



Euro-Tech certain property used in the kitchen and cabinetry business. ETD petitioned for bankruptcy protection, the matter was declared a “no-asset” case, and ETD dissolved as a corporation.

¶ 3 Plaintiffs subsequently filed a complaint alleging that ETD had failed to deliver the property pursuant to the agreement. Plaintiffs amended the complaint several times and now appeal from the dismissal of the fifth amended complaint. Plaintiffs argue that the trial court erred by dismissing the third amended complaint and failing to rule on plaintiffs’ two motions for sanctions under Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994). Without even mentioning the claims, plaintiffs argue in passing that the court erred in dismissing the fifth amended complaint too. We agree with defendants that (1) in the trial court, plaintiffs abandoned the third-amended complaint and their motions for sanctions and (2) on appeal, plaintiffs have failed to present a cogent argument regarding the fifth amended complaint, thereby forfeiting their challenge to its dismissal. We affirm the judgment, accordingly.

¶ 4 I. BACKGROUND

¶ 5 The parties entered into the agreement on October 31, 2009. ETD petitioned for bankruptcy protection on June 23, 2010, and dissolved as a corporation. On March 8, 2011, Euro-Tech filed its original complaint containing claims for specific performance and breach of contract. On June 9, 2011, Euro-Tech filed an amended complaint containing claims for specific performance, breach of contract, common-law fraud, and “piercing the corporate veil.” On August 23, 2011, defendants moved to dismiss the amended complaint under sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619, 2-619.1 (West 2012)).

¶ 6 Plaintiffs voluntarily dismissed the amended complaint and, with leave of the trial court, filed a second amended complaint containing claims for breach of contract, common-law fraud,

and “piercing the corporate veil.” Defendants again moved to dismiss the pleading under sections 2-615 and 2-619 of the Code. As part of their response, plaintiffs moved for sanctions under Rule 137, claiming that the motion to dismiss was frivolous. On January 18, 2012, the trial court dismissed the second amended complaint without prejudice. The court did not rule on plaintiffs’ motion for Rule 137 sanctions.

¶ 7 On March 9, 2012, plaintiffs filed their third amended complaint containing claims for breach of contract, common law fraud, a violation of section 2 of the Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) (815 ILCS 505/2 (West 2012)), and conversion. On April 10, 2012, defendants again moved to dismiss the pleading under sections 2-615 and 2-619 of the Code, and on June 5, 2012, the trial court dismissed the third amended complaint without prejudice. On July 3, 2012, plaintiffs filed a fourth amended complaint, but before defendants could respond, plaintiffs filed a fifth amended complaint on August 7, 2012.

¶ 8 The fifth amended complaint contained claims for common-law fraud against defendant James Bator, breach of contract against ETD, a violation of section 2 of the Consumer Fraud Act against Bator and ETD, and conversion against Bator. On August 31, 2012, defendants again filed a motion to dismiss the pleading under sections 2-615 and 2-619 of the Code. In their response, plaintiffs filed a “counter-motion for sanctions–Rule 137,” claiming that the motion to dismiss was frivolous.

¶ 9 On January 16, 2013, the trial court dismissed the fifth amended complaint with prejudice, adding in writing that “this is a final and appealable order.” On February 14, 2013, defendants filed a petition for attorney fees under Rule 137 and pursuant to the agreement.

¶ 10 On February 15, 2013, plaintiffs filed a notice of appeal from the dismissals of the fifth amended complaint and the third amended complaint, and we docketed the matter under appeal

No. 2-13-0162. On June 6, 2013, the court granted defendants \$9,300 in attorney fees and \$250 in costs pursuant to the agreement but denied sanctions under Rule 137. On July 5, 2013, plaintiffs filed another notice of appeal, and we docketed the matter under appeal No. 2-13-0689.

¶ 11

## II. ANALYSIS

¶ 12

### A. Jurisdiction

¶ 13 In this case, plaintiffs filed their first notice of appeal while their two motions for Rule 137 sanctions remained pending. An appeal may generally only be taken from final orders which dispose of every claim, that is “ ‘any right, liability or matter raised in an action.’ ” *John G. Phillips & Associates v. Brown*, 197 Ill. 2d 337, 339 (2001) (quoting *Marsh v. Evangelical Covenant Church*, 138 Ill. 2d 458, 465 (1990)). Rule 304(a) language is required when a party seeks to appeal an order that is final as to one or more but not all the claims. Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010); *Peter Fischer Import Motors, Inc. v. Buckley*, 121 Ill. App. 3d 906, 909 (1984). A motion for Rule 137 sanctions is a claim in the cause of action with which it is connected. *John G. Phillips*, 197 Ill. 2d at 339. Whether a court has jurisdiction is a question of law which this court reviews *de novo*. *John G. Phillips*, 197 Ill. 2d at 339.

¶ 14 The trial court entered a written finding that the dismissal of the fifth amended complaint was a “final and appealable order.” Rule 304(a) requires the trial court to enter “an express written finding that there is no just reason for delaying either enforcement or appeal or both.” Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). In this case, the court’s written finding does not satisfy Rule 304(a), and that rule does not confer jurisdiction over this appeal. See *Marble Emporium, Inc. v. Vuksanovic*, 339 Ill. App. 3d 84, 90 (2003) (Reviewing courts consistently dismiss appeals from orders that dispose of fewer than all the parties or claims yet lack a finding that there was no just cause to delay enforcement or appeal).

¶ 15 Nevertheless, the parties argue that we have jurisdiction over the matter pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and Illinois Supreme Court Rule 303(a) (eff. May 30, 2008). Rule 301 provides that every final judgment of a circuit court in a civil case is appealable as of right, and the appeal is initiated by filing a notice of appeal. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). Rule 303(a) governs the timing of an appeal from a final judgment of the circuit court. Rule 303(a)(1) provides that an appellant must file a notice of appeal with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or, if a timely motion directed against the judgment is filed, within 30 days after the entry of the order disposing of the last pending motion directed against that judgment. Ill. S. Ct. R. 303(a)(1) (eff. May 30, 2008).

¶ 16 Rule 303(a)(2) provides that when a postjudgment motion has been timely filed by any party, a notice of appeal filed before the entry of an order disposing of the last pending postjudgment motion, or before the final disposition of any separate claim, becomes effective when the order disposing of the pending claim or motion is entered. Official Reports Advance Sheet No. 15 (July 16, 2008) R. 303, eff. May 30, 2008. The rule was amended in 2007 to protect the rights of appellants who filed a premature notice of appeal. Official Reports Advance Sheet No. 15 (July 16, 2008) R. 303, eff. May 30, 2008, Committee Comments.

¶ 17 In this case, plaintiffs' February 15, 2013, notice of appeal was premature because three motions were still pending: (1) plaintiffs' two motions for sanctions filed in response to the motions to dismiss the second amended complaint and the fifth amended complaint and (2) defendants' February 14, 2013, petition for fees under the agreement and for sanctions under Rule 137. Plaintiffs admit that, after the second amended complaint and the fifth amended complaint were dismissed, it would have been "futile" to pursue their motions for sanctions on

the grounds that the motions prompting those dismissals were frivolous. At the time they filed the first notice of appeal, plaintiffs were aware that the trial court had not ruled on their motions for sanctions, and they dropped the matter until raising it again in this court. Moreover, defendants actually argue that plaintiffs' pending motions are *not* a bar to our jurisdiction because plaintiffs abandoned the motions by failing to pursue them in the trial court. We agree with defendants that plaintiffs abandoned their motions for sanctions in trial court, and a ruling on those motions was not necessary to render the disposition of defendant's motion for sanctions a final order. See *Muirfield Village-Vernon Hills, LLC v. K. Reinke, Jr. & Co.*, 349 Ill. App. 3d 178, 187 (2004) (Unless there is some indication to the contrary, where no ruling has been made on a motion, we will presume that the motion was waived or abandoned). Plaintiffs' failure to pursue rulings on their motions for sanctions can be viewed as a *de facto* concession that the motions were meritless.

¶ 18 We determine that plaintiffs' abandonment of their motions for sanctions meant those motions were no longer pending in the trial court. Therefore, under Rule 303(a)(2), plaintiffs' first notice of appeal is deemed effective on June 6, 2013, when the trial court disposed of defendants' motion for sanctions.

¶ 19 Plaintiffs' second notice of appeal is also effective, as they appeal the results of the ruling on defendants' petition for fees and sanctions, which was entered after the first notice of appeal was filed. We determine that this court has jurisdiction over both appeals.

¶ 20 **B. Third Amended Complaint**

¶ 21 On appeal, plaintiffs argue that the trial court erred in dismissing the third-amended complaint, which contained claims for breach of contract, common law fraud, a violation of section 2 of the Consumer Fraud Act, and conversion. However, plaintiffs appeal from the

dismissal of the fifth amended complaint, which does not restate or otherwise incorporate by reference the claims of the third amended complaint. Plaintiffs focus their appellate argument on the third amended complaint without addressing the fifth amended complaint.

¶ 22 Defendants argue that plaintiffs have forfeited their arguments regarding the third amended complaint, and therefore, we need not review the trial court's dismissal of that pleading on June 5, 2012. Specifically, defendants contend that, because plaintiffs did not preserve the claims contained in the third amended complaint, no appeal may be taken from that ruling. We agree.

¶ 23 “ ‘Where an amendment is complete in itself and does not refer to or adopt the prior pleading, the earlier pleading ceases to be a part of the record for most purposes, being in effect abandoned and withdrawn.’ ” *Foxcroft Townhome Owners Association v. Hoffman Rosner Corp.*, 96 Ill. 2d 150, 154 (1983) (quoting *Bowman v. County of Lake*, 29 Ill. 2d 268, 272 (1963)). To avoid forfeiture and preserve claims for appellate review, a party may: (1) stand on the dismissed counts, take a voluntary dismissal of any remaining counts, and argue the matter at the appellate level; (2) file an amended pleading that realleges, incorporates by reference, or refers to the dismissed counts; or (3) perfect an appeal from the dismissal order prior to filing an amended pleading that does not refer to or adopt the dismissed counts. *Jacobson v. Gimbel*, 2013 IL App (2d) 120478, ¶ 19.

¶ 24 In this case, plaintiffs did not follow any of these three options. Plaintiffs filed a fifth amended complaint that was complete in itself and did not reallege, incorporate, or refer to any of the claims from the third amended complaint. We disagree with plaintiffs that paragraph 68 of the fifth amended complaint refers to the third amended complaint for purposes of preserving the claims set forth therein. Paragraph 68 alleges that a certain document allegedly falsified by

Bator “is strikingly similar to the document produced by defendants in this case, previously attached to plaintiff’s amended complaints.” This statement mentions in passing an exhibit attached to a prior complaint but conveys no intention to refer to or incorporate any portion of the third amended complaint, or any of the other complaints for that matter.

¶ 25 The fifth and third amended complaints each contain four counts, but the factual allegations of each differ. For example, the claims of the third amended complaint are prefaced by 14 paragraphs setting forth facts common to all the claims. In contrast, the claims of the fifth amended complaint are prefaced by 92 paragraphs setting forth the facts common to all the claims. Moreover, the fifth amended complaint does not name all of the parties who were named as defendants in the third amended complaint.

¶ 26 Count I of the third amended complaint alleged breach of contract in that ETD failed to deliver the assets shown in Exhibit D, which is a collection of photographs. Count II of the fifth amended complaint alleged breach of contract in that ETD failed to deliver the assets shown in Exhibits M and N, but those exhibits are different from the Exhibit D that is attached to the third amended complaint. Exhibits M and N are lists of tools and other equipment.

¶ 27 Count II of the third amended complaint alleged common law fraud, based on a false representation that ETD owned assets in Westmont as shown in Exhibit D. Count I of the fifth amended complaint alleged common law fraud against Bator, but based on allegations that are unrelated to equipment in Westmont.

¶ 28 Count III of the third and fifth amended complaints alleged violations of the Consumer Fraud Act. However, the claim in the third amended complaint refers to Exhibit D and the claim in the fifth amended complaint alleged that Bator misrepresented the “aforesaid material facts,” which differ from those alleged in the third amended complaint.

¶ 29 Count IV of the third and fifth amended complaints alleged conversion against Bator. Again, the claim in the third amended complaint refers to Exhibit D and the claim in the fifth amended complaint refers to Exhibits M and N, which are different from the previous Exhibit D.

¶ 30 Perhaps there is some superficial overlap in the factual allegations and claims, but the fifth amended complaint does not reallege, reference, or incorporate the counts pleaded in the third amended complaint. Under these circumstances, we hold that plaintiffs abandoned any challenge to the court's dismissal of the claims in the third amended complaint, and we deem forfeited any argument on appeal regarding that ruling.

¶ 31 C. Fifth Amended Complaint

¶ 32 Plaintiffs also appeal from the January 16, 2013, order in which the trial court dismissed the fifth amended complaint with prejudice. However, in their appellate brief, plaintiffs do not address or even mention the claims in that pleading. Defendants argue that plaintiffs' failure to present a cogent appellate argument regarding the dismissal of the fifth amended complaint results in forfeiture of that issue. We agree.

¶ 33 Illinois Supreme Court Rule 341(h) (eff. Feb. 6, 2013) governs the contents of an appellant's brief. " 'The rules of procedure concerning appellate briefs are rules and not mere suggestions.' " *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7 (quoting *Niewold v. Fry*, 306 Ill. App. 3d 735, 737 (1999)). Failure to comply with the rules regarding appellate briefs is not an inconsequential matter. *Hall*, 2012 IL App (2d) 111151, ¶ 7. The purpose of the rules is to require parties before a reviewing court to present clear and orderly arguments so the court can properly ascertain and dispose of the issues involved. *Hall*, 2012 IL App (2d) 111151, ¶ 7. A brief that does not substantially conform to the pertinent supreme court rules may justifiably be stricken. *Hall*, 2012 IL App (2d) 111151, ¶ 7.

¶ 34 Rule 341(h)(7) requires that the argument section of an appellant’s brief contains his or her contentions and the reasons therefor, with citations to authorities and to the pages of the record relied upon in support of the appellant’s contentions; and a point that is not argued is waived and cannot be raised in a reply brief, oral argument, or petition for rehearing. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). An argument of an otherwise properly preserved issue on appeal is forfeited when it fails to comply with Rule 341. *Ryan v. Yarbrough*, 355 Ill. App. 3d 342, 346 (2005).

¶ 35 In their opening brief, plaintiffs devote more than 15 pages to arguing against the dismissal of the third amended complaint. Plaintiffs’ brief then states “[f]or the foregoing reasons, plaintiff’s fifth amended complaint was sufficient in the law and the trial court’s dismissal with prejudice should be reversed.” In response, defendants point out the incompleteness of the argument. Plaintiffs reply brief states that separately analyzing the fifth amended complaint would be “impractical” because the claims in the two pleadings are the same.

¶ 36 Plaintiffs fail to recognize that, although the third and fifth amended complaints are comprised of similar causes of action, the claims in the two pleadings are based on different factual allegations that require separate analyses on appeal. If the analyses regarding the sufficiency of the third and fifth amended complaints were truly the same, as plaintiffs suggest, plaintiffs would have had no reason to amend the pleading in the first place. The trial court granted plaintiffs leave to file the fifth amended complaint precisely to afford them the opportunity to plead different or additional facts and legal theories. The dismissal of the fifth amended complaint requires a discussion separate from the third amended complaint, but

plaintiffs have not presented one and may not do so in a petition for rehearing. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 37 By disregarding the differences between the third and fifth amended complaints, plaintiffs have left it to this court to assist them by going back and forth between the pleadings to construct a rational argument on the dismissal of the fifth amended complaint. A reviewing court is not simply a depository into which a party may dump the burden of argument and research. *People ex rel. Illinois Dept. of Labor v. E.R.H. Enterprises*, 2013 IL 115106, ¶ 56. A court of review is entitled to have the issues clearly defined and to be cited pertinent authority. A point not argued or supported by citation to relevant authority fails to satisfy the requirements of Rule 341(h)(7). *Vancura v. Katris*, 238 Ill. 2d 352, 370 (2010) (“Both argument and citation to relevant authority are required. An issue that is merely listed or included in a vague allegation of error is not ‘argued’ and will not satisfy the requirements of the rule.”). Failure to comply with the rule’s requirements results in forfeiture. *E.R.H. Enterprises*, 2013 IL 115106, ¶ 56.

¶ 38 In arguing that the fifth amended complaint should not have been dismissed, plaintiffs may not rely on their argument regarding the third amended complaint, because the pleadings are different, even though the causes of action overlap. Accordingly, plaintiffs’ have forfeited any argument regarding the fifth amended complaint and the dismissal of the pleading is affirmed.

¶ 39 Finally, plaintiffs argue that, if we were to reverse the trial court’s dismissal of the “amended complaint(s),” we also should reverse the order granting defendants’ petition for attorney fees pursuant to the contract because defendants would no longer be the “prevailing party” as defined by the contract. Plaintiffs concede that defendants are entitled to the attorney fees if the dismissals of the third and fifth amended complaints are affirmed. Because we affirm the dismissals, we decline to reverse the attorney fee award.

¶ 40

### III. CONCLUSION

¶ 41 We conclude that, in the trial court, plaintiffs abandoned the claims contained in the third amended complaint by failing to restate, incorporate, or refer to those claims in the fifth amended complaint. Plaintiffs also abandoned their motions for sanctions by failing to pursue them in the trial court. On appeal, plaintiffs focus their argument on the third amended complaint without addressing the fifth amended complaint. The third and fifth amended complaints share some similarities, but the claims contain significant differences and this court is not a depository into which plaintiffs may dump the burden of argument and research in sorting out those differences. Thus, plaintiffs have not presented a cogent argument on appeal in support of reversing the dismissal of the fifth amended complaint, and the issue is forfeited.

¶ 42 For the reasons stated, the judgment of the circuit court of Du Page County is affirmed.

¶ 43 Affirmed.