

access to the building. The plaintiff filed a motion for a default judgment against Brahmbhatt. The trial court conducted an evidentiary hearing on the motion for injunctive relief and on the plaintiff's motion for a default judgment. On June 12, 2012, the court entered an order granting Brahmbhatt 14 days to file an answer or otherwise plead and took the remainder of the issues under advisement.

¶ 3 On July 5, 2012, the court entered an order granting the Restaurant Group's motion for injunctive relief, restoring possession of the property to the defendants, and setting the case for further hearing. The plaintiff filed a motion asking the court to set aside the order restoring possession of the property to the defendants. On August 15, 2012, the court entered an order denying the plaintiff's motion for a default judgment against Brahmbhatt and the plaintiff's motion to set aside the July 5, 2012, order. The court granted the defendants' motion for clarification, ordered the defendants to tender one month's rent to the plaintiff, and ordered the plaintiff to furnish the defendants with keys and permit them to have possession of the premises. On August 27, 2012, the plaintiff filed an interlocutory appeal from all three orders.

¶ 4 On appeal, the plaintiff argues that the trial court improperly denied his motion for a default judgment against Brahmbhatt, improperly granted the defendant's request for injunctive relief, and improperly determined that the plaintiff had failed to comply with the statutory requirements for demanding rent and possession of the property.²

¶ 5 BACKGROUND

¶ 6 The facts stated are derived from the June 12, 2012, evidentiary hearing. Brahmbhatt testified that he and other members of the Restaurant Group signed a lease with the plaintiff

pending. Accordingly, we do not address any issue concerning the grant of a TRO.

²We note that the plaintiff-appellant lists five issues in his brief. However, we cover the final two issues in our analysis of the first three issues.

for property located in St. Clair County, Illinois. Brahmhatt and three other members of the Restaurant Group signed the lease on May 21, 2011. The plaintiff signed the lease on May 25, 2011. The term of the lease was three years. The commencement date of the lease was listed as "the day Landlord [the plaintiff] delivers possession of the premises to Tenant." The provision concerning the payment of rent is as follows:

"The Rent Commencement Date shall be Ninety (90) days after the Commencement Date or the date Tenant opens for business to the public."

¶ 7 Brahmhatt testified that, after signing the lease, he and other members of the Restaurant Group began working on the building, which they planned to use for a restaurant business. After taking possession of the building, they replaced flooring, bought equipment, refurbished the walk-in cooler and the freezer, and installed an ice machine, a soda machine, and a buffet. By the end of August 2011, they still needed to complete the computer, camera, and soda systems. The water was turned on, but the power was not because they used a generator to run their power tools and did not want to pay the monthly fee to Ameren for utilities they were not using to run a restaurant. Brahmhatt testified that they spent close to \$37,000 in wages for construction workers and payments to vendors in their attempt to prepare the building for opening as a restaurant.

¶ 8 Brahmhatt testified that the Restaurant Group had not yet paid any rent to the plaintiff because they believed they did not owe rent until the restaurant was open to the public, and they had never been able to open the restaurant. He said that on August 31, 2011, he came to the building and discovered that his key to the building did not work and that he was locked out of the building. At that time, all of the equipment and furniture that they had previously moved into the building was still inside.

¶ 9 The plaintiff's son, Suhan Kim, testified that he helped his father with the business because his father did not speak English very well. Kim said that the defendants' rent was

due 90 days after the lease was signed regardless of whether the restaurant was open. Kim had monitored the defendants' progress on remodeling the building, and between May and September 2011, he was at the building about once per week. Around the middle of August, Kim did not see any activity at the building. He acknowledged that the defendants had installed some equipment, moved in some furniture, completed the painting, and installed some of the flooring.

¶ 10 Kim testified that neither he nor his father changed the locks on August 31, 2011. Kim identified a letter written by his attorney, addressed to the defendants, and dated September 10, 2011. Kim testified that the letter constituted a five-day notice. There is no certified-mail receipt attached to the letter or otherwise in the record. The letter states, in relevant part, as follows:

"This letter will serve as notice that you are delinquent in rent payment of the commercial building [that is the subject of the lease].

* * *

This letter will serve as written demand for payment of past due commercial rent (\$1,700.00 balance from August 25 to September 25, 2011 plus the late charges \$750.00) in the total amount of \$2,450.00.

If this full amount is not paid by you on or before September 20, 2011, then suit will be filed against you for rent, plus attorney fees, any interest and/or late charges incurred because of suit and the re-possession of said property."

¶ 11 Brahmhatt testified that he did not receive this letter or any other formal notice to pay rent or leave the premises, but he acknowledged that the plaintiff sent him a letter complaining that the Restaurant Group had not paid rent. Brahmhatt said that he did not receive any other notice concerning the property until October 2011 when he was served with a summons in this lawsuit. Brahmhatt testified that the defendants had not abandoned the

property and had not removed their equipment or furnishings from the building.

¶ 12 Kim testified that, on October 13, 2011, he hired a locksmith who came to the building and changed the locks on that day. Brahmbhatt testified that the Restaurant Group could have the restaurant open within 60 days after reentry to the building. He said that they wanted to be allowed back in the building and to continue to operate under the lease.

¶ 13 At the close of the evidence, the trial court took the case under advisement, and later that day, entered a written order granting Brahmbhatt 14 days to file an answer to the plaintiff's complaint. On June 28, 2012, the defendants filed an amended answer and counterclaim adding Brahmbhatt as a defendant/counterplaintiff.

¶ 14 On July 5, 2012, the court entered an order granting the defendants' motion for preliminary injunctive relief and restoring them to the property. The court also found that the plaintiff had not complied with the statutory requirements for a demand for rent pursuant to section 9-209 of the Code of Civil Procedure (735 ILCS 5/9-209 (West 2010)), that the plaintiff had "never filed an action to regain the property," and that the defendants had not abandoned the property. The court ordered the defendants to commence payment of rent immediately and set the case for trial on October 22, 2012.

¶ 15 On July 31, 2012, the defendants filed a motion for clarification and enforcement of the court's July 5, 2012, order. In that motion, the defendants alleged that the plaintiff had not complied with the court's order to allow them to have possession of the property. The defendants requested the court to schedule a hearing to clarify that the payment of rent and the defendant's reentry to the property should happen simultaneously.

¶ 16 On August 15, 2012, the court entered an order denying the plaintiff's motion for a default judgment against Brahmbhatt and denying the plaintiff's motion to set aside its July 5, 2012, order. The court allowed the defendants' motion for clarification and ordered the parties or their representatives to meet at the leased property on August 24, 2012, at 1 p.m.

"at which time defendants shall tender one month's rent, and plaintiff shall furnish keys and permit possession of the premises."

¶ 17 On August 27, 2012, the plaintiff filed a notice of interlocutory appeal from the court's orders dated June 12, July 5, and August 15, 2012.

¶ 18 ANALYSIS

¶ 19 We first consider whether we have jurisdiction to consider the plaintiff's argument that the trial court improperly denied his motion for a default judgment against Brahmhatt. The plaintiff asserts that Illinois Supreme Court Rule 307 (Ill. S. Ct. R. 307 (eff. Feb. 26, 2010)) "confers jurisdiction upon the Appellate Court by allowing an appeal may be taken to the Appellate Court from an interlocutory order." Only final judgments or orders are appealable as of right unless the particular order falls within one of the specified exceptions enumerated by Illinois Supreme Court Rule 307. *Mund v. Brown*, 393 Ill. App. 3d 994, 996 (2009). A denial of a motion for a default judgment is an interlocutory order that is *not* one of the specified exceptions listed in Rule 307. The plaintiff does not argue that any other supreme court rule concerning jurisdiction should apply. From our review of the record, it is clear that none of the other supreme court rules that allow interlocutory appeals apply to this issue. See Ill. S. Ct. R. 304 (eff. Feb. 26, 2010) (final judgments that do not dispose of an entire appeal); Ill. S. Ct. R. 306 (eff. Feb. 16, 2011) (interlocutory appeals by permission); and Ill. S. Ct. R. 308 (eff. Feb. 26, 2010) (certified questions). Therefore, we do not have jurisdiction to consider the argument that the court improperly denied the plaintiff's motion for a default judgment. Accordingly, we will not address that issue.

¶ 20 We next consider the plaintiff's argument that the trial court improperly granted injunctive relief to the defendants. We have jurisdiction to consider this issue. Supreme Court Rule 307 provides that an appeal may be taken to the appellate court from an order "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction."

Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010). The plaintiff's August 27, 2012, notice of interlocutory appeal from the trial court's August 15, 2012, order is sufficient to confer jurisdiction.

¶ 21 Substantively, the plaintiff argues that the defendants did not establish the necessary proof for the injunctive relief granted. Parties seeking preliminary injunctive relief are required to demonstrate: "(1) a clearly ascertained right in need of protection, (2) irreparable injury in the absence of an injunction, (3) no adequate remedy at law, and (4) a likelihood of success on the merits of the case." *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62 (2007). On appeal, the reviewing court is to examine "only whether the party seeking the injunction has demonstrated a *prima facie* case that there is a fair question concerning the existence of the claimed rights." (Internal quotation marks omitted.) *Id.* "An appeal pursuant to Rule 307 may not be used as a vehicle to determine the merits" of the underlying case. *Revolution Portfolio, LLC v. Beale*, 341 Ill. App. 3d 1021, 1027 (2003). The purpose of a preliminary injunction is to preserve the status quo until the merits of the case can be decided and should be granted only when an emergency exists and serious harm would result if the injunctive relief were not granted. *Nickels v. Burnett*, 343 Ill. App. 3d 654, 662 (2003). "We will not disturb the trial court's decision to grant a preliminary injunction absent an abuse of discretion," which occurs when no reasonable person would take the trial court's view. *Id.*

¶ 22 The plaintiff argues that the defendants failed to show that any irreparable injury occurred because they vacated and abandoned the property and breached the lease. The trial court specifically found that the defendants had not abandoned the property. Brahmhatt testified that they had not abandoned the property, that all of the equipment and furnishings that they had moved into the building were still there at the end of August when he was locked out, that vendor contracts were in force, and that construction crews and other

workers were hired and ready to continue working at that time. The plaintiff did not seriously dispute Brahmhatt's testimony. Brahmhatt also testified that the Restaurant Group wanted to continue to prepare the building for opening as a restaurant and to continue to do business with the plaintiff under the lease. Accordingly, there is evidence in support of the trial court's finding that the defendants did not vacate or abandon the premises.

¶ 23 The plaintiff's argument that the defendants had breached the lease is based on his conclusion that the defendants were required to begin paying rent within 90 days after taking possession of the premises. The defendants argue the opposite, that they were not required to pay rent until they opened the business to the public. The clause of the lease that controls this issue provides that the rent is payable 90 days after the commencement of the lease, which is the date the defendants took possession, "*or the date Tenant opens for business to the public.*" (Emphasis added.) The lease contains no provision stating which one of these occurrences controls. That clause of the lease does not specify that whichever event occurred first would control, as is typical for contract provisions such as this. The trial court has not specifically ruled on whether rent was due 90 days after possession, as the plaintiff argues, but the court ordered the plaintiff to allow the defendants to have possession of the property and ordered the defendants to pay the first month's rent on the date of reentry. We do not find that the trial court's ruling was an abuse of discretion. Rather, the trial court reasonably ruled in a way that preserved the status quo until a hearing on the merits could be held.

¶ 24 Finally, the plaintiff argues that the court improperly determined that he had failed to comply with the statutory requirements for a demand for rent and possession of the premises. It was proper for the trial court to consider this issue in determining whether the defendants had demonstrated a likelihood of success on the merits. The controlling statute provides, in relevant part, as follows:

"Demand for rent—Action for possession. A landlord *** may, any time after rent is

due, demand payment thereof and notify the tenant, in writing, that unless payment is made within a time mentioned in such notice, not less than 5 days after service thereof, pay the rent due, the landlord may consider the lease ended, and sue for the possession under the statute in relation to forcible entry and detainer, or maintain ejectment without further notice or demand." 735 ILCS 5/9-209 (West 2010).

¶ 25 Additionally, the written five-day notice referred to in section 9-209 of the Code of Civil Procedure must be served on the tenant by leaving it with him or her, by leaving it with someone 13 years old or older and in possession of the premises, "or by sending a copy of the notice to the tenant by certified or registered mail, with a returned receipt from the addressee; and in case no one is in the actual possession of the premises, then by posting the same on the premises." 735 ILCS 5/9-211 (West 2010).

¶ 26 The plaintiff mailed the defendants a letter demanding the rent, stating that they had breached the lease, and threatening court action if the defendants did not comply within 10 days of the date of the letter. Brahmhatt denied receiving that letter but acknowledged receiving a letter. However, even if the court had determined that the plaintiff sent the letter admitted into evidence, it could not have found, based on that letter alone, that the plaintiff complied with the statutory requirements for serving a five-day notice on the defendants. The plaintiff failed to serve the notice as required. The evidence showed only that the plaintiff mailed the letter, but the plaintiff did not mail it via certified or registered mail requesting a return receipt. Kim testified that he posted his telephone number on the door of the building with a request to call the real estate broker, but there is no evidence that the plaintiff posted the letter on the door of the building. The trial court's finding that the plaintiff failed to give proper notice to the defendants was supported by the evidence.

¶ 27 The evidence presented was sufficient for the trial court to find that the defendants met their burden of proof to be entitled to a preliminary injunction. We find no abuse of

discretion in the trial court's award of injunctive relief to the defendants.

¶ 28

CONCLUSION

¶ 29 For all of the reasons stated, we affirm the trial court's orders of July 5, 2012, and August 15, 2012, granting preliminary injunctive relief to the defendants.

¶ 30 Affirmed.