

No. 1-10-2306

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BOARD OF DIRECTORS OF 420 WEST GRAND)	Appeal from the Circuit
CONDOMINIUM ASSOCIATION, an Illinois not-)	Court of Cook County.
for-profit corporation,)	
)	
Plaintiff and Counterdefendant-Appellee,)	
)	
v.)	No. 07 MI 718784
)	
LASALLE BANK NATIONAL ASSOCIATION, a)	
National Banking Association, as Trustee under)	
Trust Agreement Dated May 10, 2001 and Known)	
as Trust Number 127632, UNKNOWN OWNERS)	
AND OCCUPANTS, and ANTHONY BRYANT,)	The Honorable
)	Joan E. Powell,
Defendant and Counterplaintiff-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Karnezis and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Notice of appeal is insufficient to confer appellate jurisdiction to review the dismissal of the defendants' counterclaim, and the circuit court did not err in entering judgment in the plaintiff's favor and awarding attorney's fees.

¶ 2 The defendants, LaSalle Bank National Association and Anthony Bryant, appeal from the

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judgment of the circuit court dismissing their counterclaim against the plaintiff, the Board of Directors of 420 West Grand Condominium Association, and awarding attorneys fees to the plaintiff on its forcible entry and detainer action. On appeal, the defendants argue that the court erred in dismissing their counterclaim as not germane to the forcible entry and detainer proceedings, entering a monetary judgment against them when the damages they sought in their counterclaim were greater than the judgment for the plaintiff, and awarding attorneys fees to the plaintiff. For the reasons that follow, we dismiss the defendants' challenge to the dismissal of their counterclaim, and we otherwise affirm the judgment of the circuit court.

¶ 3 In April 2008, the plaintiff filed an amended forcible entry and detainer complaint against the defendants seeking possession of a certain condominium unit as well as unpaid assessments, attorneys fees, and costs. In October 2009, the defendants filed their answer along with a counterclaim for abuse of process. The defendants twice amended their counterclaims. In their April 27, 2010, second amended one-count counterclaim, the defendants alleged that the plaintiff had tortiously breached a fiduciary duty to them, and had perpetrated a constructive fraud on the them, by committing various acts in the prosecution of its forcible entry and detainer complaint.

¶ 4 On May 5, 2010, the circuit court entered an order granting the plaintiff possession of the condominium unit and over \$24,000 in delinquent assessments and late fees. On that same day, the circuit court entered a separate order striking the defendants' counterclaim as non-germane and scheduling further proceedings on the plaintiff's claim for attorney's fees. On July 13, 2010, the circuit court entered an order granting the plaintiff attorneys fees and costs of over \$22,000. On August 11, 2010, the defendants filed a notice of appeal to "appeal from the May 5 and July 13,

2010, orders" entered by the circuit court. The notice of appeal continued:

"The first order granted Plaintiff possession of [the condominium premises] and entered judgment in its favor for \$24,612.41 for assessments and late fees. The second awarded Plaintiff \$22,149.55 of attorneys' fees and \$532.00 in costs.

This appeal, among other points, seeks reversal of both orders."

¶ 5 In the meantime, according to the parties' briefs, the defendants filed their counterclaim as a separate action. The parties state that that action was dismissed on the merits and that the defendants appealed the dismissal.

¶ 6 In this appeal, the defendants first argue that the circuit court erred in dismissing their counterclaim against the plaintiff. Before responding on the merits, the plaintiff raises a threshold dispute regarding our jurisdiction: it asserts that we lack jurisdiction to review the order dismissing the defendants' counterclaim because that order was not named in the defendants' notice of appeal. We agree.

¶ 7 The filing of a notice of appeal is the jurisdictional step that initiates appellate review. *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176, 950 N.E.2d 1136 (2011). "Unless there is a properly filed notice of appeal, the appellate court lacks jurisdiction over the matter and is obliged to dismiss the appeal." *General Motors Corp.*, 242 Ill. 2d at 176. Supreme Court Rule 303(b)(2) (eff. June 4, 2008) requires that a notice of appeal "specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court." Courts invoking this rule have explained that it is " 'well established that an appellate court has jurisdiction only of those matters which are raised in the notice of appeal.' " *Steinberg v. System Software Associates, Inc.*, 306 Ill.

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App. 3d 157, 166, 713 N.E.2d 709 (1999) (quoting *Lewanski v. Lewanski*, 59 Ill. App. 3d 805, 815, 375 N.E.2d 961 (1978)).

¶ 8 Courts applying these rules will construe notices of appeal liberally. *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 433, 394 N.E.2d 380 (1979). "Unless the appellee is prejudiced thereby, the absence of strict technical compliance with the form of the notice is not fatal, and where the deficiency in the notice is one of form only, and not of substance, the appellate court is not deprived of jurisdiction." *Burtell*, 76 Ill. 2d at 434. However, even so, a notice of appeal must serve its function to " 'fairly and adequately set[] out the judgment complained of and the relief sought, thus advising the successful litigant of the nature of the appeal.' " *General Motors Corp.*, 242 Ill. 2d at 176 (quoting *People v. Smith*, 228 Ill. 2d 95, 105, 885 N.E.2d 1053 (2008) (quoting *Lang v. Consumers Insurance Service, Inc.*, 222 Ill. App. 3d 226, 229, 583 N.E.2d 1147 (1991))). Thus, under the above rules, "[w]hen an appeal is taken from a specified judgment, the appellate court acquires no jurisdiction to review other judgements or parts of the judgments not specified or fairly inferred from the notice." *In re Interest of J.P. and T.P.*, 331 Ill. Ap 3d 220, 234, 770 N.E.2d 1160 (2002).

¶ 9 Here, the defendants' notice of appeal cannot be interpreted as giving fair notice that the defendants intended to appeal the dismissal of their counterclaim. The notice of appeal indicated the defendants' intent to challenge orders entered on two dates: May 5 and July 13, 2010. Normally, the reference to those two specific dates would likely give fair notice of an intent to appeal any circuit courts orders entered on those dates. Thus, since the counterclaim dismissal order was entered on May 5, a reference to that date might normally be sufficient to trigger our jurisdiction.

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However, under these facts, the reference to a May 5 order is insufficient. As noted, the circuit court entered two separate orders on May 5: one dismissing the defendants' counterclaim and one entering judgment in the plaintiff's favor. Just after its reference to a May 5 circuit court order, the defendants' notice of appeal specified precisely which May 5 order the defendants intended to challenge: it identified the May 5 order as one that "granted Plaintiff possession of (the condominium premises) and entered judgment in its favor for \$24,612.41 for assessments and late fees." By specifying one May 5 judgment to be appealed, the defendants' notice of appeal excluded any other May 5 judgments and rendered it impossible to infer that the notice of appeal was intended to include both May 5 orders. See *People v. Smith*, 228 Ill. 2d 95, 885 N.E.2d 1053 (2008) ("The notice not only failed to mention the February 21, 2006, order; it specifically mentioned a different judgment, and only that judgment.").

¶ 10 To resist this result, the defendants offer two principal arguments. First, they contend that their notice of appeal can be interpreted as referring to the order dismissing their counterclaim because, after it specified the judgments to be appealed, it said that the defendants' appeal would "among other points, seek[] reversal of both orders." According to the defendants, this "among other points" language incorporated the order dismissing their counterclaim. We cannot agree. As we have stated, the purpose of a notice of appeal is to apprise the opposing party of the orders to be appealed. A vague reference to "other points" does nothing to advance this purpose. In fact, if the defendants were correct that this "other points" language could incorporate unnamed circuit court orders, then notices of appeal would serve no real purpose whatever, because appellants could appeal any and all circuit court orders simply by stating an intent to appeal, without specifying any

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particular order to be challenged. Supreme Court Rule 303(b)(2), which says that a notice of appeal must "specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court," expressly requires more. For the same reason, we reject the defendants' related argument that their raising their objections to the counterclaim dismissal in their appellate brief suffices to trigger our jurisdiction.

¶ 11 The defendants' second contention regarding their notice of appeal is that we should interpret the reference to the May 5 order entering judgment in the plaintiff's favor as an implicit reference to the May 5 judgment dismissing the defendants' counterclaim. For this position, the defendants rely on the rule that an unspecified order or judgment is reviewable if it is a step in the procedural progression leading to the judgment specified in the notice of appeal. *E.g., Longo v. Globe Auto Recycling, Inc.*, 318 Ill. App. 3d 1028, 1034, 743 N.E.2d 667 (2001). The rule the defendants reference is an offshoot of the more general rule we recite above, that a notice of appeal should be construed to include any judgments that can be fairly inferred from the notice. As the supreme court explained in *Burtell*:

"When an appeal is taken from a specified judgment only, or from a part of a specified judgment, the court of review acquires no jurisdiction to review other judgments or parts thereof not so specified or not fairly to be inferred from the notice as intended to be presented for review on the appeal. If from the notice of appeal itself and the subsequent proceedings it appears that the appeal was intended, and the appellant and the appellee so understood, to have been taken from an unspecified judgment or part thereof, the notice of appeal may be construed as bringing up for review the unspecified part of the order or judgment. Such a

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construction would be appropriate where the specified order directly relates back to the judgment or order sought to be reviewed." *Burtell*, 76 Ill. 2d at 434.

Here, however, even with this principle in mind, we cannot fairly infer from the notice of appeal the defendants' intent to appeal the dismissal of their counterclaim. As we discussed above, our view is that, by specifically naming one of the circuit court's May 5 judgments but not the other, the notice excluded that other order. Accordingly, for the foregoing reasons, we conclude that we lack jurisdiction to review the defendants' appeal insofar as it challenges the circuit court's May 5, 2010, order dismissing their counterclaim.

¶ 12 The defendants' second argument on appeal is that the circuit court erred in entering judgment against them on the plaintiff's complaint because they sought greater damages in their counterclaim. Because we hold above that we lack jurisdiction to review the circuit court's decision to dismiss the defendants' counterclaim, we must consider this appeal under the premise that the counterclaim was properly dismissed. With the counterclaim dismissed, the defendants' second argument cannot succeed.

¶ 13 The defendants' final argument on appeal is that the circuit court erred in awarding attorney's fees to the plaintiff. The circuit court awarded the fees pursuant to section 9.2(b) of the Condominium Property Act, which provides as follows:

"Any attorney's fees incurred by [an] Association arising out of default by any unit owner *** shall be added to, and deemed a part of, his respected share of the common expense." 765 ILCS 605/9.2 (West 2008).

¶ 14 It is undisputed in this case that the defendants committed the default described in the

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Condominium Property Act by failing to pay assessments. The defendants, however, assert that some of the charged attorney's fees were improper because they related to the plaintiff's response to their counterclaims, rather than the prosecution of the plaintiff's forcible entry and detainer complaint. The defendants continue by asserting that these counterclaim-related fees should not have been awarded, because the plaintiff did not prevail on the counterclaim. The plaintiff responds by pointing out that the Condominium Property Act contains no "prevailing party" requirement for the award of attorney's fees. We agree with the plaintiff.

¶ 15 The Condominium Property Act allows the assessment of attorney's fees "arising out of" a default by a condominium owner. The defendants make a brief reference, unsupported by any citation to authority, to a "prevailing party" requirement for the award of attorney's fees under the Forcible Entry and Detainer Act, but fees were awarded here not under that act but under the Condominium Property Act. The defendants offer no authority for their suggestion that a party must be a "prevailing party" in order to claim attorney's fees under the Condominium Property Act. Nor do they offer any argument that the fees incurred here, including those incurred to address the defendants' counterclaim, did not "arise out of" the defendants' default of their obligation to pay condominium assessments.

¶ 16 Indeed, the closest the defendants come to making such an argument is their contention that, if the plaintiff were to be awarded all its fees here, then "anytime [*sic*] a unit owner is sued, *ipso facto*, it [would be] entitled to be awarded *whatever* fees are sought." This argument, however, overlooks the "arising out of" limitation contained in the Condominium Property Act. Because the defendants offer nothing to assert that the attorney's fees awarded here did not "aris[e] out of" their

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default of their assessment obligations, we reject their argument that the circuit court's attorney's fee award must be reversed.

¶ 17 For the foregoing reasons, we dismiss the defendants' challenges to the dismissal of their counterclaim, and we otherwise affirm the judgment of the circuit court.

¶ 18 Dismissed in part; affirmed in part.