

No. 1-17-3048

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ADRIANA MAZUTIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 17 L 000008
)	
WARREN LUPEL, LAWRENCE KARLIN,)	
and LUPELWIENINGER, LLP)	Honorable
)	John Griffin,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

ORDER

- ¶ 1 *Held:* We vacate the summary judgment entered in favor of the defendants on the entirety of the plaintiff’s claims; strike the plaintiff’s complaint as failing to comply with the pleading requirement of the Code of Civil Procedure, and remand the matter to the circuit court with directions to grant the plaintiff leave to file an amended complaint and the defendant leave to answer or otherwise plead thereto.
- ¶ 2 The plaintiff, Adriana Mazutis, appeals from the circuit court’s order, granting the defendants’, Warren Lupel, Lawrence Karlin, and Lupel Wieninger, LLP (Wieninger Firm),

motion for summary judgment pursuant to section 2-1005(c) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1005(c) (West 2016)). On appeal, the plaintiff argues that the circuit court erred when it: (1) found that she failed to prove that the defendants' alleged negligence was the proximate cause of her damages; (2) found that her claims were time-barred under section 13-214.3(b) of the Code (735 ILCS 5/13-214.3(b) (West 2016)); and (3) dismissed Counts III, V, and VI of her complaint without "discussion or a legal basis." For the reasons that follow, we vacate the summary judgment entered by the circuit court, strike the plaintiff's complaint, and remand this cause to the circuit court with directions.

¶ 3 The following facts relevant to our disposition of this appeal were adduced from the pleadings, exhibits, depositions, and orders of record. On September 13, 2012, the plaintiff filed a multi-count complaint against the defendants asserting various causes of action, including legal malpractice (case no. 12 L 10405). On November 26, 2013, the circuit court dismissed counts II and IV of the plaintiff's complaint in that action with prejudice. On October 25, 2016, the plaintiff voluntarily dismissed her suit against the defendants. No appeal was taken from the dismissal of counts II and IV.

¶ 4 On January 3, 2017, the plaintiff re-filed her action against the defendants. The plaintiff's "Re-Filed Complaint at Law" filed in the instant case (complaint) was pled in six counts. Count I was titled "Legal Malpractice" and sought recovery against all of the defendants. Count II was titled "Conflicts of Interest and Breach of Duty of Loyalty," which appears to be a restatement of count II in case no. 12 L 10405 that was dismissed with prejudice on November 26, 2013. Count III was titled "Fraud" and sought recovery against all of the defendants. Count IV was titled "Breach of Fiduciary Duty," which appears to be a restatement of count IV in case no. 12 L 10405 that was dismissed with prejudice on November 26, 2013.

Count V was titled “Negligent Supervision and Hiring” and sought recovery against Lupel and the Wieninger Firm. Count VI was titled “Breach of Contract” and sought recovery against all of the defendants.

¶ 5 On April 10, 2017 the defendants filed their answer to the complaint and asserted five affirmative defenses: (1) the plaintiff’s claims relating to the provision of legal services are barred by the two-year statute of limitations set forth in section 13-214.3(b) of the Code; (2) intervening/superseding cause; (3) unclean hands; (4) contributory negligence; (5) and *res judicata*.

¶ 6 On September 17, 2017, the defendants filed their motion for summary judgment. They argued that they were entitled to judgment as a matter of law for the following reasons: (1) the plaintiff is unable to establish a proximate causal relationship between her allegations of negligence and her claimed damages; (2) the plaintiffs’ claims relating to their representation of her in the case of *Mazutis v. PoleKatz Gentlemen’s Club, Inc.*, 2007 CH 18984 (PoleKatz litigation) are time-barred under section 13-214.3(b) of the Code; and (3) the plaintiff has failed to present any evidence to support her allegations of negligence and misconduct in their provision of legal services.

¶ 7 On November 2, 2017, the circuit court granted the defendants’ motion for summary judgment. In its written order, the circuit court found that the plaintiff failed to present any evidence showing that the defendants’ representation of her in the PoleKatz litigation was the proximate cause of any damages suffered by her and that her legal malpractice claims against the defendants are time-barred. As to the defendants’ other arguments asserting that the plaintiff failed to present evidence of their negligence and misconduct, the circuit court found that the arguments cannot be resolved on a motion for summary judgment. Nevertheless, the circuit

court's order provides that it is a final order, disposing of the case "in its entirety." Thereafter, the plaintiff filed her timely notice of appeal.

¶ 8 The deficiencies in the plaintiff's complaint and the circuit court's failure to address all of the claims asserted therein, prevent us from reaching the substantive issues of whether some of the claims asserted by the plaintiff are time-barred or whether the evidence of record establishes the absence of a proximate causal relationship between any alleged legal malpractice on the part of the defendants and damages suffered by the plaintiff.

¶ 9 The plaintiff's complaint is divided into six numbered counts, but each count contains multiple causes of action. Count I alone consists of 109 paragraphs containing allegations supporting over 12 causes of action. Contained within that count are allegations supporting claims against the defendants for: legal malpractice in their handling of the PoleKatz litigation; legal malpractice in their representation of the plaintiff in relation to her investment in an entity known as O'Spaines, LLC; breach of fiduciary duty by communicating privileged information and documents to Patrick Splan, George Michael, Robert Michael, Special Agent Richard Tipton of the FBI, Susan Tamuzian, and R&G Realty; breach of fiduciary duty by representing individuals whose interests were adverse to the plaintiff; conversion; conspiracy; and fraud. In addition, the claims against the two individual defendants are set forth in the same counts, although the claims are not pled in the alternative. Counts II through VI suffer from the same deficiencies and, in addition, incorporate all of the allegations contained in each preceding count.

¶ 10 Section 2-603(b) of the Code (735 ILCS 5/2-603(b) (West 2016) provides, in relevant part, that "[e]ach separate cause of action upon which a separate recovery might be had shall be stated in a separate count *** and each count *** shall be separately pleaded, designated and numbered, and each shall be divided into paragraphs numbered consecutively, each paragraph

containing, as nearly as may be, a separate allegation.” We are again compelled to remind a litigant that the provisions of the Code are not advisory suggestions.

¶ 11 The plaintiff’s failure to file her complaint in compliance with the mandate of section 2-603(b) of the Code and comingling allegations that support multiple claims in a single count make it almost impossible to discern the facts that relate to each claim. The defendants addressed their motion for summary judgment to the plaintiff’s legal malpractice claims, particularly the plaintiff’s claim of legal malpractice in the defendants’ handling of the PoleKatz litigation. The defendants did not address their motion for summary judgment to several of the other claims contained in the plaintiff’s complaint, including, but not limited to, her claims for conversion and fraud in billing.

¶ 12 A fair reading of the circuit court’s November 2, 2017 order reveals that the court considered only the defendant’s right to summary judgment on the plaintiff’s claims of legal malpractice related to the PoleKatz litigation and not whether the defendants were entitled to judgment on the other claims in the plaintiff’s complaint. As a consequence, it was error to grant summary judgment on the entirety of the plaintiff’s complaint. If we view the order as having been entered only on the legal malpractice claims, we would find error in the circuit court’s finding that the summary judgment disposed of the case in its entirety; and, in the absence of a finding pursuant to Illinois Supreme Court rule 304(a) (eff. March 8, 2016), we would question our jurisdiction due to the pendency of the unresolved claims. It is for these reasons that we vacate the summary judgment entered by the circuit court on November 2, 2017. In so doing, we express no opinion on the merits of the defendants’ arguments that the plaintiff’s claims are time-barred or that the plaintiff failed to establish a proximate causal relationship between the defendants’ alleged legal malpractice and any damages she may have suffered. We find only

that the defendants' motion and the circuit court's order did not address all of the claims pled by the plaintiff, and it was, therefore, error to grant summary judgment on the entirety of the complaint.

¶ 13 The plaintiff's complaint is the antithesis of a model pleading. In fact, it is a prolix collection of 157 diffuse and rambling paragraphs separated into six counts, each containing multiple claims supported by comingled allegations. The deficiencies in the complaint make it virtually impossible to determine which allegations support which claim and, in many cases, when the alleged acts were performed. We believe that the best course of action is to require the plaintiff to file a complaint made in compliance with the provision of the Code. Consequently, we exercise our power under Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994) and strike the plaintiff's complaint filed in the instant action. We remand this cause to the circuit court with directions to grant the plaintiff leave to file an amended complaint with the admonition that the complaint must comply with section 2-603 of the Code, requiring "a plain and *concise* statement" of the plaintiff's causes of action with each cause of action stated in a separate count that is separately pled, numbered, and divided into consecutively numbered paragraphs with each paragraph containing a separate allegation. (Emphasis added.) 735 ILCS 5/2-603 (West 2016). Once the plaintiff's complaint is filed, the defendants are to be allowed a reasonable period of time to answer or otherwise plead to the amended complaint.

¶ 14 Judgment vacated, complaint stricken, and cause remanded with directions.