2023 IL App (4th) 230014-U

NO. 4-23-0014

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
September 29, 2023
Carla Bender
4th District Appellate
Court, IL

GARY E. MATTHEWS and MONTE J. BRANNAN, Plaintiff-Appellants, v. THE CITY OF PEORIA and MAYOR JAMES ARDIS, Individually and as Mayor of the City of Peoria, Defendants-Appellees.	) Appeal from the) Circuit Court of) Peoria County) No. 19L49)) Honorable) Stewart James Umholtz,) Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Harris and Lannerd concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Because the amended complaint does not allege that plaintiffs themselves were parties to the contracts with which defendants allegedly interfered, the amended complaint fails to state a cause of action for tortious interference with a contractual relation.

(2) Because the amended complaint does not allege that plaintiffs, as opposed to business entities with which they were associated, had a reasonable expectancy of entering into a business relationship, the amended complaint fails to state a cause of action for tortious interference with a business expectancy.

¶ 2 The plaintiffs are Gary E. Matthews and Monte J. Brannan. The defendants are the City of Peoria, Illinois (City), and James Ardis, who was the mayor of Peoria during the events that plaintiffs allege in their amended complaint. Count III of the amended complaint accuses defendants of tortiously interfering with a contractual relation. Count IV accuses them of tortiously interfering with a business expectancy.

¶ 3 Pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2018)), defendants moved for the dismissal of the amended complaint. The circuit court of Peoria County granted the motion and ultimately struck the case.

¶ 4 Plaintiffs appeal, arguing that, contrary to the circuit court's decision, counts III and IV are not barred by the statute of limitations in section 8-101(a) of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/8-101(a) (West 2018)). We do not reach this question. Instead, we conclude that counts III and IV fail to state a cause of action, and we uphold the dismissal of those counts for that threshold reason. Therefore, we affirm the judgment.

¶ 5 I. BACKGROUND

¶ 6 In a nutshell, the allegations of the amended complaint are as follows. From 2007 to 2010, plaintiffs entered into negotiations with defendants to redevelop the Pere Marquette Hotel and adjacent properties on Main Street in Peoria. In June 2010, Matthews, as president of an Illinois limited liability company, EM Properties, Ltd., signed a redevelopment agreement with the City. By threatening to discontinue its financing of the project, the City coerced amendments to the redevelopment agreement. The City then unreasonably demanded more and more information about project details and more and more control over the management of the hotel. The project ran into financial difficulties and was at risk of economic collapse. In July 2016, Deutsche Bank made a refinancing offer. Because the City, however, unlike all the other creditors, "refus[ed] to discuss any negotiated diminution of their maximum potential claim," Deutsche Bank, in January 2017, withdrew its refinancing offer. In February 2017, the prime lending group, INDURE, filed a complaint for mortgage foreclosure. In October 2017, YAM Capital, LLC (YAM), made a refinancing offer. In January 2018, a City council meeting was held to consider

YAM's proposal. In the meeting, council members criticized the YAM proposal, badmouthed the developers, and expressed the view that the City would be better off letting the hotel go bankrupt and pass into the hands of new owners. In February 2018, because of the negative City council meeting, YAM withdrew its refinancing offer. In March 2018, the owners of the hotel filed for bankruptcy. Owing to the "vitriolic atmosphere" that the City and Mayor Ardis had created, INDURE was the only approved bidder. The outcome of the bankruptcy case was that plaintiffs lost their interest in the hotel and their opportunity to receive development fees.

¶ 7 II. ANALYSIS

¶ 8 A. Count III: Tortious Interference With a Contractual Relation

¶ 9 The motion to dismiss the amended complaint was a combined motion pursuant to sections 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2018)). The motion contended that the amended complaint failed to state a cause of action (see *id.* § 2-615) and that—legal insufficiency aside—the amended complaint was barred by affirmative matter, namely, a lack of standing (see *id.* § 2-619(a)(9)), an expired statutory period of limitation (see *id.* § 2-619(a)(5)), and *res judicata* (see *id.* § 2-619(a)(4)). The circuit court assumed the legal sufficiency of counts III and IV, the counts alleging, respectively, a tortious interference with a contract and a tortious interference with a prospective economic advantage. See *Vroegh v. J & M Forklift*, 165 Ill. 2d 523, 530 (1995) (explaining that an affirmative defense "admits the legal sufficiency of [the] cause of action" while "assert[ing] new matter by which the plaintiff's apparent right to recovery is defeated"). While so assuming, the court concluded that those counts were stale. Specifically, the court held that the one-year period of limitation in section 8-101(a) of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/8-101(a) (West 2018)) barred counts III and IV. Therefore, the court dismissed those counts with prejudice.

¶ 10 Regardless of whether the dismissal of a complaint was pursuant to section 2-615 (735 ILCS 5/2-615 (West 2018)) or section 2-619 (*id.* § 2-619), our standard of review is *de novo*. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. We pay no deference to the circuit court's analysis. See *In re Miller*, 2023 IL App (1st) 210774, ¶ 22. Indeed, we may affirm the judgment for reasons that have nothing to do with the circuit court's analysis. See *Material Service Corp. v. Department of Revenue*, 98 Ill. 2d 382, 387 (1983) (remarking that "[i]t is the judgment and not what else may have been said by the lower court that is on appeal to a court of review").

¶ 11 To us, it makes more sense to begin with the question of whether counts III and IV are legally sufficient. Unless those counts, in the first place, state a claim that the law recognizes, there is no occasion for deciding whether "the claim *** is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2018).

¶ 12 Tortious interference with a contractual relation, the tort that plaintiffs assert in count III, has five elements:

> "(1) the existence of a valid and enforceable contract between the plaintiff and another; (2) the defendant's awareness of this contractual relation; (3) the defendant's intentional and unjustified inducement of a breach of a contract; (4) a subsequent breach by the other, caused by the defendant's wrongful conduct; and (5) damages." *Olaf v. Christie Clinic Ass'n*, 200 Ill. App. 3d 191, 195 (1990); see *Poulos v. Lutheran Social Services of Illinois*, 312 Ill. App. 3d 731, 742 (2000).

According to defendants, the first of those elements is lacking. Defendants observe, "Plaintiffs are not parties to *any* of the contracts attached to the Amended Complaint with which [defendants] allegedly interfered." (Emphasis in original.) Plaintiffs offer no response to that observation.

Defendants appear to be correct: in none of the allegedly breached contracts are plaintiffs named as contracting parties.

¶ 13 The amended complaint alleges the existence of seven contracts. They are attached to the amended complaint as exhibits A, D, E, F, G, H, and I.

¶ 14 Exhibit A is a "Redevelopment Agreement Between the City of Peoria and EM Properties, Ltd." As the title of the exhibit suggests, the contracting parties are the City and EM Properties, Ltd. Plaintiffs are not named as contracting parties.

¶ 15 Exhibit D is an "Amended and Restated Development Agreement by and Among the City of Peoria and EM Properties, Ltd., and Pere Marquette Hotel, LLC, and Pere Marquette TIF, Inc." As the title of that exhibit suggests, the contracting parties are the City, EM Properties, Ltd., Pere Marquette Hotel, LLC, and Pere Marquette TIF, Inc. Plaintiffs are not named as contracting parties.

¶ 16 Exhibit E is a "Second Amendment to Amended and Restated Redevelopment Agreement by and Among the City of Peoria and EM Properties, Ltd., and Pere Marquette Hotel, LLC, and Pere Marquette TIF, Inc." The contracting parties are the same as in exhibit D, and they do not include plaintiffs.

¶ 17 Exhibit F is a "Subordination and Intercreditor Agreement." There are 10 parties to this contract: (1) Pere Marquette Hotel, LLC, (2) Pere Marquette Courtyard, LLC, (3) Pere Marquette Garage, LLC, (4) Pere Marquette Garage MT, LLC, (5) IBEW-NECA Diversified Underwritten Real Estate Fund, (6) the City, (7) Main Street Land Trust, (8) Pere Marquette Hotel Associates, L.P., (9) Stonehenge SCD XXI E, LLC, and (10) Pere Marquette TIF, Inc. Plaintiffs are not parties to this contract.

¶ 18 Exhibit G is a "Management Agreement by and Between Courtyard Management Corporation and GEM Hospitality, LLC." The parties to this contract are the two business entities listed in its title. Plaintiffs are not parties to this contract.

¶ 19 Exhibit H is an "Assignment of Management Agreement, Other Project Documents[,] and Development Rights." Pere Marquette Hotel, LLC, and Pere Marquette Courtyard, LLC, are named therein as the assignors, and the City is named as the assignee. Plaintiffs are not named as parties to this assignment.

¶ 20 Finally, exhibit I of the amended complaint is a "Side Letter Amendment to Loan Documents—Pere Marriott Hotel/Courtyard Marriott Hotel, Peoria, IL (the 'Project')" (hereinafter, the side letter). The parties that signed this amendment were (1) the City, (2) Pere Marquette Hotel, LLC, (3) Pere Marquette TIF, Inc., (4) Pere Marquette Courtyard, LLC, (5) Pere Marquette Garage MT, LLC, and (6) Pere Marquette Garage, LLC. In addition, exhibit I bears the signature of one of the plaintiffs, Gary E. Matthews, as guarantor.

¶ 21 Thus, one of the plaintiffs, Gary E. Matthews, was a party to one of the contracts discussed in the amended complaint, namely, the side letter. Nowhere in the amended complaint, however, do plaintiffs allege a breach of the side letter. Instead, in count III, plaintiffs allege a breach of the "Redevelopment Agreements and the Intercreditor Agreements and the Management Agreement"—contracts to which plaintiffs are not parties. Although it is true that Matthews signed these contracts, he did so only in his capacity as the president or manager of various business entities—which, instead of himself individually, were the contracting parties. For example, EM Properties, Ltd., signed the original and amended redevelopment agreements "[b]y" "Gary E. Matthews, President." Or to take another example, GEM Hospitality, LLC, signed the management agreement "[b]y" Gary E. Matthews as "President of EM Properties, Ltd., Manager."

¶ 22 In short, in all the contracts with which defendants allegedly interfered, Matthews personally was not a contracting party but was merely an agent of the contracting party. The amended complaint shows that plaintiffs were not parties to any of the contracts that allegedly were breached. Because the first element of a cause of action for tortious interference with a contractual relation is lacking, we need not consider the remaining elements of the tort. We conclude, *de novo*, that this missing element makes count III legally insufficient. For that reason, as to count III, we uphold the granting of the motion for dismissal.

¶ 23 B. Count IV: Tortious Interference With Prospective Business Relations

¶ 24 Count IV of the amended complaint seeks to hold defendants liable for the tort of tortious interference with prospective business relations. That tort has four elements:

> "(1) the plaintiff has a reasonable expectancy of entering into a business relationship; (2) the defendant knows of the expectancy; (3) the defendant interferes and prevents the realization of the business relationship; and (4) the defendant's interference actually damages the plaintiff." *Alpha School Bus Co. v. Wagner*, 391 Ill. App. 3d 722, 747 (2009).

¶ 25 In count IV, plaintiffs allege that they "had a reasonable expectancy of entering into a lending relationship with Deutsche Bank." This allegation is a mere conclusion, the truth of which we do not assume. See *Patrick Engineering, Inc.*, 2012 IL 113148, ¶ 31. Count IV further alleges that, "by being the sole non-negotiating party with regard to the Deutsche Bank proposal," the City "caused the Deutsche Bank refinancing to fail." Also, in count IV, the amended complaint alleges that the City sabotaged the YAM proposal by "intentionally and unjustifiably [speaking] out against [it] with defamatory comments that the developers were not trustworthy[ ] and personal

comments that several of the councilmembers would rather see the entire deal fail than allow the *developers* to maintain control of the Project." (Emphasis added.)

¶ 26 According to the amended and restated redevelopment agreement, however, which is attached to the amended complaint as exhibit D, " '[r]edeveloper' means Hotel Owner and TIF member (and any permitted successors or assigns hereunder)." " 'Hotel Owner' " in turn "means Pere Marquette Hotel, LLC, an Illinois limited liability company." " 'TIF Member' means Pere Marquette TIF, Inc., an Illinois corporation." In their amended complaint, plaintiffs do not allege that Deutsche Bank proposed entering into a contract with them instead of with (more logically) the " 'Hotel Owner.' " Nor do plaintiffs allege, in their amended complaint, that YAM proposed entering into a contract with them individually. Instead, plaintiffs allege, "On November 30, 2017, YAM sent a term sheet with proposed payouts to the interested creditors." "A limited liability company *** is a legal entity distinct from its members, which has its own legal rights and obligations." *Flores v. Westmont Engineering Co.*, 2021 IL App (1st) 190379, ¶ 29. An analogous principle applies to corporations. "A corporation is a legal entity separate and distinct from its shareholders, directors, and officers." *In re Rehabilitation of Centaur Insurance Co.*, 158 Ill. 2d 166, 172 (1994).

¶ 27 Like count III, then, count IV is missing the threshold element. Count IV is devoid of facts justifying the conclusion that plaintiffs themselves "ha[d] a reasonable expectancy of entering into a business relationship" with Deutsche Bank or YAM. *Alpha*, 391 Ill. App. 3d at 747. Plaintiffs do not specifically allege that Deutsche Bank or YAM proposed entering into a business relationship with them personally as opposed to with the artificial persons—the limited liability company and the corporation—that actually owned the property to be redeveloped. Therefore, in

our *de novo* review, we conclude that count IV is legally insufficient, and we uphold the dismissal of that count.

¶ 28 III. CONCLUSION

¶ 29 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 30 Affirmed.