

2011 IL App (1st) 092651-U

SIXTH DIVISION
DECEMBER 30, 2011

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).

Nos. 1-09-2651, 1-09-3289 and 1-09-3333
(Consolidated)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LARRY ORUTA,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	Nos. 06 M1 11125
)	05 M1 721517
)	
JONG H. BEK; DOMENICA CECE,)	Honorable
)	Anthony L. Burrell,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE ROBERT E. GORDON delivered the judgment of the court.
Justices Garcia and Lampkin concurred in the judgment.

ORDER

¶ 1 This is a consolidated appeal by Larry Oruta from two circuit court cases involving Imperial Towers, a residential and commercial building in Chicago. Oruta appeals in a forcible entry and detainer action by Jong Bek against Oruta. He also appeals in his civil action against Bek, Domenica Cece, Catherine Castaneda, and the Imperial Towers Condominium Association for wrongful eviction, harassment, and deprivation of personal property. On appeal, Oruta

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contends that the court erred in staying enforcement and citation proceedings in the latter case.

He has also filed a motion before this court seeking to lift that stay.

¶ 2 This court has the duty to determine *sua sponte* whether we have jurisdiction to consider a case. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 251-52 (2010).

¶ 3 In the forcible entry case, Oruta raises no contentions of error. Regardless, we must dismiss the two appeals from that case (1-09-3289 and -3333) for lack of jurisdiction. In October 2005, an agreed order of possession for a unit in Imperial Towers was entered against Oruta with no award of damages to Bek. In November 2005, the court ordered Bek to allow Oruta to remove personal property from the unit. Oruta also obtained an order against the Association and Castaneda – who were not named parties in the forcible entry case – to allow him to retrieve property from Bek's unit and certain commercial space within Imperial Towers. However, that order was vacated upon the motion of the Association and Castaneda in March 2006. It was not until Oruta filed a motion in mid-2007 that he claimed he had been denied access to his property, and this motion was stricken without prejudice in August 2007. However, Oruta did not file another motion until October 2009, by which time the circuit court correctly ruled that it lacked jurisdiction.

¶ 4 In the wrongful eviction case, which commenced in early 2006 as the forcible entry case was pending, the Association and Castaneda were dismissed from the case with prejudice in October 2006. As he continued to challenge that dismissal, Oruta obtained a default against Cece and Bek in November 2006, which was reduced to an *ex parte* default judgment for \$10,000 in June 2007. Oruta then commenced citation and garnishment proceedings on the judgment. In September 2007, Cece filed a motion to vacate the default judgment against her, alleging that she was never served with process, and the motion was granted in October 2007. The case then languished until 2009 due to an appeal by Oruta ultimately dismissed by this court for want of

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prosecution. In July 2009, Oruta filed a motion challenging the vacatur of Cece's default judgment. In September 2009, Bek filed a motion to set aside the judgment against him, claiming that he had no notice of the proceedings. Both motions were thus pending when, on September 30, 2009, the court continued the case to October 9 in an order staying all enforcement and citation proceedings "until service is determined." Therefore, when Oruta filed a notice of appeal the next day, commencing appeal 1-09-2651, he was taking a premature appeal from a patently non-final order.

¶ 5 As to plaintiff's motion to lift the stay, his arguments against the stay rely heavily on Supreme Court Rule 305 (eff. July 1, 2004), which governs stays of judgment pending appeal. However, the stay order of September 30, 2009, was not a stay pending appeal because there was no appeal from the wrongful eviction case pending at that time. We see no error in the court staying enforcement proceedings for a brief period until the court could assess Bek's claim that he did not have notice of the proceedings. Ironically, it was Oruta taking the instant appeal that transformed a stay of a few days into something much more substantial.

¶ 6 Accordingly, this appeal is dismissed for lack of jurisdiction and the motion to lift the stay is denied.

¶ 7 This order is entered in accordance with Supreme Court Rule 23(c)(1) (eff. July 1, 2011).

¶ 8 Affirmed.