

Nos. 2—11—0015 & 2—11—0016 cons.
Order filed June 3, 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

PETER SPANOS,)	Appeal from the Circuit Court of
)	Winnebago County.
Plaintiff-Appellee,)	
)	
v.)	No. 10—L—98
)	
MORT A. SEGALL,)	
)	
Defendant-Counterplaintiff-)	
Appellant,)	
)	
and)	
)	
LADYD CORPORATION, LIZZYD)	
CORPORATION, and PRISCILLAD)	
CORPORATION,)	Honorable
)	Eugene G. Doherty,
Intervenors-Appellants.)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Bowman and Hutchinson concurred in the judgment.

ORDER

Held: Where defendants raise arguments concerning pleadings that remain pending in the trial court and where one defendant was never granted leave to intervene in this case, we dismiss the appeal for lack of jurisdiction.

I. BACKGROUND

On March 15, 2010, in a two-count complaint, plaintiff, Peter Spanos, sued defendant, Mort A. Segall, alleging that, to avoid foreclosure on his real property (at 5573 Bellingham Road in Rockford), he sought to sell the property.¹ At an open house, Segall, an attorney, informed plaintiff that he could assist him to avoid foreclosure. Plaintiff alleged that Segall convinced him to enter into a “scheme” (and that he relied on Segall’s representations), whereby: (1) Segall provided to plaintiff a contract for purchase and sale and two warranty deeds (containing an erroneous legal description of the property); (2) upon receipt of the executed erroneous warranty deeds, Segall sent plaintiff a corrected deed, which plaintiff never signed; (3) Segall allegedly changed the erroneous deed to reflect the correct legal description and subsequently recorded the deed before the filing of a *lis pendens* by the foreclosure attorney; (4) Segall caused defendant LadyD Corporation (which he represented) to deed out partial interests in the real property to two other corporations (presumably defendants LizzyD Corporation and PriscillaD Corporation, also represented by Segall); (5) there was never a closing of the sale subject to the contract to purchase and no consideration was ever given for the warranty deeds; and (6) the scheme was designed so that Segall could take title to the subject property and claim ownership. In count I, plaintiff alleged fraud and sought damages and, in count II, he sought entry of an order quieting title to him of the real property. He attached to his complaint the contract to purchase, the two erroneous warranty deeds, and the corrective deed.

On July 22, 2010, plaintiff moved for a preliminary injunction against Segall and Sheryl “Doe,” seeking an order compelling Segall and anyone living with him to turn over or vacate the subject property and grant plaintiff sole and exclusive possession. Plaintiff alleged that he is the owner of equitable title to the property; that Segall and a female were currently living in the

¹The subject property was not plaintiff’s primary residence.

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residence and had refused to leave; that, since taking up residence, neither Segall nor the female had made any mortgage payments on the underlying mortgage or placed any utilities in their own names; that the utilities have been turned off; that the residence is subject to waste and destruction; that Segall and the female were, without legal justification, intentionally depriving plaintiff of ownership and title to his property; and that plaintiff could be irretrievably harmed if Segall and the female are allowed to live in the residence without any compensation to plaintiff.

On December 17, 2010, the trial court set a December 27, 2010, hearing date on plaintiff's motion for a preliminary injunction. At this time, Segall claimed he was ill. Aware of Segall's contention that he was in ill health and that this prevented him from attending court hearings, the court ordered Segall to provide, by December 22, 2010, specific information from his physicians concerning his ability to attend the December 27, 2010, hearing. The matter was set for status on December 22, 2010. On December 21, 2010, Segall requested an extension of the hearing date and additional time to gather material to oppose the injunction. He alleged that he had recently been released from the hospital and, due to his illness, was unable to attend court. The matter was continued to January 3, 2011.

Notwithstanding his illness, on December 30, 2010, Segall filed numerous pleadings. First, Segall moved to dismiss plaintiff's complaint and for summary judgment (735 ILCS 5/2—619.1 (West 2010)), arguing that: (1) plaintiff's complaint failed to allege sufficient facts to constitute all of the elements of fraudulent misrepresentation (without specifying which elements were not sufficiently pleaded) (735 ILCS 5/2—615 (West 2010)); (2) the complaint's allegations conflicted with the exhibits, where the complaint listed Segall as defendant, but the exhibits reflected that: (a) the buyer in the sale agreement was Segall as trustee of a trust known as the "LadyD Trust"; and (b)

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the grantee in the warranty deeds was the LadyD Corporation (735 ILCS 5/2—619 (West 2010)); and (3) the undisputed facts showed that plaintiff conveyed a one-half interest in the subject property to a third-party corporation that included the sole right to exclusive possession, control, and use of the property (735 ILCS 5/2—1005 (West 2010)).

Second, Segall moved to dismiss plaintiff's preliminary injunction motion, arguing that: (1) the motion failed to establish any of the necessary elements for an injunction (apparently based on his argument that plaintiff's complaint failed to allege sufficient facts to state a cause of action for fraud (735 ILCS 5/2—615 (West 2010)); and (2) failed "to establish any necessary element" for an injunction (apparently based on his argument that the complaint's exhibits were inconsistent with the complaint's allegations) (735 ILCS 5/2—619 (West 2010)).

Third, Segall, as the corporations' attorney, filed petitions on their behalf to intervene (735 ILCS 5/2—408 (West 2010)) as party-defendants, arguing that each petitioner was the record title owner of a substantial property interest in the subject property by way of warranty deeds (executed on April 25, 2009, as to Lady D, and on June 19, 2009, as to LizzyD and PriscillaD). Fourth, Segall also filed on behalf of each corporation motions to dismiss and for summary judgment, raising arguments identical to those he raised on his own behalf. Fifth, Segall filed numerous requests to admit. Ill. S. Ct. R. 216 (eff. Jan. 1, 2011).

Finally, Segall filed on Lady D's behalf an application for substitution of judge as of right (735 ILCS 5/2—1001(2) (West 2010)), alleging that Judge Doherty had not yet ruled on any substantial issue in the case.

On January 4, 2011, in an eight-page memorandum opinion and order, the trial court granted in part plaintiff's motion for a preliminary injunction, ordering that defendant was to make the

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premises available to plaintiff, his attorney and/or agent, and or potential buyer on or before January 11, 2011; that an inspection could last up to one hour; and that defendant must accept telephone calls from plaintiff's attorney. The court reserved ruling on the balance of plaintiff's request for injunctive relief. The parties were ordered to appear in court again on January 13, 2011, at which time either party could argue for additional relief. Specifically, the court's order notes that plaintiff testified at the preliminary injunction hearing. (There is no transcript of the hearing in the record on appeal.)

In its order, the trial court also addressed or ruled on various other filings. First, it noted that none of the petitions to intervene had been noticed for hearing and, consequently, they were not presently before the court and the court declined to consider them. Second, the court addressed various issues concerning LadyD's motion for substitution of judge and denied that motion. It noted that the motion had not been noticed for hearing; the corporation did not file a motion to intervene before the preliminary injunction hearing and, thus, was not yet a party to the case; that the motion was untimely because the court had already ruled on a substantive matter in the case—namely, personal jurisdiction over Segall. See, e.g., *Behringer v. Hardee's Food Systems, Inc.*, 282 Ill. App. 3d 600, 601 (1996). The court also noted that there were many “inferences” concerning whether LadyD is Segall's alter ego. Stating that it did not need to decide the issue, it noted that, to the extent LadyD was to be found to be Segall's alter ego, Segall would not be allowed (through LadyD) to substitute judge a second time. The court also found in the alternative that, even if it had not ruled on any substantive issues as to LadyD, it could still deny the motion because LadyD, being represented by Segall, had been given the opportunity to “test the waters” concerning the case. See, e.g., *Levaccare v. Levaccare*, 376 Ill. App. 3d 503, 508 (2007). Finally, the court found that certain

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authority suggested that the court could deny the motion, where it found that the motion was being used to avoid or delay trial, which it found was present in this case. See, e.g., *Beahringer*, 282 Ill. App. 3d at 601.

Next, the court denied Segall's motion to continue the hearing. First, the court noted that Segall had, in violation of court order, failed to share with opposing counsel a copy of his medical report and had, in violation of court order, faxed various documents to the judge's chambers. The court also noted that the physician's report was not printed on letterhead and did not give any specific diagnosis, as the court had previously ordered it do. The letter merely stated that Segall was not able to appear in court on December 27, 2010, or any time in the near future, subject to reevaluation in six months. The court found that plaintiff would be enormously prejudiced by any delay because the property at issue was the subject of a pending foreclosure action. A judgment of foreclosure was entered on September 29, 2010, and the redemption period was set to expire on December 30, 2010. The court further noted that there were alternatives the corporations could pursue, such as retaining alternate counsel or seeking appointment of a guardian.

On January 7, 2011, in appeal No. 2—11—0015, Segall filed a notice of appeal from the trial court's January 4, 2011, order (misabeled as January 4, 2010). On January 10, 2011, in appeal No. 2—11—0016, the corporations appeal from the trial court's January 4, 2011, order (misabeled as January 4, 2010). This court consolidated the appeals.

II. ANALYSIS

Preliminarily, we note that plaintiff did not file an appellee's brief. However, we reach the merits under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

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Turning to the merits, defendants raise five issues on appeal. First, defendants argue that plaintiff's complaint fails to state a cause of action for fraud. Second, defendants assert that plaintiff's complaint should have been dismissed based upon certain defects or defenses that appear on its face and documents of record. Third, they assert that they are entitled to summary judgment on plaintiff's complaint. Fourth, defendants argue that plaintiff's quiet title action (in his complaint) does not validly lie because defendants have not made an adverse claim to an interest in any of plaintiff's property. Finally, defendants argue that the trial court erred in entering the injunction order after LadyD timely filed its application for substitution of judge and that this violated the corporation's due process rights. For the following reasons, we dismiss the appeal.

Defendants complain that the trial court "ignored" their pending motions to dismiss and for summary judgment (including the motion for substitution of judge) and granted (in fact, in part) plaintiff's motion for preliminary injunction. Defendants' arguments on appeal relate to the various still-pending motions relating to plaintiff's *complaint*, not the *preliminary injunction* that was the subject of the trial court's January 4, 2011, order from which defendants appeal. Although Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010) permits the filing of an appeal from the trial court's granting of an interlocutory *injunction* order (*Santella v. Kolton*, 393 Ill. App. 3d 889, 901 (2009)) and defendants' notices of appeal refer to the *injunction* order, the appeal notices make no reference to any rulings, let alone final orders, relating to the *complaint* (indeed, they cannot because Segall's various pleadings remain pending), which is the subject of their arguments in this appeal. Again, defendants urge, without explanation, that we review the propriety of the trial court's *injunction* order by first considering their arguments raised in their various *still-pending* motions addressing plaintiff's *complaint*. We decline to do so.

As to LadyD’s argument that the trial court erred in denying its motion for substitution of judge, we note that LadyD was never granted leave to intervene in this case. Accordingly, because it is not a party to the case, it has no standing to raise its argument. See *In re Marriage of Perkinson*, 147 Ill. App. 3d 692, 699 (1986) (petition to intervene denied; party lacked standing to appeal propriety of judgment order). Even assuming, *arguendo*, that, by ruling on the motion for substitution of judge, the trial court effectively granted LadyD leave to intervene and that the motion for substitution related to the injunction motion (and not solely the complaint²), we conclude that the trial court did not err in denying LadyD’s motion for substitution of judge.

Where a petition for substitution of judge as of right is filed before the trial judge has made any substantive rulings in the case, the court has no discretion to deny such a request unless it can be established the motion was made simply to delay or avoid trial. See, e.g., *In re Dominique F.*, 145 Ill. 2d 311, 319 (1991); *Hoffmann v. Hoffmann*, 40 Ill. 2d 344, 347-48 (1968); *In re Marriage of Roach*, 245 Ill. App. 3d 742, 745-46 (1993). Here, the trial court correctly determined that the motion was being used to delay or avoid trial. As the court noted: (1) “a barrage of procedural filings” by Segall had delayed for months the hearing on the injunction motion; and (2) the motion for substitution had been filed only one day before a scheduled hearing, causing concern that the motion was filed for purposes of delay.

III. CONCLUSION

²As to the complaint, the denial of the motion for substitution of judge was not a final order because the trial court made no rulings as to the complaint. See *In re A.N.*, 324 Ill. App. 3d 510, 511-12 (2001) (motion for substitution of judge is “a step in the procedural progression leading to” judgment).

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For the foregoing reasons, we dismiss in part defendants' appeal for lack of jurisdiction and otherwise affirm the judgment of the circuit court of Winnebago County.

Appeal dismissed in part and affirmed in part.