2014 IL App (1st) 123611-U

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

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Appellate Court of Illinois,
First District, Sixth Division.

Rachelle EVANS, Alexis Silsbe, Ian Johnson, Aeric Bauman, Oliver Cooper IV, Geoffrey J. Haas, Jr., Laura Haas and Leah Selinger, On Behalf of Themselves and All Others Similarly Situated, Plaintiffs–Appellants,
v.
ILLINOIS INSTITUTE OF TECHNOLOGY, a Not–For–Profit Corporation, a/k/a Chicago–Kent College of Law, and Does 1–20, Defendants–Appellees.

No. 1–12–3611.
|
Sept. 26, 2014.

Synopsis

Background: Law school graduates brought action against law school, alleging that law school had violated the Consumer Fraud Act and committed common law fraud and negligent misrepresentation by giving misleading information in certain promotional materials regarding the likelihood of its graduates finding high-paying, full-time legal employment upon graduation. The Circuit Court, Cook County, Mary Lane Mikva, J., granted law school's motion to dismiss, and graduates appealed.

Holdings: The Appellate Court, Rochford, J., held that:

[1] graduates failed to sufficiently allege a deceptive act or practice;

[2] graduates failed to sufficiently allege causation; and

[3] graduates failed to sufficiently allege actual damages.

Affirmed.

West Headnotes (5)

[1] **Antitrust and Trade Regulation**
Particular Cases

Law school graduates failed to sufficiently allege that law school had committed a deceptive act or practice, as required to state a claim under the Consumer Fraud Act, by publishing allegedly misleading promotional materials regarding the likelihood of graduates finding high-paying, full-time legal employment upon graduation; graduates admitted that they had been aware that they had been aware that the data contained in the promotional materials was based on voluntary responses to surveys, and graduates failed to allege that law school had affirmatively misrepresented generalized employment data as referring only to full-time legal employment. S.H.A. 815 ILCS 505/2.

Cases that cite this headnote

[2] **Antitrust and Trade Regulation**
Particular Cases

Law school graduates failed to sufficiently allege that law school, by publishing allegedly misleading promotional materials regarding the likelihood of graduates finding high-paying full-time legal employment upon graduation, had been the cause, as element of claim under the Consumer Fraud Act, of graduates' failure to secure desired legal jobs upon graduation; graduates did not allege that other potential law schools yielded better actual employment and salary statistics relating to their graduating classes, and at time of enrollment, one could not have reasonably foreseen graduates' academic

records while at law school, geographic areas in which they would seek employment, scope of their job searches, their interview and presentation skills, and the economic climate and overall availability of jobs during the period of their job searches. S.H.A. 815 ILCS 505/2.

Cases that cite this headnote

[3] **Antitrust and Trade Regulation**
Particular Cases

Law school graduates failed to sufficiently allege actual damages, as element of claim under the Consumer Fraud Act, in action against law school arising from law school's publishing of allegedly misleading promotional materials regarding the likelihood of graduates finding high-paying full-time legal employment upon graduation; graduates failed to plead any reliable mechanism for calculating the "true" value of their law degrees because of the alleged misrepresentation, and data contained in the promotional materials was generalized, historical averages for classes of particular prior years which did not apply to plaintiffs or make any promises or projections regarding their future employment and salary prospects. S.H.A. 815 ILCS 505/2.

Cases that cite this headnote

[4] **Fraud**
Falsity of Representations
Fraud
Knowledge of Defendant

Law school graduates failed to sufficiently allege that law school made false and materially misleading statements, as element of common law fraud, by publishing allegedly misleading promotional materials regarding the likelihood of graduates finding high-paying, full-time legal employment upon graduation; graduates admitted that they had been aware that they had been aware that the data contained in the promotional materials was based on voluntary responses to surveys, and graduates failed to allege that law school had affirmatively misrepresented generalized employment data as referring only to full-time legal employment.

Cases that cite this headnote

[5] **Fraud**
Reliance on Representations and Inducement to Act

Law school graduates failed to sufficiently allege that they had reasonably relied, as element of common law fraud, on law school's publishing of allegedly misleading promotional materials regarding the likelihood of graduates finding high-paying, full-time legal employment upon graduation; employment and salary data contained in promotional materials consisted of historical data for persons who had graduated two to eight years prior to plaintiffs, did not reflect economic climate and availability of jobs at time of plaintiffs' job searches, and did not constitute any type of promise or projection regarding plaintiffs' individual job/salary prospects either with regard to their first job and salary or their jobs and salaries over their lifetimes.

Cases that cite this headnote

Appeal from the Circuit Court of Cook County No.2012 CH 03022, Mary Lane Mikva, Judge Presiding.

ORDER

Justice ROCHFORD delivered the judgment of the court:

***1** ¶ 1 *Held:* Plaintiffs brought a complaint alleging Chicago–Kent College of Law and certain unnamed lawyer defendants violated the Consumer Fraud Act and committed commonlaw fraud and negligent

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misrepresentation by giving misleading information in certain promotional materials regarding the likelihood of its graduates finding high-paying, fulltime legal employment upon graduation. We affirmed the section 2–615 order dismissing the entirety of the complaint with prejudice, finding plaintiffs failed to adequately allege a deceptive act, proximate cause or damages.

¶ 2 Plaintiffs, Rachelle Evans, Alexis Silsbe, Ian Johnson, Aeric Bauman, Oliver Cooper IV, Geoffrey J. Haas, Jr., Laura Haas, and Leah Selinger, graduated from Chicago–Kent College of Law (Kent) between 2007 and 2012, but they have had difficulty finding full-time, legal employment that pays a high enough salary so as to allow them to pay off their student loans. On June 8, 2012, plaintiffs filed a first-amended class action complaint against Kent and certain unnamed "Lawyer Defendants" [1] (collectively referred to as defendants) on behalf of themselves and all others similarly situated, alleging that defendants violated the Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq.* (West 2012)), and committed common-law fraud and negligent misrepresentation by publishing employment and salary statistics that deceptively overstated the percentage of recent Kent graduates who had obtained full-time legal employment with salaries in excess of $60,000. Plaintiffs alleged they relied on these employment and salary statistics when deciding to enroll and remain enrolled at Kent, and that as a consequence of such reliance, they "paid tens of thousands of dollars for the required tuition, and * * * took out tuition loans that will burden them for years, if not forever." Also as a consequence of such reliance, plaintiffs "graduated with a J.D. degree from Kent with near-term and lifetime job prospects that are, statistically, less than they would have been had they obtained a degree from Kent with the employment numbers Kent claimed to have." Plaintiffs sought to recover as damages a percentage of their tuition payments as well as the additional lifetime income they would have earned had they obtained the employment and salaries they expected based on the employment and salary statistics reported by defendants. Kent filed a combined motion to dismiss (735 ILCS 5/2–619.1 (West 2012)), alleging that plaintiffs' claims against all defendants should be dismissed pursuant to section 2–615 and 2–619 of the Code of Civil Procedure. The circuit court dismissed the first-amended class action complaint with prejudice in its entirety. Plaintiffs appeal. We affirm.

¶ 3 I. Background Facts [2]

¶ 4 A. Allegations Regarding Plaintiffs

¶ 5 In their first-amended class action complaint, the following allegations were made regarding the individual plaintiffs:

***2** ¶ 6 Rachelle Evans enrolled in Kent in 2006, graduated with a J.D. degree in 2011, and was admitted to the Illinois bar on November 10, 2011. After graduation Evans was unable to obtain full-time employment as an attorney and currently works at a Pizza Hut "for low wages." Evans's wages are not actually pleaded, but plaintiffs allege they are "far too low to service her student loan debt." The balance on Evans's student loans is approximately $190,581.

¶ 7 Alexis Silsbe enrolled in Kent in 2008, graduated with a J.D. degree in 2011, and was admitted to the Illinois bar on November 10, 2011. After graduation, Silsbe could not find fulltime employment as an attorney and currently works in a part-time position with a Missouri law firm. No allegations are made regarding Silsbe's salary or any student loans she may have taken out.

¶ 8 Ian Johnson enrolled in Kent 2006, graduated with a J.D. degree in 2009, and was admitted to the Illinois bar on November 5, 2009. After graduation, Johnson was unable to find full-time employment as an attorney and currently works as a substitute high school teacher. Johnson's salary is not actually pleaded, but plaintiffs allege it is "far too low to service his student loan debt." The balance on Johnson's student loans is nearly $120,000.

¶ 9 Aeric Bauman enrolled in Kent in 2009, graduated with a J.D. degree in May 2012, and sat for the Missouri bar in July 2012. [3] Bauman has no job offers. The current balance on his student loans is $182,493.84. Plaintiffs pleaded that Bauman's job prospects "are such that he is

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highly unlikely to be able to make the monthly payments on his law school student loans."

¶ 10 Oliver Cooper IV enrolled in Kent in 2005, graduated with a J.D. degree in 2008, and was admitted to the Illinois bar on November 6, 2008. After graduation, Cooper was unable to obtain full-time employment as an attorney and continues to search for legal employment. The current balance on his student loans is approximately $73,000. Plaintiffs pleaded that Cooper "cannot afford to make the monthly interest payments on his student loans let alone pay any amount toward the principal."

¶ 11 Geoffrey J. Haas, Jr. enrolled in Kent in 2005, graduated with a J.D. degree in 2007, and was admitted to the Illinois bar on November 8, 2007. After graduation, Mr. Haas was unable to obtain full-time employment as an attorney and is currently working in a nonlegal position in the information technology industry. Mr. Haas's salary is not actually pleaded, but plaintiffs allege it is "too low to allow him to repay [his student loans] in his lifetime." The current balance on his student loans is $155,000.

¶ 12 Laura Haas enrolled in Kent in 2005, graduated with a J.D. degree in 2007, and was admitted to the Illinois bar on November 8, 2007. After graduation, Mrs. Haas was unable to obtain full-time employment as an attorney and currently works as "a case manager for Autonomy a job that does not require a law degree." Mrs. Haas's salary is not actually pleaded. The current balance on her student loans is approximately $200,000.

***3** ¶ 13 Leah Selinger enrolled in Kent in 2005, graduated with a J.D. degree in 2008, and was admitted to the Illinois bar on November 6, 2008. After graduation, Selinger was unable to obtain full-time employment as an attorney and is currently seeking such work. The current balance on her student loans is $121,487.

¶ 14 B. Allegations Regarding Kent

¶ 15 Plaintiffs alleged Kent is a law school accredited by the American Bar Association (ABA). Section 509(a) of the ABA's Standards for Approval of Law Schools provides that an accredited law school must "publish basic consumer information" in a "fair and accurate manner reflective of actual practice." Pursuant thereto, Kent published "Employment Information" on its website under a "Career Services" tab and in its online *Viewbook* purporting to set forth the employment and salary history of the previous year's graduates within the first nine months of graduation. The employment information is based on surveys sent to the recent law school graduates.

¶ 16 Plaintiffs alleged that for the class of 2004, Kent published employment information on its website that has "completely disappeared." Kent also published portions of the employment information for the 2004 class in U.S. News & World Report. In that publication, Kent claimed that 92% of its graduates were employed within nine months of graduation. Kent stated that the median salary in private practice was $69,000. Kent stated that 59% of its graduates worked at law firms, 9% worked in business (nonlegal), 9% worked in business (legal), 14% worked in government, 5% worked in the public interest, 4% worked as judicial clerks, and 2% worked in academia.

¶ 17 Plaintiffs alleged that for the class of 2005, Kent published employment information on its website stating that 95% of the class was employed within nine months of graduation, with 63% working in private practice, 18.4% working in business, 11.4% working in government, 3% working in the public interest, 3% working as judicial clerks, and 1% working in academia. The average salary was stated to be $81,238 for those working in private practice and $73,575 for those working in business.

¶ 18 Plaintiffs alleged that for the class of 2006, Kent published employment information on its website stating that 97% of the class was employed within nine months of graduation, with 58% working in private practice, 19% working in business, 14.5% working in government, 3.4% working in the public interest, 4.7% working as judicial clerks, and 1.0% working in academia. The average salary was stated to be $92,856 for those persons working in private practice and $69,380 for those persons working in business.

¶ 19 Plaintiffs alleged that for the class of 2008, Kent published employment information on its website stating that 90% of the class was employed within nine months of graduation, with 55% working in private practice, 17%

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working in business, 13% working in government, 8% working in the public interest, 5% working as judicial clerks, and 2% working in academia. The average salary was stated to be $112,327 for those working in private practice and $63,990 for those working in business.

***4** ¶ 20 Plaintiffs alleged that for the class of 2009, Kent published employment information on its website that has "completely disappeared."

¶ 21 Plaintiffs alleged that for the class of 2010, Kent published employment information on its website stating that 92% of its graduates were employed within nine months of graduation, including 54% working in private practice and 21% working in business. Kent reported that the mean salary for those working in the private sector was $87,550, while the median salary was $70,000. Plaintiffs alleged that Kent's employment information for the 2004, 2005, 2006, 2008 and 2010 classes was incomplete, false and materially misleading in that the employment rate of its graduates within nine months of graduation was "substantially overstated" because: "the jobs reported included *any* type of employment, including jobs that did not require or even prefer a J.D. degree"; "[t]he jobs reported included jobs that were part-time or full-time or temporary short-term positions"; "[t]he jobs reported included such jobs as 'research assistant' or 'intern' or other 'make-work' positions-including some of which Kent provided to its own graduates while they were studying for the Bar exams and/or to tide them over until they found 'real jobs' requiring a J.D. degree"; "[o]n information and belief, the law firm jobs reported included many paralegal and law clerk positions for which a law degree is not required or preferred"; and "[m]any of the graduates listed as working in 'business' had jobs with nothing to do with the law." (Emphasis in original.)

¶ 22 Plaintiffs alleged "[t]he salaries reported were substantially overstated, because Kent, on [the] one hand, reported as employment numbers from *any* kind of employment (including temporary and part-time), but, on the other hand, reported salary information based *only* on fulltime employment. Given that full-time employment generally pays significantly higher salaries than part-time or temporary employment, the published salary numbers were significantly distorted to show higher salaries than statistically warranted and, therefore, were inherently misleading." (Emphases in original.) Plaintiffs alleged, "[i]n particular, the average salaries reported by Kent in 2005, 2006, and 2008 were false and misleading in that the purported average salaries vastly exceeded the actual salaries of Kent's graduates in those class years. Indeed, the reported average salaries of $81,238 (2005), $92,856 (2006) and $112,327 (2008) were false and misleading because they only included the salaries of graduates working for larger law firms. Kent did not explain that the average salary computation excluded graduates working for small law firms."

¶ 23 Plaintiffs alleged "the data reported in the employment information implied a much stronger statistical basis than was the fact and failed to show the material distinctions between graduates with full-time permanent positions as lawyers and other graduates."

***5** ¶ 24 Plaintiffs alleged Kent reported the employment information for the 2004, 2005, 2006, 2008, and 2010 classes "in its print and electronic marketing materials and to third parties, such as the ABA, the National Association for Law Placement ('NALP'), and U.S. News & World Report ('U.S.News')." "The cumulative effect of [Kent's] touting its post-graduate employment placement record-whether in its own publications or in its reports to other organizations-was to imply to current and prospective students, and to induce current and prospective students to infer, that Kent's employment statistics accurately reflected their likelihood of finding a permanent full-time job as a lawyer within nine months after graduation."

¶ 25 Plaintiffs alleged they relied on the employment information when choosing to apply to, enroll, and continue to be enrolled in Kent.

¶ 26 Plaintiffs alleged Kent violated the Consumer Fraud Act and committed common-law fraud and negligent misrepresentation by providing the employment information for the 2004, 2005, 2006, 2008, and 2010 classes containing the misleading employment and salary statistics which plaintiffs relied upon when deciding to enroll and remain enrolled at Kent and when taking out the loans "that will burden them for years, if not forever." As to damages, plaintiffs alleged:

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"Kent inflated its employment statistics by a percentage to be determined in this litigation. ('X percent')

Those inflated statistics purported to be a reasonable projection by Kent of Plaintiffs' post-graduate employment prospects if he or she enrolled at Kent rather than elsewhere.

To the extent the statistics were inflated by X percent, the advantages to Plaintiffs and the value of the tuition and fees they paid to Kent was reduced by X percent. Accordingly, Kent charged for X, but the Plaintiffs did not receive X.

Therefore, plaintiffs were damaged at least in the amounts of:

(a) X percent of the amount they paid to Kent, and

(b) a statistically determinable amount of the lifetime income they would have been expected to earn after graduating from Kent if Kent's post-graduation employment statistics had been those that Kent had represented in the Employment Information, *less* the statistically determinable amount of the lifetime income they would now be expected to earn, having graduated from Kent, based upon Kent's true post-graduation employment statistics." (Emphasis in original; paragraph numbers omitted.)

¶ 27 C. Allegations Regarding the Lawyer Defendants

¶ 28 Plaintiffs alleged that the Lawyer Defendants "either personally made or disseminated the false and misleading [employment information for the 2004, 2005, 2006, 2008, and 2010 classes]" and, thus, violated the Consumer Fraud Act and committed common-law fraud and negligent misrepresentation.

¶ 29 D. The Combined Motion to Dismiss

¶ 30 Kent filed a combined motion to dismiss plaintiffs' first-amended class action complaint. Pursuant to section 2–615 of the Code of Civil Procedure (Code) (735 ILCS 5/2–615 (West 2012)), Kent contended that plaintiffs' Consumer Fraud Act claim against all defendants should be dismissed for failing to adequately plead the required elements of a deceptive act, causation or damages.

***6** ¶ 31 Kent also contended that plaintiffs' common-law fraud and negligent misrepresentation causes of action against all defendants should be dismissed pursuant to section 2–615 of the Code for failing to adequately plead the required elements of misrepresentation, reliance, causation or damages.

¶ 32 Kent also contended that plaintiffs' claims were preempted by the federal Higher Education Act (20 U.S.C. § 1001 *et seq.* (2006)).

¶ 33 Pursuant to section 2–619(a)(9) of the Code (735 ILCS 5/2–619(a)(9) (West 2012)), Kent contended that plaintiffs' Consumer Fraud Act claim against all defendants should also be dismissed because plaintiffs are not "consumers" under the Consumer Fraud Act and because the so-called "safe harbor provision" of the Consumer Fraud Act exempts it from liability here. The safe harbor provision exempts conduct "specifically authorized by laws administered by any regulatory body or officer acting under statutory authority of this State or the United States." 815 ILCS 505/10b (West 2012). Kent argued that the safe harbor provision defeats plaintiffs' Consumer Fraud Act claim because the employment and salary statistics it reported in the employment information for the 2004, 2005, 2006, 2008, and 2010 classes was authorized by a regulatory body, the ABA, acting under the statutory authority of the Higher Education Act (20 U.S.C. § 1001 *et seq.* (2006)).

¶ 34 The circuit court granted Kent's combined motion to dismiss and in so doing, expressly adopted the circuit court's ruling in similar cases involving law students who had sued DePaul University College of Law and the John Marshall Law School after being unable to find full-time, legal employment upon graduation sufficient to allow them to pay off their student loans. [4] Pursuant to section 2–615, the circuit court found that plaintiffs here failed to adequately allege fraud, proximate cause or damages against defendants and, therefore, failed to state a cause of action for a Consumer Fraud Act violation, common-law fraud, or negligent misrepresentation. Pursuant to

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section 2–619(a)(9), the circuit court found that plaintiffs' Consumer Fraud Act claim against defendants falls within the safe harbor provision of the Consumer Fraud Act. As to the Lawyer Defendants only, the circuit court also found it lacked subject matter jurisdiction to consider plaintiffs' claims against them because the Lawyer Defendants are unknown or fictitious. See *Bogseth v. Emanuel,* 166 Ill.2d 507, 513–14, 211 Ill.Dec. 505, 655 N.E.2d 888 (1995). The circuit court dismissed the entirety of the first-amended class action complaint with prejudice. Plaintiffs appeal.

¶ 35 II. Analysis of the Section 2–615 Dismissal

¶ 36 "A section 2–615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face. [Citation.] In ruling on a section 2–615 motion, only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record may be considered." *K. Miller Construction Co. v. McGinnis,* 238 Ill.2d 284, 291, 345 Ill.Dec. 32, 938 N.E.2d 471 (2010). All well-pleaded facts must be taken as true. *Unterschuetz v. City of Chicago,* 346 Ill.App.3d 65, 68–69, 281 Ill.Dec. 367, 803 N.E.2d 988 (2004). However, "a court cannot accept as true mere conclusions unsupported by specific facts." *Patrick Engineering, Inc. v. City of Naperville,* 2012 IL 113148, ¶ 31, 364 Ill.Dec. 40, 976 N.E.2d 318. Exhibits attached to the complaint are considered part of the pleadings. *Bajwa v. Metropolitan Life Insurance Co.,* 208 Ill.2d 414, 431, 281 Ill.Dec. 554, 804 N.E.2d 519 (2004). We review an order granting a section 2–615 dismissal *de novo. McGinnis,* 238 Ill.2d at 291, 345 Ill.Dec. 32, 938 N.E.2d 471.

¶ 37 A. Plaintiffs' Consumer Fraud Act Count Against Kent

***7** ¶ 38 Plaintiffs alleged Kent violated the Consumer Fraud Act by overstating its graduates' employment and salary statistics in the employment information for the 2004, 2005, 2006, 2008, and 2010 classes.

¶ 39 "To state a claim under the [Consumer Fraud] Act, a complaint must set forth specific facts showing: (1) a deceptive act or practice by the defendant; (2) the defendant's intent that the plaintiff rely on the deception; (3) the deception occurred in the course of trade or commerce; and (4) the consumer fraud proximately caused the plaintiff's injury. [Citation.] To bring a civil suit for damages, the [Consumer Fraud] Act requires that the plaintiff suffer 'actual damages.' [Citation.] Plaintiff's reliance is not an element of statutory consumer fraud." *White v. DaimlerChrysler Corp.,* 368 Ill.App.3d 278, 283, 305 Ill.Dec. 737, 856 N.E.2d 542 (2006).

¶ 40 1. Plaintiffs Failed to Adequately Allege a Deceptive Act or Practice by JMLS

[1] ¶ 41 "A complaint stating a claim under the Consumer Fraud Act must state with particularity and specificity the deceptive [unfair] manner of defendant's acts or practices, and the failure to make such averments requires the dismissal of the complaint." (Internal quotation marks omitted.) *Demitro v. General Motors Acceptance Corp.,* 388 Ill.App.3d 15, 20, 327 Ill.Dec. 777, 902 N.E.2d 1163 (2009).

¶ 42 The Consumer Fraud Act defines deceptive acts or practices as "including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact * * * in the conduct of any trade or commerce." 815 ILCS 505/2 (West 2012). Plaintiffs alleged Kent committed a deceptive act or practice by failing to disclose that its employment information for the 2004, 2005, 2006, 2008, and 2010 classes, which indicated that almost all of its graduates for those years were employed within nine months of graduation, included temporary, part-time, and nonlegal jobs. Plaintiffs alleged that "[t]he context of the employment information made it reasonably appear to the public, and especially to Plaintiffs and other prospective law students, that the jobs reported represented full-time permanent employment in positions for which a J.D. degree was required or preferred."

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¶ 43 More specifically, plaintiffs alleged:

"The Employment Information omitted and concealed material information that was necessary for recipients to properly evaluate the data contained, particularly:

(i) that the term 'business' jobs did not mean jobs working as lawyers working in an entity other than a law firm, but included jobs that any college graduate (or even non-graduate) could obtain, such as waiter, delivery person, barista or store clerk.

(ii) that the data were obtained only through surveys voluntarily returned.

(iii) the percentage of surveys returned by students working in particular categories (law firms, business and government) and that only a small percentage had been returned. * * *

***8** (iv) the respective numbers or percentages of graduates reporting employment who were employed (A) in the legal profession in a position requiring a J.D. degree, or (B) in a non-legal profession in a position preferring a J.D. degree, or (C) in a related profession, or (D) in a position not requiring a J.D. degree.

(v) the respective numbers or percentages of graduates in each category of employment employed in full time or part time or temporary positions.

(vi) that the data in the Employment Information had not been independently audited or otherwise verified."

¶ 44 Plaintiffs further alleged: "As a result, the data reported in the Employment Information implied a much stronger statistical basis than was the fact and failed to show the material distinctions between graduates with full-time permanent positions as lawyers and other graduates."

¶ 45 We find that plaintiffs failed to adequately plead any omission or misrepresentation by Kent constituting a deceptive act or practice. As to the allegations that Kent committed a deceptive act or practice by failing to inform plaintiffs that the employment information for the 2004, 2005, 2006, 2008, and 2010 classes was based on voluntary surveys as opposed to audited data, plaintiffs expressly acknowledged in their first-amended class action complaint that they were aware "[t]he Employment Information was based upon surveys sent to then recent Kent graduates." Thus, as plaintiffs admittedly were aware of the basis for the data contained in the employment information, their claims of deception regarding Kent's failure to inform them of this basis necessarily fail.

¶ 46 As to their allegation that Kent committed a deceptive act or practice by failing to inform them that "only a small percentage" of surveys had been returned, plaintiffs failed to plead any facts showing the *actual* percentage of surveys returned. In the absence of any facts pleaded regarding the actual percentage of surveys returned, plaintiffs' allegation that "only a small percentage" of surveys had been returned is conclusory, may not be accepted as true and is insufficient to withstand a section 2–615 motion to dismiss. *Floyd v. Rockford Park District,* 355 Ill.App.3d 695, 703, 291 Ill.Dec. 418, 823 N.E.2d 1004 (2005); *Patrick Engineering,* 2012 IL 113148, ¶ 31, 364 Ill.Dec. 40, 976 N.E.2d 318.

¶ 47 As to plaintiffs' allegations that Kent committed a deceptive act or practice by failing to inform them of the percentages of graduates employed in nonlegal and/or part-time positions, causing plaintiffs to believe that the data reported in the employment information for the 2004, 2005, 2006, 2008 and 2010 classes related only to full-time legal employment, we note no allegations by plaintiffs that Kent ever expressly indicated that the employment information referred only to full-time, legal employment requiring a J.D. degree. As pleaded by plaintiffs, the employment information for the 2004, 2005, 2006, 2008 and 2010 classes expressly provided the percentage of Kent's graduates employed within the first nine months after graduation; this is a generalized employment statistic which does not differentiate among legal and nonlegal and full-time and part-time positions. Plaintiffs' interpretation of this generalized employment statistic as including only full-time legal positions has been found to be unreasonable as a matter of law by courts in other jurisdictions which have considered the same issue. See *e.g., Bevelacqua v. Brooklyn Law School,* No. 500175/2012, 2013 WL 1761504

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(N.Y.Supp. Apr. 22, 2013) (citing *Gomez–Jimenez v. New York Law School,* 103 A.D.3d 13, 17, 956 N.Y.S.2d 54 (N.Y.App.Div.2012)). The court in *Gomez–Jimenez* recognized that although similar employment information published by New York Law School likely left "an incomplete, if not false impression of the school's job placement success," that fact, standing alone, did not give rise to an actionable claim. *Gomez–Jimenez,* 103 A.D.3d at 17, 956 N.Y.S.2d 54. Similarly, while the information published by Kent could certainly have been more specific about the types of employment included in the reported percentage of employed graduates, plaintiffs have indentified no affirmative misrepresentation by Kent of those figures. The gloss placed by plaintiffs on that information, *i.e.,* that it represented the percentage of graduates employed within nine months in jobs for which a law degree was either required or preferred, does not give rise to a cognizable claim. Plaintiffs' conclusory allegation that Kent deceptively indicated that the generalized employment statistic reported in the employment information for the 2004, 2005, 2006, 2008 and 2010 classes represented only full-time, legal employment may not be accepted as true in the absence of any claimed affirmative misstatement and is, thus, insufficient to withstand a section 2–615 motion to dismiss. *Floyd,* 355 Ill.App.3d at 703, 291 Ill.Dec. 418, 823 N.E.2d 1004; *Patrick Engineering,* 2012 IL 113148, ¶ 31, 364 Ill.Dec. 40, 976 N.E.2d 318.

***9** ¶ 48 We also note that as pleaded by plaintiffs, the employment information for the 2004, 2005, 2006 and 2008 classes broke down the employment data into six employment categories, including, private practice, business, government, public interest, judicial clerkships, and academia. The employment information for the class of 2010 broke down the employment data into two categories, private practice and business. As to plaintiffs' allegation that Kent committed a deceptive act or practice in its employment information for the 2004, 2005, 2006, 2008 and 2010 classes by failing to inform them that the jobs listed in the business category included nonlegal employment, causing them to reasonably believe that the persons listed therein had all been employed as lawyers, we note that the employment information for the 2004 class published in U.S. News expressly indicated the percentage of Kent's graduates for that year who had taken legal jobs in the business category, *and* the percentage who had taken nonlegal jobs in the Business category. With respect to the employment information for the 2005, 2006, 2008, and 2010 classes, we note no allegation by plaintiffs that Kent ever expressly indicated therein that the Business category referred only to legal employment requiring a J.D. degree. Plaintiffs' conclusory allegation that Kent deceptively indicated that the Business category of the employment information referred only to legal employment may not be accepted as true and is insufficient to withstand a section 2–615 motion to dismiss. *Id.*

¶ 49 Further, with the exception of the listed employment categories of private practice and judicial clerkships, for which a J.D. degree would presumably be required or preferred, none of the other employment categories listed in the employment information for the 2004, 2005, 2006, 2008 and 2010 classes necessarily excludes nonattorneys on its face. See *Bevelacqua,* No. 500175/2012, 2013 WL 1761504 at *6–7) ("it has long been conventional wisdom that a law degree affords its owner much greater flexibility than most other graduate degrees and that many people pursue a law degree without ever intending to practice law, a consideration for which plaintiffs' narrow interpretation of the aggregated statistic makes no allowance"). According to the employment information for the 2004, 2005, 2006, 2008, and 2010 classes as pleaded by plaintiffs, these other employment categories for which a J.D. degree is not necessarily required constituted: 30% of Kent's graduates in 2004; 33.8% of Kent's graduates in 2005; 37.9% of Kent's graduates in 2006; 40% of Kent's graduates in 2008; and 21 % of Kent's graduates in 2010. Additionally, none of the employment categories listed in the employment information for the 2004, 2005, 2006, 2008 and 2010 classes necessarily excludes part-time employees.

¶ 50 Thus, as pleaded by plaintiffs, the employment information for the 2004, 2005, 2006, 2008 and 2010 classes does not deceptively misrepresent its employment data as applying only to full-time, legal positions, as the data indicates that a percentage of Kent's graduates for each year obtained employment in fields that do not necessarily require a J.D. degree or exclude parttime workers.

***10** ¶ 51 In conclusion, plaintiffs failed to adequately plead that Kent committed a deceptive act or practice by

misrepresenting its employment information for the 2004, 2005, 2006, 2008 and 2010 classes as applying only to full-time, legal positions.

¶ 52 Next, we consider plaintiffs' allegation that Kent committed a deceptive act or practice in the employment information for the 2004, 2005, 2006, 2008 and 2010 classes by only reporting the salaries of its graduates who obtained full-time employment. Plaintiffs alleged:

> "The salaries reported were substantially overstated, because Kent, on [the] one hand, reported as employment numbers from *any* kind of employment (including temporary and part-time), but, on the other hand, reported salary information based *only* on full-time employment. Given that full-time employment generally pays significantly higher salaries than part-time or temporary employment, the published salary numbers were significantly distorted to show higher salaries than statistically warranted and, therefore, were inherently misleading." (Emphasis in original.)

¶ 53 Plaintiffs failed to adequately allege deception by Kent in the salary disclosures contained in the employment information for the 2004, 2005, 2006, 2008 and 2010 classes. First, plaintiffs never alleged they did not realize that the salaries listed in the employment information for the 2004, 2005, 2006, 2008 and 2010 classes were full-time salaries. Further, the salaries reported in the employment information for the 2004, 2005, 2006, 2008 and 2010 classes were average and/or median salaries, meaning that some of the graduates earned more than the average or median, while others earned less. Plaintiffs did not allege that any promises were made to them that they would earn at or above the average or median salaries listed in the employment information for the 2004, 2005, 2006, 2008 and 2010 classes. Also, we note that the employment information for the classes of 2005, 2006, and 2008, which were attached to the first-amended class action complaint and are contained in the record on appeal, states that: the salary range for the classes of 2005 and 2008 included salaries as low as $35,000; and the salary range for the class of 2006 included salaries as low as $30,000. Thus, the employment information for the classes of 2005, 2006, and 2008 expressly indicated to plaintiffs that some of the graduates had salaries far below the average or median salaries of those classes.

¶ 54 Next, we consider plaintiffs' allegation that Kent committed a deceptive act or practice in the employment information for the 2005, 2006, and 2008 classes by only including the salaries of graduates working for "larger" law firms and by not explaining that the average salary computation excluded graduates working for "small" law firms. We find that plaintiffs failed to adequately plead any deception here by Kent, as review of the employment information for the 2005, 2006, and 2008 classes reveals that they disclosed salary ranges for firms of all sizes (*e.g.,* firms of 2 to 10 attorneys, 11 to 25 attorneys, 26 to 50 attorneys, 51 to100 attorneys, 101to 250 attorneys, 251 to 500 attorneys and 501–plus attorneys) and, thus, indicated to plaintiffs the salaries graduates had earned in both "larger" and "small" law firms.

***11** ¶ 55 Further, we note the first-amended class action complaint indicated plaintiffs received from Kent exactly what they paid for and were promised. Specifically, plaintiffs alleged they enrolled in Kent, and paid thousands of dollars in tuition and took out student loans, "to obtain a Juris Doctorate ('J.D.') degree, which is a prerequisite for the practice of law." Plaintiffs alleged they completed their legal education and obtained their J.D. degrees from Kent. Plaintiffs point to no promises made to them by Kent regarding the outcome of their subsequent job searches, or guaranteeing them full-time legal employment or set salaries. As plaintiffs completed their legal education at Kent and received their J.D. degrees, which was all that was promised to them in return for the tuition paid, we find that plaintiffs failed to adequately plead any deceptive acts or practices committed by Kent.

¶ 56 2. Plaintiffs Failed to Adequately Allege Proximate Cause

[2] ¶ 57 Plaintiffs alleged two related injuries: (1) the inability to obtain the job and lifetime income they expected after graduating from Kent; and (2) their contention that their J.D. degrees from Kent are worth less than the tuition paid for the degrees given plaintiffs'

perceived lifetime career prospects. Stated either way, plaintiffs' injuries are based on their postgraduate job and income. Plaintiffs alleged their injuries were proximately caused by their reliance on the allegedly deceptive employment information for the 2004, 2005, 2006, 2008 and 2010 classes, which caused them to enroll and remain enrolled in Kent, pay the inflated tuition, take out loans, and graduate with disappointing job prospects.

¶ 58 The element of proximate cause contains two requirements: the cause-in-fact and the legal cause. *Bell v. Bakus,* 2014 IL App (1st) 131043, ¶ 23. In the context of a fraud claim, cause-in-fact is "but for" cause. *Price v. Philip Morris, Inc.,* 219 Ill.2d 182, 269, 302 Ill.Dec. 1, 848 N.E.2d 1 (2005). "That is, the relevant inquiry is whether the harm would have occurred absent the defendant's conduct." *Id.* Legal cause requires that the alleged injury be a foreseeable consequence of the alleged misrepresentation. *City of Chicago v. Michigan Beach Housing Cooperative,* 297 Ill.App.3d 317, 326, 231 Ill.Dec. 508, 696 N.E.2d 804 (1998).

¶ 59 Plaintiffs have failed to adequately allege cause-in-fact, *i.e.,* that "but for" Kent's allegedly misleading employment information for the 2004, 2005, 2006, 2008 and 2010 classes, causing them to enroll and remain enrolled in Kent as opposed to some other law school, they would have obtained the high-paying legal jobs they now want years later. Initially, we note that, other than Rachelle Evans, who alleged she was accepted to and would have enrolled at UNLV if not for the employment information upon which she relied, the remaining plaintiffs did not allege they even applied to (much less were accepted by) any other law schools [5]. None of the plaintiffs (including Rachelle Evans) alleged that other potential law schools yielded better actual employment and salary statistics relating to their graduating classes.

***12** ¶ 60 Even if plaintiffs *had* alleged they were accepted to, and would have enrolled in, other law schools with better actual employment and salary statistics if not for the employment information for the 2004, 2005, 2006, 2008 and 2010 classes, these allegations still would not have been sufficient to allege cause-in-fact. As aptly noted by the circuit court in the *DePaul* case (whose findings were adopted by the circuit court here), a law school graduate's success in obtaining the job and lifetime salary he/she desires is the result of a multitude of factors, including but not limited to: "the state of the economy, the overall availability of jobs in the legal profession, the overall academic record of the graduate, any practical experience of the graduate such as summer associate positions, internships and clinics, the efforts put into obtaining legal employment, whether the graduate interviews well, and the geographic area in which employment is sought. Additional factors impacting the amount a lawyer may or may not earn over a lifetime include, but are not limited to, whether the lawyer chooses to practice in the private or public sector, whether the lawyer takes time off for childrearing or other reasons, whether the lawyer, if in private practice, makes partner, economic conditions over the course of the lawyer's lifetime, etc."

¶ 61 Given the myriad factors that go into a successful job search and career earnings, we cannot say that "but for" the employment information for the 2004, 2005, 2006, 2008 and 2010 classes that plaintiffs would have obtained their desired jobs/salaries even upon graduation from different law schools. Accordingly, plaintiffs failed to adequately plead cause-in-fact.

¶ 62 Further, plaintiffs failed to adequately plead legal causation, as we cannot say that plaintiffs' failure to secure the jobs/salaries they desired upon graduation was a foreseeable consequence of their decisions to enroll and remain enrolled in Kent in reliance on the employment information for the 2004, 2005, 2006, 2008 and 2010 classes. At the time of plaintiffs' enrollment in Kent, one could not foresee their subsequent academic records while at Kent, the geographic areas in which they would seek employment, the scope of their job searches, their interview and presentation skills, and the economic climate and overall availability of jobs during the period of their job searches, all of which would impact their job searches and salaries. As plaintiffs' injuries (*i.e.,* their disappointing postgraduate jobs and income) were not foreseeable consequences of their decisions to enroll and remain enrolled in Kent in reliance on the employment information for the 2004, 2005, 2006, 2008 and 2010 classes, plaintiffs failed to adequately plead legal causation.

¶ 63 3. Plaintiffs Failed to Adequately Plead Damages

[3] ¶ 64 To sufficiently plead a cause of action under the Consumer Fraud Act, plaintiffs must plead actual damages. *Dubey v. Public Storage, Inc.,* 395 Ill.App.3d 342, 353, 335 Ill.Dec. 181, 918 N.E.2d 265 (2009). Damages may not be predicated on mere speculation, hypothesis, conjecture or whim. *Petty v. Chrysler Corp.,* 343 Ill.App.3d 815, 823, 278 Ill.Dec. 714, 799 N.E.2d 432 (2003).

***13** ¶ 65 Plaintiffs sought to recover as damages: (1) the difference between what they paid in tuition based on the alleged misrepresentations regarding jobs and salary data in the employment information for the 2004, 2005, 2006, 2008 and 2010 classes, and what they should have paid in tuition based on the "true" value of a Kent degree; and (2) the additional lifetime income they would have been expected to earn had the jobs and salary data contained in the employment information for the 2004, 2005, 2006, 2008 and 2010 classes been true.

¶ 66 As discussed earlier in this order, though, plaintiffs failed to adequately allege any misrepresentations by Kent in its employment information for the 2004, 2005, 2006, 2008 and 2010 classes, *i.e.,* plaintiffs received exactly what they paid for (the J.D. degrees) and, thus, have failed to show any actual damages.

¶ 67 Even if plaintiffs *had* adequately pleaded misrepresentation by Kent in its employment information, they failed to plead any reliable mechanism for calculating the "true" value of their law degrees because of the alleged misrepresentation. With respect to the calculation thereof, plaintiffs alleged that Kent "inflated its employment statistics by a percentage to be determined in this litigation. ('X percent') Those inflated statistics purported to be a reasonable projection by Kent of Plaintiffs' postgraduate employment prospects if he or she enrolled at Kent rather than elsewhere. To the extent the statistics were inflated by X percent, the advantages to Plaintiffs and the value of the tuition and fees they paid to Kent was reduced by X percent. Accordingly, Kent charged for X, but the Plaintiffs did not receive X. Therefore, plaintiffs were damaged at least in the amount[ ] of * * * X percent of the amount they paid to Kent." (Internal paragraph numbers omitted.)

¶ 68 However, the employment statistics listed in the employment information for the 2004, 2005, 2006, 2008 and 2010 classes were only generalized, historical averages *for the members of those particular classes,* and they did *not* explicitly promise or project that those averages would be the same for individuals (such as plaintiffs) graduating years later. Thus, even assuming, for the sake of argument only, that those generalized, historical averages for the 2004, 2005, 2006 2008 and 2010 graduating classes were inflated by "X percent," plaintiffs have still failed to plead how they were damaged thereby, given that these averages did not constitute any kind of promise to the individual plaintiffs here that they could expect employment at the same rate. See also *Bevelacqua,* No. 500175/2012, 2013 WL 1761504 and *Gomez–Jimenez,* 103 A.D.3d 13, 956 N.Y.S.2d 54 (holding that a damages calculation based on the difference between what graduates paid in tuition based on alleged misrepresentations and the true value of the degrees was speculative and required dismissal).

¶ 69 Plaintiffs also alleged they were damaged in the amount of: "a statistically determinable amount of the lifetime income they would have been expected to earn after graduating from Kent if Kent's postgraduation employment statistics had been those that Kent had represented in the employment information, *less* the statistically determinable amount of the lifetime income they would now be expected to earn, having graduated from Kent, based upon Kent's true postgraduation employment statistics." (Emphasis in original.)

***14** ¶ 70 In other words, plaintiffs seek the difference between their annual earnings and what they expected to annually earn based on the employment information for the 2004, 2005, 2006, 2008 and 2010 classes. As we just discussed, though, the employment and salary statistics listed in the employment information consisted of generalized, historical averages for those particular classes and did not constitute any type of promise or projection for the individual plaintiffs here; thus, even assuming for the sake of argument that the employment information for the 2004, 2005, 2006, 2008 and 2010 classes did not recite Kent's "true" postgraduation employment and salary statistics for those classes, plaintiffs have failed

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to adequately plead how they were damaged thereby given that these statistics did not apply to plaintiffs or make any promises or projections regarding their future employment and salary prospects.

¶ 71 Further, we note there are no allegations in the first-amended class action complaint regarding the actual salaries earned by plaintiffs. In the absence of such salary information, plaintiffs' damages claims, which are predicated on the difference between their salaries and the average or median salaries listed in the employment information for the 2004, 2005, 2006, 2008 and 2010 classes, are undeterminable and, thus, not adequately pleaded.

¶ 72 Plaintiffs argue that any ruling on damages is "premature" as they have not had the opportunity for document discovery. We disagree. See *Yu v. International Business Machines Corp.,* 314 Ill.App.3d 892, 897, 247 Ill.Dec. 841, 732 N.E.2d 1173 (2000) (affirming the section 2–615 dismissal of plaintiff's claims of consumer fraud, deceptive trade practices and negligence, where plaintiff failed to adequately plead damages).

¶ 73 4. Conclusion

¶ 74 In conclusion, as plaintiffs failed to adequately plead a deceptive act or practice by Kent, proximate cause, or actual damages, their Consumer Fraud Act claim against Kent failed to state a cause of action. We affirm the dismissal of plaintiffs' Consumer Fraud Act count against Kent.

¶ 75 B. Plaintiffs' Common–
Law Fraud Claim Against Kent

¶ 76 Plaintiffs alleged Kent committed common-law fraud by overstating its graduates' employment and salary statistics in the employment information for the 2004, 2005, 2006, 2008 and 2010 classes.

¶ 77 "To state a cause of action for common-law fraud, a plaintiff must plead: (1) a false statement of material fact; (2) knowledge or belief by the defendant that the statement was false; (3) an intention to induce the plaintiff to act; (4) reasonable reliance upon the truth of the statement by the plaintiff; and (5) damage to the plaintiff resulting from this reliance." *Avon Hardware Co. v. Ace Hardware Corp.,* 2013 IL App (1st) 130750, ¶ 15, 376 Ill.Dec. 348, 998 N.E.2d 1281.

[4] ¶ 78 With respect to the first two elements of common-law fraud, that defendant knowingly made a false statement of material fact, plaintiffs alleged Kent knowingly made incomplete, false and materially misleading statements in the employment information for the 2004, 2005, 2006, 2008 and 2010 classes regarding the number of graduates employed as full-time attorneys within nine months of graduation, as well as the size of their salaries. However, as discussed in detail earlier in this order, we find that plaintiffs failed to adequately allege any incomplete, false or misleading statements by Kent in its employment information for the 2004, 2005, 2006, 2008 and 2010 classes regarding the employment or salaries of its graduates for those years.

***15** **[5]** ¶ 79 With respect to the reasonable reliance element, plaintiffs alleged they enrolled and remained enrolled in Kent after reasonably relying on the employment information for the 2004, 2005, 2006, 2008 and 2010 classes as reflecting the likelihood they would find high-paying, fulltime legal employment within nine months of graduation. However, we find plaintiffs failed to adequately plead the reasonableness of their reliance on the employment information for the 2004, 2005, 2006, 2008 and 2010 classes as being indicative they would find such high-paying, full-time legal employment, given that the employment and salary data contained in the employment information: (1) consisted of historical data for persons who graduated two to eight years prior to plaintiffs; (2) did not reflect the economic climate and availability of jobs at the time of plaintiffs' job searches; and (3) and did not constitute any type of promise or projection regarding plaintiffs' individual job/salary prospects either with regard to their first job and salary or their jobs and salaries over their lifetimes.

¶ 80 In addition, we note that to the extent plaintiffs alleged they all relied on the employment information for the 2004, 2005, 2006, 2008, *and* 2010 classes when deciding to enroll and remain enrolled at Kent, some

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of the individual plaintiffs graduated from Kent prior to the publication of the employment information for the class of 2010 (*i.e.,* Ian Johnson, Oliver Cooper IV, Geoffrey J. Haas, Jr., Laura Haas, and Leah Selinger) and, thus, could not have relied thereon when determining whether to enroll and remain enrolled in Kent. Oliver Cooper IV, Geoffrey J. Haas, Jr., Laura Haas, and Leah Selinger all graduated from Kent prior to the publication of the employment information for the class of 2008 and, therefore, could not have relied thereon when determining whether to enroll and remain enrolled in Kent.

¶ 81 Also, as discussed earlier in this order, plaintiffs failed to adequately allege proximate cause and damages. Accordingly, plaintiffs' claim of common-law fraud against Kent failed to state a cause of action.

¶ 82 Plaintiffs argue that *In re Enron Corp. Securities, Derivative & ERISA Litigation,* 235 F.Supp.2d 549 (S.D.Tex.2002), compels a different result. Plaintiffs argue that Enron (a New York Stock Exchange-listed public company in the energy business) engaged in fraud by manipulating its books and records to make it appear more profitable than it actually was. After the fraud came to light and Enron went bankrupt and the stock lost its value, investors were able to recover from many defendants, including the Enron directors. Plaintiffs argue that Kent, similarly, created a fictional track record of employment that made Kent's track record look far better than it actually was. Plaintiffs argue that, similar to the investors in Enron, they should be allowed to recover the reduced value of their J.D. degrees and any lost earnings caused by Kent's fraud in connection with its false and misleading employment and salary statistics contained in the employment information for the 2004, 2005, 2006, 2008 and 2010 classes.

***16** ¶ 83 First, we note plaintiffs waived review of this argument by failing to cite to the relevant portions of the 150–page *Enron* opinion upon which they rely. See Ill. S.Ct. R. 341(h)(7) (eff.Feb.6, 2013). Waiver aside, *Enron* is inapposite because, unlike in *Enron,* plaintiffs here failed to adequately allege any false or misleading statements/statistics in the employment information for the 2004, 2005, 2006, 2008 and 2010 classes, nor did they adequately allege reasonable reliance, proximate cause or damages.

¶ 84 Accordingly, for all the foregoing reasons, we affirm the dismissal of plaintiffs' commonlaw fraud count against Kent.

¶ 85 C. Plaintiffs' Fraudulent Concealment Claim as Part of Common–Law Fraud

¶ 86 The circuit court determined that plaintiffs' first-amended class action complaint also sought recovery for fraudulent concealment under their common-law fraud claim, but that it failed to state a cause of action. Plaintiffs contend on appeal that they stated a claim against Kent for fraudulent concealment.

¶ 87 "To prove fraudulent concealment, a plaintiff must establish that (1) the defendant concealed a material fact under circumstances that created a duty to speak; (2) the defendant intended to induce a false belief; (3) the plaintiff could not have discovered the truth through reasonable inquiry or inspection, or was prevented from making a reasonable inquiry or inspection, and justifiably relied upon the defendant's silence as a representation that the fact did not exist; (4) the concealed information was such that the plaintiff would have acted differently had he or she been aware of it; and (5) the plaintiff's reliance resulted in damages." *Bauer v. Giannis,* 359 Ill.App.3d 897, 902–03, 296 Ill.Dec. 147, 834 N.E.2d 952 (2005).

¶ 88 To assert a claim for fraudulent concealment, plaintiff must establish the existence of a special or fiduciary relationship, which in turn gives rise to a duty to speak. *Hassan v. Yusuf,* 408 Ill.App.3d 327, 345, 348 Ill.Dec. 654, 944 N.E.2d 895 (2011).

¶ 89 The parties here dispute whether such a special or fiduciary relationship existed between plaintiffs and Kent, giving rise to a duty to speak. We need not resolve this issue, though, because even assuming for the sake of argument that such a duty existed, plaintiffs still failed to adequately plead all the required elements to state a cause of action for fraudulent concealment. Specifically, the material fact alleged to have been concealed is that Kent deceptively overstated its graduates' employment and salary data in its employment information for the 2004, 2005 2006, 2008 and 2010 classes. As discussed earlier in

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this order, though, plaintiffs failed to adequately plead that Kent committed any such deceptive overstatement in the employment information for the 2004, 2005, 2006, 2008 and 2010 classes; accordingly, plaintiffs' claim of fraudulent concealment based on this overstatement necessarily fails. Also as discussed earlier in this order, plaintiffs failed to adequately allege reasonable reliance, proximate cause and damages. Therefore, we affirm the circuit court's dismissal of plaintiffs' fraudulent concealment count against Kent.

¶ 90 D. Plaintiffs' Negligent Misrepresentation Claim Against Kent

***17** ¶ 91 Plaintiffs alleged Kent committed negligent misrepresentation by overstating the employment and salary data in the employment information for the 2004, 2005, 2006, 2008 and 2010 classes. To state a cause of action for negligent misrepresentation, plaintiffs must allege: (1) a false statement of material fact; (2) defendant's carelessness or negligence in ascertaining the truth of the statement; (3) an intention to induce plaintiffs to act; (4) reasonable reliance on the truth of the statement by plaintiffs; and (5) damage to plaintiffs resulting from this reliance. *Avon Hardware Co. v. Ace Hardware Corp.,* 2013 IL App (1 st) 130750, ¶ 15. Further, to plead a cause of action for negligent misrepresentation, plaintiffs must also allege defendant owes a duty to them to communicate accurate information. *Id.*

¶ 92 Plaintiffs' claim of negligent misrepresentation, like their claims for violation of the Consumer Fraud Act, common-law fraud and fraudulent concealment, alleged that the employment information for the 2004, 2005, 2006, 2008 and 2010 classes contained incomplete, false and misleading information regarding Kent's graduates' employment and salaries for those years and that plaintiffs relied on this information when choosing to enroll and remain enrolled at Kent. However, as we have discussed repeatedly in this order, plaintiffs have failed to adequately allege that Kent made any incomplete, false or misleading statements in its employment information for the 2004, 2005, 2006, 2008 and 2010 classes regarding its graduates' employment and salaries for those years, nor have they adequately alleged reasonable reliance, proximate cause or damages. Accordingly, plaintiffs failed to state a cause of action for negligent misrepresentation. We affirm the dismissal of plaintiffs' negligent misrepresentation claim against Kent.

¶ 93 E. Plaintiffs' Claims Against Lawyer Defendants

¶ 94 Plaintiffs contend the circuit court erred in dismissing their claims against the unnamed Lawyer Defendants for violation of the Consumer Fraud Act, common-law fraud, and negligent misrepresentation. The circuit court correctly dismissed the claims against the Lawyer Defendants for lack of subject matter jurisdiction. See *Bogseth v. Emanuel,* 166 Ill.2d 507, 514, 211 Ill.Dec. 505, 655 N.E.2d 888 (1995) ("Illinois courts have historically and uniformly held that suits brought against fictitious parties are void *ab initio.*"). Further, even if plaintiffs *had* identified the Lawyer Defendants, we would affirm the dismissal of the Consumer Fraud Act, common-law fraud, and negligent misrepresentation counts against them for the same reasons we affirm the dismissal of these same counts against Kent.

¶ 95 F. The Dismissal With Prejudice

¶ 96 Plaintiffs contend the circuit court erred in dismissing the entirety of their first-amended class action complaint with prejudice. Plaintiffs request we remand the case so as to provide them with the opportunity to amend their pleadings.

***18** ¶ 97 "No absolute right exists for a plaintiff to amend a pleading. [Citation.] The decision whether to grant or deny an amendment rests within the sound discretion of the trial court and will not be disturbed absent an abuse of that discretion." *Matanky Realty Group, Inc. v. Katris,* 367 Ill.App.3d 839, 844, 305 Ill.Dec. 774, 856 N.E.2d 579 (2006). Plaintiffs here never sought leave to amend their first-amended class action complaint and, accordingly, the circuit court committed no abuse of discretion in dismissing it with prejudice. *Id.* (holding that the circuit court committed no abuse of discretion in dismissing plaintiff's complaint with prejudice "where no exercise of that discretion was requested because the

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record demonstrates that plaintiff never sought leave to amend its complaint").

¶ 98 For all the foregoing reasons, we affirm the section 2–615 dismissal order. As a result of our disposition of this case, we need not address the section 2–619 dismissal or the other arguments regarding the section 2–615 dismissal.

¶ 99 Affirmed.

Justices HALL and MASON concurred in the judgment.

All Citations

Not Reported in N.E.3d, 2014 IL App (1st) 123611-U, 2014 WL 4803004

Footnotes

1 Also referred to in the first-amended class action complaint as Does 1–20.

2 In their reply brief, plaintiffs argue that Kent's statement of facts in their appellees' brief is unduly argumentative and should be stricken. We deny the motion to strike but have disregarded any inappropriate argumentative statements.

3 The first-amended class action complaint did not state whether Bauman passed the Missouri bar exam.

4 See *Jonathan Phillips et. al v. DePaul University, a/k/a DePaul University College of Law, and Does 1–20,* No. 1–12–2817, and *Jorie Johnson v. The John Marshall Law School and Does 1–20,* No. 1–12–3480. See *Jonathan Phillips et. al v. DePaul University, a/k/a DePaul University College of Law, and Does 1–20,* No. 1–12–2817, and *Jorie Johnson v. The John Marshall Law School and Does 1–20,* No. 1–12–3480.

5 Plaintiffs alleged that Aeric Bauman would have enrolled at the University of Missouri Columbia if not for the employment information upon which he relied; however, plaintiffs never alleged that Bauman applied to, and was accepted by, the University of Missouri–Columbia.

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