2013 IL App (1st) 131346-U

FIRST DIVISION
FILED: December 23, 2016

No. 1-13-1346

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

TODD HATOFF, Plaintiff-Appellant, v. ARNSTEIN & LEHR, LLP, KONSTANTINOS ARMIROS, JAY P. TARSHIS, LAW OFFICE OF AMY FELTON, P.C., and AMY MURAN FELTON, Defendants-Appellees, (Allen Brothers, Inc., and The Great Steakhouse, LLC, Plaintiffs).	)	Appeal from the Circuit Court of Cook County. No. 11 L 002413 Honorable Joan E. Powell, Judge Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: The orders of the circuit court which granted the defendants' motions to dismiss the plaintiff's legal malpractice claims as time-barred were reversed.

¶ 2 Todd Hatoff, hereinafter referred to as the plaintiff, appeals from the circuit court orders which granted two motions to dismiss his legal malpractice claims pursuant to section 2-619(a)(5)

of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(5) (West 2012)) filed by the defendants, Arnstein and Lehr, LLP, Konstantinos Armiros, and Jay P. Tarshis (Arnstein defendants); and the Law Office of Amy Felton, P.C. and Amy Muran Felton (Felton defendants). The plaintiff argues that the circuit court erred when it determined that his claims against the defendants were time-barred. See 735 ILCS 5/13-214.3 (West 2012). For the reasons that follow, we reverse the judgment of the circuit court and remand the cause for further proceedings.

¶ 3 On March 3, 2011, the plaintiff filed his original complaint at law. Relevant to this appeal are count II of his third amended complaint against the Felton defendants and counts I and II of his fourth amended complaint against the Arnstein defendants.

¶ 4 The third amended complaint, filed on June 3, 2012, alleged the following facts. On May 14, 2007, the plaintiff and his partner, Marshall Erb, contracted to purchase a condominium on North Lake Shore Drive in Chicago for $1,450,000. The plaintiff individually took out a $950,000 mortgage and used $500,000 of his personal funds to satisfy the purchase price. The plaintiff engaged the law firm of Arnstein and Lehr, LLP to represent him in the transaction. The plaintiff alleged that he told Konstantinos Armiros, an attorney with Arnstein and Lehr, that he intended to be the sole owner of the property until Erb was financially able to contribute to the renovation, mortgage and expenses attributable to the property. Eventually, the plaintiff and Erb intended that they have equal ownership shares in the property. Armiros, advised the plaintiff to hold the property in a land trust, but drafted a trust agreement providing that the plaintiff and Erb each owned 50% beneficial interests. The plaintiff alleged that Tarshis, another attorney employed by Arnstein and Lehr, also participated in the drafting of the land trust.

¶ 5 On August 9, 2007, Armiros recommended that the plaintiff retain the Felton defendants to assist the Arnstein defendants in the transaction. The plaintiff agreed and was charged a flat fee of $550 by the Felton defendants for the closing. On August 10, 2007, the closing on the property took place with the land trust holding legal title. On December 4, 2008, after 14 months of negotiations, the plaintiff and Erb signed a Co-Ownership Agreement (COA), which provided that the plaintiff owned a 92.5% beneficial interest in the property and Erb owned the remaining 7.5% interest. The complaint alleged that, in order for the COA to take effect, both the plaintiff and Erb were required to sign a letter of direction for the land trustee's acceptance. As of December 2008, both the plaintiff and Erb were willing to sign such a letter, but Armiros never prepared it.

¶ 6 On January 5, 2010, Erb allegedly assaulted the plaintiff, threatening him with a loaded shotgun. Thereafter, Erb moved out of the condominium unit, and the plaintiff filed a criminal complaint against him and sought an order of protection. Because the Arnstein defendants had represented both the plaintiff and Erb in other litigation, the plaintiff retained Philip Mullenix to represent him in legal matters ensuing from his breakup with Erb. In January 2010, after Mullenix received copies of the land trust agreement holding title to the condominium unit and the COA, Armiros made a belated attempt to obtain the plaintiff's and Erb's signatures on a letter of direction in order to file the COA with the trustee. Armiros was unsuccessful because Erb was no longer willing to sign the letter of direction. According to the complaint, it was then that the plaintiff first learned that the COA had not been filed with the trustee and the beneficial ownership interest in the land trust was still vested in he and Erb, equally.

¶ 7 The complaint further alleged that, on February 19, 2010, Erb filed suit against the plaintiff,

Armiros, and Arnstein and Lehr, asserting claims of replevin, conversion, constructive trust, rescission, breach of fiduciary duty, and intentional infliction of emotional distress. Erb's claims involved allegations that the COA was unenforceable and that the plaintiff had sought to deprive him of his fair share of the condominium unit. The plaintiff filed a counterclaim against Erb, asserting claims of conversion, assault, breach of contract, and unjust enrichment. Specifically, the plaintiff's case against Erb involved the enforceability of the COA. According to the complaint in the instant action, the plaintiff and Erb settled their lawsuits on December 10, 2010, with Erb agreeing to assign any interest he had in the land trust holding title to the condominium unit to the plaintiff.

¶ 8 In count II of the third amended complaint in this case, the plaintiff alleged that the Felton defendants negligently represented him in the 2007 real estate closing and were vicariously liable for Armiros's failure to timely file the COA with the land trustee to amend the ownership division. He further alleged that the Felton defendants breached their fiduciary duty by failing to learn about the ownership interest issues between he and Erb and to insist that the closing on the condominium unit be delayed until the land trust was properly amended to provide that he was the sole beneficiary.

¶ 9 On June 26, 2012, the Felton defendants moved to dismiss count II of the plaintiff's third amended complaint pursuant to section 2-619(a)(5) of the Code, arguing that the statute of limitations had expired for any claims related to the 2007 real estate closing because the plaintiff knew at closing that the land trust agreement provided that he only had a 50% beneficial interest. The Felton defendants also argued that the plaintiff failed to establish that they had a joint venture relationship with the Arnstein defendants, and that they, therefore, were not vicariously liable for the negligence of the Arnstein defendants. On July 9, 2012, the Arnstein defendants moved to dismiss

the malpractice claims in the third amended complaint directed against them for the same statute of limitations reason.

¶ 10 On November 15, 2012, the circuit court granted the Felton defendants' motion and dismissed count II of the plaintiff's third amended complaint, with prejudice, finding that the statute of limitations had expired. On December 7, 2012, the circuit court granted the Arnstein defendants' motion and dismissed the claims against them contained in the third amended complaint, without prejudice. On December 17, 2012, the plaintiff filed a motion for reconsideration of the court's order granting the Felton defendants' motion.

¶ 11 While the motion for reconsideration was pending, the plaintiff filed his fourth amended complaint on January 4, 2013. The fourth amended complaint contained essentially the same allegations as the third, except that the plaintiff more clearly alleged that he knew that the land trust agreement provided 50/50 ownership interests between he and Erb but that Armiros advised him to "close the deal" and that he would correct the ownership interests through the COA. Count I of the fourth amended complaint alleged professional negligence against the Arnstein defendants, claiming that they failed to properly represent the plaintiff at the property closing in 2007. The plaintiff claimed that the Arnstein defendants knew that he should have been the sole beneficiary under the land trust agreement which they drafted, but through their negligence, he was wrongfully divested of a 50% beneficial interest. He also alleged that the Arnstein defendants failed to timely file the COA with the trustee to amend the ownership division. According to the plaintiff, he did not become aware that the COA had not been properly filed with the land trustee until January 2010. He also alleged that, as a result of the negligence of the Arnstein defendants, he incurred substantial

legal fees in the litigation that ensued with Erb.

¶ 12 Count II of the fourth amended complaint was also a legal malpractice claim against the Arnstein defendants, alleging that they failed to timely file the COA with the trustee. The plaintiff alleged that, between December 4, 2008, and sometime before January 2010, the Arnstein defendants failed to obtain Erb's signature on the letter of direction in order to file the COA. According to the complaint, the plaintiff did not discover the error until January 2010 when Armiros attempted to secure Erb's signature on the letter of direction. Again, the plaintiff claimed that the negligence of the Arnstein defendants caused him to incur substantial legal fees in the defense of Erb's action and in the prosecution of his counterclaims.[1]

¶ 13 The Felton defendants were not named in the fourth amended complaint, but they were mentioned in a footnote:

> "Plaintiff Hatoff has filed a motion to reconsider this court's order of November 15, 2012 dismissing the Felton Defendants under the Third Amended Complaint and granting Rule 308a (*sic*) final order language as to the Felton defendants."

¶ 14 Initially, we note that a party who files an amended pleading forfeits any objection to the circuit court's ruling on a former complaint if he does not refer to or adopt the prior pleading in the amended complaint. *Foxcroft Townhome Owners Ass'n v. Hoffman Rosner Corp.*, 96 Ill. 2d 150, 153-54, 449 N.E.2d 125 (1983). Because the plaintiff included the footnote indicating that he had not abandoned his previously dismissed claim against the Felton defendants in the fourth amended

[1] Counts III and IV of the fourth amended complaint involve the claims of plaintiffs Allen Brothers and Great Steakhouse Steaks against the defendants. These claims are pending and are not part of this appeal.

complaint, we find that he sufficiently preserved the issue of the propriety of the trial court's dismissal of the claim against the Felton defendants for purposes of this appeal.

¶ 15 On January 25, 2013, the Arnstein defendants filed a section 2-619 motion to dismiss counts I and II of the fourth amended complaint, arguing that the claims were time-barred. They argued that the plaintiff knew that the trust agreement provided that he only held a 50% beneficial interest in the trust holding title to the condominium unit on the date of the closing and that any subsequent attempt to correct the ownership division did not trigger a new limitations period. The Arnstein defendants further argued that the plaintiff's litigation with Erb was not related to the ownership of the condominium unit and, therefore, the failure to amend the land trust agreement did not cause the plaintiff's alleged damages. Finally, the Arnstein defendants contended that the plaintiff's allegations that he knew that he only had a 50% ownership interest at the time of the condominium unit closing contradicted his previous deposition testimony in which he testified that the first time he learned that he was not the sole beneficiary of the land trust was in January 2010. The Arnstein defendants argued that the plaintiff's earlier testimony is binding and that he could not contradict it in his complaint.

¶ 16 The depositions of the plaintiff and Mullenix are contained in the record. During his December 21, 2011, deposition, the plaintiff testified that he intended that he be the sole owner of the condominium unit at the time of closing and that, after the closing, Armiros would draft the COA to allow Erb to acquire up to a 50% interest in the property as Erb financially contributed to the expenses attributable to the unit. He testified that he did not read the trust documents before the closing, but believed that Armiros had set up the trust to protect his interest as the sole beneficiary.

The plaintiff testified that he believed Armiros when he advised him that the COA would allow Erb to acquire an interest in the property as he invested money over time. The plaintiff stated that he did not become aware of the fact that he was not the sole beneficial owner until January 2010, when Mullenix informed him of the terms of the land trust agreement and that Armiros failed to file the COA with the trustee.

¶ 17 During his May 19, 2011, deposition, Mullenix testified that he was present during a discussion among Tarshis; Armiros; the plaintiff; Erb; and another lawyer, Martin Tish, that took place on January 6, 2010, after Erb allegedly threatened the plaintiff with a gun. He stated that everyone discussed the ownership of the condominium unit in terms of the division provided in the COA and debated the value of the unit and whether Erb had any interest in the property given its decline in value. Later, Mullenix received copies of the land trust agreement and the COA from Armiros. He testified that Armiros admitted that he failed to file the COA with the Albany Bank, the trustee of the land trust, in order to amend the 50/50 beneficial ownership division in the trust to the 92.5/7.5 division provided in the COA. Mullenix stated that, in order to file the COA, the trustee required that the plaintiff and Erb execute a written letter of direction consenting to its acceptance of the COA. He stated that Armiros admitted that he never had the plaintiff and Erb sign the letter of direction after they signed the COA in 2008 and never sent the documents to the trustee. However, Mullenix asserted that failure to file the COA with the land trustee did not necessarily mean that the agreement itself was not enforceable between the plaintiff and Erb.

¶ 18 The Arnstein defendants attached to their motion the deposition of Martin Tish, who opined that, regardless of the failure to file the COA with the trustee, the COA was an enforceable legal

document.

¶ 19 On April 8, 2013, the circuit court denied the plaintiff's motion for reconsideration of the November 15, 2012, order granting the Felton defendants' motion to dismiss count II of the third amended complaint, with prejudice. The court also granted the Arnstein defendants' motion to dismiss counts I and II of the fourth amended complaint, with prejudice. The court based both dismissals on the statute of limitations, which it found had commenced on August 10, 2007, the date of closing, when the plaintiff knew that the trust agreement provided that Erb had a 50% beneficial ownership interest in the land trust holding title to the condominium unit. On April 12, 2013, a written order memorializing the court's oral ruling was entered. That order included the requisite language rendering the dismissals appealable pursuant to Supreme Court Rule 304(a) (eff. Feb. 26, 2010). This appeal followed.

¶ 20 The plaintiff argues that the trial court erred in granting the defendants' motions as a genuine issue of fact exists as to when the applicable limitation period began running. We agree.

¶ 21 A section 2-619 motion admits the legal sufficiency of the plaintiff's claim but asserts certain defects or defenses outside the pleadings which defeat the claim. *Capeheart v. Terrell*, 2013 IL App (1st) 122517, ¶ 11, 996 N.E.2d 257, 260. In ruling on a motion to dismiss under section 2-619 of the Code, the trial court may consider the pleadings, depositions, and affidavits on file. *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 262, 807 N.E.2d 439, 447 (2004). The court is obligated to construe the pleadings and supporting documents in the light most favorable to the nonmoving party, accepting as true all well-pleaded facts in the plaintiff's complaint and drawing all inferences therefrom which may reasonably be drawn in the plaintiff's favor. *Capeheart*, 2013

IL App (1st) 122517, ¶ 11. The question on appeal is whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law. *Id*. The assertion that a claim is barred by the applicable statute of limitations is a matter properly raised by a section 2-619 motion to dismiss. 735 ILCS 5/2-619(a)(5) (West 2012); *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352, 882 N.E.2d 583 (2008). We review a circuit court's dismissal under section 2-619 of the Code *de novo* (*Porter*, 227 Ill. 2d at 352), noting that, even if the court dismissed on an improper ground, we may affirm the dismissal on any proper basis presented by the record (*Raintree*, 209 Ill.2d at 261).

¶ 22 Section 13-214.3(b) of the Code provides that an action for legal malpractice "must be commenced within 2 years from the time the person bringing the action knew or reasonably should have known of the injury for which damages are sought." 735 ILCS 5/13-214.3(b) (West 2012); *York Woods Community Ass'n v. O'Brien*, 353 Ill. App. 3d 293, 298, 818 N.E.2d 350 (2004). The statute of limitations provided in section 13-214.3(b) expressly incorporates the "discovery rule," which tolls the limitations period until the injured party knows or reasonably should know of the injury and knows or reasonably should know that the injury was wrongfully caused. *Steinmetz v. Wolgamot*, 2013 IL App (1st) 121375, ¶ 30, 995 N.E.2d 338. The injury in a legal malpractice action is a pecuniary injury to an intangible property interest caused by the attorney's negligent act or omission. *Steinmetz*, 2013 IL App (1st) 121375, ¶ 29. The term "wrongfully caused" refers to when an injured party becomes possessed of sufficient information concerning his injury and its cause to put a reasonable person on inquiry to determine whether actionable conduct is involved. *Id.* Generally, " '[t]he question of when a party knew or should have known both of an injury and its

[probable] wrongful cause is one of fact, unless the facts are undisputed and only one conclusion may be drawn from them.' " *Steinmetz,* 2013 IL App (1st) 121375, ¶ 30 (quoting *Nolan v. Johns-Manville Asbestos*, 85 Ill.2d 161, 171, 421 N.E.2d 864 (1981)); see also *Profit Management Development, Inc. v. Jacobson*, 309 Ill. App. 3d 289, 310, 721 N.E.2d 826 (1999); *Butler v. Mayer, Brown and Platt*, 301 Ill. App. 3d 919, 922, 704 N.E.2d 740 (1998).

¶ 23 At the outset, we agree with the Arnstein defendants' argument that, regardless of the allegations made in the fourth amended complaint, the plaintiff is bound by the testimony he gave during his December 2011 deposition. See, *Van's Material Co. v. Department of Revenue*, 131 Ill. 2d 196, 211, 545 N.E.2d 695 (1989); *James v. Ingalls Memorial Hospital*, 299 Ill. App. 3d 627, 635, 701 N.E.2d 207 (1998); *Eidson v. Audrey's CTL, Inc.*, 251 Ill. App. 3d 193, 196, 621 N.E.2d 921 (1993) ("When a party makes a judicial admission, he is bound by that admission and may not contradict it."). Therefore, we consider the merits of this case using the facts admitted during the plaintiff's deposition, namely that: he did not know the terms of the trust until January 2010; he knew the COA would allow Erb to acquire up to a 50% interest in the property over time; and, he did not know that the COA was not timely filed with the land trustee until January 2010. We note, however, that we fail to see how the plaintiff's testimony supports the Arnstein defendants' position.

¶ 24 We first consider the parties' dispute as to whether the plaintiff's injury was the divestment of a 50% beneficial interest in the trust holding title to the condominium unit or the incurrence of additional legal fees in relation to the litigation instituted by Erb. The plaintiff argues that the limitations period should commence in January 2010, when he incurred legal fees defending against Erb's suit. We disagree.

¶ 25 The incurrence of attorney fees does not automatically give rise to a cause of action for legal malpractice but may trigger the running of the statute of limitations where it is clear, at the time the additional fees are incurred, that the fees are directly attributable to an attorney's neglect. *York Woods*, 353 Ill. App. 3d at 299. Here, it is clear from the pleadings in the Erb litigation, which are contained in the record, that at least a portion of the legal fees that the plaintiff incurred were related to the division of the beneficial interest in the trust holding title to the condominium unit and in the COA.

¶ 26 The defendants argue, however, that the plaintiff was first injured at the time of the closing, when title to the condominium unit was conveyed to a land trust in which he had only a 50% interest. They further argue that the plaintiff's subsequent incurrence of legal fees in the Erb litigation as a result of the Arnstein defendants' failure to properly amend the beneficial ownership division in the trust did not trigger a new limitations period. Relying on *Snyder v. Heidelberger*, 2011 IL 111052, 953 N.E.2d 415, the defendants argue that the plaintiff suffered an immediate, pecuniary injury at the time of the property closing. We agree with the defendants on this point.

¶ 27 In *Snyder*, the plaintiff sued her attorney in 2008 for negligently preparing a quitclaim deed in 1997 which failed to convey property to her and her husband in joint tenancy with rights of survivorship. *Snyder*, 2011 IL 111052, ¶ 1. After her husband died, the plaintiff discovered that the property was held in a land trust which named her stepson as the sole beneficiary and that the quitclaim deed had failed to properly transfer title to her in joint tenancy with her husband. *Id.* The defendant moved to dismiss the complaint, alleging that the claim was barred by the statute of repose. *Snyder*, 2011 IL 111052, ¶ 4. In determining whether the plaintiff's injury occurred at the

time the deed was drafted or after her husband's death when she discovered the deed was invalid, the supreme court stated that the services rendered to the plaintiff and her husband "were intended to have an immediate benefit during" her husband's lifetime. *Snyder*, 2011 IL 111052, ¶ 14. The court explained that, had the joint tenancy deed been properly drafted, the plaintiff and her husband would have each had an undivided one-half interest in the property with a right of survivorship. *Id.* The failure of the deed to create the joint tenancy, therefore, "caused a present injury that occurred at the time the quitclaim deed was prepared." *Id.* Ultimately, the court stated that, regardless of whether the plaintiff suffered a second injury at the time of her husband's death, the plaintiff's claim was barred by the statute of repose. *Snyder*, 2011 IL 111052, ¶ 20.

¶ 28 Like in *Snyder*, had the trust agreement in this case been drafted to provide that the plaintiff was the sole beneficiary, he would have had a 100% interest in the trust holding title to the condominium unit on the date of the closing. The failure of the trust agreement to so provide, therefore, caused the plaintiff a "present injury" on the date of the closing. However, while we agree with the defendants that the plaintiff's injury occurred on the date of closing (August 10, 2007), we find that there remains a question of fact as to when he knew or should have known of the injury and that it was wrongfully caused. Where a factual question remains regarding when the plaintiff knew or should have known he was injured, dismissal under section 2-619(a)(5) is improper. *Butler*, 301 Ill. App. 3d at 922.

¶ 29 In this case, a question of fact exists as to when the plaintiff knew or should have known that he was injured. "A client ordinarily relies upon the representations of his attorney." *Sutton v. Mytich*, 197 Ill. App. 3d 672, 679, 555 N.E.2d 93 (1990). "Whether the failure of a client to read a

particular document necessarily defeats a malpractice action is dependent upon the particular circumstances." *Id.* Here, the plaintiff testified that he advised Armiros that he wanted to be the sole owner of the condominium unit, but wanted to afford Erb the opportunity to acquire an interest as he financially contributed to the unit's expenses over time. The plaintiff also testified that Armiros advised him to place the property in a land trust and that, after the closing, he would amend the ownership division to grant Erb an interest using the COA. According to the plaintiff, he understood that the land trust agreement provided that he was the sole beneficiary, although he did not read the trust documents before signing them. Further, the plaintiff testified that he understood that the COA had amended the trust agreement after he and Erb signed it in December 2008 and that, in January 2010, he discovered that he only held a 50% beneficial interest in the trust and that Armiros had not timely filed the COA with the land trustee. These facts support more than one possible conclusion as to when the plaintiff knew or should have known of his injury and that it was wrongfully caused. One reasonable interpretation is that the plaintiff did not know of his injury; that is, that he was not the sole beneficiary of the trust holding title to the condominium unit, until January 2010, placing the filing of his complaint in the instant action, on March 3, 2011, well within the two year limitations period provided in section 13-214.3(b) of the Code. Because the facts support more than one conclusion, the issue of when the plaintiff knew or should have known of his injury should not have been decided as a matter of law pursuant to a section 2-619(a)(5) motion. Therefore, the circuit court erred in granting both motions to dismiss the plaintiff's legal malpractice claims as being time-barred.

¶ 30 Because we may affirm a section 2-619 dismissal on any proper basis presented by the

record, we consider the defendants' remaining arguments supporting the dismissal of the plaintiff's claims. The Felton defendants argue that the circuit court's dismissal of count II of the third amended complaint may be affirmed because they were not, as the plaintiff alleged, part of a joint venture with the Arnstein defendants since they did not work with the Arnstein defendants on the drafting of the land trust agreement or the COA.

¶ 31 An action may be dismissed under section 2-619(a)(9) on the ground that a claim asserted is barred by "other affirmative matter" avoiding the legal effect of or defeating the claim. See 735 ILCS 5/2-619(a)(9) (West 2012). In context, affirmative matter includes a defense that completely negates the asserted cause of action, and it must be apparent on the face of the complaint or supported by affidavits or other evidentiary materials. *Webb v. Damisch*, 362 Ill. App. 3d 1032, 1037, 842 N.E.2d 140 (2005). Dismissal is proper "where the affirmative matter refutes crucial conclusions of law or material fact that are unsupported by allegations of specific facts." *Id.* Further, the affirmative matter must be more than evidence offered to refute a well-pleaded fact in the complaint as all well-pleaded facts must be taken as true for the purposes of a section 2-619 motion. *Id.*

¶ 32 Here, the Felton defendants' motion and supporting affidavit merely refute the plaintiff's allegations in the third amended complaint relating to the legal relationship between them and the Arnstein defendants. A section 2-619(a)(9) motion to dismiss is not the appropriate means to resolve such factual disputes. Therefore, we reject this argument as an alternative basis to affirm the circuit court's dismissal of count II of the third amended complaint.

¶ 33 For the same reason, we reject the Arnstein defendants' argument that we may affirm the

dismissal of counts I and II of the fourth amended complaint because the alleged negligence did not cause the plaintiff's damages.

¶ 34 As with the issue of whether a joint venture exists, "the issue of proximate causation in a legal malpractice setting is [also] generally considered a factual issue to be decided by the trier of fact." *Renshaw v. Black*, 299 Ill. App. 3d 412, 417, 701 N.E.2d 553, 557 (1998). In this case, the plaintiff alleged that the Arnstein defendants' negligent drafting of the land trust agreement and failure to file the COA caused him to incur substantial legal fees defending his ownership interest in the condominium unit. The Arnstein defendants argue that, in his litigation, Erb never raised an issue over their failure to file the COA, and they also note that the plaintiff was successful in his dispute with Erb. However, Erb's complaint, which is included in the record, establishes that a portion of the dispute between Erb and plaintiff centered around Erb's assertion that the COA was unenforceable and that he had a 50% interest in the condominium unit under the land trust agreement. While the parties settled the dispute with Erb assigning any interest he had in the condominium unit to the plaintiff, the Arnstein defendants have merely offered proof to refute the plaintiff's well-pleaded factual allegations regarding causation, which is insufficient to warrant a dismissal under section 2-619(a)(9) of the Code. *Cf., Webb*, 362 Ill. App. 3d at 1039 (finding the trial court properly dismissed the complaint under section 2-619(a)(9) where the affirmative matter refuted a crucial conclusion of law regarding damages). Therefore, we reject the Arnstein defendants' argument that counts I and II of the fourth amended complaint should have been dismissed because the plaintiff failed to establish that his damages were proximately caused by the alleged negligence.

¶ 35 For the foregoing reasons, we reverse the order of the circuit court of Cook County which dismissed count II of the third amended complaint and the order which dismissed counts I and II of the fourth amended complaint and remand the cause for further proceedings.

¶ 36 Reversed and remanded.