL App (1st) 113576, ¶ 26.

¶ 37 Here, the record reflects that once the State filed its discovery requests on June 23, 2009, defendants' discovery responses were continually untimely and incomplete. None of the defendants responded to the State's discovery requests within 28 days of being served, and although the State accommodated defense counsel's requests for additional time to respond via several 201(k) correspondences, defendants continually failed to abide by the new agreed upon response dates. Defendants also ignored court-ordered response dates. Ultimately, it was not until November 13, 2009, one day after the State filed its first motion to compel, that defendants Azzam, Tareq, and Ziyad filed their individual interrogatory responses. The remaining defendants, Road America, Barger and Salah did not respond to interrogatory requests until February 8, 2010, after ignoring several additional court-ordered response dates. Defendants' responses, however, were incomplete. As a whole, defendants objected to providing the financial information sought by the State, citing a lack of relevance even though the State's claim included allegations that defendants fraudulently charged and collected fees from Illinois consumers. Moreover, Road America, Azzam and Tareq's interrogatory responses directed the State to "attached documents," but no such documents were attached.

¶ 38 Defendants' production responses were similarly untimely and incomplete. In defiance of several court orders and agreed-upon response deadlines, defendants did not file production responses until December 20, 2009. Only Tareq and Road America actually produced any documents along with their responses, but the documents produced were nominal. Based on these deficiencies, during a March 10, 2010, status hearing, the court ordered the parties to engage in 201(k) conferences to resolve their dispute. Although the parties did so, and

defendants tendered additional documentation, defendants failed to produce invoices pertaining to the specific victimized consumers identified by State or the two staged accidents that took place during the State's investigation into their deceptive business practices. Accordingly, the State followed up with three additional 201(k) letters and a second motion to compel, and the circuit court entered its first sanction order against defendants on September 10, 2010, in which it barred defendants from presenting evidence regarding matters to which they had failed to respond. In doing so, the court analyzed the relevant factors and found that defendants had "refuse[d] to answer relevant questions or to produce relevant documents despite court Orders to do so;" that the State had made "diligent" efforts to obtain discovery but that its efforts had proven "fruitless;" that the materials sought by the State were "extremely relevant to the issues at hand;" and that defendants' objections to the State's discovery requests were neither timely nor made in good faith. The court further found that defendants' claims that they were not in possession or control of relevant documents "r[a]ng hollow."

¶ 39 Following the initial sanction, defendants failed to observe two more court-ordered response dates, and during subsequent status hearings, the circuit court admonished defendants that they would be subject to additional Rule 219 sanctions, including a default judgment sanction if they remained non-compliant. Thereafter, during a December 17, 2010, status hearing, the State informed the court that the only additional discovery proffered by defendants after the sanction was imposed, were 12 pages of Road America's bank statements and a list of 6 tow trucks that had been previously owned by defendants. The State further informed the court that although defendants' attorney had relayed to the State that there were additional documents available for the State to review, its efforts to view the documents were rebuffed when another attorney at the firm apparently believed that the State was not entitled to look at the documents

and did not allow the State to make an appointment to review the papers. After hearing from both parties, the circuit court entered a judgment of default against each defendant. In its written order, the court stated:

> "Defendants each having failed to deliver supplemental discovery responses to the above ASAs by 5:00 p.m., December 14, 2010, in violation of this court's November 16[], 2010, order and previous orders to compel, the court having previously found on September 10, 2010, that Defendants have purposefully evaded their discovery responsibilities and that the [State] will suffer extreme and unfair prejudice without the requested information, the court having since afforded Defendants multiple opportunities to fulfill their discovery obligations, and having advised them that further [Rule] 219 sanctions, including entry of default judgment, would be entered against each non-compl[iant] Defendant, the court having jurisdiction and being advised in the premises, IT IS HEREBY ORDRERED THAT:
>
> * * * Defendants Road America Automotive, Inc, Tareq Al-Hindi, Azzam Al-Hindi, Ziyad Al-Hindi, Salah Al-Hindi, and Carrie Barger are hereby Defaulted[.]"

¶ 40 Although dismissal of a cause of action or entry of a default judgment are indisputably the harshest penalties authorized by Rule 219, such sanctions will not be deemed an abuse of discretion where, as here, the record reflects a party's repeated defiance of court orders. See, *e.g., Sander,* 166 Ill. 2d at 69 (affirming a dismissal sanction where "during the final five months of th[e] ligation plaintiffs violated four separate court orders setting deadlines"); *R.M. Lucas Co. v. People's Gas Light & Coke Co.,* 2011 IL App (1st) 102955, ¶ 28 (finding that the circuit court did not abuse its discretion in dismissing the plaintiff's action with prejudice "where they [repeatedly] defied discovery deadlines set by the court and ignored defendant's discovery

requests"); *Koppel v. Michael*, 374 Ill. App. 3d 998, 1004 (2007) (upholding a default judgment sanction where the defendants "had been subject to 12 [prior] orders regarding their discovery noncompliance" as well as previous sanctions and remained non-compliant). Based on defendants' repeated violations of court orders and the circuit court's careful consideration of relevant factors, we reject defendants' claim that the default judgment sanction was an abuse of discretion.

¶ 41 We also reject defendants' argument that the circuit court erred in failing to strike the State's Rule 213 witness disclosure list. Rule 213(e) provides: "When the answer to an interrogatory may be obtained from documents in the possession or control of the party on whom the interrogatory was served, it shall be a sufficient answer to the interrogatory to produce those documents responsive to the interrogatory." Ill. S. Ct. R. 213(e) (eff. Jan. 1, 2007). Here, defendants served their interrogatory and production requests upon the State on June 15, 2010, and the State filed their timely response on July 13, 2010. In that response, the State provided an extensive list of its potential witnesses. In addition, defendants were instructed that "The documents responsive to your discovery requests are ready for inspection and copying. Please let [the State] know when you are available to review them. Alternatively, [the State] can send them out for copying should you provide [the State] with the name of the copy service that you use." The documents referenced by the State consisted of the State's Attorney's investigative reports, victim interviews, police reports, and consumer complaints that were responsive to defendants' interrogatory requests. Thereafter, State provided an updated response to defendants' requests on November 15, 2010, that also referenced available documents. Defendants, however, never made any arrangements to review the documents. In denying defendants' motion to strike the State's discovery responses for failing to comply with Rule 213, the court reasoned:

"I believe [the State's] 213(f) answers to interrogatories, I think they're proper. It is proper under the rules to refer to documents for the answer to the question.

The defendants haven't done anything. They haven't taken the trouble to read the documents. Quite frankly, that is not my problem. The defendants cannot keep themselves in ignorance of the discovery tendered and then come to court and complain we don't know.

So I don't have any problems with their answers."

¶ 42 This court finds no error with respect to the circuit court's discovery ruling.

¶ 43 Prove-Up Hearing

¶ 44 Defendants next argue that the circuit court violated their sixth amendment right to confront witnesses when it allowed the State to prove up its damages by affidavit, and precluded defendants from deposing, cross-examining, or otherwise confronting any of the complaining witnesses on whose behalf the State brought its lawsuit. Defendants reason: "The Confrontation Clause of the Sixth Amendment to the U.S. Constitution applies to this case because the penalties sought by [the State] and set forth by the various statutes under which [the State] seeks recovery are so punitive as to transform what was clearly intended as a civil remedy into a criminal penalty."

¶ 45 The State responds that the court did not err in allowing the prove-up hearing to proceed by way of affidavit because no constitutional or statutory authority requires the State to prove up its request for restitution or injunctive relief under the Consumer Fraud Act through witness testimony. Moreover, the State argues that the circuit court observed defendants' due process rights throughout the prove-up phase of the litigation process by affording defendants with notice of the hearing, ordering the State to tender all of its prove-up evidence prior to the hearing and

permitting defendants to present their own evidence provided that they complied with the court's orders. Accordingly, the State maintains that defendants' challenge to the manner in which the circuit court presided over the prove-up hearing lacks merit.

¶ 46 The sixth amendment to the United States constitution, in pertinent part, provides: "*In all criminal prosecutions*, the accused shall enjoy the right * * * to be confronted with the witnesses against him." (Emphasis added.) U.S. Const., amend. VI. As a general rule, civil proceedings do not implicate sixth amendment concerns. See *Fakes v. Eloy*, 2014 IL App (4th) 121100, ¶ 120; see also *Hermann v. Hermann*, 219 Ill. App. 3d 195, 198 (1991) (recognizing that "[t]he very words of the Sixth Amendment limits its scope to criminal proceedings" and that "[i]t would be an extravagant expansion of the Sixth Amendment to hold that it applies equally to criminal and civil proceedings"). Although proceedings brought pursuant to the Consumer Fraud Act are undeniably civil in nature, defendants suggest that the penalties allowed under section 7 of the Consumer Fraud Act are so harsh and severe that they can be considered quasi-criminal, thereby rendering applicable the protections afforded by the sixth amendment.

¶ 47 Section 7 of the Consumer Fraud Act gives the circuit court authority to exercise a number of different remedies in response to violations. 815 ILCS 505/7(a) (West 2008). That section, in pertinent part, provides:

"§7. Injunctive relief; restitution; and civil penalties.

(a) The Court, in its discretion, may exercise all powers necessary, including but not limited to: injunction; revocation; forfeiture or suspense of any license, charter, franchise, certificate or other evidence of authority of any person to do business in this State; appointment of a receiver; dissolution of domestic corporations or association suspension

> or termination of the right of foreign corporations or associations to do business in this State; and restitution. * * *
>
> (b) In addition to the remedies provided herein, the Attorney General or State's Attorney may request, and the Court may impose a civil penalty in a sum not to exceed $50,000 against any person found by the Court to have engaged in any method, act or practice declared unlawful under this Act. In the event the court finds the method, act or practice to have been entered into with the intent to defraud, the court has the authority to impose a civil penalty in a sum not to exceed $50,000 per violation." 815 ILCS 505/7(a),(b) (West 2008).

¶ 48 Although various penalties are clearly permitted under the Consumer Fraud Act, defendants cite to no controlling relevant authority that the Consumer Fraud Act is penal or punitive in nature such that the guarantees of the sixth amendment apply to Consumer Fraud Act prove-up proceedings. Moreover, defendants fail to acknowledge that our supreme court has expressly rejected previous efforts to declare the Consumer Fraud Act penal in nature due to the various remedies that are set forth in section 7. Specifically, in *Scott v. Association for Childbirth At Home, International*, 88 Ill. 2d 279, 288 (1982), the court stated:

> "The [Fraud] Act is a regulatory and remedial enactment intended to curb a variety of fraudulent abuses and to provide a remedy to individuals injured by them. Its stated purpose, set forth in its preamble, is to protect Illinois consumers, borrowers, and businessmen against fraud, unfair methods of competition, and other unfair and deceptive business practices. The Act is clearly within the class of remedial statues which are designed to grant remedies for the protection of rights, introduce regulation conducive to the public good, or cure public evils. [Citation.] The fact that a civil penalty of up to

> $50,000 can be imposed does not make the Act a penal statute. [Citation.] Rather, * * * the penalty is but one part of the regulatory scheme, intended as a supplement to aid enforcement rather than as a punitive measure.

¶ 49 Accordingly, we do not find that the circuit court erred in rejecting defendants' argument concerning the applicability of the sixth amendment to a prove-up hearing under the Consumer Fraud Act. We also are unpersuaded by defendants' contention that the circuit court erred in rejecting their alternative argument that they were entitled to cross-examine the State's prove-up witnesses pursuant to section 2-1102 of the Civil Code. 735 ILCS 5/2-1102 (West 2008). That provision, in pertinent part, provides: "Upon the trial of any case any party thereto or any person for whose immediate benefit the action is prosecuted or defended * * * may be called and examined as if under cross-examination at the instance of any adverse party." 735 ILCS 5/2-1102 (West 2008). Under the Consumer Fraud Act, however, it is only the State's Attorney or the Attorney General, whichever entity brings suit, that is considered a "party," for purposes of litigation. See, *e.g.*, *People v. Lann*, 225 Ill. App. 3d 236, 240-41 (1992) (finding that the Attorney General was the only party plaintiff in a consumer fraud lawsuit for purposes of discovery, reasoning that "[e]ven though the transactions underlying this action arose between individual consumers and defendant, the action stems from the Attorney General's duty to enforce the Consumer Fraud Act" * * * and that "[b]ecause the nature and object of the [Fraud] Act and its remedies are indisputably the protection of the public interest, we believe that the legislature intended the State to be the only real party in interest, and the only party subject to discovery"). This is true even if one of the remedies being sought is restitution to be paid to victimized consumers because "although restitution may benefit aggrieved consumers, the remedy flows from the basic policy that those who engage in proscribed conduct or practices

surrender all profits flowing therefrom." *Id.* Accordingly, we find that neither the sixth amendment nor section 2-1102 of the Civil Code required the State to prove up its request for restitution and injunctive relief under the Consumer Fraud Act through witness testimony or entitled defendants to cross-examine those witnesses.

¶ 50 Defendants, however, were entitled to an opportunity to be heard with respect to the issue of damages at the prove-up hearing. See generally *612 North Michigan Avenue Building Corp. v. Factsystem*, Inc., 34 Ill. App. 3d 922, 928 (1975) (following a default judgment, a party can no longer contest the issue of liability, but are entitled to be heard regarding damages). Here, the circuit court provided defendants with notice of the scheduled prove-up hearing, ordered the State to tender its prove-up evidence to defendants prior to the hearing and afforded defendants the opportunity to present its own prove-up evidence provided that they complied with the court's orders. Defendants thus were provided with an opportunity to be heard and we find no error with respect to the manner in which the circuit court presided over the prove-up hearing.

¶ 51 CONCLUSION

¶ 52 The judgment of the circuit court is affirmed.

¶ 53 Affirmed.