FIRST DIVISION
October 3, 2016

No. 1-15-2367

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

WON SUK CHIN, Plaintiff-Appellant, v. ELDERLY HOUSING DEVELOPMENT AND OPERATIONS CORPORATION, YOUNG DUK JUN, CHONG SUL LEE, YUN JUN KIM, HU SON PARK, and KAREN SIMMONS, Defendants. (Elderly Housing Development and Operations Corporation, and Karen Simmons, Defendants-Appellees).	)	Appeal from the Circuit Court of Cook County No. 14 L 7134 Honorable Kathy Flanagan, Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Connors and Justice Simon concurred in judgment

ORDER

¶ 1 ***Held*:** We affirm the order of the circuit court dismissing plaintiff's second amended complaint with prejudice.

¶ 2 Plaintiff, Won Suk Chin (hereinafter plaintiff), was a resident of Senate Apartments in Chicago, Illinois along with his wife. Defendant, Elderly Housing Development and Operations Corporation (hereinafter EHDOC), is the not-for-profit owner of the Senate Apartments, while defendant, Karen Simmons (hereinafter Simmons) (collectively defendants), was an employee of EHDOC and the community manager of the Senate Apartments. In February 2014, plaintiff was involved in an altercation with other residents of the community. After this incident, those involved were asked not to associate with each other. Plaintiff was accused of continuing to contact those individuals and on April 9, 2014, he was summoned to Simmons's office. At that meeting, Simmons informed plaintiff he would have to move out or she would begin eviction proceedings against him and his wife. Plaintiff was presented with a pre-printed letter under which he would agree to leave within 30 days. While he initially refused, he did eventually sign the letter. On May 9, plaintiff moved out of the apartment he shared with his wife.

¶ 3 In July 2014, plaintiff filed an eleven-count verified complaint against EHDOC and Simmons, along with other residents of Senate Apartments that are not a party to this appeal. As against Simmons and EHDOC, the complaint alleged a violation of the Chicago Residential Landlord Tenant Ordinance, breach of lease agreement, violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, breach of implied covenant of quiet enjoyment, vicarious liability, defamation *per se* (against Simmons only), loss of consortium, and civil conspiracy. After three attempts, the circuit court dismissed with prejudice all counts lodged against defendants EHDOC and Simmons. This timely appeal followed.

¶ 4 On appeal, plaintiff challenges the dismissal of the counts he alleged against EHDOC and Simmons. After a review of the pleadings, we agree with the circuit court that none of the

counts contained within the second amended complaint state a cause of action against EHDOC and Simmons. Plaintiff's complaint is full of conclusory allegations unsupported by well-pled facts. Moreover, plaintiff's allegation that he agreed to vacate the apartment instead of facing an eviction proceeding undercuts his claims against defendants. Accordingly, we affirm the order the circuit court dismissing the second amended complaint with prejudice as to Simmons and EHDOC.

¶ 5 JURISDICTION

¶ 6 On August 10, 2015 the circuit court dismissed all counts of plaintiff's second amended complaint alleged against defendants EHDOC and Simmons. The August 10, 2015 order contained Rule 304(a) language that there was no just reason to delay enforcement of the appeal. On August 25, 2015, plaintiff timely appealed. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 304. Ill. S. Ct. R. 301 (eff. Feb.1, 1994); R. 304 (eff. Feb. 26, 2010).

¶ 7 BACKGROUND

¶ 8 Plaintiff, Won Suk Chin, was a retiree who lived with his wife, Soo Jin Chin, at a senior housing apartment, Senate Apartments, located at 5801 North Pulaski Road in Chicago, Illinois. Plaintiff and his wife began living at the Senate Apartments in March 2006. Defendant, EHDOC, is a not-for-profit corporation that purports to develop and manage senior citizen housing across the United States. EHDOC managed the Senate Apartments when plaintiff and his wife lived there. Defendant Karen Simmons was an employee of EHDOC and the community manager of Senate Apartments.

¶ 9 On or about February 15, 2014, during a social event sponsored by the Korean American senior citizens of the Senate Apartments, plaintiff's guests were asked to leave since they were

not residents. The next day, a codefendant, Hu Son Park (hereinafter Park) questioned plaintiff as to why he would bring non-guests to the party. Plaintiff allegedly told Park she had a "foul mouth," at which point plaintiff alleges Park stood up and repeatedly struck him on the chest with a closed fist. A security guard for EHDOC approached the group and told plaintiff and Park to separate. Plaintiff then left the area.

¶ 10 On February 18, 2014, three of the codefendants, Young Duk Jun, Chong Sul Lee, and Yun Jun Kim went to Simmons's office and accused plaintiff of having assaulted and battered Park. Simmons drafted an incident report based on the three codefendants accusations, and reported the incident to the Chicago Police Department. The next day, those individuals also reported the alleged battery to the Chicago Police. On the same day, the Chicago Police generated an incident report which indicated that plaintiff had placed his hands around Park's neck and struck her about the body. On February 20, 2014, members of the Chicago Police Department came to plaintiff's apartment and asked him to accompany them to the police station, which he agreed to do. Prior to leaving his apartment, plaintiff asked the officers to review the closed circuit camera recordings of the February 16 incident. The officers told plaintiff to remain in his apartment until they returned, but they never did.

¶ 11 On March 28, 2014, Simmons sent a letter to plaintiff accusing him of approaching the other codefendants even though he had been told to stay away from them. On April 9, 2013, Simmons summoned plaintiff to her office where he met with Simmons and an unknown person whom Simmons indicated was a "high level person" from EHDOC management. Simmons then presented plaintiff with two pre-printed letters (one in Korean and one in English) dated April 9, 2014 that stated plaintiff would agree to vacate his apartment within 30 days while his wife could continue to reside there.

¶ 12 When plaintiff inquired as to the nature of the letters, codefendant Yun Jun Kim told plaintiff to "just sign it." Plaintiff refused to sign the letter and inquired why he was being asked to leave the apartment. Simmons informed plaintiff that if he did not sign the letter, she would institute eviction proceedings against plaintiff and his wife. However, Simmons stated that if plaintiff did agree to leave, his wife would not be evicted. Plaintiff still refused to sign the letter and left Simmons's office. A short time later plaintiff did sign the letter agreeing to vacate the apartment.

¶ 13 On May 8, 2014, Simmons, in a letter written in English, advised plaintiff that he should vacate the apartment by tomorrow. The letter further advised plaintiff that he is no longer allowed onto the property, the police would be called if he was seen on the property, and his wife must visit him. On May 9, 2014, plaintiff moved out of the apartment.

¶ 14 On July 8, 2014, plaintiff filed an eleven-count verified complaint. Plaintiff's original complaint alleged defamation *per se*, false light, civil conspiracy, loss of consortium, battery (against Hu Son Park), vicarious liability, trespass, breach of implied covenant of quiet enjoyment (against EHDOC and Simmons), violation of Chicago Residential Landlord Tenant Ordinance (against EHDOC and Simmons), common law negligence (against EHDOC) and violation of the Illinois Consumer Fraud and Deceptive Business Practice Act (against EHDOC and Simmons). On September 16, 2014, defendants EHDOC and Simmons filed a motion to dismiss pursuant to section 2-615. The circuit court granted the motion on December 19, 2014, with leave to amend. On January 8, 2015, plaintiff filed his amended complaint, and defendants again filed a motion to dismiss pursuant to section 2-615. The circuit court granted this motion on April 17, 2015. Again, plaintiff was given leave to amend.

¶ 15 On May 8, 2015, plaintiff filed his second amended complaint. Though factually similar to the previous complaints, as against defendants Simmons and EHDOC, the complaint alleged a violation of the Chicago Residential Landlord Tenant Ordinance, breach of lease agreement, violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, breach of implied covenant of quiet enjoyment, vicarious liability, defamation *per se*, loss of consortium, and civil conspiracy.

¶ 16 Defendants again filed a motion to dismiss pursuant to section 2-615. The trial court found the second amended complaint suffered from the same fatal defects as the previous two. Specifically, the circuit court pointed out that plaintiff alleged he voluntarily left the apartment. It further noted that his allegations of duress and coercion were conclusory and unsupported. Based on this and other defects apparent on its face, the circuit court granted defendant's motion to dismiss the second amended complaint with prejudice. The order of dismissal included Rule 304(a) language making the order immediately appealable. Plaintiff timely filed his notice of appeal.

¶ 17 ANALYSIS

¶ 18 On appeal, plaintiff argues that his second amended complaint successfully alleges each cause of action against EHDOC and Simmons.

¶ 19 A motion to dismiss brought pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)) attacks the legal sufficiency of the complaint based on defects apparent on its face. *Doe–3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 15. All well-pleaded facts, and all reasonable inferences drawn from those facts, must be accepted as true by a court ruling on a section 2-615 motion to dismiss. *Bonhomme v. St. James*, 2012 IL 112393, ¶ 34. "The critical inquiry is whether the allegations of the complaint, when construed

in the light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted." *Clark v. Children's Memorial Hospital*, 2011 IL 108656, ¶ 21. In ruling on a section 2–615 motion, the court only considers (1) those facts apparent from the face of the pleadings, (2) matters subject to judicial notice, and (3) judicial admissions in the record. *Gillen v. State Farm Mutual Automobile Insurance Co.*, 215 Ill. 2d 381, 385 (2005). A section 2–615 motion dismissal is reviewed *de novo*. *Doe–3*, 2012 IL 112479, ¶ 15.

¶ 20 In his first count, plaintiff alleges a violation of sections 5-12-160 and 5-12-170 of the Chicago Residential Landlord Tenant Ordinance (hereinafter RLTO). Section 5-12-160 states in relevant part:

> It is unlawful for any landlord or any person acting at his direction knowingly to oust or dispossess or threaten or attempt to oust or dispossess any tenant from a dwelling unit without authority of law, by plugging, changing, adding or removing any lock or latching device; or by blocking any entrance into said unit; or by removing any door or window from said unit; or by interfering with the services to said unit; including but not limited to electricity, gas, hot or cold water, plumbing, heat or telephone service; or by removing a tenant's personal property from said unit; or by the removal or incapacitating of appliances or fixtures, except for the purpose of making necessary repairs; or by the use or threat of force, violence or injury to a tenant's person or property; or by any act rendering a dwelling unit or any part thereof or any personal property located therein inaccessible or uninhabitable.

Chicago Municipal Code § 5-12-160 (added November 6, 1991). Plaintiff argues that defendants' conduct violated section 5-12-160 because Simmons threatened plaintiff with eviction if he did not voluntarily agree to move out. Plaintiff contends such actions constitute a threat to dispossess him without authority of law. However, accepting such allegations as true at this point in the proceedings, such actions do not constitute an actionable offense under section 5-12-160.

¶ 21 In trying to argue that defendants are liable under the ordinance, plaintiff ignores its plain language. The ordinance imposes liability on any landlord or person acting at his direction who

threatens or attempts to oust a tenant based on certain actions. Those actions are listed in the ordinance and include: (1) plugging, changing, adding or removing any lock or latching device; (2) blocking any entrance into said unit; (3) removing any door or window from said unit; (4) interfering with the services to said unit; (5) removing a tenant's personal property from said unit; (6) the removal or incapacitating of appliances or fixtures; (7) the use or threat of force, violence or injury to a tenant's person or property; or (8) any act rendering a dwelling unit or any part thereof or any personal property located therein inaccessible or uninhabitable. *Id.*

¶ 22 Simmons's alleged statement of threatening plaintiff with eviction if he did not voluntary vacate does not fall into one of the above categories. The April 9 letter does not fall within any of the categories listed above, nor does plaintiff allege it does. Moreover, none of the actions in the second amended complaint EHDOC and Simmons are alleged to have performed fall into one of the categories listed above. Accordingly, because none of the actions defendants are alleged to have taken fall with one of the eight categories delineated in the ordinance, plaintiff fails to allege a violation of section 5-12-160 of RLTO.

¶ 23 Next, plaintiff alleges the trial court erred in dismissing his allegation concerning defendants' alleged violation of section 5-12-170 of RLTO. We begin by noting that plaintiff did not allege the violation of section 5-12-170 in a separate count in violation of section 2-603(b) of the Code of Civil Procedure. Section 2–603(b) of the Code requires that "[e]ach separate cause of action upon which a separate recovery might be had shall be stated in a separate count or counterclaim." 735 ILCS 5/2-603(b) (West 2012). The sole allegation regarding the violation of section 5-12-170 is found at paragraph 72 and states, "Defendants EHDOC and Simmons have never provided the plaintiff with a copy of the summary of RLTO." Also, in dismissing the

second amended complaint, the trial court made no mention of the allegation concerning the alleged violation of 5-12-170, and the plaintiff failed to seek any clarification on the matter.

¶ 24 It is well established that an appellate court may affirm a correct dismissal by the trial court for any reason appearing in the record. *Gunthorp v. Golan*, 184 Ill. 2d 432, 438 (1998). A review of the record demonstrates that plaintiff's claim under section 5-12-170 is barred by the two-year statute of limitations. In *Namur v. Habitat Co.*, this court found that claims brought pursuant to section 5-12-170 were subject to the two-year statute of limitations found in section 13-202 of the Code of Civil Procedure. 294 Ill. App. 3d 1007, 1013-14 (1998) citing 735 ILCS 5/13-202 (West 2012). We further acknowledged that a cause of action under section 5-12-170 would accrue when the lease was offered without the correct attachment. *Id.* at 1013. Here, plaintiff was given a copy of the lease without the required attachment in March 2006, but did not file his complaint until July 2014. Accordingly, plaintiff's claim under section 5-12-170 is barred by the two-year statute of limitations.

¶ 25 Plaintiff next challenges the dismissal of his breach of lease agreement count. Plaintiff alleges he and his wife entered into a lease agreement with defendants on March 1, 2006. Plaintiff alleges that defendants breached the lease by failing to give him any written notice of termination pursuant to Section 9(f). Section 9(f) provides the landlord's determination to terminate the lease agreement shall be made in writing. The elements of a breach-of-contract cause of action include the existence of a valid and enforceable contract, performance by the plaintiff, breach of contract by the defendant, and resultant damages or injury to the plaintiff. *Gonzalzles v. American Express Credit Corp.*, 315 Ill. App. 3d 199, 206 (2000).

¶ 26 In this case, while plaintiff alleges the existence of a lease agreement, he fails to allege any breach on the part of the defendants and therefore fails to allege a breach of a lease agreement.

While plaintiff alleges he was not given written notice of the termination of lease, he does not in fact allege the lease was actually terminated by the defendants. As the trial court pointed out in each order dismissing plaintiff's complaint, plaintiff pleads at paragraph 58 and 107 that he signed the letter agreeing to vacate the apartment. Paragraph 58 of the second amended complaint states, "[p]laintiff then relented and signed the two letters but on the condition that he be given copies of them." Accordingly, plaintiff's allegations demonstrate he, not defendants, terminated the lease.

¶ 27 We also reject plaintiff's unsupported allegation that he signed the April 9 letter under duress. 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. *Hurd v. Wildman, Harrold, Allen & Dixon*, 303 Ill. App. 3d 84, 91 (1991). In an attempt to allege he signed the April 9 letter under duress, plaintiff states at paragraph 110 that "[t]he April 9, 2014, letter was involuntary signed by plaintiff and under duress as evidenced by Simmons' subsequent letter dated May 8, 2014 to Plaintiff." This allegation is illogical. Defendant's action of sending a letter on May 8 cannot possibly have induced plaintiff to sign the letter agreeing to vacate a month earlier on April 9. We therefore reject plaintiff's duress allegations.

¶ 28 Plaintiff next challenges the dismissal of his claim under the Illinois Consumer Fraud and Deceptive Business Practices Act (the Act). To state a cause of action under the Act, a plaintiff must establish five elements: (1) a deceptive act or practice by the defendant, (2) the defendant's intent that the plaintiff rely on the deception, (3) the deception occur in the course of conduct involving trade or commerce, (4) actual damage to plaintiff, and (5) proximate cause between the deception and the damage. *Oliveira v. Amoco Oil Co.*, 201 Ill. 2d 134, 149 (2002); see 815 ILCS 505/10a(a) (West 2012).

¶ 29 The Act defines a deceptive act as "the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact." 815 ILCS 505/2 (West 2012); see *DOD Technologies v. Mesirow Insurance Services, Inc.*, 381 Ill. App. 3d 1042, 1051–52 (2008). "A complaint stating a claim under the Consumer Fraud Act must state with particularity and specificity the deceptive [unfair] manner of defendant's acts or practices, and the failure to make such averments requires the dismissal of the complaint." (Internal quotation marks omitted.) *Demitro v. General Motors Acceptance Corp.*, 388 Ill. App. 3d 15, 20 (2009).

¶ 30 In trying to plead a claim under the Act, plaintiff alleges that in agreeing to lease the apartment from the defendants, the defendants agreed to "follow the Illinois law requiring the defendant to institute Court action to evict plaintiff and other similarly situated persons." As has been stated previously however, plaintiff agreed to vacate the apartment and was never evicted by defendants. On this basis alone, this count fails.

¶ 31 In Count IV of the second amended complaint, plaintiff attempted to allege a cause of action for breach of implied covenant of quiet enjoyment. The claim of breach of the covenant of quiet enjoyment requires actual or constructive eviction. *Advertising Checking Bureau, Inc. v. Canal–Randolph Associates*, 101 Ill. App. 3d 140, 146 (1981). A constructive eviction requires that the landlord have done something of a grave and permanent character with the intention of depriving the tenant of enjoyment of the premises. *Checking Bureau v. Canal-Randolph Assoc.*, 101 Ill. App. 3d 140, 146 (1981). As has been noted, no eviction occurred and plaintiff voluntarily vacated the premises rather the face an eviction proceeding. Plaintiff does not allege defendants did anything to deprive him of enjoyment of the apartment before he agreed to vacate. Moreover, plaintiff fails to cite to any case showing that a landlord's threat of eviction constitutes a

breach of the covenant of quiet enjoyment. The sole case plaintiff does rely on is readily distinguishable from the facts present here. Plaintiff relies on *Blue Cross Ass'n v. 666 North Lake Shore Drive Associates*, where the court found that the covenant had been breached despite the leaseholder not having to vacate the premises. 100 Ill. App. 3d 647, 652 (1981). However, in that case the landlord sought to enter the leasehold premises in "the form of physical penetrations for installation of plumbing, ventilation and electrical risers." *Id.* at 649. There are no such allegations here. Accordingly, plaintiff fails to allege a breach of the covenant of quiet enjoyment.

¶ 32 Plaintiff also alleged a count for loss of consortium because he can no longer visit his wife at the Senate Apartment complex. It is well-settled in Illinois that both a husband and a wife may recover for the loss of consortium. *Dini v. Naiditch*, 20 Ill. 2d 406 (1960). When a person is injured by another's wrongful conduct, the injured's spouse may recover from the tortfeasor for the loss of consortium the deprived spouse suffered as a result of the injury to his or her spouse. *Malfeo v. Larson*, 208 Ill. App. 2d 418 (1st Dist. 1990). Plaintiff's loss of consortium suffers from a fatal defect in that he fails to allege any type of injury to his wife. Simply being unable to visit her at Senate Apartments is not an injury and is insufficient to establish a loss of consortium claim. Based on this, plaintiff's loss of consortium claim must fail.

¶ 33 Count VI of the second amended complaint alleged that defendant Simmons defamed plaintiff. In his brief, plaintiff fails to raise any argument addressing the dismissal of this count. Illinois Supreme Court Rule 341(h)(7) provides, "points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Accordingly, plaintiff has waived review of the dismissal of this count.

¶ 34 Next, we address plaintiff's civil conspiracy count. The elements of a civil conspiracy are: (1) a combination of two or more persons, (2) for the purpose of accomplishing by some concerted action either an unlawful purpose or a lawful purpose by unlawful means, (3) in the furtherance of which one of the conspirators committed an overt tortious or unlawful act." *Fritz v. Johnston*, 209 Ill. 2d 302, 317 (2004). The function of a conspiracy claim is to extend tort liability from the active wrongdoer to wrongdoers who may have only planned, assisted or encouraged the active wrongdoer. *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 62 (1994). However, "[t]he mere characterization of a combination of acts as a conspiracy is insufficient to withstand a motion to dismiss." *Buckner v. Atlantic Plant Maintenance, Inc.*, 182 Ill. 2d 12, 23 (1998), citing *Hume & Liechty Veterinary Associates v. Hodes*, 259 Ill. App. 3d 367, 369 (1994). A complaint alleging a conspiracy " 'must contain more than the conclusion that there was a conspiracy, it must allege specific facts from which the existence of a conspiracy may properly be inferred.' " *Time Savers, Inc. v. LaSalle Bank, N.A.*, 371 Ill. App. 3d 759, 771 (2007), quoting *Fritz v. Johnston*, 209 Ill. 2d 302, 318 (2004).

¶ 35 Plaintiff alleges that defendants EHDOC and Simmons entered into agreement with defendants Lee, Jun, and Park to evict plaintiff from the Senate Apartments, however, plaintiff fails to support his conspiracy allegation with any well-pled facts. First, to the extent plaintiff attempts to allege a conspiracy between Simmons, as agent, and EHDOC, as principal, that claim must fail. See *Salaymeh v. InterQual, Inc.*, 155 Ill. App. 3d 1040, 1043-44 (1987) (noting that, because the acts of an agent are considered in the law to be the acts of the principal, there can be no conspiracy between a principal and an agent.) Next, as has been noted in the analysis of several other counts, plaintiff agreed to leave his apartment and never faced an eviction proceeding. Additionally, the alleged conspiracy between Simmons, Lee, Jun, and Park, is entirely lacking in

factual detail. Plaintiff's complaint merely alleges an agreement existed between defendants to expel plaintiff, but there are no factual allegations to support that contention. Nor does plaintiff sufficiently plead any defendant committed a tortuous act in furtherance of the conspiracy. Plaintiff alleges a defendant (or defendants) defamed him but does not identify the specific defendant, or the statement beyond a general characterization. Plaintiff alleges each defendant gathered signatures on a petition, but this is not a tortuous act. Thus, his own admission agreeing to vacate the apartment and his unsupported conclusory allegations prevent plaintiff from stating a cause of action for conspiracy against defendants Simmons and EHDOC.

¶ 36 Finally, we address plaintiff's count seeking to hold defendant EHDOC vicariously liable for defendant Simmons's actions. It is well-settled that under the doctrine of *respondeat superior*, an employer may be liable for the negligent, willful, malicious, or even criminal acts of its employees when such acts are committed in the course of employment and in furtherance of the business of the employer. *Randi F. v. High Ridge YMCA*, 170 Ill. App. 3d 962, 964 (1988). Having just found that plaintiff's second amended complaint fails to allege any type of cause of action against defendant Simmons, plaintiff's vicarious liability claim must fail.

¶ 37 CONCLUSION

¶ 38 Plaintiff's second amended complaint fails to allege any cause of action against defendants Elderly Housing Development and Operations Corporation and Karen Simmons. The briefs of the parties and record show that there is no set of facts which plaintiff can allege which would entitle him to recovery. Accordingly, the judgment of the circuit court dismissing the second amended complaint with prejudice is affirmed.

¶ 39 Affirmed.