

**IN THE CIRCUIT COURT FOR THE TWENTY-THIRD JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS**

JAMES DOE ,

Plaintiff,

v.

JOHN DENNIS HASTERT,

Defendant.

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**ROBYN INGEMUNSON
CIRCUIT CLERK KENDALL CO.**

ORDER

This matter coming before the court on the Defendant's Combined Motion to Dismiss pursuant to 735 ILCS 5/2-619.1; the parties having fully briefed and argued their respective positions, which arguments were recorded electronically; and the court being otherwise fully advised in the premises. The parties have previously set forth their respective arguments, so that the court will neither recite nor restate those positions, except as may be necessary herein.

A Motion to Dismiss pursuant to 735 ILCS 5/2-619.1 combines motions brought pursuant to sections 2-615 and 2-619. The former tests the legal sufficiency of the complaint on the basis of defects appearing on its face. All well-pleaded facts and any reasonable inferences from those facts must be taken as true. The court is obligated to review the allegations of the complaint in the light most favorable to the plaintiff to determine whether the allegations are sufficient to state a cause of action for which relief may be granted. In their respective briefs, counsel for each party has set forth the appropriate legal standards with respect to the court's consideration of the motion to dismiss under section 2-615.

Addressing whether the plaintiff has adequately plead the elements of a claim for a breach of contract action, and applying the proper legal standard when reviewing the complaint, the court finds that the plaintiff has sufficiently plead the necessary elements to allege a claim for contract. The plaintiff has sufficiently alleged the existence of consideration for a contract to survive a motion to dismiss. Whether

the consideration was valid is an issue to be determined at a later date. Similarly, upon reviewing the allegations of the complaint in a light most favorable to the plaintiff, the court finds that the plaintiff has sufficiently alleged facts concerning the terms of the agreement between the parties. The defendant also suggests that the plaintiff's own breach of the parties' agreement excuses the performance of the agreement by the defendant. This is not an element which the plaintiff needs to allege or prove. It may be an affirmative defense for the defendant, but it is not a basis for dismissing the plaintiff's claim for failure to state a cause of action.

For the foregoing reasons, the defendant's Motion to Dismiss the plaintiff's complaint pursuant to section 2-615 is denied.


A different analysis applies to a motion to dismiss brought under section 2-619. Such a motion admits the legal sufficiency of the complaint and presumes a valid cause of action exists, but raises defects, defenses or other affirmative matters which appear on the face of the complaint or are established by external submissions which negate the plaintiff's cause of action. The purpose of a section 2-619 motion is to dispose of issues of law and easily proved issues of fact early in the litigation. In their respective briefs, counsel for each party has set forth the appropriate legal standards with respect to the court's consideration of the motion to dismiss under section 2-619.

One aspect of the defendant's argument is that the parties' agreement is void as a matter of public policy. Whether an agreement is void due to public policy depends upon whether it expressly contravenes the law or a known public policy of this state. *Jordan v. Knafel*, 355 Ill.App.3d 534, 539 (1st Dist. 2005). As the First District held in *Jordan*, not all contracts for silence violate public policy. *Id.* at 540. In fact, "there is a presumption of validity and enforceability attaching to settlement agreements which include confidentiality provisions." *Id.* While the First District addresses matters which may be contrary to public policy, the defendant has not established any such basis sufficiently to warrant a dismissal pursuant to section 2-619.

The defendant also relies upon the Statute of Frauds as a basis for the dismissal of the plaintiff's complaint. Upon reviewing this claim in a light most favorable to the plaintiff, the court finds that this affirmative matter has not been established sufficiently for the purposes of this motion.

For the foregoing reasons, the defendant's motion to dismiss pursuant to section 2-619 is dismissed as well. The defendant is granted 28 days from the entry of this order to file an answer and any affirmative defenses to the plaintiff's complaint. The pending status date of November 29, 2016 is stricken, and this matter is continued to January 18, 2017 at 9:00 a.m. for status of the pleadings, written discovery and further case management.

Entered: November 7, 2016



Judge Robert P. Pilmer