2016 IL App (1st) 152519-U

FOURTH DIVISION
December 22, 2016

No. 1-15-2519

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

4934 FORRESTVILLE CONDOMIMIUM ASSOCIATION,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
v.	)	No. 13 M1 723454
NICOLE McKINLEY and ALL UNKNOWN OCCUPANTS,	)	Honorable Orville E. Hambright, Judge Presiding.
Defendants-Appellants.	)	

JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in denying defendant Nicole McKinley's motion to dismiss under section 2-619 where the motion raised a question of fact whether a duly elected board of the plaintiff condominium association properly filed the action. McKinley's allegations of lack of standing were germane to the proceedings and case remanded for an evidentiary hearing on the merits of McKinley's motion.

¶ 2 Plaintiff 4934 Forrestville Condominium Association (the Association) filed the instant forcible entry and detainer action against defendants Nicole McKinley and all unknown occupants for possession and damages based on McKinley's alleged failure to pay condominium

assessments. McKinley filed a motion to dismiss based on section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2012)), arguing that the Board of Directors pursuing the action were not duly elected and lacked standing to bring the action. The court denied the motion. After prolonged settlement negotiations, the case proceeded to a bench trial. McKinley moved to continue the trial because she had believed the case had been settled, which the trial court denied. A judgment was entered in favor of the Association and against McKinley. McKinley subsequently moved to vacate the default judgment, which the trial court denied. Her motion to reconsider was also denied.

¶ 3 McKinley appeals, arguing that: (1) the trial court erred in denying her motion to dismiss the Association's complaint; (2) the trial court abused its discretion in denying her motion to continue the trial date; and (3) the trial court abused its discretion in denying her motion to vacate the default judgment.

¶ 4 In September 2013, the Association filed a complaint for possession of the condominium unit and judgment for assessments against McKinley under the Forcible Entry and Detainer Act (forcible statute) (735 ILCS 5/9-101 *et seq.* (West 2012)). The Association asserted that it was granted authority to administer the property pursuant to the Declaration of Condominium Ownership and of Easements, Restrictions, Covenants, and By-Laws for 4934 Forrestville Condominium Association (Declaration). The complaint alleged that McKinley was the legal owner of #1F and parking space #P-1, which are subject to the Declaration. Under the Declaration, each owner is required to pay monthly and special assessments and other common expenses. The Association stated that it sent a demand for possession to McKinley on August 14, 2013, by certified mail. The Association claimed that McKinley owed a total of $1,544.28, which included unpaid assessments from April to September 2013, late charges, attorney fees,

and costs. The Association requested possession of the condo unit, a judgment for the unpaid sum plus any accruing assessments and costs, as well as attorney fees.

¶ 5 The attached thirty day notice and demand, dated August 14, 2013, was addressed to McKinley from the Association, stating that as of August 9, 2013, she was in default for $481.73 for her share of the assessments, as well as legal fees and costs for collection, for a total of $711.65 due and owing.

¶ 6 In May 2014, McKinley filed a motion to dismiss plaintiff's complaint pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2012)). According to McKinley, the Board of Directors for the Association was invalid for several reasons: (1) it was required to have 3 members, but the Association interrogatories named 2 members; (2) both members were owners of one single unit in violation of the Illinois Condominium Property Act (Condominium Act) (765 ILCS 605/18(a)(1) (West 2012)), which forbids multiple board members from a single unit; and (3) neither board member was validly elected. McKinley argued that without a valid board, the issuance of the thirty day notice was invalid and, absent a valid notice, the lawsuit must fail.

¶ 7 McKinley attached several exhibits to the motion, including the Association's answers to interrogatories and her own affidavit. In the interrogatories, the Association answered that the board consisted of Kenneth Pickens as president and Wendell Williams as secretary. In her affidavit, McKinley stated that she has been a member of the Association since June 2004, and she previously served on the board until August 2007. She stated that Pickens and Williams both live in and own unit 3 in the building. Both have concurrently served on the board "since at least 2007." She stated that since at least 2007, she has not received notice for an annual meeting to elect directors of the Association and has not voted for either Pickens or Williams. Upon

information and belief, she stated that the other residents have not received notice for an annual meeting or voted for either individual to serve on the board.

¶ 8 The Association filed a response to McKinley's motion, asserting that it has legal standing to sue and is not barred by an affirmative defense raised by McKinley. The Association maintained that McKinley's alleged affirmative defense does not bar the Association's recovery and was not germane to the proceeding. The Association attached an affidavit from Pickens to its response. Pickens stated that he was the president for the Association. He said McKinley was the owner of the subject premises and as of June 2014, an outstanding balance of $2,901.97, for unpaid assessments, but not including attorney fees and costs remained pending. He directed the Association's counsel to send the thirty day notice to demand the unpaid assessments, which McKinley failed to pay. Since McKinley failed to pay the amount demanded in the notice, Pickens stated that he directed the Association's attorney to proceed with a forcible entry and detainer action. Pickens said the assessments were for maintenance and upkeep of the common area elements, and McKinley has failed to pay her proportionate share of common area expenses. Pickens attached an accounting ledger to his affidavit.

¶ 9 In June 2014, the trial court denied McKinley's motion to dismiss in an order, stating "This is not proper forum/court for defendant's defenses. (See *Spanish Court* [*Two Condominium Association v. Carlson*, 2014 IL 115342.])"

¶ 10 Over the next year, the parties agreed to several continuances for settlement discussions. In May 2015, the trial court set a trial date of July 1, 2015. On July 1, 2015, McKinley filed an emergency motion to continue the trial date. The motion stated that the Association had offered to settle the case, but McKinley "was struggling with language" regarding payments for unknown obligations. On June 29, 2015, McKinley asked the Association for the total amount

owed and accepted the settlement agreement. On June 30, 2015, the Association's counsel notified McKinley's counsel via e-mail that the agreement had been withdrawn. The written motion stated a request until July 30, 2015, but subsequent proceedings suggest that in court McKinley's counsel requested a continuance to the following day, July 2. McKinley attached the e-mails between her attorney and the Association's counsel to the motion. An email was sent by McKinley's attorney asking for the updated figure for the amount owed on June 25, 2015, which the Association's attorney answered that day. At approximately 12:30 p.m. on June 29, 2015, McKinley's counsel e-mailed, "Please prepare the release with that assessment figure." At 3:15 p.m. the following day, June 30, the Association's attorney responded that her clients "have taken the agreement off the table." The email indicated that the Association planned to proceed to trial the next day.

¶ 11 On July 1, 2015, the case proceeded to trial. The trial court denied McKinley's emergency motion for a continuance. No transcript for the proceedings exists in the record on appeal. The order stated, as follows:

> "Defendant's attorney in court, Defendant not in court, Plaintiff's counsel in court, Plaintiff in court, Defendant's Attorney elects not to participate and leaves. Plaintiff's witness, Kenneth Pickens (Bd. Treasurer) testifies as to the delinquency of Defendant, Nicole McKinley. After hearing testimony of the Bd. Treasurer, Kenneth Pickens, regarding the delinquency of the Defendant, Nicole McKinley, as to her monthly assessments, reserves, late fees and building insurance, there is a finding based on the preponderance of evidence in favor of Plaintiff and against the Defendant, Nicole

> McKinley. Defendant's attorney foregoing any cross-examination and leaving before testimony of Kenneth Pickens was complete of his own accord. Order for possession and judgment entered against Defendant, Nicole McKinley, and all unknown occupants, stayed August 30, 2015 with a money judgment in the amount of 7,886.84 as assessments, 424.92 as court costs and a reduced amount of attorney fees of $6,000.00."

¶ 12 In July 2015, McKinley filed a motion to vacate the July 1 default order for possession and damages and to strike the supplemental *ex parte* order of the same date, and motion to enter judgment for defendant or alternatively for enforcement of the settlement agreement or a new trial. McKinley filed her motion pursuant to sections 2-1203 and 2-1301(e) of the Code of Civil Procedure (735 ILCS 5/2-1203, 2-1301(e) (West 2012)). In her motion, McKinley stated that on July 1, 2015, her attorney brought the settlement agreement signed by her with the first agreed settlement payment as well as the emergency motion to continue the trial. McKinley stated that the settlement offer had not been withdrawn prior to acceptance. The motion alleged that the Association "refused" to honor the settlement agreement and the trial court declined to grant a continuance. McKinley's attorney indicated that he could not proceed to trial without his client. According to the motion, the trial court stated that "a default judgment would be entered, and that [the Association] could proceed with its prove-up."

¶ 13 McKinley attached her own affidavit to the motion. In her affidavit, she stated that "upon information and belief" the settlement offer remained open until the trial date. She spoke with Thomas Ivy, president of the Association, and he informed her that "no board decision had been made to earlier withdraw the Settlement Agreement." She accepted the settlement offer on June

29, 2015, signed the agreement, and issued the first payment of $1,000 on June 30, 2015. She did not attend court on July 1, 2015, because she believed the matter had been settled and she had work obligations.

¶ 14 On August 11, 2015, the trial struck McKinley's motion as improper, noting McKinley's attorney was not in court. The order included the following statement:

> "On July 1, 2015, Def's attorney was in court and elected to leave and not participate although he was attorney of record. Defendant's counsel had filed an emergency motion at the last moment after having more than enough time to notify the other side and this court regarding plaintiff's witness being present."

¶ 15 On August 14, 2015, McKinley filed a motion to reconsider. The motion stated that counsel was unable to attend the August 11, 2015, hearing due to serious personal family matters, but sent an attorney in his stead to request a short continuance to present the motion. The request for the continuance was "ignored," and the motion was struck as improper. An affidavit from the attorney appearing for counsel of record stated that she appeared on August 11, 2015, to advise the court of the situation and seek a short continuance, but "the court refused to listen to, or grant, my motion for a continuance, instead, summarily striking Defendant's Motion outright." The attorney further stated the "order [from August 11, 2015] mischaracterizes the events in the courtroom, in as much as it states that Defendant's counsel was not present (as I was appearing for him), and fails to state that I made a motion for continuance on behalf of [counsel of record], which was denied. I was not afforded the opportunity to make any changes to the order."

¶ 16 On August 25, 2015, following a hearing, the trial court denied McKinley's motion to reconsider and McKinley's motion to vacate the orders entered on July 1, 2015, was denied.

¶ 17 This appeal followed.

¶ 18 On appeal, McKinley first argues that the trial court erred in denying her motion to dismiss because she raised a proper affirmative matter that the Association's board was invalid and lacking standing to pursue this action. We note that the Association did not file a response brief on appeal. However, we will consider this appeal on appellant's brief only pursuant to the guidelines set forth in *First Capital Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 19 "Generally, the denial of a motion to dismiss is not a final and appealable order." *CitiMortgage, Inc. v. Hoeft*, 2015 IL App (1st) 150459, ¶ 13. "However, 'an appeal from a final judgment draws into issue all previous interlocutory orders that produced the final judgment.' " *Id.* (quoting *Knapp v. Bulun*, 392 Ill. App. 3d 1018, 1023 (2009)). Here, McKinley specifically listed the order denying her motion to dismiss in her notice of appeal, as well as the subsequent orders on the case. Further, the denial of the motion to dismiss constitutes a previous interlocutory order leading to the final judgment because had the trial court granted the motion to dismiss, the subsequent orders would not have been entered. See *id.* Therefore, we can properly review the denial of McKinley's section 2-619 motion to dismiss.

¶ 20 When ruling on the motion to dismiss, the trial court "should construe the pleadings and supporting documents in the light most favorable to the nonmoving party" and "accept as true all well-pleaded facts in plaintiff's complaint and all inferences that may reasonably be drawn in plaintiff's favor." *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. We review the section 2-619 dismissal of a complaint *de novo*. *Id.*

¶ 21 A motion for involuntary dismissal pursuant to section 2-619(a) admits the legal sufficiency of the complaint, but raises defects, defenses, or other affirmative matter which avoids the legal effect or defeats a plaintiff's claim. 735 ILCS 5/2-619(a) (West 2012). An "affirmative matter" under section 2-619(a)(9) is "something in the nature of a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." *In re Estate of Schlenker*, 209 Ill. 2d 456, 461 (2004). "Once a defendant satisfies the initial burden of presenting affirmative matter, the burden then shifts to the plaintiff to establish that the defense is 'unfounded or requires the resolution of an essential element of material fact before it is proven.' " *Reilly v. Wyeth*, 377 Ill. App. 3d 20, 36 (2007) (quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116 (1993)).

¶ 22 Affidavits in support of motions to dismiss under section 2-619 are controlled by Illinois Supreme Court Rule 191 (eff. Jan 4, 2013). Rule 191(a) provides that affidavits submitted in connection with a motion for involuntary dismissal "shall be made on the personal knowledge of the affiants; shall set forth with particularity the facts upon which the claim, counterclaim, or defense is based; shall have attached thereto sworn or certified copies of all papers upon which the affiant relies; shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto." Ill. S. Ct. R. 191(a) (eff. Jan. 4, 2013). "[C]ourts must accept an affidavit as true if it is uncontradicted by counteraffidavits or other evidentiary materials." *F.H. Paschen/S.N. Nielsen, Inc. v. Burnham Station, L.L.C.*, 372 Ill. App. 3d 89, 92-93 (2007).

¶ 23 McKinley argues that the board acting on behalf of the Association was not a valid existing board and any action taken by it is void. Specifically, McKinley asserts that the board

members were not validly elected, the board had two members instead of the required three, and the two board members were owners of the same unit in violation of the Condominium Act. The trial court never considered whether the Association's board was valid and authorized to pursue the action under the forcible statute. Rather, the trial court denied the motion, stating it was not the proper forum for McKinley's defenses citing the Illinois Supreme Court decision of *Spanish Court Two Condominium Association v. Carlson*, 2014 IL 115342.

¶ 24 We now review whether the decision in *Spanish Court* applies to the instant case. An action under the forcible statute may be maintained against a unit owner who "fails or refuses to pay when due his or her proportionate share of the common expenses ***, or of any other expenses lawfully agreed upon," subject to proper notice by the association's board of managers. 735 ILCS 5/9-102(a)(7) (West 2012). "The Condominium Act contains a comparable provision authorizing an association's board of managers to maintain a forcible entry and detainer action against a unit owner who defaults in the performance of his or her obligations under the Condominium Act, or under the condominium declaration or bylaws, or under the association's rules and regulations." *Spanish Court*, 2014 IL 115342, ¶ 14 (citing 765 ILCS 605/9.2(a) (West 2008)). However, section 9-106 of the forcible statute limits the action to only those germane to the matter, stating "no matters not germane to the distinctive purpose of the proceeding shall be introduced by joinder, counterclaim or otherwise." 735 ILCS 5/9-106 (West 2012).

¶ 25 In *Spanish Court*, the condominium association filed an action under the forcible statute against a unit owner for failing to pay the monthly assessments. In her answer to the complaint, the unit owner admitted her failure to pay the assessments, but raised affirmative defenses of breach of covenants and a set-off based on water damage to her unit because the condominium association failed to maintain the roof and brick work, and to fix her toilet after investigation of a

water leak in another unit. The condominium association moved to strike the unit owner's affirmative defenses as not germane to the proceedings under the forcible statute. The trial court granted the condo association's motion and struck the affirmative defenses. *Spanish Court*, 2014 IL 115342, ¶¶ 3-5. The appellate court reversed the order striking the affirmative defenses. *Id.* ¶¶ 7-8.

¶ 26 On appeal, the only question before the supreme court was "whether an association's purported failure to repair or maintain the common elements is germane to a forcible entry and detainer proceeding against a unit owner based on unpaid assessments, and thus may be raised by the unit owner in defense of the forcible action." *Id.* ¶ 12. The majority held that the condominium association's purported failure to properly maintain the common elements, such as the roof and brick work, that caused damage to the unit would not nullify the unit owner's obligation to pay assessments and was not germane to the forcible action. *Id.* ¶ 26.

¶ 27 The supreme court analyzed the differences between a forcible entry and detainer action in a landlord-tenant case compared to a condominium association-unit owner. While nullification would be germane to proceedings in a landlord-tenant case under contractual requirements, such a basis is not relevant in condominium association-owner proceedings. *Id.* ¶¶ 20-21.

> "Although contract principles have sometimes been applied to the relationship between a condominium association and its unit owners based on the condominium's declaration, bylaws, and rules and regulations [citation], the relationship is largely a creature of statute, defined by the provisions of the Condominium Act (765 ILCS 605/1 *et seq.* (West 2008)). Under that act, the board of managers, through whom the association of unit owners acts (765

> ILCS 605/2(o) (West 2008)), has the duty '[t]o provide for the operation, care, upkeep, maintenance, replacement and improvement of the common elements.' 765 ILCS 605/18.4(a) (West 2008). The Condominium Act also addresses the '[s]haring of expenses' among unit owners, and establishes that: 'It shall be the duty of each unit owner *** to pay his proportionate share of the common expenses.' 765 ILCS 605/9(a) (West 2008). Although these duties may also be reflected in the condominium declaration and bylaws, as they are in this case, they are imposed by statute and exist independent of the association's governing documents. Accordingly, a unit owner's obligation to pay assessments is not akin to a tenant's purely contractual obligation to pay rent, which may be excused or nullified because the other party failed to perform." *Id.* ¶ 21.

¶ 28 In the instant case, McKinley is not seeking to nullify the amount of the assessments, but is challenging the validity of the action under the forcible statute and the Condominium Act. We find *Spanish Court* inapplicable to McKinley's motion to dismiss for the reasons that follow.

¶ 29 Illinois courts have held that "lack of standing qualifies as 'affirmative matter' within the meaning of section 2-619(a)(9) and may properly be challenged through a motion to dismiss under that statute." *In re Estate of Schlenker*, 209 Ill. 2d 456, 461 (2004). "The doctrine of standing ensures that issues are raised only by parties with a real interest in the outcome of the controversy." *Village of Chatham v. County of Sangamon*, 216 Ill. 2d 402, 419 (2005). "[S]tanding is shown by demonstrating some injury to a legally cognizable interest." *Id.*

¶ 30 Here, McKinley contended that the board acting on behalf of the Association was invalid. The trial court did not consider the merits of her claims, but denied under *Spanish Court* that it was the improper forum. However, we do not believe that a challenge of legal standing is akin to nullification of assessments based on unmade repairs. Whether the board members pursuing the action had the legal authority to act is germane to the proceedings. We do not see what recourse McKinley would have to raise this claim in a different forum. It is illogical that McKinley would be able to file a freestanding claim of lack of standing. Accordingly, we find that McKinley properly raised an affirmative, and germane, matter in her motion to dismiss.

¶ 31 Since McKinley's motion was germane to the proceedings, we turn to the substance of her motion to dismiss. "The essence of the inquiry concerning standing is whether the litigant, either in an individual capacity or in a representative capacity, is entitled to have the court decide the merits of a dispute or a particular issue." *Powell v. Dean Foods Co.*, 2012 IL 111714, ¶ 36. "A party must assert its own legal rights and interests, rather than assert a claim for relief based upon the rights of third parties." *Id.* The burden to plead and prove lack of standing rests on the respondent. *Schlenker*, 209 Ill. 2d at 461. "Where standing is challenged in a motion to dismiss under section 2-619, a court must accept as true all well-pleaded facts in plaintiff's complaint and all inferences that can reasonably be drawn in plaintiff's favor." *Id.*

¶ 32 McKinley argued in her motion that the purported board was invalid and lacked capacity to pursue the action against her on behalf of the Association. Under the Declaration, the Association is a not-for-profit corporation under the General-Not-For-Profit Corporation Act of 1986 (Corporation Act). See 805 ILCS 105/101.10 *et seq.* (West 2012). The direction and administration of the property is vested in the board of directors. It is undisputed that under the Condominium Act, "[t]he board of managers shall have standing and capacity to act in a

representative capacity in relation to matters involving the common elements or more than one unit, on behalf of the unit owners, as their interests may appear." 765 ILCS 605/9.1(b) (West 2012). This capacity includes the right to pursue an action under the forcible statute. See 735 ILCS 5/9-102(a)(7) (West 2012). " 'Condominiums are creatures of statute and, thus, any action taken on behalf of the condominium must be authorized by statute.' " *Alliance Property Management, Ltd. v. Forest Villa of Countryside Condominium Association*, 2015 IL App (1st) 150169, ¶ 27 (quoting *Board of Directors of 175 East Delaware Place Homeowners Association v. Hinojosa*, 287 Ill. App. 3d 886, 889 (1997)). "Where a unit owner's rights must be determined, the Act, the declaration, and the bylaws must be construed as a whole." *Id.* Further, section 4.01 of the Declaration states that "The property is hereby submitted to the provisions of the Condominium Property Act of the State of Illinois."

¶ 33 The question here is whether the board was validly constituted under the Declaration and relevant statutory requirements, and if not, whether an invalid board has standing to maintain an action on the Association's behalf. McKinley based her claim on three grounds: the board failed to have the required three members, the two members were barred from serving concurrently, and the board was not properly elected. In its response to McKinley's motion, the Association did not dispute McKinley's claims relating to the composition of the board, but instead contended that her allegations were not germane to the proceedings and operating as a two-person board was not fatal to its actions. The affidavit from Pickens attached to the response did not address McKinley's claims of an invalid board, but described Pickens' actions as board president in directing the demand for payment and pursuing the detainer action.

¶ 34 After viewing the record in favor of the nonmoving party, we find a sufficient basis to support McKinley's claims that the board was invalid to move forward. The record discloses that

the Association's answers to interrogatories listed two members of the board, Pickens and Williams. Section 5.01 of the Declaration provides that the board of directors "shall consist of three (3) persons." That the board consists of at least three members is also a statutory requirement under the Corporation Act. 805 ILCS 105/108.10(a) (West 2012). Under section 5.06(a), the board members are elected by the voting members of the Association for two-year terms.

¶ 35 McKinley also alleged in her motion that the two members of the board were serving in violation of the Condominium Act. Section 18(a)(1) states that the bylaws shall provide "If there are multiple owners of a single unit, only one of the multiple owners shall be eligible to serve as a member of the board at any one time." 765 ILCS 605/18(a)(1) (West 2012). The Declaration, which includes the bylaws, fails to include this statutorily prescribed provision. Further, McKinley stated in her affidavit that Pickens and Williams, the two named board members, owned and resided in the same unit. This allegation was not disputed in Pickens' affidavit or in the Association's response to the motion.

¶ 36 Finally, McKinley contended that she never voted for Pickens or Williams and had not received notice of the annual meeting to elect board members. Under section 5.04(b) of the Declaration, "there shall be an annual meeting of the Voting Members on the second Tuesday in December following such initial meeting, and on the second Tuesday in December of each succeeding year thereafter at 7:30 p.m., or at such other reasonable time or date as may be designated by written notice of the Board to the Voting Members." Section 5.05 provides that "notices of meetings of the Voting Members required herein may be delivered either personally or by mail to the persons entitled to vote thereat *** any such notice shall be delivered no less than ten (10) and no more than thirty (30) days prior to the date fixed for such meeting and shall

state the time, place and purpose of such meeting." The Association offered no response on this allegation that the board was not properly elected.

¶ 37 Based on McKinley's uncontested allegations, the board consisted of two persons who own one unit together and have failed to properly serve notice to voting members for the annual meeting to elect board members. As previously observed, condominiums are creatures of statute, any action on behalf of the condominium must be authorized by statute. *Alliance Property*, 2015 IL App (1st) 150169, ¶ 27. As alleged by McKinley, the actions by the invalid board do not appear to be authorized by statute. "Because the Forcible Entry and Detainer Act is a statute that is in derogation of the common law, ' "[t]he conditions and requirements that the statute prescribes in conferring jurisdiction must clearly exist and *** the mode of procedure provided by it must be strictly pursued." ' " *Spiegel v. Hollywood Towers Condominium Association*, 283 Ill. App. 3d 992, 997 (1996) (quoting *Avdich v. Kleinert*, 69 Ill. 2d 1, 6 (1977), quoting *Fitzgerald v. Quinn*, 165 Ill. 354, 360 (1896)).

¶ 38 While we cannot conclude based on the record before us whether the board was invalid, McKinley has set forth sufficient allegations challenging the legal standing of the board to act on behalf of the Association. Accordingly, we remand for an evidentiary hearing on her motion to dismiss to allow the presentation of evidence to establish whether the board was composed within the requirements of the Declaration and relevant statutes such that it had the authority to act in this case. Since we have found the denial of McKinley's motion was improper without a hearing on the merits, we vacate the subsequent orders of the trial court.

¶ 39 Based on the foregoing reasons, we reverse the trial court's denial of McKinley's motion to dismiss pursuant to section 2-619 and vacate the subsequent orders entered by the court. We remand for an evidentiary hearing as directed.

¶ 40 Reversed and remanded with directions.