

No. 1-12-0837

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(3)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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ZACHMAN ZONE LLC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	11 M1 718215
	)	
KERRY PEARSON,	)	Honorable
	)	Martin S. Agran,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Presiding Justice Salone and Justice Sterba concurred in the judgment.

**ORDER**

- ¶ 1            *HELD:* Where the plaintiff sued on a written lease which it did not attach to its complaint and its corrected complaint, this court affirmed the dismissal of the complaint.
- ¶ 2            Zachman Zone LLC (Zachman Zone) filed a complaint for forcible entry and past due rent against Kerry Pearson. Pearson moved to dismiss on several grounds, including Zachman Zone's failure to attach the lease to the complaint, in violation of section 2-606 of the Code of Civil Procedure (Code) (735 ILCS 5/2-606 (West 2010)). Zachman Zone filed a corrected complaint and claimed the landlord had transferred its interest in the lease to

Zachman Zone. Zachman Zone appended to its amended complaint neither its lease nor documents showing the transfer of the landlord's interest to Zachman Zone. The trial court dismissed the complaint with prejudice. We affirm due to Zachman Zone's failure to comply with section 2-606 of the Code.

¶ 3

### BACKGROUND

¶ 4

On March 1, 2010, IB Property Holdings leased office space in Arlington Heights to Pearson for three years, with options to renew for three additional years. In a rider to the lease, IB granted Pearson the exclusive right to use the parking space then assigned to him. The lease provided:

"During the term of this Lease, Landlord may not assign or transfer its interest in this Lease or its membership interest to any person or entity without the express written consent of Tenant.

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\*\*\* In the event of a default by Landlord under this Lease, Tenant's sole remedies shall be termination of this Lease, and enforcement of Landlord's obligations to indemnify as stated herein."

¶ 5

The lease specifically listed occurrences which would count as defaults under the lease. The lease did not list an assignment or transfer of the landlord's interest in the lease as a default for purposes of the clause limiting the tenant's remedies.

¶ 6

In 2010, IB asked Pearson to consent to the transfer to Zachman Zone of IB's interest in the property that included the office. Pearson learned that Zachman Zone planned to

deprive him of the use of his parking space. Pearson did not consent to the transfer of IB's interest in the lease to Zachman Zone.

¶ 7 On August 8, 2011, Zachman Zone sent Pearson notice that it would sue him for possession of his office if he did not pay rent to Zachman Zone for February through August of 2011. Pearson continued to send his rent checks to IB.

¶ 8 On August 12, 2011, Zachman Zone sued Pearson for possession of his office and for back rent. Pearson moved to dismiss the complaint pursuant to sections 2-615 and 2-619 of the Code on three separate bases. 735 ILCS 5/2-615, 5/2-619 (West 2010). First, he argued that the court should dismiss the complaint because Zachman Zone did not attach to the complaint the lease and documents showing the assignment or transfer of IB's interest in the lease to Zachman Zone. Second, Pearson argued that because he did not consent to the transfer of the lease to Zachman Zone, any purported assignment or transfer of the lease did not affect his rights and obligations under the lease with IB, and no purported assignment or transfer of the lease imposed on him an obligation to pay rent to Zachman Zone. Pearson swore in an affidavit that Zachman Zone deprived him of the use of his parking space and denied him access to another, unassigned parking space.

¶ 9 In response to the motion, Zachman Zone filed a corrected complaint, but it still attached neither the lease nor the assignment to the complaint. The trial court dismissed the complaint with prejudice. Zachman Zone filed a motion for reconsideration of the dismissal, and it attached a copy of the lease between IB and Pearson to the motion for reconsideration. Zachman Zone did not attach the assignment to the motion for reconsideration.

¶ 10

ANALYSIS

¶ 11

We review *de novo* the dismissal of the complaint under sections 2-615 and 2-619 of the Code. *Golf v. Henderson*, 376 Ill. App. 3d 271, 274 (2007). We may affirm the dismissal on any grounds the record supports. *McCready v. Illinois Secretary of State*, 382 Ill. App. 3d 789, 795 (2008).

¶ 12

Section 2-606 of the Code requires the plaintiff to attach to its complaint the written instruments on which it bases its claim, or else attach affidavits explaining the absence of the written instruments. *McCready*, 382 Ill. App. 3d at 794; 735 ILCS 5/2-606 (West 2010). *Zachman Zone* cites *Chicago Housing Authority v. Walker*, 131 Ill. App. 2d 299 (1970), as authority for its argument that section 2-606 does not apply to its claim because it owns the property Pearson leased. In *Walker*, the court addressed the factual pleading requirements for a complaint for forcible entry and detainer. The *Walker* court did not address the requirement that parties must attach to their pleadings any written instruments on which they base their claims. We see nothing in the Code or case law that excuses plaintiffs in forcible entry and detainer actions from the requirements of section 2-606. Insofar as *Zachman Zone* seeks to collect rents due under a written lease, it must attach to its complaint a copy of the lease showing its right to that rent, or it must attach affidavits explaining the absence of the written instruments. "Failure to comply with the requirement of section 2-606 is grounds for dismissal of a complaint." *Christoffel v. Country Mutual Insurance Co.*, 183 Ill. App. 3d 32, 35 (1989).

¶ 13

In *McCready*, the plaintiff sued the defendant for "wiping out his security interest"

in a car. *McCready*, 382 Ill. App. 3d at 797. Documents in the record showed that a bank had a security interest in the car, and the plaintiff alleged that the bank transferred its security interest to him. The plaintiff failed to attach to the complaint documents showing the transfer of the security interest or an affidavit explaining the lack of such documents. The appellate court affirmed dismissal of the complaint with prejudice because the exhibits did not substantiate the claim. The court said, "If there is a conflict between a written exhibit and the allegations of a pleading, the exhibit controls." *McCready*, 382 Ill. App. 3d at 794.

¶ 14 After Pearson moved to dismiss the complaint, Zachman Zone had the opportunity to attach to its amended complaint any documents showing the transfer of IB's interest to Zachman Zone, or an affidavit explaining the lack of such a document. Zachman Zone did neither. The written lease shows that Pearson must pay rent to IB. Although Zachman Zone alleges that IB transferred its interest in the lease to Zachman Zone, no document in the record supports the allegation or contradicts the provisions of the lease, attached to the motion to dismiss, providing for payment to IB. Following *McCready*, we affirm the dismissal of the complaint. See also *Cahill v. Eastern Benefit Systems, Inc.*, 236 Ill. App. 3d 517, 520 (1992); *Plocar v. Dunkin' Donuts of America, Inc.*, 103 Ill. App. 3d 740, 749 (1981).

¶ 15 CONCLUSION

¶ 16 Although Zachman Zone sued Pearson for failing to comply with a written lease, and Pearson pointed out that section 2-606 of the Code required plaintiffs to attach written

documents to the complaint supporting their claims, Zachman Zone did not attach a copy of the lease to its corrected complaint. Pearson showed that he had a lease with IB by appending a copy of the lease to his motion to dismiss. Zachman Zone failed to present any documents supporting its claim that IB transferred its interest in the lease to Zachman Zone. Therefore, we affirm the trial court's judgment dismissing the complaint with prejudice.

¶ 17           Affirmed.