2015 IL App (2d) 131122-U
Nos. 2-13-1122 & 2-14-0067 cons.
Order filed June 30, 2015

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

KIMBERLY R. ROSE, Individually, and as Guardian of SARAH ROSE and BAILEY ROSE, Minors,	)	Appeal from the Circuit Court of McHenry County.
Plaintiff-Appellant,	)	
v.	)	No. 08-LA-467
STATE FARM LIFE INSURANCE COMPANY, STEVE DUITSMAN, and NICHOLE MATOVICH,	)	Honorable Thomas A. Meyer,
Defendants-Appellees.	)	Judge, Presiding.

PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Jorgensen and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in granting summary judgment in favor of State Farm on all counts of the plaintiff's complaint. The trial court's order granting the defendants' petition for costs is vacated as premature.

¶ 2 Following the death of her ex-husband (decedent), the plaintiff, Kimberly Rose, individually and as guardian of Sarah and Bailey Rose, filed claims for benefits under two life insurance policies issued by the defendant, State Farm. State Farm denied the claims. Thereafter, the plaintiff filed suit. Her third amended 14-count complaint against the defendants, State Farm, Steve Duitsman, and Nichole Matovich, alleged claims, in relevant part, for

declaratory judgment, breach of contract, and violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/2 (West 2012)). On July 8, 2013, the trial court granted the defendants' motion for summary judgment on all counts of the complaint. On December 9, 2013, the trial court granted the defendants' petition for costs under section 5-110 of the Code of Civil Procedure (Code) (735 ILCS 5/5-110 (West 2012)). The plaintiff appeals from these orders. We affirm in part, reverse in part, vacate in part, and remand for additional proceedings.

¶ 3 BACKGROUND

¶ 4 While the plaintiff and the decedent were married, they purchased two life insurance policies from State Farm. Specifically, in 1991 they purchased policy #LF-1150-4577, insuring the life of the decedent in the amount of $100,000. In 1994, they purchased policy #LF-1360-4375, insuring the life of the decedent in the amount of $70,000. The plaintiff was an additional insured on these policies and provided that upon her death certain benefits would be paid to her beneficiaries. The decedent was identified as "Proposed Insured 1" and the plaintiff as "Proposed Insured 2" on the applications for those policies. The applications indicated that any policy issued based on the applications would be "owned" by Proposed Insured 1. Both policies provided that the "owner" was as named in the applications and contained an integration clause.

¶ 5 The plaintiff and the decedent participated in a State Farm Payment Plan (SFPP). This program was offered through State Farm and facilitated the payment of premiums for State Farm policy holders. Instead of requiring all premium payments in a yearly lump sum, the SFPP provided monthly or quarterly billing and payment options. The plaintiff and the decedent were listed as account holders on the SFPP and they paid their premiums on the policies on a monthly basis.

¶ 6 Under the terms of both policies, State Farm had the option to pay dividends into the policies each year. An owner had three options with respect to any dividends: apply it toward a premium then due; have State Farm hold the dividends in an account with interest; or request a cash payout. If a premium payment was not made by the due date, the policies provided a 31-day grace period. If a payment was not made by the end of the grace period, then any dividend accumulations would be applied toward the premium. If no dividend accumulations existed, then the policies would lapse and coverage would cease.

¶ 7 Additionally, both policies contained a "Waiver of Premium Benefit Rider" (Rider). Under this provision, premium payments were waived "if the Insured [became] totally disabled and such total disability ha[d] existed for [six] continuous months during the lifetime of the Insured." The Rider defined total disability as a condition that "prevent[s] the Insured from performing substantially all of the work of the Insured's regular occupation." The Rider also required the insured to give State Farm notice of any claim for waiver of premiums while the insured was alive and provide the necessary proof of total disability.

¶ 8 The decedent was first diagnosed with cancer in 1992, and it returned in 2003. On August 31, 2005, the plaintiff filed a petition for dissolution of marriage. In 2006 and 2007, the plaintiff tried to speak with the decedent about the policies, but he would not give her any information. The dissolution of marriage was entered at the end of April 2007. The marital settlement agreement included a provision that the plaintiff would be provided information about the policies and would remain the designated beneficiary. However, the last premium payment was made February 23, 2007. On April 8, 2007, no dividend accumulations were available to pay the premiums that were due on that date. The policies thus lapsed as of April 8, 2007.

¶ 9 In a discovery deposition, Kimberly acknowledged that a letter was sent to the decedent's attorney on October 9, 2006, requesting confirmation of the designated beneficiaries on the

policies. In that letter, Kimberly's attorney indicated that State Farm was refusing to give Kimberly beneficiary information because she was not the owner of the policies. Kimberly did not recall whether she ever received a response to that letter. Up until 2006, Kimberly was making the premium payments with marital funds. However, at some point during the divorce proceedings, she wanted the decedent to take over the payment of premiums.

¶ 10 Kimberly further testified that in December 2006 she received a dividend accumulation withdrawal check that was made out to the decedent in the amount of $1,900. When she asked the decedent about it, he told her he did not know what she was talking about and it was none of her business. State Farm subsequently issued a new check and sent it to the decedent's new non-marital address.

¶ 11 At the end of January 2007, Kimberly received a notice that the policies would be cancelled due to nonpayment of premiums. She called her State Farm agent, Steve Duitsman. He told her not to worry and that a premium payment could be on its way. She acknowledged that Duitsman really did not give her any information one way or the other about whether the policies were cancelled. It was around that time that she called State Farm and had the address on the SFPP changed to the decedent's new non-marital address because she wanted the decedent to pay the premiums. Kimberly acknowledged that, prior to January 2007, she had received about four or five similar notices related to car, home, or life insurance. Most of those were received during the separation. On those occasions she had paid the late premiums herself by check, either mailing the payment or personally delivering it to Duitsman's office.

¶ 12 Kimberly testified that she had requested information about the life insurance policies from Duitsman, or others in his office, many times in 2007. She was always told that any information could not be disclosed because she was not the owner of the policies. Every time she asked the decedent about the status of the policies, he would tell her that everything was fine.

¶ 13 In a certified declaration, Duitsman attached a portion of a State Farm agent guidebook. A section entitled "Inquiries About Policies" indicated that the status of a life insurance policy was confidential information and that only the "owner" of a life policy had the right to request information about the policy or authorize others to have that right. The guidebook suggested that any authorization be in writing and gave an example of an acceptable authorization. Duitsman stated that he never gave any information about the policies to the plaintiff because she was not the owner of the policies and there was no authorization to give her information.

¶ 14 In a discovery deposition, Duitsman stated that he did not remember having any telephone conversations with the plaintiff between mid-2006 and the end of 2007. State Farm's policy, verbally communicated in annual compliance meetings, was that any policy information, including premium status, was to be treated as confidential. Duitsman's understanding of "confidential" was that it was private to the policyholder. Duitsman believed the policyholder would be the "owner" of the policy. When asked what he would do if someone called to ascertain policy information, Duitsman stated that he "would ascertain whether or not [the caller] had a payment plan account that had [the caller's name] on it ***." Duitsman acknowledged that he could ascertain who was on a payment plan from his office computer. Duitsman believed that the plaintiff had a payment plan account.

¶ 15 Duitsman further testified that a notice of arrearage on the premium payment of a life policy would be sent to the policy owner. If there was an SFPP, the notice would be sent to the names and address listed on the SFPP. Duitsman stated that there was an entry on his computer system that indicated that the plaintiff had called on January 2, 2007, to tell them that the address on the SFPP should be updated to reflect "1494 Millbrook Drive"—the decedent's address after he moved out of the marital residence.

¶ 16 Nichole Matovich, a licensed insurance producer who worked with Duitsman, explained in a discovery deposition that only an owner of a life insurance policy would be allowed to request information about the policy or make changes to the policy. Matovich acknowledged that, at some point, the plaintiff had called to change the address on the SFPP for the two policies even though she was not the owner. Matovich also acknowledged that between January 2007 and December 2007, the plaintiff had come to the insurance office, and had called the office, to ask about the status of the policies. Matovich never gave the plaintiff any information about the policies because the plaintiff was not the owner. Matovich told the plaintiff to contact the decedent to request authorization. Matovich believed that the last premium payment on the policies was in February 2007 and that the policies lapsed on April 8, 2007.

¶ 17 Beth Lorance stated in a certified declaration that she was an SFPP supervisor. She explained that the SFPP did not transfer ownership of a policy or create an authorization to receive the policy owner's information. SFPP personnel followed a privacy policy that prohibited disclosure of policy information to anyone other than the owner, unless there were "additional reasonable assurances" that the owner had authorized disclosure. If SFPP personnel knew that a policy owner and a non-owner listed on an SFPP were going through a divorce, SFPP personnel would not be authorized to provide policy information to the non-owner. Lorance stated that SFPP records indicate that the plaintiff was not the owner of the policies and that the plaintiff never called the SFPP department to obtain information about the policies.

¶ 18 Attached as "Exhibit A" to Lorance's declaration was a State Farm "Privacy Policy." The exhibit included a brief overview and some frequently asked questions. Relevant to the instant case, one of the questions was about what type of policy information could be shared with family members. The response was "[u]nless the family member is on the policy too, we should not be providing policy/payment information to family members without the policyholder's

consent or delegation of authority." The privacy policy also indicated that "[i]f you are unsure [about confidentiality], go with nondisclosure until you receive additional reasonable assurances ***." Finally, as to a former spouse asking about an ex-spouse's account, the privacy policy stated: "This is an easy one. Since the spouse is no longer on the account, no information should be shared with the caller."

¶ 19 In a discovery deposition, Lorance testified that an SFPP account holder was not necessarily the policy owner. However, an SFPP account holder could make payments on a policy regardless of ownership. An account holder could also change the address to where bills are sent by contacting her insurance agent's office. An insurance agent could monitor the SFPP and make the change of address from the computer in his office. An SFPP account holder could seek information from SFPP as to whether a premium is current or whether there is a delinquency on it. The account holder could contact SFPP directly but, typically, the account holder would just contact their insurance agent's office. Lorance acknowledged that if the plaintiff had called SFPP during any month in 2007 regarding the policies and whether the premiums were current, SFPP could have answered that question because the plaintiff was an account holder.

¶ 20 On December 22, 2007, the decedent died. Thereafter, Kimberly filed a claim for benefits under the policies. State Farm, aware that the policies had lapsed in April 2007, investigated whether the waiver of premium Riders might apply. However, the investigation revealed that the decedent had worked full-time in his regular occupation until August 2007. This was well past the time the policies lapsed. Accordingly, State Farm concluded that the decedent was not eligible for the waiver of premiums based on total disability. State Farm denied the plaintiff's claim for benefits.

¶ 21 On December 22, 2008, the plaintiff filed her initial 11-count complaint against State Farm, Duitsman, and Matovich, seeking benefits under the policies. The defendants moved to dismiss the complaint pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2010)). On August 12, 2010, the plaintiff filed an amended 14-count complaint alleging causes of action for declaratory judgment (counts I and II); breach of contract (counts III and IV); negligent misrepresentation (counts V and VI); violation of the Consumer Fraud Act (815 ILCS 505/2 (West 2010)) (counts VII and VIII); negligence (count IX and X); willful and wanton conduct for violation of section 234 of the Illinois Insurance Code (215 ILCS 5/234 (West 2010)) (counts XI and XII); vexatious and unreasonable delay (215 ILCS 5/155 (West 2010)) (count XIII); and a claim for punitive damages (count XIV). The defendants again moved to dismiss the complaint under section 2-619.1 of the Code.

¶ 22 On January 24, 2011, the trial court entered an order denying the motion to dismiss as to counts I through IV, and XIII; granting the motion with prejudice as to counts V, VI, IX, X, XI and XII; and granting the dismissal without prejudice as to counts VII, VIII, and XIV. The trial court granted the plaintiff leave to file another amended complaint.

¶ 23 On February 24, 2011, the plaintiff filed a second amended complaint realleging the same claims. On June 29, 2011, the trial court granted the defendant's motion to strike counts VII, VIII, and XIV without prejudice. On February 5, 2013, the plaintiff filed a third amended complaint, again alleging the same claims. On April 2, 2013, State Farm filed a motion for summary judgment pursuant to section 2-1005 of the Code (735 ILCS 5/2-1005 (West 2012)). On July 8, 2013, following a hearing, the trial court granted the defendant's motion for summary judgment on all counts with prejudice. On September 26, 2013, the trial court denied the plaintiff's amended motion for reconsideration. On October 25, 2013, the trial court denied the plaintiff's second post-judgment motion. On that same day, the plaintiff filed a notice of appeal

from these orders. After granting the plaintiff's motion for extension of time, this court ordered that her appellant's brief was due March 17, 2014.

¶ 24 On October 28, 2013, the defendants filed a petition for court costs under section 5-110 of the Code (735 ILCS 5/5-110 (West 2012)), which provides for the recovery of costs when a judgment is entered as the result of a motion. On December 9, 2013, the trial court granted the petition and awarded the defendants $1,254.22 in costs. On January 9, 2014, the trial court denied the plaintiff's motion for reconsideration. On January 22, 2014, the plaintiff filed a subsequent notice of appeal from these orders. Her appellant's brief was due April 30, 2014.

¶ 25 On March 21, 2014, the plaintiff moved for an extension of time to file her March 17, 2014 brief and to consolidate the appeals. On April 9, 2014, this court granted the plaintiff's motion to consolidate and her motion for extension of time. This court ordered that the plaintiff file her appellant's brief on the consolidated appeals by May 1, 2014. The plaintiff failed to file her appellant's brief by that date. On May 15, 2014, this court, on its own motion, entered an order informing the plaintiff that if her brief was not filed within 10 days the appeal would be dismissed. On May 27, 2014, the plaintiff filed her appellant's brief, but it was limited to the orders appealed from in her October 25, 2013, notice of appeal.

¶ 26 On June 2, 2014, the defendants filed a motion to dismiss the plaintiff's January 22, 2014, notice of appeal. On June 11, 2014, the plaintiff filed a motion for extension of time to file her appellant's brief related to her second notice of appeal. The defendants filed a response to that motion. On June 30, 2014, while the parties' motions were pending, the plaintiff filed a motion for leave to file instanter her appellant's brief as to the second notice of appeal. The defendants were not properly served with this motion because the plaintiff sent it to the wrong address. On June 25, 2014, the defendants had filed a motion for extension of time to file their appellee brief, which was order to be filed by July 29, 2014.

¶ 27 On July 31, 2014, this court entered an order in response to the plaintiff's June 11 and 30 motions. This court struck the plaintiff's May 25, 2014, appellant's brief and granted her until September 4, 2014, to file a new appellant brief for the consolidated appeals. This court denied the defendants' motion to dismiss the appeal with regard to the second notice of appeal. Although State Farm submitted a response brief for filing on July 29, 2014, this court returned that brief unfiled because it was moot upon the striking of the appellant brief. However, at that point, the plaintiff had already been served with a copy of the defendants' response brief.

¶ 28 On September 2, 2004, the plaintiff filed her combined opening brief. On October 8, 2014, the defendants filed a motion for sanctions, which this court ordered to be taken with the case.

¶ 29 ANALYSIS

¶ 30 At the outset, we note that the defendants argue that the plaintiff has waived any claims with respect to summary judgment on counts V (negligent misrepresentation), VI (negligent misrepresentation), IX (negligence), X (negligence), XI (willful and wanton conduct), and XII (willful and wanton conduct) because she failed to reference the trial court's January 24, 2011, order in either of her notices of appeal. On January 24, 2011, the trial court had dismissed these counts with prejudice. Thereafter, the plaintiff realleged these claims in her second and third amended complaints. While the propriety of the defendants' argument is questionable in light of the fact that (1) the plaintiff realleged, thus preserving, the claims in her subsequent complaints (*Gaylor v. Campion, Curran, Rausch, Gummerson and Dunlop, P.C.*, 2012 IL App (2d) 110718, ¶ 36), and (2) the trial court granted summary judgment "on all counts," we need not address the argument because the plaintiff does not raise any argument on appeal as to the grant of summary judgment on counts V, VI, IX, X, XI, and XII.

¶ 31 The defendants also note that the plaintiff failed to provide proper citations to the record in her brief in violation of Supreme Court Rule 341(h)(6), (7) (eff. Feb. 6, 2013). The defendants argue that that the plaintiff has forfeited any unsubstantiated factual representations or argument. As we have often stated, the Illinois Supreme Court Rules are not suggestions; they have the force of law and must be complied with. *People v. Campbell*, 224 Ill. 2d 80, 87 (2006). Where a brief has failed to comply with the rules, we may strike portions of the brief or dismiss the appeal should the circumstances warrant. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 9. Nevertheless, while we acknowledge that that plaintiff's appellant brief is not a model for appellate practice, the citations to the record are not so lacking as to hinder our review of the claims on appeal. Moreover, the record on appeal and the proceedings were not lengthy, nor complex. Accordingly, we will address the merits of the plaintiff's appeal. See *Village of Posen v. Illinois Fraternal Order of Police Labor Council*, 2014 IL App (1st) 133329, ¶ 52 (forfeiture is a limitation on the parties, not on this court).

¶ 32 Finally, we address the defendants' motion for sanctions which was ordered to be taken with the case. In that motion, the defendant first raises the same issue that we just addressed—that the plaintiff's brief violates Rule 341. The defendants also argue that dismissal of this appeal is appropriate under Illinois Supreme Court Rule 375(a) (eff. Feb. 1, 1994), because the plaintiff's willful disregard for appellate rules has resulted in significant prejudice to the defendants. Specifically, State Farm notes that it had spent thousands of dollars and more than one hundred hours in preparing the July 29, 2014, appellee brief, which this court returned unfiled because it was moot upon this court's striking of the plaintiff's initial appellant's brief. State Farm argues that the prejudice was compounded by the plaintiff's use of that appellee brief to enhance her subsequent appellant brief.

¶ 33 Rule 375(a) authorizes sanctions where a party or an attorney has been found to have willfully failed to comply with the Illinois Supreme Court Rules governing appeals. Ill. S. Ct. R. 375(a). Sanctions under Rule 375 should only be imposed in the most egregious circumstances. *Janisco v. Kozloski*, 261 Ill. App. 3d 963, 968 (1994). Imposition of sanctions under Rule 375(a) is a matter for our discretion. See *First National Bank of Marengo v. Loffelmacher*, 236 Ill. App. 3d 690, 692 (1992) (recognizing our discretion under this section). In this case, the plaintiff's counsel filed a motion to consolidate these cases, which we granted. Thereafter, the plaintiff's attorney proceeded to file separate briefs as to each appeal. When we subsequently ordered the plaintiff to file one consolidated brief, State Farm had already prepared a response to the first appeal. As such, State Farm incurred additional costs when that brief was returned unfiled and it had to prepare yet another response brief. Accordingly, we grant the defendants' motion for sanctions against the plaintiff's counsel. We direct the defendants to file a statement, within 14 days, of the reasonable attorney fees and costs it incurred as a result of preparing multiple briefs. The plaintiff's counsel shall then have seven days to file a response. This court will then file a supplemental order determining the amount of sanctions to be entered against the plaintiff's attorney.

¶ 34 On appeal, the plaintiff argues that the trial court erred in granting summary judgment on counts I, II, VII, and VIII of her third amended complaint. "The purpose of summary judgment is not to try a question of fact, but rather to determine whether a genuine issue of material fact exists." *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 42-43 (2004). Summary judgment is appropriate only where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2012). In determining whether a genuine issue of material fact exists, the court must construe the

pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the nonmovant. *Adams*, 211 Ill. 2d at 43. We review *de novo* the grant or denial of summary judgment. *Id.*

¶ 35 The plaintiff first argues that the trial court erred in granting summary judgment on counts I and II. Those counts stated a claim for declaratory judgment that the plaintiff was entitled to benefits under the policies because the decedent qualified for a waiver of premiums based on a total disability. The plaintiff argues that summary judgment was improper because the decedent's treating oncologists, Dr. Thomas Cao and Dr. David Peace, opined that the decedent was "totally disabled" and unable to perform substantially all of the work of his regular occupation.

¶ 36 The trial court did not err in granting summary judgment on counts I and II. The policies indicated that premiums would be waived if an insured became totally disabled and the disability lasted six continuous months during the lifetime of the insured. On February 7, 2006, Dr. Cao issued a letter stating that the decedent was to receive treatment for his non-Hodgkin's lymphoma every three weeks and that he had advised the decedent not to work during therapy to preserve his strength. On September 20, 2008, Dr. Peace issued a letter indicating that the decedent had limited himself to working only a few hours a day during the month before his final admission (about December 10, 2007). Dr. Peace stated that the decedent received a bone marrow transplant on August 30, 2007, and that, thereafter, the decedent was not compliant with medical recommendations and insisted on returning to regular daily activities, including working.

¶ 37 The letters of Drs. Cao and Peace do not raise a genuine issue of fact as to whether the decedent qualified for a waiver of premiums based on a total disability. While Dr. Cao may have advised the decedent to stop working at some point during his illness, the record indicates

that the decedent did not do so. In a certified declaration, Dan Praljak averred that he worked with the decedent at a car dealership. Praljak was the general store manager and the decedent was the general sales manager. Praljak attested that the decedent normally worked 53 hours per week. From January 1, 2007, through August 7, 2007, the decedent worked his normal schedule but occasionally left work for a few hours to complete medical treatments.

¶ 38 Further, while Dr. Peace's letter indicated that the decedent limited his work to only a few hours a day, this did not occur until about November 2007. The policies lapsed in April 2007, well before the time the decedent began to limit his working hours to just several a day. The letters of Drs. Cao and Peace do not establish that the plaintiff was totally disabled as defined in the policies. Accordingly, the plaintiff's argument, that the letters of Drs. Cao and Peace raise a question of fact as to whether the decedent was entitled to a waiver of premiums, is without merit. The trial court did not err in granting summary judgment on counts I and II of the plaintiff's third amended complaint.

¶ 39 The plaintiff's next contention on appeal is that the trial court erred in granting summary judgment on counts VII and VIII of her third amended complaint. Those counts alleged violations under the Consumer Fraud Act. The trial court granted summary judgment on counts VII and VIII on the basis that the Consumer Fraud Act was not applicable because there was no duty to advise the plaintiff of the lapse in the policies at issue.

¶ 40 To plead a cause of action under the Consumer Fraud Act, a plaintiff must allege: "(1) a deceptive act or practice by the defendant; (2) the defendant's intent that the plaintiff rely on that deception; (3) that the deception occurred in the course of conduct involving trade or commerce; and (4) actual damage to the plaintiff (5) proximately caused by the deception." *Aliano v. Ferriss*, 2013 IL App (1st) 120242, ¶ 24. The element of intent does not require that the defendant intended to deceive; rather, the misrepresentation may be innocent, as long as it was

intended to induce plaintiff's reliance. *Mackinac v. Arcadia National Life Insurance Co.*, 271 Ill. App. 3d 138, 141-42 (1995).

¶ 41 The trial court erred in dismissing counts VII and VIII of the plaintiff's third amended complaint. At the July 8, 2013 hearing, the plaintiff argued that the Lorance deposition created a question of fact because Lorance had stated that the plaintiff was entitled to policy information as an account holder under the SFPP. The trial court found that there were no such statements in Lorance's deposition. Contrary to the trial court's finding, in her discovery deposition, Lorance stated that an SFPP account holder was not necessarily the policy owner. Nonetheless, an SFPP account holder could seek information as to whether premiums had been paid or whether there was a delinquency on an account. Lorance also stated that an SFPP account holder could call SFPP directly or get this information from his or her State Farm insurance agent. Lorance stated that if an SFPP account holder had called during any month in 2007, SFPP could have answered questions about the policies and whether premiums were current regardless of whether the account holder was the policy owner. As such, Lorance's statements in her deposition raise a question of fact as to whether the plaintiff was deceived, even innocently (see *id.* at 141-42), when the plaintiff was allegedly repeatedly told that she was not entitled to information about the status of the policies. We acknowledge that there are different types of policy information to which different degrees of privacy may apply. However, the Lorance deposition raises a question of fact as to the specific issue here, namely, whether the premium payments were current under the policies. Accordingly, the motion for summary judgment is reversed as to the plaintiff's claims under the Consumer Fraud Act.

¶ 42 The defendants argue that the dismissal of counts VII and VIII should be affirmed because the claims are based on a breach of contract, which is not actionable under the Consumer Fraud Act. We find this argument to be without merit. The plaintiff's fraud claims

are not based on a breach of contract because the plaintiff does not rely on any aspect of the policy in alleging what was or was not confidential information. Rather, the plaintiff is relying on unwritten customs or practices in asserting that policy information was available to her as an account holder under the SFPP. Moreover, the policies at issue do not address the issue of privacy or what was or was not confidential information and the defendants do not argue that State Farm's privacy policies were somehow integrated into the life insurance policies themselves. Accordingly, the plaintiff's consumer fraud claims are clearly not based on any breach of contract.

¶ 43 The defendants further argue that even if they improperly withheld information regarding the status of the policies from the plaintiff, the plaintiff has not alleged facts sufficient to establish the element of proximate cause. On the contrary, the plaintiff alleged that, had she known that the policies were in arrears, she would have paid the premiums and taken the necessary action to have the policies reinstated. The plaintiff's allegations are sufficient to raise a factual question for the jury. *Vertin v. Mau*, 2014 IL App (3d) 130246, ¶ 10 (proximate cause is typically a question of fact for the jury). The defendants note that the plaintiff received the January 2007 cancellation notice and did not pay the premium. The defendants assert, therefore, that she cannot properly allege that she would have paid the premiums at any later date. We find this argument unpersuasive. A premium payment was made in February 2007 and the plaintiff alleged that she continued to question the status of the policies on a monthly basis thereafter.

¶ 44 The plaintiff's final contention on appeal is that the trial court erred in granting the defendants' petition for costs. The petition for costs was based on section 5-110 of the Code (735 ILCS 5/5-110 (West 2012)), which provides for recovery of costs when a judgment is entered on a motion. However, since we are reversing summary judgment on the plaintiff's claims under the Consumer Fraud Act, the defendants' petition for costs is premature.

Accordingly, the trial court's December 9, 2013, order, granting the defendants' petition for costs, is vacated. The issue can be raised again after final disposition in the trial court.

¶ 45 CONCLUSION

¶ 46 For the foregoing reasons, the judgment of the circuit court of McHenry County is affirmed in part as to counts I and II; reversed in part as to counts VII and VIII; and vacated in part as to the award of costs. Additionally, we grant the defendants' motion for sanctions filed in this court pursuant to Illinois Supreme Court Rule 375(a) (eff. Feb.1, 1994). The matter is remanded for additional proceedings consistent with this order.

¶ 47 Affirmed in part, reversed in part, and vacated in part; cause remanded.