

No. 1-11-1388

**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).

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IN THE APPELLATE COURT  
OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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JOSEPH MOY; and TERESA MEDINA,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellants,	)	Cook County
	)	
v.	)	No. 07 CH 4448
	)	
DOROTHY LO; KEN HUO; and IRENE MUI (WONG),	)	Honorable
	)	Stuart E. Palmer,
Defendants-Appellees.	)	Judge Presiding.
	)	

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JUSTICE EPSTEIN delivered the judgment of the court.  
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

¶ 1 *Held:* Where appellants failed to file a complete record, and this court was unable to conduct a meaningful review of the orders being appealed, we presume that the trial court's ruling had a sufficient legal and factual basis. We affirm the trial court's order dismissing as moot the entire cause of action, including plaintiffs' second amended complaint and defendants' counterclaims.

**ORDER**

¶ 1 Plaintiffs, Joseph Moy and Teresa Medina, filed the instant appeal in this case. For the

reasons that follow, we affirm.

¶ 2

## BACKGROUND

¶ 3 The Young Parkway Homeowners Association is an Illinois not-for-profit corporation and consists of seven townhome owners. The property was controlled by the developer from the date of incorporation, July 19, 2002, until September 22, 2002. During that time, the developer designated the initial board of directors and officers of the homeowners association. Plaintiff, Joseph Moy, was the president. Plaintiff, Teresa Medina, was the treasurer. Defendant, Dorothy Lo, was the secretary. The bylaws were subsequently written.

¶ 4 On September 22, 2002, the initial meeting was held to elect the first board of directors of the owner-controlled homeowners association. Moy, Medina, and Lo were elected as directors. The new board then elected Moy as president, Medina as treasurer, and Lo as secretary.

¶ 5 On March 30, 2003, the first annual meeting of the owner-controlled homeowners association took place. Moy subsequently called annual meetings in 2004 and 2005 for the election of new directors. No new board was elected, however, because the required quorum of the voting members was not present at either meeting.

¶ 6 On or before December 1, 2004, Moy and Medina, acting as a quorum of the board of directors, set the 2005 assessment fee for each unit owner at \$360, due on January 1, 2005. On or before December 1, 2005, Moy and Medina, again acting as a quorum of the board of directors, set the 2006 assessment fee for each unit owner at \$360, due on January 1, 2006.

¶ 7 Lo and defendant, Ken Huo, apparently never paid their assessments for the years 2005, 2006, 2007, or 2008. They also apparently did not pay the required accrued interest or late

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charges.

¶ 8 On January 10, 2006, Moy apparently sent a letter to all of the association members indicating that some of the homeowners had not paid their assessment fees for 2004 and 2005. He asked the members whether a new board of directors should be elected but received no response.

¶ 9 On June 10, 2006, Moy apparently sent notice to all voting members of the association that an annual meeting would be held on June 23, 2006 at 6 p.m. at the Tasty Place Bakery in Chinatown (Chicago).

¶ 10 Present at the meeting were Yip Hing Mak, Moy, and defendants Lo, Huo, and defendant, Irene Mui (Wong). Wong had apparently been encouraged by Moy to attend the meeting to seek nomination and election to the board. Medina arrived at the Tasty Place Bakery at 7:16 after the meeting's 7:10 p.m. adjournment. Although both plaintiffs were running for reelection, both lost. Wong, however, was successful, as were Lo and Huo. Thus, the June 2006 election resulted in defendants being named members of the board of directors.

¶ 11 Plaintiffs filed a complaint for declaratory injunctive relief on February 16, 2007 requesting a declaratory judgment that actions taken by Lo and Huo at the June 23, 2006 meeting violated the association's bylaws, and that defendants Lo, Huo, and Wong be enjoined from holding themselves out as officers and directors. Defendants filed motions to dismiss pursuant to both section 2-615 and 2-619 of the Code of Civil Procedure. 735 ILCS 2-615, 2-619 (West 2006). Plaintiffs were granted leave to file an amended complaint, which they did. In response, defendants again filed motions to dismiss. On August 22, 2008, the court granted defendants

leave to file a countercomplaint, which they did.

¶ 12 At some point, defendants filed an amended motion to schedule the election of the new board of directors. The circuit court set a date for the election. Before the election, plaintiffs filed objections. On February 6, 2009, a court-supervised election of the new board of directors took place.

¶ 13 Plaintiffs eventually filed a second amended complaint on May 18, 2009, and defendants filed another section 2-619 motion to dismiss. On March 26, 2010, the trial court dismissed the entire cause of action as moot, including plaintiffs' second amended complaint and defendants' counterclaims. Plaintiff now appeals.

¶ 14 ANALYSIS

¶ 15 We first note that none of the defendants filed an appellee brief. Nonetheless, we may consider this appeal on its merits pursuant to *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131 (1976).

¶ 16 Plaintiffs raise the following three issues: (1) “[t]he trial court's *sua sponte* dismissal with prejudice of plaintiff's second amended complaint constitutes reversible error since in civil proceedings a circuit court may not summarily dispose of a claim on its own motion without giving the affected party notice and an opportunity to respond”; (2) “[t]he circuit court's overruling of plaintiffs' objections to Song Yan Shi's running as a candidate for Director prior to the February 6, 2009 court-supervised election and the circuit court's *sua sponte* March 23, 2009 striking of plaintiff's subsequent petition to remove Song Yan Shi as a Director after his indictment for violating 42 U.S.C. Sec. 408(a)(7)(B) constitute abuses of discretion”; and (3)

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“Song Yan Shi's February 6, 2009 election as a Director of the Young Parkway Homeowner's Association must be voided because of his plea of guilty to violating 42 U.S.C. Section 408(a)(7)(B) and his subsequent May 16, 2011 incarceration in a federal correctional center for that crime.”

¶ 17 The record on appeal is incomplete. Throughout their opening brief, plaintiffs refer to a “supplemental record,” even though there has been no supplemental record filed in this case. However, our court records showed that plaintiffs had filed a two-volume record in an earlier filed appeal that this court had dismissed for want of prosecution.<sup>1</sup> Recognizing that plaintiffs' reference to a supplemental record might be a reference to *that* record,<sup>2</sup> we afforded plaintiffs the opportunity to present a complete record to this court. On December 12, 2012, on the court's own motion, we ordered that “appellants shall file, on or before December 21, 2012 the Supplemental Record that is referenced in their brief.” Plaintiffs subsequently failed to do so, and also did not request additional time to file the supplemental record.

¶ 18 It is the appellant's burden to provide a reviewing court with a sufficiently complete record to allow for meaningful appellate review. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391–92 (1984). In the absence of a sufficiently complete record, a reviewing court will resolve all insufficiencies apparent therein against the appellant and will presume that the trial court's ruling had a sufficient legal and factual basis. *Id.* at 391–92.

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<sup>1</sup>Appeal No. 10-1153, which was dismissed on May 9, 2011. Plaintiffs also filed an appeal, No. 11-1956, that was dismissed on September 30, 2011.

<sup>2</sup>We returned the record to the trial court on August 5, 2011 per our usual procedure in closed appeals.

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¶ 19 Although plaintiffs argue that “[t]he trial court's *sua sponte* dismissal with prejudice of plaintiff's second amended complaint constitutes reversible error,” there is no copy of that complaint (or any complaint) in the record. In addition, the record does not contain a copy of defendant's motion to dismiss the second amended complaint or a copy of plaintiff's response to that motion. The court eventually dismissed plaintiff's second amended complaint as moot “in light of the Court-supervised election of Board of Directors in this case.” The record contains no transcript of that proceeding. The record also does not contain a transcript of a prior proceeding involving plaintiffs' objections to a certain individual's candidacy in that election. Yet the other two issues raised on appeal concern the trial court's rulings with respect to this individual's candidacy.

¶ 20 “An issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding.” *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005). “From the very nature of an appeal it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant.” *Foutch*, 99 Ill.2d at 391. In light of the principles enunciated in *Corral* and *Foutch*, we are unable to conduct a meaningful review of this appeal and will presume that the trial court's ruling had a sufficient legal and factual basis.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County in all respects.

¶ 23 Affirmed.