

2014 IL App (1st) 133341-U
Nos. 1-13-3341, 1-13-3342 & 1-13-3343 Cons.
Order Filed July 25, 2014

SIXTH DIVISION

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JEFFREY W. KROL & ASSOCIATES, LTD.,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 2011 L 4198
)	
LASSE KOERM, KAIA EINPAUL-KOERM)	
and NORTH CONTINETAL ENTERPRISES,)	
INC., a Michigan corporation,)	Honorable
)	Mary A. Mulhern,
Defendants-Appellants.)	Judge Presiding.
)	

JUSTICE HALL delivered the judgment of the court.
Justices Lampkin and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* The defendants' violations of Illinois Supreme Court Rules resulted in forfeiture or summary affirmance of several issues raised on appeal. A jury demand by one defendant was properly stricken. There was no diversity jurisdiction to support a transfer to federal court.

¶ 2 The plaintiff, Jeffrey W. Krol and Associates, Ltd., filed a two-count complaint against the defendants, Lasse Koerm (Lasse) and North Continental Enterprises, Inc. (NCE), seeking payment of fees owed by Lasse and NCE for professional tax and consulting services rendered to them by the plaintiff. The plaintiff filed an amended complaint adding counts III and IV against Kaia Einpaul-Koerm (Kaia), Lasse Koerm's wife. Following a bench trial, the trial court entered judgment in the amount of \$113,026.67 in favor of the plaintiff and against Lasse, Kaia (collectively the Koerms) and NCE. The court entered judgment on counts III and IV in favor of Kaia and against the plaintiff. Pursuant to section 2-616(c) of the Code of Civil Procedure (the Code) (735 ILCS 5/2-616(c) (West 2010)), the plaintiff filed a motion to amend its complaint to conform to the proofs and a petition for attorney fees. Following a hearing, the trial court granted the motion to amend, which added Kaia as a defendant in count I and ordered the Koerms and NCE to pay the plaintiff \$66,109.60 in attorney fees.

¶ 3 Lasse, Kaia and NCE filed separate notices of appeal. The three appeals have been consolidated for our review. Only the Koerms filed a brief. The following issues are raised on appeal: (1) whether the Koerms were personally responsible for NCE's debt; (2) whether the engagement letters were binding contracts; (3) whether the presentation of perjured testimony invalidated the plaintiff's claims; (4) whether the defendants were entitled to a jury trial; and (5) whether the case was tried in the wrong venue.

¶ 4 Both Kaia and Lasse are *pro se* in this appeal. Where a party chooses to self-represent, he or she is held to the same standard as a licensed attorney and must comply with the same rules. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78.

¶ 5 The Koerms' joint appellant's brief did not contain an appendix as required by Illinois Supreme Court Rule 342(a) (eff. Jan. 1, 2005)). On April 28, 2014, this court entered an order requiring the Koerms to file an appendix to their brief no later than June 26, 2014. The Koerms failed to comply with that order.

¶ 6 The Koerms did not file a report of proceedings from the bench trial in this case, and they did not avail themselves of the alternatives set forth in Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005). As the appellants, they bear the burden of presenting an adequate record for determination of the issues they raise on appeal. *Compton v. Country Mutual Insurance Co.*, 382 Ill. App. 3d 323, 330 (2008). An incomplete record violates our supreme court rules and is grounds for summary affirmance of the trial court. *Adams v. Sarah Bush Lincoln Health Center*, 369 Ill. App. 3d 988, 997 (2007).

¶ 7 Violations of our supreme court rules for appellate procedure may result in the dismissal of the appeal when the violations interfere with or preclude our review. *In re Detention of Powell*, 217 Ill. 2d 123, 132 (2005). While we choose not to dismiss the appeal, where the Koerms' failure to adhere to the rules of appellate procedure affects our ability to review an issue, we will not hesitate to summarily affirm or hold the issue forfeited .

¶ 8 The Koerms contend that the trial court erred when it found them liable for NCE's debt to the plaintiff. They argue that piercing the corporate veil requires a substantial showing that the corporation is really a dummy or sham for another dominating entity. *Jacobson v. Buffalo Rock Shooters Supply, Inc.*, 278 Ill. App. 3d 1084, 1088 (1996).

¶ 9 The reviewing court will not reverse a trial court's decision to pierce the corporate veil unless the decision is against the manifest weight of the evidence. *Jacobson*, 278 Ill. App. 3d at 1088. "Where the issue on appeal relates to the conduct of a hearing or proceeding, this

issue is not subject to review absent a report or record of the proceeding." *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001). In the absence of a record of the proceedings, we presume that the trial court's decision conforms to the law and the facts presented. *Webster*, 195 Ill. 2d at 432. Here, in the absence of a record of the bench trial, we presume that the trial court's finding that the Koerms were liable for NCE's debt was supported by the facts and the law and, therefore, the finding was not against the manifest weight of the evidence.

¶ 10 The Koerms contend that the trial court erred when it found that Lasse had authority to sign for NCE. Their argument is limited to the following statement: "Time pressure and limited ability to research combine to prevent review and argument."

¶ 11 Illinois Supreme Court Rule 341(h)(7) (West 2012) (eff. Feb. 6, 2013) requires the appellant to set forth the reasons for his contentions, with citations to authority and citations to the pages of the record on which he relies. The statement quoted above does not satisfy the requirement of Rule 341(h)(7). Therefore, the claimed error is forfeited.

¶ 12 The Koerms contend that the plaintiff presented perjured testimony. Review of this issue is precluded by the lack of a sufficient record. Therefore, we reject the Koerms' contention that error occurred.

¶ 13 The Koerms contend that Lasse was denied his right to a jury trial. Since there is sufficient evidence in the record on appeal, we will address the claimed error.

¶ 14 Section 2-1105(a) of the Code provides that a defendant's jury demand must be filed no later than the filing of his answer or it is waived. 735 ILCS 5/2-1105(a) (West 2010).

Where good cause is shown, the trial court has discretion to allow a party to file a late jury demand. *Malatesta v. Winzeler*, 271 Ill. App. 3d 367, 369-70 (1995).

¶ 15 The record on appeal does not contain Lasse's answer to the original complaint. On April 25, 2012, Lasse filed an answer to the amended complaint on behalf of Kaia, NCE and himself. On May 23, 2012, Circuit Court Judge Thomas R. Mulroy, Jr. entered an order striking the appearances and answers of Kaia and NCE. Judge Mulroy ordered Lasse to file an appearance by May 25, 2012. On June 4, 2012, Lasse filed his appearance and a jury demand. Kaia and NCE, now represented by counsel, also filed appearances and answers but did not file jury demands.

¶ 16 On March 20, 2013, the plaintiff filed a motion to strike Lasse's June 4, 2012 jury demand as untimely under section 2-1105(a) of the Code. Attached to the motion was a printout of the electronic record of the circuit court's filings which reflected that Lasse filed an answer to the original complaint on July 1, 2011. In response to the motion to strike, Lasse raised his right to a jury trial under the seventh amendment to the United States Constitution (U.S. Const. amend. VII). On April 1, 2013, Judge Mulroy denied the motion to strike the jury demand but did not state the basis for his ruling. On May 6, 2013, the plaintiff refilled the motion to strike the jury demand.

¶ 17 On May 7, 2013, the case was reassigned to Circuit Court Judge Mary A. Mulhern for trial. On May 9, 2013, after hearing arguments, Judge Mulhern entered an order striking Lasse's jury demand and ordering that the case proceed as a bench trial the following day.

¶ 18 On appeal, Lasse argues that he was denied his right to a jury trial pursuant to the seventh amendment of the United States Constitution. Lasse does not claim that section 2-1105(a) of the Code violated the seventh amendment or that he complied with section 2-1105(a) of the Code; he merely states that he filed his jury demand several months before the trial. The record reflects that Lasse answered the complaint July 1, 2011 and answered the

amended complaint in April 25, 2012. His jury demand was not filed until June 4, 2012 and, therefore, was untimely. Judge Mulroy's denial of the plaintiff's motion to strike Lasse's jury demand is not supported by the record before us. On the other hand, the untimeliness of Lasse's jury demand supports Judge Mulhern's decision to strike it. Finally, Lasse does not argue that he sought to file a late jury demand at any time during these proceedings.

¶ 19 Lasse provides no argument or case authority to support his contention that the striking of his jury demand violated the seventh amendment. Lasse's jury demand failed to comply with section 2-1105(a) of the Code, and Lasse failed to establish that he complied with that section. Based on the record, we conclude that Lasse's jury demand was properly stricken.

¶ 20 Finally, the Koerms contend that since Lasse was a citizen of Norway and the amount in controversy exceeded \$75,000, the plaintiff was required to file the lawsuit in federal district court. Lasse acknowledges that he had not previously objected to the circuit court's jurisdiction. Since the evidence necessary to resolve this issue is contained in the record on appeal, we will address this issue.

¶ 21 The Koerms' reliance on Title 28 Section 1332(a) of the United States Code (28 U.S.C. § 1333 (a) (2011)) is misplaced. Section 1332(a) creates diversity jurisdiction in federal courts where the amount in controversy exceeds \$75,000 and is between "citizens of a State and citizens or subjects of a foreign state ***." 28 U.S.C. § 1332(a)(2) (2011). "A civil action otherwise removable solely on the basis of jurisdiction under section 1332(a) of this title [citation] may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought." 28 U.S.C. § 1441(b) (2) (2011).

¶ 22 The Koerms acknowledge that the circuit court's jurisdiction over Kaia and NCE in this lawsuit was proper: Kaia is a United States citizen and a resident of Cook County, Illinois, and NCE is a Michigan corporation with its principal place of business in Niles, Illinois. See 28 U.S.C. § 1332 (c) (2011). Even if Lasse had sought a transfer to federal court based on diversity jurisdiction, both Kaia and NCE, by virtue of the location of its principal office in Illinois, are citizens of the State of Illinois for the purposes of diversity jurisdiction. Thus, there is no diversity, and the transfer request would have been denied. 28 U.S.C. § 1441(b) (2) (2011).

¶ 23 In summary, the Koerms' violations of our supreme court rules resulted in summary affirmance or forfeiture of several issues raised on appeal. We conclude that Lasse's jury demand was properly stricken, and we reject the Koerms' argument for transfer to federal district court since there is no diversity jurisdiction in this case. Since NCE failed to file an appellant's brief in this case, its appeal is dismissed. See *First Capital Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131 (1976) (a reviewing court has the inherent power to dismiss an appeal if the appellant's brief is not filed within the time prescribed by the rules).

¶ 24 The judgment of the circuit court is affirmed.

¶ 25 Nos. 1-13-3341 & 1-13-3342, Affirmed.

¶ 26 No. 1-13-3343, Dismissed.