2026 IL App (1st) 250543
No. 1-25-0543
Opinion filed September 16, 2026

FIFTH DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE STATE OF ILLINOIS, *ex rel.* FORDE & O'MEARA, LLP, Plaintiff-Appellant, v. VENDOR ASSISTANCE PROGRAM LLC, ILLINOIS RECEIVABLES TRUST SERIES 2015-1, ILLINOIS RECEIVABLES TRUST II, VAP FUNDING MASTER NOTE TRUST (ILLINOIS), VAP FUNDING MASTER TRUST II (ILLINOIS), VAP RRT MASTER TRUST 2016 and IRT FUNDING TRUST, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 21 L 2381 The Honorable Jerry A. Esrig, Judge, presiding.

PRESIDING JUSTICE ODEN JOHNSON delivered the judgment of the court, with opinion.
Justices Mikva and Wilson concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff-appellant Forde & O'Meara, LLP, appeals the trial court's dismissal, with prejudice, of its second amended complaint. On February 21, 2025, the trial court dismissed the complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS

5/2-615 (West 2024)) for failure to state a cause of action. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 A. Procedural History

¶ 4 Plaintiff brought this action as a relator on behalf of the State of Illinois. Plaintiff's second-amended complaint has one count, which alleges that defendants violated the Illinois False Claims Act (Act) (740 ILCS 175/1 *et seq.* (West 2024). The Act permits actions by private persons to "be brought in the name of the State," which this plaintiff did. 740 ILCS 175/4(b)(1) (West 2024).

¶ 5 Plaintiff initiated this action on March 11, 2021. Approximately a year later, on February 17, 2022, the State of Illinois filed a notice declining to intervene. Plaintiff filed its first amended complaint on September 26, 2023. On August 16, 2024, the trial court granted defendants' motion to dismiss the first amended complaint, but granted plaintiff leave to replead. A month later, on September 16, 2024, plaintiff filed its second amended complaint, which is the operative complaint on this appeal.

¶ 6 B. The Second Amended Complaint

¶ 7 In its second amended complaint, plaintiff alleges a vast scheme by defendant Vendor Assistance Program, LLC (VAP), to avoid paying income tax and avoid disclosing who actually profited from certain investments. Plaintiff alleges that defendant VAP manages the other named defendants, which plaintiff collectively refers to as "the VAP Trusts": (1) Illinois Receivables Trust Series 2015-1, (2) Illinois Receivables Trust II, (3) VAP Funding Master Note Trust (Illinois), (4) VAP Funding Master Trust II (Illinois), (5) VAP

RRT Master Trust 2016, and (6) IRT Funding Trust. Plaintiff alleges that all acts and statements of the VAP Trusts are actually made by VAP itself.

¶ 8 Plaintiff's allegations concern two programs administered by the State of Illinois: the Vendor Payment Program (VPP) and the Vendor Support Initiative Program (VSI), which we call collectively the "Programs." As the complaint explains, the Programs permit qualified and preapproved purchasers (Qualified Purchasers) to buy accounts receivables owed by the State to vendors. These state Programs were created because of substantial delays by the State of Illinois in paying the invoices of vendors who had supplied goods or services to the State.

¶ 9 The Programs require that, when a Qualified Purchaser buys a receivable from a vendor, it must pay that vendor 90% of the value of the receivable. Eventually, when the State makes payment, the Qualified Purchaser must pay the remaining 10% to the vendor. However, the Qualified Purchaser, for its part, gets to retain any interest and penalties paid by the State.

¶ 10 The Programs bar Qualified Purchasers from assigning their interests, except to other Qualified Purchasers and only after first disclosing the assignment to the State. Plaintiff alleges that defendants, who were Qualified Purchasers, assigned substantial amounts of receivables to entities that were *not* Qualified Purchasers and that these assignments were not disclosed to the State, as required.

¶ 11 As noted, the alleged point of this scheme was to avoid paying income tax and to avoid disclosing the individuals who were actually making money. Plaintiff alleges that these undisclosed third parties included former state officials and lobbyists, such as former Illinois State Senator James DeLeo and Nancy Kimme, a registered lobbyist. The second amended complaint further alleges that defendants did not adhere to the 90/10 payment structure and paid some vendors less than the vendors were entitled to receive.

¶ 12 Plaintiff's second amended complaint acknowledges that "an article had previously been published by WBEZ in 2019 generally describing that the principals of VAP had failed to disclose certain transactions in order to avoid paying State income taxes." The complaint asserts that, as part of the scheme, assignments were made to various entities and individuals, including Brian Hynes, who was discussed at length in the WBEZ article.

¶ 13 Plaintiff's first amended complaint included other defendants who plaintiff dropped as defendants from the second amended complaint—namely, Bluestone Capital Markets, LLC, and Bluestone Finance, LLC (collectively Bluestone LLCs); Greysand Finance, LLC; Neptune Investors, LLC; BFH Investments; and Nai Ark Funding, LLC. Although the Bluestone LLCs were dropped as defendants from the second amended complaint, the second amended complaint still alleged that VAP assigned to them "a substantial portion" of the receivables owned by VAP and the VAP Trusts, without the required disclosure to the State. The Bluestone LLCs were also highlighted in the WBEZ article, which was the cornerstone of defendant's motion to dismiss and which we discuss below.

¶ 14 C. Motions to Dismiss

¶ 15 Defendants filed a motion to dismiss under section 2-615 of the Code regarding plaintiff's first amended complaint. The motion argued, among other things, that a prior public disclosure barred all claims and that the complaint failed to allege any damages recoverable by the State. In support of its disclosure claim, defendants attached, among other things, the article from WBEZ, a member of National Public Radio, and the text of a subsequent post on a blog called "STUMP." The WBEZ article is dated February 11, 2013, and states that it was written by "an investigative reporter for WBEZ." The STUMP blog post is dated February 13, 2019.

¶ 16 The WBEZ article reported that a federal civil lawsuit, filed in Pennsylvania, alleged that "[b]usinesses that gave tens of thousands of dollars [in 2018] to Illinois Comptroller Susana Mendoza's political fund" were actually " 'front companies' in an ongoing multi-million dollar 'sham' involving profits" from the Programs. The article asserted that defendant "VAP was started in 2010 by Brian Hynes, a politically connected lawyer who's now a central figure in a widening City Hall corruption scandal." The article specified that defendant "VAP is the most dominant company" in the Programs, having already bought up $3.8 billion in unpaid state bills. According to the article, defendant VAP had already "received $201.6 million in late payment premiums from the state."

¶ 17 The WBEZ article reported that Warren Hill, LLC, a partner and investor in VAP, alleged that other VAP partners had created two front companies—namely, Bluestone Capital Markets, LLC, and Bluestone Finance, LLC—to perpetuate " 'a sham designed to avoid paying taxes and to avoid paying Warren Hill [LLC] what it is owed." According to the article, other VAP partners created yet another entity, SFR Equities LLC (SFR), which bought a 33% stake in VAP from Warren Hill, LLC, but was still obligated to continue sharing VAP profits with Warren Hill, LLC. However, Warren Hill, LLC, claimed that SFR tried to hide its profits in the Bluestone LLCs to avoid both paying taxes and paying Warren Hill, LLC, what it was owed. The WBEZ article reported that Warren Hill, LLC, had filed suit and that its suit alleged a failure to disclose by defendant VAP. The article stated that the Warren Hill, LLC, suit alleged "that VAP should have informed state of Illinois officials about the involvement of" the Bluestone LLCs in the Programs. The STUMP blog post, which defendants also attached to their motion, reprinted large portions of the WBEZ article.

¶ 18 Granting the motion to dismiss, the trial court issued a 25-page single-spaced memorandum opinion. In it, the trial court found with respect to damages:

> "Defendants argue that the Complaint does not allege any damages recoverable under the [False Claims Act]. The court agrees. In conclusory fashion, the Complaint asserts that the State was 'damaged in a substantial amount to be more fully determined at trial, but at least in an amount of tens of millions of dollars in payments made by the State to VAP and the VAP Trusts' ([citation]). The complaint does not provide any factual allegations to support this assertion."

The court explained that, "[w]hile the State may have been injured in the sense that the defendants violated Program rules, plaintiff has not identified any damage or damages to the State which are recoverable." The court noted that "[t]here is no allegation that the State paid more than it owed on any Receivable or Receivables."

¶ 19 Regarding the public disclosure bar, the trial court observed that a relator cannot maintain a claim under the Act " 'if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed.' by, among other things 'the news media.' 740 ILCS 175/4(e)(4) [(West 2024)]." The court noted that a relator's complaint is considered based upon publicly disclosed allegations when the allegations in the complaint are substantially similar to the publicly disclosed allegations. The court further noted that defendants argued, and plaintiff did not dispute, that the WBEZ article qualified as a public disclosure under the Act.

¶ 20 The trial court observed that:

> "Here, plaintiff does not even argue that the WBEZ article describes a different scheme from the one alleged in the complaint. This is not a case where the court is conflating two similar but different schemes because it is viewing the relator's allegations 'at the highest level of generality.' [Citation.] Plaintiff argues only that plaintiff has added more details than appear in the article."

However, the trial court noted that simply adding details to an already known outline is not enough.

¶ 21 The trial court granted defendants' motion to dismiss the first amended complaint but with leave to replead. Plaintiff repleaded, filing its second amended complaint, and defendants renewed their motion to dismiss. The trial court dismissed the second amended complaint with prejudice, both orally and by written order, on February 21, 2025. The written order was merely one line that stated that the complaint was being dismissed for the reasons already stated at the hearing. At the hearing on the same day, after listening to arguments by counsel, the trial court found the following with respect to the WBEZ article:

> "THE COURT: [M[y biggest concern here is with public disclosure. And nothing has changed, in my mind anyway, from my initial decision, which is that, the original alleged scheme, which was to use non-disclosed assignments, was publicly disclosed in the [Warren Hill LLC] lawsuit and the WBEZ article, and that, regardless of the fact that the relator has identified other shell companies—that, in my mind does not change the fact that the essence of the scheme was publicly disclosed by WBEZ prior to the filing of the lawsuit.

> And I believe that to have been true when I dismissed the First Amended Complaint, and nothing about the Second Amended Complaint changes my view as to that."

¶ 22 The trial court found the following with respect to discovery in the case:

> "THE COURT: I do believe that the allegations with respect to violations of the 90/10 program and the failure to disclose the S[enator] DeLeo and *** Kimme are arguably separate and apart from what was disclosed in the WBEZ article, but I also believe that it is not correct that the relator can walk into Court with a publicly disclosed theory, then take discovery while motions are pending, and then remain in Court, having asserted a publicly disclosed theory with information it then learns through discovery on entirely different theories that were not originally asserted.
>
> That defeats the whole purpose of a publicly disclosed theory, so I'm not going to let the relator proceed on theories which were not initially asserted and which were only learned through discovery taken in this lawsuit. So, on that basis, I'm going to dismiss the complaint[.]"

¶ 23 Plaintiff timely filed its notice of appeal less than 30 days later, on March 21, 2025. On June 18, 2025, the Attorney General filed a letter to notify this court that it did not intend to file a brief in this appeal, unless needed to respond or reply to any argument on appeal challenging the constitutionality of a statute. However, defendants state on appeal that they do not advance any constitutional arguments.

¶ 24 ANALYSIS

¶ 25 A. Standard of Review

¶ 26 In the case at bar, the trial court dismissed the complaint, pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2024)), for failure to state a cause of action. The rules governing our review of such a dismissal are well established. When ruling on a section 2-615 motion, a court must accept as true all well-pleaded facts in the complaint, as well as any reasonable inferences that may be drawn from those facts. *Tyrka v. Glenview Ridge Condominium Ass'n*, 2014 IL App (1st) 132762, ¶ 33 (citing *DeHart v. DeHart*, 2013 IL 114137, ¶ 18).

¶ 27 Our supreme court has also stated "time and again" that Illinois is a fact-pleading jurisdiction. *Weiss v. Waterhouse Securities, Inc.*, 208 Ill. 2d 439, 451 (2004); *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 367 (2004). In a notice-pleading jurisdiction, such as the federal courts, "a plaintiff is not required to plead operative facts with particularity." *City of Chicago*, 213 Ill. 2d at 367; see *Johnson v. Matrix Financial Services Corp.*, 354 Ill. App. 3d 684, 696 (2004) (federal courts operate under a notice-pleading standard, while Illinois state courts operate under a fact-pleading standard). "[If there is any set of facts consistent with the plaintiff's complaint that would allow recovery, the court in a notice-pleading jurisdiction may not grant a defendant's motion to dismiss ***." *Beretta U.S.A. Corp.*, 213 Ill. 2d at 368. By contrast, Illinois plaintiffs are required to "allege facts sufficient to bring a claim within a legally recognized cause of action." *Beretta U.S.A. Corp.*, 213 Ill. 2d at 368. As a result of this difference, we have often found less persuasive federal cases, which denied dismissal motions under the more liberal federal standard.

¶ 28 However, on this appeal, both sides turn to federal cases interpreting the federal False Claims Act (31 U.S.C. § 3729 *et seq.* (2024)) for guidance in interpreting the words of the Illinois False Claims Act. The Seventh Circuit Court of Appeals has observed: "Given the substantive similarity between the Illinois False Claims Act *** and the [federal False Claims Act], Illinois courts have relied upon federal cases interpreting [the federal act] in construing the provisions of the [state Act].” *City of Chicago ex rel. Rosenberg v. Redflex Traffic Systems, Inc.*, 884 F.3d 798, 802 (7th Cir. 2018). Similarly, Illinois appellate courts have observed that, “in construing the Act, Illinois courts have relied on federal courts’ interpretation of the [federal act] for guidance.” *People ex rel. Schad, Diamond & Shedden, P.C. v. My Pillow, Inc.*, 2017 IL App (1st) 152668, ¶ 7.

¶ 29 Although Illinois plaintiffs are not required to set forth the specific evidence on which their false claims complaint is based, they also cannot simply set forth conclusions. *Tyrka*, 2014 IL App (1st) 132762, ¶ 34 (citing *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 430 (2006)). Mere conclusory allegations unsupported by specific facts will not survive a motion to dismiss. *Tyrka*, 2014 IL App (1st) 132762, ¶ 34 (citing *Primax Recoveries, Inc. v. Atherton*, 365 Ill. App. 3d 1007, 1010 (2006)). Faced with a motion to dismiss, an Illinois court must decide whether the complaint alleges sufficient well-pleaded facts that, if proved, would entitle the plaintiff to relief. *Bogenberger v. Pi Kappa Alpha Corp.*, 2018 IL 120951, ¶ 23. Further, when asserting a fraud claim, as in the case at bar, the plaintiff must allege the supporting facts with specificity and particularity. *Avon Hardware Co. v. Ace Hardware Corp.*, 2013 IL App (1st) 130750, ¶ 15 (“[f]raud claims must be pleaded with sufficient specificity, particularity, and certainty”).

¶ 30 In addition to the facts alleged in the complaint and any reasonable inferences to be drawn from them, a court may also consider, when ruling on a section 2-615 motion, judicial admissions in the record and matters of which the court is entitled to take judicial notice. *O’Callaghan v. Satherlie*, 2015 IL App (1st) 142152, ¶ 18. Since the existence, substance, and publication of the WBEZ article are noted in the complaint that we must consider, we may take judicial notice of it. Even if we were to assume that the motion to dismiss should have been filed under section 2-619, which permits dismissals based on other affirmative matter, "[a] defendant's motion to dismiss is not defeated merely by choosing the wrong statutory mechanism where the plaintiff suffered no prejudice from the improper label." *O'Callaghan*, 2015 IL App (1st) 142152, ¶ 21. In any event, our taking judicial notice of the existence of the article and the matters asserted in it does not assume the truth of the matters asserted.

¶ 31 On appeal, our review of a trial court's section 2-615 dismissal is *de novo*. *Tyrka*, 2014 IL App (1st) 132762, ¶ 35 (citing *DeHart*, 2013 IL 114137, ¶ 18). *De novo* review means that we perform the same analysis that a trial judge would perform. *Guvenoz v. Target Corp.*, 2015 IL App (1st) 133940, ¶ 41.

¶ 32 B. Statutory Sections at Issue

¶ 33 Section 4(e)(4)(A) of the Act provides, in relevant part, that the trial court "shall dismiss an action or claim under this Section, unless opposed by the State, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed: *** from the news media." 740 ILCS 175/4(e)(4)(A)(iii) (West 2024). As noted by the trial court, defendants do not contest that the WBEZ article qualifies as a public disclosure from the news media. Thus, the issue before us is whether plaintiffs' complaint involves "substantially the same allegations" or "substantially the same *** transactions." 740 ILCS 175/4(e)(4)(A) (West 2024). " 'Substantially the same' " does not mean identical. *State ex rel. Wilke v. Ameresco, Inc.*, 2020 IL App (4th) 180563-U, ¶ 15. "A lawsuit that is even partially dependent upon the publicly disclosed information can prompt the public disclosure bar." *Wilke*, 2020 IL App (4th) 180563-U, ¶ 15. Simply adding details that were not in the prior news article is not enough to save a complaint if the complaint describes essentially the same illicit scheme. *Rosenberg*, 884 F.3d at 804.

¶ 34 In the case at bar, there is simply no question that the scheme alleged in the second amended complaint is "substantially the same" as the scheme alleged in the WBEZ article. See 740 ILCS 175/4(e)(4)(A) (West 2024). The second amended complaint alleges that all acts and statements of the defendant VAP Trusts are actually made by VAP itself, so defendant VAP, by plaintiff's own allegation, is the key player. Plaintiff alleges a vast scheme by defendant VAP, the point of which is to avoid paying income tax and avoid disclosing who was actually profiting from the investments. Plaintiff alleges that the undisclosed third parties include former state officials and lobbyists. Plaintiff alleges that, as part of the scheme, assignments were made to various entities and individuals, including Brian Hynes. Although plaintiff strategically dropped the Bluestone LLCs from its second amended complaint, the complaint still alleged that defendant VAP assigned these "front" companies a substantial portion of its receivables, without the required disclosure to the state.

¶ 35 Like plaintiff, the WBEZ article alleged a vast " 'sham' " scheme by defendant VAP, the point of which was to benefit undisclosed third parties, including former state officials. The article alleged that defendant VAP was started by Bryan Hynes, who was also named in the second amended complaint. Like the second amended complaint, the article alleged that VAP tried to hide its profits in the Bluestone LLCs front companies to avoid paying taxes. Like plaintiff, the article alleged VAP's failure to disclose its assignments to the state, in violation of state rules. Thus, the prior public disclosure bars these allegations.

¶ 36 The second amended complaint also alleged that undisclosed third parties included former Illinois State Senator James DeLeo and lobbyist Nancy Kimme and that defendants did not adhere to the 90/10 payment structure, paying some vendors less than what the vendors were entitled to. Plaintiff freely admits in its appellate brief that these allegations, added to its second amended complaint, were taken from discovery in this action. However, we must agree with the trial court that the purpose of the Act is not to let a private plaintiff go on a fishing expedition through discovery to uncover claims about which it did not know when it started, in order to rescue an otherwise barred complaint. A complaint may be saved from the public disclosure bar if plaintiff is an "original source." 740 ILCS 175/4(e)(4)(B) (West 2024). However, this complaint does not qualify plaintiff as an "original source." 740 ILCS 175/4(e)(4)(B) (West 2024). An original source is a party who "has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the State *before filing an action* under this Section." (Emphasis added.) 740 ILCS 175/4(e)(4)(B)(ii) (West 2024). Thus, the Act does not contemplate qualifying by fishing for new information after filing and during discovery. As a result, we must agree with the trial court that this complaint is barred. *Bingham v. HCA, Inc.*, 783 F. App'x 868, 876 (11th Cir. 2019) (affirming a trial court's decision to strike information in a relator's second amended complaint that was obtained through discovery). As our federal counterparts have noted, "it is important to discourage" relators, who have suffered no injury themselves, from filing pretextual suits in order to uncover previously unknown wrongs. *Bingham*, 783 F. App'x at 876.

¶ 37 CONCLUSION

¶ 38 For the foregoing reasons, we affirm the dismissal by the trial court.

¶ 39 Affirmed.

***State ex rel. Forde & O'Meara, LLP v. Vendor Assistance Program LLC*, 2026 IL App (1st) 250543**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 21-L-2381; the Hon. Jerry A. Esrig, Judge, presiding.
Attorneys for Appellant:	Daniel M. Twetten, of Loevy & Loevy, of Boulder, Colorado, for appellant. No brief filed for intervenor.
Attorneys for Appellee:	David B. Goroff and Lisa M. Noller, of Foley & Lardner LLP, of Chicago, for appellee Vendor Assistance Program, LLC. Benjamin E. Haskin and John C. Sciaccotta, of Aronberg Goldgehn Davis & Garmisa, of Chicago, and Timothy D. Elliott, of Rathje Woodward LLC, of Wheaton, for other appellees.