SIXTH DIVISION
September 14, 2018

No. 1-18-0159

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FLASH MAINTENANCE, INC.,	)	Appeal from the
	)	Circuit Court of
Plaintiff/Counterdefendant-Appellant and Cross-Appellee,	)	Cook County.
	)	
v.	)	
	)	
VICTORIA LEDESMA, GLORIA ROSS, ALEX LEDESMA, M.B. FINANCIAL BANK, and UNKNOWN OCCUPANTS,	)	No. 16 CH 3228
	)	
Defendants	)	
	)	
(Victoria Ledesma and Gloria Ross, Defendants/Counterplaintiffs-Appellees and Cross-Appellants).	)	Honorable John C. Griffin, Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly granted defendants' motion to bar plaintiff's rejection of the arbitration award where plaintiff's rejection was filed more than seven business days after the award was filed in circuit court; the trial court did not abuse its discretion when it denied plaintiff's motion to continue the arbitration date; we lack jurisdiction to address the portion of plaintiff's appeal that was not specified in its notice of appeal; and the trial court did not abuse its discretion when it denied defendants' motion for an award of attorney fees; affirmed in part and dismissed in part.

¶ 2 Plaintiff, Flash Maintenance, Inc., appeals the trial court's order granting the motion to bar rejection of the arbitration award brought by defendants, Victoria Ledesma and Gloria Ross (collectively, defendants), and entering judgment in defendants' favor. Plaintiff also appeals the trial court's order that denied its motion to continue the arbitration date, and the trial court's order that denied its motion to dismiss defendants' counterclaim for violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/1 *et seq*. (West 2012)). Defendants cross-appeal from the trial court's denial of their motion for an award of attorney fees. We affirm in part and dismiss in part.

¶ 3 BACKGROUND

¶ 4 Defendants are the owners of the property located at 1545 North Roy in the Village of Melrose Park (property). Gloria Ross is Victoria Ledesma's mother. As of January 2016, Gloria lived at the property with Victoria's husband, Alex Ledesma[1], and Victoria and Alex's children. Gloria is disabled with multiple sclerosis and osteoporosis and is unable to use stairs. In 2014, defendants decided to build an addition onto the property so that Gloria could live with Victoria and her family. In spring 2014, Victoria spoke with plaintiff's president, Josh Ferstein, regarding the addition and plaintiff subsequently presented Victoria with a proposal.

¶ 5 On May 28, 2014, plaintiff and Victoria entered into a contract for plaintiff to build a home addition on the property. The contract stated that the price was $73,841.67, the work would commence once the permit was issued, and the work would be completed "by Nov [*sic*] 1." The contract did not itemize the prices for the work and only provided a total price. The contract included a one-year warranty "on all work performed in scope of work." The contract stated that plaintiff would construct a two-story addition and would furnish and install, *inter alia*, a new opening from the existing house to the new addition, siding that matched as closely as

[1] Alex Ledesma is a codefendant but is not a party to this appeal.

possible the existing siding, a new roof, new laminate flooring, new gutters and downspouts, new electrical outlets and light fixtures, and eight windows in the new addition. The contract also stated that plaintiff would wrap the property in oriented strand board (OSB) and Tyvek, a material used to wrap homes during construction. Further, the contract provided that the costs of permits and fees were the responsibility of the homeowner, licensed architect drawings were required for the project by the Village of Melrose Park, and "[a]ll items not listed on this proposal will be added as a Change Order on the invoice and will be charged as a separate line item."

¶ 6 Victoria hired an architecture firm to prepare the drawings that were necessary to secure a permit from the village. Victoria, Ferstein, and the architect met multiple times regarding the drawings of the modification to be made to the property. However, because it took longer than anticipated to secure these drawings, the project's completion date was extended.

¶ 7 Thereafter, plaintiff performed some of the work contemplated by the contract as well as some of the work that was not included in the contract but was added after consultations with the architect. However, disputes between plaintiff and Victoria arose regarding plaintiff's alleged lack of performance, the lack of performance by subcontractors hired by plaintiff, and plaintiff's failure to comply with the completion date. Victoria, acting through counsel, sent Ferstein a letter that terminated the contract on October 14, 2015, stating that he and plaintiff "have not provided the services nor completed the work as required under the proposals." The letter further stated:

> "Please do not enter the property and be certain that none of your employees or subcontractors enter the property.

> This correspondence will act as further notice to you that my client will be hiring a new contractor to complete the work that has not been completed and will advise you of the costs that she incurs in completing the work and will request payment from you at that time."

¶ 8 On January 8, 2016, plaintiff recorded its mechanic's lien against the property with the Cook County Recorder of Deeds, stating as follows: (1) plaintiff claimed a lien in the amount of $84,317.89; (2) defendants were entitled to payment credits in the amount of $60,000; (3) the balance due and owing to plaintiff was $24,317.89.

¶ 9 On March 8, 2016, plaintiff filed its verified complaint for foreclosure of the mechanic's lien and other relief against defendants, unknown owners, and non-record claimants, alleging that defendants had failed to pay plaintiff for work performed in the amount of $24,317.89. On April 12, 2016, plaintiff filed its amended verified complaint for foreclosure of the mechanic's lien and other relief, adding Victoria's husband Alex as a defendant because he was a resident of the property and may have had some interest therein. Plaintiff's amended complaint alleged that the additional work, which was not contemplated in the contract but added through consultations with the architect, totaled $10,476.22, and that by October 12, 2015, plaintiff had completed partial work under the contract worth $84,317.89. Plaintiff further alleged that it performed all of its obligations under the contract until it was dismissed from the jobsite by the letter dated October 14, 2015. Further, the amended complaint alleged that despite plaintiff's demands, defendants refused to pay the $24,317.89 that allegedly remained due.

¶ 10 On June 6, 2016, defendants filed their verified answer to plaintiff's amended complaint and a counterclaim. Defendants' counterclaim contained the following four respectively-numbered counts: (I) common law fraud, (II) violation of the Consumer Fraud Act, (III) breach

of contract, and (IV) breach of warranty. Defendants' counterclaim alleged defects in plaintiff's work and numerous breaches of the contract. For example, the counterclaim alleged that although Victoria had asked that the siding on the house not be removed and that the siding for the addition match the old siding on the house as best it could, Ferstein told Victoria that all the siding needed to be removed. Defendants' counterclaim also alleged that in addition to removing the siding, plaintiff did limited work from October through December 2014, and that in December 2014, plaintiff stopped coming to the property, leaving the house with no siding and the new addition without windows, flooring, or finished plumbing during cold months. Thereafter, the only work completed on the property was in January 2015 by a plumber who did not complete the work that was contemplated in the contract. Defendants' counterclaim further alleged that in March 2015, defendants contacted the Illinois Attorney General and the village commissioner because no work had been done by plaintiff since December 2014. Ferstein was contacted by the village commissioner, and as a result, he and Victoria met in April 2015 and a new project manager named "Frank" was assigned to the property. The counterclaim further stated that because the siding was not put back on the house, some pipes had burst and caused significant mold and water damage. During May and June 2015, limited work was completed under Frank's supervision, and defendants alleged that the work was necessary to remedy the damage caused by the lack of siding on the property through the winter.

¶ 11 Attached to defendants' counterclaim were Melrose Park Building Department inspection reports that were dated May 17, 2015, June 7, 2015, and July14, 2015—all of which indicated that no work was being performed at the property. An inspection report dated August 18, 2015, was also attached, and stated that an unsafe electrical panel condition existed. Thereafter, Frank discovered that the foundation to the original house was cracked and recommended that

defendants have it fixed. Plaintiff refused to conduct any more work until the foundation was fixed. On July 30, 2015, the foundation repair work was completed and defendants paid $14,994 for the repairs. Defendant alleged that in August 2015, Ferstein hired a new project manager named "Dennis." Under Dennis's supervision, limited work was completed, namely, painting one room and replacing drywall. Defendant alleged that the drywall replacement was necessary due to the mold that resulted from the house being left without siding through the winter. On September 26, 2015, defendants and Ferstein signed a document titled "Memo of Understanding" that stated:

> "Per the discussion on Thursday 9/24/15 between Josh Ferstein, Dennis Kern, and Terry Childress order of completion of construction is as follows:
>
> -Siding completed by 10/5/15
>
> -Interior of house completed by 10/23/15"

¶ 12 Defendants' counterclaim alleged that the siding and house interior were not completed on October 12, 2015, and on that date, Victoria dismissed plaintiff from the jobsite. On October 16, 2015, the Village of Melrose Park revoked plaintiff's contractor license. Defendants' counterclaim also alleged that plaintiff installed a foundation for the new addition that was inches below the finish grade of the rest of the property even though the parties had previously addressed the need for the floors to be level because Gloria could not use stairs. Defendants also alleged that they incurred expenses to remedy the damage caused by plaintiff's failure to perform, such as buying replacement flooring and roofing materials and installing of a ramp so that Gloria could access the new addition. Defendants alleged that between October 2015 and June 2016, they spent at least $13,894.65 on fixtures that were supposed to be included in the contract and for replacement contractors to finish the remaining work. Defendants' counterclaim

brought pursuant to the Consumer Fraud Act alleged that plaintiff failed to tender an itemization of costs, the "Know Your Consumer Rights" brochure, and notice of three days' right to cancel, all of which were required pursuant to the Illinois Home Repair and Remodeling Act (815 ILCS 513/1 *et seq.*) (West 2012).

¶ 13 On June 28, 2016, plaintiff filed a motion to dismiss or strike defendants' counterclaims pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2012)). On February 2, 2017, the court entered an order denying the motion to dismiss as to counts II, III, and IV, granting the motion as to count I without prejudice, and allowing defendants, upon motion, to amend count I of their counterclaim "if prior to the close of discovery, [d]efendants have gathered sufficient facts to allege a common law fraud cause of action against [p]laintiff."

¶ 14 On March 7, 2017, plaintiff filed its answer and affirmative defenses to defendants' counterclaims. On March 10, 2017, the court entered an order referring the matter to the Law Division Commercial Calendar Mandatory Arbitration Program (Commercial Calendar Arbitration Program). The arbitration hearing was originally set for July 20, 2017, but upon plaintiff's motion to continue, the arbitration was reset for September 21, 2017.

¶ 15 On August 28, 2017, plaintiff filed a motion for summary judgment. On August 30, 2017, plaintiff filed a second motion to postpone the arbitration hearing date, arguing that the hearing should be postponed to December 7, 2017, because plaintiff's recently-filed motion for summary judgment may resolve all of the matters in controversy. Specifically, the motion stated, "For the purposes of judicial economy, the arbitration hearing should be postponed pending resolution of the Motion for Summary Judgment." The motion also asserted that no prejudice to any party would result.

¶ 16 On September 6, 2017, the trial court entered an order that "entered and continued generally" plaintiff's motion for summary judgment. Also on that date, the court denied plaintiff's motion to continue the arbitration hearing over plaintiff's objection.

¶ 17 The arbitration hearing took place on September 21, 2017, and the arbitrator's award in the amount of $43,000 in favor of defendants and against plaintiff was filed with the court on September 25, 2017. On October 23, 2017, plaintiff filed a rejection of the arbitration award. On October 27, 2017, defendants filed a motion to bar the rejection as untimely, arguing that Cook County Local Rule 25.11 required that a rejection of a Commercial Calendar Arbitration Program award be filed within seven business days after receiving notice of the award from the administrator. Plaintiff filed its response to the motion to bar the rejection on November 20, 2017, arguing, *inter alia*, that the court erred when it denied its motion to continue the arbitration date and that its rejection was timely filed under Illinois Supreme Court Rule 93 (eff. Jan. 1, 1997).

¶ 18 On December 4, 2017, defendants filed a motion for an award of attorney fees and costs, stating as follows:

> "At the arbitration, the arbitrator asked [d]efendants' counsel to state for the record their fees due on this case and instructed [d]efendants' counsel to submit their affidavit to the arbitration clerk. Defendants' counsel stated that their fees were currently around $40,000.00, and submitted their fee affidavit to the clerk immediately following the arbitration. The arbitrator stated that it was not up to him to issue a decision on attorneys' [*sic*] fees."

Defendants attached to their motion the fee affidavit that was submitted to the arbitration clerk. Attorney Kathryn Liss was the lead attorney and her total fees were $42,315, which included

$7,085 for preparation of the counterclaims, $6,857.50 for defending plaintiff's motion to dismiss counterclaims, and $23,272.50 for discovery and preparation for arbitration. Attorney Brian Massimino assisted with discovery and arbitration preparation and his fees totaled $7,000. Defendants' motion asserted that they had standing to seek attorney fees based on their Consumer Fraud Act claim and pursuant to the Illinois Mechanic's Lien Act (770 ILCS 60/1 *et seq.* (West 2012)). Defendants' motion also sought $831.57 in costs.

¶ 19 On December 15, 2017, the court granted defendants' motion to bar plaintiff's rejection and entered judgment on the arbitration award in favor of defendants in the amount of $43,000 plus costs. The order stated that judgment was entered in favor of defendants and against plaintiff on plaintiff's amended verified complaint, and on defendants' counterclaims for breach of contract, breach of warranty, and violation of the Consumer Fraud Act. An order releasing plaintiff's mechanic's lien was also entered on that date.

¶ 20 Plaintiff filed its timely notice of appeal on January 12, 2018, stating that plaintiff appealed from the following orders:

> "1. The Final Order of December 15, 2017, granting Defendants-Appellees' Motion to Bar Rejection of the Arbitration Award and granting Judgment in favor of Defendants-Appellees, and
>
> 2. The underlying Orders of September 6, 2017, denying Plaintiff-Appellant's Motion to continue Arbitration and entering and continuing Plaintiff-Appellant's Motion for Summary Judgment."

¶ 21 On January 12, 2018, plaintiff filed its response to defendants' motion for attorney fees, asserting that the circuit court was not authorized to grant any monetary relief in addition to the sums awarded by the arbitrator of mandatory court-annexed arbitration. On February 28, 2018,

the circuit court denied defendants' motion for attorney fees "on the basis that the ability to award fees rests with the [a]rbitrator."

¶ 22 Defendants filed their timely notice of cross-appeal on March 13, 2018.

¶ 23 ANALYSIS

¶ 24 On appeal, plaintiff asserts that the trial court erred when it granted defendants' motion to bar plaintiff's rejection of the arbitration award, denied plaintiff's motion to continue the arbitration date, and denied plaintiff's motion to dismiss defendants' Consumer Fraud Act counterclaim. Upon review, we find that the trial court's decision to grant the motion to bar plaintiff's rejection of the arbitration award and its decision to deny plaintiff's motion to continue the arbitration date were proper. We further find that we lack jurisdiction to review whether the trial court improperly denied plaintiff's motion to dismiss because plaintiff did not include that order in its notice of appeal.

¶ 25 On cross-appeal, defendants assert that the trial court erred when it denied their motion for an award of attorney fees. Because the arbitration award did not specify whether defendants prevailed on their Consumer Fraud Act counterclaim, and because defendants' Consumer Fraud Act counterclaim was not so intertwined with the other counts that it could not be distinguished, the trial court did not abuse its discretion in denying defendants' motion.

¶ 26 I. Plaintiff's Appeal

¶ 27 A. Motion to Reject Arbitration Award

¶ 28 Local rule 25.1 provides, "Mandatory Arbitration will be held in those commercial cases assigned to the Commercial Calendar Section of the Law Division, including cases with self-represented or *pro se* litigants, with damages of less than $75,000." Cook County Cir. Ct. R. 25.1 (Dec. 1, 2014). Local rule 25.11 states, "[e]ither party may reject the [arbitration] award if

the rejecting party does so within seven business days after receiving the notice of the award from the Administrator." Cook County Cir. Ct. R. 25.11 (Dec. 1, 2014).

¶ 29 Plaintiff contends that the trial court improperly granted defendants' motion to bar plaintiff's rejection of the arbitration award because plaintiff's rejection was timely under Illinois Supreme Court Rule 93 (eff. Jan. 1, 1997), which allows a party 30 days to reject an arbitration award and which should preempt any conflicting local rule. Defendants respond that the trial court correctly barred plaintiff's rejection as untimely because pursuant to the applicable local rules, a rejection in a Commercial Calendar Arbitration Program case must be filed within seven business days. Our review of the compatibility of our supreme court rules and local rules is construed in the same manner as statutes, and thus our review is *de novo*. *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 342 (2007).

¶ 30 Defendants argue that this court's recent decision in *Jones v. State Farm Mutual Automobile Insurance Co.*, 2018 IL App (1st) 170710, *petition for leave to appeal pending*, No. 123761 (filed July 5, 2018), is instructive. Plaintiff responds that notwithstanding the outcome in *Jones*, Rule 93 should preempt and control the procedure to reject an arbitration award. We agree with defendants that *Jones* applies and find no reason to deviate from that decision.

¶ 31 In *Jones*, the plaintiff filed an action in the circuit court of Cook County against his insurance company, alleging breach of contract and bad-faith denial of insurance coverage based on the insurer's denial of the plaintiff's claim relating to his stolen vehicle. *Id.* ¶¶ 7-8. The case was referred to the Commercial Calendar Arbitration Program, and subsequent to the arbitration on December 2, 2016, an award was entered in favor of the insurer. *Id.* ¶ 9. The plaintiff filed his rejection of the arbitration award 19 days later on December 21, 2016. *Id.* On December 30, 2016, the plaintiff moved to voluntarily dismiss his case, but the trial court found that his

rejection of the arbitration award was untimely, and thus the plaintiff did not have a right to either proceed to trial or voluntarily dismiss the case. *Id.* On appeal, the plaintiff argued that local rule 25.11 (Cook County Cir. Ct. R. 25.11 (Dec. 1, 2014)), which required that a rejection of an award from a commercial calendar mandatory arbitration be filed within seven business days after receiving notice of the award from the administrator, was invalid because it conflicted with Illinois Supreme Court Rule 93 (eff. Jan. 1, 1997), which provided a party 30 days to reject an award. *Id.* ¶ 20. Thus, the issue before the court was whether the trial court improperly denied the plaintiff's rejection as untimely. *Id.*

¶ 32 The *Jones* court acknowledged that local rule 25.11 and Rule 93 were, in fact, inconsistent because "[n]o principle of construction would allow [a court of review] to read a [7]-business-day deadline as compatible with a 30-day one." *Id.* ¶ 23. The court also recognized that there was no doubt that a local rule must yield to conflicting Illinois Supreme Court rule. *Id.* The defendant insurer argued that the local rules governing the commercial calendar mandatory arbitration program were valid because the supreme court first approved the arbitration program as a pilot program, and then approved its permanent implementation, and that approval included not only the program itself but also the local rules governing it. *Id.* ¶ 24. In reaching its conclusion, the court explained that, "There is no question that the supreme court has the authority to permit or mandate the implementation of a court program that otherwise would be incompatible with its own rules." *Id.* ¶ 25. The court noted that local rules are presumed valid unless the party challenging validity carries its burden of establishing otherwise. *Id.* ¶ 21. The court found that the plaintiff had not met its burden of proving that the supreme court did not approve the local rules at issue because at the time the supreme court entered the order making the Commercial Calendar Arbitration Program permanent, the program had existed for two years

and the court ordered that the program "shall continue to be administered through local rules." (Internal quotations marks omitted.) *Id.* ¶¶ 32, 34. The *Jones* court reasoned that, "If the supreme court had been concerned with the fact that certain of these local rules were inconsistent with the supreme court mandatory arbitration rules, it defies belief that the court would have passed on the opportunity to say so at the time." *Id.* ¶ 35. As a result, the court ultimately held, "Because the supreme court approved these local rules, notwithstanding their various conflicts with the Illinois Supreme Court Rules, and because the supreme court's supervisory and administrative authority vested it with authority to do so, local rule 25.11 is valid and enforceable." *Id.* ¶ 38.

¶ 33 In this case, on September 21, 2017, the arbitrator entered an award after mandatory arbitration against plaintiff and in favor of the defendants in the amount of $43,000. On September 25, 2017, the notice of arbitration award was filed by the clerk of court and sent to all parties of record via email. Local rule 25.11 states that "[e]ither party may reject the [arbitration] award if the rejecting party does so within seven business days after receiving the notice of the award from the Administrator." Cook County Cir. Ct. R. 25.11 (Dec. 1, 2014). Thus, plaintiff had seven business days from September 25, 2017, to file a timely rejection of the award. However, plaintiff did not file its rejection until October 23, 2017, which was untimely under local rule 25.11.

¶ 34 Although *Jones* was decided after plaintiff filed its opening brief, plaintiff argued in its reply that notwithstanding *Jones*, Rule 93 should preempt local rule 25.11 because the local rule impermissibly burdens the substantive rights of litigants, *i.e.*, their constitutional right to trial by jury. Plaintiff essentially makes the same argument that the plaintiff in *Jones* made—that Rule 93 preempts local rule 25.11, and thus the trial court incorrectly denied plaintiff's rejection of

arbitration award as untimely because plaintiff should have been allowed 30 days to reject it. The court in *Jones* determined that even though local rule 25.11 is inconsistent with Rule 93, it nonetheless is "valid and enforceable." 2018 IL App (1st) 170710, ¶ 38. Plaintiff cites to *Gershak v. Feign*, 317 Ill. App. 3d 14 (2000), a case not addressed by the court in *Jones*, to support its contention that a seven-day deadline to reject a mandatory arbitration award impinges on a litigant's right to trial by jury. In *Gershak*, the plaintiffs moved to bar the defendants' rejection of arbitration awards entered in the plaintiffs' favor as a sanction because the notices of rejection were not personally signed by an attorney of record. *Id.* at 17. The trial court granted the motion to bar and imposed sanctions by striking the defendants' rejections. *Id.* On appeal, this court determined that:

> "Rule 93 gives an absolute right to reject an award so as not to run afoul of a litigant's constitutional right to a trial by jury. We believe that, absent evidence that a notice of rejection was filed without an attorney's signature for an improper purpose, Rule 137 cannot be used to defeat an otherwise proper notice of rejection. Where, as here, the notice of rejection is signed by a non attorney, the proper remedy is to allow the attorney to sign the notice when the defect is brought to his attention, as provided by the plain language of Rule 137. [Citation.]" *Id.* at 25.

¶ 35 We find *Gershak* inapplicable to the case at bar because the issue there involved the form of a notice of rejection, not the timeliness of one, as is at issue here. Additionally, *Gershak* analyzed the imposition of sanctions under Rule 137, which is not at issue here, and interpreted Rule 93, which *Jones* found does not apply in cases such as this. Thus, *Gershak* does not convince this court that we should accept plaintiff's invitation to depart from *Jones.* Based on

Jones, we find that the trial court properly granted defendants' motion to bar plaintiff's rejection of the arbitration award as untimely.

¶ 36 B. Motion to Continue Arbitration

¶ 37 Plaintiff next argues that the trial court erred when it denied plaintiff's motion to continue the arbitration date because, as a result, plaintiff was denied its right to be heard on its motion for summary judgment. Defendants respond that the trial court's denial was proper and that plaintiff would have been able to present its motion for summary judgment if it had timely rejected the arbitration award. We agree with defendants and find the trial court's decision was proper.

¶ 38 It is well-settled that a litigant does not have an absolute right to a continuance. *K & K Iron Works, Inc. v. Marc Realty, LLC*, 2014 IL App (1st) 133688, ¶ 22. Thus, the decision whether to grant or deny a motion to continue is within the sound discretion of the trial court and will not be disturbed unless palpable injustice results or denial constitutes a manifest abuse of discretion. *Id.* "A circuit court's ruling is considered an abuse of discretion when it is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view." *Id.*

¶ 39 Local rule 25.5(d) requires that an arbitration in the Commercial Calendar Arbitration Program "must be held within 150 days *** of the order of Referral to Mandatory Arbitration." Cook County. Cir. Ct. R. 25.5(d) (Dec. 1, 2014). "No extensions or continuances of the 150 day *** time period within which arbitration much be conducted will be permitted, absent exigent circumstances." Cook County Cir. Ct. R. 25.14 (Dec. 1, 2014).

¶ 40 Here, the matter was referred to mandatory arbitration on March 10, 2017, and the arbitration date was originally set for July 20, 2017. Thereafter, plaintiff filed its first motion to continue the arbitration, the court granted plaintiff a continuance, and the arbitration date was reset to September 21, 2017. On August 28, 2017 plaintiff filed its motion for summary

judgment. On August 30, 2017, plaintiff filed its second motion to continue arbitration, arguing that the arbitration should be postponed until December pending the resolution of plaintiff's motion for summary judgment. Plaintiff's second motion to continue specifically stated, "For the purposes of judicial economy, the arbitration hearing should be postponed pending resolution of the Motion for Summary Judgment" and that no prejudice would result if a continuance was granted. The motion did not provide any other explanation as to why a continuance was warranted.

¶ 41 We find that the trial court did not abuse its discretion in denying plaintiff's second motion to continue arbitration. According to local rule 25.14 (Dec. 1, 2014), no extensions or continuances of the 150-day time period would be allowed "absent exigent circumstances." The term "exigent circumstances" is not defined in the local rules. Black's Law Dictionary defines exigent circumstances as "[a] situation that demands unusual or immediate action and that may allow people to circumvent usual procedures, as when a neighbor breaks through a window of a burning house to save someone inside." Black's Law Dictionary 236 (7th ed. 1999). Here, plaintiff sought a second continuanceof the arbitration hearing "[f]or purposes of judicial economy," namely the resolution of its motion for summary judgment. Plaintiff also asserted that no prejudice would result. We do not find that the resolution of plaintiff's motion for summary judgment was an exigent circumstance, and thus the trial court's decision to deny the motion was not an abuse of discretion. Plaintiff failed to present any evidence of an emergency that would have merited continuing the arbitration for a second time, and thus the trial court's decision was entirely reasonable.

¶ 42 Plaintiff asserts that the denial of the motion to continue was a *de facto* denial of its motion for summary judgment. We disagree. The court below did not strike or deny plaintiff's

motion for summary judgment, but instead entered and continued it generally. Had plaintiff timely rejected the arbitrator's award, then plaintiff could have proceeded with its motion for summary judgment. In addition, we find significant that it was plaintiff's *second* motion to continue. As previously stated, a litigant does not have an absolute right to a continuance. *K & K Iron Works, Inc.*, 2014 IL App (1st) 133688, ¶ 22. It follows that a litigant does not have a right to two continuances. Here, plaintiff's first motion to continue was granted and its second motion was denied. We find it entirely reasonable to have denied plaintiff's request for a continuance where plaintiff failed to present an adequate reason for a continuance, and where plaintiff was already granted a prior continuance. Thus, we do not find that the trial court's decision to deny the motion to continue was arbitrary, fanciful, or unreasonable. *Id.*

¶ 43 C. Motion to Dismiss Counterclaim

¶ 44 Plaintiff additionally argues that the trial court erred when it denied plaintiff's motion to dismiss defendants' Consumer Fraud Act counterclaim, which alleged defendants failed to allege how plaintiff's failure to provide a "Know Your Consumer Rights" brochure proximately caused its damages. Defendants respond that plaintiff has forfeited review of this issue because the order denying plaintiff's motion to dismiss was not listed in plaintiff's notice of appeal. Defendants alternatively argue that plaintiff forfeited any challenge to that order when it answered defendants' counterclaim.

¶ 45 Illinois Supreme Court Rule 303(b)(2) states that a notice of appeal "shall specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court." Ill. S. Ct. R. 303(b)(2) (eff. July 1, 2017). "The purpose of a notice of appeal is to notify the prevailing party that the other party seeks review of the circuit court's judgment." (Internal quotation marks omitted.) *JP Morgan Chase Bank, N.A. v. Bank of America, N.A.*, 2015 IL App

(1st) 140428, ¶ 23. As a result, "the notice of appeal confers jurisdiction on the reviewing court to consider only the judgments or pertinent parts specified therein." *Id.* The notice of appeal is to be liberally construed (*Northbrook Bank & Trust Co. v. 2120 Division LLC*, 2015 IL App (1st) 133426, ¶ 7), must be specific to the judgments being appealed, and " 'should be considered as a whole and will be deemed sufficient to confer jurisdiction on an appellate court when it fairly and adequately sets out the judgment complained of and the relief sought, thus advising the successful litigant of the nature of the appeal.' " *JP Morgan Chase Bank, N.A.*, 2015 IL App (1st) 140428, ¶ 24 (quoting *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176 (2011)). An appellant's failure to comply with the form of notice will not be fatal if the deficiency is one of form, rather than of substance, and there is no prejudice to the appellee. *Id.*

¶ 46 Plaintiff's notice of appeal was timely filed on January 12, 2018, and stated that plaintiff appealed the following orders:

> "1. The Final Order of December 15, 2017, granting Defendants-Appellees' Motion to Bar Rejection of the Arbitration Award and granting Judgment in favor of Defendants-Appellees, and
>
> 2. The underlying Orders of September 6, 2017, denying Plaintiff-Appellant's Motion to continue Arbitration and entering and continuing Plaintiff-Appellant's Motion for Summary Judgment."

However, in addition to these two above-listed orders, plaintiff's brief includes argument regarding the trial court's February 2, 2017, order that denied plaintiff's motion to dismiss defendants' Consumer Fraud Act counterclaim. Plaintiff only seeks the reversal of the denial of dismissal as to the Consumer Fraud Act count, and does not argue that the court's decision to deny dismissal on other counts was erroneous.

¶ 47 Defendants assert that we lack jurisdiction over the February 2, 2017, order, and must dismiss that portion of plaintiff's appeal. It is clear that plaintiff did not mention the circuit court's February 2, 2017, order in its notice of appeal. Plaintiff contends that its notice of appeal must be liberally construed, and argues that defendants are merely making "a backwards cry for form over substance" that our supreme court has rejected. We disagree with plaintiff's characterization of defendants' objection on this issue. The deficiency in plaintiff's notice of appeal is, in fact, one of substance rather than form because plaintiff seeks to appeal an order that is completely absent from its notice of appeal. It is well-settled that our jurisdiction only extends to those judgments, or parts thereof, that are specified in the notice of appeal. *JP Morgan Chase Bank, N.A.*, 2015 IL App (1st) 140428, ¶ 23. Thus, we only have jurisdiction over the trial court's December 15, 2017, order that granted defendants' motion to bar plaintiff's rejection of the arbitration award, and the court's September 6, 2017, order that denied plaintiff's motion to continue the arbitration hearing.

¶ 48 Looking at the notice of appeal as a whole, we find that the notice of appeal did not fairly and adequately set forth plaintiff's intention to seek reversal of the circuit court's February 2, 2017, order. See *id.* ¶ 24. The notice of appeal lists two orders that stemmed from the mandatory arbitration in this case and contained no indication that plaintiff sought to reverse the trial court's decision to deny its motion to dismiss defendants' Consumer Fraud Act counterclaim. In fact, it would have been reasonable for defendants to presume that plaintiff was not going to seek reversal of the February 2, 2017, order because plaintiff did not file a motion to reconsider that order, filed an answer to the defendants' counterclaim that included the Consumer Fraud Act count on March 7, 2017, and did not reference the February 2, 2017, order in its notice of appeal. Until defendants received plaintiff's brief, which was filed on April 20,

2018, over three months after the filing of plaintiff's notice of appeal, plaintiff had not informed defendants that it was appealing the denial of the motion to dismiss defendants' counterclaim. *Id.* Plaintiff's failure to refer to the trial court's February 2, 2017, order prejudiced defendants by depriving them of three months of preparation time during which defendants could have organized their response to plaintiff's anticipated arguments. Although we liberally construe plaintiff's notice of appeal, we find that it is substantively deficient and did not adequately advise defendants of the nature of the appeal.

¶ 49 Although not argued by plaintiff, we find it pertinent to point out that the circuit court's February 2, 2017, order was not a step in the procedural progression that led to the judgment appealed from. This is important because "an appeal from a final judgment order entails review of not only the final judgment order, but also any interlocutory orders that were a 'step in the procedural progression' leading to the judgment." *Northbrook Bank & Trust Co.*, 2015 IL App (1st) 133426, ¶ 8.

¶ 50 In *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 431-36 (1979), our supreme court held that a notice of appeal that referred only to a final judgment order was sufficient to confer jurisdiction to review a previous order for an accounting because the final judgment was based on the accounting. Conversely, in *Illinois Central Gulf R.R. v. Sankey Brothers, Inc.*, 78 Ill. 2d 56, 61 (1979), the court found that a notice of appeal that sought review only of an order granting summary judgment, and that did not mention an earlier order that dismissed the appellant's counterclaim, did not confer a reviewing court with jurisdiction to review the dismissal of the counterclaim.

¶ 51 Here, the trial court's denial of plaintiff's motion to dismiss defendants' Consumer Fraud Act counterclaim was not a step in the procedural progression that led to the court's decision to

bar plaintiff's rejection of the arbitration award, or its decision to deny plaintiff's motion to continue the arbitration date. Plaintiff's untimely rejection of the arbitration award and its motion to continue the arbitration were unrelated to the court's prior decision to deny plaintiff's motion to dismiss defendants' counterclaim. As such, we lack jurisdiction to review the February 2, 2017, order and dismiss that portion of plaintiff's appeal.

¶ 52 II. Defendants' Cross-Appeal for Attorney Fees

¶ 53 Defendants' cross-appeal argues that the trial court erred when it denied defendants' motion for attorney fees on the grounds that the ability to award attorney fees rested solely with the arbitrator. Defendants contend that this is a matter of first impression because this court has not yet determined whether courts entering judgment following arbitration conducted in the Commercial Calendar Arbitration Program may award fees to the prevailing party, or if only the arbitrator can make such an award. Plaintiff responds that the court should not be able to make a post-arbitration award because courts have consistently recognized that arbitration is to be an all-or-nothing proposition, and allowing a party to subsequently seek attorney fees would only protract litigation.

¶ 54 Defendants assert the trial court denied its motion for an award of attorney fees based on the erroneous belief that the decision whether to award fees rested with the arbitrator. Defendant also argues that whether the trial court has the power to award attorney fees after arbitration in the Commercial Calendar Arbitration Program is a pure question of law that requires *de novo* review. See, *e.g.*, *Cunningham v. Schaeflein*, 2012 IL App (1st) 120529, ¶ 19 ("Pure questions of law, including questions of statutory interpretation, are reviewed *de novo*."). However, we need not decide the broader question of whether the trial court had the authority to deny defendants' motion for attorney fees, because "[w]e review the trial court's decision, not its

reasoning, and, if the decision is correct, we may affirm the trial court on any basis in the record." *In re Marriage of Heindl*, 2014 IL App (2d) 130198, ¶ 31. Thus, the question before us is whether the trial court properly denied defendants' motion for an award of attorney fees.

¶ 55 The standard of review for determining whether the trial court properly ruled on a motion for attorney fees is an abuse of discretion. *Schorsch v. Fireside Chrysler-Plymouth, Mazda, Inc.*, 286 Ill. App. 3d 1028, 1031 (1997). "An abuse of discretion may be found only when no reasonable person would take the view adopted by the circuit court." *Serrano v. Rotman*, 406 Ill. App. 3d 900, 907 (2011). Ultimately, we find that defendants' motion for an award of attorney fees was properly denied because it was unclear whether defendants prevailed on their Consumer Fraud Act claim, and thus we affirm the circuit court's decision. See *Father & Sons Home Improvement II, Inc. v. Stuart*, 2016 IL App (1st) 143666, ¶ 27 ("[W]e may affirm the trial court's decision on any basis that appears in the record before us, whether or not the trial court in fact relied on that basis, and even if the trial court's reasoning was incorrect.")

¶ 56 Defendants argue that the trial court should have awarded them attorney fees because one of their counterclaims alleged a violation of the Consumer Fraud Act. "While there is no common-law right to recover attorney fees and costs, the Consumer Fraud Act provides that the trial court may award fees to a prevailing party." *Schorsch*, 286 Ill. App. 3d at 1031; see also 815 ILCS 505/10a(c) (West 2012). "[F]ees for work on causes of action under the Consumer Fraud Act must be differentiated from fees for noncompensable causes of action." *Id.* at 1033. The burden of proof of entitlement to fees rests with the party seeking fees and fees can only be awarded for causes of action specifically related to the Consumer Fraud Act. *Id.*

¶ 57 The arbitration in this case occurred on September 21, 2017. At the conclusion of the arbitration, the arbitrator entered an award that stated:

"1. All parties participated in good faith.

2. Award in favor of Defendant/Counter-Plaintiff and against the Plaintiff/Counter-Defendant in the amount of Forty-three Thousand dollars ($43,000.00)."

¶ 58 The arbitrator's award did not specify which of defendants' three counterclaims the award pertained to, and defendants did not file a motion to clarify the award. Instead, defendants filed a motion for an award of attorney fees and costs, which was denied. Although it is unclear whether the arbitration award was entered on defendants' Consumer Fraud Act counterclaim, defendants assert that all of the counts were based on the same evidence and so intertwined that the time spent on each cannot be distinguished, and thus fees were appropriate on all counts.

¶ 59 Typically, it would not be feasible to award fees pursuant to the Consumer Fraud Act without knowing whether an award was, in fact, entered pursuant to that count. However, a party may recover fees for work on non-Consumer Fraud Act claims when the Consumer Fraud Act claim "is so inextricably intertwined with the non-Act claims that it cannot be distinguished." *Dubey v. Public Storage, Inc.*, 395 Ill. App. 3d 342, 361 (2009). Defendants assert that this proposition applies here. After review of defendants' counterclaims and its fee affidavit, we disagree.

¶ 60 Defendants contend that "[a]ll three claims were based on the same core facts, and the time spent on each cannot be separated." Defendants provide no further explanation as to why the time spent on each claim could not be distinguished. After review of defendants' counterclaims, we find that the three counts were not based on the same facts. Defendants' Consumer Fraud Act counterclaim stems from plaintiff's failure to itemize costs in the contract, to provide the "Know Your Consumer Rights" brochure, and to provide defendants with notice of their three-day right to cancel. Conversely, defendants' breach of contract counterclaim is

based on plaintiff's failure to perform all the work contemplated in the contract and failure to make the addition's foundation level with the existing structure. Likewise, defendants' breach of warranty counterclaim is based on plaintiff's defective work, failure to meet the standard of good workmanship, and failure to cure defects for which defendants provided notice. Looking at these three counterclaims, it is apparent that defendants' Consumer Fraud Act counterclaim was not so intertwined with defendants' counterclaims for breach of contract and breach of warranty that the work performed by counsel could not be distinguished. Perhaps the breach of contract count and the breach of warranty count could be viewed as intertwined because they both stem from plaintiff's failure to adequately perform under the contract, and thus would involve the same evidence. However, defendants' Consumer Fraud Act claim, which is based on plaintiff's failure to inform defendants of certain rights and itemized costs of the contract, does not share this similar nexus. As a result, we find that it was not an abuse of discretion for the trial court to deny defendants' motion for an award of attorney fees where the arbitration award did not specify whether defendants prevailed on their Consumer Fraud Act count, and the other counts of defendants' counterclaim were not intertwined with the Consumer Fraud Act count.

¶ 61 CONCLUSION

¶ 62 Based on the foregoing, we find that the trial court properly granted defendants' motion to bar plaintiff's rejection of the arbitration award and did not abuse its discretion when it denied plaintiff's motion to continue arbitration. We dismiss the portion of plaintiff's appeal that sought to reverse the circuit court's order entered on February 2, 2017, because we lack jurisdiction. We also find that the trial court did not abuse its discretion in denying defendants' motion for an award of attorney fees.

¶ 63 Affirmed in part and dismissed in part.