

No. 1-14-0756, 14-1411, 14-2513 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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

WESTERN CAPITAL PARTNERS, LLC, a)	Appeal from the
Colorado limited liability company,)	Circuit Court of
)	Cook County
Plaintiff and Counterdefendant-Appellee,)	
)	
v.)	No. 07 CH 23740
)	
JACKSON PARK PINNACLE PLAZA, LLC,)	
an Illinois limited liability company;)	
RIDGELAND EAST END, LLC, an Illinois)	
limited liability company; RIDGELAND)	
CORPORATION, an Illinois corporation;)	
UNITED LEGAL FOUNDATION; RUFUS)	
COOK; and BARBARA REVAK,)	
)	
Defendants , Counterplaintiffs and Third-party)	
Plaintiffs-Appellants,)	
)	
and)	
)	
GREGORY E. PERKINS; LAURA M.)	
PERKINS; LOUIS M. JONES; BARBARA)	
JONES; SHIVPRASAD S. AGRWAL a/k/a)	
SHILU AGRAWAL; INDRA S.)	
AGRAWAL; and PURITAN FINANCE)	
CORPORATION)	

)	
Defendants, Counterdefendants-Appellees,)	
)	
and)	
)	
6101 KENWOOD, LLC, an Illinois limited)	
liability company; CHICAGO)	
CONDOMINIUM DEVELOPERS, LLC,)	
An Illinois limited liability company;)	
OREAL JONES; UNKNOWN OWNERS;)	
UNKNOWN TENANTS; UNKNOWN)	
SPOUSES; UNKNOWN HEIRS and)	
NONRECORD CLAIMANTS,)	
)	
Defendants –Appellees,)	
)	
v.)	
)	
CHICAGO TITLE & TRUST)	
COMPANY, CHICAGO TITLE)	
INSURANCE COMPANY,)	
)	
Third-Party Defendants -Appellees,)	
)	
and)	
)	
GUARANTY BANK OF COLORADO;)	
COMMUNITY BANKS OF COLORADO;)	
J. MARK FISHER; SHIFFHARDEN, LLP;)	
HATCHJACOBS, LLC; RPC REALTY)	
LLC; MPG GLOBAL REAL ESTATE, LLC;)	
RODERICK SAWYER; and JEFFERY)	
DEER,)	Honorable
)	Neil H. Cohen,
Third-Party Defendants.)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* This court lacks jurisdiction to entertain these consolidated appeals.

¶ 2 These three appeals are from orders of the circuit court of Cook County in its case No. 07 CH 23740. Appeal No. 1-14-0756 arises out of a notice of appeal filed by the defendant, Jackson Park Pinnacle Plaza, LLC (Jackson Park), on March 14, 2014, and is addressed to orders of the circuit court entered on January 6, 2014, and February 13, 2014. Appeal No. 1-14-1411 arises out of a notice of appeal filed by Jackson Park on May 13, 2014, and is addressed to orders of the circuit court entered on January 6, 2014, and April 14, 2014. Appeal No. 1-14-2513 arises out of a notice of appeal filed by the defendants, counter-plaintiffs and third-party plaintiffs Jackson Park, Rufus Cook, Barbara Revak, Ridgeland East End, LLC, Ridgeland Corporation and United Legal Foundation on August 15, 2014, and is addressed to an order of the circuit court entered on July 16, 2014. In their brief, the third-party defendants, Chicago Title & Trust Company and Chicago Title Insurance Company (collectively referred to as Chicago Title) challenge this court's jurisdiction to entertain each appeal.

¶ 3 In response to the challenge to our jurisdiction, the appellants appear to assert in their brief that we have "the power and duty to vacate orders void for lack of jurisdiction," contending that the circuit court lacked jurisdiction to enter the orders appealed from as a consequence of bankruptcies filed by several parties to the action, and, as to the order of July 16, 2014, by reason of the pendency of the two earlier appeals. However, as Chicago Title correctly argues, the issue of voidness must be raised in the context of a case properly pending in this court. That is to say, in order for us to address an argument that an order of the circuit court is void, we must have jurisdiction over the appeal in the first instance. If we lack jurisdiction, we cannot grant any relief, even from an order of the circuit court which is void. *People v. Flowers*, 208 Ill. 2d 291, 308 (2003). For the reasons which follow, we dismiss all three appeals for lack of jurisdiction.

¶ 4

Appeal No. 1-14-0756

¶ 5 In its notice of appeal filed on March 14, 2014, Jackson Park sought the reversal of an order of the circuit court entered on January 6, 2014, which granted the motion of the plaintiff, Western Capital Partners, LLC, to voluntarily dismiss its second-amended complaint, and an order entered on February 13, 2014, modifying the January 6, 2014, order. At the time of the entry of the orders to which the March 14, 2014, notice of appeal is addressed, there remained pending and undetermined counterclaims and third-party claims filed by the defendants, Ridgeland East End, LLC, Richland Corporation, United Legal Foundation, Rufus Cook and Barbara Revak.

¶ 6 Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) provides, in relevant part, that:

"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."

The rule applies to claims pled in a counterclaim and, therefore, bars an appeal in circumstances where counterclaims remain pending although the plaintiff's claims have been disposed of. See *Highway Industries, Inc. v. Trailer Leasing Co., Inc.*, 48 Ill. App. 3d 235, 236 (1977).

¶ 7 The circuit court did not make an express written finding that there was no just reason to delay enforcement or appeal from its orders of January 6, 2014 or February 13, 2014, either at the time the orders were entered or at any time thereafter before the notice of appeal was filed on March 14, 2014. Absent the requisite Rule 304(a) finding, the filing of the notice of appeal on March 14, 2014, did not vest this court with jurisdiction to entertain an appeal from either of the orders to which it is addressed. Consequently, we dismiss appeal No. 1-14-0756 for want of jurisdiction.

¶ 8

Appeal No. 1-14-1411

¶ 9 The notice of appeal filed by Jackson Park on May 13, 2014, sought the reversal of orders of the circuit court entered on January 6, 2014, and April 14, 2014. As noted earlier, the order of January 6, 2014, granted the plaintiff's motion to voluntarily dismiss its second-amended complaint, and the order of April 14, 2014, denied a motion to vacate the order of January 6, 2014. At the time of the entry of these orders, however, there were counter-claims and third-party claims that remained pending and undetermined. Again, the circuit court did not make written findings as required under Rule 304(a), either at the time of the entry of its orders on January 6, 2014, and April 14, 2014, or at any time thereafter prior to the filing of Jackson Park's notice of appeal on May 13, 2014. For the same reasons supporting our dismissal of appeal No. 14-0756, we also dismiss appeal No. 1-14-1411 for want of jurisdiction.

¶ 10

Appeal No. 1-14-2513

¶ 11 The notice of appeal filed on August 15, 2014, by the defendants, counter-plaintiffs and third-party plaintiffs, Jackson Park, Rufus Cook, Barbara Revak, Ridgeland East End, LLC, Ridgeland Corporation and United Legal Foundation, is addressed to an order of the circuit court entered on July 16, 2014, which granted Chicago Title's motion to dismiss count VIII of the appellants' second-amended counterclaim, asserting an action for breach of fiduciary duty by Chicago Title.

¶ 12 Of the three consolidated appeals, this appeal presents the most difficulty from a jurisdictional standpoint. The record consists of over 68 volumes, and the parties to this appeal have not presented the court with a concise statement as to which counts of the second-amended counterclaim, if any, remained pending after the entry of the circuit court's order of July 16, 2014. As a consequence, the court was required to wade through a voluminous record in order to

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determine whether we have jurisdiction to entertain this appeal. In its brief, Chicago Title challenges this court's jurisdiction to "review any orders." Chicago Title asserts that the appellants "do not state that all claims have been resolved," but Chicago Title did not bother to direct this court to which of the counterclaims remain pending and undetermined.

¶ 13 The court has reviewed the record and concludes that, at a minimum, counts II, XI and XVIII remain pending against Guaranty Bank of Colorado and Community Bank of Colorado. It would also appear that claims may remain pending against Gregory Perkins, RPG Real Estate, LLC, MPG Global Real Estate, LLC, Indera Agrawal, and Barbara Jones. The circuit court did not make an express written finding that there was no just reason to delay enforcement or appeal from its order of July 16, 2014, which granted Chicago Title's motion to dismiss count VIII of the second-amended counterclaim, either at the time that the order was entered or at any time thereafter before the notice of appeal was filed on August 15, 2014. Absent the requisite Rule 304(a) finding, the filing of the notice of appeal on August 15, 2014, did not vest this court with jurisdiction to entertain an appeal from the order to which that notice is addressed. Consequently, we dismiss appeal No. 1-14-2513 for want of jurisdiction.

¶ 14 No. 1-14-0756 Dismissed.

¶ 15 No. 1-14-1411 Dismissed.

¶ 16 No. 1-14-2513 Dismissed.