

Nos. 2—09—1120, 2—10—0146, 2—10—0781 cons.
Order filed February 18, 2011

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
SECOND DISTRICT

EARLE W. ARONSON,)	Appeal from the Circuit Court
)	of Kane County.
Plaintiff and)	
Counterdefendant-Appellant,)	
)	
v.)	No. 08—LM—1239
)	
WILLIAM K. JOHNSON, d/b/a Orlando's)	
Pizza, Inc.,)	
)	Honorable
Defendant and)	Thomas J. Stanfa,
Counterplaintiff-Appellee.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

Held: After it had entered a final judgment and lost jurisdiction, the trial court could not order the sale of the subject property; its judgment had required the extension of an offer, not the consummation of a sale, so its postjudgment orders for sale were modification, not enforcement; the trial court erred in awarding defendant attorney fees pursuant to a contract providing for fees for its enforcement; defendant didn't enforce that contract, to which defendant wasn't a party, but rather enforced a lease by which plaintiff was required to offer the property for sale on terms identical to those in the contract.

In these consolidated appeals, plaintiff, Earle W. Aronson, seeks review of orders of the circuit court of Kane County: (1) awarding defendant, William K. Johnson, "d/b/a Orlando's Pizza,"

Nos. 2—09—1120, 2—10—0146, 2—10—0781 cons.

attorney fees with respect to his counterclaim for specific performance of a “right of first refusal” clause in a commercial lease; (2) extending the closing date set forth in a contract between the parties for the sale of the leased property; (3) issuing a judicial deed; (4) approving certain closing documents; (5) and relieving defendant of the obligation to close on the subject property until further order of the court. We vacate the orders.

The pertinent facts are as follows. In 2008, plaintiff filed a forcible entry and detainer action against defendant, seeking a judgment for possession of, and rent for, property located at 821 East State Street, in Geneva. According to the complaint, in 1983, plaintiff leased the property to Orlando’s Pizza, Inc. The lease was signed on the lessee’s behalf by “Raymond Orlando, President.” The original term of the lease was five years, but the lessee was afforded the option of renewing the lease for four additional five-year terms. The lease included a clause affording the lessee a right of first refusal with respect to any offers received by plaintiff, during the term of the lease, to purchase the subject property. Plaintiff alleged that defendant, “who succeeded the original Lessee,” refused to vacate the premises when the lease expired. Defendant filed a counterclaim alleging a violation of the right of first refusal clause and seeking an award of specific performance. Defendant alleged that, in 2005, Cleatus Corporation (Cleatus) offered to purchase the property for \$532,500, and that plaintiff accepted the offer. Defendant learned of the offer only after plaintiff and Cleatus executed a written contract (the 2005 Contract) for the sale of the property. Under the 2005 Contract, the sale was scheduled to close 60 days after the execution of the contract. Defendant notified plaintiff in writing that he was exercising his right to purchase the property, but plaintiff refused to sell the property to him.

The matter proceeded to a bench trial, and on June 25, 2009, the trial court entered judgment for defendant. The trial court found that defendant exercised his right of first refusal and that plaintiff “breached the contract by refusing to sell the property to defendant.” The trial court’s handwritten order provided as follows, “Specific performance is granted as to Defendant Bill Johnson and Plaintiff Earl [*sic*] Aronson is ordered to offer for sale subject property to Bill Johnson under the same terms and conditions as the *** [2005 Contract].” As originally drafted, the order required plaintiff to “sell the subject property to Bill Johnson.” However, the words “sell the” were crossed out and the words “offer for sale” were inserted in their place.

On July 14, 2009, defendant filed a petition for attorney fees pursuant to a clause in the 2005 Contract providing that “the non-prevailing party shall pay all reasonable attorney fees and costs incurred by the prevailing party in enforcing the terms and provisions of this Purchase Agreement.”

On July 23, 2009, plaintiff moved for reconsideration of the June 25, 2009, order. On September 24, 2009, the trial court denied the motion for reconsideration and awarded plaintiff roughly \$30,000 in attorney fees. The trial court credited plaintiff for rent due from defendant, and entered a judgment for defendant in the approximate amount of \$17,000. Plaintiff filed a timely notice of appeal and we docketed the appeal as case No. 2—09—1120.

On the day the trial court denied his motion for reconsideration, plaintiff signed a contract to sell the property to defendant. The contract was in essentially the same form as the 2005 Contract. Defendant signed the contract on September 29, 2009, and the sale was to close 62 days later on Monday, November 30, 2009. The parties agreed, however, to extend the closing date by up to 20 days on defendant’s request. Thus, closing should have occurred no later than December 20, 2009. However, on December 7, 2009, defendant filed an emergency motion seeking a court-ordered

Nos. 2—09—1120, 2—10—0146, 2—10—0781 cons.

extension of the closing date. Defendant asserted that additional time was necessary to obtain the release of certain liens in favor of the Department of Revenue (Department) for retailer's occupation tax liability incurred before defendant "acquired Orlando's Pizza in 2003." In support of the motion, defendant attached several lien notices naming "Hudon Food Inc." and "Orlando's Pizza" as the lienees. On December 9, 2009, the trial court granted the motion and entered an order providing that "the parties have until February 20, 2009 [sic] to close on the subject property." Plaintiff moved for reconsideration of the order. On February 9, 2010, while the motion for reconsideration was still pending, the trial court ordered the parties to "set up a closing date on or before February 19, 2010." At the hearing on the motion for reconsideration, defendant's attorney acknowledged that the lien notices pertained to an unrelated entity and were not an encumbrance on the subject property. The trial court denied plaintiff's motion to reconsider, and plaintiff filed a timely notice of appeal. We docketed the appeal as case No. 2—10—0781 and consolidated it with case No. 2—09—1120.

On February 24, 2010, defendant filed a petition seeking attorney fees allegedly incurred during the period from July 2009 through mid-February 2010. Plaintiff objected to the petition on the ground that, *inter alia*, the trial court no longer had jurisdiction over the matter. On April 29, 2010, defendant filed a motion for issuance of a judicial deed, alleging that plaintiff persisted in his refusal to close. On May 12, 2010, the trial court entered an order issuing a judicial deed, appointing Chicago Title and Trust Company as "[the court's] agent to effectuate all closing documents and otherwise issue the judicial deed," upon payment of the purchase price set forth in the parties' contract. The trial court also awarded defendant an additional \$17,000 in attorney fees. On May 20, 2010, the trial court entered an order approving certain closing documents. On July 6, 2010, the trial court entered an order providing that defendant was "not required to close on the subject property

Nos. 2—09—1120, 2—10—0146, 2—10—0781 cons.

*** until further order of this Court.” Plaintiff appealed from the orders of May 12, 2010, May 20, 2010, and July 6, 2010. We docketed the appeal as case No. 2—10—0781 and consolidated it with case No. 2—09—1120 and case No. 2—10—0146.

Although the record on appeal contains verbatim transcripts of the proceedings subsequent to entry of the June 25, 2009, judgment, plaintiff has not supplied transcripts (or substitutes therefor) of any earlier proceedings. Defendant initially contends that this appeal should be dismissed because of plaintiff’s failure to provide a complete report of proceedings. Although plaintiff does not challenge the judgment, defendant maintains that “[w]hat happened at trial, and the fundamental findings of the trial court, remain critical to an understanding of the context and import of the post-trial motions.” Defendant fails to offer any reasonably specific explanation of why this is so. Contrary to defendant’s argument, as will be seen, what transpired prior to entry of the judgment has no bearing on the scope of the trial court’s jurisdiction, and defendant’s right to attorney fees depends on the application of principles of contract law to facts about which there is no dispute. Thus the absence of a report of proceedings for the pretrial and trial phases of this action is no impediment to review of the issues raised on appeal.

Turning to the merits, we first consider case No. 2—10—0146. Plaintiff contends that the trial court had no jurisdiction to extend the closing date provided for by the contract between the parties. It is firmly established that “after 30 days from the date that the circuit court enters its final order, the circuit court loses jurisdiction over the matters resolved in that order.” *Leavell v. Department of Natural Resources*, 397 Ill. App. 937, 950 (2010). Here the trial court entered a judgment on the merits on June 25, 2009. Plaintiff filed a timely motion for reconsideration and defendant filed a timely petition for attorney fees. The trial court ruled on plaintiff’s motion and

Nos. 2—09—1120, 2—10—0146, 2—10—0781 cons.

defendant's petition on September 24, 2009, and at that point nothing remained pending before the court. The trial court's jurisdiction lapsed 30 days later. Once the trial court's jurisdiction has lapsed due to the passage of time, the court cannot modify its orders. *Director of Insurance v. A & A Midwest Rebuilders, Inc.*, 383 Ill. App. 3d 721, 723 (2008). However, a court has the inherent authority to enforce its orders, and this authority extends beyond the 30-day period during which the court retains jurisdiction to modify its orders. *Id.* Defendant filed his emergency motion to extend the closing date on December 7, 2009. Whether the trial court exceeded its jurisdiction by granting the motion hinges on whether extending the closing date modified the trial court's judgment or merely enforced it.

Defendant argues at some length that, prior to entry of the judgment, plaintiff repeatedly endeavored to frustrate defendant's attempt to exercise the right of first refusal. In the same vein, defendant argues that plaintiff harassed him after he filed his counterclaim for specific performance. These arguments have no bearing, however, on the salient question of whether the court-ordered extension of the closing date enforced the judgment, or improperly modified it. An order improperly modifies a judgment when it imposes new or different obligations on a party. *In re Marriage of Hall*, 404 Ill. App. 3d 160, 165-66 (2010). The judgment entered on June 25, 2009, provided, in pertinent part, "[s]pecific performance is granted as to Defendant Bill Johnson and Plaintiff Earl [sic] Aronson is ordered to *offer for sale* subject property to Bill Johnson under the same terms and conditions as the *** [2005 Contract]." (Emphasis added.) As previously noted, the emphasized words—"offer for sale"—were inserted in place of the crossed-out words "sell the." Accordingly, it is clear that the judgment merely required the extension of an offer, not the consummation of a sale. Plaintiff fully complied with the judgment by tendering to defendant a signed sales contract

Nos. 2—09—1120, 2—10—0146, 2—10—0781 cons.

that was identical in all material respects to the 2005 Contract. At that point, plaintiff had no further obligations under the judgment. By ordering the closing to take place by a specific date, the trial court imposed a new obligation on plaintiff. It had no jurisdiction to do so.

The trial court would have exceeded its jurisdiction even if the judgment had been entered in its original form requiring plaintiff to sell the property to defendant on the same terms and conditions set forth in the 2005 Contract. That contract established a closing date 60 days after its execution. Because the sixtieth day after execution of the contract between plaintiff and defendant was a Saturday, closing was to take place the following Monday, November 30, 2009. Plaintiff agreed to extend the closing date by up to 20 days upon a written request from defendant; however, there is no contractual basis for further extensions. Defendant sought additional time for the ostensible purpose of obtaining the release of liens for retailer's occupation taxes. Evidently, defendant was under the impression that the lien notices pertained to his business and that the tax liability had been incurred by the previous owner. In fact, as defendant later acknowledged in open court, the lien notices pertained to an unrelated "Orlando's Pizza." In any event, the lien notices did not signify the existence of an encumbrance on the subject property. Liens for unpaid retailer's occupation taxes apply to "all the real and personal property of any person to whom a final assessment or revised final assessment has been issued ***, or whenever a return is filed without payment of the tax or penalty shown therein to be due, including all such property of such persons acquired after receipt of such assessment or filing of such return." 35 ILCS 120/5a (West 2008). Because Orlando's Pizza did not own the subject property, no lien could have attached. If defendant had somehow become liable for taxes owed by the prior owner of the business, a tax lien might attach to the property *after* defendant acquired rights in it. However, nothing in the contract

Nos. 2—09—1120, 2—10—0146, 2—10—0781 cons.

obligates plaintiff convey title free and clear of liens that (1) arise only after the conveyance and (2) secure tax liability incurred in the operation of *defendant's* business (whether by defendant or by the prior owner of the business). Plaintiff was under no obligation to obtain the release of these liens or to further extend the closing date to allow defendant to do so.

Because the December 9, 2009, and February 9, 2010, orders extending the closing date are outside the scope of the trial court's jurisdiction to enforce its judgment, they must be vacated.

In case No. 2—09—1120, plaintiff argues that the trial court erred in awarding defendant attorney fees pursuant to the terms of the 2005 Contract. Defendant argues that, once he exercised his right of first refusal, he “had rights” under 2005 Contract, and is therefore entitled to recover attorney fees pursuant to its terms. The 2005 Contract permitted recovery of “all reasonable attorney fees and costs incurred by the prevailing party *in enforcing the terms and provisions of this Purchase Agreement.*” (Emphasis added.) Ultimately, however, defendant never enforced the terms of the 2005 Contract. Defendant did not succeed in obtaining an order requiring *performance* of the 2005 Contract; rather, the trial court merely ordered plaintiff to *offer* the property for sale on identical terms. In essence, the trial court ordered specific performance of the lease of the property. That order led to the formation in September 2009 of a new contract for the sale of the property. The attorney fee provision in the 2005 Contract does not apply to fees expended to enforce the lease.

Our analysis of the jurisdictional question raised in case No. 2—10—0146 dictates that we vacate the orders at issue in case No. 2—10—0781. As discussed, the trial court's jurisdiction lapsed 30 days after the entry of the September 24, 2009, order granting defendant's first fee petition and denying plaintiff's motion for reconsideration of the original judgment. The trial court lacked jurisdiction to enter the orders of May 12, 2010, May 20, 2010, and July 6, 2010, issuing a judicial

Nos. 2—09—1120, 2—10—0146, 2—10—0781 cons.

deed, awarding additional attorney fees, approving certain closing documents, and relieving defendant of the obligation to close on the subject property until further order of the court.

For the foregoing reasons, we vacate the orders of the circuit court of Kane County awarding attorney fees to defendant, extending the closing date for the sale of the subject property, issuing a judicial deed, approving certain closing documents, and relieving defendant of the obligation to close on the subject property until further order of the court.

Orders vacated.