

Nos. 1-12-0763, 1-12-0878 and 1-12-2393 (Consolidated)

**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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EDDIE LOPEZ and SANDY LOPEZ,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellees, Appellants, and	)	Cook County.
Cross-Appellees,	)	
	)	
v.	)	No. 09 CH 1008
	)	
AMERICAN LEGAL FUNDING LLC, and	)	
ALFUND LIMITED PREFERRED LLC,	)	
	)	
Defendants-Appellants, Appellees, and	)	Honorable
Cross-Appellants.	)	Peter Flynn,
	)	Judge Presiding.

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**ORDER**

JUSTICE ROCHFORD delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

¶ 1 **Held:** In these consolidated appeals, we conclude that: (1) this court is without appellate jurisdiction to consider the majority of the issues raised by the parties; (2) the circuit court had subject matter jurisdiction to consider plaintiffs' motion to confirm a partial arbitration award; and (3) the circuit court improperly enjoined defendants from prosecuting related litigation.

¶ 2 These consolidated appeals arise out of a dispute between plaintiffs-appellees, appellants, and cross-appellees, Eddie Lopez and Sandy Lopez, and defendants-appellants, appellees, and cross-appellants, American Legal Funding LLC and Alfund Limited Preferred LLC. The dispute involved

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an agreement between the parties whereby defendants provided plaintiffs with \$35,000 in "pre-settlement funding" in exchange for the repayment of that amount, plus fees, from any proceeds plaintiffs might recover in a separate personal injury lawsuit. On appeal, we are presented with challenges to a host of orders entered by the circuit court involving: (1) the subject matter jurisdiction of the circuit court over a portion of this litigation, as well as the circuit court's status as the proper venue for this matter; (2) the propriety of a partial arbitration award entered pursuant to an arbitration clause contained in the parties' agreement; and (3) a motion to enjoin defendants from prosecuting a related suit in Arizona.

¶ 3 For the following reasons, we find: (1) this court is without appellate jurisdiction to consider the majority of the issues raised by the parties, and two of the appeals before this court must, therefore, be dismissed; (2) the circuit court had subject matter jurisdiction to consider the partial arbitration award; and (3) the circuit court improperly enjoined defendants from prosecuting related litigation.

¶ 4

#### I. BACKGROUND

¶ 5 Plaintiffs are both residents of Illinois, while defendants are both Arizona limited liability companies. The record reflects that some time prior to November of 2007, plaintiffs initiated a separate lawsuit to recover damages resulting from injuries to Mr. Lopez. On November 30, 2007, and while that personal injury suit was still pending, plaintiffs entered into a "CONSENSUAL EQUITY LIEN AND SECURITY AGREEMENT" (lien agreement) with defendants.<sup>1</sup> Pursuant to

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<sup>1</sup> The parties generally refer to the lien agreement as an agreement between both plaintiffs and both defendants. In actuality, the lien agreement's language begins by explicitly indicating that it is "by and between" defendants as the "TRANSFEREE" and Mr. Lopez as the "TRANSFEROR." However, the agreement and various attached schedules were actually signed

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that agreement, defendants paid plaintiffs \$35,000 "in order to afford TRANSFEROR sufficient funds to adequately pay for the necessities of life during the pendency of the [personal injury suit]." In exchange, the lien agreement provided that "TRANSFEROR hereby grants to TRANSFEREE a security interest in the future Proceeds of the [personal injury suit]." That security interest in future proceeds would range from a minimum of \$58,800, if the defendants were paid by April 4, 2008, to a maximum of \$219,765, if payment was made after June 4, 2010. The lien agreement further indicated that the funds advanced to plaintiffs were "an investment, not a loan," and that no repayment of that investment would be required if plaintiffs were not successful in the personal injury lawsuit.

¶ 6 In addition, the lien agreement contained a number of other relevant terms. Of particular relevance, paragraph 16 of the lien agreement stated that "[b]oth Parties agree that this Agreement shall be construed and interpreted in accordance with the laws of Arizona and venue for any dispute arising hereunder (including any interpleading action) shall lie in the Judicial District Court for Maricopa County, Arizona. TRANSFEROR agrees that any and all Federal lawsuits related to or arising from this agreement shall be filed and maintained in the Federal Courthouse located in Phoenix, Arizona." Paragraph 17 of the lien agreement also provided that "TRANSFEROR agrees that any and all disputes that may arise concerning the terms, conditions, interpretation, or

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by both plaintiffs. Moreover, the lien agreement and the attached schedules alternately refer to the rights and responsibilities of each defendant—sometimes individually and sometimes collectively—either specifically by name or as "TRANSFEREE." Additionally, there is no indication in the record that the lien agreement was ever signed by defendants, a point noted by plaintiffs in various pleadings and motions below. As none of the issues we address on appeal require us to resolve any possible ambiguity in this language, or the significance of defendants' apparent failure to sign the lien agreement, we will similarly refer to the lien agreement as being an agreement between both plaintiffs and both defendants.

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enforcement of this agreement shall be determined through arbitration pursuant to the Rules and Methods outlined by the American Arbitration Association in Arizona at the election of either party."

¶ 7 Pursuant to the arbitration clause in the lien agreement, defendants filed a demand for arbitration with the American Arbitration Association (AAA) on December 12, 2008. In describing the nature of the dispute, defendants' arbitration demand stated that defendants had "made a pre-settlement advance to Lopez. Lopez settled the litigation and is refusing to honor his contract."

¶ 8 On December 18, 2008, the AAA sent a letter to the parties which noted that the lien agreement provided for arbitration by the AAA and acknowledged defendants' arbitration demand. The letter further noted that the AAA would apply its "Supplementary Procedures for Consumer-Related Disputes" (Consumer Rules) and its "Consumer Due Process Protocol" (Consumer Protocol) to any such arbitration. However, the AAA also indicated that the provision in the lien agreement specifying Arizona as the proper venue for any disputes was "a material or substantial deviation" from the AAA's Consumer Rules and/or Consumer Protocol. As such, the AAA's letter further indicated that it might decline to administer the arbitration unless defendants would waive this provision and "agree to have this matter administered under the Consumer Rules and Protocol." Defendants were instructed that they could "confirm [their] agreement by signing and returning a copy of this letter no later than December 29, 2008."

¶ 9 It does not appear that defendants responded to this waiver request in December of 2008. The record contains a number of emails exchanged between defendants and the AAA in January of 2009, indicating that the AAA had not yet received such a waiver. On January 13, 2009, defendants sent the AAA an email in which they stated that "[i]f you forward the protocol waiver, we will sign

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it so the case can move forward." The AAA responded with an email that apparently included such a waiver as an attachment, but there is no indication in the record that this attachment was ever executed.

¶ 10 What the record does contain is a copy of the AAA's December 18, 2008, letter that was signed by a representative of defendants—Mr. William Downey—in a manner consistent with the AAA's original instructions on how defendants might indicate their waiver of the offending venue provision of the lien agreement. In correspondence between counsel for plaintiffs and defendants regarding this issue, defendants' counsel indicated his understanding that "Mr. Downey signed the letter agreeing to the locale of the arbitration on June 13, 2009. Because he didn't receive and/or couldn't pull up the Stipulation so that the signature functioned as the Stipulation."

¶ 11 Any issues as to when and for what reason the AAA ultimately agreed to proceed with the arbitration aside, on January 22, 2009, the AAA sent the parties another letter indicating that defendants had requested that the arbitration hearing be held in Phoenix, Arizona, and further indicating that this request would be automatically honored unless plaintiffs objected. Plaintiffs thereafter filed a "special and limited appearance" in the arbitration proceedings objecting to the jurisdiction of the AAA to arbitrate defendants' claim in Arizona. Plaintiffs specifically argued: (1) there was no enforceable contract containing an arbitration clause because defendants had never signed the lien agreement; (2) the lien agreement was "void and unenforceable as against public policy as a contract of champerty and maintenance;" and (3) arbitration in Illinois was required pursuant to the Fair Debt Collections Practices Act (Fair Debt Act) (15 U.S.C. § 1692, *et seq.* (2008)). Defendants filed a written response to plaintiffs' arguments on February 20, 2009. On March 9, 2009, the AAA sent the parties a letter stating that "[a]fter careful consideration of the

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parties' contentions, the Association has determined the administration of this matter shall be conducted by the Central Case Management Center and hearings will be held in Chicago, IL."

¶ 12 In June of 2009, plaintiffs filed a class action counterclaim against defendants in the arbitration proceeding. In that counterclaim, plaintiffs asked the AAA to declare the lien agreement illegal and unenforceable, enjoin defendants from enforcing that agreement, award plaintiffs damages for defendants' purported violations of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (West 2008)), and to do the same on behalf of a class of similarly situated individuals that had entered into similar agreements with defendants. On October 29, 2009, an AAA arbitrator based in Chicago, Illinois—Mr. Joel Chupack—conducted a preliminary hearing with the parties via telephone and thereafter entered a scheduling order. That order indicated that the parties had agreed that the arbitration would be heard by Mr. Chupack as the sole arbitrator,<sup>2</sup> and further provided the parties with the opportunity to file briefs with respect to plaintiffs' class action counterclaim.

¶ 13 Defendants responded with a motion seeking either the dismissal of the arbitration proceeding or, in the alternative, a "clause construction award." With respect to the request for dismissal, defendants asserted that the AAA had recently determined that it would no longer accept or administer any new consumer debt collection arbitration proceedings between defendants and its consumers. As such, defendants argued that they should not be required to litigate claims "before

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<sup>2</sup> The record also includes a written stipulation signed by the parties stating that "the parties stipulate to having this arbitration proceeding including the class action counter claim [*sic*] heard by Joel L. Chupack." While it is not exactly clear when this stipulation was signed, it was obviously executed after plaintiffs filed their class action counterclaim in June of 2009 and it appears to have been executed around the time of this preliminary hearing.

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a tribunal which has a stated policy against such claims and against [defendants]." In the alternative, defendants asked that a partial final clause construction award be entered—pursuant to the AAA's "Supplementary Rules for Class Arbitrations" (Class Rules)—finding that the arbitration clause of the lien agreement did not permit class action arbitrations. In making their arguments in favor of such an award, defendants took the position that the lien agreement was itself "silent" on the availability of class-wide relief. Plaintiffs responded to defendants' motion for a partial final clause construction award, and in that response plaintiffs also stated that "[a]ny fair reading of the [lien agreement] indicates that it is silent on whether class arbitration is permitted." Plaintiffs requested that a clause construction award be entered finding that the arbitration could proceed as a class action.

¶ 14 While these arbitration proceedings were ongoing, plaintiffs filed the instant lawsuit in the circuit court of Cook County. Thus, shortly after defendants initially filed their arbitration demand in December of 2008, plaintiffs filed a three-count complaint on January 9, 2009. The complaint sought: (1) a declaration that the lien agreement was an illegal and unenforceable contract in that it represented an improper assignment of plaintiffs' personal injury cause of action; (2) damages for "slander of title" with respect to defendants' claim on the proceeds from plaintiffs' settlement of the personal injury suit; and (3) damages resulting from defendants' purported violations of the Fair Debt Act. On February 9, 2009, plaintiffs filed a motion asserting that the arbitration proceeding should be stayed pending the circuit court's "determination of the enforceability of the contract upon which the arbitration action is based."

¶ 15 Two days later, defendants filed a motion to dismiss plaintiffs' instant lawsuit "for lack of venue." Defendants contended that the lien agreement contained a valid forum selection clause

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providing that any dispute between the parties should be heard by a court in Arizona. Thus, defendants contended that the plaintiffs' instant Illinois suit should be dismissed, and any claim plaintiffs wished to make—including any claim regarding the validity and enforceability of the lien agreement itself—should be made before a court in Arizona.

¶ 16 On August 28, 2009, the circuit court entered an order denying plaintiffs' motion to stay the arbitration proceedings. The circuit court ordered that "[t]he entire matter shall proceed at arbitration; including all claims in the complaint." The circuit court further ordered that defendants' motion to dismiss on the grounds of improper venue should be transferred to the AAA for arbitration, to be returned to the circuit court only if the AAA would not hear the motion. Finally, the circuit court ordered the parties to timely advise the court of any resolution reached in the arbitration proceedings. Neither plaintiffs nor defendants filed an appeal from this order.

¶ 17 Thereafter, on January 6, 2010, Mr. Chupack entered an order in the arbitration proceeding which: (1) denied defendants' motion to dismiss the arbitration on the basis of the AAA's purported bias and prejudice; and (2) entered a partial clause construction award finding that the arbitration clause of the lien agreement did in fact permit arbitration on behalf of a class. With respect to the clause construction award, Mr. Chupack found: (1) the lien agreement was silent on the issue of class action arbitration; (2) the AAA's Class Rules required him to issue a partial award on the availability of class action arbitration in such a situation; (3) pursuant to the lien agreement, Arizona state law was applicable to this issue; (4) Arizona state law favored arbitration and, therefore; (5) the arbitration clause in the lien agreement allowed for class arbitration. Mr. Chupack also stayed the arbitration proceedings to provide plaintiffs or defendants an opportunity to "either confirm or

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to vacate this partial award."<sup>3</sup>

¶ 18 Plaintiffs and defendants responded to Mr. Chupack's order in different forums. Defendants initially responded on February 5, 2010, by filing a petition to vacate the clause construction award in the superior court of Maricopa County, Arizona. In that petition, defendants contended Arizona was the proper forum in light of the forum selection clause in the lien agreement. Defendants further contended that Mr. Chupack's clause construction award should be vacated because: (1) federal, Arizona, and Illinois law all provided that class arbitration should not be allowed where the underlying agreement is silent on the issue; and (2) Mr. Chupack's decision resulted from the AAA's "evident partiality" in light of its refusal to accept or administer any other new consumer debt collection arbitration proceedings involving defendants.

¶ 19 In response to defendants' petition to vacate, plaintiffs filed a motion to stay in the Arizona state court proceeding on June 2, 2010. Plaintiffs' motion noted that the instant litigation was still pending in Illinois, argued that the circuit court of Cook County retained jurisdiction to confirm or vacate any arbitration award, and asserted that Illinois was, therefore, "the logical and appropriate venue to address the Clause Construction Award." On August 16, 2010, the Arizona court granted plaintiffs' motion to stay, specifically indicating that its decision was based upon the fact that the

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<sup>3</sup>Mr. Chupack's order was entered pursuant to Rule 3 of the AAA's Supplemental Rules for Class Arbitration, which in relevant part provides: "the arbitrator shall determine as a threshold matter, in a reasoned, partial final award on the construction of the arbitration clause, whether the applicable arbitration clause permits the arbitration to proceed on behalf of or against a class (the 'Clause Construction Award'). The arbitrator shall stay all proceedings following the issuance of the Clause Construction Award for a period of at least 30 days to permit any party to move a court of competent jurisdiction to confirm or to vacate the Clause Construction Award." AAA Supplemental Rules for Class Arbitration, Rule 3 (Oct. 8, 2003), [http://www.adr.org/aaa/ShowPDF?url=/cs/groups/commercial/documents/document/dgdf/mda0/~edisp/adrstg\\_004129.pdf](http://www.adr.org/aaa/ShowPDF?url=/cs/groups/commercial/documents/document/dgdf/mda0/~edisp/adrstg_004129.pdf).

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instant litigation was ongoing in Illinois. The Arizona court's order also indicated that if a court of "competent jurisdiction \*\*\* holds that venue is proper in Arizona, then any party may move to lift the stay."

¶ 20 Meanwhile, plaintiffs' initial response to Mr. Chupack's January 6, 2010, order was made on February 16, 2010, when they filed two motions in the circuit court of Cook County: (1) a motion to confirm the AAA's determination as to the proper venue for the arbitration proceedings; and (2) a motion to enter a judgment confirming the clause construction award. With respect to the first motion, plaintiffs contended that the lien agreement provided for arbitration by the AAA, and the AAA had clearly indicated that it would not arbitrate this dispute unless defendants waived the lien agreement provision requiring arbitration in Arizona. Thereafter, defendants did in fact waive this provision, and after considering the parties' arguments as to the proper locale, the AAA determined that it would hold arbitration hearings in Chicago, Illinois. Defendants even stipulated to having the arbitration heard by Mr. Chupack, an arbitrator based in Chicago. For all these reasons, and in light of federal law, state law, and notions of due process, plaintiffs asked the circuit court to "enter an order confirming the [AAA's] determination as to venue in Illinois." On June 7, 2010, the circuit court entered an order denying plaintiffs' motion, "finding that the defendants herein stipulated to venue of the AAA arbitration in Chicago."

¶ 21 With respect to their motion to enter a judgment confirming the clause construction award, plaintiffs argued that the AAA Class Rules required Mr. Chupack to render a "partial final award" on the availability of class action arbitration and those same AAA rules also allowed any party to the arbitration to seek confirmation of that award before a "court of competent jurisdiction." Plaintiffs, therefore, asked the circuit court to confirm Mr. Chupack's clause construction award and

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to refer the matter back to the AAA for further proceedings.

¶ 22 Defendants responded by filing a motion to either dismiss plaintiffs' motion for confirmation of the clause construction award or to have it transferred to the Arizona state court proceeding. In their motion, defendants argued that the lien agreement included both a "locale provision" with respect to any related arbitration proceedings and a "venue provision" with respect to any related litigation. Defendants asserted that both provisions indicated that Arizona was the proper forum. Furthermore, defendants asserted that because they had waived the locale provision only as to arbitration, the circuit court of Cook County should either: (1) dismiss plaintiffs' motion to confirm the clause construction award because it lacked subject matter jurisdiction over this issue and/or did not represent the proper venue for this dispute; or (2) transfer the motion to the Arizona court for the same reasons.

¶ 23 On July 13, 2010, the circuit court entered an order that denied defendants' motion to dismiss or transfer, and also denied a motion filed by plaintiffs seeking reconsideration of the prior denial of their motion to confirm the AAA's venue determination. In that order, the circuit court specifically found that it had subject matter jurisdiction, jurisdiction over the parties, and that Illinois was the proper venue for resolution of this matter. The circuit court further concluded that the "effect of the Defendant's [*sic*] stipulation to AAA was to prevent the Court from independently assessing challenges to the arbitration venue in this Court." While defendants filed an unsuccessful motion to reconsider this order, neither plaintiffs nor defendants filed an appeal.

¶ 24 On August 2, 2010, in part based upon the circuit court's conclusions regarding jurisdiction and venue, plaintiffs filed a motion in the circuit court seeking to enjoin defendants from pursuing their petition to vacate the clause construction award in Arizona. That motion was "denied as moot"

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on September 7, 2010, likely due to the fact that the Arizona court had—as discussed above—already stayed those very proceedings in favor of the instant litigation.<sup>4</sup>

¶ 25 Defendants then filed a motion asking the circuit court to certify for interlocutory appeal, pursuant to Supreme Court Rule 308 (Ill. S. Ct. R. 308 (eff. Feb. 26, 2010)), the questions of the circuit court's subject matter jurisdiction, the status of Illinois as the proper venue for this dispute, and what significance defendants' stipulation in the arbitration proceeding might have on the circuit court's authority to address the venue issue. This motion was withdrawn by defendants, without prejudice, shortly after it was filed.

¶ 26 Thereafter, the parties engaged in a flurry of activity in the circuit court. In the course of this activity, the circuit court asked the parties to address the significance of a recent United States Supreme Court decision, *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, 559 U.S. 662, 130 S. Ct. 1758 (2010), that involved the Federal Arbitration Act (9 U.S.C. §1, *et seq.* (2008)). This decision was filed after Mr. Chupack's arbitration award was entered and was cited by defendants in response to plaintiffs' motion to confirm that award. In *Stolt-Nielsen*, the court determined that where the parties to an arbitration agreement governed by the Federal Arbitration Act stipulated that there was "no agreement" on the question of class arbitration, the parties cannot be compelled to submit their dispute to class arbitration. *Stolt-Nielsen*, 130 S. Ct. at 1776. The circuit court expressed doubt that it could confirm Mr. Chupack's clause construction award in light of this decision and the fact that the arbitration clause at issue in this matter was indisputably "silent" on the issue of class arbitration.

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<sup>4</sup> The Arizona case was subsequently dismissed on December 7, 2011, without prejudice, for a lack of prosecution.

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¶ 27 Plaintiffs responded by contending that, to the extent the *Stolt-Nielsen* decision effectively precludes class arbitration under the arbitration clause contained in the lien agreement, the arbitration clause is unconscionable. The plaintiffs, therefore, filed a motion asking the circuit court to exercise its "gate-keeping" function to determine whether any possible "silent" waiver of class arbitration contained in the lien agreement was unconscionable under state law, and to do so in the first instance rather than leave any such determination to the arbitration proceeding. Plaintiffs also appear to have again asked the circuit court to reconsider its prior refusal to confirm the AAA's venue determination.

¶ 28 In briefing this motion, the parties also addressed another recent United States Supreme Court decision, *Rent-A-Center, West, Inc. v. Jackson*, \_\_\_ U.S. \_\_\_, 130 S. Ct. 2772 (2010). In that case, the Supreme Court held that—at least in certain circumstances—issues of unconscionability in contracts containing arbitration agreements are to be decided by an arbitrator and not a court. *Rent-A-Center*, 130 S. Ct. at 2779.

¶ 29 On February 22, 2012, the circuit court entered the order that forms the basis for many of the arguments the parties raise on appeal. That order initially indicated that the circuit court was then considering three of plaintiffs' pending motions, including motions to: (1) confirm Mr. Chupack's clause construction award; (2) have the court exercise its "gate-keeping" function; and (3) confirm the AAA's venue determination. In ruling upon these motions, the circuit court first outlined the long history of the parties' dispute, including their dispute over the import of the recent *Stolt-Nielsen* and *Rent-A-Center* decisions. However, the circuit court also recognized that the United States Supreme Court had issued yet another relevant opinion, *AT&T Mobility LLC v. Concepcion*, \_\_\_ U.S. \_\_\_, 131 S. Ct. 1740 (2011). In that case, the court concluded that an

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arbitration clause barring class arbitrations could not be invalidated on the basis of a state law rule of unconscionability, as such a result was preempted by the Federal Arbitration Act. *Concepcion*, 131 S. Ct. at 1756. As the circuit court read this decision, "the Court effectively held that the Federal Arbitration Act pre-empts and, thus, renders unenforceable, *any* state-law rule which would hold barring class-wide arbitration unconscionable." (Emphasis in original.)

¶ 30 The circuit court, therefore, concluded:

"The end result is that this Court cannot, consistent with *Stolt-Nielsen*, *Rent-A-Center*, and *Concepcion*, (i) confirm or enforce the clause construction award in this case, or (ii) entertain an argument that the Lien Agreement arbitration provision, thus stripped of any class potential, becomes unconscionable under Illinois (or any other State) law."

The circuit court went on to say:

"[I]t remains to determine what Order the Court should enter. The Court does not consider it appropriate to reverse or set aside the clause construction award, no proceeding seeking that relief having been initiated. The Court must also decline to 'confirm [AAA] Venue Determination,' as requested by plaintiffs, because the parties *stipulation* to proceed before Arbitrator Chupack, located in Chicago \*\*\* mooted that question. And the Court cannot, as plaintiffs request, 'exercise its gate-keeping function' regarding unconscionability, because after *Rent-A-Center* and *Concepcion* the Court simply has no such function in this case.

Since those procedural issues are foreclosed for the reasons stated, and the underlying substance of this dispute will be determined in the arbitral forum, it might seem appropriate to dismiss this action. But the Court believes that the better course is to stay this proceeding pending outcome of the arbitration, for three reasons. First, this Court's Order

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of August 29, 2009 directed the parties to pursue their arbitration. This Court should be available, if need be with regard to any further issues which require judicial intervention. Second, formally staying this proceeding, in favor of arbitration, will provide defendants with a basis for appeal pursuant to Sup. Ct. Rule 307, if they wish to do so [citation], and will better focus the issues on appeal than an order simply dismissing this suit. Third, if this case is simply dismissed, defendants may attempt to resuscitate their Arizona proceeding \*\*\*, which under the circumstances would be both improper and counterproductive."

Thus, the circuit court denied all three of plaintiffs' motions and stayed this litigation "pending completion of the parties' arbitration proceeding."

¶ 31 Defendants filed a motion to reconsider on March 7, 2012, explaining that it had indeed previously asked the circuit court to enter an order vacating the clause construction award and also requesting that such an order now be entered. The circuit court denied that motion on the same day, and defendants filed a notice of interlocutory appeal on March 13, 2012 (appeal no. 1-12-0763). Defendants' appeal was brought pursuant to Supreme Court Rule 307 (Ill. S. Ct. R. 307 (eff. Feb. 26, 2010)), and sought reversal of the orders entered by the circuit court on July 13, 2010, February 22, 2012, and March 7, 2012.

¶ 32 On March 21, 2012, plaintiffs also filed a notice of appeal challenging the circuit court's February 22, 2012, order (appeal no. 1-12-0878), specifically asking for reversal of that portion of the order denying their motion to enter a judgment confirming the clause construction award. On March 29, 2012, defendants filed a notice of cross-appeal which again sought reversal of the orders entered by the circuit court on July 13, 2010, February 22, 2012, and March 7, 2012.

¶ 33 While these appeals were pending, and after defendants' initial Arizona petition to vacate was

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dismissed for lack of prosecution, defendants initiated a second proceeding in Arizona state court. Specifically, on May 25, 2012, defendants re-filed their petition to vacate Mr. Chupack's partial arbitration award in the superior court of Maricopa County, Arizona. Plaintiffs responded by filing a motion in the circuit court which sought to enjoin defendants from prosecuting this new action in Arizona. Plaintiffs also sought a finding of contempt and the imposition of sanctions. That motion was granted in an order entered on July 3, 2012, which directed defendants "to cease the prosecution of their old or new Arizona suits, and to refrain from filing any further suits regarding the same transaction between plaintiffs and defendants which is the subject of this action." The circuit court declined to find defendants in contempt or to impose sanctions. As detailed in that order, the circuit court's reasoning was based in part on its understanding that defendants' first Arizona petition to vacate was still pending, albeit stayed, and that defendants had filed yet another suit. Defendants filed a motion to vacate the July 3, 2012, order, which in part noted that its original Arizona petition had actually been previously dismissed.

¶ 34 On August 8, 2012, the circuit court entered an order denying defendants' petition to vacate, which the circuit court described as a motion to reconsider. In that order, the circuit court acknowledged that its prior order incorrectly indicated that defendants' original Arizona petition to vacate the arbitration award was still pending. The circuit court thus, indicated that its July 3, 2012, order should be corrected to reflect the fact that the original Arizona proceeding had been previously dismissed. However, the circuit court declined to vacate its prior order because "that correction [did] not in any way affect the substance, nor significantly undercut the reasoning" of that order. A corrected July 3, 2012, order correcting this factual error was attached as an appendix to the August 8, 2012, order. In addition, the circuit court also entered a "CORRECTED JULY 3, 2012

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ORDER" on August 8, 2012.

¶ 35 On August 13, 2012, defendants filed a notice of appeal from the July 3, 2012, and August 8, 2012, orders (appeal no. 1-12-2393). All of the appeals filed in this matter, including defendants' cross-appeal, have been consolidated by this court. Thereafter, on November 21, 2012, defendants filed a motion in this court seeking temporary relief from the circuit court's order enjoining them from prosecuting their suit in Arizona. Defendants sought permission to take such action as was necessary to ensure that its suit in Arizona was not dismissed for want of prosecution while the instant appeals were pending. That motion was denied in December of 2012, as was a subsequent motion for reconsideration.

¶ 36

## II. ANALYSIS

¶ 37 As outlined above, the parties have raised a host of challenges to a number of the circuit court's orders in these consolidated appeals. However, after thoroughly reviewing the record, we find that we are without appellate jurisdiction to address the majority of the issues raised on appeal. Thus, we first address the extent of our jurisdiction before considering those matters properly before this court on the merits.

¶ 38

### A. Appellate Jurisdiction

¶ 39 While none of the parties have questioned this court's appellate jurisdiction, we have a duty to *sua sponte* determine whether we have jurisdiction to decide the issues presented. *Cangemi v. Advocate South Suburban Hospital*, 364 Ill. App. 3d 446, 453 (2006).

¶ 40 Except as specifically provided by the Illinois Supreme Court Rules, this court only has jurisdiction to review final judgments, orders, or decrees. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994), *et seq.*; *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994). "A

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judgment or order is final for purposes of appeal if it disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy, and, if affirmed, the only task remaining for the trial court is to proceed with execution of the judgment." *Brentine v. DaimlerChrysler Corp.*, 356 Ill. App. 3d 760, 765 (2005).

¶ 41 However, even a final judgment or order is not necessarily immediately appealable. Illinois Supreme Court Rule 304(a) provides:

"If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. \*\*\* In the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties." Ill. S. Ct. Rule 304(a) (eff. Feb. 26, 2010).

¶ 42 Finally, while the Illinois Supreme Court Rules confer jurisdiction upon this court to consider some interlocutory appeals not involving final orders, that authority only arises in certain specific circumstances. See Ill. S. Ct. R. 306 (eff. Feb. 16, 2011) (interlocutory appeals of certain orders by permission); Ill. S. Ct. R. 307 (eff. Feb. 26, 2010) (interlocutory appeals of certain orders as of right); and Ill. S. Ct. R. 308 (eff. Feb. 26, 2010) (permissive interlocutory appeals involving certified questions).

¶ 43 With this background in mind, we now consider our appellate jurisdiction over the specific issues raised in each of these consolidated appeals.

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¶ 44

1. Appeal No. 1-12-0763

¶ 45 We begin by addressing our jurisdiction over the issues raised in the first appeal filed in this matter, defendants' appeal no. 1-12-073. As noted above, defendants filed an initial notice of interlocutory appeal on March 13, 2012. That notice of appeal indicated that it was brought pursuant to Rule 307, and it further indicated that defendants generally sought reversal of the orders entered by the circuit court on July 13, 2010, February 22, 2012, and March 7, 2012.

¶ 46 In the statement of jurisdiction contained in their opening brief on appeal, defendants contend that this court "has jurisdiction over this appeal pursuant to Supreme Court Rule 307(a) as this is an interlocutory appeal from an Order of the Circuit Court of Cook County entered on February 22, 2012, which order effectively enjoins [defendants] from seeking to vacate the Arbitration Award in any forum." The jurisdictional statement also notes that the circuit court's February 22, 2012, order itself referenced defendants' right to appeal pursuant to Rule 307. Finally, the jurisdictional statement indicated that defendants also sought—in the context of this interlocutory appeal—review of the March 7, 2012, order denying defendants' motion to reconsider the February 22, 2012, order, as well as the prior July 13, 2010, order "finding that the Illinois court has subject matter jurisdiction and proper venue over this action."

¶ 47 Turning to the argument section of defendants' appellate briefs, we observe that defendants have formulated three specific arguments with respect to their initial interlocutory appeal. First, defendants assert that we should "reverse the portion of the trial court's February 22, 2012 Order in which the court declined to vacate the Arbitration Award." Second, they contend that the July 13, 2010, order denying their motion to dismiss or transfer should be reversed, and plaintiffs' motion to confirm the clause construction award should be dismissed, because the circuit court erred in

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finding it had subject matter jurisdiction over this matter. Third, they argue the same order should be reversed, and plaintiffs' declaratory judgment action and their motion to confirm the clause construction award should be dismissed, because Arizona is the proper venue for this litigation pursuant to the forum selection clause in the lien agreement.

¶ 48 After careful consideration, we conclude that this court is without jurisdiction to review any of these arguments. We again note that, except as specifically provided by the Illinois Supreme Court Rules (Ill. S. Ct. R. 301 (eff. Feb. 1, 1994), *et seq.*), this court only has jurisdiction to review final judgments, orders, or decrees. None of the orders defendants ask us to review are final orders, as none finally "disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy." *Brentine*, 356 Ill. App. 3d at 765. Even if the orders challenged on appeal were final, they would not be appealable because they did not resolve the entire dispute between the parties, the circuit court retained jurisdiction to consider any issues arising out of the arbitration proceeding, and the circuit court did not make "an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. Rule 304(a) (eff. Feb. 26, 2010). Nor have defendants sought and been granted permission to appeal from these orders pursuant to Rule 306 or Rule 308.

¶ 49 What defendants have done is seek review pursuant to Illinois Supreme Court Rule 307 (Ill. S. Ct. R. 307 (eff. Feb. 26, 2010)), which we again note grants appellants the right to appeal—and provides this court with the authority to review—only certain, specified interlocutory orders entered by a circuit court. Of these, the only type of interlocutory order that could possibly be implicated in this matter is one "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010). Indeed, it is apparent that the circuit court

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itself was referring to Rule 307(a)(1) when, in its February 22, 2012, order, it indicated that "formally staying this proceeding, in favor of arbitration, will provide defendants with a basis for appeal pursuant to Sup. Ct. Rule 307." See *Hastings Mutual Insurance Co. v. Ultimate Backyard, LLC*, 2012 IL App (1st) 101751, ¶ 28 (noting that an order granting or denying a stay is generally considered injunctive in nature, which is appealable under Rule 307(a)(1)); *Salsitz v. Kreiss*, 198 Ill. 2d 1, 11 (2001) ("An order of the circuit court to compel or stay arbitration is injunctive in nature and subject to interlocutory appeal under paragraph (a)(1) of the rule.").

¶ 50 However, it is also evident that defendants have not challenged the portion of the February 22, 2012, order which "stay[ed] this proceeding, in favor of arbitration," as they have not provided this court with any argument that this portion of the circuit court's order was improper. Indeed, defendants' position throughout the long history of this matter has been: (1) Illinois courts should not play any role in this dispute whatsoever; and (2) this dispute should be resolved via arbitration. Nothing about *this portion* of the circuit court's order negatively impacts those stated positions, and perhaps that is why defendants have not asked for review of this aspect of the order.

¶ 51 Instead, defendants have specifically contended that we should "reverse the portion of the trial court's February 22, 2012 Order in which the court declined to vacate the Arbitration Award." We fail to see how the circuit court's order declining to vacate the clause construction award was one "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction," (Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010)), where an injunction is a " 'judicial process operating *in personam* and requiring [a] person to whom it is directed to do or refrain from doing a particular thing' " (*In re A Minor*, 127 Ill. 2d 247, 261 (1989) (quoting *Black's Law Dictionary* 705 (5th ed. 1979))). Thus, this portion of the circuit court's order was not appealable pursuant to Rule 307(a)(1),

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and we lack jurisdiction to review defendants' contentions on this issue. See *Santella v. Kolton*, 393 Ill. App.3d 889, 901 (2009) (appellate court "must determine whether each aspect of the circuit court's order appealed by defendant is subject to review under Rule 307(a)(1)").

¶ 52 Indeed, defendants' challenge to this portion of the order clearly concerns the merits of the parties' dispute regarding the nature of the arbitration clause contained in the lien agreement. However, "[t]he flaw in this strategy is that it overlooks the limited scope of review on a Rule 307(a)(1) appeal." *Postma v. Jack Brown Buick, Inc.*, 157 Ill. 2d 391, 399 (1993). It is well recognized that "[w]here an interlocutory appeal is brought pursuant to Rule 307(a)(1), controverted facts or the merits of the case are not decided." *Bishop v. We Care Hair Development Corp.*, 316 Ill. App. 3d 1182, 1189 (2000). Thus, Rule 307(a)(1) does not provide us with jurisdiction to review that portion of the circuit court's order declining to vacate the clause construction award, as "the rule may not be used as a vehicle to determine the merits of a plaintiff's case." *Postma*, 157 Ill. 2d at 399.

¶ 53 We also find defendants' effort to have this court review the jurisdictional and venue findings contained in the circuit courts' prior July 13, 2010, order to be improper in the context of this appeal. Defendants did not appeal from the July 13, 2010, order at the time it was entered. Indeed, the record reflects that defendants filed a motion asking the circuit court to certify these issues for interlocutory appeal pursuant to Rule 308, but that motion was withdrawn shortly after it was filed.

¶ 54 Moreover, defendants again overlook the "limited scope of review on a Rule 307(a)(1) appeal." *Id.* Typically, courts recognize that "'Rule 307 allows only the review of the order from which a party takes an appeal, and such an appeal does not open the door to a general review of all orders entered by the trial court up to the date of the order that is appealed.'" *Kalbfleisch ex rel.*

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*Kalbfleisch v. Columbia Community Unit School No. 4*, 396 Ill. App. 3d 1105, 1114 (2009) (quoting *In re Petition of Filippelli*, 207 Ill. App. 3d 813, 818 (1990)). Thus, any consideration of the findings contained in the July 13, 2010, order is well beyond the scope of defendants' Rule 307 appeal from the February 22, 2012, order.

¶ 55 However, we do note that some courts have concluded that "Rule 307 allows this court to review any prior error that bears directly upon the question of whether an order on appeal was proper." *Glazer's Distributors of Illinois, Inc. v. NWS-Illinois, LLC*, 376 Ill. App. 3d 411, 420 (2007) (citing *In re Marriage of Ignatius*, 338 Ill. App. 3d 652 (2003) and *Sarah Bush Lincoln Health Center v. Berlin*, 268 Ill. App. 3d 184 (1994)). We are not entirely convinced that such a broad reading of the scope of Rule 307 review is proper. See *In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 970 (2004) (expressing doubt as to the validity of the holding in *Berlin*, 268 Ill. App. 3d 184).

¶ 56 Nevertheless, we need not further consider that issue here. Implicit in this broader reading is a requirement that some interlocutory order be properly before this court for review pursuant to Rule 307. As explained above, defendants' initial interlocutory appeal presents this court with no such order. We obviously cannot review any prior error, supposedly bearing directly upon the propriety of an order under review pursuant to Rule 307, when there is in fact no interlocutory order properly before this court in the first instance. We, therefore, conclude that we are without jurisdiction to consider *any* of the arguments defendants raise in the context of their initial interlocutory appeal.

¶ 57 In so ruling, we must make two additional points. First, we note again that defendants' briefs contend that this court "has jurisdiction over this appeal pursuant to Supreme Court Rule 307(a) as

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this is an interlocutory appeal from an Order of the Circuit Court of Cook County entered on February 22, 2012, which order effectively enjoins [defendants] from seeking to vacate the Arbitration Award in any forum." In apparent support for this position, defendants note that in this order the circuit court retained jurisdiction over this matter, while at the same time declining to vacate the clause construction award and further indicating that any attempt to "resuscitate their Arizona proceeding" would be "improper and counterproductive."

¶ 58 Defendants also express a concern that because—as they understand the law—a decision to confirm an arbitration award is so very closely related to a decision to vacate such an award, "the Court's judgment confirming or vacating an award has the effect of collateral estoppel as to the validity of the arbitrator's award." Defendants, therefore, contend that "if the trial court's February 22 ruling stands, the doctrine of collateral estoppel could, arguably, preclude further litigation as to the validity of the Arbitration Award." While not entirely clear from defendants' briefs, they thus appear to argue that the February 22, 2012, order "effectively" operated as an injunction against any effort by defendants to challenge the clause construction award in any court, and that such a *de facto* injunction is subject to appeal pursuant to Rule 307.

¶ 59 We disagree. Regardless of whether or not defendants are correct about the relationship between a decision to confirm and a decision to vacate an arbitration award, it is apparent that the circuit court took neither action in its February 22, 2012, order. The order specifically *denied* plaintiffs' motion to confirm the clause construction award and specifically *declined* to "reverse or set aside the clause construction award." Thus, the circuit court neither confirmed nor vacated the clause construction award, and any concern about the possible collateral effect of this order is

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unfounded.<sup>5</sup>

¶ 60 Furthermore, while the circuit court's order did indicate that any attempt by defendants to "resuscitate their Arizona proceeding" would be "improper and counterproductive," to be considered an injunction the order should have—but did not—*require* defendants to refrain from doing so. *In re A Minor*, 127 Ill. 2d at 261. As the circuit court's subsequent July 3, 2012, order indicated in the context of denying plaintiffs' request for a finding of contempt, both defendants and the circuit court recognized and agreed that the February 22, 2012, order "did not explicitly forbid defendants from doing so [*i.e.*, litigating in Arizona]." We, therefore, reject defendants' contention that the February 22, 2012, order can be read as some form of *de facto* injunction that supports our jurisdiction over this appeal pursuant to Rule 307(a)(1).

¶ 61 Second, we are cognizant of the fact that defendants' initial interlocutory appeal presents an argument that the circuit court lacked subject matter jurisdiction to consider plaintiffs' motion to confirm the clause construction award. We are also aware that if a court lacks subject matter jurisdiction, any order entered in the matter is void *ab initio* and may be attacked at any time. *In re M.W.*, 232 Ill. 2d 408, 414 (2009). However, "[a]lthough a void order may be attacked at any time, the issue of voidness must be raised in the context of a proceeding that is properly pending in the courts." *People v. Flowers*, 208 Ill. 2d 291, 308 (2003). As such, this court has previously recognized:

" ' "If a court lacks jurisdiction, it cannot confer any relief, even from prior judgments that

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<sup>5</sup> Additionally, collateral estoppel may only be applied when there was a *final judgment on the merits* in the prior adjudication. *Aurora Manor, Inc. v. Department of Public Health*, 2012 IL App (1st) 112775, ¶ 19. Whatever else the circuit court's February 22, 2012, order may represent, it is not a final judgment on the merits.

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are void. The reason is obvious. Absent jurisdiction, an order directed at the void judgment would itself be void and of no effect." ' [Citation.] Compliance with the rules governing appeals is necessary before a reviewing court may properly consider an appeal from a judgment or order that is, or is asserted to be, void. [Citation.] Thus, the appellate court is not vested with authority to consider the merits of a case merely because the dispute involves an allegedly void order or judgment. [Citation.]" *Universal Underwriters Insurance Co. v. Judge & James, Ltd.*, 372 Ill. App. 3d 372, 383-84 (2007).

Thus, even though defendants challenge the jurisdiction of the circuit court to confirm the clause construction award, we may not consider this argument in the context of their initial interlocutory appeal because we do not otherwise have appellate jurisdiction.

¶ 62 For the foregoing reasons, we dismiss defendants' appeal no. 1-12-0763 for a lack of jurisdiction.

¶ 63 2. Appeal No. 1-12-0878

¶ 64 We next consider our jurisdiction to review the issues presented in appeal no. 1-12-0878. Plaintiffs initiated this appeal on March 21, 2012, when they filed a notice of appeal from the circuit court's "February 22, 2012 Order denying Plaintiffs' Motion to Enter Judgment on [the] Clause Construction Award." The notice of appeal specifically indicated that plaintiffs sought "Reversal of the Court's Order of February 22, 2012 denying Plaintiffs' Motion to Enter Judgment on [the] Clause Construction Award." In response, defendants filed a notice of cross-appeal on March 29, 2012, which again sought reversal of the orders entered by the circuit court on July 13, 2010, February 22, 2012, and March 7, 2012.

¶ 65 Plaintiffs' notice of appeal does not indicate which Supreme Court Rule purportedly confers

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jurisdiction upon this court, while their docketing statement generally indicates—without further explanation—that jurisdiction is proper pursuant to Rules 301, 303, and 307. The jurisdictional statement contained in plaintiffs' opening brief likewise does not provide a clear explanation of our jurisdiction. The statement merely cites to cases purportedly standing for the proposition that orders confirming or vacating arbitration awards are appealable, with a Rule 304(a) finding if need be, and concludes with a statement that this court "has jurisdiction to hear the appeal."

¶ 66 In the appropriate situation, an order actually confirming or vacating an arbitration award would be considered a final order, in that such an order would dispose of "the rights of the parties, either on the entire case or on some definite and separate part of the controversy, and, if affirmed, the only task remaining for the trial court is to proceed with execution of the judgment." *Brentine*, 356 Ill. App. 3d at 765. However, as plaintiffs themselves recognize, "[t]his case presents an unusual situation where the Circuit Court neither entered judgment upon the [AAA] 'clause construction award' nor vacated it." That is absolutely correct.

¶ 67 Furthermore, this fact necessarily precludes us from reviewing "the order denying the plaintiff's [*sic*] motion to enter a judgment upon the 'clause construction award,' " as it is not a final order pursuant to Illinois Supreme Court Rules 301 (eff. Feb. 1, 1994) and 303 (eff. June 4, 2008). Furthermore, even if it were a final order, the circuit court's order also concluded that it was most reasonable to refrain from dismissing this suit, stay the circuit proceedings, refer the matter back to Mr. Chupack for further arbitration, and have the circuit court remain "available, if need be, with regard to any further issues which require judicial intervention." The circuit court, thus, did not resolve all the claims between the parties, and no "express written finding" permitting an appeal was obtained from the circuit court pursuant to Rule 304(a). Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010).

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Nor have plaintiffs been granted permission to appeal from this order pursuant to Illinois Supreme Court Rule 306 or Rule 308.

¶ 68 This again leaves us to consider our authority under Rule 307. Again, the only type of interlocutory order specified therein that could possibly be applicable in this matter is one "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010). However, in no sense can the denial of plaintiffs' motion to enter judgment on the clause construction award be considered such an injunctive order, and we are, therefore, without jurisdiction to consider the arguments plaintiffs raise on appeal. Their appeal must, therefore, be dismissed.<sup>6</sup>

¶ 69 We must now consider the issues raised by defendants in their cross-appeal. As an initial matter, we note that while plaintiffs' direct appeal must be dismissed, this fact does not itself affect our jurisdiction over defendants' timely cross-appeal. *City of Chicago v. Human Rights Comm'n*, 264 Ill. App. 3d 982, 985-87 (1994) (concluding that where a direct appeal and cross-appeal are both timely filed, subsequent dismissal of direct appeal "has no bearing on this court's jurisdiction to hear the cross-appeal."). However, defendants' notice of cross-appeal, and the arguments defendants present on appeal with respect thereto, challenge the *exact* same orders, raise the *exact* same issues, and seek the *exact* same relief as defendants' own initial appeal. As our supreme court has recognized, "a reviewing court acquires no greater jurisdiction on cross-appeal than it could on

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<sup>6</sup> Because plaintiffs' notice of appeal specifically sought review of only the circuit court's "February 22, 2012 Order denying Plaintiffs' Motion to Enter Judgment on [the] Clause Construction Award," the notice of appeal did not confer jurisdiction upon this court to consider any other aspect of that order. See *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176 (2011) ("A notice of appeal confers jurisdiction on a court of review to consider only the judgments or parts of judgments specified in the notice of appeal.").

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appeal." *People v. Farmer*, 165 Ill. 2d 194, 200 (1995). We have already concluded that this court lacks jurisdiction to consider any of these arguments, and this conclusion is not altered because defendants also pursue these arguments via their cross-appeal.

¶ 70 For the foregoing reasons, we dismiss appeal no. 1-12-0878, including defendants' cross-appeal, for a lack of jurisdiction.

¶ 71 3. Appeal No. 1-12-2393

¶ 72 Lastly, we address our jurisdiction with respect to the issues presented in defendants' appeal no. 1-12-2393. Defendants initiated this appeal on August 13, 2012, when they filed a notice of appeal from: (1) the circuit court's July 3, 2012, order granting plaintiffs' motion to enjoin defendants from prosecuting their second action in Arizona; and (2) the circuit court's August 8, 2012, order denying defendants' motion to vacate the July 3, 2012, order.

¶ 73 Defendants' notice of appeal does not specify a Supreme Court Rule conferring jurisdiction upon this court with respect to these orders, nor does the statement of jurisdiction contained in defendants' opening brief on appeal. Defendants' docketing statement contends that we have jurisdiction pursuant to Rules 301 and 303, apparently indicating defendants' understanding that these orders represent final judgments. They do not.

¶ 74 These orders clearly involve injunctions. It is certainly true that a *permanent* injunction can be considered a final judgment. *Sola v. Roselle Police Pension Board*, 2012 IL App (2d) 100608,

¶ 13. However, it is also quite apparent that the circuit court did not intend to enjoin defendants from pursuing any action in Arizona permanently. The trial court's July 3, 2012 order (both the original and the subsequent corrected order) noted that defendants' litigation in Arizona involved "the same parties and subject matter as this action, and the same 'clause construction award' already

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on review—pursuant to defendants' own pending appeals—in the Illinois Appellate Court, First District." The circuit court also reasoned that defendants' second suit in Arizona "contravenes and undercuts their own appeals in the Illinois Appellate Court," and that the circuit court had to "preserve its own jurisdiction, and the proper and efficient operation of the civil judicial system."

¶ 75 Thus, defendants were directed to cease the prosecution of their Arizona suit, and to refrain from filing any other suits regarding the matters at issue in this litigation. However, the circuit court also ordered:

"Unless otherwise explicitly directed or permitted by the Illinois Appellate Court, First District, if defendants wish to pursue a petition to vacate the arbitrator's 'clause construction award' herein, they must do so in this Court (with due regard for this Court's prior Orders and defendants' pending appeals from those Orders) or the Illinois Appellate Court, First District, and not otherwise."

We conclude that this language clearly indicates that the circuit court merely intended to preserve the *status quo*, at least while defendants' appeals to this court were pending. As such, the circuit court did not enter a permanent injunction and, therefore, did not enter an order appealable pursuant to Rules 301 and 303.<sup>7</sup>

¶ 76 What the trial court did enter was, first, an interlocutory order granting an injunction, and second, an interlocutory order denying defendants' motion to vacate that injunction. These are exactly the type of orders appealable under Rule 307(a)(1) (Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26,

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<sup>7</sup> And, again, even if the injunction was a final order, it was not an order resolving all the claims between the parties, and no "express written finding" permitting an appeal was obtained from the circuit court pursuant to Rule 304(a). Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010).

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2010)), as they are orders "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." Defendants' appeal from these orders is, therefore, proper under Rule 307(a)(1).

¶ 77 However, Rule 307(a) (Ill. S. Ct. R. 307(a) (eff. Feb. 26, 2010)) provides that an interlocutory appeal from such orders "must be perfected within 30 days from the entry of the interlocutory order." Here, the trial court initially entered its injunctive order on July 3, 2012, and defendants did not file their notice of appeal from that order until more than 30 days later on August 13, 2012. While defendants did file a motion to vacate the circuit court's initial injunctive order on July 11, 2012, such a motion (which the trial court treated as a motion to reconsider) "cannot extend the deadline for filing civil interlocutory appeals." *People v. Marker*, 233 Ill. 2d 158, 174 (2009) (citing *Craine v. Bill Kay's Downers Grove Nissan*, 354 Ill. App. 3d 1023, 1025-29 (2005) and *Trophytime, Inc. v. Graham*, 73 Ill. App. 3d 335, 335-37 (1979)). We, therefore, have no jurisdiction to review that initial order.

¶ 78 Nevertheless, defendants' motion to vacate was effectively a motion to dissolve the injunction granted by the circuit court's initial injunctive order, "the denial of which was appealable under Rule 307(a)(1)." *Doe v. Illinois Department of Professional Regulation*, 341 Ill. App. 3d 1053, 1059 (2003). Moreover, in addition to denying defendants' motion to vacate on August 8, 2012, the circuit court also entered a "CORRECTED JULY 3, 2012 ORDER" correcting a factual misunderstanding reflected in its initial order. To the extent that this order was intended to be entered *nunc pro tunc*, it was improper. *People v. Melchor*, 226 Ill. 2d 24, 32 (2007) ("[T]he use of *nunc pro tunc* orders or judgments is limited to incorporating into the record something which was actually previously done by the court but inadvertently omitted by clerical error. It may not be

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used for supplying omitted judicial action, or correcting judicial errors \*\*\*."). Thus, on August 8, 2012, the trial court effectively reentered its initial injunctive order, with some corrections, and also denied defendants' motion to vacate that injunction. Because defendants' August 13, 2012, notice of appeal was filed within 30 days from the entry of these orders, Rule 307(a)(1) confers appellate jurisdiction upon this court to review each of those orders.

¶ 79 4. Appellate Jurisdiction Over Other Matters

¶ 80 Of all the issues raised by the parties on appeal thus far, we have concluded that this court has jurisdiction to review only the propriety of the two orders entered by the circuit court on August 8, 2012. However, that does not end the matter. We perceive two ways in which our appellate jurisdiction over these two orders might also allow this court to review other matters disputed by the parties.

¶ 81 First, we again note that defendants have raised a challenge to the circuit court's subject matter jurisdiction to consider plaintiffs' motion to confirm the clause construction award. As discussed above, we could not consider this argument in the context of defendants' initial appeal, because we did not otherwise have appellate jurisdiction. *Universal Underwriters Insurance Co.*, 372 Ill. App. 3d at 383-84. However, we *do* have appellate jurisdiction over defendants' appeal from the circuit court's August 8, 2012, orders, and *any* order entered in the absence of subject matter jurisdiction is void *ab initio* and may be attacked at *any* time (*In re M.W.*, 232 Ill. 2d at 414).<sup>8</sup>

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<sup>8</sup> The same is *not* true for defendants' *venue-based* challenge to the circuit court's denial of their motion to dismiss plaintiffs' motion to confirm the clause construction award, pursuant to the forum selection clause contained in the lien agreement. In general, no order or judgment is void for having been rendered in an improper venue. See 735 ILCS 5/2-104(a) (West 2010); *Holston v. Sisters of Third Order of St. Francis*, 165 Ill. 2d 150, 173 (1995). Moreover, it has been recognized that the denial of a motion to dismiss for improper venue—based upon a forum

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Therefore, we will address defendants' contentions regarding the circuit court's subject matter jurisdiction to consider plaintiffs' motion to confirm the clause construction award.

¶ 82 Second, we reiterate that this matter is *only* before this court pursuant to defendants' Rule 307(a)(1) appeal from the circuit court's two August 8, 2012, orders, and courts have typically recognized that such an interlocutory appeal " 'does not open the door to a general review of all orders entered by the trial court up to the date of the order that is appealed.' " *Kalbfleisch*, 396 Ill. App. 3d at 1114 (quoting *Filippelli*, 207 Ill. App. 3d at 818). However, we additionally note (again) that some courts have concluded that "Rule 307 allows this court to review any prior error that bears directly upon the question of whether an order on appeal was proper." *Glazer's Distributors of Illinois, Inc.*, 376 Ill. App. 3d at 420 (citing cases). While our lack of appellate jurisdiction spared us from having to further address this conflict in the context of either defendants' initial appeal or their cross-appeal, our jurisdiction to review the August 8, 2012, orders under Rule 307(a)(1) would seem to force us to address the scope of that review now.

¶ 83 However, even if we generally ascribed to a broad understanding of the scope of our review under Rule 307, such review would not be required here. Again, this understanding "*allows* this court to review any prior error that bears directly upon the question of whether an order on appeal was proper." *Glazer's Distributors of Illinois, Inc.*, 376 Ill. App. 3d at 420. (Emphasis added.) However, it does not *require* us to do so. As we discuss below, the circuit court's August 8, 2012, orders were improper, and we reach that conclusion without the need to consider the impact any prior error might have on the propriety of those orders. Thus, we will not review the circuit court's

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selection clause—is not an interlocutory order subject to appellate review. *Walker v. Carnival Cruise Lines, Inc.*, 383 Ill. App. 3d 129, 133 (2008).

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prior orders in the context of defendants' Rule 307 appeal from the August 8, 2012, orders, given that the parties have not otherwise properly appealed from those prior orders—indeed, the Illinois Supreme Court Rules may not even provide this court with authority to review them—and any such review ultimately proves unnecessary given our resolution of the matter. See *Estate of Bass v. Katten*, 375 Ill. App. 3d 62, 72-73 (2007) (refusing to consider validity of prior orders under similar circumstances).

¶ 84 Thus, we conclude that the only issues now before this court for consideration are: (1) the circuit court's subject matter jurisdiction to consider plaintiffs' motion to confirm the clause construction award; and (2) the propriety of the circuit court's August 8, 2012, orders enjoining defendants from seeking to vacate the clause construction award in another forum. We now turn to a consideration of those issues.

¶ 85 B. Subject Matter Jurisdiction

¶ 86 Defendants contend that the circuit court lacked subject matter jurisdiction to consider plaintiffs' motion to confirm the clause construction award, with that contention primarily relying upon: (1) the fact that the lien agreement provides for arbitration and litigation in Arizona; and (2) our supreme court's decision in *Chicago Southshore and South Bend R.R. v. Northern Indiana Commuter Transportation District*, 184 Ill. 2d 151 (1998). Plaintiffs counter that defendants' argument is improperly based upon our supreme court's interpretation of the Illinois version of the Uniform Arbitration Act (710 ILCS 5/1, *et seq.* (West 2008)), while this dispute is actually governed by the Federal Arbitration Act. Challenges to the subject matter jurisdiction of the circuit court, including any related issues of statutory construction, present questions of law that this court reviews *de novo*. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 294 (2010).

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¶ 87 Our supreme court has recognized that subject matter jurisdiction:

"[R]efers to the power of a court to hear and determine cases of the general class to which the proceeding in question belongs. [Citations.] With the exception of the circuit court's power to review administrative action, which is conferred by statute, a circuit court's subject matter jurisdiction is conferred entirely by our state constitution. [Citation.] Under section 9 of article VI, that jurisdiction extends to all 'justiciable matters.' [Citation.] Thus, in order to invoke the subject matter jurisdiction of the circuit court, a plaintiff's case, as framed by the complaint or petition, must present a justiciable matter." *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334-35 (2002).

A justiciable matter is "a controversy appropriate for review by the court, in that it is definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *Id.* at 335.

¶ 88 With respect to which arbitration act applies here, we note that both plaintiffs and defendants have *repeatedly* indicated their understanding that the Federal Arbitration Act applies to the parties' dispute generally, and the lien agreement in particular. We agree, as the lien agreement contains an arbitration agreement, it represents an agreement between the Illinois plaintiffs and the Arizona defendants, and it involves the transfer of money between those two states. It is well recognized that the Federal Arbitration Act creates a body of substantive federal arbitration law governing written arbitration agreements related to contracts evidencing a transaction involving interstate commerce. *Hollingshead v. A.G. Edwards & Sons, Inc.*, 396 Ill. App. 3d 1095, 1099 (2009) (quoting *Prudential Securities Inc. v. Hornsby*, 865 F. Supp. 447, 449 (N.D. Ill. 1994)).

¶ 89 Moreover, the substantive federal law created by the Federal Arbitration Act is applicable

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in both federal and state courts. *Ford Motor Credit Co. v. Cornfield*, 395 Ill. App. 3d 896, 905 (2009) (citing *Southland Corp. v. Keating*, 465 U.S. 1, 12 (1984); see also *Grotemyer v. Lake Shore Petro Corp.*, 235 Ill. App. 3d 314, 316 (1992) (state courts have concurrent jurisdiction under Federal Arbitration Act). In fact, under the Federal Arbitration Act "state courts as well as federal courts are obliged to honor and enforce agreements to arbitrate." *Vaden v. Discover Bank*, 556 U.S. 49, 71 (2009). Finally, the Federal Arbitration Act specifically provides for judicial confirmation of arbitration awards. 9 U.S.C. § 9 (2008).

¶ 90 In light of the above discussion, it is clear that the circuit court had subject matter jurisdiction to consider plaintiffs' motion to confirm the clause construction award under the Federal Arbitration Act. Clearly, that motion presented a justiciable matter in that it presented an issue that is "definite and concrete, as opposed to hypothetical or moot, touching upon the legal relations of parties having adverse legal interests." *Belleville*, 199 Ill. 2d at 325 at 335. Moreover, because the lien agreement implicated the provisions of the Federal Arbitration Act, the circuit court had both the concurrent jurisdiction and the obligation to ensure that the arbitration provision in the lien agreement—including an arbitration award resulting therefrom—was enforced. See *Grotemyer*, 235 Ill. App. 3d at 316; *Vaden*, 556 U.S. at 71.<sup>9</sup>

¶ 91 Even if this matter was governed by the Illinois version of the Uniform Arbitration Act, we

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<sup>9</sup> Defendants make the argument that certain portions of section 9 of the Federal Arbitration Act specify exactly where a motion for confirmation is to be brought, are jurisdictional, and would indicate that Illinois is not the proper jurisdiction for plaintiffs' motion. See 9 U.S.C. § 9 (2008). However, the United States Supreme Court has determined that these provisions relate to venue and not jurisdiction, are permissive and not mandatory, and are, thus, to be read as "permitting, not limiting" the choice of venue for a motion to confirm an arbitration award. *Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.*, 529 U.S. 193, 203-04 (2000).

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would still find that the circuit court had subject matter jurisdiction to consider plaintiffs' motion to confirm the clause construction award. Defendants' arguments to the contrary are based upon *Southshore*, 184 Ill. 2d at 152-53, in which our supreme court considered this issue in a situation somewhat similar to the one presented here. There, the parties entered into a contract calling for arbitration of any disputes in Indiana, for the application of Indiana law, and for any "legal issue" with respect to an arbitration decision to be judicially resolved by filing suit in Indiana within 30 days. *Id.* at 153. Despite this fact, the parties agreed to arbitrate their dispute in Illinois "as a matter of convenience." *Id.* Thereafter, the plaintiffs filed a motion in the circuit court of Cook County to confirm the arbitration award. The defendant challenged the Illinois court's subject matter jurisdiction to confirm the award under the Uniform Arbitration Act. *Id.* at 155. That issue was ultimately addressed by our supreme court, and the court agreed with defendant. *Id.*

¶ 92 First, our supreme court noted that section 1 of the Uniform Arbitration Act indicates that it applies to "a *written* agreement to submit any existing or future controversy to arbitration." (Emphasis in original.) *Id.* (citing 710 ILCS5/1 (West 1996)). It then noted that under section 16 of the Uniform Arbitration Act, "[t]he making of an agreement described in Section 1 providing for arbitration in this State confers jurisdiction on the [circuit] court to enforce the agreement under this Act and to enter judgment on an award thereunder." *Id.* (quoting 710 ILCS 5/16 (West 1996)). Our supreme court then concluded that "under the plain language of the statute, the parties' written agreement must provide for arbitration in Illinois in order for Illinois courts to exercise jurisdiction to confirm an arbitration award." *Id.* at 155-56.

¶ 93 In coming to this conclusion, our supreme court also considered the fact that the defendant had consented to arbitration in Illinois, despite the parties' written agreement calling for arbitration

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in Indiana and for any legal disputes regarding arbitration decisions to be filed in Indiana. *Id.* at 158. Our supreme court reasoned that although the defendant "consented to arbitration in Illinois, the written arbitration agreement was never formally modified in this regard, and [the defendant] could reasonably assume that its acquiescence to arbitration in Illinois would not have the effect of transferring jurisdiction to Illinois in contravention of the original arbitration agreement." *Id.* The court also noted that the defendant's conduct had been consistent with the understanding that jurisdiction would remain in Indiana, as it had "initiated legal proceedings in Indiana pursuant to the written arbitration agreement, and [had] steadfastly opposed the exercise of subject matter jurisdiction by the Illinois trial court. Under these circumstances, the parties' deviation from the contractual provision regarding the place of arbitration did not give rise to subject matter jurisdiction in Illinois." *Id.*

¶ 94 While the circuit court's subject matter jurisdiction to confirm the clause construction award at issue here might seem to be foreclosed by the *Southshore* decision, if the Uniform Arbitration Act applied, we conclude otherwise. First, we note that the *Southshore* decision was based upon "all the circumstances of [that] factually unusual case." *Id.* Those circumstances included the fact that the parties' agreement in *Southshore* included provisions calling for arbitration of any disputes in Indiana, for the application of Indiana law, and for any "legal issue" with respect an arbitration decision to be judicially resolved by filing suit in Indiana within 30 days. *Id.* at 153.

¶ 95 While the lien agreement at issue here does contain *general* provisions allowing for elective arbitration in Arizona, and requiring the application of Arizona law and that any lawsuits be filed in Arizona, there is *no specific* provision requiring that legal issues arising out of arbitration also be resolved in Arizona. Indeed, the arbitration provision specifically indicates that arbitration will

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proceed pursuant to the AAA's rules, and Rule 3 of the Class Rules generally allow a party to ask a "court of competent jurisdiction" to confirm or to vacate a clause construction award. AAA Supplemental Rules for Class Arbitration, Rule 3 (Oct. 8, 2003), [http://ww.adr.org/aaa/ShowPDF?url=/cs/groups/commercial/documents/document/dgdf/mda0/~edisp/adrstg\\_004129.pdf](http://ww.adr.org/aaa/ShowPDF?url=/cs/groups/commercial/documents/document/dgdf/mda0/~edisp/adrstg_004129.pdf).

¶ 96 In *Southshore*, our supreme court also stressed that the Uniform Arbitration Act applies to written agreements, and that while the defendant "consented to arbitration in Illinois, the *written* arbitration agreement was never formally modified in this regard." (Emphasis added.) *Id.* In contrast, the arbitration provision of the lien agreement at issue here—specifically that portion requiring arbitration in Arizona—was modified in writing on two occasions. First, in the face of the AAA's potential refusal to administer the arbitration without a waiver of that portion of the lien agreement requiring disputes to be resolved in Arizona, defendants signed the AAA's December 18, 2008, letter in a manner indicating it was waiving that provision. Second, plaintiffs and defendants also executed a stipulation agreeing to have their arbitration proceeding heard by Mr. Chupack, an arbitrator located in Chicago.

¶ 97 In addition, we conclude that the parties' stipulation is more than simply a "formal" modification of their original lien agreement. It also constitutes an independent basis for the circuit court's authority to consider plaintiffs' motion to confirm the clause construction award. Again, section 16 of the Uniform Arbitration Act provides that "[t]he making of an agreement described in Section 1 providing for arbitration in this State confers jurisdiction on the court to enforce the agreement under this Act and to enter judgment on an award thereunder." 710 ILCS 5/16 (West 2008). In turn, section 1 specifically indicates that not only is a "provision in a written contract to submit to arbitration any controversy thereafter arising between the parties" enforceable, so too is

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a "written agreement to submit any existing controversy to arbitration." 710 ILCS 5/1 (West 2008).

The parties' stipulation agreeing to arbitrate their existing controversy before an arbitrator located in Chicago is, therefore, independent of the original lien agreement, "an agreement described in Section 1 providing for arbitration in this State" and it thus granted the circuit court authority to both enforce the agreement under the Uniform Arbitration Act and to "enter a judgment on an award thereunder." 710 ILCS 5/16 (West 2008).

¶ 98 Perhaps more important than the above discussion is the way in which the *Southshore* decision has been subsequently interpreted. Specifically, while our supreme court's decision in *Southshore* spoke in terms of "subject matter jurisdiction," many appellate court decisions have reasoned that the court may actually have intended to refer merely to the "authority" of Illinois courts to confirm arbitration awards.

¶ 99 A number of decisions have concluded that, while the requirements of the Uniform Arbitration Act and the *Southshore* decision may have something to say about the circuit court's *authority* to confirm an arbitration award, they do not affect a circuit court's constitutionally-based *subject matter jurisdiction* over all justiciable matters. *Valent BioSciences Corp. v. Kim-C1, LLC*, 2011 IL App (1st) 102073, ¶ 35 (finding that "Illinois was not the proper tribunal to adjudicate the disputes regarding the arbitration award, not on the basis of lack of subject matter jurisdiction, but because the parties agreed to conduct the arbitration in California"); *DHR International, Inc. v. Winston and Strawn*, 347 Ill. App. 3d 642, 649 (2004) (finding that the *Southshore* decision suggests our supreme court "views the Uniform Arbitration Act as creating 'justiciable matter' over which the circuit court has original jurisdiction under the Illinois Constitution of 1970 and that a failure to comply with a jurisdictional limit may be the subject of an objection, but does not by itself divest

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the circuit court of that jurisdiction"); *CPM Productions, Inc. v. Mobb Deep, Inc.*, 318 Ill. App. 3d 369, 378-79 (2000) (where contract provided for arbitration in New York, "the circuit court, while having the original power over the case generally, lacked the authority to act on the award").

¶ 100 While our supreme court itself has not revisited the *Southshore* decision, several of its recent decisions cast serious doubt upon any contention that the failure to comply with the provisions of the Uniform Arbitration Act would divest the circuit court of subject matter jurisdiction over a motion to confirm an arbitration award. In each case, and with the notable exception of actions for administrative review, our supreme court reiterated its position that: (1) a circuit court's subject matter jurisdiction over justiciable matters is conferred exclusively by the Illinois constitution; and (2) any failure to comply with relevant statutory provisions does not, and cannot, affect a circuit court's underlying subject matter jurisdiction in any way. See *In re Luis R.*, 239 Ill. 2d 295, 301-03 (2010); *In re M.W.*, 232 Ill. 2d 408, 423-26 (2009); *Belleville*, 199 Ill. 2d at 325 at 335-40.

¶ 101 In light of the above discussion, we conclude that the circuit court had subject matter jurisdiction to consider plaintiffs' motion to confirm the clause construction award. However, in so ruling, we do not express any opinion on the propriety of any order the circuit court entered in the context of that consideration. As we have explained at length, we do not have appellate jurisdiction to review such matters. We merely conclude that none of the circuit court's orders with respect thereto are void *ab initio* for a lack of subject matter jurisdiction.

¶ 102 C. Injunctive Orders

¶ 103 Finally, we address the circuit court's August 8, 2012, orders which: (1) enjoined defendants from seeking to vacate the clause construction award in another forum; and (2) denied defendants' motion to vacate that injunction. As we have already intimated, we find these orders to be improper.

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¶ 104 Illinois has long recognized that "[a] party has the legal right to bring his action in any court which has jurisdiction of the subject matter and which can obtain jurisdiction of the parties." *Pfaff v. Chrysler Corp.*, 155 Ill. 2d 35, 60 (1992) (quoting *Illinois Life Insurance Co. v. Prentiss*, 277 Ill. 383, 387 (1917)). Indeed, "a party possesses a general right 'to press his action in any jurisdiction which he may see fit and in as many of them as he chooses.'" *Pfaff*, 155 Ill. 2d at 65 (quoting *Prentiss*, 277 Ill. at 387).

¶ 105 Nevertheless, it has also "long been established in Illinois that a court of equity has the power to restrain a person over whom it has jurisdiction from instituting a suit [citation] or proceeding with suit in a foreign State [citation]." *Id.* at 43. "The exercise of such power by equity courts in Illinois is considered to be a matter of great delicacy, to be 'invoked with great restraint to avoid distressing conflicts and reciprocal interference with jurisdiction.'" *Id.* (quoting *James v. Grand Trunk Western R.R. Co.*, 14 Ill. 2d 356, 363 (1958)). Thus, a circuit court:

"[H]as the authority to restrain the prosecution of a foreign action which will result in fraud or gross wrong or oppression; a clear equity must be presented requiring the interposition of the court to prevent manifest wrong and injustice. [Citation.] What constitutes a wrong and injustice requiring the court's interposition must necessarily depend upon the particular facts of the case. [Citation.] There is no general rule as to what circumstance constitutes a proper case for the exercise of the trial court's discretion. [Citation.] The granting of an injunction will depend on specific circumstances as to whether equitable considerations in favor of granting the injunction outweigh the legal right of the party who instituted the foreign action. [Citation.]" *Pfaff*, 155 Ill. 2d at 58.

We review a circuit court's decision to enjoin a party from engaging in foreign litigation for an abuse

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of discretion. *John Crane Inc. v. Admiral Insurance Co.*, 391 Ill. App. 3d 693, 700 (2009).

¶ 106 Here, plaintiffs' motion to enjoin defendants from litigating their second petition to vacate the clause construction award in Arizona relied upon their arguments that defendants: (1) filed their second Arizona petition while the instant litigation was still pending, even though it "involves the exact same parties as this cause of action and it also involves the very same 'clause construction award' already on review before the Illinois Appellate Court;" (2) were, therefore, "attempting to circumvent this state's appellate process;" (3) were, thus, also attempting to "game" the circuit court's jurisdiction and orders, including that portion of the February 22, 2012, order finding that any attempt by defendants to "resuscitate their Arizona proceeding \*\*\* would be both improper and counterproductive;" and (4) had "sought to harass and needlessly increase the expenses to Mr. Lopez and his attorneys of efficiently and orderly litigating this dispute."

¶ 107 In granting plaintiffs' motion, the circuit court relied upon its conclusions that: (1) defendants' second petition to vacate in Arizona involved the same parties, subject matter, and clause construction award as the instant litigation; (2) the second Arizona petition was, therefore, contrary to the language contained in its prior order regarding the impropriety and counterproductiveness of any further Arizona litigation, as well as being "contrary to and inconsistent with [defendants'] own pending appeals;" and (3) the circuit court must "act to preserve its own jurisdiction, and the proper and efficient operation of the civil judicial system." In light of these considerations, the circuit court granted plaintiffs' motion because defendants "cannot be permitted to litter the landscape willy-nilly with duplicative proceedings."

¶ 108 While we recognize that whether or not to enjoin a party from proceeding with suit in a foreign jurisdiction "must necessarily depend upon the particular facts of the case" and "[t]here is

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no general rule as to what circumstance constitutes a proper case for the exercise of the trial court's discretion" (*Pfaff*, 155 Ill. 2d at 58), we must conclude that the injunction entered in this matter was an abuse of discretion. Here, there was no effort on the part of plaintiffs or the circuit court to identify why such an injunction was necessary so as to avoid fraud, gross wrong, oppression, or injustice, or why the "equitable considerations in favor of granting the injunction outweigh the legal right" of defendants to litigate in Arizona. *Id.* Rather, defendants appear to have been enjoined from prosecuting their petition in Arizona because that litigation was related to or similar to the instant litigation, it involved the same parties, and it would result in duplicative and inefficient proceedings that might be expensive for plaintiffs to defend. Our supreme court has held that these reasons are insufficient to justify such an injunction, however, specifically indicating:

"\* \* \* The bare fact that a suit [\*\*\*] has been begun and is now pending in this State, in the absence of equitable considerations, furnishes no ground to enjoin [a party] from suing his claim in a foreign jurisdiction, although the cause of action is the same \* \* \*. \* \* \* That it may be inconvenient for [a party] to go to a foreign State to try [an action], or that the maintenance of two suits will cause double litigation and added expense, is insufficient cause for an injunction \* \* \*." *Id.* at 60 (quoting *Prentiss*, 277 Ill. at 387-88).

As our supreme court further recognized, its precedents "demonstrate a strong policy against enjoining the prosecution of a foreign action merely because of inconvenience or simultaneous, duplicative litigation, or where a litigant simply wishes to avail himself of more favorable law." *Id.* at 58.

¶ 109 Moreover, any concern regarding the circuit court's own jurisdiction was also unfounded, as such concern fails to recognize that the "mere pendency" of the Arizona proceeding "did not

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threaten the jurisdiction of the Illinois trial court; jurisdiction merely became concurrent." *Id.* at 65. Finally, we find that any concern regarding "any possible inconsistency in rulings or judgments may be rectified by resort to principles of *collateral estoppel* and *res judicata*." (Emphasis in original.) *Id.* at 74. Plaintiffs could also seek to have the Arizona proceeding stayed pending the outcome of the instant litigation, a stay they successfully obtained with respect to defendants' first petition to vacate.

¶ 110 We, therefore, conclude that, based upon analysis and policy considerations contained in our supreme court's *Pfaff* and *Prentiss* decisions, the circuit court abused its discretion in granting plaintiffs' motion to enjoin defendants from prosecuting their second petition in Arizona, and in denying defendants' motion to vacate that injunction. The circuit court's August 8, 2012, orders are, therefore, reversed, and the injunction entered against defendants is vacated.

¶ 111

### III. CONCLUSION

¶ 112 For the foregoing reasons, we dismiss appeal nos. 1-12-763 and 1-12-0878 for a lack of appellate jurisdiction. With respect to appeal no. 1-12-2393, we reverse the August 8, 2012, orders of the circuit court enjoining defendants' from pursuing their litigation in Arizona (or elsewhere) and denying defendants' motion to vacate that injunction. We, therefore, vacate the injunction entered against defendants. This matter is remanded to the circuit court for further proceedings consistent with this order.

¶ 113 Appeal No. 1-12-0763, Appeal dismissed.

¶ 114 Appeal No. 1-12-0878, Appeal dismissed.

¶ 115 Appeal No. 1-12-2393, Reversed; injunction vacated; cause remanded.