

No. 1-15-1843

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

GK DEVELOPMENT, INC., an Illinois Corporation, and)	Appeal from the
COLLEGE SQUARE MALL DEVELOPMENT, LLC, a)	Circuit Court of
Delaware Limited Liability Company,)	Cook County.
)	
Plaintiffs-Appellees,)	
)	
v.)	No. 06 CH 3427
)	06 CH 3586
IOWA MALLS FINANCING CORPORATION, a)	
Delaware Corporation, COLLEGE SQUARE MALL)	
ASSOCIATES, LLC, a Delaware Limited Liability)	
Company, and CHICAGO TITLE AND TRUST)	
COMPANY, an Illinois Corporation,)	Honorable
)	Neil H. Cohen,
Defendants-Appellants.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court had jurisdiction to enter stay order in proceedings after remand; the trial court did not abuse its discretion and therefore the trial court's order granting Buyer's motion for a stay in the remanded action is affirmed.

¶ 2 This is the second appeal arising out of the sale of several shopping malls by Iowa Malls Financing Corporation and College Square Mall Associates, LLC (collectively, Seller) to GK Development, Inc., and College Square Mall Development, LLC (collectively, Buyer). In the first appeal, Buyer also filed suit alleging that Seller had breached the sales contract and, therefore, Buyer was entitled to receive a \$4.3 million holdback as liquidated damages from Seller's proceeds. Buyer also filed a separate suit against Seller for breach of contract regarding the parking lot and certain improvements that Buyer had to make to the parking lot, totaling \$530,294.86 in damages. The parking lot case and the liquidated damages cases were eventually consolidated for trial.

¶ 3 After the trial court entered a judgment finding Seller was entitled to the entire holdback, the trial court dismissed Buyer's parking lot claims as moot because under the contract, any damages from the parking lot claims would have been deducted from the holdback and the court had already awarded Buyer the entire holdback. On appeal, we reversed the trial court's judgment granting Buyer the entire holdback after determining that \$4.3 million in liquidated damages functioned as an unenforceable penalty clause. We remanded the action to the trial court to determine actual damages as a result of the Seller's breach. We also remanded Seller's claim to attorney fees and costs.

¶ 4 While the case was on remand, Buyer refiled the parking lot claims it had against Seller, which the trial court had previously dismissed as moot. The parking lot claims were transferred to the judge handling the remanded action. Seller sought dismissal of the parking lot claims, and the trial court judge granted the dismissal. Buyer appealed the trial court's ruling dismissing its

parking lot claims and also filed a motion to stay the proceedings in the remanded action until the parking lot claims were resolved on appeal. The trial court granted the stay, and Seller now appeals the trial court's ruling. In this order, we are asked to determine whether the trial court erred in granting Buyer's motion for a stay of proceedings in the remanded action. For the reasons that follow, we affirm the judgment of the trial court.

¶ 5

I. BACKGROUND

¶ 6 In the prior appeal in this case, Seller appealed the trial court's ruling that Buyer was entitled to the entire \$4.3 million holdback from Seller's proceeds. In the Notice of Appeal, Seller indicated that it was appealing the trial court's ruling relating to the holdback in the consolidated cases. The notice listed the parking lot lawsuit as a "related" case. Buyer separately appealed the trial court's ruling, but only with respect to the trial court judge's denial of postjudgment interest.

¶ 7 On December 19, 2013, we issued an opinion finding that the \$4.3 million holdback was not an enforceable liquidated damages provision because it was an unenforceable penalty clause. In doing so, we remanded the matter to the trial court with instructions that stated: "Upon remand, the trial court is directed to afford Buyer an opportunity to prove actual damages it suffered as a result of the 91-day delay, deduct such damages from the escrow to be awarded to Buyer, and order the release of the remaining funds to Seller. Seller's claim concerning attorney fees is also remanded to the trial court with instructions to decide the issue of breach by Buyer, including the issue of attorney fees and costs." We did not address the parking lot claims and the parties did not present any argument relating to those claims in the prior appeal.

¶ 8 On September 17, 2014, following remand, Buyer filed a lawsuit seeking declaration that they had satisfied their contractual obligations with regard to the parking lot and were thus

entitled to \$530,294.86 from the holdback, plus interest, fees, and costs. Buyer also sought specific performance, seeking the same amount from the holdback. On Buyer's motion, the parking lot case was transferred to the same docket where the remanded action was being heard, where it was considered a "related" case but was not consolidated with the remanded action.

¶ 9 The trial court judge in the remanded action and now the related parking lot action directed the parties to submit briefs on whether he had jurisdiction to consider Buyer's parking lot claims in the remanded action. Following briefing, the trial court found that the parking lot claims were not part of the case on remand and anticipated that Seller would file a motion to dismiss the parking lot claims.

¶ 10 Seller filed an amended motion to dismiss Buyer's parking lot claims arguing that those claims did not sound in equity. Seller also argued that the remanded action was limited to the scope of the instructions given by the appellate court upon remand, and that the parking lot claims fell outside that scope. Seller further argued that Buyer's claims were barred by the rule of waiver, doctrine of laches, the rule against claim-splitting, and the law-of-the-case.

¶ 11 Buyer responded by arguing that their claims in the parking lot case, which included specific performance, were equitable and of the type regularly used in real estate cases where an escrowee is holding disputed funds. Buyer argued that dividing the claims between two different courts would be an inefficient use of judicial resources. Buyer further argued that our remand did not preclude the trial court from addressing its parking lot claims in the remanded action because those parking lot claims were not addressed on appeal and were not at issue on appeal. Specifically, Buyer argues that it could not have appealed the trial court's order on the issue of the parking lot claims because Buyer was not prejudiced by the trial court's orders since Buyer was awarded the entire \$4.3 million holdback, which would have included the funds at issue in

the parking lot claims. Buyer also argues that it could not waive issues on appeal that it legally could not pursue on appeal in the first place, that the doctrine of laches and rule against claim-splitting did not apply in this case, and there was no applicable law-of-the-case because the merits of Buyer's parking lot claims were never decided.

¶ 12 On May 15, 2015, the trial court judge issued an order granting Seller's motion to dismiss with prejudice. The court found that because Seller's notice of appeal in the prior appeal referenced the parking lot action as being "related", Seller "specifically sought reversal of the dismissal" of Buyer's parking lot claims and, accordingly, Buyer's dismissed parking lot claims were "properly before the appellate court on Seller's appeal." Upon issuing our remand order, which reversed the trial court's ruling that Buyer was entitled to the entire holdback, the trial court judge stated that Buyer should have raised their parking lot claims in a Supreme Court Rule 367 motion for rehearing, which Buyer did not do. The trial court judge further found that his jurisdiction was limited by our remand. As such, because the remand instructed the trial court to determine Buyer's actual damages and Seller's right to attorney fees and costs, the trial court judge could not decide other issues, including Buyer's parking lot claims.

¶ 13 On June 1, 2015, Buyer filed a notice of appeal challenging the trial court's ruling dismissing their parking lot claims with prejudice. Upon filing its appeal, Buyer also filed a motion to stay the proceedings in the remanded action pending the disposition of the appeal on Buyer's parking lot claims. Buyer argued that a stay was appropriate because, if the matters on remand were resolved, that would mean that most if not all of the holdback would be released before Buyer's appeal on the parking lot matter was resolved. This, Buyer argued, would deny Buyer any relief on its parking lot claims if it was successful on appeal. The trial court judge

granted the motion to stay, over Seller's objection. Seller timely filed a notice of appeal as to the trial court's ruling on the motion to stay.

¶ 14

II. ANALYSIS

¶ 15 This is an interlocutory appeal as a matter of right from an order granting a stay of proceedings under Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010). Rule 307 allows only the review of the order from which a party takes an appeal. *Panduit Corp. v. All States Plastic Manufacturing Co.*, 84 Ill. App. 3d 1144, 1151 (1980). An appeal under Rule 307 does not open the door to a general review of all orders entered by the trial court up to the date of the order that is appealed. *Id.* We review the trial court's grant of the motion to stay under the abuse of discretion standard. *CHB Uptown Properties, LLC v. Financial Place Apartments, LLC*, 378 Ill. App. 3d 105, 107 (2007).

¶ 16

A. Jurisdiction

¶ 17 First we must address Seller's argument that the trial court lacked jurisdiction to enter the order staying the proceedings in the remanded action. If the trial court did not have jurisdiction to enter such an order, that will necessarily end our analysis in this appeal.

¶ 18 Seller argues that the trial court exceeded the jurisdictional scope of authority conferred on it by the appellate court when it subordinated the remanded action to Buyer's appeal on its parking lot claims. Accordingly, Seller argues that "the trial court abused its discretion and exceeded the bounds of its jurisdictional mandate from this [appellate court] when it entered an order staying the remand proceedings ordered by this [appellate court] almost two years ago, in deference to the appeal in [the parking lot case]." More specifically, Seller argues that the language in this court's mandate on appeal was clear and only gave the trial court jurisdiction to determine two narrow issues: (1) actual damages suffered by Seller as a result of the 91-day

delay, which are to then be deducted from the holdback and awarded to Buyer, with the release of the remaining funds going to Seller, and (2) whether Seller is entitled to attorney fees and costs as a result of Buyer's breach of contract. As such, Seller argues that the court's order staying the remanded action until the parking lot appeal is resolved fell outside the scope of those two narrow issues and, accordingly, outside the scope of its jurisdiction on remand. We disagree.

¶ 19 The trial court has the ability to manage its docket as it sees fit. *Couri v. Korn*, 203 Ill. App. 3d 1091, 1094 (1990). The power of the trial court to stay proceedings is an attribute of its inherent power to control the disposition of the cases before it. *Vasa North Atlantic Insurance Co. v. Selcke*, 261 Ill. App. 3d 626, 628 (1994); *Philips Electronics, N.V. v. New Hampshire Insurance Co.*, 295 Ill. App. 3d 895, 901 (1998) (a circuit court may stay proceedings as part of its inherent authority to control the disposition of cases before it). Accordingly, when the trial court here was presented with a motion to stay in the remanded action, the trial court absolutely had jurisdiction to hear and rule upon that motion as part of its inherent authority to control its docket. *In re Marriage of Ludwinski*, 329 Ill. App. 3d 1149, 1152 (2002); *People v. Harrison*, 225 Ill. App. 3d 1059, 1060 (1992) ("where a reviewing court remands a cause, the court to which the cause is remanded has no jurisdiction to enter any orders other than those required in furtherance of, and in conformity with, the mandate."). We emphasize that the trial court was only asked to rule on a motion for a stay; it was not asked to rule on any substantive issues relating to the parking lot claims. As such, we find that there was no question that as part of the trial court's inherent ability to control its docket, it had jurisdiction to hear and rule on a motion for a stay in the proceedings on remand.

¶ 20 B. Trial Court's Ruling on the Motion for a Stay

¶ 21 Having found that the trial court had jurisdiction to hear and rule on the motion for a stay in the remanded action, we must now determine whether the granting of that ruling was an abuse of its discretion.

¶ 22 A stay order seeks to preserve the status quo existing on the date of its entry and does not address in any way the merits of the underlying dispute. *Kaden v. Pucinski*, 263 Ill. App. 3d 611, 615 (1994). The movant requesting the stay must make a sufficient showing to the circuit court that the stay is justified. *CHB Uptown Properties, LLC*, 378 Ill. App. 3d at 109; *Estate of Bass v. Katten*, 375 Ill. App.3d 62, 67 (2007). "[I]n all cases, the movant, although not required to show a probability of success on the merits, must, nonetheless, present a substantial case on the merits and show that the balance of the equitable factors weighs in favor of granting the stay." *Stacke v. Bates*, 138 Ill. 2d 295, 309 (1990). With respect to a substantial case on the merits, the court looks to "the movant's likelihood of success on the merits." *Id.* With respect to equitable factors, the court may consider "whether a stay is necessary to secure the fruits of the appeal in the event the movant is successful" and whether hardship on other parties would be imposed. *Id.* at 305-09. "If the balance of the equitable factors does not strongly favor movant, then there must be a more substantial showing of a likelihood of success on the merits." *Id.* at 309. In addition, the circuit court has discretion to consider factors such as the "orderly administration of justice and judicial economy," as well as its inherent authority to control the disposition of the cases before it. *Estate of Bass*, 375 Ill. App. 3d at 68; *Philips Electronics, N.V.*, 295 Ill. App. 3d at 901-02. "Unless the appeal is clearly frivolous, the circuit court should stay its proceedings for a reasonable length of time, until the appeal resolves the shared significant issue." *Khan v. BDO Seidman, LLP*, 2012 IL App (4th) 120359, ¶ 74.

¶ 23 Our review of an interlocutory appeal from an order granting a motion to stay proceedings is limited to a determination of whether the trial court abused its discretion in granting the stay. *Zurich Insurance Co. v. Raymark Industries, Inc.*, 213 Ill. App. 3d 591, 594 (1991); *Reed v. Doctor's Associates, Inc.*, 331 Ill. App. 3d 618, 627 (2002). Accordingly, we must analyze whether the trial court, in the exercise of its discretion, acted arbitrarily without conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial injustice resulted. *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 9; *Estate of Bass*, 375 Ill. App. 3d at 67. We may affirm the trial court's decision on any basis supported by the record regardless of whether it was relied upon by the trial court. *Joseph v. Collis*, 272 Ill. App. 3d 200, 206 (1995).

¶ 24 i. Equitable Factors

¶ 25 Here, Buyer seeks payment from the holdback on its parking lot claims, which is the same source of funds that the trial court was to disperse in its entirety in the remanded action. Buyer argues that the trial court did not abuse its discretion when it stayed the proceedings in the remanded action because: a stay will preserve the status quo by preserving the integrity of the holdback; Buyer is likely to succeed on its appeal relating to its parking lot claims since those claims could not be, and were not, addressed in the prior appeal and, therefore, can be resolved within the remanded action; the relative hardships as a result of the stay do not particularly favor Seller or tip the balance in their favor such that a stay would be inappropriate; and the stay promotes judicial economy and the orderly administration of justice.

¶ 26 In the event Buyer's parking lot claims are reinstated, a failure to uphold the stay could result in there being no funds to pay any judgment with respect to the parking lot claims. *Stacke*, 138 Ill. 2d at 305-09 (we may consider whether a stay is necessary to secure the fruits of the

appeal in the event the movant is successful). Further, the hardships between the parties are more or less equal as both are seeking to get their hands on money from the holdback, which neither one has had access to for several years. *Id.* (we may consider whether hardship on other parties would be imposed). Given the above facts, we find that the equitable factors weigh in favor of affirming the trial court's stay in the remanded action.

¶ 27 We acknowledge that this matter has been litigated for many years, which is one of Seller's concerns. However, we note that if the appeal on the parking lot claims is extended unnecessarily the parties can request that we lift the stay. *Kahn*, 2012 IL App (4th) 120359, ¶ 74; see also *Kensington's Wine Auctioneers & Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 17 (2009); *In re Estate of Barth*, 339 Ill. App. 3d 651, 668 (2003); *Illinois Founders Insurance Co. v. Guidish*, 248 Ill. App. 3d 116, 121 (1993).

¶ 28 ii. Substantial Case on the Merits

¶ 29 Seller argues that Buyer did not carry its burden in requesting a stay before the trial court because Buyer failed to show a likelihood of success on the merits of Buyer's parking lot claims. However, the likelihood of success on the merits is only one factor that may be considered when determining whether to grant a stay in any given case. Nevertheless, because we did not find any of Seller's arguments relating to Buyer's likelihood of success on the merits to be sufficient to sway us to find that the trial court abused its discretion in granting the stay, we affirm the trial court's ruling.

¶ 30 First, while Seller argued that the trial court's order should be reversed where the trial court failed to brief or consider arguments on the motion to stay, as noted earlier, we may affirm the trial court's decision on any basis supported by the record regardless of whether it was relied upon by the trial court. *Joseph*, 272 Ill. App. 3d at 206.

¶ 31 Second, Seller argued that Buyer has failed to show a likelihood of success on the merits of its parking lot claims for a myriad of reasons, including: (1) Buyer's failure to raise those claims in the prior appeal resulted in a waiver of those claims; (2) where there is an adequate remedy at law for Buyer's claims, the courts of equity lack jurisdiction to hear such claims; (3) Buyer's parking lot claims are barred by the doctrine of laches; (4) Buyer's parking lot claims violate the rule against claim splitting and *res judicata*; and (5) Buyer's claims are barred by the law-of-the-case. While all of these arguments go towards defeating one of the factors referenced in *Stacke*—that Buyer show a likelihood of success on the merits—as noted earlier, a likelihood of success on the merits is just one of the factors that a court may consider when determining whether to grant a motion to stay proceedings. See *Stacke*, 138 Ill. 2d at 304-05. Nonetheless, we briefly address Seller's arguments on the "likelihood of success on the merits" below.

¶ 32 Without deciding the merits of the underlying claim (*Kaden*, 263 Ill. App. 3d at 615 ("A stay order seeks only to preserve the status quo existing on the date of its entry and does not address in any way the merits of the underlying dispute")), Buyer sets forth a plausible argument regarding why it could not raise the parking lot claims in the prior appeal, namely, that because the parking lot claims were dismissed as moot when the trial court awarded the entire holdback to Buyer, Buyer was not adversely affected by that ruling and, therefore, was without grounds to appeal that ruling. For that reason, we cannot definitively say that Buyer waived his right to file those claims following remand, and we cannot say the appeal is frivolous.

¶ 33 With respect to Seller's claim that there is an adequate remedy at law for Buyer's parking lot claims, where Buyer alleged specific performance to effectuate the release of funds allegedly owed to it from the holdback for the parking lot construction, this argument is not persuasive. *Butler v. Kent*, 275 Ill. App. 3d 217, 227 (1995) (Specific performance is an equitable remedy in

contrast to a remedy at law which is the payment of money as a substitute for performance. * * *

The equitable remedy of specific performance requires a party to perform an affirmative act to fulfill a contract.").

¶ 34 Seller's argument that Buyer's parking lot claims are barred by laches also appears misplaced. While Seller explains that an extended amount of time has passed since the original filing of the parking lot claims as well as the re-filing of those claims after the remand, Seller does not offer any explanation as to how that delay prejudiced Seller or, more importantly, how that time period amounted to an "unreasonable delay" on the part of Buyer. *Tully v. State*, 143 Ill. 2d 425, 433 (1991) ("Laches is an equitable doctrine which precludes the assertion of a claim by a litigant whose unreasonable delay in raising that claim had prejudiced the opposing party.").

¶ 35 Seller's argument that Buyer's claims are barred by *res judicata*, the rule against claim-splitting, and the law-of-the-case also appear to be misplaced where the parking lot claims did not arise until after the original action had already been filed, where there was never a substantive judgment entered on the merits of the parking lot claims and, as conceded by both sides, the parking lot claims were never at issue or addressed on appeal. Moreover, the parking lot claims were moot until we entered our judgment reversing the judgment of the trial court in the first appeal.

¶ 36 Given all the above, we find there is certainly a valid question raised as to whether the parking lot claims could have or should have been raised in the prior appeal, which directly affects whether those claims should have been dismissed by the trial court. *Khan*, 2012 IL App (4th) 120359, ¶ 74 ("Unless the appeal is clearly frivolous, the circuit court should stay its proceedings for a reasonable length of time, until the appeal resolves the shared significant issue."). As such, we find that Seller's arguments that Buyer failed to show a likelihood of

success on the merits of its parking lot claims fall short of overcoming our finding that the trial court's decision to grant a stay in this matter was not an abuse of discretion such that the trial court “acted arbitrarily without the employment of conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted.” *Estate of Bass*, 375 Ill. App. 3d at 67.

¶ 37

III. CONCLUSION

¶ 38 For the reasons above, we affirm the trial court's order staying the proceedings.

¶ 39 Affirmed.