

2011 IL App (1st) 100443-U

FIRST DIVISION
December 12, 2011

No. 1-10-0443

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 DISTRICT

TIB COMPANY, doing business as TIB Services, Inc.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	No. 06 CH 21589
BRUNY MARTINEZ-RUPP, also known as Brunhilda)	Consolidated with
Martinez, GARFIELD CONSTRUCTION LLC,)	No. 07 CH 03017
GARAPOLLO MAYNARD ARCHITECTS, INC.,)	
NATIONAL WASTE SERVICES, INC., CHICAGO)	
TITLE and LAND TRUST COMPANY, as Successor)	
Trustee to LaSalle National Bank Association, as)	
Successor Trustee to American National Bank and Trust)	
Company of Chicago, as Trustee under a Trust)	
Agreement, dated January 2, 1978 and known as Trust)	Honorable Darryl Simko,
Number 46111, UNKNOWN OWNERS and)	Judge Presiding.
NONRECORD CLAIMANTS,)	
)	
Defendants)	
)	
(Bridgeview Bank Group,)	
)	
Defendant-Appellee).)	

JUSTICE HALL delivered the judgment of the court.

Justices Karnezis and Rochford concurred in the judgment.

ORDER

¶ 1 **Held:** (1) This court lacked jurisdiction to review an order sanctioning a nonparty to the appeal. (2) In the absence of a transcript of the hearing on the plaintiff's motion for extension of time, the circuit court's denial of the motion was not an abuse of discretion. (3) The plaintiff's failure to comply with Illinois Supreme Court Rules governing appellate procedure resulted in forfeiture of errors raised on appeal. (3) Summary judgment was proper where there were no genuine issues of material fact. (4) The plaintiff's filing of a frivolous appeal warranted the imposition of sanctions.

¶ 2 The plaintiff, TIB Company, appeals from orders of the Circuit Court of Cook County granting summary judgment to defendant Bridgeview Bank Group (Bridgeview), dismissing with prejudice the plaintiff's second amended complaint, denying the plaintiff's request for a continuance, and awarding attorney fees to Bridgeview.¹ On appeal, the plaintiff raises 10 separate issues. In response, Bridgeview requests that this court dismiss the appeal for the plaintiff's failure to comply with the Illinois Supreme Court Rules governing appellate procedure and impose sanctions on the plaintiff for filing a frivolous appeal.

¶ 3 Based on lack of jurisdiction and the plaintiff's failure to comply with the rules governing appeals, the sole issue preserved for review is whether summary judgment for Bridgeview was proper. While we chose not to dismiss this appeal, pursuant to Illinois Supreme Court Rule 375(a) (eff. Feb. 1, 1994), we determine that the plaintiff's appeal is frivolous and warrants the imposition of sanctions.

¶ 4 According to the uncontested facts, Bruny Martinez-Rupp owned property located at 111-

¹ None of the other named defendants are parties to this appeal.

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113 West Garfield Avenue, in Oak Park, Illinois (the property). Bridgeview held the mortgage on the property. In February 2006, the plaintiff entered into a contract with Ms. Martinez-Rupp to perform repair work in the amount of \$90,000 on the property. Bridgeview was not a party to the contract. In April 2006, the plaintiff recorded a mechanics' lien against the property. In October 2006, the plaintiff filed a complaint to foreclose its lien claim against Bridgeview and the other named defendants, alleging that they failed to pay for the improvements to the property.

¶ 5 In January 2007, Bridgeview filed a complaint to foreclose the mortgage on the property. Based on its lien claim, the plaintiff was named a party-defendant in the mortgage foreclosure suit. The circuit court ordered the two cases consolidated.

¶ 6 The plaintiff's second amended complaint alleged breach of contract, fraud, intentional interference with a prospective business advantage, and sought foreclosure of its mechanics' lien claim. On August 6, 2008, the circuit court dismissed all but the foreclosure of the mechanics' lien claim and set a date for hearing on Bridgeview's motion for sanctions against the plaintiff's attorney, Raymond Sanders. On October 9, 2008, the court sanctioned Attorney Sanders in the amount of \$2,500 for filing frivolous pleadings.

¶ 7 Bridgeview filed an answer and affirmative defenses to the second amended complaint. The parties then engaged in discovery.

¶ 8 On August 6, 2009, Bridgeview filed a motion for summary judgment. Bridgeview asserted that the plaintiff failed to establish what work it performed on the property, the amount of money it expended, and failed to establish that its work resulted in improvements to the

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property.

¶ 9 In support of the motion, Bridgeview relied on the April 20, 2009, deposition testimony of Maria Bailey, the president of the plaintiff. According to her testimony, Ms. Bailey had no recollection or any independent recollection of the work that the plaintiff or its subcontractors performed, the costs of the work or of the supplies used. She was also unable to recall the basis for her verified allegations against Bridgeview. She claimed that the documents supporting the mechanics' lien claim were in storage and that weather conditions had prevented her from accessing the storage unit.

¶ 10 Bridgeview also relied on the report of Daniel Carter, president of Carter Inspection and Construction Services, Inc. Mr. Carter inspected the property on several occasions between 2005 and 2009. In his report, Mr. Carter noted the following: the plaintiff did not schedule the work properly and did not employ qualified subcontractors; most of the completed work was done by previous contractors; work done by the plaintiff was substandard and would not pass a building inspection; and the plaintiff's claim of \$6000 for leasing dumpsters was excessive, since most of the debris had been removed by the previous contractors.

¶ 11 In its response, the plaintiff asserted that the pleadings and the documentation in the record showed that questions of material fact existed as to whether the plaintiff could prove its lien claim. It further asserted that Ms. Bailey had obtained the documentation she referred to in her deposition testimony and that she was prepared to testify as to the work performed, the costs expended and that the plaintiff's work added value to the property. The plaintiff maintained that the documents had been provided to Bridgeview. Finally, the plaintiff set forth portions of

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affidavits that it alleged supported its claim. These affidavits were filed in connection with other motions and were not attached to the plaintiff's response to the motion for summary judgment. In its reply, Bridgeview denied that it had received any additional documentation from the plaintiff.

¶ 12 On October 2, 2009, the circuit court granted Bridgeview's motion for summary judgment. On January 12, 2010, the court denied the plaintiff's motion for reconsideration and denied its request for additional time to respond to Bridgeview's request for sanctions. The court granted Bridgeview's motion for sanctions against the plaintiff and awarded Bridgeview attorney fees in the amount of \$52,500.25. This appeal followed.

¶ 13 ANALYSIS

¶ 14 I. Jurisdiction

¶ 15 The plaintiff contends that the trial court erred when it sanctioned the plaintiff in the amount of \$2,500 for filing frivolous claims against Bridgeview. However, the record reveals that the sanction was not imposed against the plaintiff but against the plaintiff's attorney, Raymond Sanders.

¶ 16 In its August 6, 2008, order, the circuit court granted Bridgeview's motion for sanctions. The order further provided as follows:

"This matter is set for presentation of Bridgeview's fees and costs in addressing the Second Amended Complaint and determination of a sanctions award against Attorney Raymond Sanders on September 17, 2008 at 9:30 a.m. "

In its order of October 9, 2008, the circuit court ordered attorney Sanders to pay \$2,500 to

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Bridgeview.

¶ 17 Mr. Sanders is not a party to this appeal. He did not file a notice of appeal in this case, and he was not included as a party on the plaintiff's notice of appeal. As he is not a party to this appeal, we have no jurisdiction to rule on this issue. See *Coleman v. Akpakpan*, 402 Ill. App. 3d 822 (2010).

¶ 18 II. Violations of Illinois Supreme Court Rules

¶ 19 A. Rule 323(a)

¶ 20 Under Illinois Supreme Court Rule 323(a), "the appellant has the responsibility to ensure that the record on appeal contains a report of proceedings that includes 'all the evidence pertinent to the issues on appeal.' " *In re Marriage of Thomsen*, 371 Ill. App. 3d 236, 241 (2007) (quoting Ill. S. Ct. 323(a) (eff. Dec. 13, 2005)). An incomplete record is a violation of the supreme court rules and is grounds for summary affirmance. *Adams v. Sarah Bush Lincoln Health Center*, 369 Ill. App. 3d 988, 997 (2007).

¶ 21 The plaintiff argues that the circuit court abused its discretion when it denied its motion for an extension of time to respond to Bridgeview's motion for sanctions against it. See *Somers v. Quinn*, 373 Ill. App. 3d 87, 96 (2007) (the grant or denial of a continuance lies in the discretion of the court). Such an issue requires a reviewing court to defer to the trial court's judgment and, in the absence of a record of the proceedings, there is no basis for concluding that the trial court abused its discretion in its rulings. See *Thomsen*, 371 Ill. App. 3d at 242.

¶ 22 The plaintiff failed to provide this court with a transcript of the proceeding in which its motion for continuance was denied, and it did not utilize any of the alternatives to a transcript set

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forth in Rule 323. See Ill. S. Ct. R. 323 (c) (d) (eff. Dec. 13, 2005). Therefore, the plaintiff failed to establish that the circuit court abused its discretion in denying its motion for an extension of time.

¶ 23

B. Rule 341(h)(7)

¶ 24 The plaintiff contends that the circuit court erred and/or abused its discretion when it: (1) dismissed the plaintiff's fraud claims; (2) denied the plaintiff's motion to strike the defendant's affirmative defenses; (3) struck the plaintiff's motion for a prove-up of damages against a defaulted defendant; (4) allowed Bridgeview to file the report of its expert after the close of discovery; (5) dismissed the plaintiff's second amended complaint with prejudice and declared moot all pending motions; (6) allowed Bridgeview to argue on behalf of a defaulted defendant; and (7) awarded \$52,500.25 in attorney fees to Bridgeview.

¶ 25 Illinois Supreme Court Rule 341(h)(7) requires that the appellant's brief contain "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). As the reviewing court, we are " ' "entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research." ' " *First National Bank of LaGrange v. Lowrey*, 375 Ill. App. 3d 181, 208 (2007) (quoting *In re Marriage of Auriemma*, 271 Ill. App. 3d 68, 72 (1994), quoting *Thrall Car Manufacturing co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986). An issue not clearly defined and sufficiently presented fails to satisfy the requirements of Rule 341(h)(7) and is, therefore,

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forfeited. *Lowrey*, 375 Ill. App. 3d at 208.

¶ 26 The plaintiff's failure to comply with one or more of the requirements of Rule 341(h)(7) in connection with the trial court errors alleged above forfeits our review of those errors.

¶ 27 **III. Summary Judgment**

¶ 28 The plaintiff contends that summary judgment in this case was precluded by the existence of genuine issues of material fact.

¶ 29 **A. Standard of Review**

¶ 30 This court reviews the grant of summary judgment *de novo*. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 309 (2010).

¶ 31 **B. Summary Judgment Principles**

¶ 32 "Summary judgment is proper if, and only if, the pleadings, depositions, admissions, affidavits and other relevant matters on file show that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law." *Illinois Farmers Insurance Co. v. Hall*, 363 Ill. App. 3d 989, 993 (2006). Summary judgment should be denied if there are disputed facts or if reasonable persons could draw different inferences from the undisputed facts. *Bourgonje v. Machev*, 362 Ill. App. 3d 984, 994 (2005). The court must consider the evidence in the light most favorable to the nonmoving party. *Bourgonje*, 362 Ill. App. 3d at 994.

¶ 33 **C. Discussion**

¶ 34 To determine the validity of a mechanics' lien claim, the focus of the inquiry is whether the work performed has enhanced the property. *Contract Development Corp. v. Beck*, 255 Ill. App. 3d 660, 666 (1994). The plaintiff contends that the evidence in the record raised genuine

issues of material fact as to whether the plaintiff's work had improved the property. The plaintiff points out that Ms. Bailey never denied that the plaintiff performed work on the property or that the work did not add value to the property. We disagree. Ms. Bailey was unable to testify to any factual evidence that the plaintiff performed work on the property that contributed to its value. Therefore her testimony did not raise genuine issues of material fact.

¶ 35 The plaintiff argues that the circuit court erred when it determined that Ms. Bailey's inability to recall the facts necessary to prove the lien claim meant that no such evidence existed. It points out that Ms. Bailey testified that documentary evidence existed that would support the lien claim. The record does not indicate that the documents which Ms. Bailey claimed supported the validity of the lien were ever presented to the circuit court.

¶ 36 The plaintiff asserts that to consider Ms. Bailey's inability to recall as an admission that no evidence existed to prove the lien claim was extremely prejudicial to the plaintiff, because the plaintiff was unable to obtain an extension of the discovery period to obtain additional evidence. According to the table of contents in the appendix to the plaintiff's appellate brief, the motion to extend the discovery period was stricken on July 24, 2009. While the table of contents indicates that the order can be found at C 831 in the record, that page is missing. In the absence of a complete record, we assume that the plaintiff abandoned its request for an extension of the discovery period.

¶ 37 The plaintiff argues that it was further prejudiced when Bridgeview was permitted to file Mr. Carter's report after the close of discovery. The record reflects that the circuit court denied the plaintiff's motion to strike Mr. Carter's report. As the plaintiff has not presented any

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authority or argument why the denial of his motion was error, the alleged error is forfeited. Ill.

S. Ct. R. 341(h)(7) (eff. July 1, 2008).

¶ 38 Finally, the plaintiff argues that Mr. Carter's report was evidence, in and of itself, that genuine issues of material fact existed. The plaintiff fails to reference any portion of Mr. Carter's report supporting this argument and fails to provide any analysis as to why his report creates factual questions material to the resolution of the mechanics' lien claim. Therefore, the argument is forfeited. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).

¶ 39 The record before us reveals that no genuine issues of material fact exist as to the validity of its mechanics' lien claim. Therefore, the grant of summary judgment to Bridgeview was proper.

¶ 40 III. Sanctions for Filing a Frivolous Appeal

¶ 41 Rule 375 (b) provides for the imposition of sanctions against a party who files a frivolous appeal. Ill. S. Ct. Rule 375(b) (eff. Feb. 1, 1994). An appeal is considered frivolous if it would not have been brought in good faith by a reasonable, prudent attorney. *Dreisilker Electric Motors, Inc., v. Rainbow Electric Co.*, 203 Ill. App. 3d 304, 312 (1990). In this case, the plaintiff's appeal of the summary judgment for Bridgeview could not have been brought in good faith. Ms. Bailey's deposition testimony failed to support the validity of the lien claim, and the plaintiff failed to produce the documentary evidence it maintained supported the lien claim to the circuit court. The plaintiff's argument that it was denied the opportunity to demonstrate the existence of genuine factual issues is belied by the abandonment of its request for an extension of the discovery period. In view of the lack of reliable evidence upon which to make a credible

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argument for reversal of the grant of summary judgment, a reasonable and prudent attorney would not have pursued an appeal in this case. Therefore, we agree with Bridgeview that the sanctions should be imposed on the plaintiff for filing a frivolous appeal.

¶ 42 Accordingly, we direct Bridgeview to file within 14 days a statement of reasonable expenses and attorney fees incurred as a result of this appeal. The plaintiff shall have seven days to file a response. This court will then issue a supplementary order determining the amount of the sanction to be imposed on the plaintiff. See *Dreisilker Electric Motors, Inc.*, 203 Ill. App. 3d at 312-13.

¶ 43 The judgment of the circuit court is affirmed.

¶ 44 Affirmed with sanctions.

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