2024 IL App (3d) 220156-U

Order filed June 11, 2024

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2024

PAUL MARTIN,	)	Appeal from the Circuit Court
	)	of the 18th Judicial Circuit,
Plaintiff/Counter-Defendant/Appellee,	)	Du Page County, Illinois.
	)	
v.	)	Appeal No. 3-22-0156
	)	Circuit No. 17-L-527
ALAN J. MARTIN,	)	
	)	The Honorable
Defendant/Counter-Plaintiff/Appellant.	)	Robert E. Douglas
	)	Judge, Presiding.

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices Holdridge and Hettel concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not err in denying the defendant's motions seeking summary judgment, dismissal pursuant to section 2-615, and sanctions, and the related motions to reconsider; (2) because state precedents hold that a court may not *sua sponte* enter a judgment on an arbitration award under Supreme Court Rule 92(c), the trial court should have granted the defendant's motion to vacate the July 8 and 16, 2021, judgment orders; and (3) due to the *vacatur* of those orders, the cause is remanded to the Du Page County circuit court for additional proceedings.

¶ 2 The plaintiff, Paul Martin, filed a complaint when the defendant, Alan Martin, allegedly refused to repay a loan that had been orally agreed to in 2013. During the protracted trial court proceedings, both parties filed and argued numerous filings. Ultimately, the court denied both the defendant's motion to vacate two judgment orders based on an arbitration award for the plaintiff and the defendant's motion for sanctions against the plaintiff, concluding the trial proceedings in 2022.

¶ 3 On appeal, the defendant argues that the trial court erred by denying his motion for summary judgment, section 2-615 motion to dismiss, motion to vacate the judgment orders, and motion for sanctions. We affirm in part and reverse in part, remanding the cause to the trial court for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 In May 2017, Paul filed a two-count complaint in Du Page County against his brother, Alan, seeking $65,000 plus interest and costs for the alleged breach of an oral contract and unjust enrichment. In the first count of the complaint, Paul alleged that he agreed to Alan's initial request in 2013 for a $35,000 loan and subsequently agreed to his request for a second loan in the amount of $30,000. Both loans were allegedly payable on demand, and Paul demanded repayment on July 31, 2015. Although Paul asserted that Alan made a partial payment of $30,000, Alan never paid the $35,000 balance. In count II of the complaint, Paul alleged that Alan was unjustly enriched when he failed to pay that balance.

¶ 6 Throughout the proceedings, Alan, an attorney, represented himself. In 2018, he filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)), asserting that Paul's allegations were both legally and factually insufficient to sustain his claims. Alan asserted that count I failed because it relied on general

conclusions of law, including the existence of a valid oral contract, without offering any supporting facts. He argued that the unjust enrichment claim in count II failed because it did not state an independent cause of action and did not allege facts establishing "improper conduct such as fraud, duress, or undue influence" or Alan's failure to fulfill an established duty.

¶ 7 Paul failed to respond to the motion to dismiss, instead voluntarily dismissing his complaint. In April 2018, he successfully requested leave to file an amended complaint, over Alan's objection, which he filed on May 24. Count I of the amended complaint restated Paul's original breach of oral contract claim, alleging that he agreed to Alan's request for a $35,000 loan on June 30, 2013, as well as a request for a $30,000 loan on October 8, 2013. Both loans were alleged to have been without interest and payable on demand. Paul also reiterated his previous claim that Alan repaid only $30,000 despite repeated demands for full repayment. In count II of the amended complaint, Paul again alleged that Alan was unjustly enriched when he "unjustly retained a portion of the sums loaned by" Paul.

¶ 8 On June 21, Alan filed a second motion to dismiss pursuant to section 2-615 of the Code, again arguing that the "general allegations"" in count I of Paul's complaint, including the bare assertion that "a 'contract exists,' " were legal conclusions that failed to satisfy Illinois's fact-pleading requirement. Alan reiterated the arguments in his original motion to dismiss in addressing count II. The trial court denied Alan's motion to dismiss on August 29.

¶ 9 On September 27, Alan filed his answer and affirmative defenses to the first amended complaint, as well as a counterclaim asserting that Paul had agreed to pay him legal expenses and costs related to Alan's representation of their parents' interests in obtaining and enforcing an order of protection. Alan alleged that "[p]rior to 2013, and at all relevant times hereto, Paul Martin was indebted to Alan Martin for loans extended to Paul Martin as a result of Paul Martin's

gambling and substantial losses via electronic stock trading and for legal services rendered to Paul Martin, including but not limited to, the unwinding of stock transactions and Paul Martin's involvement in transactions with convicted felon and drug trafficker Paul Maly (a/k/a fraudulent identity 'Richard Russell') (hereinafter 'Maly/Russell') for which Paul Martin failed to repay and compensate Alan Martin in full." He further alleged that "prior to and during 2013, when this same convicted felon and drug trafficker Maly/Russell surfaced in Illinois and sought to gain access to, and transfer, mother Lillie Martin's and father Daniel Martin's UBS retirement account, Paul Martin implored Alan Martin to take legal action and measures vis-a-vis Maly/Russell as to his attempts to exploit elderly Lillie Martin and Daniel Martin and to gain access, control, and to transfer their accounts and assets." Alan claimed that, although Paul made two payments, he refused to pay the remaining sums due. In his counterclaim, Alan sought an award of more than $35,000, advancing theories of breach of contract and, alternatively, *quantum meruit.*

¶ 10 In answering the allegations in Paul's amended complaint, Alan asserted that Paul had fabricated the loans, stating "after the plenary two year order of protection had been secured and was in place, Paul Martin again started drinking, resumed gambling in electronic stock trading" and "during a 2-day period at the time of October 11, 2013, Paul Martin proceeded to lose over $30,000 on his stock gambling transactions." Allegedly due to those activities, "Paul Martin reverted to a longtime pattern of casting himself as a perpetual victim, looking to others for cover for his losses, and trying to recast his payments, as set forth above and per agreement, as being something other than what they actually were for." Alan's response asserted four affirmative defenses: (1) unclean hands; (2) estoppel; (3) waiver; and (4) laches. In his reply, Paul denied the allegations in Alan's answer and counterclaim.

¶ 11 A highly contentious and extended discovery process followed that included the parties' filing of numerous motions to compel, a petition for a rule to show cause, and requests for sanctions under Illinois Supreme Court Rule 137 (eff. Jan. 1, 2018). On November 15, 2019, Alan filed a motion for summary judgment, arguing that:

> "despite the passage of years and repeated opportunities to provide any facts in support of his claim about a purported loan in 2013, Paul Martin still cannot, and has not, identified any communication between the parties in 2013 - oral or written - regarding his claim about a purported loan. *** Pursuant to Rule 219(c), the Court properly should enter a bar order and dismissal of Paul Martin's claims about a purported loan in 2013 for which Paul Martin cannot identify a single communication in 2013 between the parties in support of such a claim. *** Should Paul Martin's claims not be dismissed pursuant to the pending Rule 219(c) motion, which would obviate and spare the further waste of the Court's (and parties') time and resources, then his claims should be dismissed pursuant to a formal summary judgment motion."

¶ 12 The next day, the trial court entered a written order denying Alan's motion under Illinois Supreme Court Rule 219(c) (eff. July 1, 2002), granting both parties leave to take depositions, and noting that Alan had withdrawn his summary judgment motion. The court then granted Alan leave to file a new summary judgment motion and supporting memorandum before the parties' scheduled January 19 arbitration date. Later, that arbitration date was stricken, Paul was ordered to sit for a deposition, and the parties were instructed to file any summary judgment motions and supporting memoranda by April 10, 2020. Paul ultimately sat for his discovery deposition on July 20, 2020. Alan subsequently filed a motion to compel Paul to answer the questions that

remained unanswered and sought sanctions under Rule 219(c). Paul subsequently completed his deposition in the trial court's chambers.

¶ 13 After the close of discovery, Alan filed a motion for summary judgment directed against Paul's first amended complaint on March 11, 2021. He argued that the allegations in the complaint were inadequate to sustain Paul's breach of contract and unjust enrichment claims as a matter of law because he failed to provide any written or oral communications between the parties regarding the loans in 2013, the year they were allegedly made. In the absence of any proof that the parties had entered into the alleged loan contracts in 2013, Alan argued that he was entitled to summary judgment.

¶ 14 In his response, Paul contended that Alan had made "a *Celotex*-type Motion for Summary Judgment," citing *Celotex Corp v. Catrett*, 477 U.S. 317 (1986), and *Jiotis v. Burr Ridge Park District*, 2014 IL App (2d) 121293. He also argued that issues of material fact remained that precluded summary judgment:

> "The issues for the trier of fact are, among other things, whether or not the loan existed between the parties/brothers, was the exchange a gift, was Defendant's actions in making a partial payment an acknowledgement of the existence of the loans, whether there has been a sufficient demand, and also whether Defendant is entitled to any setoffs against Plaintiff's claim."

¶ 15 In his reply, Alan argued that Paul's written discovery responses offered no evidence supporting his allegation that the parties had agreed orally or in writing to a "loan." In contrast, Alan attached his own Rule 191 affidavit to his summary judgment motion, attesting under oath that the allegations of a loan agreement between the parties were false. Alan maintained that, in the absence of a counter-affidavit or other admissible evidence, the trial court was required to

accept the facts asserted in Alan's affidavit as true, citing *Heidelberger v. Jewel Companies, Inc.*, 57 Ill. 2d 87, 92-93 (1974). Because Paul offered no counter-affidavit and was unable to identify any 2013 oral or written communications between the parties about the loan, he necessarily conceded that no oral or written loan agreement existed. Moreover, Paul's sworn verification, stating that he had previously provided all available documents, facts, and information, barred his presentation of any contradictory evidence in response to Alan's summary judgment motion. For those reasons, Alan argued that Paul had conceded that he was unable to establish the essential elements of his cause of action, requiring the trial court to grant summary judgment for Alan.

¶ 16 A hearing on Alan's summary judgment motion was held on April 16, 2021. On April 19, the trial court denied the motion and reaffirmed the scheduled arbitration date. The court subsequently denied Alan's motion to reconsider.

¶ 17 The arbitration hearing was held on May 26, but Alan was absent due to a severe reaction from his second Covid-19 vaccination. At least 24 hours before the hearing, his paralegal had contacted opposing counsel, the arbitration center, and the trial judge to ask that the arbitration be rescheduled due to Alan's condition. The trial court ultimately denied that request, and the arbitration hearing proceeded without Alan. At the conclusion of the hearing, the three arbitrators made no findings on Paul's breach of oral contract claim but found in his favor on the unjust enrichment claim, awarding him $35,000 plus costs. The arbitrators also found in favor of Paul on Alan's counterclaim. Because Alan was self-represented, he was unable to reject the award under Illinois Supreme Court Rule 91(a) (eff. Oct. 1, 2021). Before Paul requested the judicial entry of the arbitration award under Illinois Supreme Court Rule 92(c) (eff. Jan. 1, 2017), the trial court entered the judgment order on July 8. In a clarification entered on July 16, the court

updated the prior judgment order to state "[t]hat a Judgment is entered in favor of [Paul] and against [Alan] on the Counter-Claim" and "[t]hat all of the remaining provisions of the Order entered by this Honorable Court in [*sic*] July 8, 2021 remain in full force and effect." Alan subsequently filed motions to vacate both the July 8 and July 16 orders.

¶ 18 On August 16, Paul filed a Rule 137(a) motion seeking $20,000 in attorney fees as sanctions, arguing that Alan had frivolously "made numerous false allegations in various pleadings," alleged statements that were unrelated to the loan, and "referenced statements and documentation going back almost 15 to 20 years." Paul asserted that Alan's conduct was an attempt "to abuse this judicial process by bringing fastidious and harassing claims against the Plaintiff." He maintained that Alan had made many frivolous filings, including

> "a counter-claim, affirmative defenses, motions to dismiss, and motion for summary judgment, in addition to various motions to compel and for rule to show cause, relating to discovery requests made by Defendant to Plaintiff that really had nothing to do with any controversy in this matter. Defendant's clear and only intention was to intimidate and harass his Plaintiff brother. Defendant also served various discovery requests, including requests to admit, request to answer first set of interrogatories, supplemental requests to answer and produce first set of interrogatories, and other discovery requests seeking irrelevant and immaterial information, with again the only intention to harass and intimidate his Plaintiff brother."

¶ 19 In his sanctions motion, Paul also claimed that Alan "completely abused" the discovery process during Paul's two discovery depositions "by asking irrelevant questions having nothing to do with the controversy at hand, again only to intimidate and harass his Plaintiff brother." In other allegations, Paul contended that Alan had rejected and declined to answer the "basic

discovery requests, solely related to the matters in controversy in this matter over the existence of the loan," in an attempt "to force his brother Plaintiff to incur additional attorney's fees seeking compliance with discovery, which Plaintiff and his attorney chose not to do." According to Paul, Alan also acted in bad faith by failing to attend the arbitration hearing without cause and by filing a motion with no basis in fact seeking to vacate the judgment entered on that arbitration award merely to cause unnecessary delay and to force Paul to incur additional legal fees.

¶ 20 In his response, Alan maintained that Paul's motion for sanctions was "not legally or factually well-grounded and is itself sanctionable under Rule 137" because it did not cite any supportive case law, set out any specific factual statement made by Alan that was untrue or made without reasonable cause, or note any pleading that was contrary to the applicable law. Instead, he claimed Paul attempted to mislead the court by incorrectly stating that Alan had not responded to discovery requests and by suggesting that Alan had been acting in bad faith throughout the proceedings by making frivolous filings when, in fact, the trial court granted many of Alan's requests. Because Paul's motion for sanctions was not based on the law or facts, Alan argued that it had to be withdrawn under Rule 137 or result in Paul and his attorney being sanctioned.

¶ 21 A hearing was held on Paul's motion for sanctions on October 15, with the trial court taking the case under advisement. On November 3, Alan filed "renewed and further motions for sanctions." He cited numerous bases for imposing sanctions, including the unsubstantiated claim in Paul's first complaint that Alan owed him $65,000 in damages and Paul's defiance of an order requiring him to respond to Alan's first motion to dismiss, which resulted in Paul voluntarily withdrawing his initial complaint. When Paul subsequently filed an amended complaint, it also had no basis in fact because it was not supported by any evidence of 2013 communications

between the parties. Combined with Paul's numerous inadequate responses to Alan's discovery requests, his repeated delays and refusals to sit for a discovery deposition, failure to answer questions when he finally was deposed, and baseless pursuant of sanctions against Alan, Alan contended that sanctions against Paul were merited.

¶ 22 In his response, Paul maintained that Alan's motion was baseless and imposed solely to harass him and delay the proceedings. Alan's reply noted that Paul did not refute many of his allegations, and Alan again recounted the factual allegations supporting his request for sanctions.

¶ 23 On November 21, the court entered an order denying Paul's motion for sanctions, finding "that while Defendant Alan Martin's actions throughout this case appear to have been designed to prolong the litigation, no particular pleading, motion or other document is evidently in violation of Rule 137." The trial court later denied Alan's "renewed" motion for sanctions on January 30, 2022, finding:

> "that the documents, pleadings and actions of the Plaintiff, were upon reasonable belief by him and/or his attorney, warranted by existing law or for the extension, modification, or reversal of existing law and that they were not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. As such the Defendant's motion for sanctions pursuant to Illinois Supreme Court Rule 137 is denied."

¶ 24 Alan then filed a "Motion to Clarify, Reconsider, and/or Vacate" that denial. He asserted that the trial court had "failed to address and rule on the full motion, including pursuant to Illinois Supreme Court Rule 219 and the Court's inherent power to sanction violations of its own order." After a hearing on March 17, 2022, the trial court granted Alan's motion to clarify "for the reasons stated on the record" and denied his motion to reconsider and/or vacate the January

30 denial of sanctions. The "reasons stated on the record" during the hearing on Alan's motion to clarify included the trial court's consideration of his original Rule 219 sanctions request and its conclusion that, "taking this case in its totality and looking at both sides and the actions both sides, the Court felt that it -- none of the actions of the Plaintiff/Counter-Defendant Paul Martin rose to such a level as to offend the dignity of the Court in such a way that the Court would exercise its digression [*sic*] and impose 219 sanctions." The trial court also denied Alan's motion to reconsider that ruling.

¶ 25 Alan filed a timely notice of appeal from the trial court order entered: (1) on August 29, 2018, denying his motion to dismiss Paul's amended complaint for failure to state a claim; (2) on April 19, 2021, denying Alan's motion for summary judgment: (3) on July 8, 2021, entering judgment on the May 26 arbitration award for Paul's unjust enrichment claim: (4) on July 16, 2021, denying Alan's counterclaim; (5) on July 16, 2021, denying Alan's motion to reconsider the denial of summary judgment; (6) on November 5, 2021, denying Alan's motion to vacate; (7) on January 30, 2022, denying Alan's motions for sanctions; and (8) on March 17, 2022, denying his motion to reconsider and/or vacate the denial of his prior sanctions motion. Although Alan filed an appellant's brief, Paul did not submit an appellee's brief.

¶ 26 II. ANALYSIS

¶ 27 Before this court, Alan raises four issues: (1) whether the trial court erred in denying his motion for summary judgment; (2) whether the trial court erred in denying his section 2-615 motion to dismiss; (3) whether it was error to enter judgment on the arbitration award *sua sponte* and deny Alan's motion to vacate those orders; and (4) whether the trial court erred in denying his motions seeking sanctions against Paul. Because the first three issues present questions of law, we will review them *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154

Ill. 2d 90, 102 (1992) (applying a *de novo* standard of review to a ruling on a summary judgment motion); *DeHart v. DeHart*, 2013 IL 114137, ¶ 18 (applying a *de novo* standard of review to a ruling on a motion to dismiss under section 2-615); *Ballard RN Center, Inc. v. Kohll's Pharmacy & HomeCare, Inc.*, 2015 IL 118644, ¶ 28 (applying *de novo* standard of review to the interpretation of case law); *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 12 (applying *de novo* standard of review to the construction of Supreme Court Rules). We review the denial of a motion for sanctions for an abuse of the trial court's discretion. *Id.* ¶ 16.

¶ 28 A. Motion for Summary Judgment

¶ 29 Alan first argues that his March 11, 2021, motion for summary judgment should have been granted. A motion for summary judgment may be granted, however, only if no genuine issue of material fact remains, permitting judgment to be entered as a matter of law. *Outboard Marine*, 154 Ill. 2d at 102. A request for summary judgment is considered "a drastic measure and should only be granted if the movant's right to judgment is clear and free from doubt. [Citation.] Where a reasonable person could draw divergent inferences from undisputed facts, summary judgment should be denied." *Id.*

¶ 30 Alan argues that his sworn affidavit, filed pursuant to Illinois Supreme Court Rule 191(a) (eff. Jan. 4, 2013), and other evidentiary attachments were sufficient to disprove the allegations in Paul's unverified first amended complaint as a matter of law. In that affidavit, Alan:

> "attest[ed] hereto that his denials set forth in the answers in Exhibit 3 as to there being no oral contract or agreement for a loan by Paul Martin to Alan Martin in 2013, as alleged in the First Amended Complaint, are true and accurate and that the corresponding denials as to there being no unjust enrichment, as also alleged, likewise are true and accurate. Paul

Martin's allegations are untrue. ***Any monies Paul Martin paid to Alan Martin in 2013 were paid by Paul Martin for his own liabilities and indebtedness to Alan Martin."

¶ 31 Alan attached to his motion copies of the parties' completed discovery, along with copies of Paul's in-court statements and sworn verification of the completeness and accuracy of his prior responses. Alan maintains that those attachments demonstrate Paul's failure to offer evidence of any 2013 written or oral communication between the parties to support the allegation that they entered into a loan agreement. In the absence of that showing, Alan maintains that his motion for summary judgment should have been granted.

¶ 32 In his response, Paul cited *Celotex Corp v. Catrett,* 477 U.S. 317, 322-23 (1986), and *Jiotis,* 2014 IL App (2d) 121293, contending that Alan's motion was "commonly referred to as a *Celotex*-type Motion for Summary Judgment." Paul asserted that the parties' extensive discovery created numerous issues of fact, including "whether or not the loan existed between the parties/brothers, was the exchange a gift [*sic*], was Defendant's actions in making a partial payment an acknowledgement of the existence of the loans, whether there has been a sufficient demand, and also whether Defendant is entitled to any setoffs against Plaintiff's claim."

¶ 33 Although the Illinois Supreme Court has not addressed the distinction between types of summary judgment motions, our appellate court has recognized that distinction. The determination of whether a summary judgment motion is a traditional one or a *Celotex*-type depends on the way the movant seeks to overcome its initial burden of production. If the movant seeks to introduce "evidence that, if uncontroverted, would disprove the plaintiff's case," the motion is a traditional one. *O'Donnell v. Bailey & Associates Counseling, & Psychotherapy LLC,* 2023 IL App (1st) 221736, ¶ 53. In a traditional motion, the movant claims to affirmatively disprove an element of the nonmovant's case. *Jiotis,* 2014 IL App (2d) 121293, ¶ 25. If, on the

other hand, the movant's motion seeks to establish that the plaintiff cannot prove an essential element of the case due to a lack of evidence, it is a "*Celotex*-type motion." *O'Donnell*, 2023 IL App (1st) 221736, ¶ 53. With either type of motion, the movant bears the initial burden of production.

¶ 34 A "*Celotex*-type motion" is so named from the United States Supreme Court's discussion in *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). In a *Celotex*-type motion, the movant is required to show that, even when viewed in its entirety, the evidence available to the plaintiff is insufficient to prove the critical allegations as a matter of law, a test that "mirrors the standard for a directed verdict." *Id*. at 322-23. In other words, a *Celotex*-type motion relies on the complainant's demonstrated inability to prove its own case. *Department of Financial & Professional Regulation v. Walgreen Co.*, 2012 IL App (2d) 110452, ¶ 22. "When this second kind of motion *** is filed, the burden then shifts to the plaintiff to show a factual basis to support the elements of her claim. *Hutchcraft v. Independent Mechanical Industries, Inc.*, 312 Ill. App. 3d 351, 355." *O'Donnell*, 2023 IL App (1st) 221736, ¶ 53.

¶ 35 In Illinois, a successful *Celotex*-type summary judgment motion "requires more than merely pointing out the absence of evidence, without a supporting affidavit or other evidence." *Willett v. Cessna Aircraft Co.*, 366 Ill. App. 3d 360, 365 (2006). A successful movant must also affirmatively show that the plaintiff is unable to obtain the evidence needed to sustain its case. *Id*. at 369. Because a *Celotex*-type motion relies on the nonmovant's proven lack of evidence, it is proper only when the nonmovant has had sufficient opportunity for discovery. *Id*. Here, that threshold requirement was met because discovery was completed before Alan filed his summary judgment motion. Because Alan's motion contends that Paul is unable to offer any evidence of

the underlying loan, thus failing to establish one of the fundamental elements of his cause of action, it is a *Celotex*-type motion.

¶ 36 In his response to Alan's motion, Paul acknowledged his lack of a Rule 191 affidavit but asserted that a nonmovant is not required to strictly comply with that affidavit requirement when confronted with a *Celotex*-type motion. "Whether we classify a defendant's motion for summary judgment as traditional, or as a *Celotex*-type motion, matters. This is because strict compliance with Rule 191(b)'s affidavit requirement, applicable when the nonmovant still requires discovery of material facts to respond to the motion, is not automatically necessary when a defendant files a *Celotex*-type motion, whereas compliance is required with a traditional motion." *Jiotis*, 2014 IL App (2d) 121293, ¶ 26. See also *National Tractor Parts Inc. v. Caterpillar Logistics Inc.*, 2020 IL App (2d) 181056, ¶ 68 (adopting the analysis in *Jiotis*); *Williams v. Covenant Medical Center*, 316 Ill. App. 3d 682, 692 (2000) (stating "Rule 191(b) was adopted before *Celotex*-type motions were widely used and was never intended to apply to them.). Because "[s]trict compliance with Rule 191(b) is not required for a *Celotex*-type motion (*Jiotis*, 2014 IL App (2d) 121293, ¶ 29), no Rule 191 affidavit was required here to avoid entry of summary judgment.

¶ 37 Nonetheless, regardless of the type of motion filed, a summary judgment motion should be granted only if no genuine issue of material fact remains after reviewing the pleading, affidavits, depositions, admissions, and exhibits filed. In making that determination, the court should consider all evidentiary facts. *Carruthers v. B. C. Christopher & Co.*, 57 Ill. 2d 376, 380 (1974).

¶ 38 Here, the common law record reveals that a multitude of evidentiary facts were generated during the parties' extensive discovery. The focus of Alan's motion, however, remains on the absence of evidence of any communications between the parties about the loans in 2013, the year

they were allegedly made. The attachments to that motion, however, reveal that each of the parties provided an abundance of evidentiary facts relating to the purported existence of the loans. For example, Alan provided evidence suggesting that the "loans" were actually Paul's repayment of a prior loan from Alan. For his part, Paul offered his own supplemental answers to interrogatories, more than a dozen text messages, and an email discussing with particularity the loans, their terms, and Alan's alleged failure to repay in full. Taken together, those conflicting facts create, at a minimum, material questions about whether the parties entered into any loans, the precise terms of those loans, and the nature of the $30,000 check Allan subsequently gave to Paul. Although the timing of those facts may well be relevant to key questions such as whether the parties mutually agreed to the loans, it does not undermine the validity of the material questions of fact created by the substance of the communications themselves. For those reasons, the trial court properly denied Alan's motion for summary judgment.

¶ 39 B. Section 2-615 Motion to Dismiss

¶ 40 Alan next argues that the trial court erred by denying his motion to dismiss pursuant to section 2-615 because the allegations in Paul's first amended complaint were too "[g]eneral and conclusory" to state a valid cause of action in Illinois. Alan maintains that, to avoid dismissal, the complaint had to allege specifically how and when he requested the loan, the substance of the parties' discussions that culminated in the loan and its "payable on demand without interest" terms, and the "how, when, who, and what" that led to Alan's promise to pay Paul $35,000 "at all times relevant hereto." *St. Joseph Data Service, Inc. v. Thomas Jefferson Life Insurance Co. of America*, 73 Ill. App. 3d 935, 944 (1979).

¶ 41 Because Illinois is a fact-pleading state, "mere conclusions of law or fact unsupported by specific factual allegations" are insufficient to state a valid cause of action. *Anderson v. Vanden*

Dorpel, 172 Ill. 2d 399, 408 (1996). In Count I of his first amended complaint, Paul asserted a breach of the parties' oral loan contract. To state a claim for breach of contract, he had to allege and prove four elements: (1) a valid and enforceable contract; (2) the plaintiff's performance of the contract terms; (3) the defendant's breach of the contract terms; and (4) damages incurred by the plaintiff as a result of the breach." *Burkhart v. Wolf Motors of Naperville, Inc. ex rel. Toyota of Naperville,* 2016 IL App (2d) 151053, ¶ 14. Alan argues that Paul failed to provide facts sufficient to establish the existence of a valid and enforceable contract.

¶ 42 In his amended complaint, Paul alleged: (1) "[t]hat on June 30, 2013, at A. Martin's specific request, P. Martin loaned to A. Martin the sum of $35,000.00 payable on demand without interest;" (2) "[t]hat P. Martin agreed to provide A. Martin the Loan Amount, and A. Martin agreed to accept the loan amount, payable with our [*sic*] interest;" and (3) "[t]hat at all times relevant hereto, A. Martin has promised to make payment to P. Martin in the sum of $35,000.00." He also alleged "[t]hat full payment of the Loan Amount was payable on demand which was made by P. Martin to A. Martin on July 31, 2015," and "[t]hat P. Martin has made due demand for all sums due and owing, but A. Martin has failed and refused to tender payment."

¶ 43 In his motion to dismiss, Alan argues that those allegations were akin to ones previously found to be "no more than a legal conclusion without any factual support," such as assertions that " 'an agreement was formed' " or "a contract 'was entered.' " *OnTap Premium Quality Waters, Inc. v. Bank of Northern Illinois, N.A.*, 262 Ill. App. 3d 254, 259 (1994). We disagree.

¶ 44 At its core, the complaint alleged that Alan asked Paul for a $35,000 loan on June 30, 2013. The parties agreed that the loan would not incur interest and would "be payable on demand." When Paul demanded payment from Alan on July 31, 2015, however, Alan allegedly

refused to repay the money. In making those allegations, Paul offered more than the mere conclusions at issue in *OnTap*. He specified who was involved in the formation of the contract, how those discussions were initiated, and when the contract began, as well as providing an outline of its key terms.

¶ 45 Although the allegations in the first amended complaint are far from exemplary, we conclude that they were sufficient to satisfy the minimum standards for asserting a viable breach-of-contract claim and, thus, survived Alan's section 2-615 motion to dismiss. The complaint provided sufficient basic evidentiary facts to apprise Alan of the alleged breach but only by a slim margin. Although Paul's allegations, without more, may prove to be insufficient to establish his case at trial, that is not the issue before this court. Accordingly, the trial court did not err in denying Alan's motion to dismiss count I of Paul's first amended complaint.

¶ 46 Next, Alan claims that the trial court should have dismissed Count II of the complaint because Illinois does not recognize an independent cause of action for unjust enrichment. He contends that an unjust enrichment claim must instead be premised on "improper conduct such as fraud, duress, or undue influence," which were not alleged in this case. Moreover, he asserts that Paul had to show that he had an independent duty to act. *Martis v. Grinnell Mutual Reinsurance Co.*, 388 Ill. App. 3d 1017, 1025 (2009) (stating, "[f]or a cause of action based on a theory of unjust enrichment to exist, there must be an independent basis that establishes a duty on the part of the defendant to act and the defendant must have failed to abide by that duty.").

¶ 47 We are not persuaded by Alan's reliance on *Martis* and believe it is inapplicable here for two reasons. First, that court's discussion of the unjust enrichment question was pure *obiter dicta*. As the *Martis* court acknowledged just prior to it unjust enrichment discussion, "[b]ecause plaintiff did not file a cross-appeal, we may not address his argument that the trial court

improperly dismissed his unjust enrichment claim." *Martis*, 388 Ill. App. 3d at 1024. Thus, the court's subsequent comments do not represent an actual legal discussion of the question. We decline the opportunity to adopt "a remark or expression of opinion that a court uttered as an aside, [that] is generally not binding authority or precedent within the *stare decisis* rule." *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 277 (2009).

¶ 48 Second, the unjust enrichment claim in *Martis* was premised on an alleged violation of the Illinois Consumer Fraud Act (*Martis*, 388 Ill. App. 3d at 1025), but Paul's claim has no similar underlying statutory basis. Instead, it arises out of the parties' alleged contract. Contrary to defendant's claim, our supreme court has explained that "[t]he theory of unjust enrichment is based on a contract implied in law. To recover under this theory, plaintiffs must show that defendant voluntarily accepted a benefit which would be inequitable for him to retain without payment." *People ex rel. Hartigan v. E & E Hauling, Inc.*, 153 Ill. 2d 473, 497 (1992). The court did not require allegations of "improper conduct such as fraud, duress, or undue influence" to avoid dismissal of an unjust enrichment claim. Instead, it specified that the necessary elements "[t]o state a cause of action based on a theory of unjust enrichment" are: (1) the defendant's unjust retention of a benefit; (2) that benefit was detrimental to the plaintiff; and (3) the "defendant's retention of the benefit violates the fundamental principles of justice, equity, and good conscience." *HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145, 160 (1989). Alan's contention that unjust enrichment is not a recognizable cause of action in Illinois and that it requires a showing of improper conduct or an independent duty to act by the defendant to be viable is misplaced.

¶ 49 Accordingly, we reject the argument that Paul could not state a separate claim for unjust enrichment. We affirm the trial court's denial of Alan's section 2-615 motion to dismiss Paul's alternative claim for unjust enrichment.

¶ 50 C. Arbitration Hearing and Court Judgments

¶ 51 Alan also argues that the trial court erred in denying his motion to vacate the orders entered on July 8 and 16 that reduced the arbitration board's $35,000 award under Paul's unjust enrichment claim to judgment. His motion suggested two bases for *vacatur*. Relying on *Martis*, 388 Ill. App. 3d at 1024-25, Alan first argued that the orders were erroneous because Illinois does not recognize unjust enrichment as an independent cause of action and Paul failed to make the requisite showing of Alan's improper conduct or duty to act. Before this court, Alan reiterates those arguments in seeking reversal of the trial court's denial of that motion. Because we have already rejected those arguments (*supra* ¶¶ 47-48), we need not address them further.

¶ 52 Second, Alan also sought to vacate the judgment orders because Paul did not file a motion for entry of judgment prior to the issuance of the two judgment orders, as required in Rule 92(c). After carefully reviewing the extensive appellate record in this case, we find no suggestion that either party ever filed a motion to enter judgment on the arbitration award or that any hearing was held on that question prior to the trial court's entry of the July 8 order reducing the arbitration award to judgment. Although our supreme court has not yet ruled on the question of whether a trial court may *sua sponte* enter a judgment based on an arbitration award without a request for that order from a party, the appellate decisions addressing that issue have universally held that any such *sua sponte* judgment order is invalid. *Stemple v. Pickerill*, 377 Ill. App. 3d 788, 793 (2007); *George v. Ospalik*, 299 Ill. App. 3d 888, 890-91 (1998); *Lollis v. Chicago Transit Authority*, 238 Ill. App. 3d 583, 585 (1992).

¶ 53 The rationale for barring a trial court from entering a judgment order on an arbitration award without the requisite motion from a party was explained in *Lollis*:

> "Since the trial court was operating under the recently promulgated Supreme Court rules on mandatory arbitration, our inquiry must begin by examining those rules. Supreme Court Rule 92(c), which governs the entry of judgments on an arbitrators' award, states: 'In the event none of the parties files notice of rejection of the award and requests to proceed to trial within the time required herein [(thirty days from the filing of the award)], any party thereafter may move to enter judgment on the award.' 134 Ill.2d R. 92(c). After parsing this rule, it becomes apparent that the trial court erred twice in entering judgment on the arbitration award. Its first error was to do so *sua sponte*. Rule 92(c) places the obligation on the parties to bring the motion; it makes no provision for the court to enter judgment on its own motion. 134 Ill.2d R. 92(c); see also Ill. Ann. Stat., ch. 110A, R. 92(c), Committee Comments, at 69 (Smith–Hurd 1992) ('Unless the parties stipulate to dismiss the cause after hearing and award, it is incumbent on a party to move the court to enter judgment after the 30–day period allowed for rejection at Rule 93 herein.')." *Lollis*, 238 Ill App. 3d at 585.

¶ 54 Because the relevant Illinois precedents hold that entry of a judgment order without a request by either party violates Rule 92(c), we agree with Alan that the trial court committed error when it filed the July 8 judgment order. Consequently, the trial court's July 16 judgment order, which merely clarified its July 8 order, is also invalid. We vacate the July 8, 2021, judgment order, adopting the arbitration award, as well as the court's subsequent July 16, 2021, order, and remand the cause to the trial court for further proceedings.

¶ 55 D. Sanctions

¶ 56 Finally, Alan argues that the trial court abused its discretion by denying his "renewed and further motions for sanctions," filed on November 3, 2021. Over the course of this multi-year litigation, the parties repeatedly sought to impose sanctions on each other, alleging undue delays, incomplete discovery responses, violations of court order, and frivolous filings improperly intended to delay and harass.

¶ 57 In his November motion, Alan documented in detail the parties' prior requests for sanctions, as well as Paul's allegedly sanctionable conduct since his initiation of the proceedings. Paul's response noted that when the trial court denied his motion for sanctions against Alan on November 21, 2021, it found "that while Defendant Alan Martin's actions throughout this case appear to have been designed to prolong the litigation, no particular pleading, motion or other document is evidently in violation of Rule 137." Based on that finding, Paul opposed Alan's motion for sanctions, arguing that it was "a further attempt made by him to prolong this litigation" when "it actually was Defendant in this case who has more or less stonewalled and delayed the progress in this case."

¶ 58 A hearing was held on Alan's sanctions motion in January 2022. Due to the "voluminous amount of supplemental material attached to the motion and the reply," the trial court took the motion under advisement. On January 30, the court denied the motion, stating:

> "[t]he Court having reviewed the briefs of the Parties together with attachments finds that the documents, pleadings and actions of the Plaintiff, were upon reasonable belief by him and/or his attorney, warranted by existing law or for the extension, modification, or reversal of existing law and that they were not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. As

such the Defendant's motion for sanctions pursuant to Illinois Supreme Court Rule 137 is denied."

¶ 59 Alan subsequently filed a motion to "clarify, reconsider, and/or vacate" that order. In it he argued that, although the order denied his request for sanctions under Rule 137, it did not address his request for sanctions "pursuant to Supreme Court Rules 137 and 219(c) and the Court's inherent Powers." In addition, he argued that Paul had failed to offer any valid excuse for his misconduct.

¶ 60 A hearing was held on the motion to clarify, reconsider, and/or vacate the sanctions order in March 2022. At that hearing, the trial court stated that it had

> "read the motion and feels that a clarification is necessary to its order. The Court did consider the 219 sanction portion of the original motion for sanctions, however, taking this case in its totality and looking at both sides and the actions both sides [*sic*], the Court felt that it -- none of the actions of the Plaintiff/Counter-Defendant Paul Martin rose to such a level as to offend the dignity of the Court in such a way that the Court would exercise its digression [*sic*] and impose 219 sanctions. For that reason, the motion to reconsider is denied. The motion to clarify is granted, and the Court clarifies in that manner."

The court submitted its written denial the next day.

¶ 61 On appeal, Alan asserts that sanctions serve the vital purpose of "preventing abuse of the judicial process by penalizing parties and their counsel who file pleadings and motions that are frivolous and not well-grounded in fact or law." In addition, he notes that Rule 137 requires counsel to " ' "promptly dismiss a [filing] once it becomes evident that it is unfounded," ' " quoting *Lake Environmental, Inc.*, 2015 IL 118110, ¶¶ 5, 13, and that the court's inherent powers

to enforce its orders "often go hand-in-hand with the imposition of Rule 219(c) sanctions." He further maintains that Paul and his trial counsel knew that Paul's initial complaint was frivolous but, nonetheless, continued to litigate for years, causing Alan to incur "needless expense and cost for a suit that should not have been commenced in the first instance."

¶ 62 This court must determine whether the trial court abused its sound discretion in denying Alan's request for sanctions. Under that highly deferential standard of review, we may reverse the trial court's ruling only if no reasonable person could agree with it. *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶¶ 12, 16. After conducting an extensive review of the voluminous pleadings and other filings from both parties, we cannot say that no reasonable person would have denied Alan's sanctions motion. We affirm the trial court's denial of that motion.

¶ 63 III. CONCLUSION

¶ 64 For the reasons stated, we affirm the denial of Alan's motion for summary judgment, section 2-615 motion to dismiss, motion for sanctions, and the related motions to reconsider those denials. We reverse the trial court's denial of Alan's motion to vacate its July 8 and 16, 2021, judgment orders from the arbitration award and remand the cause to the Du Page County circuit court for *vacatur* of those orders as well as all additional proceedings.

¶ 65 Affirmed in part and reversed in part.

¶ 66 Cause remanded.