

No. 1-15-3109

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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|--|---|--------------------|
| ATLANTIC MUNICIPAL CORPORATION,        | ) | Appeal from the    |
|  | ) | Circuit Court of   |
| Plaintiff-Appellant,                   | ) | Cook County        |
|  | ) |                    |
| v.                                     | ) | No. 2015 M1 708171 |
|  | ) |                    |
| STEVE STEVENSON and UNKNOWN            | ) |                    |
| OCCUPANTS,                             | ) |                    |
|  | ) |                    |
| Defendants,                            | ) | Honorable          |
|  | ) | Diana Rosario,     |
| (Steve Stevenson, Defendant-Appellee). | ) | Judge, Presiding.  |

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JUSTICE HOFFMAN delivered the judgment of the court.  
Presiding Justice Rochford and Justice Hall concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court abused its discretion in failing to vacate its order dismissing this action as not being "a proper Forcible Entry and Detainer Action." We, therefore, reversed the circuit court's order denying the motion to reconsider and remanded the matter to the circuit court with directions to vacate its order of dismissal and to conduct further proceedings.

¶ 2 The plaintiff, Atlantic Municipal Corporation (Atlantic) appeals from orders of the circuit court dismissing its Forcible Entry and Detainer Action and denying its subsequent motion to reconsider that dismissal. For the reasons which follow, we reverse the denial of Atlantic's

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motion to reconsider and remand the matter back to the circuit court with directions to vacate its order of dismissal.

¶ 3 On April 30, 2015, Atlantic filed a single-count complaint against the defendant, Steve Stevenson, and unknown occupants of the premises commonly known as 12238 South Yale Avenue, Chicago, Illinois (the "premises"). The complaint sought possession of the premises and "the sum of "\$11,474.41 as rent or damages, plus any additional rents or damages which accrue through the trial date, at a rate of \$405.00 per month, court costs, and reasonable attorney fees." Having failed to obtain personal service of the complaint and summons upon Stevenson, Atlantic caused the Sheriff of Cook County to post a notice of the pendency of the litigation. On June 24, 2015, an ex-parte hearing was held on Atlantic's complaint, resulting in the entry of an order finding that Atlantic was entitled to possession of the premises from Stevenson and unknown occupants. That order also provides that Atlantic's claim for money damages was dismissed without prejudice. Finally, the order provided that enforcement was stayed until July 1, 2015.

¶ 4 On July 20, 2015, Stevenson filed a motion seeking "more time on stay." On July 22, 2015, Stevenson filed a motion to vacate the ex-parte order for possession of the premises which had been entered on June 24, 2015. On that same date, the circuit court entered an order, vacating its June 24, 2015, order for possession, reinstating Atlantic's claim for money damages, finding that Stevenson had submitted to the court's jurisdiction, and continuing the matter for hearing on July 29, 2015. On July 29, 2015, the circuit court entered an order of default against Stevenson and set the matter for prove-up of Atlantic's complaint on August 3, 2015.

¶ 5 When the matter came on for hearing on August 3, 2015, the court entered an order on its own motion finding that Atlantic's complaint was not "a proper Forcible Entry and Detainer

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Action within Section 5/9-102.(5) [*sic*] of the Forcible Detainer Act" and dismissing Atlantic's action. There is no transcript of the proceedings held on August 3, 2015, contained within the record filed in the instant appeal. On September 2, 2015, Atlantic filed a motion for reconsideration of the court's August 3, 2015, order dismissing its action and noticed that motion for hearing on September 15, 2015. Attached to that motion as exhibits are: a copy of a real estate contract covering the premises and purporting to have been entered into between Atlantic and Stevenson on April 27, 2010; a copy of a notice of intention to declare a termination and forfeiture of all rights under the parties contract covering the premises; and an affidavit executed by Michael Phelan, Atlantic's corporate secretary, stating, *inter alia*, that as of April 2015, Stevenson owed \$29,030.06 of principal and accrued interest on his contract to purchase the premises from Atlantic. After several continuances, the circuit court entered an order on October 13, 2015, denying Atlantic's motion to vacate the order of August 3, 2015. Again, the record before us does not contain a transcript of the proceedings on October 13, 2015. On November 6, 2015, Atlantic filed its notice of appeal from the circuit court's orders of August 3, 2015, and October 13, 2015.

¶ 6 Atlantic argues that the circuit court erred in dismissing its action in this case as Stevenson failed to comply with the terms of the contract to purchase the premises, he withheld possession of the premises from Atlantic after being served with a notice of termination and forfeiture under the contract, and the balance owed by Stevenson on his contract to purchase the premises was greater than 80% of the original purchase price. Consequently, Atlantic argues that its action in this case was properly brought as a Forcible Entry and Detainer Action pursuant to section 9-102(a)(5) of the Code of Civil Procedure (735 ILCS 5/9-102(a)(5) (West 2014)).

¶ 7 At the outset, we acknowledge that Stevenson has failed to file a brief in this appeal. However, the record in this case is short, consisting of only 73 pages, and the claimed errors are such that we can easily resolve this appeal without the aid of an appellee's brief. Consequently, we will address the merits of this appeal. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 8 As noted earlier, when the circuit court, on its own motion, dismissed Atlantic's action on August 3, 2015, it found that the action was not a proper Forcible Entry and Detainer Action. Relying upon the allegations contained in, and the exhibits attached to, its motion to reconsider the circuit court's August 3, 2015, order dismissing its action, Atlantic argues that its underlying action was properly brought as a Forcible Entry and Detainer Action. In support, Atlantic cites to the provisions of section 9-102 of the Code of Civil Procedure which states, in relevant part, that:

"(a) The person entitled to the possession of lands or tenements may be restored thereto under any of the following circumstances:

\* \* \*

(5) When a vendee having obtained possession under a written or verbal agreement to purchase lands or tenements, and having failed to comply with the agreement, withholds possession thereof, after demand in writing by the person entitled to such possession; provided, however, that any such agreement for residential real estate as defined in the Illinois Mortgage Foreclosure Law entered into on or after July 1, 1987 where the purchase price is to be paid in installments over a period in excess of 5 years and the amount unpaid under the terms of the contract at the time of the filing of a foreclosure complaint under Article XV,

including principal and due and unpaid interest, is less than 80% of the original purchase price shall be foreclosed under the Illinois Mortgage Foreclosure Law." 735 ILCS 5/9-102(a)(5) (West 2014).

¶ 9 Ordinarily, when as in this case, the appellant fails to furnish this court with a record containing either a report of proceedings or a bystanders report prepared in accordance with Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005), we would resolve the incompleteness of the record against the appellant and presume that the trial court's order had a sufficient factual base and was in conformity with the applicable law. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Although the record in this case contains no report of the proceedings held on August 3, 2015, which resulted in the court's dismissal of Atlantic's action, the motion to reconsider that dismissal contains all of the facts necessary to determine whether the action was properly brought as a Forcible Entry and Detainer Action.

¶ 10 We apply an abuse of discretion standard to our review of the circuit court's denial of Atlantic's motion to reconsider. *O'Shield v. Lakeside Bank*, 335 Ill. App. 3d 834, 837-38 (2002). Attached to Atlantic's motion to reconsider was a copy of the contract entered into between it and Stevenson on April 27, 2010, whereby Atlantic conveyed the premises to Stevenson for the sum of \$20,000, payable in installments for a period in excess of 5 years. Further, Phelan's affidavit which is attached to the motion fixes the principal and accrued interest owed by Stevenson under that contract as of April 2015 at \$29,030.06; a sum in excess of 80% of the purchase price set forth in the parties contract. We find that the facts alleged in Atlantic's motion to reconsider, coupled with the information contained within the exhibits attached thereto, satisfy the statutory requirements for a Forcible Entry and Detainer Action against a vendee of residential real estate such as Stevenson who withholds possession after failing to comply with

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the contract of purchase. 735 ILCS 5/9-102(a)(5) (West 2014). We conclude, therefore, that the circuit court abused its discretion in denying Atlantic's motion to reconsider the order of August 3, 2015, dismissing Atlantic's action against Stevenson on the basis that it "is not a proper Forcible Entry and Detainer Action."

¶ 11 Based upon the foregoing analysis, we reverse the circuit court's order of October 15, 2015, which denied Atlantic's motion to reconsider the dismissal of August 3, 2015, and remand this matter to the circuit court with directions to vacate its order of August 3, 2015, and to conduct further proceedings consistent with this order.

¶ 12 Reversed in part and remanded with directions.