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FOURTH DIVISION  
July 21, 2015

No. 1-14-3338

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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FUCHSIA TAXI, INC.,	)	
	)	Appeal from the Circuit Court
Plaintiff-Appellant,	)	of Cook County, Illinois,
	)	County Department, Chancery
v.	)	Division
	)	
CITY OF CHICAGO DEPARTMENT OF	)	No. 13 CH 23006
BUSINESS AFFAIRS AND CONSUMER	)	
PROTECTION,	)	The Honorable
	)	Kathleen M. Pantle,
Defendant-Appellee.	)	Judge Presiding.

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PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Ellis and Cobbs concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court properly dismissed the plaintiff's amended complaint for injunctive relief on the basis that the plaintiff had failed to state a cause of action. 735 ILCS 5/2-615 (West 2012). The court properly refused the plaintiff's request to stay the department's administrative subpoena, where the plaintiff's complaint failed to allege that in issuing the subpoena the department had exceeded the scope of authority granted to it under the municipal code.

¶ 2 The plaintiff-appellant, Fuchsia Taxi, Inc. (hereinafter the taxi company), filed a complaint for injunctive relief against the defendant-appellee, the City of Chicago Department of Business Affairs and Consumer Protection (hereinafter the department), seeking that the court

permanently stay an administrative subpoena issued to it by the department. The circuit court granted the department's motion to dismiss the plaintiff's complaint pursuant to section 2-615 of the Code of Civil Procedure (Civil Procedure Code) (735 ILCS 5/2-615 (West 2012)). The plaintiff now appeals contending that the administrative subpoena issued by the department exceeds the scope of authority for such subpoenas set forth in section 2-25-050 of the Chicago Municipal Code (Municipal Code) (Municipal Code of Chicago, Ill. § 2-25-050 (2014)). For the reasons that follow, we affirm.

¶ 3

### I. BACKGROUND

¶ 4

The record before us reveals the following undisputed facts and procedural history. The plaintiff, the taxi company, is the owner of a taxicab medallion issued by the City of Chicago (hereinafter the city). The defendant-department is authorized by the city's Municipal Code to oversee and regulate the taxicab industry operating within the city. On October 10, 2013, the taxi company filed its initial complaint for injunctive relief, asking the court to permanently stay an administrative subpoena issued by the department to the taxi company on September 9, 2013. According to the complaint, the subpoena was issued by the department to the taxi company in connection with three administrative notices of violation filed by the department against the taxi company, alleging that that the taxi company had licensed a taxicab vehicle bearing the medallion owned by the taxi company to an individual driver whose chauffeur license had been previously revoked by the city. The taxi company alleged in its complaint that the subpoena was issued "for the sole purpose of harassing [the taxi company] and causing it to incur unnecessary legal expenses by identifying, recovering and producing documentation to which [the department] ha[d] ready and unrestricted access, through use of a computer program that is presently available to [it.]"

¶ 5 In support, the taxi company attached a copy of the subpoena. That subpoena requested that the taxi company produce the following documents for the period between February 1, 2013, through April 30, 2013: (1) "[a]ll lease agreements pertaining to taxicab medallion license number 1431 TX"; (2) "[a]ll information, documents and records relating to the leasing and operation of" that license; (3) "[a]ll information, documents and records relating to the screening of lessees and potential lessees" of that license; and (4) "[t]he names, contact information, and public chauffeur license numbers of all individuals who drove or operated" under that license.

¶ 6 On January 28, 2014, the department filed a section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2012)). Therein, the department argued that the taxi company had failed to allege that the department had acted outside of its legal authority in issuing the subpoena. The department explained that the Chicago Municipal Code (Municipal Code of Chicago, Ill. §2-25-050(b) (2014)) expressly authorized it to issue subpoenas for documents pertaining to any licenses, including taxicab medallion licenses, and that, as a holder of a city license, the taxi company was obligated to comply with the subpoena regardless of whether the department could access some of the documents in an alternative manner. Consequently, the department asserted that the taxi company's complaint had failed to allege any facts which would bring its claim within a legally recognized cause of action in Illinois.

¶ 7 The circuit court agreed with the department and on June 23, 2014, granted its motion to dismiss without prejudice. In doing so, the court gave the taxi company 28 days within which to file an amended complaint.

¶ 8 On July 15, 2014, the taxi company filed its amended complaint to explicitly allege that the department's administrative subpoena constituted an *ultra vires* act. The taxi company asserted that the subpoena exceeded the scope of what the department was authorized to request pursuant

to section 2-25-50(b)(10) of the Municipal Code, which expressly states, in relevant part, that this power extends only to "require the production of books, papers, records and documents *pertinent to* any license or permit." (Emphasis added.) Municipal Code of Chicago, Ill. § 2-25-050(b)(10) (2014).

¶ 9 On August 11, 2014, the department filed a motion to dismiss the amended complaint, again arguing that the taxi company had failed to set forth a legally recognized claim. The department first explained that the taxi company itself had admitted that the Municipal Code explicitly authorized the department to subpoena documents "pertinent to any license." The department then asserted that because there could be no doubt that the documents sought in the subpoena were pertinent to the taxi company's medallion license, and the taxi company had not alleged a single fact to support its assertion that the documents were somehow beyond the scope of the department's authority, it had again failed to state a claim under Illinois law.

¶ 10 On September 10, 2014, the taxi company filed a response to the department's motion to dismiss, arguing that pursuant to section 2-25-110 of the Municipal Code (Municipal Code of Chicago, Ill. § 2-25-110 (2014)) it had the right to seek a stay of the department's subpoena, thereby bringing the complaint within a recognizable cause of action so as to survive a motion to dismiss. The taxi company then reiterated that the department's subpoena sought documents outside the scope of the department's authority. The taxi company, however, again provided no rationale for this argument nor did it identify which documents it believed were outside the department's subpoena reach. Instead, the taxi company merely asserted that the issuance of the subpoena was "overreaching" and that the department does not have "an unfettered license to hound the taxicab industry."

¶ 11 In its reply, filed on September 14, 2014, the department, *inter alia*, argued that section 2-25-

110 of the Municipal Code (Municipal Code of Chicago, Ill. § 2-25-110 (2014)), upon which the taxi company had relied, did not apply because it addressed penalties for failure to obey orders of the departments' commissioner, rather than subpoenas.<sup>1</sup> Accordingly, it sought the dismissal of the taxi company's complaint.

¶ 12 On October 3, 2014, the court granted the department's section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2012)) and the taxi company now appeals.

¶ 13 II. ANALYSIS

¶ 14 A section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2012)) attacks the legal sufficiency of a complaint by alleging defects on the face of the complaint. *Hadley v. Doe*, 2015 IL 118000, ¶ 29 (citing *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009)). In reviewing the dismissal of a section 2-615 motion, a reviewing court determines whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, state sufficient facts to establish a cause of action upon which relief may be granted. *Hadley*, 2015 IL 118000, ¶ 29 (citing *Green* 234 Ill. 2d at 491). In doing so, we may only consider those "facts apparent from the face of the pleadings, matters of which the court can take judicial notice and judicial admissions in the record." *K. Miller Const. Co. v. McGinnis*, 238 Ill. 2d 284, 291 (2010). In addition, we must also

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<sup>1</sup> That section provides in relevant part: "any person who: (1) unless *the commissioner's order has been stayed* by a court of competent jurisdiction, fails to obey an order issued by the commission pursuant to this chapter, or (2) unless the *order imposing such fine or penalty has been stayed* by a court of competent jurisdiction fails to pay a fine or penalty imposed under this chapter within a reasonable time specified by the commissioner \*\*\* shall be subject to a fine of not less than \$2,000.00 nor more than \$10,000.000, or imprisonment for a period not to exceed six months or both, for each offense." Municipal Code of Chicago, Ill. § 2-25-110 (2014).

accept as true all well-pleaded facts in the complaint and all reasonable inferences that may be drawn from those facts. *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81 (2004). A section 2-615 motion to dismiss should be granted only if it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to recovery. *Hadley*, 2015 IL 118000, ¶ 29 (citing *Green* 234 Ill. 2d at 491). The standard of review is *de novo*. *Hadley*, 2015 IL 118000, ¶ 29 (citing *Green* 234 Ill. 2d at 491).

¶ 15 On appeal, the taxi company apparently argues that the circuit court erred in dismissing its amended complaint on the basis that it failed to state a cause of action because: (1) the fact that the Municipal Code explicitly authorizes the stay of enforcement of administrative subpoenas establishes that the department does not enjoy unbridled authority to issue such subpoenas; and (2) the scope of information requested in the disputed administrative subpoena exceed the authority given to the department under the Municipal Code, thereby making it an *ultra vires* act.

¶ 16 As an initial matter, we note that we are troubled by the substance of the taxi company's appellate brief. The three-page argument section of that brief provides next to nothing in the way of argument, analysis or support for overturning the judgment of the circuit court. Instead of articulating its argument and explaining why the administrative subpoena exceeds the scope of the department's authority so as to permit the circuit court to stay that subpoena and curtail the city's "unbridled authority," or supplying the court with citations to relevant authority to support that position, the taxi company merely asks a series of rhetorical questions, followed by an assertion that "none of the information sought by the [department] is in fact 'pertinent' to its taxi license." Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2013) requires parties' briefs to include cohesive argument and citations to relevant authority for each of its claims. We have long held that the appellate court "is not merely a repository into which an appellant may 'dump the burden

of argument and research,' nor is it the obligation of this court to act as an advocate or seek error in the record." *U.S. Bank v. Lindsey*, 397 Ill. App. 3d 437, 459 (2009) (quoting *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993)); see also *Lake County Grading Co. v. Village of Antioch*, 2014 IL 115805, ¶ 36. Accordingly, failure to provide an argument and to cite to facts and authority, in violation of Rule 341, may result in the party forfeiting consideration of the issue. *In re Marriage of Foster*, 2014 IL App (1st) 123078, ¶ 72.

¶ 17 Nevertheless, even if we were to consider the merits of the taxi company's claims, for the reasons that follow, we would find that they lack merit.

¶ 18 First, contrary to the taxi company's assertion, there can be no doubt that pursuant to the Municipal Code, the department was authorized to issue the administrative subpoena. The parties agree that pursuant to chapter 2-25 of the Municipal Code (Municipal Code of Chicago, Ill. § 2-25-010 *et seq.* (2014)), the city created the department and charged it with the oversight of businesses that require licenses and permits, including, relevant to this appeal, the taxicab industry. In that respect, section 2-25-50(b)(4) of the Municipal Code details the department's duties, including, *inter alia*: (1) "investigating applicants and licensed businesses for compliance with the requirements of this Code or any other applicable law related to licensing"; (2) "enforcing ordinances and statutes related to licensing and all applicable rules and regulations promulgated thereunder"; (3) "conducting license disciplinary hearings and proceedings;" and (4) issuing penalties to licensees who violate the Municipal Code and other laws. See Municipal Code of Chicago, Ill. §§ 2-25-050(b)(4)(ii)- (v), 2-25(b)(5) (2014). Section 2-25-50(b)(7) of the Municipal Code further requires the department to compile various records concerning those holding municipal licenses, including information about public passenger

vehicles and their drivers. Municipal Code of Chicago, Ill. § 2-25-050(b)(7) (2014).

Particularly, subsection (b)(7)(iv) requires the department to maintain "a register containing the name and Chicago address of all public chauffeurs, including each public chauffeur's license number." Municipal Code of Chicago, Ill. § 2-25-050(b)(7)(iv) (2014). The department is also empowered "[t]o take such actions as may be necessary or appropriate to investigate, make findings, prosecute or request prosecutions by the corporation counsel for the purpose of" enforcing "ordinances relating to licenses" and making sure that "all persons required by [the Municipal] Code \*\*\* to secure any license, permit or franchise have complied with such requirements." Municipal Code of Chicago, Ill. §§ 2-25-050(b)(9)(i), (ii) (2014).

¶ 19 In addition, section 9-112 of the Municipal Code sets forth the regulations that the department enforces with respect to the taxicab industry. See Municipal Code of Chicago, Ill. § 9-112-010 *et seq.* (2014). Specifically, section 9-112-260(a) states that licensees "have an affirmative duty to ensure that [their] taxicabs are leased only to licensed chauffeurs." Municipal Code of Chicago, Ill. § 9-112-260(a) (2014). Accordingly, all licensees are required to "develop and implement protocols to prevent unlicensed chauffeurs" from leasing or operating taxicabs. Municipal Code of Chicago, Ill. § 9-112-260(b) (2014). In addition, licensees "must take reasonable steps" to ensure that anyone leasing or operating their taxicabs "has a chauffeur license in good standing with the City of Chicago and has a motor vehicle driver's license in good standing with the Secretary of the State." Municipal Code of Chicago, Ill. § 9-112-200 (2014). In that vein, licensees must also maintain records detailing which chauffeur is "operating [their] taxicabs on any given date, time and location" and "produce information and data as to which chauffeur, including name and chauffeur number, is operating a particular taxicab on a given date and time to the [department's] commissioner upon request for the same." Municipal



Code of Chicago, Ill. § 9-112-210 (2014). According to section 9-112-260(c) licensees "are strictly liable for unlicensed chauffeurs operating taxicabs if they know that the taxicab has been leased to an unlicensed chauffeur, and any offense committed by an unlicensed chauffeur while operating a taxicab." Municipal Code of Chicago, Ill. § 9-112-260(c) (2014). The department's commissioner has the power to "revoke a medallion license for leasing a taxicab to an unlicensed chauffeur if the lessor does so knowingly or should have known that the chauffeur was unlicensed." Municipal Code of Chicago, Ill. § 9-112-260(d) (2014).

¶ 20 In order to aid the department's regulatory oversight, the Municipal Code explicitly grants the department, the following powers, including the power of subpoena:

"To require the production and examination of books, papers, records and documents pertinent to any license or permit, or to any license or permit application, or to any license or permit fee or business tax, and to issue and enforce subpoenas therefore, as well as to institute investigations, inquiries, or hearings ant to take testimony and proof under oath at such hearings." Municipal Code of Chicago, Ill. § 2-25-050(b)(10) (2014).

¶ 21 Accordingly, contrary to the taxi company's assertion, there can be no doubt that the aforementioned sections of the Municipal Code vested the department with authority to issue the administrative subpoena.

¶ 22 What is more, contrary to the taxi company's assertion, the breadth of the department's subpoena did not exceed the scope of the powers delegated to the department. The department's subpoena requested the following information from the taxi company for the limited three-month period between February 1, 2013, and April 30, 2013: (1) lease agreements pertaining to the relevant taxicab medallion license; (2) information, documents and records relating to the leasing and operation of that license; (3) information, documents and records relating to the screening of

lessees and potential lessees of that license; and (4) the names, contact information, and public chauffeur license numbers of all individuals who drove or operated under that license. The request was made, as the taxi company conceded in its complaint, for the purpose of an investigation into three administrative notices of violation filed by the department against the taxi company, alleging that that the taxi company had licensed a taxicab vehicle bearing the medallion license owned by the taxi company to an individual driver whose chauffeur license had been previously revoked by the city.

¶ 23 Because, as already articulated above, under the Municipal Code, the taxi company was obligated to ensure that only licensed chauffeurs leased and operated its vehicles, and in that effort, was explicitly required to turn over information about "which chauffeur, including name and chauffeur number, [was] operating a particular taxicab on a given date and time to the commissioner [of the department] upon request for the same," there can be no doubt that the information requested under the subpoena was "pertinent to" the taxi company's medallion license. See Municipal Code of Chicago, Ill. § 9-112-210 (2014). Any information regarding persons to whom the taxi company had leased its medallion license, the taxi company's procedures for screening those lessees and potential lessees, and the identifying information about the chauffeurs of those lessees, including their chauffeur license numbers, was clearly relevant to the department's ability to determine whether the taxi company was allowing unlicensed drivers to operate its vehicles in violation of the rules and regulations governing its licenses. See Municipal Code of Chicago, Ill. § 9-112-210 (2014). What is more, the subpoena's request was limited to a three month period of the taxi company's operations. As such, it was well within the scope of the department's delegated powers.

¶ 24 In its final attempt to circumvent the court's dismissal of its cause of action, on appeal, for the

first time, the taxi company asserts that the subpoena "lacked specificity" so as to be an unreasonable search and seizure under both the Illinois and U.S. constitutions. As with its previous arguments, the taxi company provides no rationale for its claim aside from an assertion that the department's subpoena is "nothing more than an unwarranted fishing expedition." As already noted above, a party's failure to properly articulate and support an argument with proper citation to authority in violation of Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2013) may result in forfeiture of the issue on appeal. *In re Marriage of Foster*, 2014 IL App (1st) 123078, ¶ 72; see also *Lake County Grading Co.*, 2014 IL 115805, ¶36. What is more, our courts have repeatedly held that arguments, even those raising constitutional issues, not raised in the circuit court are waived and may not be raised for the first time on appeal. See *e.g.*, *In re Marriage of Pratt*, 2014 IL App (1st) 130465, ¶ 23 ("Arguments raised for the first time on appeal are waived."); *Bowman v. Chicago Park Dist.*, 2014 IL App (1st) 132122, ¶ 59 (same); *Village of Lake Villa v. Stokovich*, 211 Ill. 2d 106, 121 (2004) ("it is 'axiomatic that questions not raised in the trial court are deemed waived and may not be raised for the first time on appeal.' ") (quoting *Western Casualty & Surety Co. v. Brochu*, 105 Ill. 2d 486, 500 (1985)); see also *Hytel Group, Inc. v. Butler*, 405 Ill. App. 3d 113, 127 (2010) ("A reviewing court will not consider arguments not presented to the trial court. [Citation.] That the argument concerns the constitutionality of a statute does not make a difference."); see also *Villareal v. Peebles*, 299 Ill. App. 3d 556, 560 (1998) ("Constitutional issues not presented to the trial court are deemed waived and may not be raised for the first time on appeal."). For these reasons, we find that the taxi company has waived this issue for purposes of appeal.

¶ 25

### III. CONCLUSION

¶ 26

For the aforementioned reasons, we affirm the judgment of the circuit court.

No. 1-14-3338

¶ 27 Affirmed.