SIXTH DIVISION
July 15, 2016

No. 1-14-1946

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

COLONY BMO FUNDING, LLC, Plaintiff-Appellee, v. LAJPAT R. MADAN and REKHA M. MADAN, Defendants-Appellants,	)	Appeal from the Circuit Court of Cook County.
	)	No. 12 CH 35645
LAJPAT R. MADAN, Counterplaintiff-appellant, v. COLONY BMO FUNDING, LLC, Counterdefendant-Appellee.	)	Honorable Robert J. Quinn, Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Rochford and Justice Delort concurred in the judgment.

ORDER

HELD: We affirm the orders of the circuit court of Cook County granting summary judgment in favor of Colony as to all counts in its verified complaint, striking Mr. Madan's fourth affirmative defense, and dismissing counts I and II of his counterclaims.

¶ 1 This interlocutory appeal involves several orders the circuit court entered in favor of plaintiff-appellee Colony BMO Funding, LLC (Colony) and against defendants-appellants Mr. Lajpat R. Madan and his wife Mrs. Rekha M. Madan in connection with a mortgage foreclosure action initiated by Colony. For the reasons that follow, we affirm.

¶ 2 BACKGROUND

¶ 3 The factual and procedural background giving rise to the issues in this interlocutory appeal is as follows. In November 2006, the ATG Trust Company, as trustee under a trust agreement dated November 7, 2006 and known as the ATG Trust Company Trust No. L006-127 (Trust), purchased real property commonly known as 506-610 W. Wise Road, Schaumburg, Illinois. The property is utilized as a shopping center.

¶ 4 The Madans, who are beneficiaries of the Trust, executed several loan documents, including a promissory note pursuant to which BMO Harris Bank National Association f/k/a Harris, N.A. (Harris Bank) extended a commercial loan in the original principal amount of $2,737,500.00 to finance the purchase of the shopping center. The promissory note was secured by among other things, a mortgage lien on the real property comprising the shopping center and on the personal property located on or used in connection with the shopping center.

¶ 5 In March 2012, Harris Bank assigned all of its rights, title, and interest in the loan documents, promissory note, and mortgage to Colony.

¶ 6 On September 20, 2012, Colony filed a three-count verified complaint for foreclosure and money judgment against various parties, including the Madans. Count I sought foreclosure of

the real property; count II sought foreclosure of the personal property; and count III sought money damages for alleged breach of contract relating to the promissory note.

¶ 7 In response to the complaint, the Madans each separately filed various pleadings including verified answers with affirmative defenses and counterclaims. This appeal specifically pertains to Mr. Madan's amended third affirmative defense, his fourth affirmative defense, and counts I and II of his counterclaims.

¶ 8 Mr. Madan's amended third affirmative defense was based on theories of fraud and duress. He alleged that although the parties intended and understood that Mrs. Madan would be listed as the sole borrower on the loan, Harris Bank nevertheless fraudulently induced him, under duress during a contentious closing, into signing loan documents making him a borrower on the loan with his wife. In his fourth affirmative defense, Mr. Madan alleged that Harris Bank fraudulently induced him into signing the loan documents in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq*. (West 2012)).

¶ 9 In count I of his counterclaim, Mr. Madan sought a declaratory judgment of non-liability; and in count II, he sought rescission of the relevant loan documents.

¶ 10 Colony moved to strike the affirmative defenses pursuant to a combined motion brought under section 2-619.1 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2012)). Colony moved to dismiss the counterclaims pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)).

¶ 11 On January 31, 2014, the circuit court granted the following relevant motions to dismiss or strike filed by Colony: motion dismissing both counterclaims, with prejudice; motion striking the third affirmative defense, without prejudice and with leave to replead; and motion striking

the fourth affirmative defense, with prejudice. Mr. Madan subsequently filed an amended third affirmative defense.

¶ 12 On May 21, 2014, the circuit court granted Colony's motion for summary judgment on all counts and entered a judgment of foreclosure and sale against the Madans and other defendants who are not parties to this appeal in the amount of $3,235,312.59, and also entered a default judgment against all unknown owners and nonrecord claimants. The court included Rule 304(a) language in the summary judgment order for purposes of appeal (Illinois Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff .Jan.1, 2006)).

¶ 13 On June 17, 2014, the circuit court made findings pursuant to Rule 304(a) that there was no just reason to delay enforcement or appeal of the aforementioned court orders granting Colony's motions dismissing counts I and II of Mr. Madan's counterclaims with prejudice and striking his fourth affirmative defense with prejudice. The Madans filed a timely notice of appeal.

¶ 14 ANALYSIS

¶ 15 The Madans first challenge the circuit court's rulings on summary judgment. Review of a circuit court's ruling granting summary judgment is *de novo*. *Sears, Roebuck & Company v. Acceptance Insurance Co.*, 342 Ill. App. 3d 167, 171, (2003). The purpose of summary judgment is not to try an issue of fact but to determine whether a triable issue of fact exists. *Banco Popular North America v. Gizynski*, 2015 IL App (1st) 142871, ¶ 37. And although summary judgment is considered a "drastic means of disposing of litigation" (*Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986)), it is nonetheless an appropriate tool to employ in the expeditious disposition of a lawsuit when the moving party's right to judgment is clear and free from doubt (*Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001)).

¶ 16 Summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with any affidavits and exhibits, when viewed in the light most favorable to the nonmoving party, indicate there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (c) (West 2000); *Bier v. Leanna Lakeside Property Ass'n*, 305 Ill. App. 3d 45, 50 (1999). "If the party moving for summary judgment supplies facts which, if not contradicted, would entitle the party to judgment as a matter of law, the opposing party cannot rely on his pleadings alone to create a genuine issue of material fact." *Fields v. Schaumburg Firefighters' Pension Board*, 383 Ill. App. 3d 209, 224 (2008). "To resist a motion for summary judgment, the opponent must provide some factual basis that would arguably entitle him to judgment." *Id*; see *Citimortgage, Inc. v. Bukowski*, 2015 IL App (1st) 140780, ¶ 19 ("A party defending against summary judgment is not entitled to rely on the allegations of her pleadings to raise a genuine issue of material fact, but must affirmatively controvert evidence adduced by the moving party"). With these principles in mind, we consider the Madans' arguments regarding the grant of summary judgment in favor of Colony.

¶ 17 The Madans contend the circuit court erred in granting summary judgment in favor of Colony because the affidavits filed in support of the motion for summary judgment did not comply with the requirements of Illinois Supreme Court Rule 191(a) (eff. July 1, 2002). Rule 191 governs the sufficiency of an affidavit filed in support of, or in opposition to, a motion for summary judgment (*Jackson v. Graham*, 323 Ill. App. 3d 766, 777 (2001)), and provides in relevant part:

> "Affidavits in support of and in opposition to a motion for summary judgment under section 2-1005 of the Code of Civil Procedure * * * shall be made on the personal

knowledge of the affiants; shall set forth with particularity the facts upon which the claim, counterclaim, or defense is based; shall have attached thereto sworn or certified copies of all documents upon which the affiant relies; shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto." Ill. S. Ct. R. 191(a) (eff. July 1, 2002).

¶ 18 "Accordingly, a Rule 191(a) affidavit must not contain mere conclusions and must include the facts upon which the affiant relied." *US Bank, National Ass'n v. Avdic*, 2014 IL App (1st) 121759, ¶ 22. This rule is satisfied "if from the document as a whole it appears that the affidavit is based upon the personal knowledge of the affiant and there is a reasonable inference that the affiant could competently testify to its contents at trial." *Burks Drywall, Inc. v. Washington Bank & Trust Co.*, 110 Ill. App. 3d 569, 576 (1982).

¶ 19 In this case, the Madans argue that Ryan Riemer's original and supplemental affidavits filed in support of Colony's motion for summary judgment with respect to count III of its complaint alleging breach of contract did not comply with the requirements of Rule 191 because Riemer did not have personal knowledge of the facts contained in his affidavits. The Madans contend that Riemer's affidavits failed to state the nature of his relationship with Colony or the dates of his employment with the limited liability company and therefore it was impossible to conclude that he was employed long enough to have acquired personal knowledge of the facts to which he swore. According to the Madans, since the loan documents relate back to November 17, 2006, and the default was declared on March 14, 2011, prior to the assignment of the loan from Harris Bank to Colony, it is unclear how Riemer could have personal knowledge that Colony fully and completely satisfied its obligations under the loan documents or that Harris Bank satisfied its obligations prior to making the assignment.

¶ 20 Contrary to the Madans' contentions, we believe Riemer had personal knowledge of the facts set forth in his affidavits. In his affidavits, Riemer averred he was a duly authorized agent of Colony and a portfolio manager for various loans held by the limited liability company, including the loan at issue. There is a general presumption that an employee or corporate representative has personal knowledge of the acts of the corporation sufficient to attest to matters relating to the business entity. See, *e.g.*, *Catawba Indian Tribe v. South Carolina*, 978 F. 2d 1334, 1342 (4th Cir.1992) (*en banc*), *cert. denied*, 507 U.S. 972 (1993) (corporate officers ordinarily have personal knowledge of the acts of their corporation); *Kugler v. Southmark Realty Partners III*, 309 Ill. App. 3d 790, 796 (1999) (affidavit contained evidentiary facts, not in dispute, which reasonably appeared to be within personal knowledge of affiant in her position as paralegal).

¶ 21 In connection with his duties as a portfolio manager, Riemer reviewed and was familiar with the documents Colony maintained in the regular course of its business, including but not limited to the loan documents at issue, the promissory note, the mortgage, the loan history, and the payoff statements for the loan. Riemer attested that he gained personal knowledge of the relevant facts relating to the mortgage loan and subsequent default through review of Colony's business records created at or near the time specified in the affidavits. Attached to his affidavits as exhibits were the following documents: the business loan agreement; promissory note and addendum to the note; the mortgage; assignment of mortgage; a Uniform Commercial Code (UCC) financing statement; change in terms agreement; and notice of default.

¶ 22 Our review of Riemer's affidavits submitted in support of Colony's motion for summary judgment reveal they complied with Rule 191 because the statements contained in the affidavits were based on Riemer's personal knowledge and familiarity with Colony's business records and

procedures. See, *e.g.*, *US Bank, National Ass'n v. Sauer*, 392 Ill. App. 3d 942, 947 (2009) (affidavit submitted in support of motion for summary judgment in mortgage foreclosure action complied with Rule 191 where affidavit indicated it was based on affiant's personal knowledge of loan); *Zubel*, 2014 IL App (1st) 130976, ¶ 21 (affidavits submitted in support of motion for summary judgment in mortgage foreclosure action complied with Rule 191 where affiants' indicated they were familiar with the terms of the mortgage and had personal knowledge of business procedures and records relating to the mortgage); *Avdic*, 2014 IL App (1st) 121759, ¶¶ 26-2 (reaching similar outcome under similar facts); see also *Bank of America, N.A. v. Land*, 2013 IL App (5th) 120283, ¶ 14 (no error in the admission of bank employee's affidavit over hearsay and authenticity objections where affiant relied on records predecessor bank created and maintained in its regular course of business).

¶ 23 Moreover, having determined that Riemer's affidavits complied with Rule 191, and considering that the Madans did not file any counteraffidavits challenging the facts in his affidavits, we find the circuit court did not err in granting summary judgment in favor of Colony on Count III of its complaint alleging breach of contract. "[F]acts contained in an affidavit in support of a motion for summary judgment which are not contradicted by counteraffidavit are admitted and must be taken as true for purposes of the motion." *Purtill*, 111 Ill. 2d at 241. Here, the Madans did not dispute the execution of the loan documents, the tracking of the loan under the loan history, the lack of payment upon maturity of the loan, the amount of indebtedness or any other factual allegations in the affidavits. The Madans never submitted any counteraffidavits and therefore the statements in Riemer's affidavits were properly admitted and must be taken as true for purposes of summary judgment.

¶ 24 Mr. Madan next contends the circuit court erroneously disregarded contested issues of material fact with regard to his amended third affirmative defense premised on economic duress when it granted summary judgment on count III of Colony's complaint. We disagree.

¶ 25 An affirmative defense is one that gives credence to the claim of an opposing party but asserts new matter that defeats the opposing party's apparent right to relief. *Hartmann Realtors v. Biffar*, 2014 IL App (5th) 130543, ¶ 20. In order to establish an affirmative defense, the defendant must set forth sufficient facts to satisfy each element of the defense. *Id*. We review the circuit court's dismissal of an affirmative defense *de novo*. *Bukowski*, 2015 IL App (1st) 140780, ¶ 15.

¶ 26 While the parties assume we have jurisdiction to consider the merits of the affirmative defense, as a reviewing court, under certain circumstances, we have a duty to consider the jurisdictional issue even if it was not raised by the parties. See *Lynch Imports, LTD v. Frey*, 200 Ill. App. 3d 781, 785 (1990).

¶ 27 Here, in count III of its complaint, Colony sought money damages for alleged breach of contract relating to the promissory note at issue. Mr. Madan responded by filing a third affirmative defense seeking to void the note on the grounds of economic duress. The circuit court granted Colony's motion striking the third affirmative defense, without prejudice and with leave to replead. Mr. Madan filed an amended third affirmative defense, again, based on economic duress.

¶ 28 The circuit court subsequently issued an order granting Colony's motion for summary judgment on all counts and entered a judgment of foreclosure and sale against the Madans and other defendants and included a Rule 304(a) finding that there was no just reason to delay enforcement of, or appeal from, the order. It follows that when the circuit court granted

summary judgment in favor of Colony on its breach of contract claim, the court necessarily addressed and rejected, as a matter of law, the arguments in the amended third affirmative defense; the circuit court could not have granted Colony's motion for summary judgment on its breach of contract claim, had it not rejected the arguments in the amended third affirmative defense.

¶ 29 The amended third affirmative defense directly relates to the summary judgment order specified in the notice of appeal. A notice of appeal should be liberally construed (*Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 433 (1979)), and is sufficient to confer jurisdiction upon a reviewing court when it fairly and adequately sets out the judgment complained of and the relief sought, thereby advising the successful litigant of the nature of the appeal. See *In re Joseph M.*, 405 Ill. App. 3d 1167, 1171-72 (2010).

¶ 30 Turning to the merits, "[a] contract will be voided if it is the product of duress." *Arians v. Larkin Bank*, 253 Ill. App. 3d 1037, 1041 (1993). "Economic duress, also known as business compulsion, is an affirmative defense to a contract, which releases the party signing under duress from all contractual obligations." *Bank of America, N.A. v. 108 N. State Retail LLC*, 401 Ill. App. 3d 158, 173 (2010). "Duress occurs where one is induced by a wrongful act or threat of another to make a contract under circumstances that deprive one of the exercise of one's own free will." *Krilich v. American National Bank and Trust Company of Chicago*, 334 Ill. App. 3d 563, 572 (2002). "Duress can consist of oppression, undue influence, or taking undue advantage of another's stress to the point where that person is deprived of the exercise of free will." *In re Marriage of Tabassum*, 377 Ill. App. 3d 761, 775 (2007).

¶ 31 To establish duress, one must demonstrate that the threat has left the individual " 'bereft of the quality of mind essential to the making of a contract.' " *Hurd v. Wildman, Harrold, Allen*

& Dixon, 303 Ill. App. 3d 84, 91 (1999) (quoting *Alexander v. Standard Oil Co.*, 97 Ill. App. 3d 809, 815 (1981)). The acts or threats complained of must be wrongful; however the term "wrongful" is not limited to acts that are criminal, tortious, or in violation of a contractual duty, but also extend to acts that are wrongful in a moral sense as well. *Inland Land Appreciation Fund, L.P. v. County of Kane*, 344 Ill. App. 3d 720, 727 (2003).

¶ 32 Most significant for purposes of this appeal is that it is well established that economic duress does not exist where consent to an agreement is obtained merely through hard bargaining positions or financial pressures. See *Krilich*, 334 Ill. App. 3d at 572. In this case, the Madans contend that Mr. Madan's execution of the loan documents making him a borrower on the loan was done under economic duress during a contentious closing. The Madans claim Mr. Madan signed the loan documents in error and that after the closing he advised Harris Bank of the error. However, the only allegation of duress attributed to Harris Bank was the allegation that at the last minute of a contentious closing, the bank added Mr. Madan's name on the loan documents as a borrower and then presented the documents to him for his signature.

¶ 33 These allegations do not establish that Harris Bank deprived Mr. Madan of his free will or that he lacked the quality of mind essential to executing the loan documents at issue. As the case law demonstrates, economic duress does not exist where consent to an agreement is obtained merely through hard bargaining positions or financial pressures. See *Krilich*, 334 Ill. App. 3d at 572.

¶ 34 Moreover, approximately two months after the closing, the Madans executed a change-in-terms agreement with Harris Bank. The agreement modified the monthly payment date and referenced the promissory note and business loan agreement. The document states in part that "[e]xcept as expressly changed by this Agreement, the terms of the original obligation or

obligations, including all agreements evidenced or securing the obligation(s), remain unchanged and in full force and effect." At the top of the document it lists the "Borrower" as Rekha M. Madan and Lajpat R. Madan. At the bottom of the document the Madans each signed in a space marked "Borrower," indicating they were borrowers on the loan.

¶ 35 Mr. Madan signed the change-in-terms agreement which indicated he signed the agreement as a borrower on the loan; and the agreement expressly reaffirmed the continuing validity of the loan documents. As a result, Mr. Madan ratified his obligations under the loan documents and is unable to avoid those obligations on a claim of economic duress. "[A] finding of duress is less likely if the party has the assistance of counsel and adequate time to consider the proposed contractual terms." *Krilich*, 334 Ill. App. 3d at 572-73.

¶ 36 In this case, the record is devoid of any allegations or evidentiary support that Mr. Madan was coerced, threatened, or forced into signing the loan documents at issue. The facts of this case do not present a situation of economic duress. As a result, we find the amended third affirmative defense did not serve to defeat the entry of summary judgment.

¶ 37 Mr. Madan next contends the circuit court erroneously disregarded contested issues of material fact in striking his fourth affirmative defense premised on the Consumer Fraud Act. The circuit court struck the defense pursuant to section 2-619.1 of the Code. Section 2-619.1 permits a party to combine a section 2-615 motion to dismiss based upon insufficient pleadings with a section 2-619 motion to dismiss based upon certain defects or defenses. 735 ILCS 5/2-619.1 (West 2012); *Edelman, Combs & Latturner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 164 (2003). "It is proper for a court when ruling on a motion to dismiss under either section 2-615 or section 2-619 to accept all well-pleaded facts in the complaint as true and to draw all reasonable inferences from those facts in favor of the nonmoving party." *Id*. "We review *de*

novo an order striking affirmative defenses under section 2-619.1 of the Code." *Bayview Loan Servicing, LLC v. Cornejo*, 2015 IL App (3d) 140412, ¶ 10.

¶ 38 The Consumer Fraud Act is designed to protect consumers against fraud and unfair or deceptive acts or practices in the conduct of trade or commerce. *Skyline International Development v. Citibank, F.S.B.*, 302 Ill. App. 3d 79, 85 (1998). Section 10a(a) of the Consumer Fraud Act authorizes a private right of action for "[a]ny person who suffers actual damages as a result of a violation of [the] Act." 815 ILCS 505/10a(a) (West 2008)); *Krautsack v. Anderson*, 223 Ill. 2d 541, 553 (2006).

¶ 39 Mr. Madan asserted as an affirmative defense section 2 of the Consumer Fraud Act, which provides that the Act is violated by "deceptive acts or practices which are committed in the course of trade or commerce and with the intent that others rely upon them." *Oliveira v. Amoco Oil Co.*, 201 Ill. 2d 134, 148 (2002). Mr. Madan raised section 2 of the Consumer Fraud Act as an affirmative defense in opposition to Colony's motion for summary judgment and therefore the issue of the application of the Consumer Fraud Act is properly before this court. See, *e.g., Scentura Creations, Inc. v. Long*, 325 Ill. App. 3d 62, 68 (2001).

¶ 40 The Consumer Fraud Act does not state that a contract can be voided or rescinded as a remedy for a violation of the act as the fourth affirmative defense attempts to accomplish in this case. However, there is authority holding that a consumer cannot void a contract as a remedy for violation of similar laws. See, *e.g.*, *Route 50 Auto Sales, Inc. v. Muncy*, 331 Ill. App. 3d 515, 517 (2002) (rejecting such a defense brought under the Motor Vehicle Retail Installment Sales Act). Whether a violation of the Consumer Fraud Act can form the basis for an affirmative defense based on voidness or rescission of an underlying contract is an issue we need not resolve at this

time. We will presume for purposes of our analysis that the Consumer Fraud Act can be used as an affirmative defense in the manner Mr. Madan presents in this appeal.

¶ 41 To adequately state a violation of section 2 of the Consumer Fraud Act, a party must allege: "(1) a deceptive act or practice by the defendant; (2) the defendant's intent that the plaintiff rely on the deception; (3) the deception occurred in the course of conduct involving trade or commerce; (4) actual damage to the plaintiff; and (5) such damages were proximately caused by the deception." *Sklodowski v. Countrywide Home Loans, Inc.*, 358 Ill. App. 3d 696, 703 (2005).

¶ 42 Mr. Madan's fourth affirmative defense fails to allege any deceptive act or practice on the part of Harris Bank that could form the basis of a consumer fraud claim. Mr. Madan alleged that Harris Bank fraudulently induced him into signing the loan documents at issue. In support of this allegation, he claims he had an agreement with Harris Bank that only Mrs. Madan would be listed as a borrower on the loan.

¶ 43 This purported agreement however was never formalized in writing or signed by the parties and therefore Mr. Madan cannot rely on this alleged oral agreement to support his consumer fraud claim. See section 2 of the Credit Agreements Act (815 ILCS 160/2 (West 2012) ("A debtor may not maintain an action on or in any way related to a credit agreement unless the credit agreement is in writing"). An alleged modification of a written agreement cannot act as a counterclaim or defense unless it meets the writing requirement of section 2. 815 ILCS 160/3 (West 2012). "There is no justifiable reliance on an oral credit agreement as a matter of law in Illinois." *First National Bank in Staunton v. McBride Chevrolet, Inc.*, 267 Ill. App. 3d 367, 373 (1994).

¶ 44 Moreover, in analyzing whether a party has sufficiently alleged a deceptive act or practice under the Consumer Fraud Act, the analysis must consider whether the act was deceptive as reasonably understood in light of all of the information available to the plaintiff. *Phillips v. DePaul University*, 2014 IL App (1st) 122817, ¶ 44. Therefore, the act of Harris Bank in delivering the loan documents listing Mr. Madan as a borrower, allegedly contrary to his expectations, must be considered in light of all the other information available to Mr. Madan at closing; namely, the multiple loan documents he signed clearly listing him as a borrower in at least eight other places. "[A] party who signs a written agreement and has had an opportunity to review it may not subsequently claim that he was fraudulently induced to enter into the agreement based on misrepresentations as to its terms." *Nilsson v. NBD Bank of Illinois*, 313 Ill. App. 3d 751, 762 (1999) (citing *Belleville National Bank v. Rose*, 119 Ill. App. 3d 56, 59 (1983)).

¶ 45 In sum, the circuit court correctly struck Mr. Madan's fourth affirmative defense premised on the Consumer Fraud Act where such defense failed to allege any deceptive act or practice on the part of Harris Bank that could form the basis of a violation of the act. Our court has determined that the Consumer Fraud Act is not intended to be used as a vehicle for transforming nondeceptive, nonfraudulent activities into actionable ones. *Kellerman v. Mar-Rue Realty & Builders. Inc.*, 132 Ill. App. 3d 300, 306 (1985). Accordingly, we find the circuit court did not err in striking Mr. Madan's fourth affirmative defense.

¶ 46 Mr. Madan finally contends the circuit court erred in dismissing counts I and II of his counterclaims. The circuit court dismissed these counts pursuant to section 2-615 of the Code. A motion to dismiss under section 2-615 admits all well-pleaded facts and attacks the legal

sufficiency of the complaint. *La Salle National Bank v. City Suites, Inc.*, 325 Ill. App. 3d 780, 790 (2001). A ruling on the motion is subject to *de novo* review. *Id*.

¶ 47 Upon review of the record and relevant case law, we believe the circuit court properly dismissed counts I and II of Mr. Madan's counterclaims. First, we reject Mr. Madan's contention that the circuit court erred in dismissing count I of his counterclaim for declaratory relief.

¶ 48 "The central purpose of the declaratory judgment procedure is to allow the court to address a controversy one step sooner than normal after a dispute has arisen, but before steps are taken which would give rise to a claim for damages or other relief." *Eyman v. McDonough District Hospital*, 245 Ill. App. 3d 394, 396 (1993). "Its purpose is to allow the parties to resolve the disputes or aspects of the dispute before either party has changed their position in ways that will irrevocably affect their rights." *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 23. "In order to maintain a declaratory judgment action, there must be an actual controversy between the parties capable of being affected by a determination of the controversy." *Batteast v. Argonaut Insurance Co.*, 118 Ill. App. 3d 4, 6 (1983). The granting or denying of declaratory relief rests within the sound discretion of the circuit court. *Eyman*, 245 Ill. App. 3d at 396.

¶ 49 In count I of his counterclaim, Mr. Madan sought a judicial declaration that he was not liable for any of the claims brought against him by Colony. Declaratory relief was inappropriate at the stage it was requested because it would have required a finding on the same issue raised in Colony's complaint, namely Mr. Madan's liability. See *Midwest Transfer Co. of Illinois v. Preferred ACC. Ins. Co. of New York*, 342 Ill. App. 231, 236 (1951) (striking counterclaim seeking declaratory relief because it required a finding on the same issue raised in the amended complaint and answer).

¶ 50 Finally, we reject Mr. Madan's contention that the circuit court erred in dismissing count II of his counterclaim seeking rescission of the promissory note. This contention rests on the same alleged fraudulent and coercive conduct as to which we have found the evidence insufficient, and therefore this claim requires no further discussion.

¶ 51 For the foregoing reasons, we affirm the orders of the circuit court of Cook County granting summary judgment in favor of Colony as to all counts in its verified complaint, striking Mr. Madan's fourth affirmative defense, and dismissing counts I and II of his counterclaims.

¶ 52 Affirmed.