Illinois Official Reports

Appellate Court

***Cooper v. Dr. Martin Luther King Jr. Boys & Girls Club of Chicago*, 2021 IL App (1st) 192618**

Appellate Court Caption	CLIFTON COOPER, Plaintiff-Appellant, v. DR. MARTIN LUTHER KING JR. BOYS AND GIRLS CLUB OF CHICAGO, an Illinois Not-for-Profit Corporation, and RIDGEWORTH ROOFING COMPANY, INC., Defendants (Dr. Martin Luther King Jr. Boys and Girls Club of Chicago, Defendant-Appellee).
District & No.	First District, Third Division No. 1-19-2618
Filed	September 30, 2021
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 18-CH-9485; the Hon. Caroline K. Moreland, Judge, presiding.
Judgment	Affirmed in part and reversed in part; cause remanded.
Counsel on Appeal	Calvita J. Frederick, of Chicago, for appellant. Daniel R. Campbell and Timothy J. Farina, of McDermott Will & Emery LLP, of Chicago, for appellee.
Panel	JUSTICE ELLIS delivered the judgment of the court, with opinion. Justices McBride and Burke concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, Clifton Cooper, sued his neighbor and the neighbor's roofing contractor over damage to Cooper's roof. In short, the contractor was attempting to place a new roof on top of the neighbor's existing roof and secure it to Cooper's roof, without Cooper's consent or even knowledge. The contractor drilled holes in and otherwise damaged Cooper's roof in the process. The circuit court dismissed the claims against the neighbor under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2018)) for failure to state a claim. Cooper claims he sufficiently pleaded vicarious and in-concert liability against the neighbor, based on the roofing contractor's actions. We agree. We reverse the circuit court's judgment on those claims and remand for further proceedings.

¶ 2 BACKGROUND

¶ 3 As we are at the pleading stage, we draw our facts from the well-pleaded allegations of the amended complaint, which we accept as true. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). The complaint alleges that Cooper owns a 3-story masonry brick home in Chicago that carries a "City of Chicago Historical Designation," which "limits what can be done to the exterior of the building." The building next to him is owned by defendant, Dr. Martin Luther King Jr. Boys and Girls Club of Chicago (the Club). The two buildings are very close to one another, separated by "at least 6-8 inches."

¶ 4 At some point in March 2018, the Club hired defendant, Ridgeworth Roofing Company, Inc. (Ridgeworth), to repair the roof of its building. The building permit authorized a "total roof tear off and installation of a new roof." On March 19, Cooper was inside his home when he "heard the sounds of drilling coming from the roof and plaster falling between the buildings." He went outside and saw that a bracket had been drilled into the side of his house. Cooper was unable to get the attention of the workers on the roof, so he called the Club's corporate office.

¶ 5 A few days later, Cooper spoke with Thomas Krueger, an employee of the Club who "was in charge of the roofing project." Krueger told Cooper that he was recovering from hip replacement surgery but "would have someone from [Ridgeworth] come to Plaintiff's house." The same day, Cooper spoke with Ridgeworth's foreman. When asked why the roofers had attached the bracket to the side of Cooper's roof, the "foreman indicated that he thought he was doing [Cooper] a favor by attaching [the Club's roof] to [Cooper's] roof to keep water from coming into [Cooper's] basement." Cooper claims the foreman "then said, 'I grant you we should have asked you first before attaching it.' "

¶ 6 Cooper asked to have the attached roofing materials removed from his building. To try sating Cooper, the foreman offered to show him the work they had done. They went on the roof and "observed that Ridgeworth had wrapped the rubber roofing around the back portion of his house and they had wrapped white material on his house which had been tuck pointed in red." After viewing the work, Cooper still wanted the materials removed.

¶ 7 At the beginning of April, Krueger called Cooper to discuss the matter. Krueger "attempted to apologize on behalf of the Club and the [*sic*] Ridgeworth and to reach an agreement between Ridgeworth and [Cooper], which [Cooper] refused to do."

¶ 8 Cooper had his roofing company look at Ridgeworth's work. Upon inspection, Cooper's roofers said that the Club "has a problem, in that they cannot go up and over the existing gravel roof with a rubber roof, but must instead perform a total tear off of the existing roof." They also informed him that "for Ridgeworth to take that off your roof … will require [Cooper] to tuck point again, remove the bricks because they have holes in them, but the stone portion (decorative portion) cannot be replaced so [Cooper] will have to live with holes being drilled into his building which holes are visible from the ground."

¶ 9 Due to the damage to his home, Cooper filed a complaint with the Chicago Building Department. The Chicago Building Department determined that Ridgeworth was required to remove the work done on Cooper's building and refrain from further work without his consent.

¶ 10 Cooper filed this suit to recover for the damage caused to his home, asserting various tort theories against both the Club and Ridgeworth. The only claims relevant here are those against the Club for negligence (based on its vicarious liability for Ridgeworth's tortious acts) and "in-concert" liability (for the Club acting "in concert" with Ridgeworth in its tortious acts).

¶ 11 The Club moved to dismiss, arguing that Cooper's allegations showed that Ridgeworth was an independent contractor for whom the Club could not be vicariously liable, and there were no facts pleaded to show an agency relationship or that the Club and Ridgeworth acted "in concert." It is unclear whether the court granted these initial motions, as Cooper sought leave to amend in lieu of responding. Ultimately, the court granted Cooper leave to amend his complaint.

¶ 12 The amended complaint added a few paragraphs regarding agency, including more specificity as to Krueger, the Club's employee:

> "40. The Club and Ridgeworth entered into a principal/agency relationship.
>
> 41. A principal/agency relationship existed between the Club and Ridgeworth.
>
> 42. The Club controlled or had the right to control the conduct of Ridgeworth.
>
> 43. The conduct described above as related to the installation of roofing material, drilling holes into Plaintiff Premises and attaching retention stripes to [Cooper's building] is conduct on the part of Ridgeworth that fell within the scope of agency.
>
> 44. Krueger was or is an agent, servant and or employee of the Club.
>
> 45. Krueger had the right and/or authority to direct the activities of Ridgeworth.
>
> * * *
>
> 48. The Club retained the right to approve the work done on the roof … through its agent, servant and or employee Krueger, and others.
>
> 49. The Club retained the right to supervise and or otherwise control the manner in which Ridgeworth performed the professional roofing services on the Club's building."

¶ 13 Once again, the Club moved to dismiss, arguing that, "[a]lthough [Cooper] recites the legal elements of a principal-agent relationship, [he] fails to plead facts showing that Ridgeworth acted as the Club's agent." It further argued there were no facts giving rise to "in-concert" liability.

¶ 14 Cooper responded that whether Ridgeworth was an independent contractor or an agent of the Club was a question of fact. He also claimed that it "is unrealistic to think that Ridgeworth decided to do an up and over rubber roof, instead of a total tear off and did not discuss and obtain the approval of the Club to make this drastic alteration to the plans for the roof of the

Club's building." He thus concluded that the Club *must* have had control over the roofing project. Cooper also leaned heavily on the fact that the complaint alleged Krueger was "in charge" of the roofing project and attempted to help resolve Cooper's issue with Ridgeworth.

¶ 15 The court determined that the allegations of a principal-agent relationship between the Club and Ridgeworth were "conclusory statements of fact. They are not factual allegations regarding or supporting the relationship." Further, the court noted that "Plaintiff did in their response argue the inference between the relationship; however, the factual inferences are not contained in the complaint, and because they're not in the complaint, but they are in the motion, I'm disregarding the motion allegations because they need to be in the complaint." The court concluded by saying that "all" of the allegations of damage were attributable to Ridgeworth and did not support the conclusion of a principal-agent relationship. The court likewise found insufficient allegations to support "in-concert" liability against the Club.

¶ 16 Within the time allowed by the court, Cooper sought leave to file a second amended complaint. The Club objected, claiming that Cooper failed to cure the defects and it would be "futile" to allow the amendment.

¶ 17 On November 20, 2019, the court entered an order denying Cooper's motion to amend and dismissing the Club as a party-defendant "with prejudice." The order denying leave to amend and dismissing the Club contained the finding, pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016), that "there is no just reason to delay appeal of this order." (The claims against Ridgeworth remain pending in the circuit court, thus the Rule 304(a) language.)

¶ 18 Within 30 days of the dismissal "with prejudice" of the Club from the lawsuit and the 304(a) finding, Cooper filed his notice of appeal.

¶ 19 ANALYSIS

¶ 20 Cooper argues that the court erred in granting the Club's section 2-615 motion to dismiss the vicarious liability and "in-concert" claims against the Club or, alternatively, erred by refusing to allow his second amended complaint.

¶ 21 A section 2-615 motion challenges the sufficiency of a complaint on its face. *Chandler v. Illinois Central R.R. Co.*, 207 Ill. 2d 331, 348 (2003). Like the trial court, we accept as true all well-pleaded facts and the inferences from those facts. *Marshall*, 222 Ill. 2d at 429. The critical inquiry is whether the allegations state a claim upon which relief can be granted. *Thurman v. Champaign Park District*, 2011 IL App (4th) 101024, ¶ 8. The court should not grant a section 2-615 motion unless it is clearly apparent that no set of facts would entitle the plaintiff to relief. *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 25. Our review is *de novo*. *Berry v. City of Chicago*, 2019 IL App (1st) 180871, ¶ 24.

¶ 22 I

¶ 23 We begin with Cooper's argument that the court erred in concluding that Cooper failed to allege an agency relationship between the Club and Ridgeworth.

¶ 24 Cooper gets off to a rocky start by relying heavily on section 414 of the Restatement (Second) of Torts to argue agency liability. See Restatement (Second) of Torts § 414 (1979). Though we can understand how one could read section 414 as imposing vicarious liability, our supreme court has made clear that section 414 concerns one's *direct* liability for failing to adequately exercise control over another's actions; section 414 does not address vicarious

liability. *Carney v. Union Pacific R.R. Co.*, 2016 IL 118984, ¶ 38 ("Agency law, under which an employer may be vicariously liable for the torts of its employees, is distinct from the principles encompassed in section 414, under which an employer is directly liable for its own negligence. In short, 'section 414 takes over where agency law ends.' " (quoting *Aguirre v. Turner Construction Co.*, 501 F.3d 825, 829 (7th Cir. 2007))).

¶ 25 In any event, it is undeniable that Cooper is asserting vicarious liability, notwithstanding the references to section 414. It is clear to us from the briefs, and it was clear to the Club, which directly addressed Cooper's vicarious-liability arguments (though noting that section 414 was inapplicable). There is no issue of forfeiture here, just some misplaced argument.

¶ 26 To plead a claim for agency liability, the complaint must allege more than the mere legal conclusion that an agency relationship existed; a complaint "must plead facts which, if proved, could establish the existence of an agency relationship." *Connick v. Suzuki Motor Co.*, 174 Ill. 2d 482, 498 (1996); see *Bogenberger v. Pi Kappa Alpha Corp.*, 2018 IL 120951, ¶ 28. The complaint must allege that a (1) principal-agent relationship existed between the defendant and actor, (2) the principal controlled or had the right to control the conduct of the actor, and (3) the conduct fell within the scope of the agency. *Magnini v. Centegra Health System*, 2015 IL App (1st) 133451, ¶ 25.

¶ 27 The dispute usually centers, as it does here, on the second element—the degree of the principal's control. See *Knapp v. Hill*, 276 Ill. App. 3d 376, 380 (1995). More specifically, the principal's "right to control the manner in which the agent performs the work." *Magnini*, 2015 IL App (1st) 133451, ¶ 25. The best indicator of retained control is a written contract. See *LePretre v. Lend Lease (US) Construction, Inc.*, 2017 IL App (1st) 162320, ¶ 30.

¶ 28 The Club says the complaint, at most, alleged that Ridgeworth was an independent contractor, not an agent. In contrast to an agent,

> " 'An independent contractor is one who undertakes to produce a given result but in the actual execution of the work is not under the orders or control of the person for whom he does the work but may use his own discretion in things not specified *** [and] without his being subject to the orders of the [person for whom the work is done] in respect to the details of the work.' " (Internal quotation marks omitted.) *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 43 (quoting *Horwitz v. Holabird & Root*, 212 Ill. 2d 1, 13 (2004)).

¶ 29 As such, "one who employs an independent contractor is not liable for harm caused by the latter's acts or omissions." *Carney*, 2016 IL 118984, ¶ 31. The law generally protects the hiring party from the negligent acts of independent contractors because the hiring party does not have sufficient control over the details and methods of the independent contractor's work and is not in a position to prevent negligent performance. *Id.* ¶ 32. Many laypeople hire experts to perform functions that require some level of expertise (roofing work being one example), and it would be impractical, inefficient, and sometimes dangerous for a layperson to micromanage precisely how the independent contractor gets the job done—telling the contractor which kind of safety harness to use, which brand of epoxy to apply, or any number of other details better left to the expert contractor. See *id.*

¶ 30 There is no precise formula for deciding whether someone is an agent or independent contractor, as that determination "rests upon the facts and circumstances of each case." *Lawlor*, 2012 IL 112530, ¶ 44. And sometimes, our supreme court has reminded us, an individual may

be both an independent contractor and an agent. See *id.* ¶ 43 (independent contractor status does not prohibit vicarious liability if it is determined independent contractor is also agent).

¶ 31 Cooper claims his allegations are sufficient, and the circuit court failed to properly draw reasonable inferences in his favor. Again, in dismissing his claims, the court stated: "Plaintiff did in their response argue the inference between the relationship; however, the factual inferences are not contained in the complaint, and because they're not in the complaint, but they are in the motion, I'm disregarding the motion allegations because they need to be in the complaint."

¶ 32 It is fundamental, however, that at the dismissal stage, we are required to draw all reasonable inferences from well-pleaded facts in the plaintiff's favor. See *Northbrook Bank & Trust Co. v. 2120 Division LLC*, 2015 IL App (1st) 133426, ¶ 26. This principle would mean nothing if those inferences had to be pleaded—making them allegations, not inferences. See *Walker v. Rumer*, 51 Ill. App. 3d 1005, 1006 (1977) ("The inference to be drawn from such allegations need not be pleaded."). So we will examine these allegations in detail.

¶ 33 First, Cooper points to the allegations in the complaint that "[t]he Club controlled or had the right to control the conduct of Ridgeworth," that it "retained the right to supervise and or otherwise control the manner in which Ridgeworth performed the professional roofing services," that it "had the right to approve the work done *** by Ridgeworth," and that its employee, Krueger, "had the right and/or authority to direct the activities of Ridgeworth."

¶ 34 The Club says those allegations are "conclusory," void of factual detail, and thus inadequate. The Club reminds us that a court does not draw reasonable inferences from "conclusory" allegations. See *Northbrook Bank & Trust*, 2015 IL App (1st) 133426, ¶ 26.

¶ 35 The challenge to an allegation as "conclusory" is a familiar refrain in motions to dismiss. And though it is simple enough to recite the well-worn phrases about the requirements of factual specificity and not mere conclusory allegations, drawing those lines is not always as easy as it sounds. See *Borcia v. Hatyina*, 2015 IL App (2d) 140559, ¶ 38 ("The degree of specificity required to sufficiently plead a cause of action in any case is difficult to determine and is dependent upon the individual circumstances of each case.").

¶ 36 Start with the guiding principles. "The purpose of pleadings is to present, define and narrow the issues and limit the proof needed at trial." *People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill. 2d 300, 307 (1981). They are not intended to erect barriers to a trial on the merits but rather to "produce an issue asserted by one side and denied by the other so that a trial may determine the actual truth." *Id.* at 308.

¶ 37 A complaint in Illinois must plead facts "necessary for the plaintiff to recover." *Id.* But the plaintiff need not " 'set out his evidence. To the contrary, only the ultimate facts to be proved should be alleged and not the evidentiary facts tending to prove such ultimate facts.' " *Id.* (quoting *Board of Education of the Kankakee School District No. III v. Kankakee Federation of Teachers Local No. 886*, 46 Ill. 2d 439, 446-47 (1970)). In the end, "[p]erhaps the best measure of a complaint's sufficiency *** is whether the defendant is able to answer the essential allegations." *Id.*

¶ 38 To that we would add that, when reviewing a complaint's sufficiency under the unique circumstances of a given case, one factor to consider is the plaintiff's access to evidence (witnesses, for example) before the suit is filed. See *Borcia*, 2015 IL App (2d) 140559, ¶ 38 (comparing its facts to those of comparable injury cases involving multiple witnesses and

noting that, in considering sufficiency of Borcia's complaint, involving action with no surviving witnesses other than defendants, that plaintiff "should not be foreclosed from bringing a cause of action *** due to a lack of sensory witnesses other than [defendants]" and "[t]o hold otherwise would be contrary to justice and the purpose of section 2-615").

¶ 39 Here, we are not sure how much more detailed the complaint's allegations could have been at this stage. There may be a written contract between the Club and Ridgeworth, which could go a long way to determining questions of agency, but presumably Cooper did not have it in his possession pre-suit (the complaint does not mention a contract). Nor would we expect Cooper to be privy, pre-suit, to the details of every conversation between Ridgeworth and the Club.

¶ 40 Robbed of any personal knowledge of any such oral or written interactions between defendants, it is hard to imagine how Cooper could be any more specific than to allege that the Club had the right to approve, direct, and control the manner of Ridgeworth's work. These are unquestionably "ultimate facts" that Cooper must prove under an agency theory (*Fahner*, 88 Ill. 2d at 308), and it would not be difficult at all for the Club to answer those allegations. Cooper should not have to lay out the evidence supporting these ultimate facts.

¶ 41 In any event, for reasons we explain below, the amended complaint overall alleges more than these ultimate facts. Viewed in the light most favorable to Cooper and drawing all reasonable inferences in his favor, the complaint adequately alleges that Ridgeworth was not an independent contractor. Rather, it acted specifically at the Club's direction in altering Cooper's roof and was thus the Club's agent at least to *that* extent.

¶ 42 The complaint alleged that the City issued a work permit for a "total roof tear off and installation of a new roof" and that the Club hired Ridgeworth as its roofing contractor. The complaint also alleged that Ridgeworth did *not* perform that total tear-off and replacement work: "Instead of performing the tear off and installation of a new roof, the Defendants chose to go over the existing roof with rubber roofing, drill holes into Cooper's masonry and brick and stone roof, and affix an anchor retention strip for the Club to Cooper's roof."

¶ 43 It is perfectly reasonable to infer, from these facts, that Ridgeworth and the Club discussed this revised scope of work in advance. It is reasonable to infer that Ridgeworth would not have strayed so far from the city-permitted work (a total roof replacement), to the very different approach of laying down a rubber roof over the existing one and attaching it to a neighbor's roof, without the Club knowing about it and authorizing it.

¶ 44 It would *not* be reasonably favorable to Cooper, on the other hand, to infer that the Club had no idea about this plan to lay down a rubber roof and attach it to Cooper's roof. It is, in fact, rather difficult to imagine that a contractor would *not* tell the property owner that the project would include trespassing onto a neighbor's property, altering the neighbor's roof, and permanently attaching the new rubber roof to the neighbor's roof. Those are, after all, pretty significant details a property owner would want and expect to know—if, for no other reason, because the neighbor might not be happy about it, as Cooper was not here.

¶ 45 The proof may show otherwise. It may be the case that the Club just told Ridgeworth to fix the roof, full stop, and left the details to Ridgeworth. We may ultimately learn that Ridgeworth discussed the concept of a rubber roof with the Club generally but left out the significant detail that it would have to be physically attached to the neighbor's roof. Or maybe Ridgeworth only realized later that it would need to physically affix the rubber roof to Cooper's roof and did not discuss this revelation with the Club.

¶ 46 But at this stage, we draw all reasonable inferences in Cooper's favor, not against him. And it is entirely reasonable to infer that the Club knew about and authorized Ridgeworth's plan to attach a new rubber roof to Cooper's existing roof, which by definition would involve at least *some* trespass onto Cooper's property and *some* method of affixing the two roofs together.

¶ 47 In this regard, then, this case is somewhat different than many cases that discuss the differences between a principal-agent relationship versus one of hiring party-independent contractor. Ordinarily, as noted above, the hallmark of an independent-contractor relationship is that the contractor is simply told to do the work, and the details of *how* to do it are left to the contractor. See *Carney*, 2016 IL 118984, ¶ 31. The hiring party is responsible for the "what"—the scope of the work—and the independent contractor is exclusively responsible for the "how"—the manner in which it is performed.

¶ 48 Here, however, the "what" and "how," for all relevant purposes, might be one and the same. If, as it is reasonable to infer, the Club and Ridgeworth discussed the fact that the rubber roof would have to be physically attached to Cooper's roof, then that was part of the intended scope of the work—the "what"—that the Club authorized and directed Ridgeworth to perform. The physical attachment of the rubber roof to Cooper's roof, and the obvious trespass and alteration of Cooper's property it would entail, would not qualify as " 'things not specified,' " for which the contractor could " 'use his own discretion' " as an independent contractor. (Internal quotation marks omitted.) *Lawlor*, 2012 IL 112530, ¶ 43 (quoting *Horwitz*, 212 Ill. 2d at 13). They would instead qualify as things *explicitly* specified, for which the contractor was acting as an agent, following the direction and authorization of the property owner, its principal.

¶ 49 Regardless of whether the Club "controlled" every single detail of the work, the complaint alleges "control" with regard to the only detail that matters here—direction to attach the new rubber roof to Cooper's roof, which resulted in the damage to Cooper's roof.

¶ 50 The complaint thus adequately pleaded a claim for vicarious liability against the Club. We cannot agree with the Club's many attempts to argue otherwise.

¶ 51 The Club claims that, in several ways, Cooper essentially pleaded himself out of a claim for vicarious liability. For one, the complaint alleges that a Ridgeworth employee told Cooper that "he thought he was doing [Cooper] a favor," that the affixing of the rubber roof would help Cooper avoid water accumulation in his basement. But that allegation speaks in no way to what the Club knew, controlled, or directed. Nor does it matter that the Ridgeworth employee allegedly told Cooper, "I grant you we should have asked you first before attaching it." It does not automatically follow that the "we" meant Ridgeworth exclusively and not the Club, as well. And even if that is exactly what the Ridgeworth employee meant, it again does not automatically follow that the Club did not authorize Ridgeworth to drill those holes and join the roofs.

¶ 52 We likewise find the Club's arguments relating to its own employee, Krueger, to be red herrings. For one, the Club says Krueger could not have supervised or controlled the work because (according to the complaint) Krueger told Cooper he was on medical leave at the time due to hip-replacement surgery. But having the *right* to control the work is enough, even if that individual does not, in fact, exercise that control. *Magnini*, 2015 IL App (1st) 133451, ¶ 25. And if the decision to let Ridgeworth attach a new rubber roof to Cooper's roof was made in advance, we are not sure why Krueger's absence from the worksite would have any relevance.

¶ 53 We know little about Krueger from this complaint; the complaint only relates what Krueger told Cooper over the phone. Krueger allegedly told Cooper that "he was in charge of the

roofing project," though "he was on leave of absence for another week, recovering from hip replacement surgery." But that does not tell us who signed off on the scope of the work, which could have happened long before the work was actually performed. Maybe it was Krueger, before his surgery; maybe it was someone else from the Club. These are details that we need not resolve at the pleading stage. And they are not details for which we should leap to unsupported conclusions in the *defendant's* favor at this stage.

¶ 54 Nor can we agree with the Club's claim that Krueger could not have controlled the work as a legal matter because he is not a licensed roofing contractor. The type of direction relevant here—to proceed with work that would involve trespassing onto neighboring property and permanently altering it—requires no license or even expertise. The *performance* of that work surely does, but we are talking here merely of a property owner giving the "ok" to a plan after a contractor has explained what it would entail and what it would cost. If a property owner in that instance were required to be a licensed roofing contractor before saying "yes," nearly every homeowner in this state, at some point in time or another, would have to apply for a roofing license just to tell (another) licensed roofer to fix their leaky roof.

¶ 55 As the complaint stated a cause of action for vicarious liability against the Club, dismissal of that count was inappropriate.

¶ 56 II

¶ 57 The trial court also dismissed Cooper's claim of "in-concert" liability against the Club. In-concert liability "establishes a legal relationship" between an individual who acts in concert with other individuals who commit a tort. *Woods v. Cole*, 181 Ill. 2d 512, 519 (1998). The one who acts in concert with the tortfeasor becomes liable for that tortfeasor's conduct as if there were a " 'joint enterprise' " or " 'mutual agency, so that the act of one is the act of all, and liability for all that is done is visited upon each.' " *Id.* at 519-20 (quoting Prosser and Keeton on the Law of Torts § 52, at 346 (W. Page Keeton *et al.* eds., 5th ed. 1984).

¶ 58 Illinois has adopted the theory of in-concert liability found in section 876 of the Restatement (Second) of Torts (Restatement (Second) of Torts § 876 (1979)). See *Simmons v. Homatas*, 236 Ill. 2d 459, 476 (2010). Specifically, the Restatement provision imposes liability when a party:

> "(a) does a tortious act in concert with the other or pursuant to a common design with him, or
>
> (b) knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself, or
>
> (c) givessubstantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person." Restatement (Second) of Torts § 876, at 315 (1979).

¶ 59 Cooper relies only on prong (b)'s substantial-assistance-or-encouragement prong. This portion of section 876 "imposes liability on those persons who act in concert with another tortfeasor, giving substantial assistance or encouragement to another's tortious conduct." *Simmons*, 236 Ill. 2d at 476. In determining substantial assistance or encouragement, we consider (1) the nature of the act encouraged, (2) the amount of assistance given, (3) his presence or absence at the time of the tort, (4) his relation to the other, and (5) his state of mind. *Id.* at 477.

¶ 60 In light of what we have already determined above, however, a detailed analysis of these five prongs is unnecessary. We already held that the complaint, along with reasonable inferences drawn in favor of Cooper, alleged that the Club signed off on a rubber-roofing project that would include physically attaching the rubber roof to Cooper's roof, which unavoidably would involve some trespass onto Cooper's property and some damage to and alteration of his property.

¶ 61 In other words, the Club did not just encourage Ridgeworth to do it; it *paid* Ridgeworth to do it. It would defy all logic and reason to hold that literally paying someone to perform an act does not constitute, at the very least, "substantial encouragement" to perform that act.

¶ 62 The complaint adequately alleges that the Club "substantially encouraged" Ridgeworth to drill those holes in Cooper's roof, as part of a plan to connect a new rubber roof over the Club's roof and attach it to Cooper's roof. The complaint sufficiently alleged in-concert liability against the Club. Dismissal of that count was improper.

¶ 63 III

¶ 64 The trial court dismissed other counts against the Club, including claims for injunctive relief and punitive damages, but Cooper has raised no arguments in his brief for reversing those rulings by the court. Any such claim is thus forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) (points not raised in brief are forfeited); *Vancura v. Katris*, 238 Ill. 2d 352, 369 (2010) (same). We thus uphold the dismissal of all other counts directed against the Club.

¶ 65 CONCLUSION

¶ 66 We reverse the dismissal of the counts in the amended complaint directed at the Club based on vicarious liability and in-concert liability. The cause is remanded for further proceedings on those counts. We affirm the dismissal of all other counts directed at the Club.

¶ 67 Affirmed in part and reversed in part; cause remanded.