FIRST DIVISION
FILED: FEBRUARY 14, 2012

No. 1-11-1421

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MICHAEL J. GAGNON,	) APPEAL FROM THE
	) CIRCUIT COURT OF
Plaintiff-Appellant,	) COOK COUNTY
	)
v.	) No. 08 CH 37052
	)
DEBORAH SCHICKEL,	) HONORABLE
	) MARTIN S. AGRAN,
Defendant-Appellee.	) JUDGE, PRESIDING.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Karnezis concurred in the judgment.

ORDER

Held: Appellate court lacked jurisdiction over appeal.

¶ 1 The plaintiff, Michael Gagnon, appeals from the trial court's judgment finding in favor of the defendant, Deborah Schickel, on several counts of his 15-count complaint against her. On appeal, the defendant argues that the trial court erred in dismissing three of the counts of his complaint prior to trial and in finding in favor of the defendant on three additional counts. For the reasons that follow, we dismiss this appeal for lack of jurisdiction.

¶ 2 The plaintiff filed his 15-count complaint in October 2008. It alleged generally that, during

the course of their relationship, the parties arranged to purchase real estate and record both of their names as title holders but that the defendant failed to record the plaintiff's ownership even after he contributed to the acquisition and development of the property. The complaint was later amended, and several counts were dismissed. Among the dismissed counts was Count IV, which alleged a theory of unjust enrichment against the defendant. After the dismissal of Count IV, the plaintiff successfully moved to have the trial court reconsider the dismissal, and Count IV was tried on its merits along with the remaining active counts of the amended complaint. On February 17, 2011, after a bench trial, the trial court entered an order granting the plaintiff damages under a theory of promissory estoppel but declined to award any damages based on the Count IV unjust enrichment theory. The same day that the trial court entered its judgment, the plaintiff filed an "Emergency Motion for Reconsideration with Regard to Count IV of the Amended Complaint" asking the court to reconsider its judgment regarding Count IV. As the plaintiff acknowledges in his brief on appeal, that motion was never heard. The plaintiff asked the trial court judge to hear the motion, but that judge, who was set to be reassigned, did not do so. On February 28, a bankruptcy court entered an order that had the effect of staying the litigation in this case. That stay was lifted on April 14, and the plaintiff filed his notice of appeal on May 6.

¶ 3 Although neither party raises an issue regarding our jurisdiction, we have an independent duty to consider the issue and dismiss the appeal where our jurisdiction is lacking. Palmolive Tower Condominiums, LLC v. Simon, 409 Ill. App. 3d 539, 542, 949 N.E.2d 723 (2011). The filing of a notice of appeal is a jurisdictional step that initiates appellate review. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). "When a timely postjudgment motion has been filed by any party, whether in a jury case or

a nonjury case, a notice of appeal filed before the entry of the order disposing of the last pending postjudgment motion, or before the final disposition of any separate claim, becomes effective when the order disposing of said motion or claim is entered." Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008). Here, there remains a pending postjudgment motion, and, therefore, the plaintiff's notice of appeal is premature and ineffective.

¶ 4 After this appeal was briefed, we invited the plaintiff to submit a status report addressing the status of any pending post-judgment motions. In his status report, the plaintiff argued that he had abandoned his post-judgment motion because he let it sit without obtaining a hearing on it. We disagree. To support his abandonment theory, the plaintiff cites several cases that generally state the idea that a party may, under certain circumstances, be deemed to have abandoned or withdrawn a motion. However, as the supreme court said in a decision cited by the plaintiff in its motion, "[w]e are not saying that a party may not abandon its post-trial motion, but to do so there must be a more affirmative indication of abandonment than the mere filing of a notice of appeal before the disposition of the post-trial motion." Chand v. Schlimme, 138 Ill. 2d 469, 479, 563 N.E.2d 441 (1990).

¶ 5 Here, we cannot infer the plaintiff's abandonment of his post-trial motion. Although the plaintiff allowed approximately three months to pass without obtaining a ruling on his post-judgment motion, we do not consider that passage of time to be significant under these facts. The plaintiff indicated an intent to pursue a ruling immediately after filing his motion, by asking the trial judge to consider the motion. Ten days passed between the trial judge's refusal and the imposition of the bankruptcy stay that precluded the plaintiff from further pursuing his post-judgment motion. That

stay remained in effect until April 14. Thus, the plaintiff's only real inaction with regard to his post-judgment motion occurred between April 14 and May 6, the date he filed his notice of appeal. We cannot consider this short delay, along with the filing of the notice of appeal, as the plaintiff's abandoning his post-judgment motion.

¶ 6 For the foregoing reasons, we conclude that the plaintiff's notice of appeal was ineffective because a post-judgment motion remains pending in the circuit court. We therefore dismiss the defendant’s appeal for lack of jurisdiction.

¶ 7 Dismissed.