

THIRD DIVISION
February 8, 2012

Nos. 09-2276, 09-2288, 1-10-0415 and 1-10-1323

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

LA SALLE BANK, N.A., as)	Appeal from the
Trustee under Land Trust #4179)	Circuit Court of
)	Cook County
Plaintiff-Appellant)	
Cross-Appellee,)	
)	
v.)	
)	No. 08 M2 01990 and
TAMARA L. REEME)	No. 09 M1 188360
)	
)	
)	Honorable
Defendant-Appellee)	James C. Murray and,
Cross-Appellant)	Martin Moltz, Judges
)	Presiding.

JUSTICE SALONE delivered the judgment of the court.
Presiding Justice Steele and Justice Murphy concurred in the judgment.

ORDER

HELD: In appeal Nos. 09-2276, 09-2288, the trial court properly dismissed the complaint

filed *pro se* by the beneficiary of a land trust in the name of the land trust on the basis that it was void *ab initio*. The trial court also properly imposed sanctions against the *pro se* plaintiff pursuant to Supreme Court Rule 137, and did not err by excluding the time defense counsel traveled to the courthouse. In appeal Nos. 1-10-0415 and 1-10-1323, the trial court properly dismissed the complaint on the basis that it lacked jurisdiction. The trial court also correctly denied defendant's motion for Rule 137 sanctions in that matter based upon lack of jurisdiction.

¶ 1 This is a consolidated appeal from two orders issued by the circuit court of Cook County.

¶ 2 In case numbers 1-09-2276 and 1-09-2288, Marshall Spiegel filed an action to recover damages for an alleged breach of an apartment lease by defendant, Tamara Reeme. Spiegel was the beneficial owner of a land trust at LaSalle Bank which included the apartment building in which Reeme resided. The trial court dismissed Spiegel's complaint on the basis that Spiegel, *pro se*, filed the action in the name of the land trust, rendering the complaint void *ab initio*. In addition, the court imposed sanctions against Spiegel pursuant to Supreme Court Rule 137. On appeal, Spiegel contends that the trial court erred in dismissing his action and imposing sanctions against him. Reeme has cross-appealed, arguing that the Rule 137 sanctions imposed against Spiegel should have included attorney travel time to the courthouse. We affirm the judgment of the circuit court.

¶ 3 In case numbers 1-10-0415 and 1-10-1323, a second action was filed against Reeme for the same alleged breach of lease. The trial court dismissed this complaint because the action filed by Spiegel alleging the same cause of action was already pending on appeal. The trial court also denied a motion filed by Reeme for Rule 137 sanctions. On appeal, attorney Mark Lavery has filed a brief on behalf of "plaintiff-appellant" which contends that the trial court erred in dismissing the complaint. Reeme has filed a cross-appeal alleging that the trial court erred in denying Rule 137 sanctions in this matter. We affirm the judgment of the circuit court.

¶ 4

BACKGROUND

¶ 5 In August 2007, Reeme signed a one-year lease for an apartment at 116 Greenleaf Avenue in Wilmette. It is alleged that Reeme failed to pay rent for the final month of the lease. The apartment building was held in a land trust by LaSalle Bank, and the beneficial owner of the trust was Marshall Spiegel. On August 15, 2008, Spiegel filed a *pro se* forcible detainer complaint against Reeme, seeking possession of the premises, past due rent and court costs.

¶ 6 Spiegel captioned the complaint as “LaSalle Bank N.A. A/T/U/T #4179 v. Tamra L. Reeme,” and it was given case number 08-M2-1990. In the complaint, Spiegel alleged that the “plaintiff,” LaSalle Bank, was entitled to possession of Reeme’s apartment and was owed the sum of \$900 for one months’ rent plus additional costs. Spiegel signed the complaint as “pro se plaintiff” and “owner of the beneficial interest” of the land trust. Attached to the complaint was the executed lease, dated August 27, 2007. The document was signed by Reeme as the lessee, and states that the lessor is La Salle National Bank Association as successor trustee under Trust #4179. The lease is signed on behalf of the lessor by Terry Herman, “agent for the owners of the beneficial interest.”

¶ 7 The complaint had a return date of August 29, 2008. The record reflects that summons was issued to Reeme on that same date and was served on her in Vermont on September 7, 2008. On September 12, 2008, an *ex parte* default judgment order was entered by the trial court in the amount of \$1,331.27. On that same date, Spiegel filed a garnishment summons against Reeme and UBS Paine Webber. The summons was captioned in the case name of “LaSalle Bank v. Reeme” and was filed by Spiegel as “pro se plaintiff.” Spiegel also filed on that date a garnishment notice, which in one instance named “La Salle Bank” as the “Judgment Creditor,” and in another instance listed the

“Judgment Creditor” as Marshall Spiegel.

¶ 8 On September 18, 2008, Reeme, through counsel, filed an “Emergency Motion to Quash Purported Service of Summons and to Dismiss this Cause.” Reeme's motion alleged that the September 12, 2008 *ex parte* default judgment against her was improper on a number of grounds, including that Spiegel, a *pro se* nonattorney, sought to represent La Salle Bank under Trust 4179.

¶ 9 On September 19, 2008, the circuit court entered and continued Reeme’s motion. On that date, attorney Mark Lavery entered a general appearance stating that he was appearing on behalf of “La Salle Bank NA Trust.”

¶ 10 On December 5, 2008, the trial court entered a three-part order. First, the court dismissed Spiegel's complaint on the basis that it was “void *ab initio*.” Second, the court vacated the *ex parte* default judgment on the ground it was “void and a nullity.” Finally, the court vacated and quashed all garnishments, citations to discover assets and any other post-judgment proceedings against Reeme.

¶ 11 The order was accompanied by a 3-page memorandum opinion. The court explained that its rulings were based on the principle that a person who holds the beneficial interest in a land trust has no right to represent a third party trustee of that land trust. Here, the beneficiary of the land trust, Spiegel, did not sign the lease; the lessor of the premises was the trustee, and, therefore, it was the trustee who was the proper plaintiff. Despite this, Spiegel filed suit in the name of the land trust in a *pro se* capacity. Relying upon *Ford Motor Credit Co. v. Sperry*, 214 Ill. 2d 371 (2005), the court held that since this action was filed by a lay person on behalf of a corporate third party, it was null and void *ab initio*. Because the complaint was a nullity, the court further held that the *ex parte*

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default judgment against Reeme was also a nullity, and all garnishments were vacated and quashed.

¶ 12 On January 21, 2009, Reeme filed a motion for sanctions against Spiegel, seeking to recover attorney's fees and costs in defending the action. On January 23, 2009, Lavery moved to amend the complaint filed by Spiegel. On March 20, 2009, the court denied this motion to amend. Thereafter, on June 26, 2009, the court granted Reeme's motion for sanctions against Spiegel. The court allowed Reeme to file an amended statement of fees and costs, and took the matter under advisement for a final determination of the sanction amount. On July 24, 2009, the court entered a two-page Memorandum Opinion and Order in which it awarded to Reeme \$2,175 in attorney's fees and \$248.79 in costs. The court, however, excluded attorneys' time for travel to the courthouse, but included the cost of mileage under the IRS business reimbursement rate.

¶ 13 On August 18, 2009, Lavery filed an appeal¹ on behalf of "LaSalle National Bank" asking for reversal of the dismissal of the complaint, reversal of the sanction order and reversal of the sanction award. Spiegel filed a separate *pro se* appeal² in which he asked for reversal of the sanction order and award. Reeme filed a cross-appeal in which she contended that the trial court erred in its sanctions ruling by excluding costs for her attorney's time and travel to the courthouse in the amount of \$2,970. During the pendency of these appeals, a verified complaint was filed in the circuit court of Cook County on November 30, 2009. This action, captioned "LaSalle National Bank N.A. as trustee under Land Trust 4179 v. Tamara L. Reeme" was given docket No. 09 M1 188360. This action sounded in breach of contract and requested that Reeme pay back rent, damages and the

¹This appeal was docketed as 01-09-2276.

²This appeal was docketed as 01-09-2288.

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attorney fees incurred by Lavery in the earlier action. The complaint was signed by Joseph Gentleman as an attorney for "LaSalle National Bank N.A. as trustee under Land Trust 4179." The verification was signed by Spiegel as the "owner of the beneficial interest in LaSalle Bank N.A. Land Trust 4179."

¶ 14 Reeme thereafter filed a motion to dismiss this complaint arguing, *inter alia*, that the complaint should be dismissed pursuant to section 2-619(a)(1) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(1)) because the filing of notices of appeal in the earlier action deprived the trial court of jurisdiction over the cause of action raised in the later complaint.

¶ 15 On January 8, 2010, the trial court dismissed this complaint under section 2-619(a)(1) for lack of jurisdiction. On February 3, 2010, Reeme filed a motion for sanctions against Spiegel pursuant to Supreme Court Rule 137 on the basis that a second case was filed involving the same lease when the first appeal was still pending. The circuit court denied Reeme's motion on the basis that it lacked jurisdiction. Both parties filed separate appeals of the orders of the circuit court.³

¶ 16 DISCUSSION

¶ 17 I. Appeals in Case Nos. 01-09-2276 and 01-09-2288

¶ 18 A. *Defendant's Motion to Strike the Brief Filed by Lavery on Behalf of Spiegel*

¶ 19 As a threshold matter, we note that Reeme has filed a motion to strike the brief filed by Lavery on behalf of Spiegel. This is the only appellant brief filed in this matter. Reeme contends that this brief should be stricken because it contains at least 162 violations of Supreme Court Rule 341. No response to this motion to strike has been filed.

³These appeals were docketed as Nos. 1-10-0415 and 1-10-1323.

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¶ 20 Supreme Court Rule 341(g) requires that citation to authorities shall be provided as in Supreme Court Rule 6. Rule 6, in turn, specifies that case citations "must be by title, to the page of the volume where the case begins, and to the pages upon which pertinent matter appears in at least one of the reporters cited. *** Citation shall be to the official reports."

¶ 21 Supreme Court Rule 341(h)(6) provides in pertinent part that the "Statement of Facts" section of the brief "[s]hall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal."

¶ 22 Finally, Supreme Court Rule 341 (h)(7) provides in pertinent part that the "Argument" section of the brief "[s]hall contain the contentions of the appellant and the reasons therefore, with citation of the authorities and the pages of the record relied upon."

¶ 23 In her motion to strike the appellant's brief, Reeme sets forth with specificity at least 162 violations of Supreme Court Rule 341. She does so by attaching the appellant's brief to her motion and noting directly upon that brief each violation of the rules. Included are instances where there are no citations to the record or the citation to the record does not match the allegation, in violation of Rule 341(h)(6); instances where there is no citation to legal authority, in violation of Rule 341(h)(7); instances where the citation form is incorrect, in violation of Rule 6 and 341(a); instances where the citations given do not match the information purported to be present, in violation of Rules 341 (h)(6) and (h)(7); and instances where allegations are argued as fact, in violation of Rule 341(h)(6).

¶ 24 An appellate court has the right to strike a brief and dismiss an appeal as a result of a failure

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to provide a complete statement of facts. *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 845 (2001).

Failure to comply with Rule 341 is grounds for disregarding arguments on appeal. *Jeffery M. Goldberg & Assoc., Ltd. v. Collins Tuttle & Co.*, 264 Ill. App. 3d 878, 886 (1994).

¶ 25 Here, after carefully reviewing the brief, we agree with Reeme that the appellant's brief violates Rule 341. The brief sets forth appellant's version of the purported facts and the argument derived therefrom either without citation to the record or with inaccurate record citations. In addition, the brief is replete with argument, conclusions, and unsupported accusations.

¶ 26 We note, however, that Rule 341 is not a limitation on the court. Accordingly, we may reach the merits of an appeal if the "interest[s] of justice" so require. *Luttrell v. Panozzo*, 252 Ill. App. 3d 597, 600 (1993). Thus, this court may properly entertain any appeal where jurisdiction is proper (*Id.*) and the interests of justice require an examination of the merits (*Id.* at 601). Here, because this case involves multiple and cross-appeals, we believe the interests of justice require examination of the merits. See *Harvey v. Carponelli*, 117 Ill. App. 3d 448, 451 (1983)(reaching the merits of the case despite an appellant's failure to present an organized and cohesive argument).

¶ 27 We caution, however, that our decision not to strike appellant's brief "should not be interpreted as a signal that we are willing, as a matter of course, to overlook violations of the supreme court rules in briefs filed with this court. We are not." *Alderson*, 321 Ill. App. 3d at 845, quoting, *Buckner v. Causey*, 331 Ill. App. 3d 139, 142 (1999). Instead, we have simply concluded that the nature of the issues on appeal is such that a review of the merits is warranted.

¶ 28 We now turn to the merits of this appeal.

¶ 29 *B. Dismissal of Complaint as Void Ab Initio*

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¶ 30 Spiegel appeals the dismissal of his forcible entry action, alleging that the trial court erred in holding that the complaint was void *ab initio* because Spiegel, as a nonlawyer, filed that *pro se* action in the name of a third party - LaSalle Bank.

¶ 31 We review a trial court's decision to dismiss a complaint *de novo*. *Van Meter v. Darian Park District*, 207 Ill. 2d 359, 368 (2003). The trial court held that Spiegel, as the holder of a beneficial interest in the land trust, had no right to file a *pro se* complaint in the name of LaSalle Bank - the third party trustee of that land trust. We agree.

¶ 32 A land trust beneficiary does not own real estate in the conventional sense. *Klein v. LaSalle National Bank*, 155 Ill. 2d 201, 207 (1993). Instead, the beneficiary's interest is considered personal property; it is the trustee which holds both legal and equitable title. *Id.* Accordingly, Spiegel had no authority to file suit against Reeme in the name of the land trust and LaSalle Bank. In addition, because Spiegel did not sign the lease with Reeme, he had no authority to enforce the provisions of that document.

¶ 33 In *Ford Motor Credit Co. v. Sperry*, 214 Ill. 2d 371, 387-90 (2005), our Supreme Court held that when an unlicensed individual files suit on behalf of a third-party, the nullity rule applies and the proceedings are void *ab initio*. The purpose of this rule is "to protect litigants against the mistakes of the ignorant and the schemes of the unscrupulous and to protect the court itself in the administration of its proceedings from those lacking requisite skills." *Id.* at 390, quoting *Janiczek v. Dover Management Co.*, 134 Ill. App. 3d 543, 546 (1985).

¶ 34 We conclude that, under the facts presented, the trial court correctly dismissed Spiegel's complaint as being void *ab initio*.

¶ 35

C. Denial of Leave to Amend

¶ 36 Spiegel further asserts that the trial court erred when it refused to allow him to amend the complaint once he hired Lavery as counsel.

¶ 37 We review a trial court's decision to deny leave to amend under an abuse of discretion standard. *County of Cook ex rel Rifkin v. Bear Stearns & Co.*, 215 Ill. 2d 466, 474 (2005). Spiegel alleges that the trial court should have allowed the filing of his proposed amended complaint, and states that this complaint is found in the record at C00091. This citation to the record, however, is inaccurate, as it does not contain such a document.

¶ 38 The mere fact that Spiegel hired counsel to represent him in this action does not cure the defects noted by the trial court: that Spiegel, as a land trust beneficiary, had no authority to file suit against Reeme in the name of the land trust and LaSalle Bank, and, further, that because Spiegel did not sign the lease with Reeme, he had no authority to enforce the provisions of that document. Accordingly, the trial court did not abuse its discretion in denying leave to amend.

¶ 39

D. Imposition of Rule 137 Sanctions

¶ 40 Spiegel argues that the trial court erred in imposing sanctions against him pursuant to Supreme Court Rule 137. Reeme has filed a cross-appeal on the issue of sanctions, arguing that the trial court erred in refusing to award her fees for her attorney's travel time to the courthouse for the hearings on Spiegel's action.

¶ 41 The decision whether to impose sanctions under Rule 137 is committed to the sound discretion of the circuit court, and that decision will not be reversed on appeal absent an abuse of discretion. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998). Rule 137 provides, in

pertinent part:

"A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. *** The signature of a[] *** party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. *** If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a

reasonable attorney fee.

Where a sanction is imposed under this rule, the judge shall set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order."

¶ 42 In this case, the trial court imposed sanctions upon Spiegel based upon the well-settled law that a layperson cannot file a complaint on behalf of a third-party corporate entity. The court explained:

"[t]his principle of law was brought to the attention of Spiegel almost on the first day that Reeme's lawyers presented their motion to vacate. Spiegel retained a lawyer who filed briefs in opposition to the motion to vacate when the law on this subject was clear and unmistakable."

The court further found that Spiegel's conduct "merely prolonged this litigation and harassed this defendant." The court then concluded:

"The filing of the complaint was not warranted by existing law, and [Spiegel] fail[ed] to make a reasonable inquiry as to the existence of the law prior

to taking his actions; the court further finds that his continuing position *** that he was entitled to represent LaSalle Bank was intended to harass the opposing party and to cause undue delay."

Accordingly, the court awarded to Reeme \$2,175 in attorney's fees and \$248.79 in costs.

¶ 43 It is well-established that "[t]he purpose of Rule 137 is to prevent abuse of the judicial process by penalizing claimants who bring vexatious and harassing actions." *Sundance Homes, Inc. v. County of Du Page*, 195 Ill. 2d 257, 285-86 (2001); see also *Kingbrook, Inc. v. Pupurs*, 202 Ill. 2d 24, 34 (2002) (identifying Rule 137 as one of the procedures in place to resolve contentions of bad-faith litigation); *Cult Awareness Network v. Church of Scientology International*, 177 Ill. 2d 267, 279 (1997) ("Rule 137 was adopted as a means of preventing false and frivolous filings").

¶ 44 The record reflects that, under the specific circumstances presented, the trial court did not abuse its discretion in imposing sanctions against Spiegel. The trial court set forth its basis for the imposition of sanctions, which is in line with the purpose of Rule 137 sanctions to "penalize litigants who plead frivolous or false matters or bring suit without any basis in law." *Fischer v. Brombolich*, 246 Ill. App. 3d 660, 664 (1993). Accordingly, we affirm the judgment of the trial court.

¶ 45 Reeme, however, argues in her cross-appeal that the trial court erred in its sanctions ruling by excluding costs for her attorney's time to travel to the courthouse in the amount of \$2,970. The standard of review in determining the reasonableness of sanctions awarded is abuse of discretion. *Nelson v. Chicago Park District*, 408 Ill. App. 3d 53, 70 (2011). An abuse of discretion occurs

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when a court's award is arbitrary or exceeds the bounds of reason. *Kellett v. Roberts*, 281 Ill. App. 3d 461, 466 (1996). Here, the trial court believed that a reasonable sanction under the circumstances included the in-court time for Reeme's attorney in defending Spiegel's action, as well as mileage costs for travel to the courthouse. After a careful review of the record, we cannot say that the trial court abused its discretion in excluding costs for Reeme's attorney's time to travel to the courthouse.

¶ 46 II. Appeals in Cases No. 01-10-0415 and 01-10-1323

¶ 47 Although attorney Gentlemen filed the verified complaint in the circuit court of Cook County in case No. 09 M1 188360, captioned "LaSalle National Bank N.A. as trustee under Land Trust 4179 v. Tamara L. Reeme," attorney Lavery (who represented Spiegel in the first action, No. 08-M2-1990, and also represents him in the other two appeals consolidated in this action) has filed the appellant brief with respect to these appeals. We note that in signing this brief, Lavery simply states that he is an "attorney," and does not indicate with specificity which party he is representing in this appeal. Indeed, based upon our close examination of the record, there is no clear indication that LaSalle Bank actually retained counsel to prosecute this action, in either the circuit court or this court, even though it is captioned in its name.

¶ 48 In his brief on behalf of "appellant," Lavery contends that the trial court erred in dismissing case No. 09-M1-188360 because the prior action filed by Spiegel was dismissed as a nullity. Lavery contends that this means that the trial court could entertain the second case because it treated the first one as if it never occurred. We disagree.

¶ 49 Lavery overlooks that the judgment in case No. 08 M2 1990 was on appeal at the time that

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the complaint in case No. 09-M1-188360 was filed. The filing of a notice of appeal causes the jurisdiction of the reviewing court to immediately attach, thereby depriving the trial court of jurisdiction over the matter. *Hecht v. Hecht*, 49 Ill. App. 3d 334, 338 (1977). Thus, the appellate court had jurisdiction over the issues presented in case No. 08-M2-1990, including the dismissal of that action and the propriety of the sanctions imposed. The trial court could not maintain concurrent jurisdiction over the same causes of action presented in case No. 09-M1-188360. Such a scenario presents the possibility of an absurd result, where the trial court could enter a judgment in the later action which could be contrary to the judgment of the appellate court in the former action. Accordingly, we affirm the judgment of the circuit court in dismissing case No. 09-M1-188360 for lack of jurisdiction.

¶ 50 We also find Reeme's cross-appeal in this case to be without merit. She asserts that the trial court erred in failing to impose sanctions under Rule 137 for this filing. For the same reasons set forth above, the trial court correctly concluded that it had no jurisdiction to entertain Reeme's motion.

¶ 51 CONCLUSION

¶ 52 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 53 Affirmed.