2018 IL App (2d) 170145-U
No. 2-17-0145
Order filed February 14, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

KEVIN WILLIAM BLOESE and BARBARA ANN BLOESE, Plaintiffs-Appellants/Cross-Appellees, v. STATE FARM FIRE AND CASUALTY COMPANY and RESTORE CONSTRUCTION, INC., Defendants, (Restore Construction, Inc., Defendant-Appellee/Cross-Appellant.)	)	Appeal from the Circuit Court of Du Page County. No. 16-MR-728 Honorable Paul M. Fullerton, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly dismissed the plaintiffs' amended complaint for failing to state a cause of action; the trial court did not abuse its discretion when it sanctioned plaintiffs pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013).

¶ 2 Plaintiffs, Kevin William Bloese and Barbara Ann Bloese, filed an action *pro se* in the circuit court of Du Page County against State Farm Fire and Casualty Company (State Farm) and

Restore Construction, Inc. (Restore). After plaintiffs settled with State Farm, the court dismissed plaintiffs' amended complaint against Restore with prejudice pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)). The court also sanctioned plaintiffs in the amount of $2040 pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013) for including certain allegations in their amended complaint in violation of the court's directives. Plaintiffs appeal the dismissal and sanction orders. In its cross-appeal, Restore contends that the trial court should have assessed sanctions in a greater amount. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 (A) Plaintiffs' Original Complaint

¶ 5 In their original complaint, plaintiffs alleged as follows. On May 31 and June 6, 2015, their home in Winfield, Illinois sustained unspecified "accidental direct physical loss[es]." Plaintiffs made insurance claims for each loss. On approximately June 8, 2015, Paul Douds, who was an employee of their insurer, State Farm, inspected the damage and gave plaintiffs the names of three contractors. Over the next several days, plaintiffs met with those contractors and sought a written proposal from Restore. On or about June 11, 2015, Restore's representative, Tom Allen, inspected plaintiffs' home to gather information to write a proposal for repairing the damage.

¶ 6 Plaintiffs alleged that, on June 15, 2015, State Farm sent them what plaintiffs called "Scope of Work and Cost Estimates" for both of their pending insurance claims. According to plaintiffs, the "Scope of Work and Cost Estimates" were transmitted on State Farm letterhead and were prepared by a State Farm representative. Plaintiffs thus believed at the time that the documents reflected "solely the opinions of Paul Douds of [State Farm]," and plaintiffs "based

their subsequent actions and communications to [State Farm] upon that belief."

¶ 7 According to the complaint, Restore tendered a written contract to plaintiffs on June 18, 2015. Plaintiffs rejected that contract on June 21, 2015, and they informed State Farm the next day that they would seek a different contractor to perform the necessary repairs. On July 5, 2015, they e-mailed State Farm to dispute the "Scope of Work and Cost Estimates" in multiple respects. State Farm never acknowledged the issues that plaintiffs raised in their July 5 email.

¶ 8 Plaintiffs alleged that, on August 11, 2015, they advised State Farm by e-mail that they had selected another contractor, Aslan Design and Renovation, Inc. (Aslan), to work on their home. In that e-mail, plaintiffs informed State Farm that Aslan's estimates were higher than the estimates in State Farm's "Scope of Work and Cost Estimates." State Farm never acknowledged plaintiffs' August 11 email. On August 31, 2015, plaintiffs e-mailed State Farm again regarding Aslan's proposal, but still they received no communication from State Farm.

¶ 9 Plaintiffs further alleged that, on September 2, 2015, they signed a contract with Aslan, which they forwarded to State Farm the next day. Plaintiffs told State Farm that Aslan was scheduled to begin work at their home within the week. State Farm never contacted plaintiffs to inquire about Aslan's estimate. Aslan completed the work at plaintiffs' home between September 8 and November 5, 2015, and plaintiffs paid Aslan. After crediting State Farm for certain sums that it tendered to plaintiffs pursuant to the homeowners' insurance policy, plaintiffs believed that State Farm was obligated to pay them an additional $10,311.12 in conjunction with Aslan's work.

¶ 10 According to plaintiffs, in March 2016, they learned that, in the process of adjusting plaintiffs' insurance claims, State Farm had been operating under the mistaken beliefs that plaintiffs had (1) authorized Restore to act on their behalf and (2) agreed to the cost estimates

that were set forth in the "Scope of Work and Cost Estimates." Specifically, plaintiffs quoted selectively from a letter they received from State Farm dated March 2, 2016, wherein State Farm asserted that "[t]he scope of damage and cost of repair was agreed upon by Claim Assigned Handler Paul Douds and Tom Allen of Restore Construction on June 15, 2015." Plaintiffs noted that State Farm included virtually identical language about such "agreement" in a letter that it sent to the Illinois Department of Insurance on March 1, 2016.

¶ 11 Counts I through IV of plaintiffs' complaint were directed toward State Farm and are not directly relevant to this appeal. In count V, plaintiffs alleged that Restore violated the Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West 2016)). Plaintiffs alleged, on information and belief, that on June 15, 2015, Restore, through its agent Allen, falsely held itself out as having the authority to act on plaintiffs' behalf and agreed with State Farm as to the two "Scope of Work and Cost Estimates." In so doing, plaintiffs asserted, Restore "was engaging in the Home Repair and Remodeling business." To that end, plaintiffs observed that section 15 of the Home Repair and Remodeling Act provides that, "[p]rior to initiating home repair or remodeling work for over $1,000, a person engaged in the business of home repair or remodeling shall furnish to the customer for signature a written contract or work order ***." 815 ILCS 513/15 (West 2016). According to plaintiffs, Restore did not tender a written contract to them until June 18, 2015. Plaintiffs thus alleged that Restore violated the Home Repair and Remodeling Act by "falsely holding itself out as having the authority to act" on their behalf on June 15, 2015.

¶ 12 Plaintiffs alleged that, by violating the Home Repair and Remodeling Act, Restore "committed an unlawful practice within the meaning of the [Consumer Fraud Act]." Plaintiffs further alleged that they relied on Restore's deceptive representations, insofar as they contracted

with and obligated themselves to pay Aslan. Plaintiffs alleged that Restore's "deceptions were done intentionally and maliciously," and they sought damages in the amount of $10,311.12, plus interest, attorney fees, punitive damages, and costs of suit.

¶ 13 State Farm settled with plaintiffs prior to answering the complaint. Restore filed a motion to dismiss count V of the complaint pursuant to section 2-615 of the Code. At the hearing on Restore's motion, Mr. Bloese, who is apparently a licensed Illinois attorney, argued the matter on behalf of himself and his wife. The court clarified with Mr. Bloese that plaintiffs' theory was that Restore violated section 15 of the Home Repair and Remodeling Act, which, in turn, created a cause of action under the Consumer Fraud Act. The court repeatedly asked Mr. Bloese whether there was any authority supporting a cause of action under the Home Repair and Remodeling Act where the homeowner never entered a contract with the company being sued. Mr. Bloese did not provide the court with any such authority, but said that he was aware of some unspecified case which supposedly established that "no privity of contract" is required.

¶ 14 The court granted Restore's motion to dismiss count V of the complaint without prejudice. The court ruled that plaintiffs failed to state a cause of action under the Home Repair and Remodeling Act. Addressing Mr. Bloese, the court said, "If you've got some other cause of action under something else, I'd entertain it; but under the Home Repair and Remodeling Act, the motion's granted." The court added, "If you're going to file an amended pleading, do not bring it under the Home Repair and Remodeling Act."

¶ 15 (B) Plaintiffs' Amended Complaint

¶ 16 The amended complaint rested on many of the same factual allegations set forth in the original complaint. In count I, plaintiffs alleged interference with contractual relations against Restore. As in the original complaint, plaintiffs asserted that Restore, without authorization, held

itself out as having the authority to act on plaintiffs' behalf and agreed with State Farm regarding the scope of work and the estimated cost of repairs. Specifically, plaintiffs alleged, Restore agreed that the estimated costs of the repairs for the claims were $4,234.10 and $3,076.14, respectively, and State Farm then "adjusted the claims as if Plaintiffs' [*sic*] themselves had entered into the agreements." According to plaintiffs, Restore intended for both plaintiffs and State Farm to be bound by the agreement, and further "intended to interfere with Plaintiffs' rights under their insurance policy." Moreover, they alleged, Restore indeed interfered with their rights under the insurance policy to "demand an independent appraisal," "seek estimates of other contractors of their own choosing," and "negotiate the differences between their insurer's estimates and those of a contractor selected by the Plaintiffs." Plaintiffs alleged that they suffered damages as follows:

> "(a) Plaintiffs' claims with their insurer were erroneously adjusted based upon the false agreement between Restore Construction and the insurance company.
>
> (b) Plaintiffs' [*sic*] were compelled to use their personal resources to pay $10,311.12 for the Repairs and Remodeling during the period of the erroneous adjustment.
>
> (c) Plaintiff Kevin William Bloese was compelled to utilize his time and knowledge as an attorney to investigate the claims adjustment procedure used by the insurance company and to file complaints with the Illinois Department of Insurance which lead [*sic*] to the discovery of the error in the adjustment of the claims.
>
> (d) Plaintiff Kevin William Bloese was compelled to utilize his time and knowledge as an attorney to prepare a lawsuit, have the complaint filed and served on Restore Construction, appear in court and do legal research in support thereof.
>
> (e) Plaintiffs have been compelled to use their limited 'leisure time' attending to this

matter as opposed to doing the things that they enjoy.

(f) Plaintiffs were compelled to borrow money to meet obligations they would have ordinarily had the resources to pay because of the delays of the insurance company in paying what it owed."

Plaintiffs also requested punitive damages on the basis that Restore's "actions were intentional and deserving of punishment."

¶ 17 In count II of the amended complaint, plaintiffs alleged breach of contract against Restore. Plaintiffs alleged that, "[s]ometime prior to June 11, 2015, Restore Construction accepted the offer to inspect the damage to Plaintiffs' home." In doing so, Restore purportedly "by implication of law agreed to abide by the requirements of the Home Repair and Remodeling Act." Once again, plaintiffs complained that Restore acted without authorization when it agreed with State Farm regarding the scope of work and the estimated cost of repairs. According to plaintiffs, by agreeing to the scope of work and the estimated cost of repairs for plaintiffs' two insurance claims, Restore "initiated Home Repair and Remodeling work and did so before furnishing Plaintiffs' [*sic*] with a written contract as required by Section 15 of the Home Repair and Remodeling Act." Plaintiffs further alleged that Restore "breached its contractual duty to abide by the provisions of [the Home Repair and Remodeling Act]" by entering into an agreement with State Farm that established the scope of work and set the estimated costs of repairs in connection with plaintiffs' claims. Moreover, Restore allegedly violated the Home Repair and Remodeling Act "[b]y falsely holding itself out as having the authority to act on behalf of the Plaintiffs" and agreeing to the scope of work. Plaintiffs' allegations regarding the damages caused by Restore's breach of contract substantially mirrored the allegations in count I.

¶ 18 In count III of the amended complaint, plaintiffs alleged that Restore violated the

Consumer Fraud Act. They first adopted and re-alleged the allegations set forth in count II. They then alleged that, by violating the Home Repair and Remodeling Act, Restore "committed an unlawful practice within the meaning of the [Consumer Fraud Act]." Plaintiffs' allegations regarding the damages caused by Restore's conduct were identical to the allegations in count II. Plaintiffs additionally requested attorney fees and punitive damages.

¶ 19 Restore moved to dismiss the amended complaint pursuant to section 2-615 of the Code. The court granted that motion, dismissing the action with prejudice. With respect to the claim of interference with contractual relations, the court found that plaintiffs could not allege facts to support two of the necessary elements: *i.e.*, that Restore intentionally and unjustifiably interfered with plaintiffs' contract with State Farm and that Restore's wrongful conduct caused State Farm to breach the contract. The court found that the breach of contract claim failed because plaintiffs did not have a contract with Restore. Moreover, the court found, the facts alleged in the amended complaint did not support that Restore violated the Home Repair and Remodeling Act so as to sustain a cause of action under the Consumer Fraud Act.

¶ 20 Plaintiffs filed a timely notice of appeal from the order dismissing their amended complaint.

¶ 21 (C) Restore's Motion for Sanctions

¶ 22 Restore filed a motion for sanctions pursuant to Supreme Court Rule 137 on the same day that plaintiffs filed their notice of appeal. In its motion, Restore requested attorney fees in the amount of $10,290, plus court costs of $182.

¶ 23 The court granted Restore's motion in part. The court reasoned that, despite having been explicitly admonished by the court not to do so, plaintiffs alleged in their amended complaint that Restore violated the Home Repair and Remodeling Act. According to the court, because

count II of the amended complaint was "really *** another Home Repair and Remodeling Act claim," Restore was entitled to "some recoupment of their attorney's fees." The court decided to award fees in connection with Restore's defense of the amended complaint, but not the original complaint. However, the court declined to award any fees in connection with Restore's defense of count I of the amended complaint, which did not involve the Home Repair and Remodeling Act. The court did not specifically mention count III of the amended complaint in its ruling.

¶ 24 Upon reviewing Restore's counsel's affidavit in light of its rulings, the court entered judgment against plaintiffs in the amount of $2040. Plaintiffs filed an amended notice of appeal to include the sanctions order, and Restore filed a timely notice of cross-appeal.

¶ 25 II. ANALYSIS

¶ 26 (A) Dismissal of the Amended Complaint

¶ 27 The trial court dismissed plaintiffs' amended complaint pursuant to section 2-615 of the Code. "A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face." *K. Miller Construction Co. v. McGinnis*, 238 Ill. 2d 284, 291 (2010). In ruling on such motion, the court must accept as true both the well-pleaded facts contained in the complaint and the inferences which may reasonably be drawn from those facts. *K. Miller Construction*, 238 Ill. 2d at 291. However, the court does not accept as true mere conclusions that are unsupported by specific facts. *Borcia v. Hatyina*, 2015 IL App (2d) 140559, ¶ 20. "The critical inquiry is whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action on which relief may be granted." *Borcia*, 2015 IL App (2d) 140559, ¶ 20. We review *de novo* an order dismissing a complaint for failing to state a cause of action. *Abazari v. Rosalind Franklin University of Medicine & Science*, 2015 IL App (2d) 140952, ¶ 12. We may affirm the trial

court's order on any basis in the record. *Antonacci v. Seyfarth Shaw, LLP*, 2015 IL App (1st) 142372, ¶ 21.

¶ 28 The basic factual allegation underlying all three counts of the amended complaint was that, "on information and belief," on or about June 15, 2015, Restore acted without authorization by agreeing with State Farm regarding the nature of the work that would be necessary to repair plaintiffs' home as well as the costs of such work. On appeal, plaintiffs repeatedly assert that Restore entered into an agreement on their behalf, that the agreement had the effect of settling their insurance claims, and that Restore acted with improper motives. Plaintiffs go so far as to use the words "insidious" and "sinister" to describe Restore's "scheme." The only bases for plaintiffs' allegations are the inferences they draw from two letters that State Farm drafted in March 2016, in which it detailed the history of plaintiffs' insurance claims. Plaintiffs attached those letters as exhibits to both their original and amended complaints. After reviewing the letters, it is apparent that plaintiffs quote selectively from the letters without regard for context. Most notably, State Farm's letters do not indicate that Restore entered into an agreement "on behalf of" plaintiffs or that State Farm considered any such agreement as conclusively establishing plaintiffs' benefits under the applicable insurance policy. Nevertheless, we recognize that no discovery has been conducted and that it is not the purpose of a motion to dismiss to adjudicate disputed issues of fact. As explained below, even accepting as true plaintiffs' suspect characterizations of Restore's purported "agreement" with State Farm, plaintiffs failed to sufficiently allege any cause of action upon which relief could be granted.

¶ 29 (1) Count I—Interference with Contractual Relations

¶ 30 Count I of the amended complaint alleged interference with contractual relations. In order to state a cause of action, plaintiffs were required to allege: (1) the existence of a valid and

enforceable contract between plaintiffs and State Farm; (2) Restore's awareness of that contractual obligation; (3) Restore's intentional and unjustified inducement of a breach by State Farm; (4) subsequent breach by State Farm caused by Restore's unlawful conduct; and (5) damages. *Clarage v. Kuzma*, 342 Ill. App. 3d 573, 582-83 (2003).

¶ 31 Plaintiffs failed to allege facts supporting that Restore intentionally and unjustifiably induced a breach of contract by State Farm. Plaintiffs alleged that Restore intended to, and did, interfere with their rights under their insurance policy to (1) demand an independent appraisal, (2) seek estimates of other contractors of their own choosing, and (3) negotiate the differences between State Farm's estimates and those of a contractor of their own choosing. The amended complaint was lean on facts supporting plaintiffs' legal conclusion that Restore interfered with their contractual rights—much less that Restore intended to do so. But even assuming that Restore's agreement as to the scope of work and the cost of repairs had the effect of "interfering" with the insurance contract as alleged, conspicuously absent from the amended complaint was any allegation (let alone facts supporting the allegation) that Restore intended to induce State Farm to breach the contract.

¶ 32 Plaintiffs elaborate on their legal theory in their brief on appeal. They assert that Restore wanted "to secure for itself the contracts to do the necessary repairs and renovations on terms, not of the Plaintiffs' choosing, but on terms it, Restore Construction, found advantageous." Plaintiffs further claim that Restore's false representation to State Farm "was intended to induce State Farm to forsake its contractual duty of good faith and fair dealing and duty to promptly acknowledge pertinent communications from the Plaintiffs." Plaintiffs fail to explain how Restore could have known, much less intended, in June 2015 (1) that plaintiffs would subsequently select a different contractor, Aslan, to perform work at their home; (2) that Aslan

would offer to perform more work and at a higher cost than State Farm had originally contemplated; (3) that plaintiffs would authorize Aslan to complete the work before obtaining State Farm's express approval; and (4) that plaintiffs would experience difficultly communicating with State Farm regarding Aslan's work. Common sense dictates that a company in Restore's position would have wanted to perform any necessary work at plaintiffs' home and receive the insurance proceeds, not encourage the insurance company to breach the insurance contract. Plaintiffs suggest no conceivable incentive for Restore to induce State Farm to act in bad faith or to ignore plaintiffs' communications. Plaintiffs accordingly failed to state a cause of action for interference with contractual relations.

¶ 33 (2) Count II—Breach of Contract

¶ 34 Count II was a claim for breach of contract. "The elements of a breach-of-contract cause of action include the existence of a valid and enforceable contract, performance by the plaintiff, breach of the contract by the defendant, and resultant damages or injury to the plaintiff." *Razor Capital v. Antaal*, 2012 IL App (2d) 110904, ¶ 30. Irrespective of whether the contract at issue is written or oral, to plead the existence of a valid contract, the plaintiff must allege facts indicating the terms of the contract. *Razor Capital*, 2012 IL App (2d) 110904, ¶ 30.

¶ 35 Plaintiffs alleged that, "[s]ometime prior to June 11, 2015, Restore Construction accepted the offer to inspect the damage to Plaintiffs' home." In so doing, plaintiffs alleged, Restore "by implication of law agreed to abide by the requirements of the Home Repair and Remodeling Act." According to plaintiffs, Restore then breached the contract by violating the Home Repair and Remodeling Act.

¶ 36 Plaintiffs failed to allege the existence of a valid and enforceable contract with Restore. Their allegation that Restore "by implication of law agreed to abide by the requirements of the

Home Repair and Remodeling Act" was plainly a legal conclusion, not a well-pleaded fact. See *Borcia*, 2015 IL App (2d) 140559, ¶ 39 (defining a legal conclusion as " 'a statement that expresses a legal duty or result but omits the facts creating or supporting the duty or result.' " (quoting Black's Law Dictionary 912 (8th ed. 2004))). In their reply brief on appeal, plaintiffs explain that their theory is that, "because Restore Construction held itself out as being in the Home Repair and Remodeling business[,] *** an implied contract was created when its representative entered the Plaintiffs' home to gather information to make a proposal for needed renovations." Unsurprisingly, plaintiffs fail to direct our attention to any authority supporting such a ridiculous proposition. By virtue of being a company that performs home repair and remodeling work, Restore is of course subject to the requirements of the Home Repair and Remodeling Act. See, *e.g.*, 815 ILCS 513/15 (West 2016) (imposing certain obligations on any "person engaged in the business of home repair or remodeling"); 815 ILCS 513/10 (West 2016) (defining "person" as "any individual, partnership, corporation, business, trust, or other legal entity"). But that has nothing to do with contract law. Plaintiffs completely missed the mark by pursuing a breach of contract theory, and the trial court properly dismissed count II of the amended complaint.

¶ 37 (3) Count III—Violation of the Consumer Fraud Act

¶ 38 In count III, plaintiffs asserted a claim against Restore pursuant to the Consumer Fraud Act for violating the Home Repair and Remodeling Act. See 815 ILCS 513/30 (West 2016) (anyone who suffers actual damages as a result of a violation of the Home Repair and Remodeling Act may bring an action pursuant to section 10a of the Consumer Fraud Act (815 ILCS 505/10a (West 2016))). According to the amended complaint, Restore accepted plaintiffs' offer to inspect the damage to their home in June 2015 "for the purpose of gathering the

information to make a written proposal to repair the damage." Plaintiffs alleged on information and belief that, on or about June 15, 2015, Restore entered into an unauthorized agreement with State Farm regarding the scope of work required at plaintiffs' home and the estimated costs of repairs. Plaintiffs' theory was that, by entering into that agreement, Restore "initiated" home repair or remodeling work within the meaning of section 15 of the Home Repair and Remodeling Act. That was improper, plaintiffs alleged, because Restore had not yet tendered a proposed written contract to plaintiffs.

¶ 39 The dispositive issue is whether the facts alleged by plaintiffs supported their legal conclusion that Restore "initiated" home repair or remodeling work within the meaning of section 15 of the Home Repair and Remodeling Act. This presents a question of statutory interpretation. In construing a statute, the goal is to ascertain and effectuate the legislature's intent. *Fleissner v. Fitzgerald*, 403 Ill. App. 3d 355, 366 (2010). The best indication of legislative intent is the plain and ordinary meaning of the statutory language. *Fleissner*, 403 Ill. App. 3d at 366. Rather than read any portion of the statute in isolation, we must read the entirety of the statute while considering the subject it addresses as well as the legislature's apparent objective. *Artisan Design Build, Inc. v. Bilstrom*, 397 Ill. App. 3d 317, 325 (2009). Where the statute is clear and unambiguous, we apply it as written without resorting to tools of statutory construction. *Artisan Design Build*, 397 Ill. App. 3d at 325.

¶ 40 Section 5 of the Home Repair and Remodeling Act states:

> "It is the public policy of this State that in order to safeguard the life, health, property, and public welfare of its citizens, the business of home repair and remodeling is a matter affecting the public interest. The General Assembly recognizes that improved communications and accurate representations between persons engaged in the business of

> making home repairs or remodeling and their consumers will increase consumer confidence, reduce the likelihood of disputes, and promote fair and honest practices in that business in this State." 815 ILCS 513/5 (West 2016).

Section 15 provides, in relevant portion:

> "Prior to initiating home repair or remodeling work for over $1,000, a person engaged in the business of home repair or remodeling shall furnish to the customer for signature a written contract or work order that states the total cost, including parts and materials listed with reasonable particularity and any charge for an estimate. ***" 815 ILCS 513/15 (West 2016).

Section 10 defines "home repair and remodeling" as "the fixing, replacing, altering, converting, modernizing, improving, or making of an addition to any real property primarily designed or used as a residence other than maintenance, service, or repairs under $500." 815 ILCS 513/10 (West 2016). "Home repair and remodeling" also includes:

> "the construction, installation, replacement, or improvement of driveways, swimming pools, porches, kitchens, bathrooms, basements, chimneys, chimney liners, garages, fences, fallout shelters, central air conditioning, central heating, boilers, furnaces, electrical wiring, sewers, plumbing fixtures, storm doors, windows, roofs, awnings, and other improvements to structures within the residence or upon the land adjacent to the residence." 815 ILCS 513/10 (West 2016).

However,

> " 'Home repair and remodeling' does not include the sale, installation, cleaning, or repair of carpets; the repair, installation, replacement, or connection of any home appliance including, but not limited to, disposals, refrigerators, ranges, garage door openers,

> televisions or television antennas, washing machines, telephones, hot water heaters, satellite dishes, or other appliances when the persons replacing, installing, repairing, or connecting the home appliance are employees or agents of the merchant that sold the home appliance or sold new products of the same type; or landscaping." 815 ILCS 513/10 (West 2016).

¶ 41 Although the Home Repair and Remodeling Act prohibits a person from initiating home repair or remodeling work exceeding $1000 without furnishing a written contract or work order to the customer, it does not define the word "initiating." The primary dictionary definition of "initiate" is "to cause or facilitate the beginning of: set going." *Merriam-Webster Online Dictionary*, https://www.merriam-webster.com/dictionary/initiate (last visited Jan. 19, 2018). Equating the word "initiating" with "beginning" is consistent with the commonly understood meaning of the word. See *Tom Geise Plumbing, Inc. v. Taylor*, 396 Ill. App. 3d 289, 300 (2009) (in summarizing section 15 of the Home Repair and Remodeling Act, the court asserted: "Prior to *beginning* home repair or remodeling work that will cost the consumer over $1,000, the contractor must 'furnish to the customer for signature a written contract or work order ***.' " (emphasis added) (quoting 815 ILCS 513/15 (West 2006))).

¶ 42 Plaintiffs did not and cannot allege that Restore ever engaged in any activities at their home that are similar to the activities encompassed within the statutory definition of "home repair and remodeling" (*e.g.*, "fixing," "replacing," "altering," "converting," "modernizing," "improving" or "making of an addition to any real property"). If Restore never performed home repair or remodeling work for plaintiffs, it follows that Restore cannot be faulted for failing to tender plaintiffs a proposed written contract before "initiating" or "beginning" such work.

¶ 43 Using section 15 as a sword against a business that never contracted with plaintiffs, received money from plaintiffs or their insurance company, or engaged in home repair or remodeling work at plaintiffs' residence is inconsistent with the plain language of the statute. Plaintiffs have not cited, and we have not found, any authority which would support a conclusion that Restore "initiated" home repair or remodeling work under the circumstances alleged in the amended complaint. For these reasons, plaintiffs failed to state a claim pursuant to the Consumer Fraud Act for violations of the Home Repair and Remodeling Act, and the trial court properly dismissed count III of the amended complaint.

¶ 44 (B) Sanctions

¶ 45 Plaintiffs also argue that the trial court erred in sanctioning them pursuant to Supreme Court Rule 137. In its cross-appeal, Restore contends that the trial court should have awarded it the full amount of fees and costs requested ($10,472) rather than only $2040.

¶ 46 Illinois Supreme Court Rule 137(a) provides, in relevant portion:

> "Every pleading, motion and other document of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other document and state his address. *** The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. *** If a pleading, motion, or other document is signed in

> violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other document, including a reasonable attorney fee." Ill. S. Ct. R. 137(a) (eff. July 1, 2013).

"The purpose of Rule 137 is to prevent the filing of false and frivolous lawsuits." *Sanchez v. City of Chicago*, 352 Ill. App. 3d 1015, 1020 (2004). The rule is penal in nature and is therefore strictly construed. *Deutsche Bank National Trust Co. v. Ivicic*, 2015 IL App (2d) 140970, ¶ 24. In evaluating the conduct of an attorney or a litigant, "the court must determine what was reasonable at the time rather than engage in hindsight." *Fremarek v. John Hancock Mutual Life Insurance Co.*, 272 Ill. App. 3d 1067, 1074 (1995). We will not reverse the trial court's order imposing or denying sanctions unless the court abused its discretion, which occurs "only where no reasonable person would take the view adopted by it." *Fremarek*, 272 Ill. App. 3d at 1074. "When reviewing a decision on a motion for sanctions, the primary consideration is whether the decision was informed, was based on valid reasoning, and follows logically from the facts." *Ivicic*, 2015 IL App (2d) 140970, ¶ 25.

¶ 47 After the trial court granted Restore's motion to dismiss count V of the original complaint without prejudice, the court admonished plaintiffs, "If you're going to file an amended pleading, do not bring it under the Home Repair and Remodeling Act." Despite that admonishment, plaintiffs alleged in counts II and III of their amended complaint that Restore violated the Home Repair and Remodeling Act. Having ignored the court's clear directions, plaintiffs forced Restore to file another motion to dismiss and to incur additional unnecessary expenses. On appeal, although plaintiffs insist that they advanced a good faith construction of the Home Repair

and Remodeling Act, they offer no excuse for violating the court's order. The trial court thus acted well within its discretion insofar as it sanctioned plaintiffs for disregarding its order.[1]

¶ 48 Plaintiffs fault the trial court for failing to set forth its reasoning for imposing sanctions in the judgment order. See Ill. S. Ct. R. 137(d) ("Where a sanction is imposed under this rule, the judge shall set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order."). The court's written order here provided that Restore's motion was granted in part for reasons stated on the record. The court, in turn, adequately explained on the record its reasons for imposing sanctions. It would be senseless to remand the matter to require the trial court to make the same findings in writing that it already articulated on the record. The court's oral findings, which were incorporated by reference into the written judgment, were sufficient to allow us to review the order imposing sanctions. See *Spiegel v. Hollywood Towers Condominium Association*, 283 Ill. App. 3d 992, 1002 (1996) ("Further, the transcript of the hearing on the motion for sanctions indicates that the circuit court articulated in detail the basis for each sanction imposed. Accordingly, we find no error in the court's failure to reduce those reasons to writing.").

[1] It is true that "allegations in former complaints, not incorporated in the final amended complaint, are deemed waived" for purposes of appeal. *Foxcroft Townhome Owners Ass'n v. Hoffman Rosner Corp.*, 96 Ill. 2d 150, 155 (1983). However, as the trial court noted, rather than merely preserving their right to appeal the dismissal of count V of the original complaint by briefly indicating their intent to incorporate that count into the amended complaint, plaintiffs violated the court's directive by attempting to re-plead their rejected legal theory in two new counts.

¶ 49 Turning to Restore's cross-appeal, we likewise find no abuse of discretion in the court's decision not to sanction plaintiffs in connection with their allegations in the original complaint or count I of the amended complaint. As explained above, plaintiffs failed to state any cause of action upon which relief can be granted. "However, [Rule 137] is not intended to penalize litigants and their attorneys merely because they were zealous, yet unsuccessful." *Peterson v. Randhava*, 313 Ill. App. 3d 1, 7 (2000). Although plaintiffs' claim that Restore violated the Home Repair and Remodeling Act was premised on an incorrect assumption that Restore "initiated" home repair or remodeling work, their arguments were arguably reflective of a good-faith attempt to extend existing law. Moreover, once the trial court rejected plaintiffs' theory regarding a violation of the Home Repair and Remodeling Act, the court afforded plaintiffs an opportunity to amend their complaint to attempt to plead a different cause of action. In count I of their amended complaint, plaintiffs attempted to allege a claim for interference with contractual relations. In advancing that particular claim, they complied with the court's directive not to allege violations of the Home Repair and Remodeling Act. Given that the trial court allowed plaintiffs to file an amended complaint, and in light of the highly deferential standard of review, we are unwilling to overturn the trial court's decision not to impose further sanctions on plaintiffs. We cannot say that the trial court's order reflected a view which "no reasonable person would take." *Fremarek*, 272 Ill. App. 3d at 1074.

¶ 50 Restore also requests sanctions in connection with this appeal pursuant to Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994). That rule "allows us to impose an appropriate sanction if the appeal is frivolous, not taken in good faith, or taken for an improper purpose, such as to harass or cause unnecessary delay or needless increase in litigation costs." *Jaworski v. Skassa*, 2017 IL App (2d) 160466, ¶ 18. An appeal is frivolous if it is "not reasonably well

grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law." Ill. S. Ct. R. 375(b). Additionally, an appeal "will be deemed to have been taken or prosecuted for an improper purpose where the primary purpose of the appeal *** is to delay, harass, or cause needless expense." Ill. S. Ct. R. 375(b). The imposition of sanctions pursuant to Rule 375(b) is discretionary. *Jaworski*, 2017 IL App (2d) 160466, ¶ 18.

¶ 51 Although it is a close question, we decline to impose Rule 375(b) sanctions against plaintiffs. Some of plaintiffs' arguments are undoubtedly frivolous. Their contention that Restore somehow entered an implied contract with them promising to abide by the Home Repair and Remodeling Act is one obvious example. On the other hand, some of plaintiffs' arguments, such as their contention that Restore violated the Home Repair and Remodeling Act, are arguably reflective of a good-faith attempt to extend existing law. Moreover, as explained above, the trial court sanctioned plaintiffs only insofar as they re-hashed certain allegations in their amended complaint that the court already rejected; the court did not deem it appropriate to sanction plaintiffs for advancing any substantively frivolous legal theory. Having held that the trial court did not abuse its discretion in limiting the sanctions that it imposed, it would be somewhat incongruous for us to assess additional sanctions in connection with this appeal.

¶ 52 III. CONCLUSION

¶ 53 For the reasons stated, the judgment of the circuit court of Du Page County is affirmed.

¶ 54 Affirmed.