2018 IL App (1st) 172978-U

FOURTH DIVISION
June 21, 2018

No. 1-17-2978

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MAXIMO MARTINEZ and DAVID MALDONADO,	)	
	)	Appeal from
Plaintiffs-Appellees,	)	the Circuit Court
	)	of Cook County
v.	)	
	)	14-L-07479
DEA PROPERTIES LLC, AMD INDUSTRIES INC., and CONSTRUCTION PARTNERS INC.,	)	
	)	Honorable
	)	Brigid Mary McGrath,
Defendants-Appellants.	)	Judge Presiding

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Burke and Justice Gordon concurred in the judgment.

O R D E R

Held: Permissive interlocutory appeal dismissed where resolution would have required fact-intensive inquiry and application of settled law rather than analysis of a question of law as to which there is substantial ground for difference of opinion.

¶ 1 The defendants to this real property damage suit appeal pursuant to Supreme Court Rule 308 (Ill. S. Ct. R. 308(a) (eff. Jan. 1, 2016)) from a circuit court order denying the defendants' motion for summary judgment in which they argued the plaintiffs lack standing to sue. The defendants twice sought summary judgment on grounds that the plaintiffs are not the title owners of real property they are in the process of buying pursuant to a contract which specifies they will

have no legal or equitable interest until the transaction is complete. The trial judge found that despite the contract language, the plaintiffs have standing to sue for structural damage to the building that was allegedly caused by the defendants, because the facts indicate an equitable conversion of the property has occurred, and that the damage aspect of their suit should proceed to trial. The judge said that she was, however, willing to certify a question for permissive interlocutory review, because the concept of equitable conversion by contract "hasn't been ruled on in a while in the First District." The question certified for our resolution is essentially the defendants' argument for summary judgment: "As a matter of law, does a provision in a contract for deed that says 'No right, title, or interest, legal or equitable, in the premises described herein, or in any part thereof, shall vest in the Buyer until the Deed, as herein provided, shall be delivered to the Buyer,' preclude equitable conversion and thereby deprive the contract buyer of standing to pursue an action for damages to the property?" Before addressing the merits of an appeal, we are to consider whether we have jurisdiction. *Camp v. Chicago Transit Authority*, 82 Ill. App. 3d 1107, 1109, 403 N.E.2d 704, 706 (1980)). Unless the appeal meets the requirements of Rule 308, we are without jurisdiction to consider the matter. *Camp*, 82 Ill. App. 3d at 1110, 403 N.E.2d at 706. Because we have determined that the certified question does not meet the criteria for a Rule 308 appeal, we lack jurisdiction and must dismiss the appeal.

¶ 2 Appellate review of interlocutory orders is not favored. Generally, only orders which terminate the litigation between the parties or dispose of their rights on some definite, separate part of the litigation are appealable. *Dick Lashbrook Corp. v. Pinebrook Foundation, Inc.*, 134 Ill. App. 3d 56, 63, 479 N.E.2d 1229, 1234 (1985); *Village of Niles v. Szczesny*, 13 Ill. 2d 45, 47-48, 147 N.E.2d 371, 372 (1958); Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); Ill. S. Ct. R. 303 (eff. Jan. 12, 1967). An order denying summary judgment is not a final, appealable order, because it does

not conclusively determine the parties' rights or impede the continuation of the proceedings. *Dick Lashbrook Corp.*, 134 Ill. App. 3d at 63, 479 N.E.2d at 1234; *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 472, 693 N.E.2d 358, 365 (1998).

¶ 3 Supreme Court Rule 308, originally adopted in 1967, is one of the exceptions to the general rule that only final orders are subject to appellate review. The rule states:

> "When the trial court, in making an interlocutory order not otherwise appealable, finds that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the court shall so state in writing, identifying the question of law involved. Such a statement may be made at the time of the entry of the order or thereafter on the court's own motion or on motion of any party. The Appellate Court may thereupon in its discretion allow an appeal from the order." Ill. S. Ct. R. 308(a) (eff. Jan. 1, 2016).

¶ 4 Thus, Rule 308 provides for permissive interlocutory appeals, but the rule was intended to be used "sparingly" and only in the most "exceptional situation" to resolve an important question at an interlocutory stage. *Voss v. Lincoln Mall Management Co.*, 166 Ill. App. 3d 442, 445, 519 N.E.2d 1056, 1058-59 (1988). Rule 308 " 'was not intended to open the floodgates to a vast number of appeals from interlocutory orders in ordinary litigation.' " *Voss*, 166 Ill. App. 3d at 445, 519 N.E.2d at 1058 (quoting *Camp*, 82 Ill. App. 3d at 1110, 403 N.E.2d at 707).

¶ 5 The trial court found pursuant to Rule 308(a) that its order denying summary judgment as to standing "involved a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation." Ill. S. Ct. R. 308(a) (eff. Jan. 1, 2016). This conclusion was

incorrect. In fact, the authority underlying the trial court's denial of summary judgment—*Shay*, *Eade*, *Cox*, and *Vinson*—is well-settled, consistent, and clear as to whether an equitable conversion may be found despite the inclusion of the type of contract clause at issue here. There is no "substantial ground for difference of opinion" on the topic in Illinois law. *Shay v. Penrose*, 25 Ill. 2d 447, 449, 185 N.E.2d 218, 219-20 (1962); *Eade v. Brownlee*, 29 Ill. 2d 214, 193 N.E.2d 786 (1963); *Cox v. Supreme Savings & Loan Ass'n*, 126 Ill. 2d 214, 193 N.E.2d 786 (1963); *In re Vinson*, 202 B.R. 972 (Bankr. S.D. Ill. 1996); and Ill. S. Ct. R. 308(a) (eff. Jan. 1, 2016).

¶ 6 We briefly set out how we came to this conclusion. In mid 2014, plaintiffs Maximo Martinez[1] and David Maldonado alleged in a verified complaint that the two-story brick apartment building they jointly own at 4639 West 19th Street, in Cicero, Illinois sustained cracks in the foundation, walls, roof, and ceiling and water seepage into the basement, due to the defendants' negligent construction of a parking lot in 2010 on the adjacent property, 4623-to-4637 West 19th Street. The adjacent parcel is approximately 72,000 square feet and is commonly known as 4700 West 19th Street. Its owner, defendant DEA Properties LLC; its tenant, defendant AMD Industries Inc.; and the general contractor responsible for the work, defendant Construction Partners, Inc., argued for summary judgment on grounds that Martinez and Maldonado lack standing to sue for structural damage which the defendants are alleged to have caused to the building. Under the standing doctrine, one must have a sufficient stake in the outcome of the controversy in order to present the issues to a court. *People* ex rel. *Hartigan v. E&E Hauling, Inc.*, 153 Ill. 2d 473, 482, 607 N.E.2d 165, 170 (1992).

¶ 7 The defendants contended Martinez and Maldonado are not the proper plaintiffs because

[1] The record indicates that Martinez is now known as Max B. Martins, but we will use the name that appears on the complaint and throughout the record, in order to avoid confusing the reader.

(1) they are not on the 1998 warranty deed maintained in the files of the Cook County Recorder of Deeds which indicates Abelardo Telles is the sole owner and (2) although Martinez and Maldonado have been making monthly payments to Telles pursuant to a 2004 contract, they cannot be deemed the equitable owners of the building when paragraph 19 of their contract with Telles states that the buyers accrue no right, title, or interest in the premises until the deed is delivered to them at their completion of the purchase.

¶ 8 Pursuant to that contract, the buyers took immediate possession of the property on March 3, 2004 (paragraphs 4 and 5) and assumed liability for all maintenance and necessary repairs, insurance, taxes, water charges, and liens (paragraphs 14, 15, 16, and 17); and although the seller reserved the right to keep or place a mortgage on the property, the mortgage amount could not to exceed the balance of the purchase price then unpaid (paragraph 6).

¶ 9 The trial judge rejected the defendants' argument that the court need look only at the deed and paragraph 19 of the purchase contract and found that the defendants' presentation left open questions of fact as to whether an equitable conversion had occurred. The trial judge remarked that paragraph 19 of the form contract was contrary to the parties' intent expressed in other paragraphs of their agreement, specifically (1) paragraph 14, which requires the buyers to maintain the building and grounds in good condition, including the property's plumbing, electrical system, electrical fixtures, roof, and masonry; (2) paragraph 16, which requires the buyers to maintain and pay for insurance against fire or other casualty, with coverage being no less than the balance owed on the purchase price, and (3) paragraph 17, which requires the buyers to immediately pay all general and special taxes, water charges, sewer service charges, and other taxes, fees, liens levied or assessed against the premises. The judge also commented that it was early in the proceedings, and that little discovery had been conducted.

¶ 10 After additional discovery, which included deposing the seller and buyers about rental receipts, maintenance outlays, property tax payments, and so forth, the defendants again moved for summary judgment on grounds that Martinez and Maldonado did not have standing. Despite introducing the additional facts about the seller and buyers' interactions, the defendants again argued that the court need look only to Telles's deed and to paragraph 19 of the only document which connected the buyers to the property and specified that they would take not any equitable interest until the deed was in their names.

¶ 11 This time, the trial judge found that an equitable conversion had occurred; denied the second motion for summary judgment as to standing; indicated that the buyers should bring the seller in as a nominal party to their negligence suit because of his interest in the property; and that once the seller had been notified, the judge would set a trial date as whether the defendants' activity damaged the brick building. The judge remarked that she was 85% certain of the correctness of her ruling, but was nevertheless willing to authorize an interlocutory appeal because the motion presented an "interesting" issue that "hasn't been ruled on in a while in the First District." The defendants followed up with a motion to proceed to the appellate court pursuant to Rule 308(a) (Ill. S. Ct. R. 308(a) (eff. Jan. 1, 2016)), which the trial judge granted. After we granted the defendants' application for leave to appeal, the trial judge stayed the proceedings pending our disposition of the appeal.

¶ 12 Equitable conversion, which may stem from a contract or a will, is a doctrine used to decide the status of the interests of a property seller and buyer during the period between the execution of the contract of sale and the actual transfer of legal title, or to carry out the intentions of a testator who has directed the sale or purchase of specific property. *In re Estate of McGee*, 66 Ill. App. 3d 994, 383 N.E.2d 1012 (1978) (equitable conversion is applied to uncompleted sales

of real estate and to devises under wills, in order to carry out the intention of the parties and enforce the maxim "equity regards as done that which ought to be done"). The doctrine may be used, for instance, to allocate an increase or decrease in property value between contracting and closing the transaction, such as when there is a fire, flood, or windstorm that damages structures on the land, or to determine the status of the property when a seller or buyer dies before closing. *Parson v. Wolfe*, 676 S.W.2d 689, 691 (1984); Simpson, Legislative Changes in the Law of Equitable Conversion by Contract: II, 44 Yale L.J. 559, 754 (1935). Under the doctrine, a buyer is regarded as an equitable owner of the land and a debtor for the purchase money; and the seller continues to hold legal title, but in trust for the buyer and is regarded as a secured creditor, not unlike a mortgagee. Simpson, Legislative Changes in the Law of Equitable Conversion by Contract: I, 44 Yale L.J. 559 (1935).

¶ 13 In *Shay*, the Illinois Supreme Court indicated that the doctrine of equitable conversion has been recognized in this jurisdiction and most other jurisdictions since the "earliest times." *Shay*, 25 Ill. 2d at 449, 185 N.E.2d at 219. The court addressed the timing of an equitable conversion by contract and rejected the argument that the buyer would not hold equitable title until the buyer satisfied all the contractual obligations and was entitled to the deed. *Shay*, 25 Ill. 2d at 450, 185 N.E.2d at 220. Instead, the court held that equitable title vests in the buyer as of the date when the buyer and seller enter into a valid and enforceable contract. *Shay*, 25 Ill. 2d at 450, 185 N.E.2d at 220 (titles would be left "in an utter state of confusion," if equitable conversion were to depend on the length of a contract or whether a contract is nearing completion). Because equitable conversion by contract occurred prior to the death of the actual title holder, her sister could not claim ownership in the land under the rules of intestacy. *Shay*, 25 Ill. 2d at 451, 185 N.E.2d at 220.

¶ 14 Subsequently, in *Eade*, *Cox*, and *Vinson*, the courts applied the doctrine to contracts which contained clauses similar to the one currently at issue. In each instance, the courts considered not only the clause, but the parties' contract as a whole and other facts surrounding the transaction, such as whether the buyer was exercising prerogatives of ownership such as making improvements to the property. *Eade*, 29 Ill. 2d 214, 193 N.E.2d 786; *Cox*, 126 Ill. 2d 214, 193 N.E.2d 786; *Vinson*, 202 B.R. 972.

¶ 15 Home improvement contractors in *Eade*, however, wanted the court to limit its consideration to just one fact—that a real estate purchase contract had been executed—and conclude that the buyer had immediately become an equitable owner with authority to mortgage the property in order to pay for repairs and updating. *Eade*, 29 Ill. 2d at 217, 193 N.E.2d at 788. Although the buyer subsequently fell behind on her payments to the seller and the seller declared a forfeiture, the home improvement contractors argued they should be able to step in to pay off the buyer's debt to the seller and then foreclose their mortgages against the property, under the theory that execution of the purchase contract had immediately transferred equitable title to the buyer. *Eade*, 29 Ill. 2d at 217, 193 N.E.2d at 788. The Illinois Supreme Court considered all the relevant circumstances. The court considered the whole contract, including the clause stating, "That no right, title or interest, legal or equitable, in the premises aforesaid, or any part thereof, shall vest in the Purchaser until the delivery of the deed aforesaid by the Seller, or until the full payment of the purchase price at the times and in the manner herein provided." *Eade*, 29 Ill. 2d at 218, 193 N.E.2d at 789. The court found that this language clearly indicated the seller and buyer did not intend for equitable title to transfer such that the buyer could encumber the property with mortgages. *Eade*, 29 Ill. 2d at 218, 193 N.E.2d at 789. The Supreme Court did not stop its analysis with that conclusion. Other contract clauses prohibited the buyer from

permitting liens to attach to the property, required contracts for repairs and improvements to waive and release claims or liens against the property, and precluded the buyer from assigning any interest in the purchase contract without the prior written consent of the seller. *Eade*, 29 Ill. 2d at 218, 193 N.E.2d at 789. The court also considered the cost and quality of the buyer's improvements to the property and deemed them to be "shoddy improvements at a ridiculous cost." *Eade*, 29 Ill. 2d at 218, 193 N.E.2d at 789. All these facts led the court to conclude that it would be inequitable to impose the doctrine of equitable conversion for the benefit of the home improvement contractors, and that the seller held the property title free and clear of the purchase contract and the buyer's purported mortgage debt for improvements to the residence. *Eade*, 29 Ill. 2d 214, 193 N.E.2d 786. Thus, *Eade* may be cited for the proposition that despite a "no equitable conversion" clause, a court's decision as to whether an equitable conversion by contract has occurred depends on contemplation of the contract as a whole and other facts surrounding the transaction. In no way does *Eade* suggest that the significance of a "no equitable conversion" is a question of law that may be decided in a factual vacuum.

¶ 16 When the same contract clause was considered in *Cox*, the buyers argued that the language meant they took bare possessory rights and had no liability for remedying building code violations. *Cox*, 126 Ill. 2d at 296-97, 262 N.E.2d at 76. The property was an apartment building, and pursuant to the purchase contract, the buyers leased out the units, collected rent payments, paid taxes and insurance, and made repairs, but could not make major improvements without the seller's approval. *Cox*, 126 Ill. 2d at 297, 262 N.E.2d at 77. The Illinois appellate court observed that nothing remained to be done under the contract except for the buyers to complete payments and the seller to deliver its warranty deed. *Cox*, 126 Ill. 2d at 295, 262 N.E.2d at 75. The court ruled that the contract language and the conduct on both sides allowed

the buyers to exercise all the rights of an owner and perform all the duties of an owner, with the exception of making certain improvements without the seller's approval. *Cox*, 126 Ill. 2d at 297, 262 N.E.2d at 77. Thus, the contract as a whole and the parties' conduct negated the "no equitable conversion" clause, and rendered the buyers, not the seller, obligated to pay for correcting the building code violations. *Cox*, 126 Ill. 2d 293, 193 N.E.2d 74. Like *Eade*, *Cox* may be cited for the proposition that the significance of a "no equitable conversion" clause depends on contemplation of the contract as a whole and other facts surrounding the transaction.

¶ 17 Slightly different wording was used in the *Vinson* contract. *Vinson*, 202 B.R. 972. The clause at issue there stated: " '[b]oth legal and equitable title in the property shall be reserved by the seller[s] until the purchase price is fully paid and this contract fully performed by the buyer.' " *Vinson*, 202 B.R. at 973-74. Applying Illinois law, the federal bankruptcy court for the Southern District of Illinois rejected the argument that it should limit its analysis to the quoted clause. The bankruptcy court noted, "While the *Eade* court used strong language in giving effect to the provision reserving equitable title in the sellers, the court's ruling was based on the facts of that case and must not be applied in a blanket fashion to cases, such as the present one, involving far different facts." *Vinson*, 202 B.R. at 975. The bankruptcy court ruled that the clause barring an equitable conversion was nullified by other terms of the parties' contract which gave the buyer complete control of the property and did not prevent the vesting of equitable title in the buyer. *Vinson*, 202 B.R. at 976. The bankruptcy court concluded, "while the provision reserving title in the sellers purports to express the parties' intent regarding their respective interests in the property, this intent is more plainly manifested by the remainder of the contract giving the debtor the rights and responsibilities of an owner of the property." *Vinson*, 202 B.R. at 976.

¶ 18 Thus, in these cases, the courts consistently adhered to the overriding principle of

contract interpretation that clauses are construed within the context of the contract as a whole and that equitable theories require an analysis of the substance of the transaction rather than its form. *Eade*, 29 Ill. 2d at 217, 193 N.E.2d at 798 (equitable conversion does not apply where the parties intend otherwise or where equitable considerations intervene); *Cox*, 126 Ill. App. 2d at 295, 262 N.E.2d at 76 ("The doctrine of equitable conversion is actually an equitable fiction [applied when the facts warrant] to accomplish the intention of the parties and to ensure justice where technical rules of law might preclude it."); *Vinson*, 202 B.R. at 976 ("Ironically, the provision at issue would prevent application of this equitable doctrine and defeat the parties intent as evidenced by other provisions of the contract giving the debtor an ownership interest in the subject property."). See also *McGee*, 66 Ill. App. 3d at 996, 383 N.E.2d at 1014 (when equitable principles are invoked, the substance of a transaction controls, not the form of the transaction); *Metcalf v. Altenritter*, 53 Ill. App. 3d 904, 909, 369 N.E.2d 498, 502 (1977) (in equity, a conveyance of land, seemingly absolute, could be treated as a mortgage if it were intended as security for the payment of money); *Great Western Bank & Trust Co. v. Pima Savings & Loan Ass'n*, 149 Ariz. 364, 718 P.2d 1017 (1986) (sorting out status of real estate loan checks where title was conveyed and deed was recorded on Friday, riverside condominium project was destroyed by flood on Saturday and Sunday, and lender stopped payment on checks on Monday).

¶ 19 We have considered the specific authority that was argued in the trial court proceedings, *Shay*, *Eade*, *Cox*, and *Vinson*, as well as the general principles of equitable conversion. *Shay*, 25 Ill. 2d 447, 185 N.E.2d 218; *Eade*, 29 Ill. 2d 214, 193 N.E.2d 786; *Cox*, 126 Ill. 2d 214, 193 N.E.2d 786; *Vinson*, 202 B.R. 972. We find no disagreement, no lack of clarity, and no uncertainty in Illinois law regarding the impact of including a "no equitable conversion" clause

in a real estate purchase contract. The authority consistently indicates that the significance of the clause can be determined only through the trial court's fact-intensive inquiry into the parties' transaction to determine whether their intentions and justice warrant treating the buyer as the equitable owner of real property which is still legally titled in the seller's name. After reviewing this authority, we have come to the conclusion that the certified question does not meet Rule 308's criteria. *Shay* did not include the type of clause now at issue and the opinion is relevant only for its conclusion that equitable conversion by contract dates to the execution of the contract. The three subsequent cases, *Eade*, *Cox*, and *Vinson*, are the same case for our purposes because the courts engage in the same analysis with regard to the significance of a "no equitable conversion" clause. In other words, this is a well-settled area of Illinois law about which there is no substantial ground for difference of opinion. In their motion for Rule 308 certification, the defendants argued there are two lines of authority in Illinois regarding a "no equitable conversion" clause, consisting of *Shay* and *Eade*, which were decisions issued by the highest Illinois court and which did not support the trial judge's ruling; and *Cox* and *Vinson*, which the trial judge had expressly relied on, even though these were merely the subsequent decisions of an Illinois intermediate appellate court and a foreign court applying bankruptcy law. *Shay*, 25 Ill. 2d 447, 185 N.E.2d 218; *Eade*, 29 Ill. 2d 214, 193 N.E.2d 786; *Cox*, 126 Ill. 2d 214, 193 N.E.2d 786; *Vinson*, 202 B.R. 972. However, in their appellate brief the defendants argue that *Shay*, *Eade*, and *Cox* reached different results because of their factual differences and they discount *Vinson* in part because there are "significant [factual] differences in the instruments at issue" in that precedent and the contract at issue here. *Shay*, 25 Ill. 2d 447, 185 N.E.2d 218; *Eade*, 29 Ill. 2d 214, 193 N.E.2d 786; *Cox*, 126 Ill. 2d 214, 193 N.E.2d 786; *Vinson*, 202 B.R. 972. The defendants' arguments acknowledge that this area of law requires a fact-specific analysis.

¶ 20 The hearing transcript confirms that the trial court's ruling was based on its application of the law to the established facts. The court discussed the four cases and then stated, "So I'm following the *Vinson* court which *** applied *** Illinois law. I'm finding that in this case, equitable conversion is especially suited to the allegations." When counsel countered that under *Shay* and *Eade* the mere existence of the "no equitable conversion" clause was controlling, the trial judge responded: "[Under the Illinois case law you just cited,] you've got to look at other provisions in the contract to see *** whether that provision is voided by other provisions that clearly place control within the buyer. In this case, those provisions are there." The trial judge's denial of summary judgment—twice—as to the issue of equitable conversion was based on the well-settled legal principles and facts of this case and did not involve a question of law as to which there is substantial ground for difference of opinion. The trial judge's additional conclusion that the theory of equitable conversion was an "interesting" issue that "hasn't been ruled on in a while in the First District," did not justify immediate review of the summary judgment ruling.

¶ 21 We conclude that the certified question necessarily involves factual analysis and can be answered only by incorporating those facts into the answer, or by answering equivocally. Rule 308 should not be used as a means of obtaining the expedited review of an order that merely applies the law to the facts of a particular case. In *Morrissey* it was alleged that the City of Chicago's failure to repair or warn of potholes on a portion of South Kedzie Avenue caused a driver to lose control of her car, cross the center line, and collide with another car, resulting in her own death and the death of a passenger in the other car. *Morrissey v. City of Chicago*, 334 Ill. App. 3d 251, 253, 777 N.E.2d 390, 391 (2002). The municipality sought summary judgment on grounds that it was immunized from liability by certain sections of the Governmental Employees

Tort Immunity Act, 745 ILCS 10/2-201, 3-102(a) (West 1994). *Morrissey*, 334 Ill. App. 3d at 253, 777 N.E.2d at 391-92. The trial court denied the City's motion, on grounds that there were fact questions as to whether the statute was applicable. *Morrissey*, 334 Ill. App. 3d at 253, 777 N.E.2d at 392. In other words, the trial court's order did not involve a question of law as to which there was substantial ground for difference of opinion. Nevertheless, the trial court granted a joint motion to certify the following question for interlocutory appeal pursuant to Rule 308: " 'Is a municipality immune from liability under section 2-201 of the Local Governmental and Governmental Employees Tort Immunity Act when the municipality is sued for breaching the duty to maintain a public roadway in a reasonably safe condition?' " *Morrissey*, 334 Ill. App. 3d at 253, 777 N.E.2d at 392. An answer in the City's favor would preclude the plaintiffs' right to recover damages and avert the need for a trial. *Morrissey*, 334 Ill. App. 3d at 255, 777 N.E.2d at 393. The appellate court granted the City's petition for leave to appeal, but then realized the question should never have been certified. *Morrissey*, 334 Ill. App. 3d at 258, 777 N.E.2d at 395. Because the open questions of fact had to be addressed before it was apparent whether the statute was applicable, the certified question could not be answered definitively and the appellate court could have only equivocated in its response. *Morrissey*, 334 Ill. App. 3d at 255, 777 N.E.2d at 393. Appellate courts generally do not issue provisional opinions or provide advisory opinions to guide future litigation. Accordingly, instead of equivocating, the appellate court dismissed the City's appeal. *Morrissey*, 334 Ill. App. 3d at 259, 777 N.E.2d at 396. Accord *Rozsavolgyi v. City of Aurora*, 2012 IL 121048, ¶ 21, --- N.E.3d --- (vacating appellate court's answer to Rule 308 question which was dependent upon the facts of the specific case, as the certified question was improper); *Dowd & Dowd*, 181 Ill. 2d at 477, 693 N.E.2d at 367 ("Because of the provisional nature of the inquiry and the many unresolved factual questions that remain *** we do not

attempt on this occasion to offer an answer to the question certified by the trial judge").

¶ 22 Applying *Morrissey* and the equitable conversion authority discussed above, we decline to answer the certified question where, although the matter was framed as a question of law, its resolution depends on a factual analysis. *Morrissey*, 334 Ill. App. 3d at 258, 777 N.E.2d at 396. Upon our full review of the question, record, and authority, we find that we improvidently granted the defendants' Rule 308 application for leave to appeal. Accordingly, we dismiss the appeal for lack of jurisdiction. *Camp*, 82 Ill. App. 3d at 1110, 403 N.E.2d at 706.

¶ 23 Appeal dismissed.