

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHICAGO BANCORP, INC.,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 15 L 5043
)	
CHAO CHEN, SOUTHEASTERN SECURITY)	
PROFESSIONALS, LLC, and IVAN BASTOS,)	The Honorable
)	Jerry A. Esrig,
Defendants)	Judge Presiding.
)	
(Chao Chen and Southeastern Security)	
Professionals, LLC, Defendants, Cross-plaintiffs-)	
Appellees; Ivan Bastos, Defendant and Cross-)	
defendant).)	

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Lavin and Hyman concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where defendant-cross-plaintiffs' crossclaim remained pending at the time the trial court entered final judgment on plaintiffs' claims against defendants and no finding pursuant to Supreme Court Rule 304(a) was entered, the appeal was dismissed for lack of jurisdiction.
- ¶ 2 Plaintiff, Chicago Bancorp, Inc., appeals from the trial court's grant of summary judgment in favor of defendants Chao Chen and Southeastern Security Professionals, LLC

(collectively, “Southeastern defendants”), on plaintiff’s claims of fraud and conspiracy to defraud. For the reasons that follow, we conclude that we lack jurisdiction and, therefore, dismiss plaintiff’s appeal.

¶ 3

BACKGROUND

¶ 4

In April 2017, plaintiff filed its second amended complaint against the Southeastern defendants and Ivan Bastos. Count I of the second amended complaint alleged conspiracy to defraud against all defendants. Count II alleged fraud by Bastos, and Count III alleged fraud by the Southeastern defendants. The gravamen of plaintiff’s second amended complaint was that the Southeastern defendants and Bastos made false representations regarding Bastos’ employment and salary with Southeastern Security Professionals, which induced plaintiff to loan Bastos \$510,320.00. Bastos never repaid the loan.

¶ 5

The Southeastern defendants filed an answer and affirmative defenses to plaintiff’s second amended complaint. They also filed a verified cross-claim against Bastos. In the cross-claim, the Southeastern defendants alleged that Bastos falsely and without authority from the Southeastern defendants represented to plaintiff that he was employed with Southeastern Security Professionals, knowing that plaintiff would rely on that representation in evaluating his loan application. The Southeastern defendants alleged that as a result of Bastos’ misrepresentation, they were sued by plaintiff and had incurred and would continue to incur legal fees and other expenses in defending against the suit.

¶ 6

Bastos never filed an answer to either plaintiff’s second amended complaint or the Southeastern defendants’ crossclaim.

¶ 7

In November 2017, the Southeastern defendants filed a motion for summary judgment on plaintiff’s claims against them. In that motion, the Southeastern defendants argued that plaintiff

could not establish that the Southeastern defendants made any fraudulent misrepresentations or conspired with Bastos to commit fraud. They also argued that plaintiff could not establish that it was damaged by any fraud that might have occurred, because it sold the Bastos loan to another lender for a profit before any payment was due on the loan.

¶ 8 On February 26, 2018, after the summary judgment motion was fully briefed by the parties, the trial court entered an order granting the Southeastern defendants' motion for summary judgment. In that order, the trial court concluded that although there was sufficient evidence to create a genuine issue of material fact with respect to whether the Southeastern defendants committed fraud or conspired to defraud, there was no genuine issue of material fact that plaintiff was not damaged by any fraud that might have occurred. Plaintiff filed a motion to reconsider, which the trial court denied.

¶ 9 On April 18, 2018, plaintiff moved to voluntarily dismiss its claims against Bastos, and the trial court granted that motion. On the same day, plaintiff filed its notice of appeal, seeking review of the trial court's orders granting the Southeastern defendants' motion for summary judgment and denying plaintiff's motion to reconsider.

¶ 10 ANALYSIS

¶ 11 On appeal, plaintiff argues that the trial court erred in granting summary judgment in favor of the Southeastern defendants, because the collateral-source rule prohibited consideration of plaintiff's sale of the Bastos loan in determining whether plaintiff suffered damages as a result of the defendants' alleged fraud. Before we may consider the merits of any appeal, we must first ascertain whether we have jurisdiction. Although none of the parties to this appeal contest our jurisdiction, we have an independent duty to consider it. *In re Estate of York*, 2015 IL App (1st) 132830, ¶ 27. Here, we conclude that we do not have jurisdiction.

¶ 12 In its jurisdictional statement on appeal, plaintiff contends that we have jurisdiction over this appeal under Supreme Court Rule 303(a)(1) (eff. July 1, 2017),¹ because upon the entry of the order granting plaintiff's voluntary dismissal of its claims against Bastos, all pending claims against all parties were resolved. We disagree.

¶ 13 Rule 303(a)(1) provides that a party seeking to appeal from a final order must file its notice of appeal within 30 days of the entry of that final order or, if a timely posttrial motion is filed, within 30 days of the order resolving that posttrial motion. Supreme Court Rule 304(a) (eff. Mar. 8, 2016), however, governs situations where a party seeks to appeal from an order that does not resolve all claims against all parties. Rule 304(a) provides:

“If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. Such a finding may be made at the time of the entry of the judgment or thereafter on the court's own motion or on motion of any party. The time for filing a notice of appeal shall be as provided in Rule 303. In computing the time provided in Rule 303 for filing the notice of appeal, the entry of the required finding shall be treated as the date of the entry of final judgment. In the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties.”

¹ Plaintiff refers to Supreme Court Rule 301(a)(1). We presume that this was a typographical error, as Supreme Court Rule 301 does not contain a subsection (a)(1), nor does it address the procedure for filing a timely notice of appeal. Accordingly, we must assume that plaintiff intended to refer to Supreme Court Rule 303(a)(1), which governs appeals from final judgments.

¶ 14 In this case, the trial court’s order granting the Southeastern defendants’ motion for summary judgment did not resolve all claims against all of the parties. Apparently recognizing this and desiring to appeal the trial court’s summary judgment decision, plaintiff voluntarily dismissed its claim against Bastos. The dismissal of plaintiff’s claims against Bastos did not resolve all claims against all parties, however. According to the record before us, at the time plaintiff filed its notice of appeal, the Southeastern defendants’ cross-claim against Bastos remained unresolved. Although the order granting plaintiff’s voluntary dismissal stated, “This order is the final order in this case, the court having now disposed of all claims against all parties,” the record does not contain any order resolving the Southeastern defendants’ cross-claim against Bastos. The fact that the order on the voluntary dismissal contained language claiming that it was the final order in the case does not make it so (see *In re Adoption of S.G.*, 401 Ill. App. 3d 775, 783 (2010) (written finding that an order is final and appealable does not make a non-final order final)), especially where the record clearly belies such a claim. We also note that the trial court’s decision on the Southeastern defendants’ motion for summary judgment did not necessarily resolve the Southeastern defendants’ cross-claim against Bastos, because the trial court’s decision was based on plaintiff’s inability to prove damages. The damages claimed by the Southeastern defendants in their fraud claim against Bastos were entirely different than those alleged by plaintiff. Accordingly, the fall of plaintiff’s claim did not require that the Southeastern defendants’ cross-claim also fall.

¶ 15 Because the Southeastern defendants’ cross-claim against Bastos remained pending at the time plaintiff filed its notice of appeal, plaintiff could not appeal the trial court’s grant of summary judgment absent an express written finding that there was “no just reason for delaying either enforcement or appeal or both,” pursuant to Rule 304(a). See *Kim v. Alvey, Inc.*, 322 Ill.

App. 3d 657, 665 (2001) (where third-party claim remained pending, a Rule 304(a) finding would be required). There is no such finding in any of the orders in the record on appeal. Accordingly, we lack jurisdiction over this appeal, and it must be dismissed. See *Palmolive Tower Condominiums, LLC v. Simon*, 409 Ill. App. 3d 539, 545 (2011) (where required Rule 304(a) finding was not made, appellate court lacked jurisdiction and appeal was dismissed).

¶ 16 We note, however, that if plaintiff still wishes to have the trial court's summary judgment decision reviewed, there is nothing preventing plaintiff from requesting that the trial court enter a proper finding pursuant to Rule 304(a) and filing a timely notice of appeal following the entry of such a finding. See *John G. Phillips & Assoc. v. Brown*, 197 Ill. 2d 337, 344 (2001) (“[O]ne may request at any time that the trial court add Rule 304(a) language to the final order ***.”). Likewise, once the remaining cross-claim against Bastos (and any other claims that might have arisen in this case) is resolved, plaintiff is free to file a timely notice of appeal. Should it be the case, however, that during the pendency of the current appeal, all pending claims were resolved and the time for filing a new notice of appeal expired, Supreme Court Rule 303(a)(2) permits plaintiff to establish the effectiveness of the present notice of appeal. In that case, plaintiff may file a petition for rehearing and to supplement the record, establishing our jurisdiction. *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1050 (2007).

¶ 17 CONCLUSION

¶ 18 For the foregoing reasons, this appeal is dismissed.

¶ 19 Appeal dismissed.