

2020 IL App (1st) 18182570-U

No. 1-18-2570

Order filed September 30, 2020

Modified upon denial of rehearing December 3, 2020

Fourth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JOHN D. DUDLEY,)
) Appeal from the
) Circuit Court of
 Plaintiff-Appellant,) Cook County.
)
 v.) No. 17 L 012406
)
 G6 HOSPITALITY PROPERTY LLC, ACCOR NORTH) Honorable
 AMERICA, INC., and MOTEL 6 OPERATING L.P.,) Moira S. Johnson,
) Judge, Presiding.
 Defendants)
)
 (Motel 6 Operating L.P., Defendant-Appellee).)

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Gordon and Justice Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the circuit court’s section 2-615 (735 ILCS 5/2-615 (West 2016)) dismissal with prejudice of the plaintiff’s first amended complaint where he failed to allege sufficient facts to establish a cause of action for consumer fraud.

¶ 2 Plaintiff John Dudley appeals the partial dismissal of his first amended complaint which alleged, among other things, that defendants G6 Hospitality Property LLC (G6), Accor North America, Inc. (Accor) and Motel 6 Operating, L.P. (Motel 6) (collectively defendants), violated the Consumer Fraud and Deceptive Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West 2018)) when he was locked out of his room at the Motel 6 in Elk Grove Village in 2011 that he had previously occupied for three years. After several pretrial proceedings, defendants G6 and Accor were dismissed from the case and only Motel 6 remained as a defendant. On Motel 6's motion, the circuit court dismissed plaintiff's first amended complaint pursuant to section 2-615 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2018)) because plaintiff failed to allege sufficient facts establishing a cause of action under the Consumer Fraud Act. On this interlocutory appeal, plaintiff contends that: 1) the circuit court erred in finding that plaintiff's original verified complaint that was previously stricken prevented him from alleging a claim for violation of the Consumer Fraud Act, and 2) the circuit court erred in dismissing plaintiff's suit for failure to state a claim. For the following reasons, we affirm.

¶ 3 **BACKGROUND**

¶ 4 The following facts are taken from the pleadings filed and proceedings held in the circuit court.

¶ 5 In April 2008, plaintiff moved into room 218 at the Motel 6 in Elk Grove Village. He paid for the room weekly, but was required to check out and check back in once per week. Plaintiff was allowed to keep the same room number, and also kept his belongings in the room. He lived at the motel for more than three years under the same arrangement.

¶ 6 On October 1, 2011, plaintiff followed his normal practice of prepaying for his room for the week. The prepayment covered seven nights, from Saturday, October 1, through Friday, October 7. On October 5, a manager of the Motel 6 called local police and asked them to remove plaintiff, but they declined. The manager had previously warned plaintiff that the next time he complained, he would be removed. The following day, plaintiff left his room in the morning, and when he returned in the evening, he discovered that his key card did not work, and he had no access to the room. Plaintiff asked the front desk attendant for access to the room, but she refused. Plaintiff then called the police.

¶ 7 When the police arrived, the front desk attendant confirmed that Motel 6 was refusing plaintiff access to the room or his belongings because the manager ordered the lockout. The police spoke with the manager over the phone, who informed them that Motel 6's legal department approved the lockout and that plaintiff's belongings were removed from the room. After the call, police informed plaintiff that they did not have the power to direct Motel 6 to allow him access to the room or to his belongings.

¶ 8 After leaving the Motel 6, plaintiff made repeated requests for access to his belongings. Each time, the front desk attendant indicated that only the manager had access to the storage location where his belongings were stored, and that the manager was not present.

¶ 9 On October 6, 2014, plaintiff filed a three-count verified complaint against defendants (case number 14 L 11073), alleging that they were liable for conversion (Count I), violation of the Illinois Forcible Entry and Detainer Act (Eviction Act) (735 ILCS 5/9-101 *et seq.* (West 2014)) (Count II), and violation of the Consumer Fraud Act (Count III). Plaintiff's signature appeared on the "verification by certification" clause. Defendants filed a section 2-615 (735 ILCS 5/2-615

(West 2014)) motion to dismiss the verified complaint, and that motion was partially granted to strike the verification over plaintiff's objection on October 30, 2014.

¶ 10 On November 24, 2014, defendants moved to dismiss all three counts in plaintiff's complaint for failure to state a claim under section 2-615 (735 ILCS 5/2-615 (West 2014)). On the same date, G6 and Accor sought dismissal from the case, contending that they were not proper parties because they did not own, operate, or manage the subject property on the date of the alleged occurrence. Subsequently, plaintiff submitted interrogatories to the defendants, and G6 and Accor moved to strike the discovery request.

¶ 11 A hearing was held on all three of defendants' motions on October 8, 2015, at which time the circuit court granted defendants' motion to strike plaintiff's interrogatories and to dismiss G6 and Accor from the case with prejudice. However, the circuit court denied Motel 6's motion to dismiss Count I, but granted the motion as to Counts II and III. Counts II and III were dismissed without prejudiced and plaintiff was granted leave to file an amended complaint. Subsequently, plaintiff's attorney presented an oral motion to withdraw from the case, which was granted.

¶ 12 Plaintiff retained new counsel, who in turn filed a motion to reconsider the dismissal of G6 and Accor from the case with prejudice. The motion was denied and on the request of plaintiff, the dismissal of G6 and Accor was entered as a final and appealable order.

¶ 13 On December 16, 2016, plaintiff filed a timely notice of appeal to this court (No. 1-15-3584), challenging the trial court's dismissal of G6 and Accor with prejudice and the denial of his motion to reconsider. Plaintiff's appeal was subsequently dismissed for want of prosecution, and the mandate issued. Plaintiff's request for recall of the mandate was denied.

¶ 14 Simultaneous to the proceedings in this court, the presiding judge of the law division requested a status on the pending case. The request was sent to plaintiff's former attorney instead of his then-current counsel, and resulted in a dismissal for want of prosecution. Plaintiff filed an emergency motion to vacate, which was granted, and the case was re-docketed by the circuit court under a new case number (17 L 012406).

¶ 15 After the case was reinstated, plaintiff sought, and was granted leave to file an amended complaint. On February 6, 2018, plaintiff filed his first amended complaint, alleging four claims against Motel 6: 1) breach of contract (Count I), 2) wrongful eviction (Count II), 3) conversion (Count III), and 4) violation of the Consumer Fraud Act (Count IV). Count IV was based on two theories of liability, unfair conduct, and deceptive practices.

¶ 16 On March 7, 2018, G6 and Accor filed a motion to dismiss the first amended complaint under section 2-619 of the Code (735 ILCS 5/2-619 (West 2018)) and sought sanctions under Rule 137 (Ill. S. Ct. R. 137 (eff. Jan. 1, 2018)), because plaintiff improperly added them as defendants in the refiled case. On May 9, 2018, the circuit court declined to rule on that motion, finding that they had already been dismissed with prejudice from the case.

¶ 17 Additionally, on March 7, 2018, Motel 6 moved to dismiss the first amended complaint under section 2-615 of the Code ((735 ILCS 5/2-615 (West 2018)) for failure to state a claim. Plaintiff filed a written response to Motel 6's motion on April 10, 2018. Motel 6 filed a reply on April 24, 2018, contending that the Consumer Fraud Act claim was insufficient under the unfair practices theory, and that plaintiff's earlier verified complaint prevented him from alleging a claim under the Consumer Fraud Act because of verified admissions made in that complaint.

¶ 18 On May 9, 2018, the circuit court partially granted Motel 6’s motion to dismiss, dismissing Count IV with prejudice and including Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016)) language. In the order, the circuit court stated that “Plaintiff is barred from proceeding with a count under the Consumer Fraud and Deceptive Business Practices Act as Plaintiff cannot allege facts to sustain such a count.” This order was entered after a hearing on Motel 6’s motion, during which the court specifically state what practice of defendant violated the Consumer Fraud Act. Plaintiff was then confronted with his previous verified statement that he was told by the manager that if there was another complaint, he would be removed. The order included 304(a) (Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016)) language. The court then transferred the case from the law division to the municipal division after learning that the damages were less than \$10,000.

¶ 19 On May 23, 2018, plaintiff filed a second amended complaint in the municipal division, to preserve the issues raised in the earlier complaint (which remained pending at the time this appeal was filed).

¶ 20 On June 8, 2018, plaintiff filed a motion to reconsider and vacate judgment, which was transferred back to the law division, and was subsequently amended by counsel on August 23, 2018. On November 26, 2018, the circuit court denied plaintiff’s motion and sent it back to the municipal division.

¶ 21 On December 6, 2018, plaintiff filed his timely notice of appeal.

¶ 22 ANALYSIS

¶ 23 On appeal, plaintiff contends that the circuit court erred by granting Motel 6’s section 2-615 motion to dismiss Count IV of his first amended complaint based on allegations made in his initial verified complaint. He further contends that the circuit court erred by dismissing his first

amended complaint because he properly alleged a claim under the Consumer Fraud Act because Motel 6's practices were unfair or, alternately, deceptive. Because we find the issue of whether plaintiff properly alleged a claim under the Consumer Fraud Act dispositive of this appeal, we will focus our discussion on that issue.

¶ 24 “A motion to dismiss pursuant to section 2-615 of the Code challenges the legal sufficiency of the complaint by alleging defects on its face.” *Alpha School Bus Co. v. Wagner*, 391 Ill. App. 3d. 722, 735 (2009). All well-pleaded facts are accepted as true and reasonable inferences are construed in favor of the plaintiff. *Id.* Additionally, the allegations must be construed in the light most favorable to the nonmovant. *Marshall v. Burger King Corp.*, 222 Ill. 2d. 422, 429 (2006). A circuit court's ruling on a section 2–615 motion is reviewed *de novo*. *Lewis v. Heartland Food Corp.*, 2014 IL App 1st 123303, ¶ 7.

¶ 25 Dismissal is proper only where it is clearly apparent that no set of facts can be proven that entitle the plaintiff to recover. *Iseberg v. Gross*, 227 Ill. 2d. 78, 86 (2007). The only matters to be considered in ruling on 2-615 motion are the allegations of the pleadings themselves. *Urbaitis v. Commonwealth Edison*, 143 Ill. 2d 458, 475 (1991). A court may only consider defects found on the face of the complaint and may not rely on matters outside the complaint. *Cwikla v. Sheir*, 345 Ill. App. 3d 23, 29 (2003). A plaintiff must allege facts – not mere conclusions – to establish his or her claim as a viable cause of action. *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305 (2008). Illinois is a fact-pleading state, and conclusions of law and conclusory factual allegations not supported by specific facts are not deemed admitted. *Alpha School Bus Co.*, 391 Ill. App. 3d at 765. Where “there are not sufficient allegations of fact to state a cause of action, a motion to dismiss will properly be granted, no matter how many conclusions may have been stated and

regardless of whether they inform the defendant in a general way of the nature of the claim against him.” *Adkins v. Sarah Bush Lincoln Health Ctr.*, 129 Ill. 2d 497, 519-20 (1989).

¶ 26 “The Consumer Fraud Act is a regulatory and remedial statute intended to protect consumers against fraud, unfair methods of competition, and other unfair and deceptive business practices.” *Cripe v. Leiter*, 184 Ill. 2d 185, 190-91 (1998). It is to be liberally construed to effectuate its purpose. *Id.* at 191. Section 10a(a) of the Consumer Fraud Act authorizes a private right of action for “[a]ny person who suffers actual damages as a result of a violation of [the] Act.” 815 ILCS 505/10a(a) (West 2018); *Krautsack v. Anderson*, 223 Ill. 2d 541, 553 (2006).

¶ 27 Section 2 of the Consumer Fraud Act describes unfair or deceptive practices as:

“including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or admission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact * * * in the conduct of any trade or commerce * * *.” 815 ILCS 505/2 (West 2018).

¶ 28 Consequently, to sustain a deceptive practice claim under the Consumer Fraud Act, the pleader must allege “(1) a deceptive act or practice by the defendant; (2) the defendant’s intent that the plaintiff rely on the deception; and (3) that the deception occurred in the course of conduct involving trade and commerce.” *Evitts v. Daimler-Chrysler Mot. Corp.*, 359 Ill. App. 3d 504, 508 (2005) (citing *Weatherman v. Gary-Wheaton Bank of Fox Valley, N.A.*, 186 Ill. 2d 472, 492 (1999)).

¶ 29 Our supreme court has held that “the complaint must state with particularity and specificity the deceptive manner of defendant’s acts or practices, and the failure to make such averments

requires the dismissal of the complaint.” *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 419 (2002). To this end, “[a] plaintiff must at least plead with sufficient particularity and specificity, facts establishing the elements of fraud, including [1] what misrepresentations were made, [2] when they were made, [3] who made the misrepresentations, and [4] to whom they were made.” *Perona v. Volkswagen of America, Inc.*, 292 Ill. App. 3d 59, 65 (1997) (citing *Connick v. Suzuki Motor Co.*, 174 Ill. 2d 482, 496-97 (1996)).

¶ 30 Here, plaintiff challenges the circuit court's conclusion that he failed to state a private cause of action under the Consumer Fraud Act. In his first amended complaint, plaintiff alleged Motel 6 was deceptive by representing to plaintiff that he was entitled to stay at the motel through the entire week. However, plaintiff offers only his assumptions as facts. According to plaintiff, Motel 6's misrepresentation was its act of accepting weekly rent in advance. Plaintiff assumed from this acceptance that Motel 6 promised not to lock plaintiff out of the room under any circumstance for that week. Essentially, plaintiff assured himself that a certain act would not happen and now claims Motel 6 deceived him after that act occurred.

¶ 31 Plaintiff's allegations are clearly insufficient to state a deceptive practice claim. First, there were no misrepresentations by Motel 6. Plaintiff did not provide any written or verbal statement by any Motel 6 employee at any point during his stay indicating that a lockout was not a possibility. Additionally, accepting weekly rent only became deceptive to plaintiff because he assumed a promise that was never made. Under plaintiff's theory, any customer's unprompted assumption could become the basis for a deceptive practice claim. This would be an overly broad interpretation of the Consumer Fraud Act, and this court has determined that the Consumer Fraud Act is not intended to be used as a vehicle for transforming nondeceptive, nonfraudulent conduct into

actionable conduct. See *Kellerman v. Mar–Rue Realty & Builders Inc.*, 132 Ill. App. 3d 300, 306 (1985).

¶ 32 Assuming *arguendo* that Motel 6’s acceptance of plaintiff’s payment was an inherent promise to not perform a lockout, it would nonetheless be insufficient to prove as a deceptive practice. A deceptive practice involves more than the mere fact that a defendant promised something and then failed to do it, since that type of “misrepresentation” occurs every time a defendant breaches a contract. *Zankle v. Queen Anne Landscaping*, 311 Ill. App. 3d. 308, 312 (2000). “Were our courts to accept plaintiff’s assertion that promises that go unfulfilled are actionable under the Consumer Fraud Act, consumer plaintiffs could convert any suit for breach of contract into a consumer fraud action.” *Id.* This would also be an overly broad interpretation of the Consumer Fraud Act.

¶ 33 Next, there is no allegation that Motel 6 intended for plaintiff to rely on its alleged deceptive act. Without a misrepresentation, plaintiff cannot prove Motel 6’s intent with any level of specificity. This court would have to assume that Motel 6 knew plaintiff would assume its acceptance of his weekly rent was a promise not to perform a lockout and intended for plaintiff to rely on that assumption. In his first amended complaint, plaintiff alleged “[t]he Motel intended the necessary consequences of accepting weekly payments of rent in advance.” However, this allegation is merely a conclusory allegation unsupported by specific facts. See *Alpha School Bus Co.*, 391 Ill. App. 3d at 765. Moreover, being bound by plaintiff’s unprompted assumption is not a necessary consequence of accepting payment and is insufficient to show Motel 6’s intent. Additionally, as noted by the circuit court, plaintiff stated in his initial, verified complaint that he was warned by the manager that if there was another complaint, he would be removed. Therefore,

we find that plaintiff failed to state with sufficient particularity and specificity the deceptive manner of Motel 6's acts. Without such specificity and particularity, the complaint fails to state a violation of the Consumer Fraud Act under the deceptive practice theory of liability.

¶ 34 Alternatively, the Consumer Fraud Act allows a plaintiff to recover against a defendant for unfair conduct. *Robinson*, 201 Ill. 2d at 417. To properly plead unfair conduct, plaintiff must set forth facts showing that (1) the practice offends public policy; (2) is immoral, unethical, oppressive, or unscrupulous; or (3) causes consumers substantial injury. *Id.* at 417-18 (citing *F.T.C. v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244 (1972)). A practice can be unfair without meeting all three criteria of unfairness; rather, a practice may be unfair because of the degree to which it meets one of the criteria. *Demitro v. General Motors Acceptance Corp.*, 388 Ill. App. 3d 15, 20 (2009). Illinois courts determine whether conduct is unfair under the Consumer Fraud Act on a case-by-case basis. *Id.*

¶ 35 Whether the practice of a motel locking a guest out of the room is unfair under the Consumer Fraud Act is a matter of first impression. However, plaintiff's allegations are insufficient to prove unfairness. In his first amended complaint, plaintiff alleged Motel 6's lockout practice offends public policy because, as a place of a public accommodation, Motel 6 should not deny its services to the public without justification. While Motel 6 is a place of public accommodation, reserving the right to remove an unwanted guest generally does not offend public policy. Again, we note that plaintiff was warned by the manager that if there was another complaint, that he would be removed, as stated in plaintiff's initial verified complaint. Plaintiff does not allege any form of discrimination as the basis for his lockout and removal. Motel 6 simply no longer wanted plaintiff in its establishment. That alone is not a violation of public policy.

¶ 36 Plaintiff then alleges that the lockout was oppressive because Motel 6 removed him and kept his belongings “without justification, process, notice, or any other option to challenge the decision, correct any potential issue, or, at least, access his Possessions.” Removing plaintiff from the room and denying him access to his belongings may have been rude and inconvenient, but it was not so oppressive as to constitute unfairness.

¶ 37 Finally, plaintiff alleges that the lockout caused substantial injury because plaintiff “suffered actual monetary damages, and he was forced to endure significant hardship, stress, and uncertainty by unexpectedly being forced to find shelter without notice or access to his belongings.” Plaintiff was clearly injured by Motel 6’s conduct. He was left without his belongings and forced to find new housing on short notice. Plaintiff had other alternatives in the marketplace for motels but alleged that he had to pay a higher rate. He quite possibly suffered monetary damages and endured a hardship. However, his injury cannot fairly be described as substantial for purposes of the Consumer Fraud Act.

¶ 38 After reviewing all three factors required to sustain a claim for unfairness under the Consumer Fraud Act, we find that plaintiff met two of the criteria: oppressiveness and injury. However, plaintiff’s oppressiveness and injury do not rise to the level of substantial and he thereby failed to properly plead unfair conduct under the Consumer Fraud Act.

¶ 39 We conclude that plaintiff failed to allege sufficient facts establishing a cause of action under the Consumer Fraud Act under either theory of liability. Therefore, the circuit court’s dismissal of his consumer fraud claim was proper.

¶ 40 Plaintiff also argues that the circuit court improperly based its decision on his original complaint and dismissed the consumer fraud claim because of judicial admissions contained

therein. It is unclear to what judicial admissions plaintiff is referring. In its May 9, 2018, order, the circuit court stated that “Plaintiff is barred from proceeding with a count under the Consumer Fraud and Deceptive Business Practices Act as Plaintiff cannot allege facts to sustain such a count.” The court’s order does not mention any judicial admissions or provide any explanation for its dismissal. Nonetheless, this court reviews the determination of the circuit court, not its reasoning, and may affirm on any basis in the record whether the circuit court relied on that basis or its reasoning was correct. *Antonacci v. Seyfarth Shaw, LLP*, 2015 IL App (1st) 142372, ¶ 21. We find that plaintiff failed to state a claim for violation under the Consumer Fraud Act in his first amended complaint and affirm on that basis. We therefore decline to address plaintiff’s other contention.

¶ 41

CONCLUSION

¶ 42 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

Affirmed.