

FOURTH DIVISION  
September 17, 2015

No. 1-14-3914

**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 JUDICIAL DISTRICT

---

JOSEPHINE LOPEZ, TRUSTEE OF	)	Appeal from the
LOUIS BORIL LIVING TRUST	)	Circuit Court of
DATED NOVEMBER 6, 2006,	)	Cook County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 14 M1 711470
	)	
ALLYSON AGUILERA,	)	Honorable
	)	Raymond Funderburk,
Defendant-Appellant.	)	Judge Presiding.

---

JUSTICE COBBS delivered the judgment of the court.  
Justices Fitzgerald Smith and Ellis concurred in the judgment.

**O R D E R**

- ¶ 1 **Held:** *Pro se* defendant forfeited her arguments on appeal concerning a complaint for forcible entry and detainer and related real estate contracts when she consented to an agreed order with plaintiff that an order of possession would be entered in favor of plaintiff if defendant did not obtain a loan commitment letter by a certain date; alternatively, defendant forfeited her remaining arguments on appeal when

she did not first raise them in the trial court and did not fully develop them in her brief.

¶ 2 *Pro se* defendant Allyson Aguilera appeals from the circuit court's order of possession for real property in favor of plaintiff Josephine Lopez, trustee of Louis Boril Living Trust dated November 6, 2006, pursuant to an agreed order between the parties. On appeal, defendant contends that: (1) plaintiff's complaint was defective in various ways, including being brought under the wrong statute and lacking subject-matter jurisdiction; (2) she attempted to comply with various obligations in the parties' 2012 contract but could not do so because of plaintiff's failure to comply with the 2012 contract; and (3) generally, the trial court denied her due process, a fair lawsuit and violated statutory procedures. For the reasons that follow, we affirm.

¶ 3 On May 28, 2014, plaintiff filed a verified complaint for forcible entry and detainer seeking forfeiture of a real estate purchase contract with defendant and her former husband, Jose Aguilera, who is not a party to this appeal. Additionally, the complaint sought immediate possession of a property located at 3611 West 27th Street in Chicago.

¶ 4 The complaint alleged that on November 24, 2009, plaintiff and defendant agreed to a real estate purchase contract for the price of \$90,000 for the property. Pursuant to the terms of the 2009 contract attached to the complaint, defendant bought the property "as is," took immediate possession of the property and was required to pay all real estate taxes becoming due after January 1, 2010. However, the complaint alleged that defendant failed to pay \$7,979.05 of the real estate taxes owed on the property since 2010.

¶ 5 The complaint alleged that on approximately January 25, 2012, an adult occupant at the property named "Consuella" was personally served with a notice of default and demand for possession. Plaintiff also sent a copy of the same to defendant at the property.

¶ 6 The complaint alleged that approximately two weeks later, plaintiff made a written offer to defendant to reduce the purchase price of the property to \$60,000 plus the unpaid balances of real estate taxes owed by defendant if she cured certain defaults in the 2009 contract. Defendant never responded in writing to plaintiff's offer, but orally agreed to the offer, according to the complaint.

¶ 7 The complaint also alleged that on approximately December 5, 2012, plaintiff agreed to a modified real estate purchase contract with Aguilera with defendant's consent. The 2012 contract reduced the purchase price of the property to \$60,000, required Aguilera to pay plaintiff \$1,000 monthly installments until the purchase price was met and extended the closing date for the property, among other modifications. According to the complaint, Aguilera "assume[d] all of the obligations of [defendant] under the 2009" contract.

¶ 8 Relying on the 2012 contract, plaintiff allowed defendant and Aguilera to maintain possession of the property. Only some of the payments required under the 2012 contract were made to plaintiff.

¶ 9 The complaint alleged that plaintiff sent multiple notices of default to defendant and Aguilera, demanding full payment for the property. Eventually, plaintiff filed her complaint for forcible entry and detainer, seeking forfeiture and immediate possession of the property.

¶ 10 Defendant filed a *pro se* appearance and made a demand for a jury trial. Subsequently, an attorney entered an additional appearance on behalf of defendant and filed an answer along with affirmative defenses.

¶ 11 On September 11, 2014, the parties settled on an agreed order, which, in pertinent part, stated that:

"Plaintiff and defendant Allyson Aguilera having settled and signed this agreement with these terms: \*\*\* If defendant Allyson Aguilera does not have a loan commitment letter to purchase the property within 60 days, on or before [November] 10, 2014, and defendant Allyson Aguilera has not vacated the property, plaintiff shall be entitled to an order of possession *instanter* with no stay of execution thereon."

The agreed order also stated that Aguilera had defaulted and his right to possession of the property was terminated. The parties agreed to a status date of November 14, 2014, to ensure "settlement compliance."

¶ 12 At the subsequent court date, plaintiff's counsel did not appear in court, and the trial court dismissed plaintiff's case for want of prosecution. However, six days later, plaintiff moved to vacate the dismissal for want of prosecution, arguing that he attempted to check in with the trial court's clerk on November 14, 2014, but the clerk was unavailable. He then became occupied with other matters in different courtrooms.

¶ 13 Approximately three weeks later, the trial court vacated the order dismissing plaintiff's case for want of prosecution and entered an order of possession pursuant to the parties' agreed

order stating that plaintiff was entitled to immediate possession of the property. This appeal followed.

¶ 14 On appeal, defendant makes various arguments alleging defects in plaintiff's complaint for forcible entry and detainer, including that it was brought under the wrong statute and lacked subject-matter jurisdiction. Additionally, defendant makes various arguments concerning the 2012 contract, and general allegations that the trial court did not afford her due process, did not provide her a fair lawsuit, and violated statutory procedures.

¶ 15 We conclude that defendant forfeited her arguments related to the underlying contracts and the alleged procedural deficiencies in plaintiff's complaint by consenting to the agreed order with plaintiff. An agreed order, sometimes referred to as a consent decree or consent order, is a record of a parties' private, contractual agreement rather than an adjudication of their rights. *In re Marriage of Rolseth*, 389 Ill. App. 3d 969, 971 (2009). Because the parties acquiesce to an agreed order, it can supersede the parties' pleadings. *City of Marseilles v. Radke*, 287 Ill. App. 3d 757, 760 (1997). Moreover, "agreed orders are generally not subject to appeal or attack." *People ex rel. Devine v. Murphy*, 181 Ill. 2d 522, 538 (1998); see also *McGath v. Price*, 342 Ill. App. 3d 19, 31 (2003); *Olsen v. Staniak*, 260 Ill. App. 3d 856, 861 (1994). The exception to the general rule occurs when there is newly discovered evidence, or the order resulted from a gross disparity in the capacity or position of the parties, coercion, incompetence of one the parties or fraudulent misrepresentation. *Murphy*, 181 Ill. 2d at 538; *McGath*, 342 Ill. App. 3d at 31; *In re Haber*, 99 Ill. App. 3d 306, 309 (1981). Generally, if a party wants to modify an agreed order, the proper course of action is to file a motion to vacate the order under either section 2-1301 or section 2-

1401 of the Code of Civil Procedure, depending on when the motion is filed. 735 ILCS 5/2-1301, 2-1401 (West 2014); see *Draper & Kramer, Inc. v. King*, 2014 IL App (1st) 132073, ¶¶ 24-25.

¶ 16 In the present case, defendant's acquiescence to the agreed order superseded plaintiff's complaint for forcible entry and detainer, and defendant's answer and affirmative defenses. See *Radke*, 287 Ill. App. 3d at 760. Furthermore, defendant never moved to vacate the agreed order in the trial court nor argues on appeal that any of the exceptions apply to allow her to attack the agreed order. Accordingly, to the extent that defendant's arguments on appeal attack the underlying contracts and the alleged procedural deficiencies in plaintiff's complaint, we find them without merit. See *Murphy*, 181 Ill. 2d at 538.

¶ 17 Additionally, to the extent there are any other arguments made by defendant on appeal, we find that defendant has forfeited those arguments for being raised on appeal for the first time. See *Concord Air, Inc. v. Malarz*, 2015 IL App (2d) 140639, ¶ 24 ("Issues not raised in the trial court generally are forfeited and may not be raised for the first time on appeal."). Furthermore, to the extent any of defendant's arguments survive forfeiture on this basis, we find she has forfeited her remaining arguments by failing to fully develop them on appeal. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (stating "[p]oints not argued are waived").

¶ 18 Finally, plaintiff requests sanctions from defendant for filing a frivolous appeal and failing to follow the rules of appellate procedure. Illinois Supreme Court Rule 375 (eff. Feb. 1, 1994) allows reviewing courts to impose sanctions upon a party who has "wilfully failed to comply with the appeal rules" or if the appeal itself is "frivolous" and "not taken in good faith." Frivolous appeals are "for an improper purpose, such as to harass or to cause unnecessary delay

or needless increase in the cost of litigation." Ill. S. Ct. R. 375 (eff. Feb. 1, 1994). However, Rule 375 sanctions are left entirely to the discretion of the reviewing court. *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 87. Only when a *pro se* litigant's appeal is "sufficiently egregious" may sanctions be awarded against her. *Id.*

¶ 19 In the present case, we do not believe that defendant's appeal is "sufficiently egregious" to warrant sanctions. We agree with plaintiff that defendant never sought relief for many of her arguments in the trial court, and she failed to follow the rules of appellate procedure. For example, defendant's statement of facts is argumentative, and she fails to support her arguments with proper citations to the record, all in violation of Illinois Supreme Court Rule 341(h)(6), (7) (eff. Feb. 6, 2013). Nevertheless, her appeal does not rise to the requisite level of egregiousness to necessitate sanctions. Accordingly, we deny plaintiff's request for sanctions against defendant.

¶ 20 For the reasons stated above, we affirm the order of the circuit court of Cook County.

¶ 21 Affirmed.