

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

HORIZON GROUP MANAGEMENT, LLC,)	
An Illinois limited liability company,)	
Plaintiff,)	No. 2009 L 008675
)	
v.)	CALENDAR B
)	
AMANDA BONNEN,)	
Defendant.)	

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**DEFENDANT MS. BONNEN'S
AMENDED MOTION TO STRIKE PORTIONS OF
PLAINTIFF'S RESPONSE (MISNAMED REPLY)**

Defendant, Amanda Bonnen (Ms. Bonnen), files this her Amended Motion to Strike Portions of Plaintiff's Response (Misnamed Reply) and requests that this Court strike portions of Plaintiff,¹ Horizon Group Management, LLC's Reply brief² in opposition to Defendant's Motion to Dismiss Plaintiff's Complaint. In its Response, Plaintiff improperly seeks to amend the Complaint, attaches improper exhibits to the Response, and seeks to include facts not in its Complaint by reference to improper materials and non-authoritative sources. These materials and references should be stricken. In support thereof, Defendant states as follows:

I. Plaintiff's Interpretation of Its Name-Changing Incarnation is Not Merely a "Misnomer" and, Accordingly, Cannot Be Amended.

Ms. Bonnen, in her Motion and Memorandum, referenced that the name Plaintiff gives as its own in the caption of the complaint is "HORIZON GROUP MANAGEMENT, LLC." However, in its verification, prayer for relief, and attorneys' signature Plaintiff avers that it is "Horizon Realty Group, LLC." The verification was by Jeff Michael, who verified "[u]nder

¹ As is further addressed in this Motion, as well as the Reply Brief in Support of the Motion to Dismiss, Defendant is not altogether sure who Plaintiff actually is in this matter.

² Plaintiff erroneously labels its pleading as "Plaintiff's Reply," which will be correctly referenced herein as Plaintiff's Response.

penalties as provided by law pursuant to Section 1 109 of the Code of Civil Procedure . . . that he is an authorized agent for Horizon Realty Group, LLC, the Plaintiff herein, a limited liability company organized and doing business in the State of Illinois.” He further verified that he read the complaint and that “the statements set forth in this instrument are true and correct.” Complaint at 4.

Plaintiff, in its Response, blithely asserts that the conflicting entity names given was “an obvious typographical error.” It then incorrectly presupposes, “Such misnomer can be corrected by Filing a Rule 366 Motion to Correct a Misnomer, or, as a matter of judicial economy, the error can be corrected on its face. Plaintiff so moves.” Response at 1-2. There are a number of errors in this statement, each of which denies Plaintiff’s claim that it can merely amend the Complaint to choose which entity it now wishes to be.

A. Plaintiff verified its Complaint as Horizon Realty Group, LLC, which was found in another case not to be a legally recognized entity.

In the instant case, Plaintiff verifies that it is “HORIZON REALTY GROUP, LLC” by an authorized agent of that entity, but another court in this circuit found that Horizon Realty Group, LLC, is not a legal entity. Attachment A to this Motion. “[F]or purposes of a section 2-615 motion, the court considers matters subject to judicial notice and judicial admissions in the record. Facts in a prior court opinion are subject to judicial notice.” *Kirchner v. Greene*, 294 Ill. App. 3d 672, 677 (1st Dist. 1998). In Case No. 09 CH 20365, “Horizon Realty Group, LLC” moved to dismiss Ms. Bonnen’s complaint against Horizon Realty Group, LLC, for return of a security deposit, stating that “‘Horizon Realty Group, LLC,’ is not a legal entity recognized by law.” Attachment B to this Motion. The Circuit Court of Cook County, Chancery Division, granted that motion, of which this court may take judicial notice. Attachment A. Seeking relief

for, signing on behalf of, and verifying a Complaint as an entity that does not exist is not a mere misnomer.

B. Adding to the confusion, Plaintiff chose to file a verified Complaint which judicially estops it from attempting to change its name.

Because Plaintiff chose to verify its Complaint by an authorized agent for a company other than the one identified in the caption and first paragraph of the Complaint, Plaintiff is judicially estopped from attempting to change its name by an amended pleading. A statement of fact that has been admitted in a pleading is a judicial admission and is binding on the party making it. *State Security Insurance Co. v. Linton*, 67 Ill. App. 3d 480, 484 (1st Dist. 1978). “Judicial admissions are . . . formal admissions in the pleadings . . . which have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact.” *Precision Extrusions, Inc. v. Stewart*, 36 Ill. App. 2d 30, 50 (1st Dist. 1962). “[O]riginal *verified* pleadings will remain binding as judicial admissions even after the filing of an amended pleading . . . unless the amended pleading discloses that the original pleading was made through mistake or inadvertence. *Knauerhaze v. Nelson*, 361 Ill. App. 3d 538, 558 (1st Dist. 2005).

Here, Plaintiff verified (1) that Horizon Realty Group, LLC [an entity not recognized at law] seeks relief by this Complaint and (2) that Horizon Group Management, LLC, a separate entity, was defamed. Although Plaintiff calls this conflict “a typographical error in the signature page,” Response at 7, it neither explains the “error” nor addresses the verification by “an authorized agent for Horizon Realty Group, LLC [a legally non-existent entity] the plaintiff herein.” Complaint at 4. Unsupported conclusive statements of “inadvertence” are insufficient to support a claim of inadvertence. *See Beverly Bank v. Coleman Air Transport*, 134 Ill. App. 3d 699, 704 (1st Dist. 1985).

Plaintiff also is silent as to why the attorney represented that its client was “Horizon Realty Group, LLC” when it signed the signature block. “A lawyer should know his client when he files his suit,” *Alton Evening Telegraph v. Doak*, 11 Ill. App. 3d 381, 382 (5th Dist. 1973) (granting motion to vacate because plaintiff was not properly named.) By signing the complaint as attorney for “Horizon Realty Group, LLC, an Illinois limited liability company,” the attorney did not know who its client is in this case.

Plaintiff’s use of a non-entity’s name in the prayer, attorney signature, and verification is not a “mere mistake” or inadvertence. Plaintiff filed a complaint for defamation in which Plaintiff must show that the statement was of and concerning plaintiff. If Plaintiff does not know its true name, it cannot meet the basic pleading requirement for defamation. It goes to the heart of the matter that Plaintiff is attempting to hold Ms. Bonnen to a standard which Plaintiff itself cannot meet.

C. Plaintiff has failed to properly seek leave to amend its Complaint.

Plaintiff also has failed to properly move to amend its complaint. The substance of Plaintiff’s “motion” is set forth in two lines in its Response to Ms. Bonnen’s Motion to Dismiss. Moreover, Plaintiff did not attach its proposed amended pleading to its “motion.” *See Edwards v. City of Henry*, 385 Ill. App. 3d 1026, 1034 (3d Dist. 2008).

A party should not seek to amend a pleading without attaching the proposed pleading to its motion. *See Austin Liquor Mart, Inc. v. Department of Revenue*, 51 Ill. 2d 1, 8 (1972). However, at a minimum, the party must present the facts and reasoning formulating the basis of the proposed amendment. *Baker v. Walker*, 173 Ill. App. 3d 836, 842 (1st Dist. 1988). Here, Plaintiff failed to accomplish either task.

Plaintiff's sole support for its claim to amend its complaint is its claimed "Rule 366 Motion to Correct a Misnomer." Assuming that Plaintiff is referring to Supreme Court Rule 366, this Rule has no basis to support Plaintiff's claim. Supreme Court Rule 366 references the powers of a *reviewing court*, not a trial court. Ill. Sup. Ct. Rule 366(a). Hence, Plaintiff has no support for its request to amend its Complaint.

Plaintiff's request to "correct" its Complaint under Rule 366 should be denied and its improper request to amend its Complaint, as contained in its Response, be stricken.

II. Plaintiff's Exhibits to Its Response Should Be Stricken as They Are Not Part of the "Four Corners" of Its Complaint.

Plaintiff, in its Response, inappropriately attaches two exhibits. The first is a copy of a memorandum of law regarding a motion to dismiss filed in a California Court in the case of *Simorangkir v. Love*, Case No. BC4190593.³ The second is a "tweet" from the Centers for Disease Control ("CDC"). Neither is appropriate or allowed for review under a motion to dismiss.

Ms. Bonnen brought her Motion to Dismiss under section 2-615 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-615. Section 2-615 motions may not "be supported by reference to any facts or exhibits that are not alleged in or attached to the complaint under attack." *Scott Wetzel Services v. Regard*, 271 Ill. App. 3d 478, 480-81 (1st Dist. 1995). A court may not consider such materials in ruling on a section 2-615 motion. *See Cwikla v. Sheir*, 345 Ill. App. 3d 23, 29 (1st Dist. 2003).

³ Ms. Bonnen is not a party to the California litigation. The Memorandum of Law appears to be in response to a motion to strike the California pleading based upon a California statute interpreting California law. It has no persuasive or authoritative value in this case.

The sole attachment to Plaintiff's Complaint is an exhibit purporting to be Ms. Bonnen's "tweets." No pleadings from the California case (Response Ex. A) are attached to the complaint and neither is a "tweet" from the CDC (Response Ex. B). Neither exhibit attached to Plaintiff's Response has any connection to Plaintiff's claim against Ms. Bonnen nor do they refer to Ms. Bonnen or her tweets. These exhibits are outside the "four corners of the complaint" and, accordingly, should be disregarded by the court and stricken from Plaintiff's Response.

III. Plaintiff's References to Other Materials Seeking to Establish Facts Must Be Stricken as They Are Outside the Four Corners of the Complaint.

Plaintiff's Response includes references to its own Google search, to blogs on the Internet, and to other Internet articles. The Plaintiff uses these references in an impermissible attempt to add facts outside the four corners of its Complaint. These references must be disregarded by the court and should be stricken.

Plaintiff includes in its Response purported results of a "quick Google search of 'Horizon realty.'" Response at 7. Even disregarding the fact that Plaintiff does not state when the search was conducted nor attaches the results of the search, neither the search nor the results are within the four corners of Plaintiff's Complaint. Plaintiff is erroneously trying to include new facts in its Response that are outside its own Complaint. The search must be disregarded in ruling on Ms. Bonnen's 2-615 motion, and the references to the search should be stricken.

In addition, Plaintiff improperly attempts to insert facts to support its contention that the tweet was about Plaintiff by referencing comments on a *Chicago Tribune* blog. There is no reference whatever in the Complaint to the *Chicago Tribune* blog, or any other blog for that matter. Again, this is an attempt by Plaintiff to include facts outside its Complaint in its

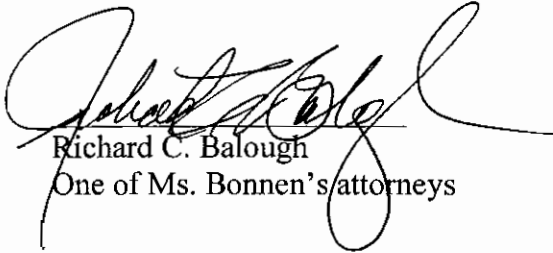
Response. The footnote and the “facts” Plaintiff attempts to establish by the footnote must be disregarded and the footnote should be stricken from the Response.

Finally, Plaintiff’s Response references various articles on the Internet. They are: a news story on LJWorld.com, Response at footnote 2; a news story on “Mashable, the Social Media Guide,” Response at footnote 2; a news story about Facebook on CNN.com, Response at footnote 3; and a news story on CNN.com, Response at 5. The articles are neither legally authoritative nor persuasive. More fundamentally, they are improper attempts to add facts to Plaintiff’s Complaint. These articles must be disregarded and the references to them should be stricken from the Response.

CONCLUSION

For the reasons set forth in this motion, Defendant, Ms. Bonnen, respectfully requests that this Court strike portions of Plaintiff’s Response as set out in this motion.

Respectfully submitted,



Richard C. Balough
One of Ms. Bonnen's attorneys

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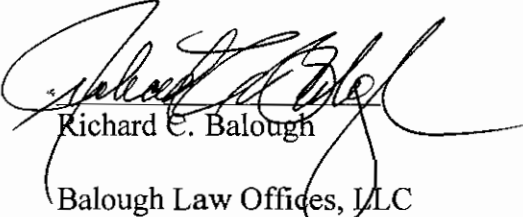
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CERTIFICATE OF SERVICE

I, Richard C. Balough, do hereby certify that a true and correct copy of the foregoing Amended Motion to Strike Portions of Plaintiff's Response (Misnamed Reply) has been served upon:

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847.597.2151
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by electronic mail on this 12th day of January, 2010.



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Order

(Rev. 9/13/04) CCG 0002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

BONNEN

v.

No. 09 CH 20365

HORIZON REALTY GROUP, LLC

ORDER

This matter coming on to be heard upon defendant's motion to dismiss plaintiff's complaint, the parties appearing through counsel and the Court being fully advised, it is hereby ordered:

- 1) Defendant's motion to dismiss plaintiff's motion pursuant to sections 2-619(a)(2) is **GRANTED**.
- 2) Plaintiff is allowed 28 days, to December 21, 2009, to file an amended complaint.
- 3) Plaintiff's motion to correct misnomer is **DENIED**.

2-619(a)(2) Dismissed

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2-401

Atty. No.: 25167
 Name: Central Lake Ltd
 Atty. for: Defendant
 Address: 160 N. LaSalle
 City/State/Zip: Chicago 60601
 Telephone: 312-263-6778

ENTERED
 JUDGE SOPHIA K. HALL-0162
 NOV 23 2009
 DOROTHY BROWN
 CLERK OF THE CIRCUIT COURT
 OF COOK COUNTY, IL
 ENTERED BY CLERK

Judge _____ Judge's No. _____

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

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CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
CHANCERY DIV.
DROTHY BROWN CLERK

AMANDA BONNEN, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

HORIZON REALTY GROUP, LLC,

Defendant.

No. 09 CH 20365

MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Now comes defendant, HORIZON REALTY GROUP, LLC ("Horizon"), by and through its attorneys, SANFORD KAHN, LTD., and moves to dismiss plaintiff's complaint pursuant to section 2-619(a)(2) of the Code of Civil Procedure, and in support thereof states as follows:

1. Plaintiff filed its complaint herein against defendant "Horizon Realty Group, LLC."

2. Section 2-619(a)(2) of the Code of Civil Procedure provides that a defendant may, within the time for pleading, file a motion for dismissal of the action upon the ground "that the defendant does not have legal capacity to be sued." 735 ILCS 5/2-619(a)(2) (2008).

3. "Horizon Realty Group, LLC" is not a legal entity recognized by law. See Secretary of State Corporation/LLC Search Results, attached hereto as Exhibit A.

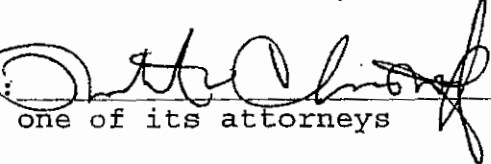
4. Where a suit is brought against an entity which is legally nonexistent, the proceedings are void ab initio and its invalidity may be called to the court's attention at any stage of the proceedings. Palen v. Daewoo Group, 358 Ill.App.3d 649, 832 N.E.2d

173 (1st Dist. 2005); Tyler v. J.C. Penney Company, 145 Ill.App.3d 967, 496 N.E.2d 323 (4th Dist. 1986).

5. Here, plaintiff has sued a party that is not a recognized entity. As a result, plaintiff's action must be dismissed. Palen, id.

WHEREFORE, defendant moves pursuant to section 2-619(a)(2) of the Code that plaintiff's action be dismissed and for its costs of suit.

HORIZON REALTY GROUP, LLC

by:  one of its attorneys

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Attorney No. 25167

EXHIBIT A

[SERVICES](#) [PROGRAMS](#) [PRESS](#) [PUBLICATIONS](#) [DEPARTMENTS](#) [CONTACT](#)

CORPORATION/LLC SEARCH RESULTS

Search Criteria: HORIZON REALTY

Entity Type	File Number	Corporation/LLC Name
LLC MST	01482831	<u>HORIZON REALTY ACQUISITIONS COMPANY, LLC</u>
CORP MST	63843415	<u>HORIZON REALTY BROKERS, INC.</u>
CORP MST	57745865	<u>HORIZON REALTY GROUP, INC.</u>
LLC MST	00323713	<u>HORIZON REALTY GROUP L.L.C.</u>
CORP MST	53351875	<u>HORIZON REALTY, INC.</u>
CORP MST	58513814	<u>HORIZON REALTY, INC.</u>
CORP MST	59832565	<u>HORIZON REALTY, INC.</u>
CORP MST	60777195	<u>HORIZON REALTY SERVICES, INC.</u>

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