

No. 1-12-2150

**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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JPMORGAN CHASE BANK, N.A.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 2008 CH 35001
	)	
RICHARD TROJAN and ERICA TROJAN,	)	Honorable
	)	Laura C. Liu,
Defendants-Appellants.	)	Judge Presiding.

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

ORDER

¶ 1 *Held:* We affirmed the order dismissing defendants' second-amended counterclaim with prejudice where the appeal was taken by only one of the defendants, who did not file an appellant's brief and therefore waived review of the circuit court's dismissal order.

¶ 2 This appeal arises from a 2008 foreclosure proceeding. It involves a 2006 mortgage executed by defendants, Richard and Erica Trojan, in favor of plaintiff, J.P. Morgan Chase Bank. Over the course of the foreclosure proceedings, defendants were allowed three opportunities to amend their answers and affirmative defenses to the complaint. In addition, defendants were twice allowed to amend their counterclaims. On April 3, 2012, the circuit court dismissed defendants' second-

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amended counterclaim with prejudice pursuant to section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2010)), and subsequently entered a finding pursuant to Illinois Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)) that there was no just reason for delaying appeal. A timely notice of appeal from the April 3, 2012, order was filed, naming Richard and Erica Trojan as the appellants; however, only Richard Trojan signed the notice of appeal. For the reasons that follow, we affirm the circuit court's April 3, 2012, order dismissing defendants' second-amended counterclaim with prejudice.

¶ 3 On September 19, 2008, plaintiff filed a complaint seeking to foreclose on defendants' mortgage. In December 2009, defendants filed their second-amended answer and affirmative defenses and counterclaim. The counterclaim consisted of two counts: breach of fiduciary duty, and rescission. After retaining counsel, defendants were granted leave to file amended pleadings on or before February 23, 2010. On February 23, 2010, defendants filed their third-amended answer and affirmative defenses and amended counterclaim. The amended counterclaim consisted of three counts: breach of fiduciary duty; "rescission-mistake;" and an action to quiet title. On November 9, 2010, the circuit court dismissed count I of defendants' amended counterclaim (breach of fiduciary duty) with prejudice; the court allowed defendants to re-plead counts II and III, the "rescission-mistake," and quiet title claims.

¶ 4 On November 30, 2010, defendants filed their second-amended counterclaim, consisting of four counts: violation of the High Risk Home Loan Act (815 ILCS 137/65 (West 2010)) (count I); violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (West 2010)) (count II); "mistake" (count III); and quiet title (count IV). Counts III and IV were

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brought solely on behalf of Erica Trojan. On April 3, 2012, the circuit court dismissed defendants' second-amended counterclaim with prejudice, finding all defendants' counterclaims failed as a matter of law, and that defendants had been "afforded fair and ample opportunity to plead claims and defenses in this matter." The circuit court also denied Erica Trojan's request (submitted in her sur-reply to plaintiff's reply in support of its motion to dismiss) to further amend her second-amended counterclaim to include a Truth In Lending Act (15 U.S.C. §1601 *et. seq.* (2008)) violation, finding such a claim was time-barred. Defendants moved for a Rule 304(a) finding, which the circuit court entered on June 22, 2012. A timely notice of appeal was filed on July 23, 2012, which named both Richard and Erica Trojan as the appellants, but which was signed only by Richard. Erica has filed a *pro se* brief in this appeal, arguing that the circuit court erred in dismissing counts III and IV of the second-amended counterclaim, both of which were brought solely on Erica's behalf. Richard has not filed a brief in this appeal.

¶ 5 Illinois Supreme Court Rule 303(b)(4) states that the notice of appeal "shall contain the signature and address of *each* appellant or appellant's attorney." Ill. S. Ct. R. 303(b)(4) (eff. June 4, 2008). (Emphasis added.) We have held, pursuant to the language of Rule 303(b)(4), that where a notice of appeal states it has been taken on behalf of two persons, but only one of those persons signed his name thereto, we consider the appeal to have been taken only by the signatory to the notice of appeal. See *People v. Krueger*, 146 Ill. App. 3d 530, 533 (1986). See also *In re Estate of Kunsch*, 342 Ill. App. 3d 552, 553 (2003) ("Our supreme court demands strict compliance with its rules governing appeals, and neither a trial court nor an appellate court has authority to excuse compliance with the requirements mandated by such rules.").

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¶ 6 As the notice of appeal here from the April 3, 2012, dismissal order was signed only by Richard Trojan and not by Erica Trojan, nor was it signed by any attorney on Erica's behalf, we must consider the appeal herein to have been taken only by Richard. Because only Richard has a properly noticed appeal before this court, but has failed to file a brief making any arguments for reversal of the circuit court's April 3, 2012, dismissal order, he has waived review thereof. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Points not argued are waived.").

¶ 7 For the foregoing reasons, we affirm the circuit court.

¶ 8 Affirmed.