2011 IL App (1st) 113234-U

Third Division
November 18, 2011

No. 1-11-3234

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

INTEGRA BANK, N.A., Plaintiff, v. CAGN DEVELOPMENT, LLC, CHRIS BYRNE, NUALA BYRNE, QUALITY FLOORING EXPERTS, INC., PATRICK DUFFY, C.J. PLUMBING HEATING AND AIR CONDITIONING CO., NORTHWEST MILL WORK CO., 5206-12 N. WINTHROP CONDO ASSOC. and UNKNOWN OWNERS AND NON-RECORD CLAIMANT, Defendants, (Amber Crain, Intervenor).	)	Appeal from the Circuit Court of Cook County. 10 CH 25214 Honorable Jesse G. Reyes, Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Steele and Justices Murphy and Salone concurred in the judgment.

ORDER

¶ 1 *HELD*: This court lacked jurisdiction to consider an appeal from an order authorizing

a receiver to collect rents on a property, because the appellant did not file a notice of appeal within 30 days of the order.

¶ 2 This case comes before us on a motion to dismiss the appeal for want of jurisdiction. We find that the entry of an ambiguous order led to additional litigation that the trial court could have avoided with the entry of a more definitive order. One of the defendants, 5206-12 N. Winthrop Condo Association (Association) appeals from an order dated November 4, 2011, in which the court said, that the Association "is precluded from taking any action that interferes with the receiver's administration of the property, including *** any action to attempt eviction of *** tenants." The Association asserts that we have jurisdiction to review the order because the order had the effect of a temporary restraining order (TRO).

¶ 3 Another party moves to dismiss the appeal, asserting that the trial court meant that a different order, entered on March 22, 2011, precluded such action. The trial court has entered a separate order, dated November 10, 2011, in which it said that it meant only that the March 22 order precluded the Association for evicting tenants for paying rent to the receiver. Because we agree with the trial court's interpretation of its orders, we dismiss the appeal for lack of jurisdiction.

¶ 4 BACKGROUND

¶ 5 In 2008, a bank loaned more than $4 million to CAGN Development, LLC, in connection with a condominium conversion project at 5206-12 N. Winthrop in Chicago. CAGN Development mortgaged the entire property under development. Integra Bank acquired the mortgage from the lending bank, and then Integra sued to foreclose the

mortgage, alleging that CAGN Development defaulted on the loan.

¶ 6 On March 22, 2011, a judge in the Chancery Division of the Circuit Court of Cook County entered an order appointing a receiver for the property. The order authorized the receiver to collect all rents related to the property and to allocate the payments received to operation of the property.

¶ 7 No one appealed from the March 22, 2011, order. The Association moved to direct the receiver to pay all rents to the Association, but the Association withdrew the motion before the court ruled on it.

¶ 8 In August 2011 Amber Crain renewed her lease for her unit in the property. She continued paying rent to the receiver.

¶ 9 The Association filed several lawsuits in the Municipal Division of the Circuit Court of Cook County, naming as defendants in each suit CAGN Development and "Unknowns." The Association sought possession of all the units in the property, including Crain's unit, because the tenants paid rent to the receiver rather than the Association. On August 23, 2011, the Municipal Division apparently issued the orders for possession the Association sought. The record on appeal includes dated orders for possession of the units, but none of the orders has a legible stamp or signature of any judge. The Association then sent notice to all of the residents, informing them that if they did not pay rent to the Association, the Association would evict them from their homes.

¶ 10 Crain petitioned to intervene in the foreclosure lawsuit, and she sought a TRO to prevent the Association from further pursuing possession of her unit as long as she continued

paying rent to the receiver. The trial court scheduled a hearing on her petition.

¶ 11 At the outset of the hearing on the petition, the court pointed out that its March 22 order already directed the tenants to pay their rent to the receiver. The court stressed that any action directing the tenants to pay their rents elsewhere would constitute contempt of court.

¶ 12 The Association's attorney sought clarification of whether the court had granted the TRO. The court answered, "I haven't heard from the receiver yet." After the receiver's report, the court directed the attorneys to discuss the matter in an effort to agree on the question of to whom the tenants should pay rent. When they failed to agree, the court again clarified that under the March 22 order, all tenants must pay rents to the receiver, and any action like threatening to evict tenants for paying their rents to the receiver would constitute contempt of court.

¶ 13 The court signed an order, dated November 4, 2011, in which the court granted Crain leave to intervene, and the court said:

> "Crain and other tenants are ordered to pay rent to the court appointed receiver *** [and] third-party defendant 5206-12 North Winthrop Condo Association is precluded from taking any action that interferes with the receiver's administration of the property, including without limitation any action to attempt eviction of Crain or other tenants."

¶ 14 On November 8, 2011, the Association filed a notice of appeal, claiming that

Supreme Court Rule 307(d) (Ill. S. Ct. R. 307(d) (eff. Feb. 26, 2010)) gives this court jurisdiction to hear an appeal from the November 4 order, because that order effectively granted Crain a TRO.

¶ 15 Crain filed an emergency motion to clarify the November 4 order. On November 10, 2011, the trial court heard Crain's motion. Although the Association's attorney had notice of the emergency motion, he could not attend the hearing. The court signed an order dated November 10, 2011, in which the court said that in its November 4 order it did not rule on Crain's motion for a TRO, and the motion was moot because the March 22 order already precluded the Association from taking any action inconsistent with the tenants' payment of their rents to the receiver. The court specified:

> "The rights and obligations of the Condo Association under the November 4, 2011 order are understood to be the rights and obligations [of] the Condo Association previously established by this Court."

¶ 16 Based, in part, on the trial court's clarification of its November 4 order, Crain now moves to dismiss this appeal for want of jurisdiction.

¶ 17 ANALYSIS

¶ 18 Because the trial court did not presume to rule on this court's jurisdiction, we must decide Crain's motion *de novo*. See *In re A.H.*, 207 Ill. 2d 590, 593 (2003) (applying *de novo* standard to jurisdiction issue). "To determine what constitutes an appealable injunctive order under Rule 307[] we look to the substance of the action, not its form." *In re A Minor*, 127

Ill. 2d 247, 260 (1989).

¶ 19 Rule 307 gives this court jurisdiction to hear interlocutory appeals from orders of the types specified in the rule. Under subsections (a)(2) and (a)(3), this court can hear appeals from orders appointing receivers and from orders granting receivers the power to collect rents, but this court gains jurisdiction only if a party perfects the appeal within 30 days of the entry of the order the appellant seeks to challenge.

¶ 20 Thus, this court would have had jurisdiction to consider the propriety of the appointment of the receiver, and the propriety of the order empowering the receiver to collect all rents for the property, if a party had filed a notice of appeal from the March 22 order on or before April 21, 2011. Ill. S. Ct. R. 307(a) (eff. Feb. 26, 2010). Because no party filed a notice of appeal before that deadline passed, we now lack jurisdiction to review the March 22 order. See *Trophytime, Inc. v. Graham*, 73 Ill. App. 3d 335, 336-37 (1979) (motion requesting that the court vacate its injunction could not extend the time for appeal from the injunction – appeal dismissed as untimely under Rule 307).

¶ 21 Rule 307(d) gives this court jurisdiction to review orders granting or denying motions for TROs, and from orders modifying or refusing to modify TROs. The Association argues that the trial court's November 4 order effectively granted Crain's motion for a TRO.

¶ 22 A TRO is an emergency remedy, issued in exceptional circumstances to preserve the status quo pending a hearing on a motion for a preliminary injunction. *Diamond Savings & Loan Co. v. Royal Glen Condominium Ass'n*, 173 Ill. App. 3d 431, 434 (1988). The trial court should not enter a TRO unless it finds the order necessary to prevent immediate and

irreparable harm to the party seeking the order. *Diamond Savings*, 173 Ill. App. 3d at 434.

¶ 23 At the hearing on November 4, 2011, the trial court did not hear argument about whether to enter a TRO, it did not consider any of the criteria for entering a TRO, and it made none of the findings needed for a TRO. A few days later, the court clarified that it did not intend for its November 4 order to operate as a TRO. Instead, the court found such an extraordinary remedy unnecessary, because its March 22 order already authorized the receiver to collect all rents for the property, and any claim that a tenant needed to pay rent to anyone else would violate the March 22 order.

¶ 24 We agree with the trial court's interpretation of its November 4 order. The court did not grant the motion for a TRO, as it found that extraordinary relief unnecessary. The court did not modify its March 22 order, and it did not deny any motion to modify the March 22 order, as no party made any such motion.

¶ 25 We find that the Association effectively seeks to appeal from the March 22 order, which authorized the receiver to collect all rents paid for the property at issue. However, the Association filed the notice of appeal far more than 30 days after the entry of the order it now seeks to challenge. Accordingly, we find that we lack jurisdiction to hear the appeal.

¶ 26 Appeal dismissed.