

2021 IL App (1st) 201261-U  
No. 1-20-1261

FIFTH DIVISION  
NOVEMBER 19, 2021

**NOTICE:** This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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ROBERT JACKSON,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 18 L 12096
	)	
WALGREENS COMPANY,	)	Honorable
	)	Ronald F. Bartkowicz,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE CUNNINGHAM delivered the judgment of the court.  
Justices Hoffman and Connors concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The circuit court's dismissal with prejudice of the plaintiff's amended complaint for failure to allege specific facts to sufficiently state a claim is affirmed.
- ¶ 2 The plaintiff, Robert Jackson, appeals *pro se* from an order of the circuit court of Cook County dismissing with prejudice, pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2018)), his amended complaint filed against the defendant, Walgreens

Company. On appeal, Mr. Jackson challenges the dismissal of his complaint. We affirm the judgment of the circuit court of Cook County.

¶ 3

### BACKGROUND

¶ 4 On November 7, 2018, Mr. Jackson filed a *pro se* complaint in the circuit court of Cook County, alleging that Walgreens discriminated against him when it denied him use of the restroom in one of its stores on the basis that he was African American. Mr. Jackson stated that he had previously suffered a stroke, and his disability required him to use the restroom frequently. About 3:40 p.m. on August 2, 2018, he was inside a Walgreens store purchasing water and asked an employee if he could use the restroom. The employee replied that Mr. Jackson needed permission from a supervisor in order to use the restroom because there was going to be a “march” at 7 p.m. Mr. Jackson stated that he was not part of any group, but instead, was going to the Cubs game and arrived early to avoid the protesters. Mr. Jackson alleged that 10 minutes later, a supervisor told him that “she was not allowing anybody to use the restroom because of the protesters.” Mr. Jackson stated that he asked the supervisor whether the reason for withholding permission to use the restroom was because he was African American. The supervisor replied “yes,” and added that her actions were for the safety of the customers. Mr. Jackson stated that he was also a customer. The supervisor then asked him to leave the store. Mr. Jackson alleged that he began recording the interaction on his cell phone and the supervisor again asked him to leave. Mr. Jackson stated that a Walgreens’ security guard, who was African American, appeared very upset that he could not assist Mr. Jackson.

¶ 5 Mr. Jackson further alleged that on that same day he filed a complaint with Walgreens’ corporate office seeking \$500,000 in damages. He claimed Walgreens’ investigation found that its

employees were “wrong,” and that the supervisor was “sanctioned.” Mr. Jackson alleged that someone from Walgreens’ law department called him and offered him a coupon to settle his claim. Mr. Jackson was insulted and rejected the offer. Mr. Jackson stated that he had maintained a record of the communication between him and Walgreens, including the video recording, and the name of a witness who was with him that day.

¶ 6 On January 16, 2019, the circuit court found that Mr. Jackson’s complaint, which was in the format of a letter to the court, failed to conform with the Illinois Rules of Civil Procedure. The court granted Mr. Jackson leave to file an amended complaint by March 1, 2019.

¶ 7 On February 21, 2019, Mr. Jackson filed a second complaint, which was purportedly amended but was substantially the same as his original complaint. Mr. Jackson stated nearly identical allegations but added the address of the store. He asserted that the store’s supervisors were disrespectful and hateful, and discriminated against him. He added an assertion of discrimination based on his disability.

¶ 8 On March 6, 2019, Walgreens filed a motion to dismiss Mr. Jackson’s amended complaint pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2018)) arguing that it was legally deficient and that the defects from his initial complaint were still present. Walgreens argued that the amended complaint was nearly identical in substance to the initial complaint, which the court found legally deficient. Walgreens further argued that the amended complaint should be dismissed pursuant to section 2-615 of the Code because it failed to state a proper cause of action. Walgreens asserted that the amended complaint failed to state any recognizable cause of action and the specific allegations against Walgreens were unclear. It further argued that the amended complaint was factually deficient because it failed to set forth specific facts to support the

conclusory allegations of discrimination by Walgreens based on denial of the use of the restroom. Walgreens pointed out that Mr. Jackson alleged that the store had not allowed “anyone” to use the restroom at the time in question. Walgreens argued that such action was inapposite of discrimination as it was not directed specifically to Mr. Jackson.

¶ 9 Walgreens also argued that Mr. Jackson failed to allege that he sustained any injuries or damages, and thus, there was no basis for his requested relief. In addition, Walgreens asserted that the court should dismiss Mr. Jackson’s complaint for lack of jurisdiction pursuant to section 2-619(a)(1) of the Code and section 8-111(D) of the Illinois Human Rights Act (Act) (775 ILCS 5/8-111(D) (West 2018)) because his claims, although not entirely clear, were barred by the preemption provision of the Act. Walgreens argued that, under the Act, Mr. Jackson was required to raise his discrimination claims before the Illinois Human Rights Commission (Commission) rather than the circuit court of Cook County. Walgreens sought dismissal of the complaint with prejudice.

¶ 10 On March 15, 2019, the court continued the matter for a status hearing regarding whether Mr. Jackson had filed a claim with the Commission. The court stated that if Mr. Jackson did not file a claim with the Commission by May 22, 2019, the court would dismiss the complaint for lack of jurisdiction.

¶ 11 On May 22, 2019, the circuit court noted Mr. Jackson had filed a charge with the Commission and therefore the court entered a stay of the court case for six months for “status on the charge/dismissal.” Thereafter, the court continued the case three additional times over the next several months. The record does not contain any documentation related to what, if any, proceedings took place regarding the charge filed with the Commission.

¶ 12 On July 15, 2020, Walgreens moved to amend its pending motion to dismiss Mr. Jackson's complaint. Walgreens withdrew and no longer relied on its original argument that the lawsuit was preempted by the Act and, therefore, should be dismissed on that basis. Instead, Walgreens asked the court to set its motion to dismiss for a ruling pursuant to section 2-615 of the Code.

¶ 13 On July 27, 2020, Mr. Jackson filed an "AMENDED COMPLAINT" substantially restating many of the same allegations as in his prior complaints. In this second amended complaint, however, Mr. Jackson omitted his earlier allegation regarding his inquiry to the supervisor as to whether her denial of use of the restroom was based on his race. He also omitted her alleged reply of "yes." Similarly, he omitted his allegation that the supervisor told him she was not allowing anyone to use the restroom because of the street protest.

¶ 14 In this second amended complaint, Mr. Jackson included additional allegations regarding the proceedings related to the charge filed with the Commission. He stated there was a hearing before the Commission on December 12, 2019. He alleged that in order to make him look like a "bad person," the lawyers and supervisors from Walgreens "lied" to the Commission's investigators claiming that he had entered the store cursing at their employees. He also stated that the Commission dismissed his case because he had already filed a lawsuit in the circuit court of Cook County and therefore, the circuit court was required to render a decision on his claim. Mr. Jackson raised his damages request to \$600,000 claiming Walgreens' lawyers purposefully "defamed" him in the Commission proceedings.

¶ 15 On August 7, 2020, the circuit court of Cook County entered an order granting Walgreens' motion to dismiss Mr. Jackson's amended complaint filed on February 21, 2019. The court noted that the Illinois Department of Human Rights had dismissed the charge Mr. Jackson filed with the

agency pursuant to section 7-109.1 of the Act (775 ILCS 5/7-109.1 (West 2018)) because Mr. Jackson had already initiated litigation in the circuit court of Cook County. The court found that Mr. Jackson failed to sufficiently allege that he was denied full and equal enjoyment of the facilities and services at Walgreens in that he acknowledged that *no one* was allowed to use the restroom on the day in question due to a planned street protest. The court stated that there were no facts in Mr. Jackson's complaint that alleged other individuals outside of his protected class were treated differently and given access to the restroom.

¶ 16 On August 25, 2020, Walgreens filed a motion pursuant to section 2-615 of the Code to dismiss Mr. Jackson's "AMENDED COMPLAINT" which had been filed July 27, 2020. Walgreens noted it had not received that version of the amended complaint until after the court dismissed the second complaint. Walgreens argued that the newest amended complaint, which was technically the second amendment, was nearly identical in substance to Mr. Jackson's two prior complaints, which the court found deficient. Walgreens argued that the current version of the amended complaint failed to state a recognizable cause of action and was unclear as to specific allegations against Walgreens. Walgreens also argued that the current version of the third amended complaint was factually deficient because it failed to set forth specific facts to support Mr. Jackson's conclusory allegation that Walgreens discriminated against him solely because he was denied use of the restroom. Walgreens noted that Mr. Jackson alleged that the store did not allow *anyone* to use the restroom at that time due to a street protest. This does not support a theory of disparate treatment discrimination.

¶ 17 Walgreens further argued that Mr. Jackson failed to allege that he was denied full and equal enjoyment of the facilities and services as compared to other individuals, whom were not a member

of his protected class. In addition, Walgreens argued that Mr. Jackson's new claim that he had been defamed during the hearing before the Commission, failed because there was an absolute privilege and immunity against defamation claims based upon statements made during judicial or quasi-judicial proceedings. Consequently, Walgreens argued that statements made by its counsel in the proceedings before the Commission could not serve as a basis for recovery by Mr. Jackson.

¶ 18 On September 8, 2020, Mr. Jackson filed a *pro se* response to Walgreens' motion to dismiss. He asserted that it was unnecessary for the case to continue because Walgreens already informed him that its actions against him were wrong and that the supervisors had been punished. Mr. Jackson stated that Walgreens had apologized to him for the way he was treated. However, he had been unable to come to an agreement with a Walgreens representative regarding the amount he should receive in compensation. Mr. Jackson further stated his purpose in filing the complaint in the circuit court was "only to settle [upon] the amount to be paid" in a settlement by Walgreens. Mr. Jackson requested the court enter a judgment against Walgreens for \$600,000.

¶ 19 On September 21, 2020, Mr. Jackson sent a letter to the circuit court of Cook County stating that Walgreens had admitted that the only reason he was not allowed to use the restroom on the day in question was because he was African American. He maintained that he was a disabled veteran, who had been treated poorly and should be awarded \$600,000 in damages due to the "Racist, untruthful, underhanded, hurtful and evil ways" of Walgreens.

¶ 20 On September 23, 2020, Walgreens filed a reply in support of its motion to dismiss. Walgreens maintained that the current version of Mr. Jackson's amended complaint should be dismissed with prejudice because he failed to plead a recognizable cause of action or a *prima facie* case of discrimination. Walgreens again argued that Mr. Jackson failed to set forth specific facts

to support his conclusory allegations that it had discriminated against him solely by denying him use of the store's restroom. Walgreens argued that Mr. Jackson's response to the motion to dismiss ignored the deficiencies in his complaint and did not point to any facts that supported his claim. Walgreens asserted that Mr. Jackson's response was an attempt to sidestep the pleading rules and forego any issues of liability. In addition, Walgreens asserted that Mr. Jackson's request that the court award him money, was improper.

¶ 21 On October 26, 2020, the court found Mr. Jackson had failed to correct the deficiencies in the pending, current version of his amended complaint. The court further found that Mr. Jackson failed to allege any facts in support of his added claim of defamation against him by Walgreens. Accordingly, the court granted Walgreens' motion to dismiss that final version of Mr. Jackson's amended complaint. The court noted that because Mr. Jackson's third attempt to adequately plead a cause of action had failed, the dismissal was with prejudice. Mr. Jackson filed his notice of appeal on November 19, 2020.

¶ 22

#### ANALYSIS

¶ 23 We note that we have jurisdiction to hear this appeal as Mr. Jackson filed a timely notice of appeal. See Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. July 1, 2017). On appeal, Mr. Jackson challenges the dismissal of his complaint. He argues that the trial court erred when it did not allow him to call witnesses or show the videos which he took while in the store. Mr. Jackson also claims that the COVID-19 pandemic made it impossible for the court to consider his case. Mr. Jackson argues that Walgreens' supervisors made "many intentional untruthful statements" during the hearing before the Commission. Mr. Jackson maintains that Walgreens subjected him



to racist and prejudicial treatment and asks that his case be remanded to the circuit court of Cook County for a jury trial on his discrimination claim.

¶ 24 Walgreens responds that this court should strike Mr. Jackson's appellate brief for failure to comply with any portion of Illinois Supreme Court Rule 341 (eff. Oct. 1, 2020). Alternatively, Walgreens argues that the circuit court correctly dismissed Mr. Jackson's latest version of his amended complaint because he failed to plead a cause of action for either discrimination or defamation. Walgreens argues that he did not plead that similarly situated individuals were treated differently than him, nor did he allege that anyone outside of his protected class was given access to the restroom. Walgreens points out that the complaint alleged that the restroom was unavailable to *everyone* that day.

¶ 25 Initially, we observe that Mr. Jackson's *pro se* brief fails to comply with the requirements of Rule 341(h). The brief fails to present the facts and procedural history necessary for our understanding of the case. The brief also fails to articulate a cohesive legal argument supported by citation to legal authority and the record. Mr. Jackson's *pro se* status does not relieve him of his duty to comply with our supreme court's rules regarding the contents of his brief. *Ellis v. Flannery*, 2021 IL App (1st) 201096, ¶ 8. Based on his noncompliance with the rule, this court could grant Walgreens' request to strike Mr. Jackson's brief and dismiss his appeal. *Id.* However, striking a brief is appropriate only where the rule violations hinder our ability to review the case. *Affiliated Health Group, Ltd. v. Devon Bank*, 2016 IL App (1st) 152685, ¶ 15. Here, because we have the benefit of a cogent appellees' brief (see *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001)), we choose to entertain the appeal and resolve it (see *Harvey v. Carponelli*, 117 Ill. App. 3d 448, 451 (1983)).

¶ 26 This court reviews the circuit court's order granting Walgreens' section 2-615 motion to dismiss, *de novo*. *Berry v. City of Chicago*, 2020 IL 124999, ¶ 25. A motion filed under section 2-615 of the Code tests the legal sufficiency of a complaint on its face. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. When ruling on such motions, a court must determine whether the allegations in the complaint, taken as true and construed in the light most favorable to the plaintiff, sufficiently state a cause of action. *Berry*, 2020 IL 124999, ¶ 25. All well-pleaded facts and any reasonable inferences that arise from them must be taken as true. *Patrick Engineering*, 2012 IL 113148, ¶ 31. However, mere conclusions of fact or law that are not supported by specific factual allegations cannot be accepted as true. *Id.*

¶ 27 Under section 5-102(A) of the Act, it is a civil rights violation for any person to deny or refuse to another the full and equal enjoyment of the facilities, goods, and services of any public place of accommodation on the basis of unlawful discrimination. 775 ILCS 5/5-102(A) (West 2018). Courts apply a three-part analysis to determine whether unlawful discrimination occurred. *Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill. 2d 172, 178 (1989). First, a plaintiff must establish a *prima facie* case of unlawful discrimination by a preponderance of the evidence. *Id.* at 178-79. If he does so, a rebuttable presumption arises that he was subjected to unlawful discrimination. *Id.* at 179. Second, to rebut that presumption, a defendant must demonstrate a legitimate, nondiscriminatory reason for its action. *Id.* Third, if the defendant demonstrates such a reason, the presumption of unlawful discrimination fails and the plaintiff must prove by a preponderance of the evidence that the defendant's articulated reason was not true, but instead, was merely a pretext for unlawful discrimination. *Id.* The ultimate burden of persuasion remains on the plaintiff throughout the proceedings. *Id.*

¶ 28 To establish a *prima facie* case of discrimination in a place of public accommodation, a plaintiff must demonstrate that: (1) he is a member of a protected class; (2) he attempted to exercise the right to full benefits and enjoyment of a place of public accommodation; (3) he was denied those benefits and enjoyment; and (4) he was treated less favorably than similarly situated persons outside his protected class. See *McCoy v. Homestead Studio Suites Hotels*, 390 F. Supp. 2d 577, 583-85 (S.D. Tex. 2005).

¶ 29 Here, the record shows that Mr. Jackson's latest version of his amended complaint failed to plead sufficient facts to state a *prima facie* case for discrimination by Walgreens. It is uncontested that the Walgreens store was a place of public accommodation, that Mr. Jackson is a member of a protected class due to his race, and that he was attempting to exercise his right to use Walgreens' facilities. However, Mr. Jackson's allegation that he was denied use of the store's restroom because he was African American is entirely conclusory as it is unsupported by any, specific, factual allegations.

¶ 30 In the latest version of his amended complaint, Mr. Jackson stated that there was a street demonstration scheduled to occur in that area later in the day. Mr. Jackson stated that when he asked to use the restroom, an employee told him "the parade is coming soon," and advised Mr. Jackson to ask a supervisor if he could use the restroom. He stated that when he asked a supervisor, she initially claimed the restroom was out of order. Mr. Jackson replied that the other employee had told him the restroom was working. Mr. Jackson stated that the supervisor then told him "I am not going to let you use the restroom for the safety of our customers." Mr. Jackson further stated in his complaint that at the hearing before the Commission, Walgreens' supervisors told the

investigators that the store did not allow use of its restroom on days when there were Cubs games, as there was that day.

¶ 31 Taking these factual allegations as true, the allegations do not demonstrate that Walgreens refused to allow Mr. Jackson use of the restroom based on his race. Thus, Mr. Jackson has provided no direct evidence of public accommodation discrimination. Nor did he allege that any similarly situated person outside his protected class was allowed to use the restroom that day. He was required to allege such a fact to establish a *prima facie* case of public accommodation discrimination. We therefore find that Mr. Jackson failed to state a cause of action against Walgreens for public accommodation discrimination.

¶ 32 We further find that Mr. Jackson's attempt to raise a claim of defamation against Walgreens also fails. His defamation claim relies on allegations that Walgreens' lawyers "lied" during the hearing before the Commission and falsely claimed Mr. Jackson had entered the store cursing at the employees. However, an absolute privilege bars defamation claims based upon statements made by an attorney during judicial and quasi-judicial proceedings. *Atkinson v. Affronti*, 369 Ill. App. 3d 828, 832 (2006) (citing Restatement (Second) of Torts, § 586 (1977) and collecting cases). The privilege applies to communications made before, during, or after litigation, and we resolve all doubts in favor of pertinency. *O'Callaghan v. Satherlie*, 2015 IL App (1st) 142152, ¶¶ 25-26; *Atkinson*, 369 Ill. App. 3d at 832. The communications must pertain to proposed or pending litigation and be made in furtherance of representation. *O'Callaghan*, 2015 IL App (1st) 142152, ¶ 25. Therefore, the alleged statements made by Walgreens' counsel during the proceedings before the Commission do not provide a basis for recovery on a defamation claim brought in the circuit court of Cook County.

¶ 33 Accordingly, we affirm the dismissal of the current amended version of Mr. Jackson's amended complaint, which is the subject of this appeal.

¶ 34 CONCLUSION

¶ 35 For the reasons discussed, we affirm the judgment of the circuit court of Cook County.

¶ 36 Affirmed.