2014 IL App (2d) 130496-U
No. 2-13-0496
Order filed February 24, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

TAJUDEEN LASISI,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 12-L-0644
	)	
MODIS, INC.,	)	
	)	
Defendant-Appellee	)	Honorable
	)	John T. Elsner,
(Intertek USA, Defendant).	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Birkett and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in effectively granting a section 2-619 dismissal or a summary judgment on plaintiff's claim for fraudulent misrepresentation: his reliance on an e-mail's alleged promise of continued employment was unjustified in light of the e-mail's actual content and, more importantly, an employment agreement that contained an integration clause and provided that his employment would be at will.

¶ 2 Plaintiff, Tajudeen Lasisi, who has appeared *pro se* throughout, appeals a judgment dismissing his amended complaint against defendant, Modis, Inc. (Modis). We affirm.

¶ 3 On June 1, 2012, plaintiff filed a one-paragraph complaint against Intertek USA (Intertek), alleging that Intertek offered him a position for six months, to be "extended with a likelihood of conversion as well"; he started work on October 7, 2011; and he was fired on February 19, 2012. Plaintiff sought damages for lost wages, "failure to convert," and "distress." The complaint attached no exhibits.

¶ 4 On November 29, 2012, plaintiff filed an amended one-paragraph complaint against Intertek and Modis. The amended complaint repeated the original complaint's allegations. It asserted further that Modis, which recruits and provides temporary employees to client companies, had acted as Intertek's agent when it made a "promise" to plaintiff. On January 24, 2013, the trial court dismissed the complaint, without prejudice, as to Intertek only and allowed plaintiff to file a second amended complaint by February 26, 2013. Plaintiff did not do so, and the cause continued against Modis only.

¶ 5 On March 26, 2013, Modis moved to dismiss the amended complaint. The motion was labeled as one under section 2-615 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-615 (West 2012)) for failure to state a cause of action, but it attached several exhibits. The motion alleged the following facts, as evidenced by the exhibits. The alleged "promise" was an e-mail that Heather Thompson, Modis's employee, sent plaintiff on September 30, 2011. In pertinent part, it stated that Intertek was seeking "consultants *** for possible full time conversion in the future." Thompson's e-mail continued in part, "Per our conversation, we will be representing you to Intertek at an hourly rate of $58 ***. *** The duration is an initial 6 months and WILL be extended with a likelihood of conversion as well." The e-mail then informed plaintiff, "Interviews will be phone screens next week, followed by a face to face meeting *** 1-2 days

after a successful phone screen." Finally, Thompson's e-mail requested that plaintiff send Modis a current resume and specify when he would be available for a "phone screen."

¶ 6 Modis's motion alleged further as follows. On October 12, 2011, plaintiff and Modis entered into a "Consultant Employment Agreement" (employment agreement). Paragraph 8 of the employment agreement stated, "Employee's at-will employment *** shall continue in effect until terminated by Modis or Employee***." Nothing in the employment agreement or an "assignment confirmation letter," dated October 15, 2011, specified the duration of plaintiff's employment. Further, according to paragraph 32, the employment agreement "expressly supersed[ed] all practices, understandings, and agreements, whether written or oral, not specifically set forth in this Agreement" and was "the entire agreement between Modis and [plaintiff]." Modis contended that the amended complaint failed to state a cause of action for breach of contract, because paragraph 8 of the employment agreement made plaintiff an employee at will and paragraph 32 made the employment agreement the sole source of any contractual obligation from Modis to plaintiff.

¶ 7 Plaintiff responded that his amended complaint stated a cause of action for fraudulent misrepresentation, because he had reasonably relied on Thompson's promise that he would be employed for at least six months, with a likely "conversion" thereafter. Plaintiff also alleged (with no documentation) that, on his first day at work at Intertek, he received a "confirming verbal restatement of [the] promise." Plaintiff did not contend that Modis's motion was not a proper one to dismiss for failure to state a cause of action.

¶ 8 The trial court dismissed the amended complaint. The court stated that the cause had been brought as one for "breach of contract or misrepresentation"; all representations merged

into the employment agreement; and plaintiff had agreed in writing that he was an at-will employee, thus negating any action based on his termination. Plaintiff timely appealed.

¶ 9 On appeal, plaintiff does not renew any argument that his amended complaint stated a cause of action for breach of contract. Instead, he contends that his amended complaint stated a cause of action for fraudulent misrepresentation. He asserts that Thompson's e-mail of September 30, 2011, falsely stated that his employment would be for six months, and he contends that he reasonably and detrimentally relied on this misrepresentation. Modis responds that Thompson's e-mail created no obligation that survived the employment agreement, which stated plainly that plaintiff was employed at will, and that plaintiff could not reasonably have relied on any prior representations otherwise. We agree with Modis.

¶ 10 Initially, we note that the procedure by which this case was decided was somewhat irregular. Modis labeled its motion as one under section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)). This type of motion "attacks only the legal sufficiency of the complaint on its face. Affirmative matter outside the face of the complaint may not be asserted in a section 2-615 motion." *Gilmore v. Stanmar, Inc.*, 261 Ill. App. 3d 651, 654 (1994). Modis's motion did not attack the facial sufficiency of the amended complaint, but instead relied on evidentiary exhibits to negate its allegations. Thus, whether the amended complaint was considered as sounding in breach of contract, fraudulent misrepresentation, or another theory, Modis's motion was in substance based on some ground other than that addressed by section 2-615.

¶ 11 We note, however, that plaintiff never objected to the impropriety and did not move to strike the improperly labeled motion. Thus, plaintiff has forfeited any objection to the procedural irregularity (especially as he does not raise it here either). See *American National Bank & Trust Co. v. City of Chicago*, 192 Ill. 2d 274, 279-80 (2000) (plaintiff forfeited argument

that defendant's section 2-615 motion improperly relied on matters outside the complaint, as plaintiff failed to raise objection at trial level).

¶ 12 Moreover, we note that the exhibits attached to Modis's motion consisted of Thompson's e-mail, the employment agreement, and the assignment confirmation letter. Because plaintiff's action was based on these written instruments, they should have been attached to the amended complaint anyway. See 735 ILCS 5/2-606 (West 2012). Therefore, in effect, the attachments to Modis's motion cured the defects in the complaint rather than adding extraneous matters. Thus, while Modis's motion might more properly have been denominated one to dismiss under section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2012)), or as one for summary judgment (735 ILCS 5/2-1005(c) (West 2012)), we shall disregard the procedural irregularity and consider the merits of the appeal.

¶ 13 We note first, however, that plaintiff's brief fails in certain respects to conform to the rules for appellate briefing. The main deficiency is that the brief's statement of facts (see Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013)) and argument (see Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013)) cite matters outside the record on appeal. As a court of review, we are limited to the record before us, and an appellant may not raise matters outside the record. See *Keener v. City of Herrin*, 235 Ill. 2d 338, 346 (2009). Therefore, we disregard the portions of plaintiff's brief that are not based on the record.

¶ 14 We also note that, although plaintiff's brief's "Points and Authorities" section lists, as a claim of error, that his amended complaint stated a cause of action for promissory estoppel, the brief does not develop this argument. Therefore, the argument is forfeited. See Ill. S. Ct. R. 341(h)(7), eff. July 1, 2008. Also, plaintiff does not appear to argue that his amended complaint stated a cause of action for breach of contract, so we do not consider that potential issue either.

Finally, plaintiff argues in one short paragraph that the trial court erred in refusing to allow him to amend the complaint again, but he does not support this argument with any citation to the record or pertinent legal authority. This claim of error is forfeited. See *Holmstrom v. Kunis*, 221 Ill. App. 3d 317, 325 (1991).

¶ 15 We turn to the one issue that plaintiff's brief raises properly: whether the trial court erred in rejecting plaintiff's claim for fraudulent misrepresentation. Because the issue is purely one of law, we address it *de novo*, regardless of whether we consider the judgment a dismissal under section 2-619 of the Code or a grant of summary judgment. See *Lacey v. Village of Palatine*, 232 Ill. 2d 349, 359 (2009) (section 2-619 dismissal); *Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 93 (2010) (summary judgment). The issue is (a) whether affirmative matter avoids the legal effect of or defeats the claim (735 ILCS 5/2-619(a)(9) (West 2012)) or (b) whether there is no genuine issue of material fact and Modis is entitled to judgment as a matter of law (735 ILCS 5/2-1005(c) (West 2012)). Our analysis is the same in either instance, so we address the substance of this appeal only once. We hold that the trial court did not err.

¶ 16 The elements of fraudulent misrepresentation are (1) a false statement of material fact; (2) known or believed to be false by the person making it; (3) an intent to induce the plaintiff to act; (4) action by the plaintiff in justifiable reliance on the truth of the statement; and (5) damages caused by the reliance. *Schrager v. Bailey*, 2012 IL App (1st) 111943, ¶ 19. We hold that the fourth element defeats plaintiff's claim: as a matter of law, his reliance was not justified.

¶ 17 Thompson's e-mail stated that Intertek was seeking new hires and that Modis would "represent[]" him to Intertek at a given rate. The e-mail also stated the terms of the possible employment and noted the "likelihood" of conversion. However, the e-mail told plaintiff only

what he had to do to be screened for a position. It gave him no assurance that he would be hired *at all*. Plaintiff could not rely on this tentative statement as an assurance of anything.

¶ 18 More important, the October 12, 2011, employment agreement that plaintiff signed (and presumably read) negated any reasonable reliance on the "promise" in Thompson's e-mail. Paragraph 8 stated plainly that plaintiff would be an employee at will. Paragraph 32, the integration clause, stated that the employment agreement "expressly supersed[ed] all practices, understandings, and agreements, whether written or oral, not specifically set forth in this Agreement" and was "the entire agreement between Modis and [plaintiff]."

¶ 19 Paragraph 8 of the employment agreement refutes any contention that plaintiff reasonably relied on Thompson's e-mail. A party who signs a written contract and has been able to review it may not later claim that his agreement was fraudulently induced by the misrepresentation of the agreements' terms. *Nilsson v. NBD Bank of Illinois*, 313 Ill. App. 3d 751, 762 (1999).

¶ 20 Further, even if the plain language of paragraph 8, standing alone, did not negate any reasonable reliance on Thompson's e-mail, then surely paragraph 32 did. By including an integration clause in a contract, parties are "explicitly manifesting their intention to protect themselves against misinterpretations which might arise from extrinsic evidence." *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d 457, 464 (1999). "The integration clause makes clear that the negotiations leading to the written contract *are not* the agreement." (Emphasis in original.) *Id*. By signing the employment agreement and thus assenting to the integration clause, plaintiff agreed that only the employment agreement created any contractual obligations from Modis to him. He may not now claim that he reasonably relied on prior representations that he agreed would have no force.

¶ 21 Plaintiff cites various opinions from foreign jurisdictions in an apparent effort to circumvent settled Illinois case law and the plain meaning of the employment agreement. These authorities are not pertinent to this case and we need not mention them further.

¶ 22 We affirm the judgment of the circuit court of Du Page County.

¶ 23 Affirmed.