2015 IL App (1st) 141599-U

FIFTH DIVISION
December 18, 2015

No. 1-14-1599

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

	)	Appeal from the
SAVAS TSITIRIDIS,	)	Circuit Court of
	)	Cook County
Plaintiff-Appellant,	)	
	)	
v.	)	No. 13 L 2219
	)	
KHALED MAHMOUD and CHICAGO TAXI	)	
MEDALLION MANAGEMENT, INC.,	)	Honorable
	)	Margaret Ann Brennan,
Defendants-Appellees.	)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming in part and reversing in part the judgment of the circuit court of Cook County where plaintiff set forth sufficient facts to state a claim for breach of contract, but failed to plead sufficient facts to state claims for breach of contract implied in law and unjust enrichment.

¶ 2 Plaintiff Savas Tsitiridis (plaintiff), appeals an order of the circuit court of Cook County dismissing his second amended complaint with prejudice pursuant to section 2-615 of the Code

of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2014)) against defendants Khaled Mahmoud and Chicago Taxi Medallion Management, Inc. (collectively the defendants). On appeal, plaintiff contends he sufficiently alleged a cause of action for breach of contract, breach of implied contract, and unjust enrichment against each of the defendants. For the reasons that follow, we affirm in part and reverse in part the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 The Parties

¶ 5 Plaintiff is the owner of a number of taxicab medallions. Taxicab medallions are licenses issued by the City of Chicago to control the quality and safety of the vehicles to which the medallion is affixed. Each medallion has a unique numeric code, is registered with the City of Chicago, and must be physically affixed atop the hood of the vehicle to which it is registered. The medallion owner must pay an annual renewal fee, unless the medallion is managed by another individual or entity, commonly referred to as a "medallion manager." Defendant Mahmoud is the sole owner and operator of Chicago Taxi Medallion Management, Inc., an entity licensed and bonded as a medallion manager.

¶ 6 Prior Complaints

¶ 7 On February 28, 2013, plaintiff filed the first of three complaints in this case against defendants. This one-count complaint generally alleged that defendants' breached the parties' five-year taxicab medallion management agreement when they did not pay for fines and citations incurred by defendants' drivers while operating vehicles to which plaintiff's medallions were affixed.

¶ 8 Defendants moved to dismiss the complaint pursuant to section 2-619(a)(7) of the Code (735 ILCS 5/2-619(a)(7) (West 2012)), arguing that because plaintiff's oral contract was not

performable within one year, the Illinois Frauds Act (740 ILCS 80/1 (West 2012)) barred its enforcement. The circuit court granted defendant's 2-619 motion without prejudice and further granted plaintiff leave to file an amended complaint.

¶ 9 Thereafter, plaintiff filed a three-page verified amended complaint which alleged that between 2006 and 2011 he and defendants entered into a "series of one-year oral management agreements" regarding the taxicab medallions. Defendants once again moved to dismiss the verified amended complaint pursuant to section 2-619(a)(7) of the Code (735 ILCS 5/2-619(a)(7) (West 2012)). Defendants later withdrew their section 2-619 motion and were granted leave to file an amended motion to dismiss pursuant to sections 2-615 and 2-619 of the Code (735 ILCS 5/2-619.1 (West 2012)). Defendants filed their combined motion; however, before the matter was fully briefed, plaintiff requested and was granted leave to file a second amended complaint.

¶ 10 The Operative Pleading

¶ 11 On August 26, 2013, plaintiff filed a second amended verified complaint (second amended complaint), the operative pleading in this cause. It alleged three counts: (1) breach of express oral contract (count I); (2) breach of implied contract (count II); and (3) "*Quantum Meruit*/Unjust Enrichment" (count III).[1] The following factual allegations are taken from the second amended complaint.

¶ 12 In November of 2006, defendants began managing various medallions owned by plaintiff in exchange for a monthly fee. This agreement was "on a year to year basis, and on standard terms." Thereafter, defendants affixed the medallions to various taxicabs they owned and registered them with the City. Defendants paid monthly fees to plaintiff according to the terms of their agreement. Each year some medallions would be renewed, while others were returned to

[1] We note that plaintiff, in his brief on appeal, does not argue he stated a claim for *quantum meruit*. Instead, plaintiff is clear that count III was solely for unjust enrichment.

plaintiff. The parties' management agreement ended in 2011 when the last medallion managed by defendants was returned to plaintiff.

¶ 13 According to the operative complaint, "[t]his type of medallion management arrangement is customary in the industry, and the essential terms of these management relationships are largely standard. The manager pays a negotiated fee to the owner for each medallion, and in turn, is authorized to affix the medallions on its fleet of vehicles, and register its vehicles with the City." The second amended complaint further alleged that "[t]he manager is solely responsible for the operation of its fleet, and all expenses incurred in connection therewith, including, but not limited to fines, citations for parking violations, any and all penalties for traffic violations, City of Chicago Ground Tax, Special Use Tax, additional permits as may be required for advertising, medallion renewal fees and any administrative notices or fines that may be generated or required in conjunction with the operation of the medallion while under the lease and use of the medallion manager." These medallion management agreements "run on a year to year basis." If the medallion is not renewed, then the management of that medallion naturally ends.

¶ 14 Plaintiff further asserted that, unbeknownst to him, the individual taxicab drivers operating under the control of defendants had received various tickets and legal violations while plaintiff's medallions were affixed to those vehicles. Plaintiff alleged that "[p]ursuant to the terms of the arrangement between the parties, the sole and exclusive responsibility for payment of the above-alleged fines and citations resided exclusively with Defendants." Defendants, however, failed to pay the fines and citations. In an effort to halt the "mounting penalties," plaintiff paid the fines and citations in the amount of $58,905.10. A copy of the fines and citations was attached as an exhibit to plaintiff's second amended complaint.

¶ 15 Regarding the breach of express contract count, plaintiff alleged defendants "manifested an intention to be bound by the essential terms of the management arrangement that is standard in the industry" through their conduct and statements. Plaintiff asserted he fully performed his obligations under the contract, but that defendants breached the contract as previously described.

¶ 16 In count II, breach of implied contract, plaintiff alleged that defendants were "fully aware of the standard terms and conditions pursuant to which medallions are managed" and their obligation to pay all fines, citations, and penalties during the time a medallion is under its management. The parties reached an implied agreement between them upon terms and conditions that are standard in the industry. The parties conduct evidenced a mutual belief that a contract implied in law existed between them. Plaintiff performed all of his obligations under the contract; however, defendants did not and plaintiff was damaged as a result of their breach.

¶ 17 Count III alleged plaintiff "agreed to permit Defendants to manage the subject medallions with a reasonable expectation of payment for each medallion under management, without any responsibility for any costs or expenses associated with the operation of the subject taxicabs." It further alleged defendants accepted the benefits of this arrangement without paying the costs and expenses associated with the operation of the taxicabs. Instead, these expenses were "wrongfully forced upon [plaintiff]." Thus, defendants were unjustly enriched in an amount of $58,905.10.

¶ 18 The Motion to Dismiss

¶ 19 On September 23, 2013, defendants filed a section 2-615 motion to dismiss.[2] Defendants argued that plaintiff asserted inconsistent facts in his second amended complaint as it stated "there exists an 'express oral agreement between the parties' and immediately thereafter claim[ed] the existence of 'a series of one year oral contract [*sic*]' in the following paragraph."

[2] Although not specified in the motion, we consider the motion to be brought pursuant to subsection (a) of section 2-615 of the Code (735 ILCS 5/2-615(a) (West 2014)).

Defendants maintained that the second amended complaint was insufficient at law because the essential terms of the agreement could not be determined from the language of the complaint.

¶ 20 In response, plaintiff asserted that his complaint sufficiently alleged a breach of a series of one-year oral management agreements. Plaintiff further argued he set forth sufficient facts to establish a claim of breach of implied contract where he alleged an oral contract was formed when defendant's requested and received permission to manage the medallions and then paid a monthly fee to plaintiff for use of those medallions. Plaintiff maintained this claim was "premised upon settled industry standards and the parties' course of dealings." Regarding his claim for unjust enrichment, plaintiff contended he set forth facts alleging that no contract existed and defendants received and retained a benefit which made it unjust for them to retain the benefit without paying.

¶ 21 Although not raised in defendant's motion, plaintiff further argued the statute of frauds did not apply because: (1) the agreement could be fully performed within a year; and (2) the agreement was satisfied by various writings. In addition, plaintiff and defendants' performance "take[s] the oral agreement outside the scope of the Statute of Frauds, as a matter of law." Further, plaintiff argued that the statute of frauds does not apply to quasi-contract actions and is therefore not a basis for dismissal of count III. Attached to plaintiff's response were "surrender forms" indicating defendants' intent to no longer manage plaintiff's medallions and copies of certain checks from defendant Chicago Taxi Medallion Management, Inc. to companies owned by plaintiff.

¶ 22 In reply, defendants contended plaintiff failed to allege the number of medallions, the duration of the medallions, or the numbers of the medallions which were the subject of the alleged management agreements. Defendants also noted that the exhibits attached to plaintiff's

response did not indicate when the management agreement commenced.

¶ 23 On December 20, 2013, the circuit court granted defendants' section 2-615 motion with prejudice finding plaintiff failed to set forth sufficient facts regarding each of the counts. In a three-page written order, the circuit court found that the language of the second amended complaint did not directly conflict with the prior allegations and did not rise to a judicial admission of fact. The court further found that plaintiff pleaded insufficient facts, specifically finding that a general reference to the "industry standard" was "insufficient to elucidate the terms of the contract alleged." According to the court, the term "industry standard" as used in plaintiff's second amended complaint was "insufficient to apprise Defendants, or this Court for that matter, of what the terms of the contract are." The court also pointed out that plaintiff failed to attach records or documents establishing the existence of an agreement between the parties to the complaint. Finally, the court found the allegations of the second amended complaint for breach of implied contract and unjust enrichment "too vague to properly support Plaintiff's alleged right to relief."

¶ 24 The circuit court denied plaintiff's motion to reconsider. This appeal followed.

¶ 25 ANALYSIS

¶ 26 A motion to dismiss pursuant to section 2-615 of the Code attacks the legal sufficiency of a complaint by alleging defects on the face of the complaint. 735 ILCS 5/2-615 (West 2010); *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81 (2004). When ruling on a section 2-615 motion, the relevant question is whether the allegations in the complaint, construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted. *Canel v. Topinka*, 212 Ill. 2d 311, 317 (2004). Exhibits attached to a complaint become part of the pleading for a motion to dismiss. *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 18. A

motion to dismiss should not be granted "unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief." *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 161 (2009). Illinois is a fact-pleading state; conclusions of law and conclusory allegations unsupported by specific facts are not sufficient to survive dismissal. *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 408 (1996). We review the dismissal of a complaint pursuant to section 2-615 *de novo*. *Mauvais-Jarvis v. Wong*, 2013 IL App (1st) 120070, ¶ 64. *De novo* consideration means we perform the same analysis that a trial court would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 27 Turning to the merits of plaintiff's appeal, we first note defendants have not filed an appellee's brief. The record, however, is simple and the claimed errors are such that we can easily decide them without an appellee's brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 28 Breach of Express Contract

¶ 29 We first address whether plaintiff's second amended complaint sufficiently stated a cause of action for breach of contract to survive dismissal under section 2-615 of the Code (735 ILCS 5/2-615 (West 2014)). Plaintiff maintains that he alleged facts that demonstrate the existence of an express oral contract, plaintiff's performance thereunder, and defendant's breach and the ensuing damage. Plaintiff contends that despite the circuit court's statements to the contrary, the second amended complaint contains "a detailed account about custom and practice in the industry regarding medallion management by third parties."

¶ 30 The elements of a cause of action for breach of a contract, whether oral or written, are: (1) the existence of a valid and enforceable contract; (2) the plaintiff's performance of all contractual conditions; (3) a breach by the defendant; and (4) resulting damages. See

Unterschuetz v. City of Chicago, 346 Ill. App. 3d 65, 69 (2004); *Sheth v. SAB Tool Supply Co.*, 2013 IL App (1st) 110156, ¶ 68. A valid and enforceable contract requires an offer, an acceptance, and consideration. *CNA International, Inc. v. Baer*, 2012 IL App (1st) 112174, ¶ 45.

¶ 31 The allegations of count I of the second amended complaint provided that plaintiff entered into an agreement with defendants to have them manage a number of taxicab medallions he owned on a year-to-year basis in exchange for a monthly fee. This agreement, however, was not in writing. Plaintiff further alleged that he provided the medallions to defendants who then affixed the medallions to vehicles they leased to other drivers. In addition, count I indicated that defendants paid plaintiff a monthly fee for those medallions. Accordingly, count I of the complaint alleged an express oral contract between plaintiff and defendants and that plaintiff fully performed his obligations under the contract.

¶ 32 What remains at issue is whether the second amended complaint sufficiently pleaded a breach of the contract by defendants. The allegations provided that the contract was premised on "industry standards." The trial court took issue with this allegation, finding the second amended complaint did not sufficiently state what those industry standards were. Our review of the second amended complaint, however, reveals that plaintiff did allege sufficient facts regarding the "industry standards." According to the second amended complaint:

> "6. This type of medallion management arrangement is customary in the industry, and the essential terms of these management relationships are largely standard. The manager pays a negotiated fee to the owner for each medallion, and in turn, is authorized to affix the medallions to its fleet of vehicles, and register its vehicles with the City. The manager thereafter leases the vehicles to individual drivers licensed by the City.
>
> 7. The manager is solely responsible for the operation of its fleet, and all

> expenses incurred in connection therewith, including, but not limited to fines, citations for parking violations, any and all penalties for traffic violations, City of Chicago Ground Tax, Special Use Tax, additional permits as may be required for advertising, medallion renewal fees and any administrative notices or fines that may be generated or required in conjunction with the operation of the medallion while under the lease and use of the medallion manager."

Pursuant to these allegations, defendants breached their obligations under the contract when they refused to pay for fines, citations, and penalties incurred while plaintiff's medallions were affixed to certain vehicles. Plaintiff stated that he paid those fines, citations, and penalties and was damaged in the amount of $58,905.10. Based on the allegations of count I of the second amended complaint, we conclude plaintiff sufficiently stated a claim for breach of express contract against defendants and, therefore, the circuit court erred in dismissing count I with prejudice.

¶ 33 Breach of Implied Contract and Unjust Enrichment

¶ 34 Plaintiff next argues that the circuit court erred in dismissing counts II and III of the second amended complaint. According to plaintiff, counts II and III were plead in the alternative and stated sufficient facts to survive a section 2-615 motion to dismiss.

¶ 35 Count II of plaintiff's second amended complaint alleged breach of implied contract. There are two types of implied contracts, contracts implied in law and contracts implied in fact. A contract implied by law, or a quasi-contract, "arises by implication of law wholly apart from the usual rules relating to contracts and does not depend on an agreement or consent of the parties. A contract implied in law is equitable in nature, predicated on the fundamental principle that no one should unjustly enrich himself at another's expense." *In re Estate of Milborn*, 122 Ill.

App. 3d 688, 690 (1984); see *Martis v. Pekin Memorial Hospital, Inc.*, 395 Ill. App. 3d 943, 952 (2009) ("The theory of unjust enrichment is based on a contract implied in law."). "A contract implied in fact is an actual contract; the only difference between an express contract and a contract implied in fact is that in the former the parties arrive at their agreement by words, either written or oral, while in the latter their agreement is arrived at by a consideration of their acts and conduct." *Barry Mogul & Associates, Inc. v. Terrestris Development Co.*, 267 Ill. App. 3d 742, 750 (1994).

¶ 36 Plaintiff's second amended complaint alleged that "there are contracts implied by law between them." Thus, "[i]n order to state a claim based upon a contract implied in law, a plaintiff must allege specific facts in support of the conclusion that it conferred a benefit upon the defendant which the defendant has unjustly retained in violation of fundamental principles of equity and good conscience." *Karen Stavins Enterprises, Inc. v. Community College Dist. No. 508*, 2015 IL App (1st) 150356, ¶ 7. However, "[n]o claim of a contract implied in law can be asserted when an express contract or a contract implied in fact exists between the parties and concerns the same subject matter." *Id.*

¶ 37 Count III of plaintiff's second amended complaint alleged unjust enrichment. Under this theory of recovery, plaintiff must similarly demonstrate that defendants "unjustly retained a benefit to the plaintiff's detriment, and that defendant[s'] retention of the benefit violates the fundamental principles of justice, equity, and good conscience." *HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145, 160 (1989). Unjust enrichment is not an independent cause of action. *Martis v. Grinnell Mutual Reinsurance Co.*, 388 Ill. App. 3d 1017, 1024 (2009) (citing *Mulligan v. QVC, Inc.*, 382 Ill. App. 3d 620, 631 (1989)). Rather, "it is condition that may be brought about by unlawful or improper conduct as defined by law, such as

fraud, duress, or undue influence." (Internal quotation marks omitted.) *Alliance Acceptance Co. v. Yale Insurance Agency, Inc.*, 271 Ill. App. 3d 483, 492 (1995). In fact, "an unjust enrichment claim is an action at law and is sometimes known as a contract implied at law, a quasi-contract, restitution, or *assumpsit*." *Blumenthal v. Brewer*, 2014 IL App (1st) 132250, ¶ 12. This theory is inapplicable where an express contract, oral or written, governs the parties' relationship. *Id.* A plaintiff, however, is permitted to plead breach of contract claims in addition to unjust enrichment. See *Bureau Service Co. v. King*, 308 Ill. App. 3d 835, 841 (1999) (a complaint may properly plead alternative theories of recovery despite their apparent inconsistency). "Thus, although a plaintiff may plead claims alternatively based on express contract and an unjust enrichment, the unjust enrichment claim cannot include allegations of an express contract." *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 25 (citing *Guinn v. Hoskins Chevrolet*, 361 Ill. App. 3d 575, 604 (2005)).

¶ 38 Here, plaintiff alleges two separate counts of breach of a contract implied in law (count II) and unjust enrichment (count III); however, based on the law stated above, these counts are actually one and the same. See *Blumenthal*, 2014 IL App (1st) 132250, ¶ 12. Thus, we will consider whether the allegations of these counts taken together sufficiently state a cause of action to withstand dismissal.

¶ 39 In this case, plaintiff's second amended complaint alleged the parties entered into an express oral contract. Counts II and III do not argue in the alternative that this contract was invalid, no longer in full force and effect, or otherwise unenforceable. Instead, plaintiff incorporates the allegations of paragraphs one through 18, which allege the existence of an express oral contract between the parties. Because these counts improperly include allegations of an express contract, the circuit court properly dismissed them. See *Gagnon*, 2012 IL App

(1st) 120645, ¶ 25; *Guinn*, 361 Ill. App. 3d at 604.

¶ 40 Plaintiff asserts that even if the dismissal was justified, the circuit court should not have dismissed his second amended complaint with prejudice where (1) this was the first time plaintiff's complaint was dismissed pursuant to section 2-615 of the Code and (2) plaintiff's documents attached to his response demonstrated that he should have had an opportunity to amend his pleading.

¶ 41 Although we generally review dismissals pursuant to section 2-615 of the Code *de novo* (*Mauvais-Jarvis*, 2013 IL App (1st) 120070, ¶ 64), "the question of whether that dismissal should have been 'with prejudice' is a matter committed to the sound discretion of the circuit court, and we, therefore, review its resolution of that issue using an abuse of discretion standard." *Fabian v. BGC Holdings, LP*, 2014 IL App (1st) 141576, ¶ 22 (citing *Bruss v. Przybylo*, 385 Ill. App. 3d 399, 405 (2008); *Muirfield Village-Vernon Hills, LLC v. K. Reinke, Jr. & Co.*, 349 Ill. App. 3d 178, 195 (2004)). A complaint should be dismissed with prejudice under section 2-615 only if it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recover. *McLean v. Rockford Country Club*, 352 Ill. App. 3d 229, 233 (2004).

¶ 42 We agree with plaintiff that the trial court abused its discretion when it dismissed the complaint with prejudice. As plaintiff points out, defendants' motion to dismiss was the first and only substantive motion directed to the sufficiency of his claims. Because plaintiff's claims were substantively dismissed only once and he may be able to plead a cause of action for quasi-contract/unjust enrichment, plaintiff should have been granted leave to amend his complaint. See *Andersen v. Mack Trucks, Inc.*, 341 Ill. App. 3d 212, 219 (2003) (amendments should be liberally allowed). In addition, the documents inappropriately attached to plaintiff's response to the motion to dismiss, could also be included with the complaint upon amendment. We therefore

affirm the circuit court's dismissal of counts II and III, but reverse its finding that the complaint be dismissed "with prejudice." Plaintiff is granted leave to amend his complaint.

¶ 43 CONCLUSION

¶ 44 We reverse the dismissal of count I of plaintiff's second amended complaint with prejudice as plaintiff set forth sufficient facts to state a breach of contract claim. Although we affirm the dismissal of counts II and III, we reverse that portion of the judgment of the circuit court ordering that the dismissal be with prejudice, and we remand this cause to the circuit court with directions that plaintiff be provided an opportunity to amend his pleading.

¶ 45 Affirmed in part; reversed in part; remanded with directions.