

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FIFTH DIVISION
March 31, 2016

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

EDWARD CRESSY, as an Individual and as a Partner)	Appeal from the
in UnNamed Partnership; UNNAMED PARTNERSHIP,)	Circuit Court of
an Illinois Partnership,)	Cook County.
)	
Plaintiffs-Appellants,)	
)	
v.)	No. 13 L 14384
)	
LARS GEARY, as an Individual and as a Partner in)	
UnNamed Partnership; LEE CHRISTNER; MARK)	
HAMID; ROB SLOVIN; FINDTICKETS.COM, an)	
Illinois Corporation; and JUSTGREATTICKETS.COM,)	
an Illinois Corporation,)	The Honorable
)	Patrick J. Sherlock,
Defendants-Appellees.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *HELD:* Plaintiffs' could not sustain a cause of action for damages to a partnership agreement that was unenforceable because it was based on the illegal resale of sports team tickets for a profit without a proper license.

¶ 2 This case appears before us a second time following our dismissal for lack of jurisdiction. Now that jurisdiction has properly been vested with this court, we consider the substance of the appeal by plaintiffs', Edward Cressy and the UnNamed Partnership. Plaintiffs contend the circuit court erred in dismissing their complaint involving allegations of fraud, conversion, breach of fiduciary duty, and tortious interference with an oral partnership agreement for the purchase and resale of athletic game tickets in favor of defendants, Lars Geary, as an individual and as a partner in UnNamed Partnership, Lee Christner, Mark Hamid, Rob Slovin, FindTickets.com, an Illinois corporation, and JustGreatTickets.com, an Illinois corporation. Plaintiffs argue that their purchasing of professional sports game tickets was a legal action that could be separated from the illegal enterprise of selling the tickets for a profit without a license. Based on the following, we affirm the dismissal of plaintiffs' complaint.

¶ 3 FACTS

¶ 4 We provide the factual background as detailed in our first order:

"In approximately February of 2006, Cressy and Geary entered into an oral partnership agreement to act as ticket brokers for season tickets issued by a particular sports team. The partnership was referred to as the UnNamed Partnership. It was never registered with any governmental entity. The purpose of the partnership was to purchase season tickets and then to resell the individual game tickets at a profit. If the sports team were to participate in the playoffs, the process would be repeated with playoff tickets. Cressy and Geary never entered into a written partnership agreement.

According to plaintiffs' complaint, the terms of the verbal agreement were that Cressy provided funding for the purchase of the tickets and participated in the selling of the tickets, while Geary provided the day-to-day operational services, which included

record keeping, receiving and disbursing funds, ordering tickets, recruiting 'straw purchasers' for said tickets, and selling the tickets to the UnNamed Partnership's customers. Cressy was to receive \$360,000 per year and Geary was to receive \$50,000 per year. Cressy and Geary agreed to share equally in any excess profits. Plaintiffs' complaint provided that 'Cressy and/or the Partnership acquired for the use of the UnNamed Partnership 66 Team season tickets' in the names of Geary, Christner, Geary's stepfather, and Jane Doe, an alias.

Plaintiffs' complaint alleged that prior to November 2012, Geary advised defendants Hamid, Slovin, FindTickets.com, and JustGreatTickets.com (defendant competitors) of his desire to purchase an ice skating rink in Wisconsin. Geary, however, lacked the necessary funds to complete the purchase. In response, Hamid arranged for defendant competitors to pay Geary \$150,000 in exchange for the sale or assignment of the 66 season tickets. Geary agreed to transfer to defendant competitors the exclusive use and benefit of the 66 season tickets in exchange for \$150,000 in November 2012.

Then, on March 28, 2013, Geary dissociated himself from Cressy and the UnNamed Partnership. According to the complaint, Geary informed Cressy that he intended to treat all 66 tickets as his sole property, selling the tickets and retaining all proceeds for himself. Geary also advised Cressy that all future season tickets and playoff tickets would remain under Geary's sole control. The team in question entered the playoffs in 2013; therefore, Geary obtained playoff tickets and sold them 'at a large profit.'

On December 20, 2013, Cressy filed a five-count complaint against defendants alleging fraud, two separate counts of conversion, breach of fiduciary duty, and tortious

interference with contract. In the fraud claim, Cressy alleged Geary willfully and wantonly misrepresented that, despite the fact that the tickets purchased with Cressy and/or the partnership's funds were in the names of Geary, Christner, and Jane Doe, all 66 season tickets were to be used only for the benefit of the partnership. Cressy alleged he was financially injured by relying on Geary's misrepresentations in the form of the lost purchase price of the 66 season tickets, the loss of the 2013 playoff ticket sales, and the loss of future season and playoff tickets in perpetuity. In the fraud claim, Cressy admitted that 'as partners in the UnNamed Partnership, [he and Geary] were concerned that the Team had identified Plaintiff Cressy as a Ticket Broker. Consequently, the partners decided not to purchase any of said 66 season tickets in Plaintiff Cressy's name, because they feared said tickets would be canceled by the Team.' In his conversion claim against Geary and Christner, Cressy alleged they improperly exercised control of the tickets, relying on the same losses alleged in the fraud count. In his conversion claim against Hamid and defendant competitors, Cressy alleged they improperly exercised control over the partnership's property, again relying on the same losses alleged in the fraud count. In his breach of fiduciary duty claim against Geary, Cressy alleged Geary owed him a duty under their partnership agreement. In his tortious interference with a contract claim, Cressy alleged defendant competitors knew of and interfered with his and Geary's partnership agreement.

On February 3, 2014, defendants Geary, Christner, Hamid, Slovin, and JustGreatTickets.com filed a section 2-619.1 motion to dismiss (735 ILCS 5/2-619.1 (West 2012)). In the section 2-615 portion of the motion, defendants argued that plaintiffs' complaint failed to sufficiently state a cause of action where plaintiffs had no

property interest in the season ticket rights or any renewal rights related thereto. In the section 2-619 portion of the motion, defendants argued the partnership was based upon an agreement to operate an unlicensed ticket broker business that made unlawful sales of amusement tickets for a profit.

The circuit court granted defendants' motion in part and denied it in part, ultimately dismissing plaintiffs' complaint. In an April 21, 2014, written order, the circuit court found that, pursuant to section 2-615, plaintiffs did sufficiently plead a cause of action where the question of whether plaintiffs had a property interest in the season tickets merely affected the amount of damages suffered. The court, therefore, denied defendants' section 2-615 motion to dismiss. With regard to defendants' section 2-619 motion to dismiss, the circuit court found that the partnership agreement violated the Illinois Ticket Sale and Resale Act (Act) (815 ILCS 414/1.5 (West 2006)); therefore, plaintiffs had no basis for recovery. The court granted the 2-619 motion to dismiss with prejudice as to all defendants except FindTickets.com. A status date was provided for the claims against FindTickets.com.

Plaintiff subsequently filed a motion for reconsideration, arguing that since plaintiffs were not involved in the resale of any of the 66 playoff tickets, they had not violated the Act. According to plaintiffs, they were simply 'compiling' tickets, not selling them, and defendants took control of the tickets before plaintiffs could have committed a violation by selling them for profit without a license. On September 25, 2014, plaintiffs' motion to reconsider was denied." *Cressy v. Geary*, 2015 IL App (1st) 143303-U,

¶¶ 4-11.

¶ 5 We dismissed plaintiffs' initial appeal for lack of jurisdiction because the record did not contain an order determining the outstanding claims against FindTickets.com nor language pursuant to Illinois Supreme Court Rule 304(a) allowing for an immediate appeal of the circuit court's April 21, 2014, or September 25, 2014, orders. *Cressy v. Geary*, 2015 IL App (1st) 143303-U. Then, on December 30, 2015, the circuit court entered an uncontested motion to dismiss FindTickets.com with prejudice. This appeal followed.

¶ 6 ANALYSIS

¶ 7 Plaintiffs contend the circuit court erred in dismissing their complaint on the basis that they engaged in an illegal partnership and participated in the illegal sale of tickets for a profit without a requisite license.

¶ 8 A section 2-619 motion to dismiss admits the legal sufficiency of the complaint, but asserts an affirmative matter to otherwise defeat the claim. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. In considering a section 2-619 motion to dismiss, a court reviews all pleadings and supporting documents in a light most favorable to the nonmoving party. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367-68 (2003). The court must determine whether the existence of a genuine issue of material fact precludes dismissal or, absent such an issue of fact, whether the asserted affirmative matter makes dismissal proper as a matter of law. *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993). We review the dismissal of a complaint pursuant to section 2-619 *de novo*. *Id.* at 116.

¶ 9 In their complaint, plaintiffs alleged the existence of the partnership and the partnership's exclusive rights to the resale of the subject tickets. In their motion to dismiss, defendants argued that the sale of sporting tickets for profit by an unlicensed broker violates the Illinois Ticket and Resale Act. Defendants maintained that since the oral partnership agreement for the UnNamed

Partnership and its purpose were illegal under the Act, the circuit court could not aid plaintiffs in recovery against them for alleged violations of the illegal agreement. In response, plaintiffs argued, and repeatedly argue on appeal, that they merely compiled tickets, which was not an illegal act. In fact, plaintiffs maintain that the improper actions of defendants in converting the partnership's tickets prevented plaintiffs from the possibility of engaging in the illegal resale of the playoff and championship tickets.

¶ 10 According to plaintiffs' complaint, Cressy and Geary entered into an oral partnership the purpose of which was to purchase season tickets for a sporting team and to sell the individual game tickets "at a profit." The complaint expressly stated that neither Cressy nor Geary registered the partnership with any governmental agency. Pursuant to section 1.5 of the Act, it is unlawful to resell tickets to sporting events for more than the face value of the ticket unless the seller is a licensed ticket broker who otherwise complies with the dictates of the Act. 815 ILCS 414/1.5 (West 2006). Our supreme court has instructed:

"It is well settled that 'courts will not aid a plaintiff who bases his cause of action on an illegal act.' [Citation.] More specifically, 'courts will not enforce a contract involving a party who does not have a license called for by legislation that expressly prohibits the carrying on of the particular activity without a license where the legislation was enacted for the protection of the public, not as a revenue measure.' [Citations.]" *Chatham Foot Specialists, P.C. v. Health Care Service Corp.*, 216 Ill. 2d 366, 380-81 (2005).

¶ 11 Because plaintiffs' claims are based on the terms of the oral partnership agreement, this court must ascertain whether the agreement was enforceable. Plaintiffs concede that the partnership was not licensed to resell tickets as required by section 1.5 of the Act. According to

Chatham Food Specialists, P.C., we, therefore, must determine whether section 1.5 of the Act was enacted for the protection of the public and not as a revenue measure.

¶ 12 Our courts have stated clearly that the primary objective when construing the meaning of a statute is to ascertain and give effect to the intent of the legislature by applying the plain and ordinary meaning of the language used in the statute. *Id.* at 382. Turning to the language of section 1.5 of the Act, the legislature expressly stated its intent to protect consumers. More specifically, subsection 1.5(b)(1)(F) requires, *inter alia*, that licensed ticket brokers meet the following requirements:

- "(i) ticket broker maintains a toll free number specifically dedicated for Illinois consumer complaints and inquiries concerning ticket sales;

- (ii) the ticket broker has adopted a code that advocates consumer protection that includes, at a minimum:

- (a-1) consumer protection guidelines;

- (b-1) a standard refund policy. In the event a refund is due, the ticket broker shall provide that refund without charge other than for reasonable delivery fees for the return of the tickets; and

- (c-1) standards of professional conduct;

- (iii) the ticket broker has adopted a procedure for the binding resolution of consumer complaints by an independent, disinterested third party and thereby submits to the jurisdiction of the State of Illinois; and

- (iv) the ticket broker has established and maintains a consumer protection rebate fund in Illinois in an amount in excess of \$100,000, which must be cash available for

immediate disbursement for satisfaction of valid consumer complaints." 815 ILCS 414/1.5(b)(1)(F) (West 2006).¹

¶ 13 Based on the plain language of section 1.5 of the Act, the statute clearly was enacted for the protection of the public. As a result, no court can enforce the terms of Cressy and Geary's oral partnership agreement to resell sporting game tickets above face value without a license in violation of section 1.5 of the Act. See *Chatham Foot Specialists, P.C.*, 216 Ill. 2d at 380-81.

¶ 14 Plaintiffs attempt to limit the reach of *Chatham Foot Specialists, P.C.*, by arguing that their complaint only addressed the improper conversion of the playoff and championship game tickets. Plaintiffs argue that, because they were not involved in the resale of those tickets, they did not engage in the illegal sale of tickets in violation of section 1.5 of the Act. Instead, plaintiffs maintain that they merely compiled tickets by funding the purchase of said tickets, which was not illegal. Plaintiffs argue that, since they did not engage in illegal activity, the defendants' illegal conduct can be separated from plaintiffs' legal conduct and plaintiffs can enforce the terms of the oral agreement. Plaintiffs' argument is misguided and misinformed.

¶ 15 Plaintiffs' appeal focuses on the losses related to the conversion of the playoff and championship games, along with the future rights to season tickets, but the terms of the agreement, as detailed in plaintiffs' complaint, also involved the resale of the regular season tickets for a profit without a license. Section 1.5 of the Act does not differentiate between the type of sporting event in terms of regular season versus playoff season. Rather, all resales of tickets to all sporting events above face value without a broker's license are illegal. See 815 ILCS 414/1.5 (West 2006). In plaintiffs' complaint, they admitted that Cressy's responsibility to

¹ The statute provides an alternative set of requirements to satisfy subsection (b)(1)(F) also directed at the protection of consumers.

the partnership was to provide "the funding for the purchase of [t]eam season and playoff ticket[s] and participat[e] in the selling of said tickets." The complaint stated that plaintiff paid for the 66 tickets, but the tickets were purchased in the names of straw purchasers and Jane Doe. The purpose of using straw purchasers and Jane Doe admittedly was to avoid detection as an unlicensed ticket broker by the sports team and undoubtedly was to avoid detection following the illegal resale of the tickets. It is clear from plaintiffs' own complaint that the partnership was illegal from its inception. We recognize that plaintiffs only base their causes of action on the time period after Geary dissociated himself from the partnership and sold the playoff tickets and rights to future season tickets. However, the complaint expressly stated that Cressy was involved in the selling of the tickets. Therefore, Cressy did engage in illegal acts of reselling the regular season tickets above face value without a license. Accordingly, Cressy admittedly engaged in illegal acts on behalf of the partnership. Simply stated, plaintiffs' cannot support their argument that their conduct was legal and can be separated from the illegal acts of defendants.

¶ 16 In sum, we conclude that no court will aid plaintiffs in seeking recovery of damages based on their illegal acts. See *Chatham Foot Specialists, P.C.*, 216 Ill. 2d at 380-81.

¶ 17 CONCLUSION

¶ 18 We affirm the dismissal of plaintiffs' complaint.

¶ 19 Affirmed.