SIXTH DIVISION
December 23, 2015

No. 1-15-2294

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

MP 200 WEST RANDOLPH, LLC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 2014 CH 20330
	)	
GRAMAR, LLC-SERIES OAK,	)	Honorable
	)	David B. Atkins,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

O R D E R

¶ 1 *Held:* We affirmed the circuit court's order enforcing a settlement agreement between plaintiff, a foreign limited liability company, and defendant, where defendant waived the majority of its arguments related to plaintiff's alleged failure to properly register to transact business in Illinois under the Limited Liability Company Act. Finding no error, we affirmed the circuit court's denial of defendant's motions to reconsider an earlier order instructing defense counsel to keep the settlement payments in its IOLTA account pending further court orders.

¶ 2 Defendant, Gramar LLC-Series Oak, appeals the circuit court's orders granting the motion of plaintiff, MP 200 West Randolph, LLC, to enforce a settlement agreement and denying defendant's motions to reconsider an order requiring defendant to keep the settlement monies within its former attorneys' trust account (IOLTA account). We affirm.

¶ 3 In October 2012, plaintiff and defendant, through their company, 2 East Oak Partners, LLC (the company), purchased a parking garage located at 2 East Oak Street for $2,350,000. Plaintiff owned a 27.5% interest in the company. Defendant owned the remaining 72.5% interest in the company and is its sole manager.

¶ 4 In May 2014, the City of Chicago (City) inspected the garage and issued a report listing 17 violations of the City's building and fire codes.

¶ 5 On October 29, 2014, plaintiff provided defendant notice under the company's operating agreement that it had received an offer for the purchase of its 27.5% interest in the company for $1,075,000. Less than one week later, on November 4, 2015, defendant issued a call for an additional $2.4 million in capital from the company members to make repairs to the garage which would address the various code violations cited by the City. Additionally, defendant threatened to dilute plaintiff's interest in the company if plaintiff did not contribute its share of the additional capital by January 3, 2015.

¶ 6 On December 19, 2014, plaintiff filed a three-count verified complaint for injunctive and declaratory relief against defendant and an emergency motion for a temporary restraining order. Plaintiff alleged that defendant's capital call was made in bad faith and defendant was seeking to improperly dilute plaintiff's ownership interest in the company. Plaintiff requested an order directing defendant to produce the books and records of the company so that plaintiff could evaluate the alleged need for additional capital (count I). Additionally, plaintiff sought a declaration that under the operating agreement, defendant could not decrease plaintiff's percentage interest in the company (count II). Finally, plaintiff sought to enjoin defendant from diluting plaintiff's ownership interest in the company (count III). Plaintiff contended that defendant's acts had prevented it from selling its interest in the company. The complaint

identified plaintiff as an Illinois limited liability company, but in actuality it had been organized in Delaware.

¶ 7 In its emergency motion for a temporary restraining order, plaintiff sought to preserve the *status quo* by the entry of an order enjoining defendant from decreasing plaintiff's interest in the company and interfering with plaintiff's right to sell its interest in the company, pursuing further construction work on the garage, and obstructing plaintiff's access to the company's books.

¶ 8 On December 30, 2014, the circuit court entered an order directing defendant to produce the company's books and records, "including but not limited to records or communications related to defendant's November 4, 2014, request for additional capital." The circuit court's order also prohibited defendant from decreasing plaintiff's percentage interest in the company for 31 days which effectively stayed the capital call. The record on appeal does not include a transcript of the proceedings which were held on that date. In subsequent pleadings, plaintiff asserted that the order was entered by the agreement of the parties.

¶ 9 Plaintiff, on January 27, 2015, filed a motion to compel defendant to comply with the December 30, 2014, order to produce the relevant company records and to extend the effect of the court's December 30, 2014, order staying the capital call. On January 29, 2015, and on March 26, 2015, the circuit court entered orders extending the effectiveness of the December 30, 2014, order first to April 1, 2015, and then to May 7, 2015. The matter was set for status on the later date.

¶ 10 On May 6, 2015, plaintiff's counsel emailed defense counsel stating:

> "Per our conversation earlier today, [plaintiff] accepts [defendant's] offer to settle this matter for a $300,000 cash buyout of [plaintiff's] interest in [the company]. The cash should be paid by [May 7, 2015] into Anderson & Moore's trust account to be held in

escrow until a closing and execution of all settlement documents.

At tomorrow's hearing, we can continue the matter for [a] short duration in order to finalize the aforementioned documents and transfer the payment."

¶ 11 On May 7, 2015, before the parties were to appear in court, defense counsel sent plaintiff's counsel an email stating: "The settlement will also include mutual releases of all claims, rights, etc. The Rizzos are arranging to transfer the $300,000 to our client trust account."

¶ 12 On that same date, the parties appeared in court, and the circuit court entered an order stating that the parties had "reached a settlement in this matter." The circuit court entered and continued the matter to May 21, 2015, "in order to allow the parties time to memorialize the agreement." A transcript of the May 7 proceedings is not contained in the record.

¶ 13 On May 8, 2015, defendant deposited the $300,000 into its counsel's IOLTA account.

¶ 14 On May 21, 2015, the circuit court entered an order continuing the matter to June 4, 2015 "to allow the parties to memorialize their agreement."

¶ 15 Plaintiff, having not received settlement documents, filed a motion to enforce the settlement agreement on May 28, 2015. In its motion, plaintiff stated that the parties had resolved the case and set forth the agreed terms of the settlement. Defendant agreed to buy plaintiff's interest in the company for $300,000 cash, which was to be paid into defense counsel's IOLTA account on May 7, 2015. Plaintiff was to transfer its interest in the company to defendant and dismiss its suit with prejudice. The parties were to mutually release all claims. Plaintiff requested that the court enter an order enforcing the terms of the settlement, directing that the $300,000 remain in defense counsel's IOLTA account until further order of the court and instructing defendant to finalize the settlement documents.

¶ 16 On June 4, 2015, defense counsel withdrew its appearance on behalf of defendant and

new counsel appeared. The circuit court ordered defendant's original counsel to maintain the $300,000 payment from defendant in its IOLTA account until further order of the court. On that same date, defendant filed a response to plaintiff's motion to enforce the settlement arguing, for various reasons, that there was no valid, enforceable settlement agreement. Defendant maintained that plaintiff was not licensed to do business in Illinois and, under section 45-45 of the Limited Liability Company Act (805 ILCS 180/45-45 (West 2012)), could not file suit in Illinois. Defendant also argued that the parties had engaged in preliminary discussions as to settlement but there had been no acceptance or meeting of the minds and that conditions precedent had not been met.

¶ 17 The court set the motion to enforce the settlement for hearing on August 31, 2015. On June 15 and 19, 2015, defendant filed a motion to reconsider[1] the June 4, 2015, order requiring its original counsel to retain the $300,000 payment in its IOLTA account. On June 29, 2015, the circuit court entered an order which reset the hearing on plaintiff's motion to enforce the settlement to July 17, 2015, and set defendant's motions to reconsider for status on that date.

¶ 18 Plaintiff, in its written reply in support of its motion to enforce the settlement, stated it now was licensed to transact business in Illinois and attached a June 24, 2015, letter from the office of the Illinois Secretary of State. The letter stated that plaintiff's application to transact

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[1] In the circuit court, defendant labeled its motion as one brought pursuant to section 2-1301(e) of the Code of Civil Procedure (735 ILCS 5/2-1301(e) (West 2012)). Section 2-1301(e) provides that the court "may in its discretion, before final order or judgment, set aside any default, and may on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable." *Id*. The present case does not involve a non-final default order or a final order or judgment; therefore, it is not properly considered a section 2-1301(e) motion. See *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002) (when analyzing a party's request for relief, courts should look to what the pleading contains, not what it is called).

business in the state of Illinois had been approved on that date.

¶ 19 On July 17, 2015, the circuit court held a hearing on the motion to enforce the settlement, and on July 20, 2015, the circuit court entered a memorandum opinion and order. In that order, the circuit court found:

> "[T]he parties had a valid, enforceable settlement agreement consisting of the following terms:
>
> 1. [Defendant] pays $300,000 cash into its counsel's trust account, to be held in trust until a closing and execution of settlement documents;
> 2. [Plaintiff] transfers its ownership interest in the Company to [defendant];
> 3. [Plaintiff] dismisses the lawsuit with prejudice; and
> 4. The parties enter into mutual general releases of all claims and rights related to this lawsuit."

The circuit court also found that plaintiff was now registered to do business in Illinois and, therefore, any challenge to the settlement based on plaintiff's failure to be registered in Illinois at the time of suit was now moot, and that the memorialization of the parties' agreement was not a condition precedent. The circuit court granted plaintiff's motion to enforce the settlement agreement and denied defendant's motions to reconsider the June 4, 2015, order. A transcript of the proceedings as to the July 17, 2015, hearing on the motion to enforce settlement has not been made part of the record on appeal. Defendant has appealed.

¶ 20 On appeal, defendant first argues that the circuit court erred in granting plaintiff's motion to enforce the settlement agreement.

¶ 21 The agreement to settle litigation is in the nature of a contract and is governed by principles of contract law. *Rose v. Mavrakis*, 343 Ill. App. 3d 1086, 1090 (2003). Oral

settlements, like written statements, are binding and enforceable, so long as the offer, acceptance, and a meeting of the minds as to the terms are shown. *Sheffield Poly-Glaz, Inc. v. Humboldt Glass Co.*, 42 Ill. App. 3d 865, 868-69 (1976). Generally, where the court finds an enforceable settlement agreement, we will not disturb this decision unless it was against the manifest weight of the evidence. *Lampe v. O'Toole*, 292 Ill. App. 3d 144, 146 (1997).

¶ 22 Defendant contends that the failure of plaintiff, a foreign limited liability company, to register to transact business in Illinois in accordance with section 45-45 of the Limited Liability Company Act (805 ILCS 180/45-45 (West 2012)), at the time it entered into the settlement agreement with defendant, renders the settlement agreement void. Defendant's contention is without merit, as section 45-45(b) of the Limited Liability Company Act specifically provides:

> "The failure of a foreign limited liability company to be admitted to transact business in this State *does not impair the validity of any contract or act of the foreign limited liability company* or prevent the foreign limited liability company from defending any civil action in any court of this State." (Emphasis added.) 805 ILCS 180/45-45(b) (West 2012).

¶ 23 Defendant next contends that the circuit court lacked jurisdiction to consider plaintiff's motion to enforce the settlement agreement, as plaintiff had not yet registered to transact business in Illinois at the time it entered into that agreement. In support, defendant cites section 45-45(a) of the Limited Liability Company Act, which states: "A foreign limited liability company transacting business in this State may not maintain a civil action in any court of this State until the limited liability company is admitted to transact business in this State." 805 ILCS 180/45-45(a) (West 2012).

¶ 24 The Business Corporation Act of 1983 contains language virtually identical to section 45-45(a) of the Limited Liability Company Act: "No foreign corporation transacting business in

this State without authority to do so is permitted to maintain a civil action in any court of this State, until the corporation obtains that authority." 805 ILCS 5/13.70(a) (West 2012). In construing section 13.70(a) of the Business Corporation Act of 1983, the appellate court has held a foreign corporation's failure to obtain a certificate of authority to transact business in the State "is a defense which will be considered waived unless raised by the defendant at the earliest opportunity." *Amerco Field Office v. Onoforio*, 22 Ill. App. 3d 989, 993 (1974). Given that section 45-45(a) of the Limited Liability Company Act contains language virtually identical to the language used in section 13.70(a) of the Business Corporation Act of 1983 regarding the requirement that a foreign limited liability company be admitted to transact business in Illinois before maintaining a civil action here, we hold, consistent with *Amerco Field*, that the foreign limited liability company's failure to register to transact business in Illinois is a defense that will be waived unless raised by defendant at the earliest opportunity.

¶ 25 Plaintiff here filed its initial action for injunctive and declaratory relief against defendant on December 19, 2014, and defendant could have then raised its defense that plaintiff had failed to register to do business in Illinois; instead, defendant did not raise this defense until June 4, 2015, in its response to plaintiff's motion to enforce the settlement agreement. Defendant waived review of this defense by failing to raise it at the earliest opportunity.

¶ 26 Next, defendant argues that the circuit court erred in finding an enforceable settlement because the settlement agreement required that defendant pay $300,000 into its counsel's IOLTA account by May 7, 2015, but defendant paid the $300,000 into the account *after* May 7 and, therefore, there was no acceptance of the settlement offer. Defendant also argues that its May 7 email requesting that the settlement include mutual general releases of all claims constituted a counteroffer instead of an acceptance; in the absence of an acceptance, defendant contends the

court should have denied plaintiff's motion to enforce the settlement agreement. Defendant further argues that the execution of written settlement documents was a condition precedent of the contract's completion, and that in the absence of such documents, the court erred in granting plaintiff's motion to enforce the settlement agreement.

¶ 27 Defendant failed to file a sufficient record supporting its arguments. The record indicates that on May 7, 2015, the circuit court entered an order stating that "the parties have reached a settlement in this matter." On July 17, 2015, the court conducted a hearing on plaintiff's motion to enforce the settlement, and then entered a memorandum opinion and order on July 20, 2015, finding the parties had a valid, enforceable settlement agreement and that the execution of signed settlement documents was not a condition precedent of the agreement.

¶ 28 The record on appeal does not contain a transcript of the proceedings held on May 7, 2015, where the parties notified the court of the settlement. More significantly, the record on appeal does not include a transcript of the proceedings from the hearing on the motion to enforce settlement on July 17, 2015. Therefore, we are without a record of what was told to the court about the settlement process on May 7, without a transcript of the proceedings from the hearing on the motion to enforce settlement, and we do not know all the evidence that may have been presented or considered by the circuit court or what arguments may have been made.

¶ 29 As the appellant, defendant had the burden to present a sufficiently complete record to support a claim of error on appeal. *Foutch v. O'Bryant*, 99 Ill. 3d 389, 391 (1984). In the absence of a complete record, it is presumed that the order entered by the circuit court was in conformity with law and had a sufficient factual basis. *Id.* at 392.

¶ 30 Even if we were to consider the argument that the parties intended a written agreement to be a condition precedent of the settlement agreement's completion, the outcome would be the

same. In support of its argument, defendant cites the May 6 email from plaintiff accepting defendant's settlement offer, the May 7, 2015, and May 21, 2015, court orders and plaintiff's motion to enforce settlement. However, as correctly noted by the circuit court, none of the emails, court orders or motions indicate an intention that the parties execute signed documents as a condition precedent of the settlement agreement.

¶ 31 Defendant also argues that the circuit court should have denied plaintiff's motion to enforce the settlement because consideration was lacking. Specifically, defendant contends that plaintiff's agreement to dismiss its suit against defendant in exchange for the $300,000 settlement payment did not constitute valid consideration, as the suit could not legally be brought in the first instance as plaintiff had not registered to transact business in Illinois under section 45-45 of the Limited Liability Company Act when the suit was brought. As discussed, though, defendant has waived review of its argument that plaintiff failed to timely register under section 45-45.

¶ 32 Next, defendant contends the parties' attorneys lacked the authority to settle plaintiff's lawsuit. Defendant waived review of this issue by failing to raise it in the circuit court. *Mortgage Electronic Registration Systems, Inc. v. Thompson*, 368 Ill. App. 3d 1035, 1039 (2006).

¶ 33 Next, defendant contends the circuit court should have denied plaintiff's motion to enforce the settlement because no final judgment has been entered and releases have not been signed. In support, defendant cites *Thornberry v. Board of Education*, 8 Ill. App. 3d 351, 354 (1972), in which the appellate court held plaintiff failed to state a cause of action to enforce the pretrial oral settlement of his personal injury claim. The appellate court explained that "[i]t is generally known in the legal profession that the compromise is not considered final or concluded until either a judgment has been entered, the case disposed or releases have been signed." *Id.*

¶ 34 More recently, though, the appellate court stated:

> "Whatever the accuracy of [*Thornberry*'s] observation at the time it was made, we believe it sets up an arbitrary presumption-or an arbitrary *per se* rule-that an oral settlement agreement is unenforceable. The weight of authority *** encourages oral settlement agreements in tort suits and endorses no such presumption. We agree with the Appellate Court, Third District, that a properly proved oral agreement is enforceable even without a signed release, an expression of a party's willingness to sign a release, or a judgment incorporating the settlement." *Lampe v. O'Toole*, 292 Ill. App. 3d 144, 147-48 (1997) (citing *Fishburn v. Barker*, 165 Ill. App. 3d 229, 230 (1988)).

¶ 35 We adhere to *Lampe* and find that the parties' oral agreement is enforceable.

¶ 36 Next, defendant contends the circuit court erred in denying its motions to reconsider the June 4, 2015, order requiring defendant's original counsel to retain the $300,000 payment in its IOLTA account. Defendant's motions alleged the court's misapplication of existing law, which we review *de novo*. *River Village I, LLC v. Central Insurance Cos.*, 396 Ill. App. 3d 480, 492 (2009).

¶ 37 The May 6, 2015, email from plaintiff's counsel to defendant's counsel stated plaintiff's acceptance of defendant's offer to settle for a $300,000 cash buyout. Defendant paid the $300,000 into its counsel's IOLTA account two days later, on May 8, 2015. On June 4, 2015, defense counsel withdrew its appearance on behalf of defendant and new counsel appeared. Also on June 4, 2015, the circuit court ordered defendant's former counsel to maintain the $300,000 in the IOLTA account pending further court order. On July 20, 2015, the circuit court denied defendant's motions to reconsider the June 4 order. Defendant argues that the circuit court's June 4 order which required defendant's former attorneys to maintain the $300,000

payment in its IOLTA account, and the July 20 order denying the motions to reconsider the June 4 order were erroneous because the placement of the funds into the IOLTA account violated Rule 1.15(f) of the Illinois Rules of Professional Conduct. Rule 1.15(f) states:

> "All funds of clients or third persons held by a lawyer or law firm which are nominal in amount or are expected to be held for a short period of time *** shall be deposited in one or more IOLTA accounts ***. A lawyer or law firm shall deposit all funds of clients or third persons which are not nominal in amount or expected to be held for a short period of time into a separate interest-or dividend-bearing client trust account with the client designated as income beneficiary." Ill. R. Prof. Conduct R. 1.15(f) (eff. July 1, 2015).

¶ 38 Defendant argues that the $300,000 which its former counsel placed into the IOLTA account on May 8, 2015, is not a nominal sum and therefore it should have been put into an interest-bearing client trust account with the client designated as income beneficiary. However, Rule 1.15(f) provides that funds expected to be held for a short period of time may be held in a firm's IOLTA account as opposed to an interest-bearing client trust account. Rule 1.15(g) allows a lawyer or law firm to "exercise reasonable judgment" in determining whether funds of a client are expected to be held for a short period of time and provides factors to consider in determining the type of account into which to deposit particular funds for a client, including: the amount of interest that the funds would earn during the period they are expected to be held and the likelihood of delay in the relevant transaction or proceeding; and the cost of establishing and administering the account, including the cost of the lawyer's services. Ill. R. Prof. Conduct R. 1.15(g) (eff. July 1, 2015).

¶ 39 Defendant has pointed to no evidence in the record indicating that it was unreasonable for defendant's prior counsel to determine on May 8, 2015, (two days after the settlement agreement

had been reached) that the $300,000 settlement payment would only be held for a short period of time such that the costs of establishing a separate interest-bearing client trust account would outweigh any interest gained on that account. The circuit court committed no error when it: maintained the *status quo* on June 4, 2015, by instructing defendant's former counsel to continue holding the $300,000 in the IOLTA account pending further order of the court; and when it denied defendant's motions to reconsider the June 4, 2015, order.

¶ 40 For the foregoing reasons, we affirm the circuit court.

¶ 41 Affirmed.