

¶ 2 Plaintiff Piero Orsi, individually and as successor in interest to RT Financial, Inc., and as assignee of Matthew Gambs, filed an action against defendants Jeffrey Picklin, Jill Lake, individually and as successor in interest to the estate of Ronald M. Lake, and Michelle Drew Spaulding. Plaintiff sought rescission of a stock purchase agreement and a settlement agreement entered into by the parties and/or damages for defendants' alleged fraud, breach of contract and assorted other infractions. The court granted defendants' motion to dismiss plaintiff's second amended complaint with prejudice pursuant to section 2-615 of the Illinois Code of Civil Procedure (the Code) (735 ILCS 5/2-615 (West 2010)). The court denied plaintiff's motion to reconsider and his motion for leave to file a third amended complaint. Plaintiff appeals, arguing the court erred in (1) granting defendants' motion to dismiss; (2) denying his motion to reconsider; and (3) denying his alternative motion for leave to file a third amended complaint. We affirm.

¶ 3 **Background**

¶ 4 Jeffrey Picklin and Ronald Lake founded Republic Title Company in 1984. They operated Republic Title for 12 years, until Lake's death in April 2006. At the time of Lake's death, Picklin and Lake each held 47.5% of Republic Title's shares. Michelle Drew Spaulding held the remaining 5%.

¶ 5 On August 6, 2006, Picklin, Spaulding and Jill Lake, as executor of Lake's estate, sold their Republic Title stock to RT Financial Corporation (RT Financial). The stock purchase agreement executed by the parties provided that, in exchange for \$4.83

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million, RT Financial would receive Picklin, Spaulding and Lake's stock. It would also receive \$400,000 in "working capital" as shown on a "closing working capital statement" to be presented to plaintiff within 60 days of closing. "Working capital" was defined as Republic Title's "current assets *** less the current liabilities." If the working capital exceeded \$400,000, plaintiff's purchase price would be increased by the overage. If it was under \$400,000, the purchase price would be reduced concomitantly.

¶ 6 The agreement provided that Republic Title was a corporation in good standing under the laws of the State of Illinois; there were no pending claims or investigations to which Republic Title was a party except as disclosed in schedule 3.2(i); and the company had complied with and owned its assets in accordance with all federal, state and local laws, and had operated its business accordingly except as set forth in schedule 3.2(n). Defendants promised that, to their knowledge, Republic Title had no liabilities or obligations except for those that were disclosed on the most recent balance sheet, arose after the date of that balance sheet, were not required to be reported on the balance sheet and arose out of specifically excluded matters set forth in schedule 3.2(i) of the agreement.

¶ 7 Schedule 3.2(bb) set forth a list of each escrow account used by Republic Title. The agreement provided that, except for account no. 0125754401 at First Midwest Bank, which account had been closed in July 2006 and with respect to which there had been no activity, "the aggregate amount held in escrow *** equals or exceeds the aggregate amount of the obligation of or on behalf of [Republic Title] to pay amounts

held in escrow."

¶ 8 Plaintiff Piero Orsi and Matthew Gambs were the only shareholders in RT Financial. After execution of the stock purchase agreement, they dissolved RT Financial and became Republic Title's sole shareholders. Plaintiff owns 95% of Republic Title's stock and Gambs owns 5%. Gambs subsequently assigned to plaintiff any rights Gambs had against Picklin, Jill Lake and Spaulding.

¶ 9 In 2007, plaintiff discovered what he alleged were "numerous previously undisclosed liabilities of Republic to third parties and misrepresentations by [d]efendants" concerning Picklin and Lake's operation of Republic Title prior to the sale.¹ On October 17, 2007, plaintiff, Gambs, Picklin and Jill Lake, in her capacity as "successor-in-interest" to her husband's estate, executed a "Confidential Settlement, Termination and Mutual Release Agreement" (settlement agreement). Pursuant to the settlement agreement, the parties agreed "to settle, waive and release" each other "from all disputes and claims, subject to Section 10 [of the agreement], arising with respect to matters arising under the Purchase Agreement." They agreed that, upon payment of certain sums, the purchase agreement would terminate in full, subject only to section 10. Republic Title, plaintiff and Gambs agreed to release Picklin and Lake and their respective agents or successors from any action arising or relating in any way to Republic Title, the purchase agreement and assorted other matters and never to sue

¹ This phrasing is taken from plaintiff's second amended complaint, paragraph 16.

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them on those bases.

¶ 10 In section 10 of the settlement agreement, titled "Limitations on Releases," Picklin and Jill Lake acknowledged and agreed that nothing in the settlement agreement should be construed as a release by plaintiff, Gambs or Republic Title of any claims they might have against Picklin and Jill Lake "for any fraudulent act, or any criminal act involving embezzlement or fraud, of Picklin or Lake [which included Ronald Lake individually] or any claim brought by any third party against any of the Buyers' Parties arising out of any fraudulent act, or any criminal act involving embezzlement or fraud, of Picklin or Lake [which included Ronald Lake individually]."

¶ 11 In 2009, plaintiff allegedly found additional undisclosed liabilities, irregularities and improper practices at Republic Title, committed by Picklin and Lake while they operated Republic.² He filed suit against Picklin, Jill Lake, individually and as successor-in-interest to her husband's estate, and Spaulding (defendants). In a 96-page complaint with more than 400 pages of exhibits, he charged defendants with fraudulent misrepresentation, violation of Illinois securities law, nonperformance, breach of contract, fraudulent inducement, common law fraud, fraudulent concealment, breach of employment agreement, unjust enrichment and civil conspiracy. He sought

² Plaintiff had hired a forensic accountant to examine Republic Title's records after Picklin's former employee, Catherine Weaver, had been convicted of mail fraud in connection with her activities at Republic Title, incarcerated and ordered to pay plaintiff \$845,577 in restitution.

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rescission of the stock purchase and settlement agreements and damages.

¶ 12 Finding the complaint to be "a very strange pleading," "miserable to deal with," rife with conclusory allegations and unworkable, the court granted Picklin's motion to dismiss pursuant to section 2-615 of the Code. The court explained to plaintiff that he pleaded so many facts and then repeated the same facts in his counts that it was impossible to determine whether he made an actual allegation as to an operative fact. The court stated that "[n]obody can answer a complaint like that" and the court "could never figure out what you want to prove."

¶ 13 The court instructed plaintiff to file an amended complaint. It limited him to 10 paragraphs of background facts and instructed him to put in each count the operative facts regarding each count. It explained to plaintiff that he had to set out in the background facts and then in each count the provisions of the agreement he was saying was breached. The court could not determine what provisions were at issue in the complaint the way it stood. The court then stated that there was "never actually an allegation that says this provision is breached by this. So all those allegations of breach are conclusory." It stated there was an overload of evidentiary details but no real allegations of breach of a particular part of the agreement. The court specifically pointed out to plaintiff how his counts III, VI, VII and VIII were conclusory, and explained that he had to "tell [the court] what's been breached."

¶ 14 Plaintiff filed a 17-page amended complaint against defendants. The court denied Jill Lake's 2-619.1 motion to dismiss the amended complaint against her for

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failure to comply with the statute of limitations applicable to claims against an estate. The court then granted Jill Lake's and Picklin's motions to dismiss pursuant to section 2-615. The court found that it had "great difficulty understanding what the nature of the case" was "because, still, the allegations are not specific" against either Jill Lake or Picklin. The court stated that although there were a lot of factual allegations made in the beginning of the amended complaint, the actual counts were "so minimal, it's conclusory. I cannot see what the allegations really are." It gave plaintiff leave to file another complaint.

¶ 15 Plaintiff filed a 29-page second amended complaint against defendants. In counts I through III, he sought rescission of the stock purchase and settlement agreements based on fraud, violation of Illinois securities law and non-performance/breach. In counts IV through VII, he sought money damages for common law fraud, breach of the settlement agreement, civil conspiracy and unjust enrichment.

¶ 16 On February 17, 2011, the court granted Jill Lake's and Picklin's motions to dismiss the second amended complaint pursuant to section 2-615. The court found

" [it] clear *** there are no claims - - there is no claim stated against any defendant in this case. There are no damages asserted and no basis for rescission of the settlement agreement or the purchase agreement as set out. There's no indication of a causal connection between all of the detailed allegations of allegedly bad acts and anything that happened as a result that either would serve as damages or as a basis for rescinding the entire agreement.

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Those key allegations are not there.

**** nothing has changed as far as the plaintiff's pleadings are concerned.

There is a great deal of detail as to alleged bad acts, but then all the allegations that would be needed to state a cause of action are conclusory, and there's nothing tied up. The pleadings remain impenetrable, is the way I would say it."

The court dismissed the second amended complaint as to all parties with prejudice.

¶ 17 On February 22, 2011, plaintiff filed an appeal from the court's order dismissing his second amended complaint, appeal no. 1-11-0680.

¶ 18 On March 21, 2011, plaintiff filed a motion to reconsider the dismissal of his second amended complaint or, in the alternative, for leave to file a third amended complaint.³ The court denied plaintiff's motion to reconsider. With regard to the motion for leave to amend, the court stated it had looked at the proposed pleading and, except for count I, found "all the other counts are completely identical to the counts [it had] already dismissed, so [there was] no need to address those." The court ordered

³ A party has 30 days from the date of entry of an order in which to file a posttrial motion addressing that order. 735 ILCS 5/2-1202 (West 2002). Plaintiff filed his motion to reconsider the court's February 17, 2011, order dismissing his second amended complaint on March 21, 2011, 32 days after entry of the order. However, the 30th day after February 17, 2011, fell on a Saturday and plaintiff's motion filed on the next business day was, therefore, timely. 5 ILCS 70/1.11 (West 2010).

Further, plaintiff filed his appeal from the court's February 17, 2011, dismissal with prejudice of his second amended complaint before he filed his motion to reconsider that dismissal. Because this notice of appeal, case no. 1-11-0680, was filed before entry of an order disposing of the last pending posttrial motion, the notice of appeal did not become effective until the court entered its July 6, 2011, order finally disposing of all posttrial motions. Illinois Supreme Court Rule 303(a)(2) (eff. May 30, 2008).

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defendants to brief the issue of whether the court should grant leave to file the proposed count I, addressing which factors the court should consider and whether those factors were present. On July 6, 2011, after such additional briefing, the court denied plaintiff's motion for leave to file a third amended complaint "for the reasons stated in open court."⁴

¶ 19 On July 20, 2011, plaintiff timely appealed from the court's denial of his motion to reconsider and for leave to file a second amended complaint, appeal no. 1-11-2102. Plaintiff's two appeals were consolidated on August 31, 2011.

¶ 20 Analysis

¶ 21 (I) Dismissal of Second Amended Complaint

¶ 22 Plaintiff first argues the court erred in granting defendants' motion to dismiss his second amended complaint pursuant to section 2-615 of the Code. A section 2-615 motion to dismiss attacks the legal sufficiency of the complaint, alleging only defects on the face of the complaint. *Neppl v. Murphy*, 316 Ill. App. 3d 581, 584 (2000); *Elson v. State Farm Fire & Casualty Co.*, 295 Ill. App. 3d 1, 6 (1998). Viewing the complaint in the light most favorable to plaintiff, we must determine whether the complaint alleges facts sufficient to state a cause of action upon which relief may be granted (*Ziemba v. Mierzwa*, 142 Ill. 2d 42, 46-47 (1991)) and do not consider the merits of the case (*Elson*, 295 Ill. App. 3d at 5, 691 N.E.2d at 811)). In making that determination, we take

⁴ There is no report of the July 6, 2011, proceeding in the record.

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as true all well-pleaded facts of the complaint, draw all reasonable inferences therefrom in favor of the nonmoving party and disregard mere conclusions of law unsupported by specific factual allegations. *Krueger v. Lewis*, 342 Ill. App. 3d 467, 470 (2003); *Ziembra*, 142 Ill. 2d at 47. We review the court's decision to grant or deny a section 2–615 motion to dismiss *de novo*. *Neppi*, 316 Ill. App. 3d at 583.

¶ 23 Viewing the complaint in the light most favorable to plaintiff, taking all well-pleaded facts as true and drawing all reasonable inferences therefrom in favor of plaintiff, we find the trial court was correct in holding that plaintiff's second amended complaint was insufficient to state a claim on any of the seven counts.

¶ 24 Each count in plaintiff's second amended complaint consists of a charge and a litany of facts alleging assorted improprieties committed by Picklin and Lake while they operated Republic Title. What is missing from each count, however, as it was in his earlier complaints, is the connection between the facts and the charge, the explanation of how the cited facts show that defendants committed the alleged fraud or breach or violation. We address the counts *seriatim* and then briefly address the question of damages.

¶ 25 (A) Count I

¶ 26 In count I, plaintiff requested rescission of the stock purchase agreement and settlement agreement on the basis of fraud. Rescission is an equitable remedy that cancels a contract so as to restore the parties to their initial status, to the status quo before the contract took place. *23-25 Building Partnership v. Testa Produce, Inc.*, 381

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Ill. App. 3d 751, 756 (2008). To establish an equitable claim for rescission on the basis of fraud and misrepresentation, the plaintiff must show: "(1) a false statement of material fact; (2) known or believed to be false by the party making it; (3) intended to induce the other party to act; (4) acted on by the other party in reliance on the truth of the representation; and (5) resulting damage." *23-25 Building Partnership*, 381 Ill. App. 3d at 757.

¶ 27 In count I, plaintiff first noted that the settlement agreement provided an exception for claims based on defendants' fraud and then listed six provisions of the purchase agreement. He alleged that defendants failed to perform or comply with the purchase and settlement agreements and "made numerous material misrepresentations of facts." He asserted that (1), between 2001 and 2004, defendants routinely used an undisclosed dummy file to perform "many irregular transactions" such as making improper loans, buying real estate and transferring funds to themselves; (2) in 2004, Picklin and Lake transferred \$700,000 between escrow accounts and then, shortly before the sale in 2006, disbursed the money to themselves; (3) in 2001, funds "were flushed" through closed files and money laundered by Picklin and Lake; (4) in 2004, the money in an idle escrow account was disbursed to Picklin and Lake; and (5) in 2004, other escrow accounts were disbursed to Picklin and Lake.

¶ 28 Despite 13-pages of allegations, plaintiff failed to explain the connection between the quoted contract provisions and defendants' alleged misconduct and improprieties, let alone why/how the alleged improprieties were fraudulent. He did allege that

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defendants made affirmative misrepresentations to plaintiff that all financial statements were true and correct and that there were no undisclosed liabilities and that their concealment of true and accurate material information regarding their conduct was done with the intent to deceive. But he did not explain which contract provision applied to each example of challenged conduct or misrepresentation to show how the misrepresentations was material or relevant.

¶ 29 Most of the challenged conduct occurred between 2001 and 2004, well before plaintiff purchased Republic Title in 2006. Plaintiff failed to show how defendants' actions two-years prior to the sale constituted material omissions or misrepresentations under the agreement. Plaintiff's allegation that the 2006 transfer of \$700,000 to Picklin and Lake was improper was supported by his assertion that the purchase agreement required that all escrow monies remain in the escrow accounts after the sale. There is nothing in the agreement that provides such nor does plaintiff point us to a provision that requires this.

¶ 30 In essence, by failing to explain how the alleged misconduct is a misrepresentation under the agreement(s), plaintiff is asking the court to make his argument for him. That is not our role. Granted, we can draw reasonable inferences from well-pleaded facts, but we must disregard mere conclusions of law unsupported by specific factual allegations. *Ziembra*, 142 Ill. 2d at 47. Plaintiff's assertion that defendants committed fraud is an unsupported conclusion of law. As such, it is inadequate to state a claim on which relief can be granted and was properly dismissed.

¶ 31

(B) Count II

¶ 32 In count II, plaintiff requested rescission of both agreements on the basis that defendants violated Illinois securities law, specifically sections 12 (F), (G) and (H) of the Illinois Securities Law of 1953 (815 ILCS 5/12 (F), (G) and (H) (West 2010)). Plaintiff did not set out the provisions in his complaint, but they provide that it is a violation of the Act for any person:

"F. To engage in any transaction, practice or course of business in connection with the sale or purchase of securities which works or tends to work a fraud or deceit upon the purchaser or seller thereof.

G. To obtain money or property through the sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

H. To sign or circulate any statement, prospectus, or other paper or document required by any provision of this Act or pertaining to any security knowing or having reasonable grounds to know any material representation therein contained to be false or untrue." 815 ILCS 5/12 (West 2010).

¶ 33 Incorporating the factual allegations he made in count I, plaintiff alleged defendants "concealed true, accurate, and material information about their conduct and about Republic from plaintiff and Gambs." He asserted defendants had a duty to speak up; their concealment was done with the intent to deceive plaintiff and Gambs; their

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misrepresentations and concealment were designed to mislead and defraud plaintiff and Gambs in connection with the sale of stock; plaintiff and Gambs relied on the concealment and omission because they did not have equal knowledge or a means of obtaining the knowledge of the misrepresented or concealed facts; and, had plaintiff and Gambs been aware of the misrepresentations and concealment, they would not have agreed to enter into the settlement agreement or the underlying purchase agreement.

¶ 34 Plaintiff alleged

"[d]efendants engaged in the transaction with Plaintiff and Gambs in connection with the sale of Republic's securities, which tended and in fact did work to defraud and deceive Plaintiff (See 815 ILCS 5/12(F)).

*** obtained money through the sale of Republic's securities by means of untrue statements of material facts. (See 815 ILCS 5/12(G)).

*** signed Republic's financial and other relevant statements and other documents required by the Illinois Securities Law knowing or having reasonable grounds to know they contained materials [mis]representations. (See 815 ILCS 5/12(H))."

¶ 35 But plaintiff never explained why defendants had a "duty" to disclose the challenged transactions; how defendants' statements were "untrue"; what those untrue statements were; why the alleged misrepresentations were "material; or how defendants' actions were "fraud." He again failed to make the necessary connection

between the facts and the charge. Count II was insufficient to state a claim for violation of Illinois securities law and properly dismissed.

¶ 36 (C) Count III

¶ 37 In count III, plaintiff sought rescission of both agreements for defendants' "nonperformance/breach" of the agreements. "[S]ubstantial nonperformance or breach of contract warrants rescission where the matter, in respect to which the failure of performance occurs, is of such a nature and of such importance that the contract would not have been made without it." *Ahern v. Knecht*, 202 Ill. App. 3d 709, 715–16 (1990). A complaint sufficiently states a claim for rescission if it alleges: (1) substantial nonperformance or breach of a contract by the defendant and (2) that the parties can be restored to the status quo ante. *Horwitz v. Sonnenschein Nath & Rosenthal LLP*, 399 Ill. App. 3d 965, 973 (2010). Breach of contract requires the existence of a valid and enforceable contract, performance of the contract by the plaintiff, breach of the contract by the defendant, and a resulting injury to the plaintiff. *Horwitz*, 399 Ill. App. 3d at 973.

¶ 38 Incorporating the factual allegations in count I, plaintiff asserted defendants breached the settlement agreement by failing to provide true and accurate financial statements; fully and adequately disclose any and all liabilities of Republic; conduct business in compliance with all legal and other regulatory requirements; fully and adequately disclose all escrow accounts; fully and accurately turn over all escrow funds prior to the sale; provide true and accurate representations regarding Republic Title's

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business as of the date of sale; and perform and comply with "all material respects of all covenants and obligations" of both agreements. He asserted "[d]efendants' failure to comply with their duties and obligations arising under the [agreements] constitute a total failure of consideration."

¶ 39 Count III consists of nothing but unsupported legal conclusions. Nowhere does plaintiff explain how the asserted facts show defendants breached their obligations under the agreement. He quotes six of the contractual provisions but does not explain which of his factual allegations applies to each provision to show defendants' breach or nonperformance thereof. We are, again, left to make these arguments for him. Accordingly, plaintiff's count III is inadequate to state a claim on which relief can be granted and was properly dismissed.

¶ 40 (D) Count IV

¶ 41 In count IV, plaintiff sought damages for defendants' alleged common law fraud. In order to state a claim for common-law fraud, a complaint "must allege, with specificity and particularity, facts from which fraud is the necessary or probable inference, including what misrepresentations were made, when they were made, who made the misrepresentations and to whom they were made." *Connick v. Suzuki Motor Co.*, 174 Ill.2d 482, 496-97 (1996).

¶ 42 As previously determined, count I was inadequate to state a claim for fraud. Count IV, which incorporates the factual allegations plaintiff made in count I and essentially restates the same conclusory allegations regarding defendants' fraud that he

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made in count I, is similarly defective. The court properly dismissed count IV.

¶ 43 (E) Count V

¶ 44 In count V, plaintiff sought damages for defendants' alleged breach of the settlement agreement. Plaintiff incorporated the factual allegations of count I, asserted he performed all his obligations under the settlement agreement, alleged defendants breached that agreement by failing to perform their duties as required by both agreements, restated the same conclusory allegations he had made in count III and closed with the statement that defendants' failure to perform constituted a complete failure of consideration. As before, plaintiff makes no connection between defendants' conduct and the contractual provisions they allegedly failed to perform. Count V is inadequate to state a claim and was properly dismissed.

¶ 45 (F) Count VI

¶ 46 In count VI, plaintiff sought damages for defendants' alleged civil conspiracy. A civil conspiracy is "a combination of two or more persons for the purpose of accomplishing by concerted action either an unlawful purpose or a lawful purpose by unlawful means." *McClure v. Owens Corning Fiberglas, Corp.*, 188 Ill.2d 102, 133 (1999) (quoting *Buckner v. Atlantic Plant Maintenance, Inc.*, 182 Ill.2d 12, 23 (1998)). To state a claim for civil conspiracy, a complaint must allege both an agreement and a tortious act committed in furtherance of that agreement. *McClure*, 188 Ill.2d at 133. In order to be found liable as a conspirator, a defendant must understand the general objectives of the conspiratorial scheme, accept those objective and agree explicitly or

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implicitly to do his part to further those objectives. *McClure*, 188 Ill.2d at 133.

¶ 47 Here, plaintiff incorporated the factual allegations from count I and then asserted that, pursuant to both agreements, defendants were required to fairly and accurately disclose all relevant and material facts influencing the formation or terms of the agreements. He alleged defendants entered into an agreement to make false representations of material facts to plaintiff and Gambs; as a result of this "unlawful overt act," plaintiff suffered damage; these overt acts were done in furtherance of defendants' "common scheme to defraud and induce Plaintiff and Gambs" to enter into the agreements.

¶ 48 Plaintiff alleges an agreement and a scheme but no specific facts that support his conclusion. He makes no showing that defendants knew that their actions were improper, false and misleading and that they agreed to unlawfully conspire to have plaintiff enter into the settlement agreement. His allegations are insufficient to state a claim for civil conspiracy and the court properly dismissed this count.

¶ 49 (G) Count VII

¶ 50 In count VII, plaintiff charged defendants with unjust enrichment and sought damages. In an action in equity for unjust enrichment, a complaint on which recovery may be based need only allege that there has been unjust retention of a benefit by one party to the detriment of another against the fundamental principles of justice and equity. *Firemen's Annuity & Benefit Fund of City of Chicago v. Municipal Employees', Officers', & Officials' Annuity & Benefit Fund of Chicago*, 219 Ill. App. 3d 707, 712

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(1991). However, the doctrine of unjust enrichment is based upon an implied contract of law and is not available where the relationship between the parties is governed by contract. *Howard v. Chicago Transit Authority*, 402 Ill. App. 3d 455, 460-461 (2010).

¶ 51 Although plaintiff could plead breach of contract in one count and unjust enrichment in another, he could not include allegations of an express contract governing the relationship of the parties in his unjust enrichment count. *Guinn v. Hoskins Chevrolet*, 361 Ill. App. 3d 575, 604 (2005). But that is exactly what he did. Plaintiff stated his unjust enrichment count in the alternative but incorporated the factual allegations stated in count I into his unjust enrichment count. Those allegations alleged the existence of the purchase agreement and the settlement agreement, *i.e.*, that two contracts governed the relationship between the parties, although one of those contracts may have been subsumed by the other. Plaintiff never alleged that the contracts were void or unenforceable. Therefore, his claim for unjust enrichment was properly dismissed. *Howard*, 402 Ill. App. 3d at 461; *Guinn*, 361 Ill. App. 3d at 604-05.

¶ 52 (H) Damages

¶ 53 Lastly, we are hard-pressed to determine what injury or damage plaintiff and/or Republic Title claims to have suffered as a result of Picklin and Lake's alleged improprieties. The stock purchase agreement provided that RT Financial (now plaintiff) was buying all stock, \$400,00 in working capital and escrow accounts with sufficient funds in them to cover Republic's obligations on those accounts. As long as the contracted-for funds, whether in the form of working capital or escrow account, were

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available for transfer at the time of the sale to RT Financial, it really does not matter how much money Picklin and Lake may have taken from Republic Title before that date.

¶ 54 Plaintiff does not assert that the contracted-for funds were not made available at the time of purchase; or that the funds in the escrow accounts on the day of the sale were insufficient to cover Republic Title's obligations at that time as required by the agreement. He does assert, in count I, that the purchase agreement "required all escrow monies to remain in the escrow accounts of Republic after the sale." No, it does not. The agreement provides "the aggregate amount held in escrow *** equals or exceeds the aggregate amount of the obligation of or on behalf of [republic title] to pay amounts held in escrow," *i.e.*, that the total amount of money in the escrow accounts at the time of the sale would cover Republic Title's obligation to pay on those accounts. Nowhere does the agreement provide that plaintiff should receive at the time of sale all monies in the accounts at the time the agreement was reached or that defendants were required to leave any funds in excess of that needed to cover the obligations in the escrow accounts. Defendants agreed that the monies in the escrow accounts at the time of sale would cover Republic's obligations. There is no showing that plaintiff did not receive what he was promised. Nor did he show that there were any viable lawsuits filed or pending against Republic Title or plaintiff that are the result of any of Picklin and Lake's allegedly improper or illegal behavior. He did allege that two third-party claimants had made claims for payment from inadequate escrow accounts. But those

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two claims were based on checks issued to the claimants well before the sale to plaintiff. The checks had expired after the passage of some years and the claimants belatedly sought payment. Picklin paid the claimants the money due, totaling approximately \$2,000, so the claims were resolved.

¶ 55 Plaintiff argues he would not have bought the company if he had known of the alleged liabilities and misappropriations. But the fact that he is not happy with the way the company was run before he took it over does not show that he and/or Republic Title suffered damages as a result or that the agreements should be rescinded. There is nothing to show that plaintiff got less than he bargained for. Even if Picklin and Lake had, as plaintiff alleged, funneled \$3.5 million through Republic Title during the period prior to the sale, plaintiff has not shown how this hurt him, the current owner of Republic Title. He did not contract to receive the entirety of Republic Title's holdings. He contracted to acquire certain assets of Republic Title as of a specific date and there is nothing to show he did not receive what he was promised. A claim should be dismissed if the plaintiff fails to allege with specificity his damages or current injury. *Professional Executive Center v. LaSalle National Bank*, 211 Ill. App. 3d 368, 378 (1991).

¶ 56 The complaint failed to allege facts sufficient to state a cause of action upon which relief may be granted. It consisted of unsupported legal conclusions and failed to sufficiently allege damages. Accordingly, we affirm the trial court's dismissal of plaintiff's second amended complaint pursuant to section 2-615 of the Code.

¶ 57 Given our determination that the second amended complaint is inadequate to

state a claim on which relief can be granted, we need not address Jill Lake's alternate arguments that plaintiff's claims against her should be dismissed because they were time barred, improperly brought and/or released.

¶ 58 (II) Denial of Motion to Reconsider

¶ 59 Plaintiff next argues the court erred in denying his motion to reconsider. In his motion to reconsider, plaintiff asserted that the court erred in dismissing his second amended complaint with prejudice because the court misapplied the legal standard for a section 2-615 motion to dismiss. He asserted the court improperly focused on whether plaintiff could prove his damages rather than on whether plaintiff properly pled the causes of action alleged. As alternate bases for reconsideration, plaintiff also argued that the court misunderstood certain facts and that he had newly discovered evidence further proving defendants' fraud and plaintiff's resulting damages.

¶ 60 We review a motion to reconsider based on the submission of additional facts or new arguments under an abuse-of-discretion standard. *In re County Collector of Lake County*, 343 Ill. App. 3d 363, 371 (2003). However, we review *de novo* the court's application of law to the facts, regardless of whether the motion to reconsider presents new facts. *In re County Collector of Lake County*, 343 Ill. App. 3d 363, 371, 797 N.E.2d 1122, 1128 (2003). Accordingly, because plaintiff challenges the court's application of the law to the facts, we review *de novo* the court's denial of plaintiff's motion to reconsider.

¶ 61 Plaintiff first asserts his motion to reconsider should have been granted based on

his argument that the court should not have focused on whether he could show damages. The trial court did not solely focus on the issue of damages. It clearly considered whether the assorted pleadings sufficiently alleged a cause of action in any of the counts. Further, unless a plaintiff makes a showing with specificity of his damages or current injury, his claim should be dismissed. *Professional Executive Center*, 211 Ill. App. 3d at 378. Accordingly, the court did not err in examining whether the complaint sufficiently alleged damages.

¶ 62 Plaintiff next argues his motion should have been granted based on his assertion that the court misunderstood certain facts. He argues the court confused the First Midwest Bank escrow account, which was specifically excluded from the stock purchase agreement in schedule 3.2(bb), with the "dummy account"/"secret ledger" through which he alleged defendants laundered funds. But it makes no difference whether the court did, indeed, think these two accounts were one and the same. As found previously, plaintiff never explained why defendants should not have used the dummy account, what duty or contract provision they breached in using that account or transferring money through it or how he was damaged by use of the account. Even if the court did misunderstand the evidence, its misconception would not have changed the outcome of defendants' motion to dismiss.

¶ 63 Plaintiff lastly argues his motion should have been granted because it presented newly discovered evidence of money damages not available at the time of sale that further proved defendants' fraud and plaintiff's resulting damages. He does not,

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however, tell us what the newly discovered evidence is. Looking to the motion to reconsider, we find the newly discovered evidence consists of a demand for payment tendered to Republic Title by a client of Republic Title. The demand, made after the February 11, 2011, hearing, consisted of an escrow check issued in 2002 in the amount of \$2,280.44. Plaintiff asserted the claim could not be paid because defendants had stolen the money from that escrow account and Republic Title was left with an unfunded obligation. Even if the check could be considered an undisclosed liability, this only shows one small instance of damage to plaintiff. It does not erase the fact that the second amended complaint is completely lacking in allegations showing the causal connections between defendants' alleged improper conduct and plaintiff's causes of action. This new evidence is no basis for granting the motion to reconsider. Accordingly, all three of plaintiff's arguments falling short, we affirm the court's denial of plaintiff's motion for reconsideration.

¶ 64 (III) Denial of Motion for Leave to File Third Amended Complaint

¶ 65 Plaintiff lastly argues that the court erred in denying his motion for leave to file a third amended complaint. Because we construe a complaint liberally and dismiss only when it appears that the plaintiff cannot recover under any set of facts, leave to amend is usually freely granted. *Sheffler v. Commonwealth Edison Co.*, 399 Ill. App. 3d 51, 74 (2010). However, a plaintiff does not have an absolute and unlimited right to amend a complaint. *Hayes Mechanical, Inc. v. First Industries, L.P.*, 351 Ill. App. 3d 1, 6 (2004). The decision to deny leave to amend rests in the sound discretion of the circuit court

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and we will not reverse such a decision absent an abuse of that discretion. *Sheffler v. Commonwealth Edison Co.*, 399 Ill. App. 3d 51, 74 (2010); *Hayes Mechanical, Inc., L.P.*, 351 Ill. App. 3d at 6.

¶ 66 Pursuant to *Loyola Academy v. S&S Roof Maintenance, Inc.*, 146 Ill. 2d 263 (1992), we must consider the following four factors in determining whether the circuit court abused its discretion in denying plaintiff leave to amend his complaint: “ '(1) whether the proposed amendment would cure the defective pleading; (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the pleading could be identified.' ” *Hayes Mechanical, Inc., L.P.*, 351 Ill. App. 3d at 7 (quoting *Loyola Academy*, 146 Ill. 2d at 273). A proposed amendment must meet all four factors. *Sheffler*, 399 Ill. App. 3d at 74. Where a proposed amendment does not state a cognizable claim, *i.e.*, fails to satisfy the first factor, we need not consider the other factors. *Hayes Mechanical, Inc., L.P.*, 351 Ill. App. 3d at 7.

¶ 67 Here, as the circuit court correctly found, plaintiff's proposed third amended complaint would not cure the pleading deficiencies present in his earlier complaints. Although plaintiff's proposed third amended complaint was 38 pages, nine pages longer than the second amended complaint, it was still essentially identical to his second amended complaint in its allegations. Only count I contained new allegations but, as with the earlier incarnations of plaintiff's complaint, it failed to sufficiently state a claim for relief.

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¶ 68 Given that plaintiff's proposed amendment again failed to state a cause of action, it failed to cure his earlier defective pleading and thus failed to satisfy the first factor in the *Loyola Academy* test. We, therefore, need not consider the remaining three factors. Leave to amend should be denied if it is apparent that no cause of action can be stated even after amendment. *Hayes Mechanical, Inc., L.P.*, 351 Ill. App. 3d at 7.

¶ 69 The court had given plaintiff two previous chances to correct the deficiencies in his pleadings. It went so far as to instruct him on what he needed to do to overcome those deficiencies in his first complaint. Plaintiff tried and failed twice to make the necessary adjustments to his pleading. He would have failed a third time had the court granted him leave to file that third amended complaint. The court did not abuse its discretion in denying plaintiff's motion for leave to file a third amended complaint.

¶ 70 Conclusion

¶ 71 For the reasons stated above, we affirm the decisions of the trial court dismissing plaintiff's second amended complaint with prejudice and denying his motion to reconsider and his motion for leave to file a third amended complaint.

¶ 72 Affirmed.