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FIFTH DIVISION
December 11, 2015

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

EDWARD CRESSY, as an Individual and as a Partner)	Appeal from the
in UnNamed Partnership; UNNAMED PARTNERSHIP,)	Circuit Court of
an Illinois Partnership,)	Cook County.
)	
Plaintiffs-Appellants,)	
)	
v.)	No. 13 L 14384
)	
LARS GEARY, as an Individual and as a Partner in)	
UnNamed Partnership; LEE CHRISTNER; MARK)	
HAMID; ROB SLOVIN; FINDTICKETS.COM, an)	
Illinois Corporation; and JUSTGREATTICKETS.COM,)	
an Illinois Corporation,)	The Honorable
)	Patrick J. Sherlock,
Defendants-Appellees.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Gordon and Palmer concurred in the judgment.

ORDER

¶ 1 *HELD:* This court lacks jurisdiction to consider the instant appeal where claims remain pending before the circuit court and the circuit court did not provide Illinois Supreme Court Rule 304(a) language vesting this court with jurisdiction.

¶ 2 Plaintiffs, Edward Cressy, as an individual and as a partner in UnNamed Partnership, and UnNamed Partnership, appeal the dismissal of their five-count complaint related to an oral partnership agreement for the purchase and sale of athletic game tickets in favor of defendants, Lars Geary, as an individual and as a partner in UnNamed Partnership, Lee Christner, Mark Hamid, Rob Slovin, FindTickets.com, an Illinois corporation, and JustGreatTickets.com, an Illinois corporation. Plaintiffs contend the circuit court erred in dismissing their complaint where purchasing of the professional sports tickets was a legal action that could be separated from the illegal enterprise of selling the tickets for a profit without a license. As a result, plaintiffs argue that defendants engaged in fraud, conversion, breach of their fiduciary duty, and tortious interference with the parties' contract. Based on the following, we dismiss this appeal for lack of jurisdiction.

¶ 3 **FACTS**

¶ 4 In approximately February of 2006, Cressy and Geary entered into an oral partnership agreement to act as ticket brokers for season tickets issued by a particular sports team. The partnership was referred to as the UnNamed Partnership. It was never registered with any governmental entity. The purpose of the partnership was to purchase season tickets and then to resell the individual game tickets at a profit. If the sports team were to participate in the playoffs, the process would be repeated with playoff tickets. Cressy and Geary never entered into a written partnership agreement.

¶ 5 According to plaintiffs' complaint, the terms of the verbal agreement were that Cressy provided funding for the purchase of the tickets and participated in the selling of the tickets, while Geary provided the day-to-day operational services, which included record keeping, receiving and disbursing funds, ordering tickets, recruiting "straw purchasers" for said tickets,

and selling the tickets to the UnNamed Partnership's customers. Cressy was to receive \$360,000 per year and Geary was to receive \$50,000 per year. Cressy and Geary agreed to share equally in any excess profits. Plaintiffs' complaint provided that "Cressy and/or the Partnership acquired for the use of the UnNamed Partnership 66 Team season tickets" in the names of Geary, Christner, Geary's stepfather, and Jane Doe, an alias.

¶ 6 Plaintiffs' complaint alleged that prior to November 2012, Geary advised defendants Hamid, Slovin, FindTickets.com, and JustGreatTickets.com (defendant competitors) of his desire to purchase an ice skating rink in Wisconsin. Geary, however, lacked the necessary funds to complete the purchase. In response, Hamid arranged for defendant competitors to pay Geary \$150,000 in exchange for the sale or assignment of the 66 season tickets. Geary agreed to transfer to defendant competitors the exclusive use and benefit of the 66 season tickets in exchange for \$150,000 in November 2012.

¶ 7 Then, on March 28, 2013, Geary dissociated himself from Cressy and the UnNamed Partnership. According to the complaint, Geary informed Cressy that he intended to treat all 66 tickets as his sole property, selling the tickets and retaining all proceeds for himself. Geary also advised Cressy that all future season tickets and playoff tickets would remain under Geary's sole control. The team in question entered the playoffs in 2013; therefore, Geary obtained playoff tickets and sold them "at a large profit."

¶ 8 On December 20, 2013, Cressy filed a five-count complaint against defendants alleging fraud, two separate counts of conversion, breach of fiduciary duty, and tortious interference with contract. In the fraud claim, Cressy alleged Geary willfully and wantonly misrepresented that, despite the fact that the tickets purchased with Cressy and/or the partnership's funds were in the names of Geary, Christner, and Jane Doe, all 66 season tickets were to be used only for the

benefit of the partnership. Cressy alleged he was financially injured by relying on Geary's misrepresentations in the form of the lost purchase price of the 66 season tickets, the loss of the 2013 playoff ticket sales, and the loss of future season and playoff tickets in perpetuity. In the fraud claim, Cressy admitted that "as partners in the UnNamed Partnership, [he and Geary] were concerned that the Team had identified Plaintiff Cressy as a Ticket Broker. Consequently, the partners decided not to purchase any of said 66 season tickets in Plaintiff Cressy's name, because they feared said tickets would be canceled by the Team." In his conversion claim against Geary and Christner, Cressy alleged they improperly exercised control of the tickets, relying on the same losses alleged in the fraud count. In his conversion claim against Hamid and defendant competitors, Cressy alleged they improperly exercised control over the partnership's property, again relying on the same losses alleged in the fraud count. In his breach of fiduciary duty claim against Geary, Cressy alleged Geary owed him a duty under their partnership agreement. In his tortious interference with a contract claim, Cressy alleged defendant competitors knew of and interfered with his and Geary's partnership agreement.

¶ 9 On February 3, 2014, defendants Geary, Christner, Hamid, Slovin, and JustGreatTickets.com filed a section 2-619.1 motion to dismiss (735 ILCS 5/2-619.1 (West 2012)). In the section 2-615 portion of the motion, defendants argued that plaintiffs' complaint failed to sufficiently state a cause of action where plaintiffs had no property interest in the season ticket rights or any renewal rights related thereto. In the section 2-619 portion of the motion, defendants argued the partnership was based upon an agreement to operate an unlicensed ticket broker business that made unlawful sales of amusement tickets for a profit.

¶ 10 The circuit court granted defendants' motion in part and denied it in part, ultimately dismissing plaintiffs' complaint. In an April 21, 2014, written order, the circuit court found that,

pursuant to section 2-615, plaintiffs did sufficiently plead a cause of action where the question of whether plaintiffs had a property interest in the season tickets merely affected the amount of damages suffered. The court, therefore, denied defendants' section 2-615 motion to dismiss. With regard to defendants' section 2-619 motion to dismiss, the circuit court found that the partnership agreement violated the Illinois Ticket Sale and Resale Act (Act) (815 ILCS 414/1.5 (West 2006)); therefore, plaintiffs had no basis for recovery. The court granted the 2-619 motion to dismiss with prejudice as to all defendants except FindTickets.com. A status date was provided for the claims against FindTickets.com.

¶ 11 Plaintiff subsequently filed a motion for reconsideration, arguing that since plaintiffs were not involved in the resale of any of the 66 playoff tickets, they had not violated the Act. According to plaintiffs, they were simply "compiling" tickets, not selling them, and defendants took control of the tickets before plaintiffs could have committed a violation by selling them for profit without a license. On September 25, 2014, plaintiffs' motion to reconsider was denied. The record, however, does not contain an order determining the outstanding claims against FindTickets.com nor does the record contain an Illinois Supreme Court Rule 304(a) finding that there was no just reason for delaying the appeal of its April 21, 2014, or September 25, 2014, orders.

¶ 12 ANALYSIS

¶ 13 Plaintiffs contend the circuit court erred in dismissing their complaint where they were never involved in the resale of the 2013 playoff tickets, and, therefore, did not violate the Act, which only prohibits the resale of tickets for profit.

¶ 14 As a threshold issue, we must address whether this court has jurisdiction to consider plaintiffs' contention. We recognize that neither party challenged our jurisdiction on appeal;

however, this court has an independent duty to consider our jurisdiction and dismiss the appeal where it is lacking. *Palmolive Tower Condominiums, LLC v. Simon*, 409 Ill. App. 3d 539, 542 (2011).

¶ 15 Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) 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 finding that there is no just reason for delaying either enforcement or appeal or both. *** In 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. R. 304(a).

Here, the circuit court's April 21, 2014, order granted section 2-619 dismissal with prejudice as to all defendants except FindTickets.com, which was not named in the motion to dismiss. Consequently, based on the record before this court, the two claims filed against FindTickets.com remain unresolved. There is no dispute that neither the April 21, 2014, dismissal order nor the September 25, 2014, orders did not contain Rule 304(a) language. There is nothing in the record revealing a final judgment as to all of plaintiffs' claims. Without Rule 304(a) language or evidence of a final judgment as to all of plaintiffs' claims, this court has no jurisdiction to consider plaintiffs' appeal. "Absent a supreme court rule, the appellate court is without jurisdiction to review judgments, orders or decrees which are not final." *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419, ¶ 9. We, therefore, must dismiss plaintiffs' appeal.

1-14-3303

¶ 16

CONCLUSION

¶ 17 We dismiss plaintiffs' appeal.

¶ 18 Appeal dismissed.