NOS. 4-10-0247, 4-10-0403 cons. Filed 01/05/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE CITY OF VIRGINIA, ILLINOIS, an Illinois Municipal Corporation, Plaintiff-Appellee, v. (No. 4-10-0247) CHARLES TAYLOR, Individually and as Trustee of the TAYLOR LAND TRUST NO. 1, Defendant-Appellant.	)	Appeal from Circuit Court of Cass County No. 09CH3 Honorable Alesia A. McMillen, Judge Presiding.
_____	)	No. 09MR22
CHARLES TAYLOR, Individually and as Trustee of the TAYLOR LAND TRUST NO. 1, Plaintiff-Appellant, v. (No. 4-10-0403) STEVE SUDBRINK, Mayor, City of Virginia, Illinois, Defendant-Appellee.	)	Honorable Scott J. Butler, Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Turner and Pope concurred in the judgment.

ORDER

Held: (1) The trial court did not abuse its discretion by denying a landowner's motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994), considering that the pleading defect of which the landowner complained caused him no harm and the city moved to amend its complaint so as to correct the pleading defect but the landowner opposed the motion, for invalid reasons.

(2) Just because the city had an easement over a vendor's land to reach land that the city had purchased from the vendor, the trial court did not have to find that the city had violated Rule 137 by pleading that a third-party landowner's private road was "the only means" by which the city could reach its land, since there was no evidence of any other existing road that would have served the purpose and the common law interpreted the concept of necessity, in eminent-domain cases, as meaning "reasonably convenient," not

"absolutely necessary."

(3) The trial court did not abuse its discretion by denying a party's motion for attorney fees pursuant to section 11(i) of the Freedom of Information Act (5 ILCS 140/11(i) (West 2008)), considering that, in the evidentiary hearing on the motion, the party never offered into evidence either his written FOIA request or the city's response thereto.

(4) Where, at trial, a party states to the trial court, or at least strongly implies, that he will proceed on the assumption that, despite the lack of an answer, the opposing party has denied the allegations of the party's amended complaint and where the party then undertakes to prove his case without any further mention, during the trial, of the opposing party's failure to answer, the party was deemed to have forfeited any reliance on the opposing party's default.

We have consolidated two cases, and in one of them, case No. 4-10-0247, Charles Taylor appeals from the denial of his motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994). In the other case, case No. 4-10-0403, he appeals from the denial of his motion for attorney fees pursuant to section 11(i) of the Freedom of Information Act (5 ILCS 140/11(i) (West 2008)). We conclude that neither ruling is an abuse of discretion. Therefore, we affirm the trial court's judgment in the two cases.

I. BACKGROUND

A. The Condemnation Case (Case No. 4-10-0247)

In case No. 4-10-0247 (circuit court case No. 09-CH-3), the city filed a complaint against Taylor, seeking judicial authorization to use a private road belonging to him. The city claimed that section 11-138-1 of the Illinois Municipal Code (65 ILCS 5/11-138-1 (West 2008)) gave it the right to use his road for the purpose of accessing five parcels of land and drilling a water well on each parcel.

These five parcels were city property. Each of them was a hundred feet

square, and they were within 20 miles of city limits, so they were close enough to the city to serve as a water source (see 65 ILCS 5/11-138-1 (West 2008)). But the question was how to get to them so as to do the construction work. The five parcels were spread out in a straight line like a row of postage stamps with some space between each one, and they all abutted the south side of Taylor's road. According to paragraph 9 of the complaint, the road "provide[d] the only means for [the city] to reach it[s] land" so as to construct and maintain the wells, water mains, and appurtenances.

Because Taylor's road was allegedly the only route to these parcels of land and because Taylor had refused to allow the city to use his road, the complaint sought two forms of relief: (1) "an order declaring [the city's] right to use the subject road for the purposes set forth above" and (2) a permanent injunction forbidding Taylor from interfering with the city's use of his road.

In requesting this relief, the complaint said nothing about paying Taylor for the use of his road. Nevertheless, Taylor did not move to dismiss the complaint for failure to state a cause of action. See 735 ILCS 5/2-615 (West 2008). Instead, he filed an answer, in which he denied paragraph 9 of the complaint, the paragraph alleging that his road was "the only means" by which the city could reach its land.

With his answer, Taylor filed a counterclaim for declaratory judgment, in which he objected that the city could not take his property without just compensation. But the taking to which he referred was not the use of his road. Rather, he alleged that the planned construction of the wells threatened to deprive him of property without just compensation by "adversely affect[ing] [his] irrigation wells."

A couple of months later, it occurred to Taylor that the proposed use of the

road would itself be an uncompensated taking, and he filed a motion for summary judgment for that reason, along with the additional reason that the city already had the means of reaching its five parcels of land without using his road. He argued that the city had an implied easement across the land of Aaron, Jenelle, Jonathan, and Rebecca Stock, from whom the city had bought the five parcels. By virtue of this implied easement, Taylor concluded, the city had an adequate remedy at law and therefore no right to the equitable remedy of an injunction, which would unfairly require him to "keep the road in existence in the future." Consequently, he requested a summary judgment barring all claims of the city against him.

In response to Taylor's motion for summary judgment, the city insisted that the implied easement was a "red herring" because the law did not require the city to "exhaust[] any and all alternative measures" before seeking the use of Taylor's road. In the city's view, there was no reason to create an alternative route because Taylor's existing road was quite adequate to the purpose and the city did not anticipate causing any damage to the road during construction. And in the event of any such damage, the city promised to "promptly repair and restore said roadway to the same condition before the damage," and further, the city was not opposed to the entry of a court order to that effect. For those reasons, the city moved for a summary judgment in its own behalf granting the relief it requested in its complaint.

Before the trial court had an opportunity to rule on these cross-motions for summary judgment, the city filed a motion to amend its complaint, apparently conceding Taylor's point, in his summary-judgment motion, that using his road without his permission would be tantamount to taking property from him without just compensation.

The city's motion for leave to file an amended complaint stated as follows:

> "2. The gist of Defendant's claim for Summary Judgment is that Plaintiff's Complaint fails to allege sufficient facts entitling it to the relief prayed for and if granted, would deprive Defendant of his property without just compensation.
>
> 3. Whereas, Plaintiff is desirous of filing an Amended Complaint to correct the pleading deficiencies in its Complaint and to address the concerns of the Defendant[,] [plaintiff requests the entry of an order allowing it to file an amended complaint]."

Although the city did not submit a proposed amended complaint with its motion, the city seemed to concede, in the quoted paragraphs, that the omission of any provision for just compensation was indeed a "pleading deficiency" in its complaint, and the city implied that the amended complaint would "correct" that deficiency.

Despite the city's willingness to draft an amended complaint that would "address Taylor's concerns," Taylor opposed the city's motion to amend its complaint. His objection was twofold: (1) Taylor never filed a motion for dismissal on the ground of pleading defects, and hence pleading defects were not "before the Court"; and (2) the case was classified, or "filed," as a chancery case, in which there was no right to a jury trial, unlike an eminent-domain case. Taylor's "Objection to Motion for Leave to File an Amended Complaint" read as follows:

> "2. That a Motion to Dismiss the Plaintiff's Complaint based upon defects in the pleadings was not filed herein and is

not before the Court and any suggestion by the Plaintiff that an Amended Complaint should be filed is an admission that the original Complaint was not warranted by existing law.

3. That this case was filed as a Chancery case and as such no jury is allowed as a matter of right. If the Plaintiff chooses to file an Eminent Domain case it should be filed as an ED case and a jury is available to Defendants as a matter of right."

Thus, Taylor appeared to be suggesting that (1) the city could not amend its complaint unless he first moved to dismiss the complaint and (2) the city could not prosecute an eminent-domain proceeding unless it started all over by instituting a new case.

Instead of litigating the question of whether the city should be allowed to file an amended complaint, the parties agreed to voluntarily dismiss their actions against each other. On January 28, 2010, the trial court granted the city's motion to voluntarily dismiss its complaint and Taylor's motion to voluntarily dismiss his counterclaims, specifying that the dismissals were without prejudice. Although these motions were ostensibly motions to voluntarily dismiss pleadings, the parties apparently intended them as motions to voluntarily dismiss actions, and we will so construe the motions, even though, strictly speaking, there is a distinction between actions and pleadings within the actions. See 735 ILCS 5/2-1009(a) (West 2008); *Berman v. National Pharmacists Ass'n*, 156 Ill. App. 3d 402, 404 (1987) ("The Illinois Code of Civil Procedure expresses a clear intention to have pleadings *** liberally construed for the purpose of doing substantial justice between the parties").

Within 30 days of these voluntary dismissals of the action and counter-action,

Taylor filed a motion for sanctions in the amount of $3,600 to cover his court costs and attorney fees. He argued that the city should incur this penalty for two reasons. First, the city alleged in paragraph 9 of its complaint that Taylor's road "provide[d] the only means" for the city to reach its land, even though the city knew, or should have known, that its sale agreement with the Stocks contained the following provision: "Said [purchase price of $25,000] shall include any necessary access easements. Should the construction of any roadways be necessary to access said well sites, the Municipality shall bear the responsibility and cost of constructing such roadways." Consequently, according to Taylor, the city not only had an implied easement over the Stocks' land, but the city also had the explicit grant of an easement by the Stocks. Second, the city's complaint sought to take private property without just compensation, and in that respect, Taylor contended, the complaint was legally frivolous.

We do not know specifically what the trial court or the city had to say about these two reasons in the hearing of March 4, 2010, on Taylor's motion for sanctions because the record does not include a transcript of the hearing. In any event, the docket entry of that date denies the motion for sanctions while ordering the city, however, to reimburse Taylor his cost of answering the complaint. See 735 ILCS 5/2-1009(a) (West 2008) (the plaintiff may voluntarily dismiss an action, without prejudice, "upon payment of costs").

B. The FOIA Case (Case No. 4-10-0403)

On October 28, 2009, in case No. 4-10-0403 (circuit court case No. 09-MR-22), Taylor filed an amended complaint against the city, in which he sought a judicial order compelling the city to comply with a FOIA request he submitted to the city on February 9, 2009, for a variety of documents pertaining to the permitting of the wells, compliance with

environmental regulations, and bidding. The trial court ordered the city to answer the amended complaint by November 11, 2009 (within 14 days).

The city never filed an answer, and the case went to trial on February 17, 2010. At the beginning of the trial, before opening statements, the trial court noted the absence of any responsive pleading by the city. The court said:

> "THE COURT: I went through the file and noticed that there was no, I don't think there has been a responsive pleading filed to the amended complaint. There was an order entered granting the city some time to respond to that, so as far as proceedings today, were you just assuming Mr. Knuppel [(Taylor's attorney)] that they were going to deny--
>
> MR. KNUPPEL: That's what I was assuming.
>
> THE COURT: --everything there. Is that how you want to proceed?
>
> MR. THOMAS [(the city's attorney)]: That's pretty much, yes."

So, both attorneys seemed to agree that they would proceed on the assumption that the city had denied the allegations in the amended complaint.

Knuppel then made an opening statement, in which he told the trial court that, owing to the voluntary dismissal of case No. 09-CH-3, Taylor no longer needed the documents he had requested pursuant to FOIA, because the whole purpose of the FOIA request had been to defend against the city's action in case No. 09-CH-3. Nevertheless, Knuppel told the court that Taylor still was pursuing attorney fees pursuant to section 11(i)

of FOIA (5 ILCS 140/11(i) (West 2008)) because of the city's failure to turn over documents that Taylor no longer wanted.

With that preface, Knuppel called Taylor to the stand. Knuppel asked Taylor if he was "familiar with all of the requests that [Knuppel had made to the city] for documents." Taylor answered yes. Knuppel asked him if he had gone through the documents the city had provided on two or three occasions. Taylor answered yes. Knuppel asked him if the city had provided all of the requested documents. "No, not all of them," Taylor answered. That was why he had "made repeated requests for the same documents over and over again."

As for what these withheld documents were, the only documents that Taylor mentioned specifically on direct examination were those that the city had submitted to the Illinois Environmental Protection Agency. Knuppel asked Taylor:

> "Q. Now, one of the documents that have been asked for repeatedly is the document--documents that Mr. Thomas alluded to a few minutes ago, copies of any documents furnished to the Illinois Environmental Protection Agency demonstrating technical, financial or managerial capacity for the water supply of the City of Virginia pursuant to 415 ILCS 5/15(b) that's been asked for from day one, has it not?
>
> A. Yes, yes it has.
>
> Q. And have we ever gotten a response, that you know of, to that?
>
> A. No."

After Thomas cross-examined Taylor, Knuppel submitted an affidavit stating the time and costs he had expended in the case, whereupon he rested. This affidavit of expenses was the only document that Taylor introduced into evidence at trial. The State presented no evidence. Consequently, the trial court found that Taylor had failed to carry his burden of proof, and the court entered judgment in the city's favor.

On February 24, 2010, Taylor filed a motion for reconsideration, in which he argued that, by failing to answer the amended complaint, the city had admitted the allegations therein and, hence, the violation of FOIA was established and he was entitled to attorney fees pursuant to section 11(i) (5 ILCS 140/11(i) (West 2008)). Also, he argued, if this purported admission by the city did not clinch the case, he reminded the court of his testimony that the city had failed to turn over to him the documents that it had furnished to the Illinois Environmental Protection Agency and since he was the only witness called at trial, his testimony was unrebutted.

In an order of May 11, 2010, denying the motion for reconsideration, the trial court observed that, notwithstanding Taylor's testimony, "there were no FOIA written request[s] admitted into evidence, nor were there any copies of any FOIA responses admitted into evidence." Without such documentary evidence, the court declined to find a violation of FOIA. The claimed admission by the city could not serve as a substitute for such documentary evidence, because Knuppel had agreed to proceed with the trial as if the city had denied the amended complaint. At the beginning of the trial, "both counsel agreed to proceed, and in fact proceeded, to hearing as if the defendant had denied the Amended Complaint. There was no suggestion at that time that the defendant should be held in default or that the hearing was simply to prove up attorney's fees."

II. ANALYSIS

A. Noncompliance with Illinois Supreme Court Rule 341

Taylor's brief violates Illinois Supreme Court Rules 341(h)(3), (h)(6), and (h)(7) (eff. July 1, 2008) in that it fails to "include a concise statement of the applicable standard of review for each issue" and it makes factual assertions without citation to the record. These sorts of infractions can result in the striking of a brief. *Crull v. Sriritana*, 388 Ill. App. 3d 1036, 1045 (2009). We will not do that in this case. See *In re Marriage of Eberhardt*, 387 Ill. App. 3d 226, 228 (2008). Instead, we will disregard any factual assertion unaccompanied by a citation to the record (*Anderson Dundee 53, L.L.C. v. Terzakis*, 363 Ill. App. 3d 145, 152 (2005)), and we will remind Taylor that Rule 341 is a rule, not a suggestion (See *Applebaum v. Rush University Medical Center*, 231 Ill. 2d 429, 447 (2008)).

B. The Motion for Sanctions in the Condemnation Case

Taylor argues the trial court erred in case No. 09-CH-3 by denying his motion for sanctions. To address that argument, we first must be clear what "error" means in the context of a ruling on a motion for sanctions. We will find error only if the ruling is an abuse of discretion. *McNeil v. Ketchens*, 397 Ill. App. 3d 375, 397 (2010). "Abuse of discretion" is the most deferential standard of review known to the law. *People v. Coleman*, 183 Ill. 2d 366, 387 (1998). The court abused its discretion in denying Taylor's motion for sanctions only if no reasonable person could agree with that ruling. See *Schwartz v. Cortelloni*, 177 Ill. 2d 166, 176 (1997). It follows that, if reasonable minds could differ on the correctness of the ruling, we should defer to the trial court because the ruling would not be an abuse of discretion. See *McNeil*, 397 Ill. App. 3d at 398.

So, under our deferential standard of review, reversal is required only if all reasonable persons would agree that the city deserves to be sanctioned for the two reasons that Taylor states in his brief. Those two reasons are as follows: (1) the city pleaded in its complaint that it had a right, under section 11-138-1 of the Illinois Municipal Code (65 ILCS 5/11-138-1 (West 2008)), to use Taylor's private road, but the complaint said nothing about paying for that right; and (2) the city falsely pleaded, in paragraph 9 of its complaint, that Taylor's road "provide[d] the only means for [the city] to reach it[s] land."

Thus, Taylor regards the complaint as having two sanctionable defects, one legal and the other factual. Legally, the city could not take an easement without paying him for it, and factually, Taylor believes that the city made a culpably false representation when it pleaded that his road was "the only means" by which the city could reach the sites of its planned wells.

As to the legal and factual bases of its complaint, the city made the following certification by operation of Rule 137:

> "The signature of an attorney or party constitutes a certificate by him that he has read the pleading ***; 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." Ill. S. Ct. R. 137 (eff. Feb. 1, 1994).

In other words, whoever signs a pleading is expected to have made a reasonable inquiry to ensure that the allegations therein are factually sound and that the pleading is justified either by existing law or by an honest argument for a change in the law. We understand Taylor to be arguing that the city failed to make a reasonable inquiry on either of those fronts, legal or factual. We first will consider the claim of legal frivolity, and then we will consider the claim of factual frivolity.

a. "Warranted by Existing Law"

Obviously, the city cannot compel Taylor to grant it an easement for free. See Ill. Const. 1970, art. I, §15; 65 ILCS 5/11-138-2 (West 2008); *Drainage Commissioners of Drainage District No. 8 v. Knox*, 237 Ill. 148, 151 (1908); 17 Ill. L. & Prac., *Eminent Domain* §25 (2006). Undeniably, the complaint was defective in that it claimed the right to an easement without mentioning the necessity of paying for the easement. See 735 ILCS 30/10-5-10(a) (West 2008) (the complaint "shall pray the court to cause the compensation to be paid to the owner to be assessed"). Specifically, the prayer for relief in the complaint was defective in that it was unqualified: it omitted the condition of just compensation. In that limited respect, the complaint was not "warranted by existing law." Ill. S. Ct. R. 137 (eff. Feb. 1, 1994).

Nevertheless, Rule 137 does not require a trial court to punish every pleading defect. The rule does not lay down an inflexible, draconian policy of punishing every mistake. Instead, the rule is written so as to leave room for an exercise of judgment. The rule is phrased in permissive terms, using the word "may." "If a pleading *** is signed in violation of this rule, the court *** *may* impose *** an appropriate sanction ***." (Emphasis added.) Ill. S. Ct. Rule 137 (eff. Feb. 1, 1994).

When exercising its discretion under Rule 137, a trial court might reasonably consider whether the pleading defect caused any harm to the opposing party. See *In re Y.A.*, 383 Ill. App. 3d 311, 316 (2008). The defect in this instance was the failure to mention the matter of just compensation. Evidently, though, Taylor did not think the defect was worth the trouble of moving to strike the complaint (735 ILCS 5/2-615 (West 2008)), thereby compelling the correction of the defect--which, after all, would have been easily correctable. And, indeed, his identification of the defect was an afterthought.

Except for the correctable omission of compensation, the complaint appears to be basically sound from a legal point of view. It sets forth all the facts that would justify the taking of an easement pursuant to section 11-138-1 of the Illinois Municipal Code (65 ILCS 5/11-138-1 (West 2008)). The city pleaded that its land and Taylor's land were within 20 miles of the city limits and that the city needed to use his road for the construction and maintenance of water wells, mains, and appurtenances on the city's land. These factual allegations appear to satisfy section 11-138-1, which provides in part as follows:

> "Any water company organized under the laws of this state for the purpose of supplying any municipality or the inhabitants thereof with water, may locate its source of supply at, or change its source of supply to, a point not more than 20 miles beyond the corporate limits of the municipality. Such company may enter upon any land and take and damage private property beyond those corporate limits, (1) for the construction, maintenance, and operation of a line or lines of water-pipe to the source of supply, (2) for the necessary

> pumping stations, reservoirs, and other appurtenances, and (3) for the protection of all reservoirs, submerged land, and source of supply from contamination, pollution, or damage from any cause whatsoever." 65 ILCS 5/11-138-1 (West 2008).

According to the complaint, the city wishes to enter upon Taylor's land--and more specifically, take an easement over his road--for the purposes of constructing and maintaining water lines and wells (it would seem that a well is roughly the same as a "pumping station").

Granted, it is beyond dispute that the city would have to pay Taylor for such an easement, and, initially, in its complaint, the city failed to acknowledge the necessity of payment. Requesting the wrong relief, however--or inadequately qualified relief--is not fatal. If the trial court determines "that the plaintiff has pleaded *** facts which entitle the plaintiff to relief but that the plaintiff has sought the wrong remedy, the court shall permit the pleadings to be amended, on just and reasonable terms." 735 ILCS 5/2-617 (West 2008).

As a matter of fact, the city did eventually file a motion to amend its complaint, presumably to correct the prayer for relief. The record does not appear to contain a copy of the proposed amended complaint, but one might infer, from the city's motion, that the purpose of the proposed amendment was to acknowledge the necessity of compensating Taylor. For two reasons, however, each of them of dubious merit, Taylor opposed the city's motion to amend its complaint, insisting that the city instead had to start all over by instituting a new case: (1) Taylor never filed a motion for dismissal pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2008)), and (2) this

case "was filed as" a chancery case rather than as an eminent-domain case.

As for the first reason, the filing of a motion for dismissal is not a condition precedent to the amendment of a pleading. Section 2-616 of the Code of Civil Procedure, entitled "Amendments," says nothing about a motion for dismissal. Rather, section 2-616(a) says that "[a]t any time before final judgment[,] amendments may be allowed on just and reasonable terms." 735 ILCS 5/2-616(a) (West 2008).

As for the second reason, the letters that the circuit clerk includes in the case number (*e.g.* "CH" and "ED") surely do not determine the right to a jury trial. The substance of the pleading, not its administrative label, determines the right to a jury. See *Kemner v. Monsanto Co.*, 112 Ill. 2d 223, 239 (1986) ("The character of a pleading is to be determined more from its content than from its label"); *Fischer v. Senior Living Properties, L.L.C.*, 329 Ill. App. 3d 551, 557 (2002) ("The character of a pleading is determined by its content and not the title or label asserted by the petitioner").

Hence, when evaluating his right to a jury, Taylor should have looked beyond the "CH" label (the chancery designation) and to the nature of the claims pleaded in the complaint. In its complaint, the city sought a declaratory judgment that the city had a right to use Taylor's road--the complaint requested "an order declaring [the city's] right to use the subject road for the purposes set forth [in the complaint]." True, the complaint also requested an injunction, which is an equitable remedy, but that did not foreclose the possibility of a jury trial on the other claim. See Ill. S. Ct. R. 232(b) (eff. Jan. 1, 1967). The other claim was for a declaratory judgment, which was neither legal nor equitable but *sui generis* and "[took] the character of the nature of the relief declared" (*Freeport Motor Casualty Co. v. Tharp*, 406 Ill. 295, 300 (1950), *overruled in part on other grounds, People*

ex rel. Schwartz v. Fagerholm, 17 Ill. 2d 131, 137 (1959); see also Ill. L. & Prac. *Declaratory Judgments* §37 (2004)), and a government's taking of private property for public use amounts to eminent domain, which carries the right to a jury (see Ill. Const. 1970, art. I, §15; 735 ILCS 30/10-5-5(a) (West 2008)).

We are discussing the nature of the city's declaratory-judgment claim and Taylor's corresponding right to a jury because we can see an argument by him that he needlessly spent money as a result of being misled about the nature of the claim. The argument would run something like this. If the complaint had originally mentioned the necessity of just compensation, the nature of the action as an eminent-domain action (instead of a purely equitable action) would have been clear, and Taylor would have responded by filing a timely jury demand. Instead, he refrained from filing a jury demand with his answer, relying on the chancery format of the complaint, and now there is no alternative but to start all over with a new case, or else he will be unfairly stuck with a bench trial. Hence, the money he spent in this case was a waste, thanks to the city's defective pleading.

If that is the argument that Taylor is making between the lines, we do not buy it, and here is why. Regardless of whether the nature of the declaratory relief that the complaint requested was clear or ambiguous, the city really could do nothing to harm Taylor's right to a jury trial. Either Taylor should have known, from the complaint, that the nature of the proposed relief was a condemnation of his road, in which case he had a right to a jury trial and he had to file a jury demand with his answer (see 735 ILCS 5/2-1105(a) (West 2008)), or else, alternatively, he reasonably was misled by the city's failure to mention any just compensation, in which case he had good cause for being allowed to file

a late jury demand (see 735 ILCS 5/2-1007 (West 2008); *Williams v. National Super Markets, Inc.*, 143 Ill. App. 3d 110, 112 (1986)). In either event, the omission of just compensation from the complaint--a correctable pleading defect--caused him no real harm, and the absence of harm tends to weaken his case for sanctions. See *Y.A.*, 383 Ill. App. 3d at 316.

b. "Well Grounded in Fact"

Taylor insists that because the city had the right, pursuant to its agreement with the Stocks, to cross over the Stocks' land in order to access the sites of the planned wells, the city's complaint was not well grounded in fact insomuch as it represented, in paragraph 9, that Taylor's road "provide[d] the only means for [the city] to reach it[s] land."

Arguably, however, the truth or falsity of that representation depends on how one understands the word "means." If by "means," we understand the city as meaning any potential route to the sites of the wells, the representation would be false because the city is contractually entitled to make any necessary road across the Stocks' land. On the other hand, if by "means," we understand the city as meaning an actual, presently existing road that could be used right now as opposed to requiring the inconvenience and expense of making a new road, the representation would not be false.

The second meaning makes the most sense because, when considering the necessity of taking private property for public use, the law of eminent domain understands "necessary" as being synonymous with "reasonably convenient" or "useful to the public," not "indispensable" or "absolutely necessary." *County Board of School Trustees of Macon County v. Batchelder*, 7 Ill. 2d 178, 181 (1955); *City of Chicago v. Boulevard Bank National Ass'n*, 293 Ill. App. 3d 767, 778 (1997). Consequently, when section 11-138-2 of the Illinois

Municipal Code (65 ILCS 5/11-138-2 (West 2008)) says that private property may be taken (subject to compensation) "[w]henever it is *necessary* for the construction, maintenance, and operation of such a line or lines of water-pipe, pumping stations, reservoirs, and other appurtenances" (emphasis added), the statute means "whenever it is reasonably convenient and useful to the public," not "whenever it is absolutely necessary" or "whenever there is no conceivable alternative."

Given this understanding of the concept of necessity, we are unconvinced, on the record before us, that all reasonable persons would deem the complaint to be factually frivolous insomuch as it states, in paragraph 9, that Taylor's road "provides the only means for [the city] to reach it[s] land." Any inadequacy of the record in this respect should be resolved against Taylor (see *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984)), who has the burden of establishing that the city made a statement which it knew or should have known to be false or for which it had no reasonable cause (see *Kensington's Wine Auctioneers & Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 17-18 (2009)). Taylor must make that showing from the record, which is incomplete in that it does not include a transcript of the hearing of March 4, 2010, on Taylor's motion for sanctions.

In that hearing, the city might have stated a reasonable cause for its allegation in paragraph 9 of the complaint, such as that it was more convenient to use Taylor's existing road than to make a new road across the Stocks' land. For all we know, the city might even have presented testimony that the Stocks' land was marshy or criss crossed by gullies. Absent a transcript of the hearing, we will "presume that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch*, 99 Ill. 2d at 391-92.

B. The Denial of Attorney Fees in the FOIA Case

Taylor maintains that, in case No. 09-MR-22, the trial court erred by denying his petition for attorney fees pursuant to section 11(i) of FOIA (5 ILCS 140/11(i) (West 2008)) because, according to Taylor, he proved that the city violated FOIA by failing to furnish him a copy of the city's agreement with the Stocks. Taylor refers to the Stocks agreement as exhibit No. A-1-5, but there is no exhibit No. A-1-5 in the envelope of exhibits in case No. 09-MR-22. Nor is there any mention of the Stocks agreement in the transcript of the trial. To prove his entitlement to attorney fees under section 11(i), Taylor had to prove at trial that he submitted a written request to the city for the Stocks agreement, or for that type of document, and that the city failed to comply with the request. See 5 ILCS 140/3(c) (West 2008). Because Taylor presented no such evidence at trial, we find no abuse of discretion in the court's denial of his request for attorney fees. See *Callinan v. Prisoner Review Board*, 371 Ill. App. 3d 272, 277 (2007).

In lieu of evidence at trial regarding the Stocks agreement, Taylor urges us to deem his amended complaint in case No. 09-MR-22 to be admitted due to the city's failure to file an answer. See *Pinnacle Corp. v. Village of Lake in the Hills*, 258 Ill. App. 3d 205, 209 (1994) ("a failure to file an answer results in well-pleaded facts being deemed admitted"). The problem, however, is that the amended complaint does not appear to mention the Stocks agreement, either. And then there is the further problem that Taylor's attorney appears to be going back on his word: he told the trial court, or at least strongly implied, that he would dispense with the filing of an answer. At the beginning of the trial, the court noted the absence of an answer, and Taylor's attorney nevertheless agreed to proceed with the trial on the assumption that the city had denied the allegations of the amended complaint. Hence, Taylor has forfeited any reliance on the city's default. See *In*

re Detention of Swope, 213 Ill. 2d 210, 217 (2004) ("Simply stated, a party cannot complain of error which that party induced the court to make or to which that party consented").

III. CONCLUSION

For the foregoing reasons, we affirm the trial court's judgment in case Nos. 4-10-0247 and 4-10-0403 (circuit court case Nos. 09-CH-3 and 09-MR-22).

Affirmed.