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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

M. TOMAS CARDENAS,)	Appeal from the Circuit Court of
)	Cook County, Law Division.
Plaintiff-Appellant,)	
)	
v.)	No. 16 L 63065
)	
RAY GROZDIC and REAL ESTATE)	
ADVISORS, INC.,)	Honorable Martin Agran,
)	Judge Presiding.
Defendants-Appellees.)	

PRESIDING JUSTICE GRIFFIN delivered the judgment of the court.
Justices Mikva and Pierce concurred in the judgment.

ORDER

Held: We affirm the trial court's dismissal of count I, but do so without prejudice and reverse its dismissal of count II and imposition of Rule 137 (eff. Jan. 1, 2018) sanctions.

¶ 1 Plaintiff M. Tomas Cardenas and defendants Ray Grozdic and Real Estate Advisors, Inc. agreed to settle a case in federal court in the Northern District of Illinois on November 12, 2014. The material terms of the settlement were recited by the district court on the record and the parties orally agreed to them. As part of their agreement, the parties agreed to execute a written

settlement agreement. Defendants first of four installment payments was due within ten days of “full execution.” No written settlement agreement was ever executed.

¶ 2 Plaintiff’s case was dismissed with prejudice in the district court and the settlement languished for more than a year until plaintiff filed a complaint for breach of contract against defendants in the circuit court of Cook County. Plaintiff’s complaint, as amended, was dismissed with prejudice and the trial court sanctioned him pursuant to Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018), awarding attorney fees and costs to defendants.

¶ 3 Plaintiff appeals, and challenges the trial court’s decision to dismiss his lawsuit and sanction him. We affirm in part, reverse in part and remand this case to the trial court.

¶ 4 **BACKGROUND**

¶ 5 On January 13, 2012, plaintiff filed a complaint against defendants in federal court in the Northern District of Illinois claiming they failed to pay him wages for handyman work and other repair and renovation services he performed on their behalf as an employee. Plaintiff sought relief pursuant to the Fair Labor Standards Act of 1938 (29 U.S.C. 201 *et seq.* (2012)) and the Illinois Wage Payment and Collection Act (820 ILCS 115/1 *et seq.* (West 2012)). The matter proceeded to a bench trial and on November 12, 2014, the parties agreed to settle the case.

¶ 6 The terms of the settlement were read aloud by the district court judge on the record and the parties orally agreed to them. Defendants agreed to pay plaintiff \$50,000 in four installments: one lump sum payment of \$20,000 “to be paid within ten days of full execution of this settlement agreement” and three payments of \$10,000 “to be paid annually within the one-year period following the first lump sum payment.” Defendants agreed to pay plaintiff by check and had a 60-day period to cure non-payment. If defendants failed to pay within that time-period, the remaining balance would double. Defendants waived any right to collect a prior sanction award

ordered by the district court, and the parties were bound to keep the settlement agreement confidential and not disparage each other.

¶ 7 The district court made clear that these terms resolved “all claims in 12 C 292, including any claims set forth in the pending motion to amend the complaint” and concluded by asking the parties on the record, “is that your agreement.” Counsel for each party answered in the affirmative.

¶ 8 The district court told the parties to “work out the details” of a written settlement agreement within ten days (“on or before 11/19/2014”) and entered a written order dismissing the case without prejudice. The order provided that the dismissal would become final (with prejudice) on December 31, 2014. The district court noted, “[t]hat should give you plenty of time to both hammer out the agreement and get your first payment done.”

¶ 9 On November 19, 2014, defendant sent plaintiff a proposed written settlement agreement. The agreement provided that defendants would “issue IRS forms 1099” and pay plaintiff as an independent contractor, not an employee. The proposed agreement also required plaintiff to “indemnify Defendants from any liability against any of them by any taxing authority” and return to defendants certain items (“keys, identification cards, records and documents”) allegedly in plaintiff’s possession. Plaintiff refused to sign the proposed settlement agreement.

¶ 10 The ten day period expired and plaintiff’s case was dismissed with prejudice on December 31, 2014. No written settlement agreement was ever executed. Plaintiff failed to revive the action in the district court and for more than a year, the settlement languished in limbo as the parties quibbled over tax and other extraneous issues. Eventually, plaintiff sought relief in state court.

¶ 11 On October 11, 2016, plaintiff sued defendants in the circuit court of Cook County for breach of contract and sought damages resulting from defendants' alleged failure to pay under the settlement agreement. Defendants filed a combined motion to dismiss the complaint pursuant to section 2-619.1 of the Illinois Code of Civil Procedure (735 ILCS 5/2-619.1) (West 2016)), which allows a party to file a single motion challenging a complaint pursuant to sections 2-615 (*id.*, § 2-615) and 2-619(a)(9) (*id.*, § 2-619(a)(9)).

¶ 12 The trial court held a hearing on the motion and in a written order entered on April 24, 2017, dismissed the complaint without prejudice pursuant to section 2-615. The trial court found that defendants' payment obligation had not arisen because the parties never executed a written settlement agreement. The trial court reasoned that, without an obligation to pay, there were no damages.

¶ 13 Plaintiff filed an amended complaint on May 9, 2017 and was later granted leave to file a second amended complaint. In the meantime, defendants filed a motion for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018) (Rule 137), which allows a court to sanction an attorney or his or her client for filing of a false or frivolous lawsuit.

¶ 14 On August 31, 2017, plaintiff filed a second amended complaint containing two counts for specific performance and breach of the implied covenant of good faith and fair dealing. In count I, plaintiff sought the equitable enforcement of a proposed written agreement he attached to his complaint as Exhibit G or any other agreement ordered by the trial court. In count II, he sought damages resulting from defendants' alleged failure to execute a written settlement agreement.

¶ 15 Defendants filed another section 2-619.1 motion to dismiss and in a written order entered on January 8, 2018, the trial court dismissed the complaint with prejudice, finding that plaintiff

was collaterally estopped from raising his claims in state court. Plaintiff filed a motion to reconsider and the trial court reversed course. It found that plaintiff was not collaterally estopped from seeking relief in state court, but his claims were nonetheless barred as unripe. The trial court also found that plaintiff filed the lawsuit with unclean hands.

¶ 16 In a written order entered the same day, the trial court granted defendants' motion for Rule 137 sanctions, finding that plaintiff "should have realized that the lawsuit was unfounded and should have voluntarily dismissed the case" on April 24, 2017. Defendants were awarded attorney fees and costs "from April 25, 2017 forward," which totaled \$16,433.25 and \$532.01, respectively.

¶ 17 Plaintiff appeals and argues that the trial court erred when it dismissed his lawsuit and sanctioned him.

¶ 18 ANALYSIS

¶ 19 We review the trial court's dismissal of plaintiff's second amended complaint *de novo*. *Johnson v. Filler*, 2018 IL App (2d) 170923, ¶ 15. The trial court's imposition of Rule 137 sanctions is reviewed for an abuse of discretion. *Peterson v. Randhava*, 313 Ill. App. 3d 1, 9 (2000).

¶ 20 A section 2-619.1 motion to dismiss permits a party to combine, as defendants did here, section 2-615 and section 2-619 challenges in a single motion. See 735 ILCS 5/2-619.1 (West 2016). A 2-619.1 motion must be in parts and each part must (1) be limited to and specify the section under which it is made and (2) clearly show the points or grounds relied upon. *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 20.

¶ 21 A section 2-615 motion to dismiss attacks the sufficiency of a complaint and raises the question of whether a complaint states a cause of action upon which relief can be granted. 735

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ILCS 5/2-615 (West 2016); *Fox v. Seiden*, 382 Ill.App.3d 288, 294 (2008). All well-pleaded facts must be taken as true, and any inferences should be drawn in favor of the nonmovant. *Jones v. Brown-Marino*, 2017 IL App (1st) 152852, ¶ 19. A section 2-615 motion to dismiss should not be granted unless no set of facts could be proved that would entitle the plaintiff to relief. *Id.*

¶ 22 A section 2-619(a)(9) motion to dismiss challenges a claim on the basis that it “is barred by other affirmative matter avoiding the legal effect of or defeating the claim.” 735 ILCS 5/2–619(a)(9) (West 2017). The moving party admits the legal sufficiency of the complaint, but asserts an affirmative defense or other matter to defeat the plaintiff’s claim. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). In reviewing a section 2-619(a)(9) dismissal, we construe all pleadings and supporting documents in the light most favorable to the nonmoving party. *Burns v. City of Chicago*, 2016 IL App (1st) 151925, ¶ 14.

¶ 23 Count I

¶ 24 In count I, plaintiff sought an order requiring defendants to specifically perform the settlement agreement. In specific, he asked the trial court to enter an order requiring defendants to perform: (1) a proposed agreement he attached to his second amended complaint as Exhibit G; or (2) “any other settlement agreement ordered by the court.” The trial court dismissed the claim as unripe, finding that defendants’ payment obligation did not trigger until the settlement agreement was executed in writing, which never happened. Hence, the trial court reasoned, there was no breach and plaintiff suffered no damages.

¶ 25 We reject the trial court’s reasoning as unsound, but nonetheless affirm its decision to dismiss plaintiff’s claim for specific performance. *Johnson v. Filler*, 2018 IL App (2d) 170923, ¶ 15 (we may affirm the decision to dismiss plaintiff’s complaint on any basis in the record, regardless of whether or not the trial court relied on that basis or its reasoning was correct).

¶ 26 To state a cause of action for specific performance, a plaintiff must allege the following elements: (1) the existence of a valid, binding, and enforceable contract; (2) compliance by the plaintiff with the terms of the contract, or proof that the plaintiff is ready, willing, and able to perform the contract; and (3) the failure or refusal of the defendants to perform his part of the contract. *Hoxha v. LaSalle National Bank*, 365 Ill. App. 3d 80, 85 (2006).

¶ 27 To be clear, plaintiff does not seek the specific performance of the oral agreement reached between the parties in the district court on November 12, 2014, nor does he seek an order mandating: (1) the reduction of the material terms of the settlement agreement to writing; and (2) the parties' execution of that writing. Instead, he seeks the specific performance of either a proposed agreement that contains several additional terms upon which there was no meeting of the minds or another agreement that he suggests should be written by the court.

¶ 28 Exhibit G is not a valid, binding and enforceable contract. It contains terms the parties never agreed to. Hence, it cannot be specifically performed. The entry of an order mandating defendants to specifically perform Exhibit G would impose contractual obligations upon defendants they never agreed to fulfill. It is also not appropriate to ask the court to draft the agreement for the parties. *Butler v. Kent*, 275 Ill. App. 3d 217, 227 (1995) (“the province of a court in a specific performance action is to enforce the contract which the parties have made, not to make a contract for them and then enforce it”). Accordingly, we affirm the trial court's dismissal of count I, but do so without prejudice.

¶ 29 Count II

¶ 30 After looking past the title of count II and reaching its substance (See *Tzakis v. Berger Excavating Contractors, Inc.*, 2019 IL App (1st) 170859, ¶ 59), we find that it adequately pleads a cause of action for breach of the parties' oral settlement agreement and is sufficient to survive

the arguments advanced by defendants under sections 2-615 and 2-619(a)(9). The trial court's decision to dismiss count II was not warranted and it must be reversed.

¶ 31 A settlement agreement is in the nature of a contract and is governed by principles of contract law. *K4 Enterprises, Inc. v. Grater, Inc.*, 394 Ill. App. 3d 307, 313 (2009). Oral agreements are binding so long as there is an offer, an acceptance, and a meeting of the minds as to the terms of the agreement. *Id.* When an agreement is clear, certain, and definite in its material provisions, it is by its very nature of being presented to the court, enforceable. *In re Marriage of Haller*, 2012 IL App (5th) 110478, ¶ 30.

¶ 32 In order to state a cause of action for breach of contract, a plaintiff must allege: (1) the existence of a valid and enforceable contract; (2) plaintiff's performance of all required contractual conditions; (3) defendant's breach of the terms of the contract; and (4) damages resulting from the breach. *Lindy Lu LLC v. Illinois Central Railroad Co.*, 2013 IL App (3d) 120337, ¶ 21.

¶ 33 "A contract may be enforced even though some contract terms may be missing or left to be agreed upon." *Academy Chicago Publishers v. Cheever*, 144 Ill. 2d 24, 30 (1991). Even an agreement to agree may be enforceable and "exists when the parties enter into what appears to be an enforceable contract but leave one or more terms to be fixed by later agreement." (Internal quotation marks omitted.) *Pearson Bros. Co. v. Pearson*, 113 B.R. 469, 475 (C.D. Ill. 1990).

¶ 34 As pleaded in count II, the parties orally agreed to settle the case in the district court on November 12, 2014. The material terms were read into the record by the district court, they were clear, certain and definite, and the parties agreed to them. *In re Marriage of Haller*, 2012 IL App (5th) 110478, ¶ 30. The oral settlement then, by its very nature of being presented to the court, was enforceable. *Id.*

¶ 35 As part of their oral agreement, the parties agreed to: (1) reduce the material terms of the settlement to writing; (2) execute the writing; and (3) pay plaintiff the first installment of \$20,000 with ten days thereafter (“defendants will pay the plaintiff \$50,000, to be paid as follows: One lump sum of \$20,000, to be paid within ten days of full execution of this settlement agreement”). Despite the district court’s reference to working out the “details,” no material terms of the settlement were left for future negotiation and there exists no impediment to enforceability. *Cheever*, 144 Ill. 2d at 30; *Pearson*, 113 B.R. at 475.

¶ 36 Plaintiff’s claim in count II, that defendants breached the oral agreement by refusing to execute a written agreement unless objectionable, nonmaterial terms were accepted, was sufficiently stated a cause of action for breach of the parties’ oral settlement agreement. The trial court erred when it dismissed count II of plaintiff’s second amended complaint with prejudice and its decision must be reversed.

¶ 37 The position advanced by defendants that a mere disagreement with plaintiff over nonmaterial terms to be included in the writing could serve to delay their payment obligation until the end of time is roundly rejected. The parties did not agree to engage in an unending negotiation, nonmaterial terms will not rule the day and it is high time this litigation be put to rest.

¶ 38 We must note, that the parties could “fully execute” the settlement agreement and trigger defendants’ obligation to make their first payment, simply by signing the transcript of the terms that were read aloud by the district court and agreed to by the parties on November 12, 2014.

¶ 39 **Rule 137 Sanctions**

¶ 40 We also reverse the trial court’s decision to sanction plaintiff pursuant to Rule 137. The trial court’s ruling that plaintiff violated Rule 137 was predicated upon the determination that on

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April 24, 2017, when plaintiff's complaint was dismissed without prejudice, the frivolity of plaintiff's lawsuit was objectively evident and he should have voluntarily dismissed it. *American Service Insurance v. Miller*, 2014 IL App (5th) 130582, ¶ 13 (implicit in Rule 137 is the requirement that an attorney dismiss a lawsuit once it becomes evident that the lawsuit is unfounded). Given our holding here, plaintiff's lawsuit was not frivolous and the trial court's imposition of sanctions had no basis. Accordingly, the trial court's decision to sanction plaintiff by awarding defendants \$16,433.25 in attorney fees and \$532.01 in costs must be reversed.

¶ 41

CONCLUSION

¶ 42 Accordingly, we affirm the dismissal of count I of plaintiff's second amended complaint without prejudice, reverse the dismissal of count II, reverse the trial court's imposition of Rule 137 sanctions and remand the case to the trial court for further proceedings consistent with this order.

¶ 43 Affirmed in part; reversed in part; cause remanded.