

No. 1-11-0846

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

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

EDWARD W. MOLTZEN & ASSOCIATES, LTD.,	)	APPEAL FROM THE
Plaintiff-Counterdefendant and Appellee- Cross-Appellant,	)	CIRCUIT COURT OF
	)	COOK COUNTY
	)	
v.	)	No. 10 L 9114
	)	
WILLIAM P. SULLIVAN and MICHELLE SULLIVAN,	)	HONORABLE
Defendants-Counterplaintiffs and Appellants-Cross-Appellees.	)	BILL TAYLOR, JUDGE PRESIDING.

---

PRESIDING JUSTICE STEELE delivered the judgment of the court.  
Justices Neville and Salone concurred in the judgment.

**ORDER**

¶ 1 *HELD:* On remand from this court following an appeal from a bench trial, the circuit court of Cook County did not err in recalculating and entering a new award of damages, but erred in concluding it could not reconsider its prior decision on the counterclaim after denying the plaintiff leave to file a late answer to the counterclaim. The judgment of the circuit court of Cook County is affirmed in part, reversed in part, and the case is remanded for further proceedings consistent with this order.

¶ 2 Defendants William P. and Michelle Sullivan (Sullivans) appeal from a judgment of the circuit court of Cook County entered on remand from a prior appeal in a lawsuit brought against them by plaintiff Edward W. Moltzen & Associates, Ltd. (Moltzen). The Sullivans contend the trial court erred in failing to award statutory interest on the judgment now entered in their favor, and in failing to enter judgment and award damages on their counterclaim. Moltzen cross-appeals, arguing the circuit court exceeded its authority on remand in ordering that any amount be paid to the Sullivans, particularly in ordering Moltzen to repay statutory interest on the original judgment and costs incurred in collecting that judgment. We conclude the circuit court did not err in its recalculation and entry of the new award of damages, but erred in concluding it could not reconsider its prior decision on the counterclaim after denying Moltzen leave to file a late answer to the counterclaim. For the following reasons, we affirm the decision of the circuit court of Cook County in part, reverse in part, and remand the case for further proceedings consistent with this order.

¶ 3 **BACKGROUND**

¶ 4 The record on appeal discloses the following facts. In 2000, the Sullivans employed Moltzen to represent them in two lawsuits. During the litigation, William graduated from law school and began working part-time for Moltzen. William and Moltzen agreed William would earn a percentage of the fees in cases he brought to Moltzen, and the Sullivans' legal bills would be credited by William's earnings.

¶ 5 In 2004, Moltzen filed a breach of contract claim against the Sullivans, seeking allegedly unpaid legal bills. On December 21, 2004, the Sullivans filed an answer and affirmative defenses, as well as a counterclaim alleging Moltzen committed legal malpractice in its

representation of the Sullivans and failed to pay William for his services. Moltzen filed an untimely answer to the counterclaim. The Sullivans moved for default judgment on the counterclaim and to strike Moltzen's answer. On November 23, 2005, the trial court, *sua sponte*, granted Moltzen leave to file its answer to the counterclaim *instanter*.

¶ 6 On May 18, 2007, a bench trial on the matter commenced in the circuit court. At the conclusion of the trial, the circuit court ruled no contract existed between Moltzen and the Sullivans, but the parties could recover on claims in *quantum meruit*.<sup>1</sup> Comparing the fees the Sullivans owed Moltzen against credits due William, the circuit court entered judgment against the Sullivans in the amount of \$15,792. The circuit court also ruled the Sullivans failed to prove their counterclaim, reasoning that the Sullivans' settlement with one of the defendants in the underlying litigation precluded a finding of legal malpractice.

¶ 7 The Sullivans appealed to this court. On April 9, 2009, this court entered an order affirming in part, reversing in part, vacating in part, and remanding the case to the circuit court for further proceedings. *Edward W. Moltzen & Associates, Ltd. v. Sullivan*, No. 1-07-1752 (2009) (unpublished order under Supreme Court Rule 23). In pertinent part, this court upheld the circuit court's ruling that the parties could recover in *quantum meruit*. *Id.* at 8. However, this court concluded the circuit court's ruling on the calculation of damages, which stated Moltzen's hourly fees would be reduced from \$200 to \$100, conflicted with its actual assessment of damages, which totaled almost exactly what Moltzen billed. *Id.* at 9. This court also concluded the circuit court erred in allowing Moltzen to file a late answer to the counterclaim

---

<sup>1</sup> The basis for this ruling was that Moltzen is a successor firm to the firms of Brenner & Moltzen and Moltzen & Kindwald, and is not an issue in this appeal.

without showing good cause as mandated by Illinois Supreme Court Rule 183 (eff. Jan. 1, 1967).  
*Id.* at 11.

¶ 8 Accordingly, this court vacated the order on the counterclaim and remanded for proper notice and reconsideration of the ruling. *Id.* at 13. This court also reversed the judgment entered for Moltzen and remanded for a recalculation of damages. *Id.*

¶ 9 On August 9, 2010, this case was reinstated in the circuit court. On remand, Moltzen filed a motion for an extension of time to answer the Sullivans' counterclaim, arguing it had good cause to file a late answer, as required by Supreme Court Rule 183. The issue was briefed and, following a hearing, the circuit court denied Moltzen's motion.

¶ 10 The circuit court also held a hearing on the recalculation of damages after briefing on the issue. On February 15, 2011, the circuit court recalculated the damages award, granting judgment to the Sullivans in the amount of \$4,027.55, plus repayment of sums previously paid by the Sullivans, including statutory interest that accrued on the original judgment and collection costs incurred by Moltzen. The circuit court declined to include additional damages alleged at trial or damages related to the Sullivans' counterclaim, explaining that authority to rule on the latter was not granted by this court. On March 14, 2011, the Sullivans filed a timely notice of appeal to this court. On March 18, 2011, Moltzen filed a timely notice of cross-appeal.

¶ 11 **DISCUSSION**

¶ 12 On appeal, the Sullivans argue the circuit court erred in failing to: (1) award them statutory postjudgment interest on their judgment from the date of its original entry and on sums garnished from William's wages based on the dates those sums were received by Moltzen; (2) enter judgment in their favor on their counterclaim; and (3) enter a damage award on the

counterclaim. Moltzen argues that the circuit court exceeded the authority granted by this court's mandate on remand by including in its recalculation costs Moltzen incurred in collecting the original judgment and postjudgment interest accrued on the original judgment during collection and ordering said sums be paid to the Sullivans. Moltzen also argues the Sullivans are not entitled to postjudgment interest from the date of the original judgment. Moltzen further argues that it would have been beyond the scope of this court's mandate for the circuit court to enter judgment and a damage award on the Sullivans' counterclaim. As the issues on appeal are raised within the larger context of whether the trial court acted within the scope of this court's mandate on remand, we first generally address the effect of the procedural posture of the case on our second review of this case.

¶ 13

#### I. The Mandate

¶ 14 The appellate court's mandate is its judgment, which, "upon transmittal to the trial court, vests the trial court with authority only to take action that conforms with the mandate." *In re Marriage of Ludwinski*, 329 Ill. App. 3d 1149, 1152 (2002). Moreover:

"The correctness of the trial court's action on remand is to be determined from the appellate court's mandate, as opposed to the appellate court opinion. [Citations.]

However, if the direction is to proceed in conformity with the opinion, then, of course, the content of the opinion is significant. [Citations.]" *Aardvark Art, Inc. v.*

*Lehigh/Steck-Warlick, Inc.*, 284 Ill. App. 3d 627, 630-31 (1996) (quoting *PSL Realty Co. v. Granite Investment Co.*, 86 Ill. 2d 291, 308-09 (1981)).

In this appeal, the record suggests this court's order functioned as the mandate, with a cover letter from this court's clerk to the Clerk of the Circuit Court of Cook County. The parties do not

dispute the circuit court was required to proceed in accordance with the directions in this court's order on remand.

¶ 15 Directions that are precise and unambiguous must be obeyed. *People ex rel. Daley v. Schreier*, 92 Ill. 2d 271, 276 (1982). Where no such directions are given, the trial court must determine from the nature of the case what further proceedings are appropriate. *Pioneer Trust & Savings Bank v. Zonta*, 96 Ill. App. 3d 339, 344 (1981). Issues not actually decided by the reviewing court, as well as those not at issue in the appeal, may be considered following remand. *People ex rel. Bernardi v. City of Highland Park*, 225 Ill. App. 3d 477, 482 (1992). Further, matters that are implied by the mandate are considered embraced by it. *PSL Realty Co.*, 86 Ill. 2d at 308. The circuit court is required to exercise its discretion within the bounds of the remand. *Clemons v. Mechanical Devices Co.*, 202 Ill. 2d 344, 351 (2002). Whether the trial court acted accordingly is a question of law that this court reviews *de novo*. *Clemons*, 202 Ill. 2d at 351–52.

¶ 16 II. The Recalculation of the Damages Award

¶ 17 On remand, the circuit court recalculated the award of damages, resulting in a judgment for the Sullivans in the amount of \$4,027.55. The circuit court also ordered Moltzen to repay the Sullivans \$17,673.20 in monies collected on the original award. The Sullivans argue the circuit court erred in failing to award statutory postjudgment interest on this award dating back to the date of the original judgment. Moltzen argues the circuit court exceeded its authority by including postjudgment interest on the original award and the costs of collecting the original award in the sum Moltzen was ordered to repay the Sullivans.

¶ 18 The issue the Sullivans raise is the effect of the court's mandate on the accrual of statutory postjudgment interest. Where the exact amount of damages is undetermined until the trial court disposes of the case on remand, statutory interest should run from the date of the amended decree. See *Rosenbaum v. Rosenbaum*, 94 Ill. App. 3d 352, 356 (1981); *Thatch v. Missouri Pacific R.R. Co.*, 69 Ill. App. 3d 48, 52-56 (1979); *Presbyterian Distribution Service v. Chicago National Bank*, 36 Ill. App. 2d 1, 6 (1912). In contrast, where this court provides for a specific amount of damages on remand, interest may accrue from the date of the original judgment. *Phelps v. O'Malley*, 187 Ill. App. 3d 150, 157 (1989). In this case, this court remanded the case for a recalculation of the damage award and did not provide for a specific award to be entered on remand. Accordingly, the circuit court did not err on remand in declining to award the Sullivans statutory postjudgment interest from the date of the original judgment.

¶ 19 As for Moltzen's objections, this court has previously ruled it would be unjust to permit a party to retain the interest on a judgment which has been reversed and remanded. *In re Marriage of Waltrip*, 216 Ill. App. 3d 776, 785 (1991). We are persuaded the same reasoning applies to costs awarded to a party in collecting on a judgment which has been reversed and remanded. A circuit court may, "in its discretion, determine that costs incurred by the judgment creditor were improperly incurred, in which case those costs shall be paid by the judgment creditor." 735 ILCS 5/12-814(a) (West 2010). Given that our order reversed the judgment in favor of Moltzen and directed the trial court to recalculate the award of damages, we are profoundly unpersuaded by Moltzen's suggestion that the trial court exceeded its authority in directing payment to the Sullivans, where the recalculation resulted in an award and judgment in favor of the Sullivans.

In short, given the procedural posture of the case, we conclude the trial court properly exercised its discretion within the bounds of the remand in its recalculation of damages.

¶ 20 III. The Late Answer to the Counterclaim

¶ 21 This court's order in the first appeal vacated the trial court's November 23, 2005, *sua sponte* order granting Moltzen leave to file a late answer to the Sullivans' counterclaim, and remanded for the filing of a written motion pursuant to Supreme Court Rule 183, with proper notice to the Sullivans. On remand, Moltzen filed a motion for an extension of time to answer the Sullivans' counterclaim, with the notice required by Rule 183. The issue was briefed and, following a hearing, the circuit court denied Moltzen's motion.

¶ 22 The Sullivans argue that absent an answer to their counterclaim, the circuit court erred in refusing to enter judgment and award damages on the counterclaim. Moltzen responds not only that the Sullivans forfeited the issue by failing to ask for judgment on the counterclaim, but also that the circuit court properly refused to go beyond the bounds of the remand.

¶ 23 Moltzen is incorrect on the question of forfeiture. The Sullivans correctly note that in their brief in the first appeal, they expressly argued that judgment should be entered on their counterclaim based on Moltzen's failure to timely answer.

¶ 24 We also agree with the Sullivans to the degree that the circuit court erred in refusing to reconsider its ruling on the merits of their counterclaim, given its ruling denying Moltzen leave to file a late answer. Although this court's prior order specifically vacated the November 23, 2005, order *sua sponte* granting Moltzen leave to file a late answer (see *Moltzen*, No. 1-07-1752, at 11), it also generally vacated the order "on the counterclaim and remanded for proper notice

and reconsideration of the ruling" in light of the late answer issue. *Id.* at 13. This court's prior order did not expressly require further proceedings if the circuit court denied the request to file a late answer, but the circuit court was obliged to determine from the nature of the case what further proceedings were appropriate. See *Pioneer Trust & Savings Bank*, 96 Ill. App. 3d at 344.

¶ 25 Here, the potential effect of this court's order regarding the late answer would be to trigger a reconsideration of the judgment on the merits of the counterclaim. The circuit court could have affirmed its prior decision, which would have had no possible effect on the outcome, or the court could have ruled as it did. In general, courts of review will not direct the circuit court to undertake a useless or futile act on remand. See *Amschler v. Remijasz*, 341 Ill. App. 262, 267-68 (1950). Given the order to reconsider its ruling on the late answer, the circuit court should not have ignored the logical consequences of its ruling. Where no answer is filed, all well-pleaded facts are admitted. *Charter Bank v. Eckert*, 223 Ill. App. 3d 918, 924 (1992). However, the failure to file an answer does not admit the truth of legal conclusions alleged, does not admit that the facts alleged constitute a cause of action, and does not act to admit facts not alleged in the complaint. *Id.* Having ruled Moltzen could not file a late answer, given the nature of the case, the circuit court was not precluded from proceeding to reconsider its ruling on the merits of the counterclaim, just as it was within the bounds of the remand for the circuit court to not only recalculate the damage award, but also to enter an order reflecting that recalculation, including the ancillary rulings requiring Moltzen to repay interest and costs.

¶ 26 Accordingly, we conclude this case must be remanded to the circuit court for reconsideration of its ruling on the merits of the counterclaim. If, after such reconsideration, the

circuit court concludes the Sullivans are not entitled to judgment on their counterclaim, it may enter an order on reconsideration reflecting that judgment. Alternatively, if the circuit court concludes the Sullivans are entitled to judgment on their counterclaim, it may enter an order vacating the prior judgment for Moltzen on the counterclaim and entering judgment for the Sullivans, with any damages award on such judgment to be determined by the circuit court.

¶ 27

#### CONCLUSION

¶ 28 In sum, the circuit court did not err in its recalculation of the damage award on remand. The circuit court acted within its authority in declining to award postjudgment interest to the Sullivans dating to the original judgment, but ordering Moltzen to repay not only the original damage award, but also postjudgment interest and costs recouped in collecting the original judgment. The circuit court erred in ruling it was barred from reconsidering its judgment on the Sullivans' counterclaim, given this court's initial order and the necessary implication of its ruling on remand denying Moltzen's request to file a late answer. Accordingly, the judgment of the circuit court of Cook County is affirmed in part, reversed in part, and remanded for further proceedings consistent with this order.

¶ 29 Affirmed in part and reversed in part; cause remanded.