

2013 IL App (1st) 123061-U

THIRD DIVISION
June 12, 2013

No. 1-12-3061

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(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CITIBANK, N.A.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 11 M1 167153
)	
MARK A. MURRAY,)	Honorable
)	Joyce Marie Murphy Gorman,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Justices Hyman and Sterba concurred in the judgment.

ORDER

- ¶ 1 *Held:* Complaint sufficiently alleged breach of contract by defendant. Because defendant failed to include a transcript of the trial proceedings, reviewing court could not determine whether plaintiff's contentions concerning the sufficiency of an accompanying affidavit, even assuming that affidavit was insufficient, were cured by facts introduced at trial. Accordingly, court would presume that trial court's finding of judgment for plaintiff conformed to the law and the facts.
- ¶ 2 In this breach of contract action, defendant Mark A. Murray (Murray) appeals, *pro se*, from an order of the circuit court of Cook County granting judgment for plaintiff Citibank, N.A. (Citibank) in the amount of \$11,230.24, plus costs. On appeal, Murray contends that Citibank

failed to properly allege the existence of an account stated or a contract, and that the affidavit filed in support of the complaint was insufficient.

¶ 3 On October 18, 2011, Citibank filed a complaint against Murray, alleging that he had opened an account in which he agreed to make monthly payments for purchases charged to that account. The complaint also alleged that Murray made purchases which were charged to that account, but failed to make monthly payments as called for on the account, and was in default in the amount of \$11,230.24. Citibank sought a recovery of this amount plus costs.

¶ 4 In an affidavit in support of this complaint, Daniel J. Fisher (Fisher), averred that he was an employee of a Citibank subsidiary, Citicorp Credit Services, Inc, with duties which included being a custodian of Citibank records. Because of these duties, Fisher averred that he had access to the information concerning Murray's Citibank account ending in 2451, which was the subject of the instant lawsuit. Fisher averred that, as reflected in an attached account statement, which was kept by Citicorp in the ordinary course of business, Murray was in default on this account in the amount of \$11,230.24.

¶ 5 Following a bench trial, on October 3, 2012, judgment was entered for Citibank in the amount sought. This appeal ensued.

¶ 6 Murray contends that Citibank's complaint failed to allege the elements of an account stated. We need not consider this contention, because Citibank's complaint is based on breach of contract, not an account stated.

¶ 7 Murray next contends that the complaint failed to establish that he breached a contract with Citibank. But, as Citibank argued in the court below, in a complaint for breach of contract, a plaintiff is not required to prove the existence of a valid and enforceable contract. He is only required to plead facts which support a cause of action. *Imperial Apparel, LTD v. Cosmo's Designer Direct, Inc.*, 227 Ill. 2d 381, 392 (2008). A challenge to the legal sufficiency of the

complaint is made pursuant to section 2-615 of the Code of Civil Procedure. 735 ILCS 5/2-615 (West 2010). We will dismiss a complaint on these grounds only if no set of facts could be proved entitling the plaintiff to recover. *Imperial*, 227 Ill. 2d at 392. Our standard of review is *de novo*. *Oliveira v. Amoco Oil Co.*, 201 Ill. 2d 134, 147-48 (2002). We view the complaint's allegations in the light most favorable to the plaintiff and accept as true the well-pleaded facts and all reasonable inferences to be drawn from those facts. *Id.*, at 147.

¶ 8 The elements of a breach of contract are: (1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) defendant's breach of the contract; and (4) injury to the plaintiff. *Gallagher Corp. v. Russ*, 309 Ill. App. 3d 192, 199 (1999). Here, viewed in the light most favorable to the plaintiff, the allegations of the complaint established that: Citicorp and Murray had an agreement for the extension of credit to Murray in a credit card account; Citibank performed by extending credit to Murray; Murray breached the contract by failing to make monthly payments to Citicorp; and Citicorp was damaged because Murray had a balance of over \$11,000 in outstanding debt to Citibank. We accordingly find no merit to Murray's contention that the complaint failed to allege that he breached his contract with Citicorp.

¶ 9 Murray also alleges that Fisher's affidavit in support of the complaint is "utterly incompetent" and "legally insufficient." But Murray has not included in the record on appeal the report of proceedings from the trial or a bystander's report or an agreed statement of facts. Ill. S. Ct. R. 323(c), (d) (eff. Dec. 13, 2005). Without a record of these proceedings, we cannot determine whether any deficiencies in Fisher's affidavit, assuming there were such deficiencies, were remedied by evidence introduced at trial by Citicorp. An appellant has the burden of presenting this court with trial court proceedings which are sufficiently complete to support his claims of error, and absent such a record, we will presume that the trial court's order conformed

to the law and the facts. *In re Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 422 (2009); *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156-57 (2005).

¶ 10 Lastly, Murray contends that the trial court's order in favor of Citibank, entered after trial, be reconsidered and overturned. Murray asserts that the trial court: (1) did not take into consideration the documents denying the obligation and debt that he filed with the court; (2) permitted Citibank and its attorneys to commit perjury; and, (3) denied him a fair trial. However, as discussed above, because the record on appeal does not include a transcript of the trial, a bystander's report or an agreed statement of facts we must presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319 (2003). For all of these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 11 Affirmed.