

2019 IL App (2d) 180729-U  
No. 2-18-0729  
Order filed August 13, 2019

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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WILLIAM PAVLOVIC,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 16-CH-972
	)	
M. MILES SUKOVIC and MAJA	)	
SUKOVIC,	)	
	)	
Defendants	)	Honorable
	)	Margaret A. Marcouiller,
(M. Miles Sukovic, Defendant-Appellee.)	)	Judge, Presiding.

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JUSTICE BURKE delivered the judgment of the court.  
Justices Zenoff and Jorgensen concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The trial court erred in dismissing plaintiff's breach-of-contract claim: the statute of frauds did not apply, as the contract was for a loan to buy real estate, not for a sale of real estate, and plaintiff sufficiently alleged that the loan was not actually a gift; (2) we could not affirm the trial court's dismissal of plaintiff's complaint on the ground that it was untimely under the five-year statute of limitations for oral contracts, as plaintiff alleged partial payments that sufficiently tolled the limitations period.

¶ 2 Plaintiff, William Pavlovic, appeals from the dismissal of his two-count second amended complaint seeking recovery from defendants, M. Miles Sukovic (Miles) and Maja Sukovic

(Maja), for breach of contract and seeking the imposition of a constructive trust.<sup>1</sup> We reverse and remand.

¶ 3

### I. BACKGROUND

¶ 4 Plaintiff's second amended complaint alleged, in pertinent part, as follows:

“1. Plaintiff's daughter is defendant Maja Sukovic and she is married to defendant M. Miles Sukovic,

2. On or about October, 2008, plaintiff paid defendants about \$400,000.00 (actually 395,641.50) to buy a house and they promised to repay plaintiff, in a short time. Promises were oral.

3. Plaintiff borrowed the money, at 6%.

4. Defendants knew plaintiff borrowed the funds.

5. Defendants bought a house and occupied it as a marital residence.

6. Defendants paid plaintiff some of the money by making installment payments to the lending bank and by making payments to plaintiff in an equivalent amount, i.e., \$2500.00 per month to March 2016, and reduced the precise amount due.”

In count I, plaintiff sought an award of damages. In count II, he sought the imposition of a constructive trust on the residence.

¶ 5 Miles filed a combined motion to dismiss under sections 2-615, 2-619, and 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619, 2-619.1 (West 2018)). The portion of the motion brought under section 2-619 sought dismissal on the basis that the Frauds Act (740 ILCS 80/0.1 *et seq.* (West 2018)) bars actions on oral contracts relating to interests in real estate.

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<sup>1</sup> Maja's liability to plaintiff, if any, has been discharged in a bankruptcy proceeding and she is not a party to this appeal.

The portion of the motion brought under section 2-615 sought dismissal on the basis that plaintiff alleged nothing to overcome the presumption that the transfer of money to his daughter was a gift. The trial court granted the motion for both reasons. This appeal followed.

¶ 6

## II. ANALYSIS

¶ 7 A section 2-615 motion challenges the legal sufficiency of the complaint based on defects apparent on its face. *Signapori v. Jagaria*, 2017 IL App (1st) 160937, ¶ 16. When a court reviews a dismissal under section 2-615, it accepts as true all well-pleaded facts in the complaint and all reasonable inferences that may be drawn from those facts. *Id.* Section 2-619 provides, in pertinent part:

“(a) Defendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following grounds. If the grounds do not appear on the face of the pleading attacked the motion shall be supported by affidavit:

\* \* \*

(5) That the action was not commenced within the time limited by law.

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(7) That the claim asserted is unenforceable under the provisions of the Statute of Frauds.” 735 ILCS 5/2-619(a)(5), (a)(7) (West 2018).

As with a section 2-615 motion, “[i]n considering whether a complaint was properly dismissed under section 2-619, we take as true all well-pleaded factual allegations of the complaint.” *Moncelle v. McDade*, 2017 IL App (3d) 160579, ¶ 17.

¶ 8 We first consider whether the Frauds Act bars plaintiff’s breach-of-contract action. Section 1 of the Frauds Act provides, in pertinent part:

“That no action shall be brought, \*\*\* whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person \*\*\* unless the promise or agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized” 740 ILCS 80/1 (West 2018).

Plaintiff contends that defendants’ agreement with him was not a promise to answer for the debt of another. Miles responds that, because plaintiff alleged that defendants made installment payments on a bank loan that plaintiff had taken out, the contract was subject to section 1. We agree with plaintiff. There is no allegation that defendants ever promised to answer for plaintiff’s debt to his lender. Rather, the payments to plaintiff’s lender simply functioned as partial repayment of defendants’ debt to plaintiff. In any event, whatever those payments represent is irrelevant. The applicability of section 1 depends on the nature of this action. Plaintiff did not seek to have defendants answer for *his* debt to his *lender*. Rather he sought to have defendants answer for *their* debt to *him*.

¶ 9 Section 2 of the Frauds Act (740 ILCS 80/2 (West 2018)) provides, in pertinent part:

“No action shall be brought to charge any person upon any contract for the sale of lands, tenements or hereditaments or any interest in or concerning them, for a longer term than one year, unless such contract or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith[.]”

Plaintiff contends that the contract at issue here was not for the sale of real property. Miles responds that “the basic theory of Plaintiff’s complaint is an oral agreement to repay a debt, which the Plaintiff claims was *part and parcel of the purchase of property*.” (Emphasis added.)

According to Miles, the trial court “correctly found that the Statute of Frauds bars claims of oral agreements *relating to interest in real estate*.” (Emphasis added.) Miles contends that “[plaintiff’s] second amended complaint and all prior iterations are replete with allegations of fact that he loaned the defendants money to purchase real estate.” Miles’s argument is unpersuasive.

¶ 10 By its terms, section 2 applies to contracts for the *sale* of real property, not to contracts “relating to” or “part and parcel of” the sale of real property. In effect, Miles asks us to add these words to section 2. However, courts “may not inject provisions that are not found in a statute,” but must rather give effect to the plain language of the statute. *Williams v. Bruscato*, 2019 IL App (2d) 170779, ¶ 39; see also *Wolf v. Toolie*, 2014 IL App (1st) 132243, ¶ 24. Plaintiff’s agreement with defendants was merely to advance them the funds with which to purchase real property in exchange for their promise to repay. This was simply a loan. Plaintiff did not agree to sell property to defendants. Defendants did not agree to buy property from plaintiff. The contemplated use of the loan proceeds did not transform the loan agreement into a contract for the sale of real property.

¶ 11 We next consider whether the second amended complaint was properly dismissed on the basis that the transfer of funds to defendants was presumed to be a gift. It is well established that “a transfer from parent to child is presumed to be a gift [citation], and the gift presumption may be overcome only by clear and convincing evidence to the contrary.” In re *Marriage of Marcello*, 247 Ill. App. 3d 304, 314-15 (1993). Because this action was disposed of at the pleading stage, it never reached the point where plaintiff was required to meet his evidentiary burden. *Roark v. Macoupin Creek Drainage District*, 316 Ill. App. 3d 835, 848-49 (2000) (“A plaintiff is not required to plead evidence in his complaint but is only required to allege ultimate

facts.”). Here, plaintiff specifically alleged that defendants orally promised to repay the money he advanced. Furthermore, plaintiff alleged that defendants partially repaid plaintiff either directly or by repaying the debt that plaintiff owed to a third party. That allegation creates a powerful inference that the transfer of funds to defendants was not a gift. It remains to be seen whether plaintiff will ultimately be able to meet his burden of rebutting the presumption of a gift with clear and convincing evidence. However, the allegations of his second amended complaint were sufficient to withstand Miles’s motion to dismiss.

¶ 12 Miles also argues that plaintiff’s action was barred by the five-year statute of limitations for oral contracts. We disagree. “[P]art payment of a debt tolls the statute of limitations such that it commences to run from the date of last payment.” *Saint Francis Medical Center v. Vernon*, 217 Ill. App. 3d 287, 289 (1991). As noted, plaintiff alleged that “[d]efendants paid plaintiff some of the money by making installment payments to the lending bank and by making payments to plaintiff in an equivalent amount, i.e., \$2,500.00 per month to March, 2016, and reduced the precise amount due.” Under the circumstances, there is no effective difference between payment to plaintiff and payment to plaintiff’s creditor. *Tummelson v. White*, 2015 IL App (4th) 150151, ¶ 37. Assuming the allegations of the second amended complaint are true (as we must when reviewing a ruling on a section 2-619 motion), the statute of limitations was tolled until March 2016. Obviously, plaintiff commenced this action within five years thereafter.

¶ 13 We therefore conclude that the trial court erred in granting Miles’s motion to dismiss.

¶ 14 III. CONCLUSION

¶ 15 For the foregoing reasons, the judgment of the circuit court of Lake County is reversed and the case is remanded for further proceedings.

¶ 16 Reversed and remanded.