2019 IL App (1st) 181035-U

SIXTH DIVISION
Order filed March 15, 2019
Modified upon denial of rehearing June 7, 2019

Nos. 1-18-1035 & 1-18-1049 (cons.)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LIBRARY TOWER CONDOMINIUM ASSOCIATION, Plaintiff-Appellee, v. LIBRARY TOWER, LLC and LENNAR CHICAGO, INC., successor by merger to CONCORD HOMES, INC., Defendants-Appellants.	))))))))))))	Appeal from the Circuit Court of Cook County. No. 17 L 5988 Honorable John C. Griffin, Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* We dismiss the appeal for lack of jurisdiction because defendants did not file their interlocutory notice of appeal within 30 days of the circuit court's order denying their motion to compel arbitration, as is required for such an appeal to be timely under Illinois Supreme Court Rule 307(a)(1) (Ill. S. Ct. 307(a)(1) (eff. Nov. 1, 2017)); we also deny defendants' application for leave to appeal pursuant to Illinois Supreme Court Rule 308(a) (Ill. S. Ct. R. 308(a) (eff. Jul. 1, 2017)) because answering the certified questions would require this court to apply the law to the specific facts of this case, which is improper; appeal dismissed.

¶ 2 Defendants, Library Tower, LLC and Lennar Chicago, Inc. (collectively defendants), appeal from the trial court's order denying their section 2-619 motion to dismiss and subsequent

motion to reconsider. Defendants' motions asserted that the claims brought by plaintiff, Library Tower Condominium Association, were improperly filed in circuit court because the parties agreed to mediate and arbitrate any claims. For the reasons that follow, we dismiss defendants' Rule 307(a)(1) appeal and deny defendants' application for leave to appeal pursuant to Rule 308(a).

¶ 3 BACKGROUND

¶ 4 Plaintiff is the condominium association of the Library Tower development, which is a 184-unit, high-rise building located at 520 South State Street in Chicago. Defendant Library Tower, LLC, was the developer of said property and defendant Lennar Chicago, Inc., successor by merger to Concord Homes, Inc., was the general contractor on the project.

¶ 5 On June 13, 2017, plaintiff filed a three-count complaint against defendants. Count I alleged breach of the implied warranty of habitability against the developer, count II alleged breach of the implied warranty of habitability against the general contractor, and count III alleged breach of the implied warranty of good workmanship against the developer. Plaintiff's complaint alleged that defendants failed to construct and deliver the building to plaintiff in a manner that was fit for its intended purpose of habitation. Specifically, plaintiff alleged that in 2015, it discovered numerous masonry construction defects in the units, common elements, and limited common elements, including the following:

> "flashing does not extend beyond the perimeter of the wall, which allows water to remain behind the façade and causes the exterior bricks to spall, deteriorate, and fall off the [b]uilding; flashing is missing in other locations on the [b]uilding, which leads to the same spalling, deterioration, and falling off of bricks; insufficient or missing drip edges, which also allows water to remain within the façade and cause the same aforementioned

> damage the bricks; and the [b]uilding lacks end-dams, which also contributes to water penetration behind the façade ***."

¶ 6 Plaintiff's complaint also alleged that it found numerous other construction defects in 2016, such as:

> "metal coping on the top of the parapet of the roof lacks sufficient flashing to prevent water infiltration; stone capping on top of the masonry façade lacks sufficient flashing, which allows water penetration; improper and insufficient expansion joints are causing bricks to crack; cast stone window sills lack proper flashing, which allows water infiltration; balconies do not pitch away from the building, causing water to pool and make the balconies unusable after periods of rain; and window frames were improperly sealed, which allows water penetration***."

All of the foregoing defects were allegedly caused by inferior workmanship during the construction and development of the building. Plaintiff alleged that the defects adversely affected the habitability of the building because water penetrated through the façade and into the units.

¶ 7 On June 30, 2017, plaintiff voluntarily dismissed its complaint with leave to reinstate. On August 29, 2017, plaintiff filed a motion to reinstate, which was granted on September 13, 2017.

¶ 8 On October 18, 2017, defendants filed their "Limited Section 2-619 Motion to Dismiss," arguing that plaintiff's complaint must be dismissed because plaintiff was required to mediate, and if necessary arbitrate, any and all claims it may have against defendants. Defendants pointed to the Declaration of Covenants (Declaration) governing the condo association and argued that sections of the Declaration forbid adjudication of plaintiff's claims in circuit court. Defendants

also argued that "the purchase agreements executed by those for whom the [plaintiff] advances claims in its representative capacity require the same alternative dispute resolution procedure."

¶ 9 On November 21, 2017, plaintiff responded to the motion to dismiss, asserting that the Declaration had been amended and the arbitration provisions removed. In defendants' reply, filed on December 12, 2017, they contended in part that section 18.9 of the Condominium Property Act (765 ILCS 605/18.9 (West 2016)) was preempted by the Federal Arbitration Act (9 U.S.C. § 1 *et seq.* (2016)).

¶ 10 On January 17, 2018, the circuit court entered an order denying defendants' section 2-619 motion to dismiss, finding that the amendment to the Declaration was proper and that the Federal Arbitration Act did not preempt section 18.9 of the Condominium Property Act.

¶ 11 Subsequently, on February 9, 2018, defendants filed a motion to reconsider and for other relief in the alternative. Defendants asserted that the trial court misapplied well-settled law regarding the enforcement of arbitration agreements and plaintiff's amendment to the Declaration did not have retroactive effect on the requirement to arbitrate the instant claims. Additionally, defendants' motion to reconsider argued that the court's January 17, 2018, order did not consider the arbitration clause contained in the individual purchase agreements. In its entirety, that section of defendants' motion stated as follows:

> "Reconsideration is also necessary because, notwithstanding any of the foregoing, the Purchase Agreements separately require mediation and arbitration, an argument briefed by the parties but which the Court's Order did not address. Even if the Court disagrees with the above analysis addressing the FAA's preemption of the Anti-Arbitration Statute, it is still required to dismiss based on the mediation and arbitration requirements set forth in the Purchase Agreements."

¶ 12 As alternative relief, defendants' motion to reconsider requested a finding pursuant to Illinois Supreme Court Rule 308(a), which provides for permissive appeals of interlocutory orders when the trial court determines that "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. Jul. 1, 2017).

¶ 13 On April 25, 2018, the court denied defendants' motion to reconsider, finding that defendants waived certain contentions and could not rely on case law that was not asserted in their motion to dismiss. The court also denied the motion to reconsider on substantive grounds. Specifically, in addressing defendants' contention that the court did not address their argument regarding the purchase agreements, the trial court stated:

> "The defendants argue the court erred in not considering the individual unit Purchase Agreements, which contained arbitration provisions. Yet these agreements were executed by defendant Library Tower, L.L.C., as the "Seller," and the individual unit owners as "Purchasers." Because plaintiff Library Tower Condominium Association was not a party to these agreements, the arbitration agreement cannot be binding on it, and the defendants presented no legal authority showing otherwise."

¶ 14 Although the court denied defendant's motion to reconsider, it granted defendants' alternative request for a finding pursuant to Rule 308(a) and certified the following questions for appeal:

> "1. Does the Federal Arbitration Act preempt application of Section 18.9 of the Illinois Condominium Property Act to the present case?
>
> 2. Can a condominium association governed by a declaration which contains an arbitration requirement file a suit, voluntarily dismiss the suit, remove the provisions

in its declaration requiring arbitration, and refile its cause of action in state court, avoiding the arbitration requirements of its original declaration?"

¶ 15 On May 23, 2018, defendants filed their notice of interlocutory appeal pursuant to Rule 307(a)(1), seeking to reverse the circuit court's January 17, 2018, order denying defendant's motion to dismiss, and the circuit court's April 25, 2018, order denying defendants' motion to reconsider. That appeal was numbered as 1-18-1035.

¶ 16 Two days later, on May 25, 2018, defendants filed an application for leave to appeal pursuant to Rule 308(a), requesting that this court resolve the certified questions. That appeal was numbered as 1-18-1049.

¶ 17 On June 4, 2018, defendants filed a motion to consolidate appeals 1-18-1035 and 1-18-1049, which was granted on June 26, 2018.

¶ 18 This court filed its original decision in this appeal on March 15, 2019. On April 5, 2019, defendants filed a petition for rehearing. We denied defendants' petition for rehearing but file this modified order to clarify and expand upon some issues raised in the petition.

¶ 19 ANALYSIS

¶ 20 Defendants appeal to this court pursuant to two separate supreme court rules. We address each in turn.

¶ 21 Rule 307 Appeal

¶ 22 "An appellate court is under a duty to consider its jurisdiction and to dismiss an appeal if jurisdiction is lacking." *Craine v. Bill Kay's Downers Grove Nissan*, 354 Ill. App. 3d 1023, 1024 (2005). Even where, as here, the parties do not raise the issue of jurisdiction, this court must determine the question nonetheless. *Id.* Upon review of the record, we find that we lack jurisdiction to consider this appeal.

¶ 23 Appeals from interlocutory orders are allowed only as specially provided in the rules. Illinois Supreme Court Rule 307 applies to interlocutory appeals as of right and states, "An appeal may be taken to the Appellate Court from an interlocutory order of court: (1) granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." Ill. S. Ct. R. 307(a)(1) (eff. Nov. 1, 2017). "An order of the circuit court to compel or stay arbitration is injunctive in nature and subject to interlocutory appeal under paragraph (a)(1) of the rule." *Salsitz v. Kreiss*, 198 Ill. 2d 1, 11 (2001).

¶ 24 In this case, defendants' motion to dismiss was titled "Defendants' Limited Section 2-619 Motion to Dismiss" and argued that plaintiff's complaint must be dismissed because the parties had agreed to mediate and arbitrate any claims. Defendants' motion did not specifically request that the court compel the parties to participate in arbitration, but the entire basis of the motion was that the parties were required to mediate or arbitrate any disputes based on a prior agreement. Thus, defendants' motion to dismiss was substantively a motion to compel arbitration and we refer to it as such, even though that was not the motion's title. *In re Haley D.*, 2011 IL 110886, ¶ 67 (recognizing that "the character of the pleading should be determined from its content, not its label" and "when analyzing a party's request for relief, courts should look to what the pleading contains, not what it's called").

¶ 25 When bringing an appeal from an interlocutory order, Rule 307(a) states that "the appeal must be perfected *within 30 days from entry of the interlocutory order* by filing a notice of appeal designated 'Notice of Interlocutory Appeal' conforming substantially to the notice of appeal in other cases." (Emphasis added.) Ill. S. Ct. R. 307(a) (eff. Nov. 1, 2017).

¶ 26 Here, the interlocutory order denying defendants' motion to compel arbitration was entered on January 17, 2018. As a result, defendants had 30 days from January 17, 2018, to file

their notice of interlocutory appeal pursuant to Rule 307(a)(1). Ill. S. Ct. R. 307(a)(1) (eff. Nov. 1, 2017). However, instead of filing a notice of interlocutory appeal within 30 days of January 17, 2018, defendants filed a motion to reconsider the court's denial of their motion to compel arbitration. Defendants' motion to reconsider was denied on April 25, 2018, and defendants subsequently filed their notice of interlocutory appeal pursuant to Rule 307(a)(1) on May 23, 2018, which was over four months after the entry of the interlocutory order denying defendants' motion to compel arbitration.

¶ 27 In their petition for rehearing, defendants argued, *inter alia*, that this court overlooked controlling precedent—specifically, our supreme court's decision in *Salsitz*, which defendants contend mandates a contrary jurisdictional analysis. We disagree that another outcome is warranted, and find we lack jurisdiction over defendant's Rule 307(a) appeal.

¶ 28 In *Salsitz*, the plaintiffs appealed the lower court's dismissal of their complaint. *Salsitz*, 198 Ill. 2d at 8. Prior to dismissal, in February 1995, the municipal court entered an order staying the plaintiffs' civil action and directing that an arbitrator determine whether particular matters were arbitrable. *Id.* at 5. Two of the plaintiffs, Neil Salsitz and Biagio D'Ugo, did not pursue arbitration but two of the other plaintiffs did. *Id.* In November 1995, Salsitz and D'Ugo nonsuited their action in municipal court, leaving only the other two plaintiffs' demand for arbitration before the court. *Id.* In 1996 and 1997, several arbitration hearings were held. *Id.* The plaintiffs who had previously nonsuited their case ultimately re-filed their claims in August 1997, seeking to stay and permanently enjoin the arbitration proceedings on the grounds that no agreement to arbitrate existed. *Id.* The court denied the plaintiffs' request for stay. *Id.* at 6. After arbitration at which the plaintiffs did not appear, the defendants were awarded substantial damages, totaling over $6 million. *Id.*

¶ 29 In response to the defendants' motion to confirm the arbitration award, the plaintiffs asked that the chancery court review the determination of arbitrability, sought leave to file an amended complaint, and requested the court vacate the award. *Id.* at 6-7. The defendants moved to dismiss the plaintiffs' amended complaint, which the court granted. *Id.* at 8. Within 30 days of the entry of the dismissal order, the plaintiffs appealed. *Id.* The defendants moved to dismiss the appeal as untimely, arguing that the plaintiffs should have filed an interlocutory appeal from the denial of the plaintiffs' motion to stay the arbitration proceedings. *Id.* The appellate court granted the defendants' motion to dismiss based on their contention that because the plaintiffs failed to file an interlocutory appeal, they forfeited their right to contest arbitrability and our supreme court granted leave to appeal. *Id.*

¶ 30 On appeal, our supreme court disagreed with the defendants that the doctrine of *res judicata* barred relitigation of the issue of arbitrability. *Id.* at 9. The defendants argued that the lower court's decision was proper because in order to preserve the issue of arbirtrability, the plaintiffs were required to file an interlocutory appeal from the chancery court's order of August 1997, denying the plaintiffs' motion to stay. *Id.* at 11. Our supreme court set forth the relevant law as follows:

> "First, a party who decides not to file an appeal from an interlocutory order of the circuit court denying a stay of arbitration does not lose the opportunity to contest the arbitrability of the dispute in a subsequent appeal from a final judgment of the court confirming the arbitration award. *** [Rule 307] confers on parties the right to appeal certain interlocutory orders before entry of final judgment by the circuit court. *** The rule, ***, does not require that a party appeal from an interlocutory order of the circuit court denying a stay of arbitration. Under the rule, the party has the option of waiting until

after final judgment has been entered to seek review of the circuit court's interlocutory order. [Citation.]" *Id.* at 11.

¶ 31 The court further explained that the optional nature of Rule 307 is apparent from the language it employs—it plainly states that an appeal "may" be taken and the use of the word "may" is "generally regarded as indicating that action is permissive rather than mandatory." *Id.* at 11-12. In reaching its holding, the court determined that the plaintiffs *could have* filed an appeal from the interlocutory order of the chancery court, but *they did not do so*. (Emphases added.) *Id.* at 12. The court ultimately held that, "it was not mandatory that [the plaintiffs] appeal from the interlocutory order," and thus their "failure to file an appeal from the interlocutory order did not result in a forfeiture of their right to contest the arbitrability of disputes ***." *Id.*

¶ 32 We find it pertinent to set forth the foregoing detailed summary of *Salsitz* because despite defendants' emphatic argument that our determination that we lack jurisdiction is incorrect in light of *Salsitz*, it is clear that the case before us differs in one significant way—the plaintiffs in *Salsitz*, unlike the defendants here, never filed an appeal from the interlocutory order at issue. This is important because *Salsitz*'s holding hinged on the fact that Rule 307 allows a party to appeal an interlocutory order as a matter of right within 30 days, but that a party is not required to do so and may wait until the final disposition. *Salsitz* made clear that merely because the plaintiffs chose not to bring an interlocutory appeal, it did not mean that they were barred by *res judicata* from doing so after final judgment was entered. However, *Salsitz* did not address the scenario we have here, *i.e.*, defendants chose to bring an appeal pursuant to Rule 307(a) but did so in an untimely manner. Thus, contrary to defendants' strongly-worded contentions, *Salsitz* does not actually hold that a party may bring an appeal from a final judgment when it has already

opted to bring an interlocutory Rule 307(a) appeal on the same issue but that was deemed untimely. The court in *Salsitz* specifically stated that "a party *who decides not to file an appeal from an interlocutory order* of the circuit court denying a stay of arbitration does not lose the opportunity to contest the arbitrability of the dispute in a subsequent appeal from a final judgment of the court confirming the arbitration award." (Emphasis added.) *Id.* at 11. Here, defendants filed their Rule 307(a) notice of interlocutory appeal on May 23, 2018, seeking to appeal the court's January 17, 2018, order denying their motion to dismiss, and its April 25, 2018, order denying their motion to reconsider. Unlike the plaintiffs in *Salsitz*, defendants are not "[parties] who decide[d] not to file an appeal from an interlocutory order." *Id.*

¶ 33 Simply put, defendants failed to file their notice of interlocutory appeal within 30 days from the entry of the order denying their motion to compel arbitration. Defendants' motion to reconsider did not toll the 30-day time limit. See *People v. Marker*, 233 Ill. 2d 158, 174 (2009) (recognizing that a motion to reconsider does not toll the deadline for filing a notice of interlocutory appeal in a civil matter). Although the denial of defendants' motion to reconsider is an interlocutory order, it is not an appealable interlocutory order because it does not grant, modify, refuse, dissolve, or refuse to dissolve or modify an injunction. *Craine*, 354 Ill. App. 3d at 1027; Ill. S. Ct. R. 307(a)(1) (eff. Nov. 1, 2017). As a result, defendants' notice of interlocutory appeal pursuant to Rule 307(a)(1) was untimely, and we lack jurisdiction to address the merits of this appeal.

¶ 34 Defendants' petition for rehearing raised concerns about whether they would be able to re-raise the issue of arbitrability after final judgment is entered. Because we are only concerned with the instant appeal (over which we lack jurisdiction), we express no opinion or holding as to defendants' ability to appeal in the future.

¶ 35 Defendants' petition also asserted that their interlocutory appeal is, in fact, timely because their motion to compel arbitration was not fully disposed of until April 25, 2018, when the court entered its order denying defendants' motion to reconsider. We find this contention unconvincing. Although the circuit court did not expressly reference the individual unit purchase agreements in its January 17, 2018, holding, it also did not grant defendant's motion to reconsider in its April 25, 2018, order, a basis of which was that the court did not address the purchase agreements. In fact, the circuit court never agreed with defendants' contention that it had overlooked its contentions on the purchase agreements. Instead, the court acknowledged that defendants argued that it erred in not considering the individual unit purchase agreements and stated that defendants presented no legal authority explaining why plaintiff, who was not a party to the agreements, should be bound by it. Thus, defendants' contentions that the trial court did not rule on the arbitrability of the purchase agreements until its April 25, 2018, order is unconvincing.

¶ 36 Defendants' argument that the court's January 17, 2018, order was not a substantive disposition similarly fails. We recognize that "[w]here a trial court has failed to articulate any specific reasons for ruling on the motion to compel arbitration, the court has not issued a substantive disposition." *Sturgill v. Santander Consumer USA, Inc.*, 2016 IL App (5th) 140380, ¶ 27. However, that is not the case here. In *Sturgill*, the defendants raised numerous issues regarding the existence of an arbitration agreement, including, *inter alia*, its assignability, whether affirmative matters defeated the right to arbitrate, and whether the arbitration clause had terminated. *Id.* ¶ 26. In ruling on the motion at issue, the trial court entered an order that, in its entirety, stated: " 'After reviewing parties memoranda and having heard argument on Defendants' Motion, the Court finds as follows: Defendant's renewed Motion to Compel

Individual Arbitration and to Stay or Dismiss Proceedings is hereby denied." *Id.* ¶ 19. The appellate court determined that the trial court's order was not a substantive disposition because the court failed to articulate any specific reasons for ruling on the motion to compel arbitration. *Id.* ¶ 27. Specifically, the court explained that "the court has not substantiated the existence of any fact that would allow for the denial of the motion." *Id.*

¶ 37 In this case, the trial court issued an eight-page order, addressing defendant's motion to compel arbitration in great detail. The court issued a well-reasoned analysis and conducted a thorough exploration of defendants' argument that the parties were obligated to arbitrate their dispute. This is a far cry from the one-sentence order that was found not to be "substantive" in *Sturgill*. It is apparent that, contrary to the order in *Sturgill*, that the court's January 17, 2018, order substantiated the existence of facts that allowed for denial of the motion. As such, we reject defendants' assertions on this point.

¶ 38 Rule 308(a) Application for Leave to Appeal

¶ 39 Defendants also filed an application for leave to appeal pursuant to Supreme Court Rule 308, which governs permissive interlocutory appeals and "is an exception to the general rule that only final orders from a court are subject to appellate review." *Morrissey v. City of Chicago*, 334 Ill. App. 3d 251, 257 (2002). Rule 308(a) provides:

> "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. Jul. 1, 2017).

¶ 40 Our supreme court recognizes that "the appellate court serves as a gatekeeper and must carefully question whether the case before it warrants consideration outside the usual process of appeal." *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶ 23. Our supreme court further explained that "[a]ppeals under Illinois Supreme Court Rule 308 should be reserved for exceptional circumstances, and the rule should be sparingly used." *Id.* ¶ 21. "Rule 308 *** was not intended to open the floodgates to a vast number of appeals from interlocutory orders in ordinary litigation." *Morrissey*, 334 Ill. App. 3d at 257.

¶ 41 When certifying the instant two questions for review, the circuit court found that "the issues raised in the defendants' 2-619 motion to dismiss, and the current motion to reconsider, involve questions of law as to which there is a substantial ground for difference of opinion" and that an immediate appeal would materially advance the litigation. We disagree and deny defendants' Rule 308(a) application because answering either of the certified questions would require this court to apply the law to the particular facts of this case, which is improper. Our supreme court has consistently held that "[c]ertified questions must not seek an application of the law to the facts of a specific case." *Rozsavolgyi*, 2017 IL 121048, ¶ 21.

¶ 42 Question one explicitly asks whether applying an Illinois statute "to the present case" would be preempted by a federal statute. Such a question is impermissible because it asks this court to answer the question by applying the law to the specific facts of this case. That the question actually includes the language "to the present case" is a clear indication that question one is not proper under Rule 308(a). As such, we decline to answer it.

¶ 43 Similarly, question two is also improper because its answer is entirely dependent on the facts of this case and it inherently asks this court to review the propriety of the circuit court's January 17, 2018, order, denying defendants' motion to compel arbitration. Question two asks whether a condo association can avoid an arbitration clause when it files a lawsuit, voluntarily dismisses that suit, removes the arbitration provisions, and then reinstates its cause of action, which amounts to a request that we apply the law (*i.e.*, the Federal Arbitration Act (9 U.S.C. § 1 *et seq.* (2000)) and the Condominium Property Act (765 ILCS 605/18.9 (West 2016)) to the specific sequence of events that occurred in this case. "Rule 308 was not intended to be a mechanism for expedited review of an order that merely applies the law to the facts of a particular case, and it does not permit us to review the propriety of the order entered by the lower court." (Internal quotation marks omitted.) *Combs v. Schmidt* [1], 2015 IL App (2d) 131053, ¶ 6.

¶ 44 Question two merely seeks review of the trial court's application of the law to the facts of this case rather than a properly written certified question, which only states a specific question of law. The trial court's January 17, 2018, order denied defendants' motion to dismiss because the court found that the amendment to plaintiff's declaration was proper and that the Federal Arbitration Act (9 U.S.C. § 1 *et seq.* (2000)) did not preempt section 18.9 of the Condominium Property Act (765 ILCS 605/18.9 (West 2016)). Question two inherently asks this court to review the propriety of that decision, which is beyond the scope of Rule 308(a) review. See *Combs*, 2015 IL App (2d) 131053, ¶ 6. Answering question two would result in this court determining whether the circuit court properly denied defendants' motion to compel arbitration, which would be improper. As such, we decline to answer question two.

[1] In *Combs*, although the court answered one of the two questions certified by the trial court, it refused to answer the other because it was "outside the scope of Rule 308." *Combs*, 2015 IL App (2d) 131053, ¶ 9.

¶ 45 We recognize that "[a]n exception exists under which a court may exceed the usual bounds of review set by Rule 308." *Id.* ¶ 8. Such an exception should be applied "[w]here the interests of judicial economy and the need to reach an equitable result so require." *Id.* We do not believe that this appeal merits the invocation of such an exception because defendants' Rule 308 application for leave to appeal is essentially an attempt to appeal the circuit court's January 17, 2018, order denying defendants' motion to dismiss, which we have already determined we lack jurisdiction to address in light of defendant's failure to file a timely Rule 307(a) notice of interlocutory appeal.

¶ 46 Had defendants timely filed their Rule 307(a)(1) notice of appeal, then we would have jurisdiction to review the January 17, 2018, order. We do not believe that allowing defendants' Rule 308 application for leave to appeal on the same issue that was the subject of their untimely Rule 307(a)(1) appeal would produce an equitable result. Thus, we deny defendants' application for leave to appeal pursuant to Rule 308(a).

¶ 47 CONCLUSION

¶ 48 Based on the foregoing, we find that we lack jurisdiction and dismiss defendants' Rule 307(a)(1) appeal. We also deny defendants' application for leave to appeal pursuant to Rule 308(a).

¶ 49 No. 1-18-1035, Dismissed.
No. 1-18-1049, Denied.