2015 IL App (2d) 141025-U
No. 2-14-1025
Order filed November 24, 2015
Modified upon denial of rehearing February 1, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

PHILLIP GOLDBERG, Plaintiff-Appellant, v. GLENSTONE HOMEOWNERS ASSOCIATION, FRANK MONDANE, STANLEY RAZNY, and RUBEN ANASTACIO, Defendants-Appellees (Hillcrest Property Management, Inc., Defendant).	)	Appeal from the Circuit Court of Lake County No. 14-SC-1870 Honorable Theodore S. Potkonjak, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Schostok and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly dismissed counts III and IV of Goldberg's complaint for failure to state a cause of action. Next, the circuit court properly directed a verdict for defendants on counts I, II, V, and VI, because Goldberg failed to present sufficient evidence at trial. Finally, the circuit court did not abuse its discretion when it denied sanctions against defendants and granted sanctions against Goldberg in the form of attorney fees. Therefore, we affirmed.

¶ 2 Plaintiff, Phillip Goldberg, filed a *pro se* complaint against defendants, Glenstone

Homeowners Association (Association), Frank Mondane, Stanley Razny, Ruben Anastacio, and Hillcrest Property Management, Inc. (Hillcrest). His small claims suit sought recovery of $7,500, which he paid the Association in compliance with a special assessment for road repair. He alleged, in six counts, that the special assessment was invalid, a breach of contract, excessive, and fraudulent. On defendants' motion to dismiss, the court dismissed two of Goldberg's counts for failure to state a cause of action. The case proceeded to trial on the remaining four counts, and after Goldberg's case-in-chief, the court directed a verdict in favor of defendants on all four counts.

¶ 3 For the reasons set forth herein, we affirm.

¶ 4 I. BACKGROUND

¶ 5 Goldberg was an owner of property in the Association's Unit II subdivision (Subdivision), located in Long Grove, Illinois. The Subdivision consisted of 24 individually owned lots, one of which Goldberg owned with his wife. The Subdivision was governed by the Association, and each lot owner was a member of the Association. At all relevant times to this action, the Association's board of directors were Frank Mondane, Stan Razny, and Ruben Anastacio.

¶ 6 On July 1, 2013, the Association held a special meeting (the special meeting) to discuss a road construction proposal for the Subdivision. The special meeting was noticed to Association members with a list of topics to be discussed, including road construction. The minutes from the meeting stated that a discussion and vote were taken with regard to a road construction proposal in the Subdivision, not to exceed $185,000. The votes tallied 11 in favor of the project and 1 against. Accordingly, the road project would commence once the board of directors entered into a contract for the project. It was decided that a total special assessment of $180,000, or $7,500

per lot owner, was necessary to fund the road project.

¶ 7 After the special meeting, the Association levied a $7,500 special assessment for roadway construction and repair on each of the 24 lot owners, including Goldberg. Goldberg paid the special assessment in full by September 2, 2013.

¶ 8 A. Pre-Trial

¶ 9 Goldberg filed his *pro se* complaint against defendants in small claims court on March 11, 2014. He alleged six counts seeking the return of the $7,500 special assessment that he paid to the Association. Count I alleged that the board of directors were not lawfully constituted and did not have authority to impose the special assessment in violation of the Illinois Common Interest Community Association Act (Community Act) (765 ILCS 160/1-1 *et seq.* (West 2012)) and the General Not For Profit Corporation Act (Not For Profit Act) (805 ILCS 105/101.01 *et seq.* (West 2012)). Count II alleged breach of contract in that the special assessment violated the terms of the Association's declaration and bylaws (the Declaration). Count III alleged fraud in that defendants violated the Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/2 (West 2012)) and Uniform Deceptive Trade Practices Act (Deceptive Practices Act) (815 ILCS 510/2 (West 2012)) by adopting the special assessment through false pretenses. Count IV alleged that defendants violated the Community Act and the Not For Profit Act by failing to properly notice a November 2013 meeting that the Association members called for. Count V again alleged a breach of contract, this time on the basis that the special assessment was excessive. Finally, count VI alleged a breach of contract in that the special assessment improperly paid for road construction outside the Subdivision in violation of the Declaration.

¶ 10 Defendants filed an initial appearance through their counsel on April 9, 2014. The clerk

set trial for May 8, 2014, and defendants moved to continue the trial date. Defendants thereafter moved to substitute counsel and re-noticed their motion to continue the trial date. Goldberg first objected to both motions and asked the court to sanction defendants and strike their appearance. However, on May 7, 2014, the court entered an agreed order in which Goldberg and defendants agreed to substitution of defendants' counsel and to continue trial. Thereafter, defendants filed a "Motion to Dismiss Plaintiff's Complaint under Sections 2-619 and 2-615," (735 ILCS 5/2-615, 2-619 (West 2012)) and Goldberg filed a motion for summary judgment on the pleadings. The court scheduled a hearing on cross motions for summary judgment and motions to dismiss for June 11, 2014.

¶ 11 Defendants' motion to dismiss sought dismissal of all six counts of the complaint. The trial court granted defendants' 2-615 motion with prejudice on counts III and IV on June 11, 2014. It found that counts III and IV failed to state a cause of action under the statutes cited. It denied defendants' motion to dismiss counts I, II, V, and VI. Further, it denied Goldberg's motion for summary judgment based on the pleadings. It separately dismissed all counts against Hillcrest, effectively removing it from this litigation. Therefore, when we refer to defendants throughout the rest of our disposition, it is understood that we refer only to those defendants who are appellees—the Association, Mondane, Razny, and Anastacio.

¶ 12 Before proceeding to trial on his remaining claims, Goldberg filed a motion for Rule 137 (Ill. S. Ct. R. 137 (eff. July 1, 2013)) sanctions against individual defendant Frank Mondane and defendants' attorneys. In the motion, Goldberg argued that Mondane submitted an affidavit to the court that falsely averred that Goldberg had sued the Association several times in the past but had never prevailed. Goldberg argued that the statement was "false and defamatory" because he had prevailed "if not fully, than to an exceptional extent" in past actions against the Association.

He detailed several instances in which he sued the Association and at least one in which the Association sued him. Finally, he characterized Mondane's affidavit as gratuitous and irrelevant and sought that Mondane be barred from testifying at trial.

¶ 13 With respect to defendants' counsel, Goldberg argued that they falsely stated that the lawsuit was a continuation of a "crusade" against defendants. He also argued that counsel falsely stated that Goldberg eschewed communication with the Association when in truth he had been chastised for repeated contact with defendants. Goldberg characterized these statements as "knowingly false and defamatory." Additionally, Goldberg argued that counsel raised a baseless *res judicata* defense and, after their motion to dismiss counts I, II, V, and VI was denied, moved for an inordinately long delay of trial, from June 11, 2014, to August 5, 2014. The delay allowed for road construction to begin before trial commenced.

¶ 14 In addition to requesting sanctions, Goldberg also moved for leave to file a first amended complaint. He sought to add a seventh count for common law fraud in relation to how the road construction had actually proceeded.

¶ 15 Goldberg further sought to subpoena certain documents from defendants, including all documents defendants relied on to establish the adoption and approval of the special assessment, the list of Glenstone members eligible to vote for the special assessment, and documents and contracts relating to road work funded by the special assessment. Defendants moved to quash the subpoena, arguing that at a prior hearing, the court had asked all parties whether they intended to engage in discovery prior to trial and all parties, including Goldberg, answered no. In addition, defendants argued that Goldberg's subpoena violated Rule 287 (Ill. S. Ct. R. 287 (eff. Aug. 1, 1992)) because he failed to first seek leave of court, as required in a small claims suit. In response, Goldberg sought leave to subpoena documents.

¶ 16 The trial court denied Goldberg's motion for Rule 137 sanctions on August 26, 2014. It reasoned that the allegations in his Rule 137 motion bore no relevance to the matter before the court. In particular, the court told Goldberg that it would hear Mondane's testimony and determine whether he was credible, and it further stated that it would decide whether the case law submitted by defendants supported their arguments.

¶ 17 The court next denied Goldberg's motion to file an amended complaint, with prejudice, reasoning that the fraud allegations were conclusory and not supported by sufficient facts. Finally, it denied his motion for leave to subpoena documents (and denied defendants' motion for leave to quash the subpoena as moot), and it set the case for trial on September 19, 2014.

¶ 18 B. Trial

¶ 19 The matter proceeded to trial on the four remaining counts (counts I, II, V, and VI), and Goldberg called but one witness: himself. Goldberg's case-in-chief presented more argument than evidence. We recount the proceedings with respect to each of the four counts as follows.

¶ 20 1. Count I

¶ 21 Count I alleged violations of both the Community Act and the Not For Profit Act in that the Association's board of directors were unlawfully constituted. The basis for Goldberg's argument was as follows. The Community Act stated that an election shall be held for the board of directors from among the membership, and in order to be a member of the Association, one must be an owner. Goldberg continued that Anastacio was not a record title holder of property in the Association and thus not a member. Therefore, under the Declaration, Anastacio was ineligible for election to its board of directors and the board was unlawfully constituted.

¶ 22 Defendants admitted that Anastacio was not a record titleholder to a lot in the Association. However, defendants argued that the only issue before the court was whether the

Community Act or the Not For Profit Act precluded the election of an officer who was not also a record titleholder. They argued that the statutes did not. First, they asked that the court take judicial notice of section 1-5 of The Community Act (765 ILCS 160/1-5 (West 2012)), which was provided as plaintiff's exhibit 4. Section 1-5 of the Community Act provided definitions of various terms used throughout the act, including "board member," "board of directors," and "board of managers." The definitions were made with reference to the particular association's declaration and bylaws, did not specify a statutory procedure for election, and did not restrict who was eligible for election by the membership. Rather, it was necessary to look at the Association's community instrument. Here, the community instrument was the Declaration.

¶ 23 Thereafter, defendants directed the court to the Declaration. First, defendants testified that officers, such as Anastacio, need not be members under the terms of the Declaration. Nevertheless, defendants argued that Anastacio was a member because article 1, section 1 of the Declaration considered holders of a beneficial interest under a land trust to be members. Defendants asserted that Anastacio fit this definition because he was the beneficiary of a land trust through his wife. In sum, defendants argued that Anastacio was an Association member, but even if he were not, he remained eligible for election to the board of directors.

¶ 24 Defendants then turned to the Not For Profit Act, which Goldberg provided as part of plaintiff's exhibit 3. Goldberg had provided the court with section 108.05 of the Not For Profit Act (805 ILCS 105/108.05 (West 2012)), entitled "Board of directors." They argued that section 108.05, which described the general appointment and authority of board members for nonprofit corporations, in no way precluded Anastacio from sitting on the Association's board of directors. In particular, section 108.05(b) read only that a director need not be a resident of Illinois or a member of the corporation unless the articles of incorporation or bylaws so prescribed. Here, the

Declaration did not impose such restrictions.

¶ 25 After considering the arguments and examining the two statutes, the court concluded that Anastacio was a valid director. It reasoned that under the Declaration, Anastacio did not need to be a member of the Association to be a director, and nevertheless, Goldberg could not show he was not a member. Accordingly, it found against Goldberg on count I.

¶ 26 2. Count II

¶ 27 The court turned to count II, which alleged that defendants breached the Declaration in the adoption and implementation of the special assessment. Goldberg argued that the special meeting failed to adhere to proper procedure, and he further argued that the Association's name in the special meeting notice was incorrectly spelled. In support, he submitted the minutes of the special meeting as part of plaintiff's exhibit 3.

¶ 28 The minutes provided that the special meeting was called to order by Mondane and seconded by Razny. A discussion ensued regarding a proposed road construction project. After the discussion, a vote was taken whether to proceed with the road project, not to exceed $185,000. The vote tallied 11 in favor of the road project and 1 against. Therefore, the road project would proceed once the board of directors procured a contract for road construction. Additionally, the attendees discussed the amount of the special assessment to pay for the road construction, and the consensus was a total of $180,000, which came out to $7,500 per homeowner. Terms for payment by homeowners were addressed, and thereafter the meeting was adjourned. The meeting took half an hour.

¶ 29 Goldberg next submitted a statement from the Association outlining its 2014 budget as plaintiff's exhibit 4. In particular, he pointed to the $15,844.61 marked as "Money Market funds" held by Edward Jones, which he argued should have been applied to the special

assessment before it was voted on. He argued that this demonstrated that the Association failed to comply with its Declaration.

¶ 30 On cross-examination, Goldberg admitted he did not attend the special meeting or vote on the special assessment. His knowledge of what occurred at the special meeting came from the minutes, which he submitted to the court. He had attended other meetings in the past but not the special meeting. Defendants questioned Goldberg whether the Association had the general power to levy a special assessment. Goldberg, after admonishment by the court to provide a yes or no answer, responded with a qualified yes.

¶ 31 Defendants then had Goldberg read from the Declaration. Article 4, section 3(d) stated that the Association could levy special assessments on members for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, or repair. The section defined reconstruction as including capital improvements upon the Association's common areas and defined "common area" as including the Association's private roadways. Goldberg agreed that a road construction project would be covered by this section of the Declaration.

¶ 32 After his cross-examination, Goldberg reiterated that the minutes showed that the Association had failed to follow proper procedure in adopting the special assessment. The court responded that Goldberg had not shown anything yet with regard to the Association following proper procedure; rather, "one small page of the minutes doesn't specifically say all those things." It was his burden to prove that the Association failed to act in accordance with its Declaration. Goldberg replied that he could not "prove a negative," and his only information regarding the meeting was the minutes and the bill he received afterward for the special assessment.

¶ 33 The court found for defendants on count II, reasoning that Goldberg could not meet his

burden of proof as to a breach of the Declaration. The court told Goldberg that if he had wanted to testify to the procedure followed at the special meeting, "I guess you should have gone to the meeting, to put it bluntly."

¶ 34 3. Count V

¶ 35 With respect to count V for breach of the Declaration, which alleged that the special assessment levied on members was excessive, Goldberg argued that each individual lot owner, not the Association, was responsible for maintaining his section of road. Therefore, the special assessment was excessive because it was not the Association's duty to maintain the roads but rather the individual lot owners'.

¶ 36 Goldberg offered a quitclaim deed into evidence that described his property. The deed referred to a final plat of survey (the Final Plat) of the Subdivision, which included a description of his lot. The Final Plat in turn contained descriptions of covenants and easements, including an easement for private road drainage and utility over his lot. Goldberg focused the court's attention on the easement over his property. Citing language from the Declaration and the Final Plat, he argued that the easement made it his and the Association's responsibility to maintain the common areas over which the easement ran, which included the roadway.

¶ 37 The court interjected to summarize Goldberg's testimony. "So what you just told me is, number one, it's a private road, number two, it's a designated common area and, number three, the Association is responsible for maintaining it." The court reasoned that the Association would have to assess monies from time to time in order to maintain the common areas, including the roads.

¶ 38 Goldberg disagreed that it was the Association's *sole* responsibility to maintain the common areas. He continued by citing Article 6 of the Declaration, which addressed the

procedure to follow if an owner fails to maintain his lot. However, the court found that the section did not address maintenance of the common areas. Rather, it was about situations such as where an owner failed to mow the lawn on his lot.

¶ 39 Goldberg then asked the court how the Association "can come on my property all willy-nilly arbitrarily and capriciously decide what maintenance is to be done when, in fact, the road was in very good shape to begin with and only needed minor maintenance." Again, the court told him that there was a special meeting that he could have attended where the issue of road maintenance was decided.

¶ 40 The court ruled in favor of defendants on count V. It reasoned that Goldberg's evidence and testimony only substantiated defendants' position that the Association had the authority to levy the special assessment in order to maintain the roadways.

¶ 41 4. Count VI

¶ 42 The trial proceeded to the final count at issue, count VI, for a breach of the Declaration. In particular, Goldberg alleged that the Association improperly performed road construction outside of the Subdivision. Goldberg argued that the Association performed road construction on the Tarnaris outlot (outlot G on the Final Plat), which he alleged was not a part of the Subdivision. He argued this was improper because the Association only had authority to perform road construction, if any, within the Subdivision. Moreover, Goldberg argued that the easement the Association had over the Tarnaris outlot was defective and did not establish that the Association had any cognizable interest in the Tarnaris outlot.

¶ 43 The court sought to clarify Goldberg's position. Goldberg agreed that his argument was that the Association acted improperly because it used funds to perform road work on a lot outside the Subdivision, not outside the Association. That is, he did not allege that the Tarnaris outlot

was property outside the purview of the Association.

¶ 44 Goldberg submitted three exhibits related to count VI: a deed for the Tarnaris outlot, drawings of the Subdivision boundaries, and a photograph of the construction that took place at the Tarnaris outlot (taken by Goldberg). Goldberg also referenced a 2008 easement between the Association and the Tarnaris outlot owners, arguing for various reasons that the easement was defective and invalid. Those reasons were that the easement was signed by the wrong people, that defendants failed to provide evidence that the easement was duly approved by the Association's board of directors, and that the signature was by an individual, not by an Association director in an official capacity. He also argued that even if the easement were not defective, it did not comply with the Declaration and was not recorded.

¶ 45 Next, Goldberg cited to *Goldberg v. Michael*, 328 Ill. App. 3d 593 (2002). In *Michael*, Goldberg had sued several former Association board members and their counsel for breach of fiduciary duty, unjust enrichment, and constructive fraud. *Id.* at 595-97. He argued that the case held that the Association was not in the business of acquiring property, only maintaining or administering existing property. Here, Goldberg argued that the grant of an easement over the Tarnaris outlot was the Association acquiring new property, and therefore the easement was defective under the holding in *Michael*. The court noted that in *Michael*, Goldberg lost every count in the trial court and lost on appeal.

¶ 46 The court was unconvinced by Goldberg's argument. It reasoned that there was never a prior challenge to the Tarnaris outlot easement. It emphasized that Goldberg was in small claims court seeking monetary damages, and based on what was before the court, the easement was valid. The terms of the easement were consistent with the Declaration: both stated that the Association would be responsible for maintaining the roadways in good order and repair.

Accordingly, it ruled against Goldberg on count VI.

¶ 47 Thereafter, defendants moved for a directed finding on counts I, II, V, and VI. The court granted a directed finding on all counts. It entered an order granting the directed finding on September 18, 2014. Defendants also filed a petition for attorney fees.

¶ 48 The trial court held a hearing on attorney fees on November 18, 2014. It heard arguments from defendants and Goldberg. After considering the arguments, the case law presented, the transcripts and prior proceedings, the court granted defendants' petition for attorney fees pursuant to Rule 137 on December 2, 2014.

¶ 49 Goldberg timely appealed.

¶ 50 II. ANALYSIS

¶ 51 A. Motion to Substitute Counsel and Continue Trial

¶ 52 Goldberg's first argument is that the trial court erred when it granted defendants' motion to substitute defendants' counsel and to continue trial. Defendants argue that Goldberg forfeited this issue by failing to include it in his notice of appeal. Goldberg did not reference the May 7, 2014, order granting substitution of counsel and continuance of trial in his December 26, 2014, amended notice of appeal. However, he did specifically seek relief from the May 7 order in his original October 14, 2014, notice of appeal. The amended notice of appeal sought to add review of Rule 137 sanctions against him but did not re-list the May 7 order.

¶ 53 We need not address whether Goldberg had to re-list the May 7 order in his amended notice of appeal, however, because his appeal of the May 7 order fails regardless. The record reflects that Goldberg agreed to the substitution of counsel and continuance of trial. In fact, the May 7 order was entered as an agreed order. A party may not appeal an order he agreed to absent fraudulent misrepresentation, coercion, incompetence of one of the parties, gross disparity

in position of capacity of the parties, or newly discovered evidence. *People ex rel. Devine v. Murphy*, 181 Ill. 2d 522, 538 (1998). Rather, to successfully challenge an agreed order on appeal, an appellant must argue that the standard for section 2-1401 petitions for relief from final order and judgments is met. *In re Marriage of Rolseth*, 389 Ill. App. 3d 969, 971-72 (2009).

¶ 54 Goldberg has not argued that the agreed order was the result of anything but his agreement. Rather, he argues that he objected to the motions on May 6 and that the trial court erred in granting the substitution and continuance that he agreed to on May 7. He simply argues that he does not now agree with the agreed order. This is insufficient. Accordingly, we will not disturb the order substituting defendants' counsel or continuing the trial.

¶ 55 B. Section 2-615 Dismissal

¶ 56 Goldberg next argues that the trial court erred in dismissing counts III and IV of his complaint with prejudice, for failure to state a cause of action. The question on review of a section 2-615 motion to dismiss is whether the complaint contains sufficient facts that, if established, would entitle the plaintiff to relief. *Zahl v. Krupa*, 365 Ill. App. 3d 653, 658 (2006). In our review, we accept all well-pleaded facts as true and make all reasonable inferences therefrom. *Id.* We review *de novo* a circuit court's grant of a 2-615 motion to dismiss. *Phoenix Insurance Co. v. Rosen*, 242 Ill. 2d 48, 54 (2011).

¶ 57 Count III alleged fraud. In particular, Goldberg alleged that defendants violated the Consumer Fraud Act (815 ILCS 505/2 (West 2012)) and the Deceptive Practices Act (815 ILCS 510/2 (West 2012)) by failing to follow all procedures outlined in the Declaration and required by Illinois law. Goldberg argues that the board of directors had a fiduciary duty to Association members that it violated. In particular, he focuses on the notice sent for the July 2013 special meeting, and the procedures followed at the meeting itself. He argues that the notice caused

confusion because it did not specifically refer to a special assessment vote or spell the Association's name correctly (the notice included an apostrophe on "Homeowner's" instead of simply reading "Glenstone Homeowners Association"). He cites case law for the proposition that a harmless scrivener's error is inexcusable in this context, and that misspellings and supplying incorrect information are equivalent to providing no information. See *In re Application of County Collector*, 295 Ill. App. 3d 703, 709-10 (1998); *Davis v. Chicago Transit Authority*, 326 Ill. App. 3d 1023, 1028 (2001); *Beyene v. Irving Trust Co.*, 762 F.2d 4, 6 (7th Cir. 1985). He further argues that the vote and subsequent special assessment were in "questionable" compliance with the necessary procedures.

¶ 58 Goldberg does not, however, argue why the Consumer Fraud Act or the Deceptive Practices Act should apply to his case. The Deceptive Practices Act provides for injunctive relief but not monetary damages. *Smith v. Prime Cable of Chicago*, 276 Ill. App. 3d 843, 859-60 (1995); see 815 ILCS 510/3 (West 2012) (providing for injunctive relief). Goldberg is only seeking monetary relief. Accordingly, we do not further address his arguments under the Deceptive Practices Act.

¶ 59 To state a cause of action under the Consumer Fraud 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). Defendants argue that Goldberg did not show a deceptive act, proximate cause, or that defendants were engaged in trade or commerce. Failure to sufficiently allege any element is fatal to Goldberg's fraud claim.

¶ 60 We agree with defendants. A complaint alleging a violation of consumer fraud must be pled with particularity and specificity, the same as for common law fraud. *Pappas v. Pella Corp.*, 363 Ill. App. 3d 795, 799 (2006). The Consumer Fraud 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). An omission or concealment of a material fact is actionable where it is employed as a device to mislead. *Pappas*, 363 Ill. App. 3d at 799.

¶ 61 Here, Goldberg has not pled a deceptive act under the Consumer Fraud Act. The misspelling of Glenstone Homeowners Association by including an apostrophe is simply not deceptive, even if it was confusing to Goldberg. While Goldberg argues that the meeting did not refer to "a 'special assessment' vote, per se," he admits that the meeting was called to discuss road repair and resurfacing. The meeting notice, which he provided to the court, listed road repair as a meeting topic. The Consumer Fraud Act required that Goldberg plead a deceptive act with specificity, yet he has not alleged anything resembling a misrepresentation, an omission of material fact, or a false pretense or promise. Rather, he has alleged only that (1) the Association made a typo in its meeting notice and (2) the notice of the meeting, which he did not attend, did not specifically refer to a special assessment for road construction but only that the meeting would address the topic of road construction. These are not deceptive acts.

¶ 62 Moreover, Goldberg's case law is not on point. None of the cases he cites involved the Consumer Fraud Act, and in all cases, the discrepancy or omission was found to be material to the transaction. See *In re Application of County Collector*, 295 Ill. App. 3d at 709-10; *Davis*, 326 Ill. App. 3d at 1028; *Beyen*, 762 F.2d at 6. Here, the alleged omissions and

misrepresentations were anything but material.

¶ 63 Likewise, Goldberg did not sufficiently allege that the defendants were engaged in trade or commerce. The act defines "trade or commerce" to mean the "advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, personal or mixed, and any other article, commodity, or thing of value where situated." 815 ILCS 505/1(f) (West 2012); see *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 180 (2005). Goldberg made no allegation that defendants were engaged in trade or commerce at all. This failure alone is enough for count III to fail.

¶ 64 For these reasons, Goldberg did not plead facts which would entitle him to relief, and the court properly dismissed count III for failure to state a cause of action.

¶ 65 Moving to count IV, Goldberg alleged a breach of defendants' fiduciary duties. He alleged that defendants were required to issue a meeting notice for a November 4, 2013, meeting called by Association members 10 days prior to the meeting. He alleged that members called for the meeting to reconsider the special assessment. He argues the 10-day prior notice was required by section 1-40(b) of the Community Act (765 ILCS 160/1-40(b) (West 2012)) and section 107.05 of the Not For Profit Act (805 ILCS 105/107.05 (West 2012)). According to Goldberg, the Association delayed mailing the notice knowing it would arrive only seven days before the meeting. Goldberg argues that it was reasonable to expect there would have been enough votes to recall the special assessment at the November meeting.

¶ 66 The trial court was again correct to dismiss the count for a failure to state a cause of action. The essential elements of a breach of fiduciary duty are the existence of a fiduciary duty, a breach of that duty, and that the breach proximately caused injury. *Neade v. Portes*, 193 Ill. 2d 433, 444 (2000). Even if we were to generously assume that Goldberg sufficiently plead that

defendants breached their duty by mailing the meeting notice a couple of days late, he did not allege proximate cause. Proximate cause has two distinct requirements: cause in fact and legal cause. *Young v. Bryco Arms*, 213 Ill. 2d 433, 446 (2004). For cause in fact, a court must first ask whether the injury would have occurred but for the defendant's conduct. *Coole v. Central Area Recycling*, 384 Ill. App. 3d 390, 397 (2008).

¶ 67 Here, Goldberg did not plead that his injury occurred but for the late notice of the proposed November meeting. Rather, his alleged injury had already occurred because he had paid the $7,500 special assessment in full by September 30, 2013. The special meeting to reconsider the special assessment was not even proposed until October 2013.

¶ 68 Goldberg's argument that it was reasonable to expect there would have been enough votes to recall the special assessment is speculative and, standing on its own, insufficient. The only concrete allegations before the court were that the Association adopted a special assessment, Goldberg paid it, and thereafter Goldberg sought to have a meeting to reconsider the assessment. Goldberg did not allege that the delayed notice affected the November meeting attendance. Indeed, he did not allege whether anyone actually attended the November meeting or whether the meeting occurred. He offered only speculation that there would have been enough votes at the November meeting to revoke the special assessment that he had already paid.

¶ 69 Simply, Goldberg cannot show that but for the delayed notice, he would not have paid $7,500 to the Association. He had already paid the full amount, and he offered no connection between the late notice and a vote to refund the assessment, only his general speculation. Accordingly, the trial court properly dismissed count IV for failure to state a cause of action.

¶ 70 C. Directed Verdict

¶ 71 We next address Goldberg's arguments regarding the trial court's directed verdict in

favor of defendants on counts I, II, V, and VI. A directed verdict will be upheld where all of the evidence, viewed in the light most favorable to the non-moving party, so overwhelmingly favors the moving party that no contrary verdict based on the evidence could ever stand. *Sullivan v. Edward Hospital*, 335 Ill. App. 3d 265, 272 (2002). We review *de novo* the grant of a motion for directed verdict. *Jones v. DHR Cambridge Homes, Inc.*, 381 Ill. App. 3d 18, 28 (2008).

¶ 72 1. Count I

¶ 73 Count I alleged violations of the Community Act and Not For Profit Act in that the Association's board of directors, which implemented the special assessment, was not lawfully constituted. Goldberg argues that defendants admitted that Anastacio, one of the directors, was not a record title owner to property in the Association. He cites his own testimony concluding that, because of Anastacio's failure to hold title within the Association, his vote on the special assessment was invalid. He further cites section 1-5 of the Community Act, which defines "member" as a person or entity designated as an "owner" by the community instrument. 765 ILCS 160/1-5 (West 2012). In conjunction with the Declaration, which defines "owner" as a record title owner, he argues that he has presented a *prima facie* case that Anastacio was not eligible for election to the Association's board of directors. Goldberg also reiterates his argument that defendants failed to meet their burden to provide sufficient evidence that Anastacio was a controlling beneficiary in a land trust and thus eligible for the board of directors. We summarily reject this argument because, as the trial court correctly admonished Goldberg, he, not defendants, had the burden of proof to establish whether Anastacio was a valid member of the board of directors.

¶ 74 Fatal to Goldberg's claim is his lack of evidence that Anastacio was not an Association member. First, we note that the Declaration states that all lot "owners" are voting "members."

Goldberg argues Anastacio was not an owner, but his argument ignores the full definition of "owner" under article 1, section 1 of the Declaration. That section defined an owner as the record owner of fee simple title to an Association lot *or* as any holder of a beneficial interest in a land trust holding title to an Association lot. Goldberg argues only that Anastacio was not a record owner. At trial, Goldberg never addressed defendants' argument that Anastacio was a beneficiary of a land trust through his wife, who was an owner of an Association lot. Rather, he argued "[t]here has been no evidence presented to this Court that he's a beneficiary of anything." The court responded that defendants "don't have to prove it. You're the plaintiff." Because Goldberg did not present evidence to show that Anastacio failed to meet the Declaration's criteria for a member, in particular that he was not the beneficiary of a land trust through his wife and therefore an "owner," the court correctly directed a verdict against him on this count.

¶ 75 Even if we were to conclude that Anastacio was ineligible for election to the board of directors, which we do not, that conclusion would not invalidate the special assessment. Article 4, section 3(d) of the Declaration grants the Association the power to levy a special assessment for the purposes of "defraying *** the cost of any *** construction, reconstruction, repair or replacement of any capital improvement upon the Common Areas and facilities." A limit on this power to levy a special assessment is that assessments in excess of $7,000 must be approved by a vote *of members* at a meeting called for the purpose of approving the assessment. Importantly, directors need not vote on the assessment. Under Article II, section 2 of the Declaration, the Association president or any director may call a special meeting. Here, the minutes show that the special meeting was called by Mondane and seconded by Razny, both of whom were directors. Therefore, Anastacio's eligibility as a board member was irrelevant to calling the meeting and to voting on the special assessment.

¶ 76 Accordingly, the trial court properly directed a verdict in favor of defendants on count I.

¶ 77 2. Count II

¶ 78 Count II alleged that the $7,500 special assessment was not adopted in strict compliance with the Declaration. Goldberg argues that the Association had a three-step process for adopting special assessments. First, under article 4, section 2(b) of the Declaration, the board of directors had to set the amount of the assessments. Second, article 4, section 3(d) limited special assessments for the purpose of defraying the costs of construction, reconstruction or repair, and it required a vote to approve assessments in excess of $7,000. Third, article 4, section 3(g) required the board of directors to maintain a reasonable reserve of money, and to pay for "extraordinary expenditures" from the reserve first.

¶ 79 Goldberg argues that the Association failed to properly adopt the special assessment because the meeting notice never specifically mentioned the assessment—it referenced only road construction and repair. He argues the meeting notice was defective because it misspelled Glenstone Homeowners Association by adding an apostrophe to Homeowners. He then argues that the minutes from the special meeting do not reflect that a vote was taken whether to adopt the special assessment, and therefore it was not duly fixed by the directors. However, Goldberg himself quotes the minutes in his brief to read that "[a] vote was taken in regard to proceeding with the road project, not to exceed $185,000."

¶ 80 Defendants rightly respond that Goldberg never sought to admit the Declaration into evidence. Nevertheless, we find that Goldberg's arguments are without merit. Goldberg presents a three-step process to adopting a special assessment. Assuming this is the process for adopting a special assessment, he has only demonstrated that defendants complied with the process. Here, the Association held a meeting to discuss road construction and repair. It noticed

the meeting to its members, the notice listed road construction as a topic, and the meeting minutes reflect that the members who attended discussed the road construction proposal and voted in favor of paying for it through a special assessment. Furthermore, an extra apostrophe in the Association's name on the notice did not somehow render the notice defective. Goldberg cites no requirement that the notice specifically state that a vote on a special assessment would occur. Rather, the Declaration required only that a member vote be taken to approve of a special assessment in excess of $7,000, and such a vote took place. In fact, the special meeting minutes reflect the results of the vote: 11 in favor of the special assessment and 1 against. Goldberg's arguments here are pedantic, and defendants are right to characterize his arguments—in particular, that no vote was taken at the special meeting—as frivolous and contrary to the facts.

¶ 81 The trial court was correct on two fronts: Goldberg should have attended the special meeting, and it was proper to direct a verdict for defendants on whether the special assessment was duly adopted.

¶ 82 3. Count V

¶ 83 Count V was for breach of contract in that the special assessment was excessive. Goldberg argues that the trial court misinterpreted the Declaration to allow the Association authority to maintain the roadways within the subdivision. In support, he cites the Final Plat, as well as Article 2, section 1(i), and Article 6 of the Declaration. In particular, he argues the court failed to give proper effect to the Final Plat and those sections of the Declaration, which spoke to the lot owners' responsibilities to maintain the roadways. He concludes that because owners had a duty to maintain the Subdivision's roads, the Association did not have the power to "arbitrarily, absolutely, unilaterally, exclusively and capriciously decide *** what maintenance is to be performed on [his] road," and to levy a special assessment to pay for it.

¶ 84 However, our examination of the Declaration reveals that the Association had authority to maintain the roads and levy a special assessment to cover its maintenance costs. Article 2, section 1(i) of the Declaration addresses both the owners' and the Association's responsibility to maintain the storm water drainage system. First, this section primarily addresses the storm water drainage system, not the roads, and it does not limit responsibility to the owners but specifically references the Association's responsibility. Article 6 states that the Association shall be able to perform maintenance on an owner's lot if the owner fails to perform necessary maintenance. The trial court reasonably concluded this portion of the Declaration was speaking to situations where an owner failed to mow his lawn, not failed to perform road construction. It also does not limit responsibility for road repair to owners.

¶ 85 Moreover, other sections of the Declaration stand in direct opposition to Goldberg's position. Article 1, section 4 defines common areas to also include all private roadways and roadway easements within the Association, as delineated on the Final Plat. Article 1, section 5 excludes the common areas from being included within the individually owned lots. Article 6 addressed exterior maintenance within the Association, and begins that the "Association shall maintain and keep in repair the Common Areas and facilities, *** as well as the *** private road system." Article 4, section 3(d) specifically granted the Association authority to levy a special assessment to defray the costs of construction, reconstruction, or repair of the common areas, which, as mentioned, included the roadways. Taken together, these sections of the Declaration say that roads are common areas, not part of individual lots; the Association is responsible for their repair; and the Association can levy an assessment to pay for their repair.

¶ 86 Finally, the Final Plat indicates that it is specifically limited by the conditions set forth in the relevant covenants and restrictions. The Declaration was the relevant covenant and

restriction. On its first page, it states that subject property "shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements, charges and liens *** which shall run with the property submitted thereto." Thus, the Declaration limited the Final Plat, and we have already determined that the Declaration authorized the Association to repair the roads.

¶ 87 Accordingly, the trial court properly directed a verdict for defendants on count V.

¶ 88 4. Count VI

¶ 89 Goldberg's final count alleged a breach of the Declaration because road construction took place outside of the Subdivision. In particular, he references the road construction performed at the Tarnaris outlot. Defendants do not dispute that construction occurred at the Tarnaris outlot but counter that the Association had an easement over the Tarnaris outlot.

¶ 90 Goldberg first argues that the Association's easement over the Tarnaris outlot constituted the improper acquisition of new property by the Association. He cites *Michael*, 328 Ill. App. 3d at 600, a case in which he previously sued former Association members, which stated that the Association was not in the business of purchasing new property but only maintaining existing property. Goldberg urges that because acquiring an easement was acquiring new property, the Association exceeded its authority. He also argues that *Michael* bars relitigation of this issue under collateral estoppel.

¶ 91 Goldberg continues that the Tarnaris outlot was not included in Article 1, section 4 of the Declaration's definition of common areas or Article 1, section 3's definition of property. Nor could the Tarnaris outlot be added to the Subdivision as a common area or property, he argues, because the ten-year deadline for adding adjacent property, set in Article 8, section 2 of the Declaration, had already passed. Therefore, he concludes that the Tarnaris outlot was outside of

the Subdivision.

¶ 92 Additionally, Goldberg argues that the easement was invalid because it was not signed by the record title holder but rather signed by an unidentified individual not in an official capacity. He further argues it was not recorded and that defendants should have provided evidence that the easement was valid.

¶ 93 Defendants respond by arguing that Goldberg did not present any evidence that the special assessment was used to pay for any repairs to the road over the Tarnaris outlot. They argue that the trial court rejected the only evidence that Goldberg attempted to submit on the issue as inadmissible hearsay, and Goldberg does not challenge the hearsay objection on appeal.

¶ 94 We agree that Goldberg failed to present evidence that the special assessment was used to pay for the repairs, which alone demonstrates he is not entitled to the damages he seeks. Nevertheless, Goldberg's arguments are unavailing. The easement itself, which Goldberg presented as plaintiff's exhibit 8, is signed by LaSalle Bank and Jeanie Tarnaris as grantors and the Association as grantee, dated June 20, 2008. The easement stated that it was granted for purposes of "installation, operation, repair, maintenance and replacement from time to time of a paved private roadway, cul-de-sac and related improvements." Goldberg offers various arguments that amount to no more than his conclusions that the easement was invalid. He simultaneously concludes that the easement was signed by an unidentified person and that this unidentified person did not sign in an official capacity. He argues that the proper parties failed to sign the easement and that the easement was not recorded. However, he offers no authority about who had to sign the easement or whether the alleged failures invalidated the easement. Like the trial court found, we see no support in the record that the easement was invalid. It was Goldberg's burden, not defendants', to prove the Association acted without authority, and

Goldberg has failed to produce evidence or authority to that effect.

¶ 95 Nor does the *Michael* case establish that the easement was invalid. The quote that Goldberg pulls from *Michael*—"[I]t is clear from our review of the Association's declaration that it is in the business of administering and maintaining the existing property, not purchasing new property" (*Michael*, 328 Ill. App. 3d at 600)—is consistent with how Goldberg presents his arguments on appeal: out of context. The relevant issue in *Michael* was whether former Association board members took advantage of their knowledge gained working for the Association to surreptitiously purchase property for personal gain. The property in question was the Murphy lot, which had fallen behind in assessment payments. *Id.* at 595. The property was foreclosed, and Michael, a named defendant, purchased the lot at a public sale after published notice. *Id.* 595-96. Goldberg then sued him and others he believed were involved in a concealed and fraudulent purchase, even though, as we noted, Goldberg was directly involved in the purchase due to his position as treasurer of the board.

¶ 96 We stated that the Association was not in the business of purchasing new property to explain our dismissal of Goldberg's claim. He had alleged that the purchase of the Murphy lot was an usurpation of the Association's corporate opportunity, but because buying homes was not the Association's primary function, purchasing the Murphy lot could not deprive the Association of a corporate opportunity. *Id.* at 600. Importantly, the purchase of property there was the acquisition of an entire lot through a judicial sale by one individual. This is distinguishable from the grant of an easement to an entity, the Association, for the limited purpose of road use and repair, in no small part because the Association is in the business of maintaining the subdivision's common areas, including the roads.

¶ 97 Having rejected Goldberg's argument that the easement was invalid, it is clear that the

Association had authority to maintain the road over the Tarnaris outlot. The Declaration clearly states, in Article 1, section 5(b), that "it is understood that the Common Areas shall include all private roadways and roadway easements *** located on the Final Plat of Subdivision." The Tarnaris outlout was included on the Final Plat provided to the trial court. Therefore, the Declaration clearly recognized the roadway easement as a common area, which the Association had the authority to maintain.

¶ 98 Finally, the doctrine of collateral estoppel has no application here. Collateral estoppel may only apply if the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication, and the issues are identical. *In re Owens*, 125 Ill. 2d 390, 399-400 (1988). The Association was not a party to *Michael*—in fact, Goldberg sought to sue on behalf of the Association but did not have standing to do so—and Goldberg has not argued privity. Moreover, Goldberg lost his appeal in *Michael*. 328 Ill. App. 3d at 601. We affirmed the motion to dismiss his claims of breach of fiduciary duty, unjust enrichment, and constructive fraud. *Id.* We further issued a rule to show cause as to why plaintiffs, including Goldberg, should not be sanctioned or ordered to pay attorney fees. *Id.*

¶ 99 Accordingly, we hold that the directed verdict for defendants on count VI was proper.

¶ 100 D. Leave to Amend

¶ 101 Goldberg argues that the trial court erred when it denied him leave to amend his complaint to add a seventh count for fraud. The circuit court may grant a plaintiff leave to amend his complaint on just and reasonable terms any time prior to final judgment. *I.C.S. Illinois, Inc. v. Waste Management of Illinois, Inc.*, 403 Ill. App. 3d 211, 219 (2010). Nevertheless, the right to amend is neither absolute nor unlimited, and unless the plaintiff's proposed amendment states a cause of action, leave to amend should be denied. *Id.* at 219-20.

We review denial of leave to file an amended complaint for an abuse of discretion. *Gaylor v. Campion, Curran, Rausch, Gummerson & Dunlop, P.C.*, 2012 IL App (2d) 110718, ¶ 47.

¶ 102 A plaintiff must plead fraud with specificity and particularity. *Aasonn, LLC v. Delaney*, 2011 IL App (2d) 101125, ¶ 28. "Conclusionary allegations will not substitute for well-pled facts." *Small v. Sussman*, 306 Ill. App. 3d 639, 646 (1999). The elements of common law fraud are: (1) a false statement of material fact; (2) the defendant knew the statement was false; (3) the defendant intended that the statement induce the plaintiff to act; (4) the plaintiff relied upon the statement; and (5) damages. *Delaney*, 2011 IL App (2d) 101125, ¶ 28.

¶ 103 The gravitas of the proposed amended complaint was that defendants had "short-changed" Goldberg by hiring a worse contractor to save money, the result of which was poor road repairs, and the savings from the poor repairs were not redistributed to members such as him. However, Goldberg plead no more than conclusions for all five necessary elements, and failure to properly allege even one would be a failure to state a valid cause of action. The only facts that Goldberg alleged were that the Association entered into a contract for road construction; road construction was performed; road construction was funded by the special assessment; he was unhappy with the work done; and he did not receive a refund of the special assessment.

¶ 104 Goldberg concludes that the work performed was not the work originally intended when the assessment was set. However, he offers no allegations as to what the original work was intended to be and sparse allegations as to the work actually performed (he offers only his assertion that cracks were filled and the roads were top-coated). Without allegations of what work was originally promised, we cannot say whether that promise was false or not, whether defendants knew it was false, or whether he actually relied on it. Moreover, as defendants

rightly argue, a promise to perform a future act without present intent to perform is generally insufficient to constitute fraud. *International Meat Co., Inc. v. Bockos*, 157 Ill. App. 3d 810, 815 (1987). Rather, the false promise must be alleged as the scheme or device to accomplish the fraud. *Id.* Goldberg has not alleged this. Finally, Goldberg offers nothing but his conclusion that the Association saved money, which is an insufficient conclusory allegation that he was damaged.

¶ 105 Leave to amend is properly denied where the proposed amendment fails to state a cause of action. *McDonald v. Lipov*, 2014 IL App (2d) 130401, ¶ 49. Here, Goldberg failed to propose a fraud count that stated a cause of action. Accordingly, the trial court did not abuse its discretion in denying leave to amend.

¶ 106 E. Motions for Rule 137 Sanctions

¶ 107 Goldberg next argues that the court erred in denying his motion for Rule 137 sanctions against defendants' counsel. The purpose of Rule 137 is to prevent parties from abusing the judicial process by imposing sanctions on those who file vexatious and harassing actions premised on unsupported allegations of fact or law. *Dismuke v. Rand Cook Auto Sales, Inc.*, 378 Ill. App. 3d 214, 217 (2007). Rule 137 is penal in nature and is strictly construed, reserving sanctions for the most egregious cases. *Patton v. Lee*, 406 Ill. App. 3d 195, 202 (2010). The petitioner for sanctions bears the burden of proof. *Technology Innovation Center, Inc. v. Advanced Multiuser Technologies Corp.*, 315 Ill. App. 3d 238, 243 (2000). On review, we ask whether the trial court's decision was informed, based on valid reasons, and followed logically from the circumstances of the case. *Dismuke*, 378 Ill. App. 3d at 217. False statements will not support sanctions if those false statements were inconsequential to the primary issues before the court. See *Patton*, 406 Ill. App. 3d at 202. We review a trial court's ruling on a motion for Rule

137 sanctions for an abuse of discretion. *CitiMortgage, Inc. v. Johnson*, 2013 IL App (2d) 120719, ¶ 19.

¶ 108 Goldberg's argument is two-fold. First, he argues that defendants falsely attacked him in their briefs and misrepresented the law that applied to the case. In particular, Goldberg argues that Mondane, in an affidavit to the court, falsely accused him of unsuccessfully suing the Association several times in the past and falsely stated that he never attempted to settle this case out of court; that Mondane falsely characterized Goldberg as carrying on a "personal vendetta" against the Association; and that counsel misrepresented that this case was barred by prior litigation where the parties were not substantially the same parties as here. Second, he argues that the trial court failed to set out its reasoning for denying the motion.

¶ 109 Goldberg's arguments are without merit. First, our supreme court has recently held that the circuit court need not explain its reasons for denying a motion for Rule 137 sanctions. *Lake Environmental v. Arnold*, 2015 IL 118110, ¶¶ 15-16. Nevertheless, the record plainly contradicts his argument that the trial court did not set out its reasoning for denying sanctions. While the trial court did not present a written memorandum delineating its reasons, it did address Goldberg's motion for Rule 137 sanctions at the August 26, 2014, hearing. The trial court allowed Goldberg to argue his motion and defendants to respond. Goldberg specified that the only sanction he was requesting was that the court bar Mondane as a witness because his false statements proved he was not credible. The court properly responded that it was its job to determine whether a witness was credible. Goldberg was free to use Mondane's statements to impeach him should he testify, but the court was not going to prejudge how he would testify. Moreover, the court explained that it was irrelevant to the case whether Goldberg had prevailed in prior cases or attempted to settle; the court would keep extraneous issues out. All the court

had in front of it was "whether or not you're entitled to get the monetary relief that you're seeking here."

¶ 110 Next, Mondane's allegedly false statements were inconsequential. See *Patton*, 406 Ill. App. 3d at 202 (inconsequential false statements will not support sanctions). Stating that Goldberg had a personal vendetta against the Association was no more than needless exposition. Likewise, whether Goldberg attempted to settle with defendants or was successful in past suits were irrelevant to whether Goldberg was entitled to a return of his $7,500. Finally, defendants' argument that this case was barred by a prior case was a legal argument and, as the trial court noted, it was the court's duty to determine whether there was any merit to the argument. See *Polsky v. BDO Seidman*, 293 Ill. App. 3d 414, 428 (1997) (reasoning that a court should not impose sanctions where a party advances reasonably objective arguments for his position, even if those arguments are unpersuasive or incorrect). Ironically, Goldberg himself presented an incorrect argument that defendants were collaterally estopped from arguing whether the Association could procure a valid easement such as the one on the Tarnaris outlot.

¶ 111 Accordingly, we hold that the court did not abuse its discretion in denying Goldberg's motion for Rule 137 sanctions.

¶ 112 At the end of trial, defendants also moved for sanctions against Goldberg, in the form of attorney fees. The court granted attorney fees in the amount of $16,672.75. Goldberg argues that the court erred in granting defendants' Rule 137 motion for sanctions. His arguments are, again, that the trial court failed to provide its reasons for granting the motion and that defendants falsely concluded that his case was frivolous and baseless. He asserts that defendants did not show why his pleadings and motion for discovery were frivolous, and he further contends that defendants "nakedly and falsely conclude" that his motion for Rule 137 sanctions and his motion

for leave to amend his complaint were denied as baseless.

¶ 113 As with Goldberg's motion for sanctions, the trial court did not provide a written memorandum outlining why it granted defendants' motion for sanctions. Rather, once again, the trial court held a hearing on the Rule 137 motion. On November 18, 2014, the court heard Goldberg's arguments as well as defendants'. On December 2, 2014, the court stated that it had had the opportunity to review the files; to consider the arguments made by counsel on behalf of defendants; to hear arguments made by Goldberg on behalf of himself; to examine the case law presented; to review the transcripts; and that it had presided over the previous proceedings and hearings. Based on everything it considered, it granted the defendants' motion for attorney fees in the full amount requested, $16,672.75.

¶ 114 Goldberg argues that *In re Estate of Smith*, 201 Ill. App. 3d 1005, 1009 (1990), required that the trial court provide specific reasons for its grant of sanctions. It is true that Rule 137(d) requires that the trial court set forth its reasons for granting sanctions with specificity. Ill. S. Ct. R. 137(d) (eff. July 1, 2013); see *Arnold*, 2015 IL 118110, ¶¶ 14-15. Nevertheless, Goldberg's reliance on *Smith* is misplaced. *Smith* concerned a *denial* of a motion for attorney fees pursuant to Rule 137 where the trial court never held a hearing on the motion. *Smith's* reasoning—that Rule 137 requires the circuit court to set forth its reasons for denying a motion for sanctions—was abrogated by our supreme court in *Arnold*, 2015 IL 118110, ¶¶ 16. Here, the trial court held a hearing, unlike in *Smith*. Thereafter, the court granted sanctions against Goldberg.

¶ 115 We do not find that the trial court abused its discretion or disregarded Rule 137(d)'s specificity requirement where, as here, the trial court conducted a hearing, rejected the majority of Goldberg's arguments because it found he was trying to relitigate his case, and the record clearly demonstrated that Goldberg filed his pleadings and extended the case based on his

personal interpretations of events without adequate basis in fact or law. The trial court found that the case was "extended out because [Goldberg] filed it," not because of defendants' actions. In particular, it was Goldberg who asked for discovery in his small claims suit after previously stating to the court he would not engage in discovery, sought to subpoena Association documents, and sought to add a seventh count for fraud—which was denied for failing to state a cause of action. With regard to count I, the court rejected that Goldberg had a basis other than his personal opinion because all the evidence he sought to admit—articles whose authors were not available for cross examination—were inadmissible hearsay. Further, the court questioned why Goldberg challenged the Association's substitution of counsel when he was the one who sued the Association and he entered into an agreed order to substitute counsel and continue trial. It rejected Goldberg's contention that he never agreed to the May 7, 2014, agreed order, finding it "very, very hard to believe that if you got a copy of the Order and it said agreed on it and you didn't agree to it, you would have brought it to the court's attention a long time ago." Finally, it rejected that it should give Goldberg special consideration for his *pro se* status as a litigator.

¶ 116 It would have been ideal for the trial court to set out its reasons in a memorandum or at the December 2, 2014, hearing. However, our review was not impeded and the admonishment to future litigants is clear: Do not file claims without an adequate basis in fact and law. See *Kellett v. Roberts*, 276 Ill. App. 3d 164, 172 (1995) (failure of trial court to explicitly state its reasons for granting sanctions did not warrant a reversal where the record showed that the trial court's decision was informed).

¶ 117 For all these reasons, we do not find that the trial court abused its discretion in granting defendants' motion for Rule 137 sanctions in the form of attorney fees.

¶ 118 F. Motion for Rule 375 Sanctions

¶ 119 Finally, defendants filed a motion for Rule 375 (Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994)) sanctions for pursuing a frivolous appeal. Defendants sought $15,827.00 in attorney fees and $125.90 in costs from Goldberg. Goldberg responded to the motion, in which he incorporated his petition for rehearing. For the following reasons, we grant defendants' Rule 375 motion for sanctions.

¶ 120 Rule 375(b) is penal in nature; its purpose is to condemn and punish the abusive conduct of litigation and their attorneys who appear before us. *Fraser v. Jackson*, 2014 IL App (2d) 130283, ¶ 51. The rule permits a reviewing court to impose an appropriate sanction on a party or a party's attorney if an appeal is frivolous, if the appeal is not taken in good faith, or if the appeal is made for an improper purpose such as to harass or cause unnecessary delay or needlessly increase the cost of litigation. *Id.* A reviewing court applies an objective standard to determine whether an appeal is frivolous, that is, whether a reasonable, prudent attorney would have brought the appeal in good faith. *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 87. An appeal is frivolous if not well-grounded in fact or not warranted by existing law or a good-faith argument for the extension, modification, or reversal of the law. *Michael*, 328 Ill. App. 3d at 600.

¶ 121 The imposition of Rule 375 sanctions is "left entirely to the discretion of the reviewing court." *Korzen*, 2013 IL App (1st) 130380, ¶ 87. Sanctions may be awarded against *pro se* litigants. See *Sterling Homes, Ltd. v. Rasberry*, 325 Ill. App. 3d 703, 709 (2001) (exercising inherent jurisdiction to impose Rule 375 sanctions against *pro se* defendants).

¶ 122 Here, we agree with defendants that Goldberg's appeal is frivolous—that is, his appeal is not grounded in facts or warranted by the law or an extension, modification, or reversal of existing law. We note that we have already affirmed the trial court's Rule 137 sanctions against

Goldberg. Goldberg reiterated many of the same, sanctionable arguments before us on appeal, and his arguments have become no less sanctionable when repeated. First, Goldberg often lacked a factual basis for his claims. With respect to the motion to substitute counsel, he argued it was not an agreed order despite that it was entitled "agreed order" and the substance of the order specifically said the parties agreed to the following, including substitution of defense counsel. With respect to count I, he argued that Anastacio was not an Association member but failed to address whether he was a member via a beneficial interest in a land trust. With respect to count II, Goldberg argued no vote took place at the special meeting, which was contrary to the evidence he presented (the meeting minutes specifically provided that a vote took place and the results of the vote). Next, with respect to count V, Goldberg drew conclusions based on the Declaration while ignoring salient, contradictory sections of the Declaration. In particular, his argument that the lot owners had sole authority to maintain the roads was directly contradicted by the terms of the Declaration, which provided for the Association's responsibility to maintain the roads. Finally, he argued for the application of law that was not only wrong but misleading with respect to count VI. He argued that *Michael*, 328 Ill. App. 3d at 600—in particular, one quoted sentence—supported his contention that the Association was not in the business of acquiring property and therefore could not acquire an easement over the Tarnaris lot. He presented the quote devoid of context, which was a discussion of whether the purchase of a lot was a usurpation of the Association's corporate authority—an irrelevant issue to our case. This was beyond an argument for a good-faith extension of the law or a mere losing argument; it was frivolous.

¶ 123 In Goldberg's response to the motion for sanctions, he sought to incorporate his petition for rehearing. However, his petition serves only to reinforce the sanctionable nature of his

appeal. In particular, to bolster his argument that the court should have allowed him to amend his complaint to add a seventh count for fraud, Goldberg attached an exhibit of a proposed amended complaint. However, this proposed amendment did not appear in the record nor was it ever referenced before his petition for rehearing. He also attached the hearsay documents he sought to admit—but the trial court excluded—in order to prove Anastacio was not an Association member, despite that he never argued that the documents were admissible.

¶ 124 For all these reasons, we find Goldberg's appeal is frivolous under Rule 375. Defendants have attached to their motion an affidavit with exhibits to support their requested amount of attorney fees and expenses. After a review of their affidavit and exhibits, we determine that the requested amounts of $125.90 in costs (to make copies of their response brief) and $15,827.00 in attorney fees (to prepare their response brief) are reasonable. Accordingly, we grant defendants' motion for Rule 375 sanctions and order Goldberg to pay defendants $125.90 for costs incurred and $15,827.00 in attorney fees.

¶ 125 III. CONCLUSION

¶ 126 For the reasons stated herein, the judgment of the Lake County circuit court is affirmed; the petition for rehearing is denied; and attorney fees and costs in the amounts of $15,827.00 and $125.90, respectively, are awarded in favor of defendants, as a sanction against plaintiff.

¶ 127 Affirmed.