

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

Kathryn Farmer, Individually, and as)
Representative of a Class of Similarly-)
Situated Persons and Entities)
)
Plaintiff,)
)
v.)
)
City of Chicago, an Illinois Municipal)
Corporation,)
)
Defendants.)

Case No. 2021CH04583

MEMORANDUM OF OPINION AND ORDER

This matter comes to be heard on the Defendant, City of Chicago's, 2-615 Motion to Dismiss Plaintiff, Kathryn Farmer's, Second Amended Complaint. The matter has been fully briefed and argued before the Court. Defendants' motion is denied. On its own motion, the Court strikes Plaintiff's Second Amended Complaint and grants Plaintiff 28 days to file a third amended complaint correcting the defects discussed below.

BACKGROUND

Defendant, City of Chicago, operates a water and sewer utility under 65 ICLS 5/11-139-1 *et seq.* On September 14, 2016, Defendant approved a tax on water and sewer usage to fund their pension obligations.

Plaintiff is a water and sewer customer residing in Chicago. On September 9, 2021, Plaintiff filed a twelve-count complaint in this Court claiming the Tax violates Illinois state statute and general principles of common law.

On July 21, 2022, Defendant filed a 2-615 motion to dismiss Counts VII-XII of Plaintiff's Second Amended Complaint.

2-615 MOTION TO DISMISS STANDARD

A Section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006). The motion does not raise affirmative factual defenses, but rather alleges only defects on the face of the complaint. *Beahringer v. Page*, 204 Ill. 2d 363, 369 (2003). The question presented by a section 2-615 motion to dismiss is whether the allegations of the complaint, when viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted. *Id.* This determination requires an examination of the complaint as a whole, not its distinct parts.

Lloyd v. County of Du Page, 303 Ill. App. 3d 544, 552 (2d Dist. 1999). In reviewing the sufficiency of a complaint, a court must accept all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Burger King Corp.*, 222 Ill. 2d at 429. A complaint is deficient when it fails to allege facts necessary for recovery. *Chandler v. Ill. Cent. R.R.*, 207 Ill. 2d 331, 348 (2003). A court should not dismiss a cause of action unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *Redelman v. Sprayway, Inc.*, 375 Ill. App. 3d 912, 917 (1st Dist. 2007).

DISCUSSION

Defendant's 735 ILCS 5/2-615 motion is improper because it does not contain arguments appropriate for a 2-615 motion. "In ruling on a section 2-615 motion; the court only considers (1) those facts apparent from the face of the pleadings, (2) matters subject to judicial notice, and (3) judicial admissions in the record." *Reynolds v. Jimmy John's Enters.*, 2013 IL App (4th) 120139 ¶ 25). Defendant's arguments contain claims about Plaintiff's ability to prove her claims, arguments about the substantive law surrounding these issues, and other documents unrelated to defects on the face of the complaint. Accordingly, this Court denies Defendant's motion. The Court however, on its own motion, strikes Plaintiff's second amended complaint due to violations of 735 ILCS 5/2-603(b) and 735 ILCS 5/2-615 and described below.

735 ILCS 5/2-603(b) states, "each separate cause of action upon which a separate recovery might be had shall be stated in a separate count or counterclaim, as the case may be and each count, counterclaim, defense or reply, shall be separately pleaded, designated and numbered, and each shall be divided into paragraphs numbered consecutively, each paragraph containing, as nearly as may be, a separate allegation." Plaintiff commingled causes of action in Counts VII-XII. For example, Count VII contains allegations related to both assumpsit and uniformity clause violations, and Count VIII contains allegations related to unjust enrichment and uniformity clause violations. A proper designation of the allegations in Counts VII and VIII would be separate counts for Assumpsit, Unjust Enrichment, and Uniformity Clause violations.

The complaint also contains numerous defects under 735 ILCS 5/2-615 detailed below:

I. Count VII

Count VII alleges Assumpsit and a violation of the uniformity clause. To state a claim for Assumpsit, a plaintiff must allege: (1) the existence of a valid and enforceable contract; (2) performance by the plaintiff; (3) a breach by defendant; and (4) injury to the plaintiff. *Northbrook Bank & Trust Co. v. Abbas*, 2018 IL App (1st) 162972. Plaintiff does not allege a valid and enforceable contract between Plaintiff and Defendant.

To state a claim for violation of the uniformity clause, a plaintiff must allege a non-property tax classification is: (1) based on a real and substantial difference between the people taxed and those not taxed; and (2) bear some reasonable relationship to the object of the legislation or to public policy. Plaintiff's complaint states, "The Water and Sewer Taxes violate the Uniformity Clause because (1) they are not based on a real and substantial difference between the people taxed

and those not taxed.” Pl. Compl. ¶13. Plaintiff does not plead facts to support this conclusory statement, which is not sufficient under Illinois’ fact pleading standards.

II. Count VIII

Count VIII alleges unjust enrichment and breach of the uniformity clause. To state a claim for unjust enrichment, a plaintiff must allege: (1) an enrichment; (2) an impoverishment; (3) a relation between the enrichment and impoverishment; (4) the absence of justification; and (5) the absence of a remedy provided at law. Plaintiff’s only allegation arguably related to this cause of action is “By virtue of the City’s imposition of the Water and Sewer Taxes, the City has collected amount sin excess of amounts it was legally entitled to collect.” Pl. Compl. ¶167. The complaint contains no specific factual allegations to support paragraph 167 or allegations to support the other elements of the cause of action.

The uniformity clause claim fails for the same reasons as Count VII because the allegations are the same in both counts.

III. Count IX

Count IX alleges Assumpsit and violation of the Equal Protection Clause. Count IX contains no allegations to support Plaintiff’s claim for Assumpsit. To state a claim for an equal protection violation, a plaintiff must allege: (1) a threshold allegation that the plaintiff was treated differently from similarly situated individuals; and (2) the government cannot demonstrate an appropriate reason for the differentiated treatment. *In re C.E.*, 406 Ill. App. 3d 97, 112 (1st Dist. 2010). Plaintiff alleges that the City discriminated against her by “exempt[ing] hundreds of similarly-situated water and sewer customer locations from their obligation to pay the City’s Water and Sewer Rates.” Pl. Compl. ¶173. Plaintiff does not, however, make allegations related to the government’s ability to demonstrate an appropriate reason for the differentiated treatment.

IV. Count X

Count X alleges unjust enrichment and violation of the Equal Protection Clause. Plaintiff does not explicitly allege an enrichment, the absence of a government justification, or the absence of a remedy provided at law; she arguably alleges an impoverishment in paragraph 187, which states, “Plaintiff and the Class have been harmed by the illegal discrimination because they have necessarily paid higher Water and Sewer Charges.” Pl. Compl. ¶187. Plaintiff’s allegations related to the Equal Protection Clause have the same defects discussed under Count IX.

V. Count XI

Count XI alleges Assumpsit and unreasonable rates. Again, the Plaintiff does not allege the existence of a valid and enforceable contract, so she did not state a valid claim for Assumpsit. To state a claim for unreasonable rates, a plaintiff must allege: (1) plaintiff is a separate class of customers; (2) the rates are fixed by ordinance; and (3) the rates are unreasonable as applied to plaintiff. *Niles v. Chicago*, 82 Ill. App. 3d 60, 62 (1st Dist. 1980). Plaintiff’s complaint contains conclusory statements about the reasonableness of the rates. For example, in paragraph 195,

Plaintiff alleges, "The City's Excessive Allocations of the City's general fund expenses and the Pension Overcharges grossly inflate the Water and Sewer Rates imposed upon Plaintiff and the Class, and as such, necessarily render these Rates as arbitrary, capricious, and unreasonable." Pl. Compl. ¶195. The Plaintiff must plead facts to support her claim, not merely conclusory statements.

VI. Count XII

Count XIII alleges unjust enrichment and unreasonable rates. Count XII does not state a relationship between Plaintiff's impoverishment or Defendant's enrichment. Plaintiff also does not allege the government cannot justify the differentiation or that there is no remedy at law. Plaintiff's claim for unreasonable rates fails for the same reasons outlined under Count XI.

CONCLUSION

Plaintiff's complaint is dismissed without prejudice. Plaintiff has 28 days from the entry of this Order (until August 10, 2023) to file her third amended complaint. This case is set for status on August 21, 2023, at 10:00 a.m.

**Associate Judge
Allen Price Walker**
JUL 13 2023
Circuit Court -- 2071

ENTERED:

Dated: _____


Honorable Judge Allen P. Walker