FOURTH DIVISION
June 28, 2013

No. 1-12-0839

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

INDEPENDENT PRINT SERVICES, INC., Plaintiff and Counter-Defendant Appellee, v. AMATA, LLC, Defendant and Counter-Plaintiff Appellant, _____ AMATA, LLC, Third-Party Plaintiff-Appellant, v. MARK GAGLIANO and STEPHEN TAUCHER, Third-Party Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County 2006 M1 189115 Honorable Sidney A. Jones, III, Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: Where appellant failed to include any transcript of two-day bench trial in record on

appeal, this court was unable to conduct a meaningful review of the court's posttrial order denying sanctions, and we presume that the trial court's ruling had a sufficient legal and factual basis.

¶ 2 Amata, LLC appeals the circuit court's order denying sanctions under Illinois Supreme Court Rule 137 (Ill. Sup. Ct. R. 137 (eff. Jan. 4, 2013)) and Illinois Supreme Court Rule 219(c) (Ill. Sup. Ct. R. 219(c) (eff. July 1, 2002)). Following a two-day bench trial, the circuit court ruled in favor of Amata on a breach of contract claim brought by Independent Print Services, Inc. (IPS), finding that Amata was not responsible for paying IPS for two print jobs that IPS had completed. The court found that Midwest Document Management (MDM), a defunct Amata subsidiary, had ordered the print jobs and was responsible for payment. The trial court found in favor of IPS on Amata's claims against IPS and IPS principals, Stephen Taucher and Mark Gagliano, for abuse of process and spoliation of evidence. The trial court also denied Amata's motion for Rule 137 and Rule 219(c) sanctions. Amata now appeals only the order denying sanctions. For the reasons that follow, we affirm.

¶ 3 We provide a brief factual background and review of the parties' positions, drawn from the pretrial filings, motions, and motion exhibits that are within the record on appeal. As discussed below, Amata did not include any trial transcript or report of proceedings in the record on appeal.

¶ 4 In 2006, Matt Kardovich ordered print services for his client, the American Bar Association (ABA), by contacting Stephen Taucher of IPS. Kardovich ordered two print and mailing jobs for the ABA. IPS finished printing both jobs and delivered the final product to Kardovich and the product was ultimately used by the ABA. IPS was never paid the

approximately $15,000 due for both jobs.

¶ 5 To collect payment, IPS filed suit against Amata, alleging that Kardovich worked for Amata and Amata had ordered the print jobs. In defense of these claims, Amata took the position that it had nothing to do with the printing work done by IPS. Amata claimed that the print jobs were ordered by MDM, a printing company that did 95% of its business with the ABA, with whom it had a contract. Amata describes itself as a firm engaged in "creating, operating, and licensing executive suites and offices," though Amata acknowledges on appeal that sometime after MDM was dissolved in September 2006, Amata began offering printing services (through third parties) to its executive suite clients.

¶ 6 According to Amata, MDM was purchased by Amata as a wholly owned subsidiary in 2004, and Amata and MDM were two separate and distinct companies that operated out of the same address as a principal office, but conducted two separate businesses. As to Kardovich, on appeal Amata describes him as an employee of MDM (and subsequent to [Amata's] purchase, also an employee of [Amata])." In his deposition, Kardovich stated that his employment contract was with Amata, but his "position was to be vice president of operation running Midwest Document Management, which was a separate affiliate of Amata, which just managed the print facilities for the ABA as well as other clients that Midwest Document Management had."

¶ 7 Kardovich also testified that MDM was Amata's affiliate; Kardovich's business card had both the Amata logo and the MDM logo on it; Amata and MDM had the same landline phone number; Amata and MDM had the same cell phone number; Kardovich was paid at all times by Amata, not MDM; and Kardovich's email address used "amatacorp.com" as the domain name.

Kardovich further testified that "Amata had nothing to do with MDM or the ABA," and he denied that he ever told IPS to "invoice Amata" for the ABA print jobs.

¶ 8 Both Taucher and Gagliano submitted affidavits stating that Kardovich represented that IPS could bill Amata for the two ABA print jobs. In his deposition, Taucher testified that he "always thought [he] was dealing [with] Amata and MDM at the same time." When asked what led to that conclusion, Taucher stated "there was information that I would receive that emails were with Amata in the titles or information that was provided to me if I was dealing with another representative that worked for MDM, that it was one in the same."

¶ 9 During the course of discovery, Amata filed a counterclaim against IPS and a third-party claim against Taucher and Gagliano for abuse of process and spoliation of evidence. Amata claims that Taucher and Mark Gagliano only filed suit against Amata after finding out, in July 2006, that MDM would be shutting down and would not be able to pay IPS. Amata pointed to two July 2006 invoices sent by IPS to MDM (not Amata) for the two print jobs. Amata claimed that two invoices later sent by Gagliano in August 2006, substituting Amata's name for MDM as the debtor, were "phony" and "fraudulent." For his part, Gagliano stated in an affidavit that he had re-submitted invoices for the ABA jobs to Kardovich, listing Amata as the client, because an assistant had mistakenly listed MDM on the July invoices. In his deposition, Taucher stated that some packing and delivery slips read MDM and some read Amata because "[a]t the time probably if the packing slips or something was written up in haste or if we needed to get something done we'd put MDMA[1] or Amata. There was no reason for me to keep it separate."

[1] The deposition transcript in the record reads "MDMA" not "MDM."

¶ 10 In support of its spoliation of evidence claims, Amata principally claimed that Taucher or Gagliano had destroyed two MDM job requests sent by Kardovich to IPS in July 2006 and falsely denied that IPS had ever received these documents from MDM. While Amata produced the MDM job requests sent by Kardovich to IPS, IPS denied having the job requests in its files. In an affidavit submitted early in the litigation, Taucher stated that he had not seen the MDM job requests in IPS's files. Taucher later submitted a sworn statement and gave deposition testimony admitting that he had seen the MDM job requests in IPS's files. As to whether the job requests had been destroyed, Taucher, in a sworn statement, testified that "I witnessed Mark going through IPS job ticket files for MDM print jobs and throwing out documents. I don't know exactly what was thrown away ***." In his deposition, Taucher further stated that he did not see Gagliano destroy the IPS job request, but he saw Gagliano take it and say, "'We don't need this.' " When asked where that job request form "came from," Taucher answered "MDM/Amata."

¶ 11 Taucher also testified in his deposition that IPS was already working on the print job when the job request came to IPS from MDM. According to Taucher, Kardovich placed the print order on or about June 27, 2006, three weeks before Kardovich gave IPS the job request on July 10, 2006. Taucher further testified that IPS could not distinguish between orders being placed by Amata and orders being placed by MDM because Kardovich was employed by Amata and the entities were one and the same, as Taucher understood them:

> "Q. The fact that [the job request] said MDM or Midwest Document Management on the top versus Amata didn't mean anything to IPS, did it?
>
> A. No.

Q. Because MDM and IPS were one—MDM and Amata were one in the same as far as you were concerned, correct?

A. Correct."

¶ 12 Amata filed a combined motion for summary judgment and motion for Rule 137 and Rule 219(c) sanctions against IPS, Gagliano, Taucher, and their attorneys. Apart from the arguments described above, Amata claimed that IPS should be sanctioned for withholding production of 395 pages of documents to Amata until October 2010. Amata claimed those documents were "highly relevant," "discoverable," and responsive to its 2007 requests for production.

¶ 13 The trial court directed the parties to brief the motion for summary judgment first and continued the sanctions motion. The trial court later denied the motion for summary judgment, finding *inter alia* that there was a question of fact as to the relation of the two entities, Amata and MDM. The trial court then set the matter for trial, continuing the sanctions motion until after trial.

¶ 14 Following a two-day bench trial, the court issued its findings as to the breach of contract claim, the spoliation of evidence and abuse of process counterclaims and third-party claims, and the request for Rule 137 and Rule 219(c) sanctions. As to the breach of contract claims, the court found that while IPS's claims were not unreasonable, they were ultimately unsuccessful:

"[I]t seems clear to the Court that Amata did not order and that MDM did order the job. That does not rise to the level of the plaintiff not having some belief that Amata was pulling the strings behind this; the card, the emails, the signatures, the email address, and all that other kind of business. I don't think that the website

has anything to do with it because [there] was no testimony that the plaintiff's side of the case ever relied or even saw the website; but, the other things are important, and I think that they reasonably deserve—or that they reasonably prompted a belief that Amata was pulling the strings very efficiently, and very quickly, and I might add very inexpensively, contrary could have [*sic*] quite[] easily have been established.

* * *

Mr. Kardovich denies saying that plaintiffs could bill Amata. Well, I think Mr. Kardovich said something. He might have—I believe he probably said something, I'll take care of it, don't worry about it, we'll get you taken care of; and, I believe that that was construed as meaning that the only surviving company would be responsible for it, but that's a misconstruction. I think it's an innocent misconstruction; but, nevertheless, it's a misconstruction. It's also a misconstruction of Mr. Kardovich's authority to bind Amata.

I don't think that Mr. Kardovich even had the apparent authority to do that. Clearly, he did not have the actual authority. I believe that there is no showing of any fraudulent intent by MDM and/or Amata against IPS.

* * *

I think that the defense side of the case, by whatever corporations are involved, did not only an adequate job of maintaining corporate separateness; but, in fact, they did a splendid job of it with respect to their internal operations,

> maybe a little suspect on how they projected themselves all the time to the public. But, drafts of business cards lying around on the desk to be given out to somebody with whom there has been a long-term relationship, to this Court does not rise to the level of corporate alter ego-ness.
>
> I think that the long and short of it is that the plaintiff, after trial, has simply failed to show that one corporation is the alter ego of the other, that one corporation is responsible for the debts of the other."

The court also rejected Amata's abuse of process and spoliation claims against IPS, Taucher, and Gagliano:

> "Now, let's get to the counter claims. With respect to abuse of process, abuse of process in the court in this Court's impression involves the filing of some legal process and that is not appropriate for the intended result ***. Here, the plaintiff had a belief, however mistaken, that Amata was somehow responsible, and they filed a lawsuit directly on that question.
>
> * * *
>
> With respect to the spoliation of evidence, the testimony of the witnesses regarding the removal of job requests is not clear and convincing. Mr. Taucher says he saw Mr. Gagliano removing stuff. I don't believe that he was clear in saying that he removed job requests.
>
> There is talk about computers not being available and that the computers suddenly became unavailable to conceal the MDM/IPS relationship. ***

* * *

> Well, I don't think that any of that has proven to be essential to anything in this case. Plaintiffs denied receiving Defendant's 4 and 12. Okay. So, they denied receiving it. The defendants produced their own exhibits. I'll show the judge, and that's the end of the case. I don't believe that the—and certainly the defendants have prevailed in the underlying case with respect to spoliation."

The court further discussed the spoliation claim:

> "There's argument that the documents were intentionally removed and destroyed and everything else like that. Initially, it seems to the Court that the documents were not intentionally destroyed or removed or anything else. Given the history of the parties in this case, it seems to the Court that these documents are just too essential so that a reasonable person might think that just because I destroyed my copy of them, you know, therefore, the other side is magically going to lose theirs."

The court also referenced the documents that IPS allegedly concealed and untimely produced:

> "The defense and counter-plaintiffs argues that the case has lasted this long because the plaintiffs/counter-defendants denied the existence of the job requests, and that they hid the job requests and then hid 400 documents.
>
> Well, with respect to the 400 documents, I don't believe then [*sic*] proffered any of the 400 documents as something so important that it would be

earthshakingly determinative of the outcome. Exhibits 4 & 12 on the other hand certainly are, but the defense had those documents; and, it didn't matter one iota whether the plaintiff admitted to having them or not.

At the time of the trial all the defense has to do is to come forward and say here they are. And, of course, Mr. Taucher received them because otherwise why would he have done the work ***."

¶ 15 As to the motion for Rule 137 and Rule 219(c) sanctions, the court denied Amata's motion for sanctions as "moot because the Court has found that the third-party plaintiff and the counter-plaintiff were not damaged." Amata filed a motion for reconsideration as to the trial court's rulings on the spoliation of evidence claim, the abuse of process claim, and the sanctions motion. The parties fully briefed the motion for reconsideration and after a hearing, the trial court denied the motion to reconsider in its entirety "for the reasons stated on the record." There is no transcript or record of the hearing in the record on appeal. Amata appealed.

¶ 16 ANALYSIS

¶ 17 On appeal, Amata argues that the trial erred by not imposing sanctions under Rule 137(c) or Rule 219(c). Amata argues that IPS's pleadings, affidavits, and sworn statements were false, and IPS, Taucher, Gagliano, and their attorneys "unwittingly stood by its false claims over the course of nearly 5 years of litigation to try to collect a debt from [Amata] that they knew it did not owe." Amata also challenges to the court's denial of Rule 219(c) sanctions. Amata argues that discovery sanctions were appropriate because IPS and their attorneys filed false or deficient discovery responses, withheld or concealed 395 pages of "relevant IPS documents" for nearly

four years, and failed to reasonably preserve material evidence in IPS's possession.

¶ 18 Illinois Supreme Court Rule 137 provides:

> "The signature of an attorney or 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." Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994).

The purpose of Rule 137 is "to engender an additional remedy to parties who are victimized by frivolous filings and to protect courts from lawsuits, filed without a good-faith basis, intended only to harass." *Sterdjevich v. RMK Management Corp*., 343 Ill. App. 3d 1, 19 (2003). "Rule 137 is not a means by which trial courts should punish litigants whose arguments do not succeed; instead, it is a tool which they can employ to prevent future abuse of the judicial process or discipline in the case of past abuses." *Schneider v. Schneider*, 408 Ill. App. 3d 192, 200 (2011).

"Courts are instructed to use an objective standard in evaluating what was reasonable under the circumstances as they existed at the time of filing." *Sterdjevich*, 343 Ill. App. 3d at 19. "The party seeking to have sanctions imposed by the court must demonstrate that the opposing litigant made untrue and false allegations without reasonable cause." *Burrows v. Pick*, 306 Ill. App. 3d 1048, 1050-51 (1999).

¶ 19 Rule 219(c) authorizes a trial court to impose a sanction upon any party who unreasonably refuses to comply with any provisions of this court's discovery rules or any order entered pursuant to these rules. *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 120 (1998). Sanctions may include the payment of "reasonable expenses, including attorney's fees incurred by any party as a result of the misconduct." Ill. Sup. Ct. R. 219(c). "The court may not invoke sanctions which are designed to impose punishment rather than to achieve or effect the objects of discovery." (Internal quotation marks omitted.) *Gonzalez v. Nissan North America, Inc.*, 369 Ill. App. 3d 460, 465 (2006).

¶ 20 The appellate court will not overturn a trial court's ruling on Rule 137 or Rule 219 sanctions absent an abuse of discretion. *Schneider*, 408 Ill. App. 3d at 199. A trial court abuses its discretion when "its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court." *Patton v. Lee*, 406 Ill. App. 3d 195, 199 (2010). "[I]f reasonable people would differ as to the propriety of the court's [imposition of sanctions], a reviewing court cannot say that the trial court exceeded its discretion." *Senese v. Climatemp, Inc.*, 289 Ill. App. 3d 570, 582 (1997). The abuse of discretion standard "is the most deferential standard of review—next to no review at all." *In re D.T.*, 212 Ill. 2d 347, 356 (2004).

¶ 21 While the record contains an excerpt from the trial transcript in which the judge entered his rulings, Amata did not provide any record of the two days of trial testimony that was the basis for those factual findings and conclusions of law. The record contains no transcript, no report of the proceedings, no bystander's report, and no agreed statements of facts. Ill. Sup. Ct. R. 323(c), (d) (eff. Dec. 13, 2005). Also absent from the record is a transcript from the trial court's ruling on Amata's posttrial motion to reconsider the court's ruling on the sanctions award.

¶ 22 It is the appellant's burden to provide a reviewing court with a sufficiently complete record to allow for meaningful appellate review. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). "An issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding." Corral v. Mervis Industries, Inc., 217 Ill. 2d 144, 156 (2005); Webster v. Hartman,195 Ill. 2d 426, 432 (2001). In the absence of a sufficiently complete record, a reviewing court will presume that the trial court's ruling had a sufficient legal and factual basis and will resolve any doubts that may arise from the incompleteness of the record against the appellant. *Foutch*, 99 Ill. 2d at 391-92; see also *Landau & Associates, P.C. v. Kennedy*, 262 Ill. App. 3d 89, 92 (1994) (concluding that "the inadequate condition of the record makes meaningful review of plaintiff's arguments impossible and requires that the judgment of the trial court be affirmed").

¶ 23 Here, the record does not allow us to meaningfully assess whether the trial court abused its considerable discretion when it denied Amata's request for sanctions. We emphasize that to find that the trial court abused its discretion, we must conclude that "no reasonable person would take the view adopted by the trial court." *Patton*, 406 Ill. App. 3d at 199. Our "primary

consideration is whether the trial court's decision was informed, based on valid reasoning, and flows logically from the facts." *Technology Innovation Center, Inc. v. Advanced Multiuser Technologies Corp.*, 315 Ill. App. 3d 238, 244 (2000). The relevant "facts" in this case are those developed at trial, for a review of the trial court's findings above shows that the trial court heard testimony directly relevant to Amata's request for sanctions. That the trial touched on these subjects is not surprising, for the court heard testimony not just on the merits of plaintiffs' breach of contract claim, but also on defendant's counterclaims for spoliation of evidence and abuse of process. Also, Amata's sanctions motion was pending at the time of trial.

¶ 24 Amata apparently recognizes the importance of the trial proceedings to its sanctions claims, as it argues on appeal that "[a]t Trial, AMATA presented concrete, unrebutted proof of IPS Parties fraudulent contract claims against AMATA." In order to show that it presented "concrete unrebutted proof" of IPS's fraudulent contract claims, however, Amata does not cite to the evidence presented at trial. Instead, Amata would have us rely on its selected citations of the record (*e.g.*, selected pages of deposition testimony attached as exhibits to motions). But without a record of the proceedings in the trial court, we have no way to determine whether the trial testimony contradicts, explains, or qualifies the documents that happen to be in the pretrial record. The peril in relying on the pretrial record alone in reviewing the trial court's sanctions ruling can be seen by simply comparing the trial court's findings with the filings relied upon by Amata.

¶ 25 For example, in arguing that sanctions are appropriate under Rule 137 and Rule 213(c), Amata argues that Gagliano intentionally destroyed evidence showing that IPS's claims were

false. That is a direct challenge to the trial court's rejection of Amata's spoliation of evidence claim: "Mr. Taucher says he saw Mr. Gagliano removing stuff. I don't believe that he was clear in saying that he removed job requests." In support of its argument on appeal, however, Amata asserts that "Taucher admitted under oath" (in a sworn statement submitted earlier in the litigation) that "Gagliano/IPS intentionally removed [the MDM job request] from IPS's files and/or destroyed it to conceal this evidence." (Emphasis in original.) Yet in his sworn statement, Taucher only states that "I witnessed Mark going through IPS job ticket files for MDM print jobs and throwing out documents. I don't know exactly what was thrown away ***." Amata later cites to selected pages from Taucher's deposition transcript attached to a pretrial motion filed by Amata. Among those pages, Taucher states that he believe that the MDM job request was destroyed by Mark Gagliano. Taucher further stated, "I did not see him destroy it. I saw him take it and say, 'We don't need this.' " Yet when asked where that job request form "came from," Taucher answered "MDM/Amata."

¶ 26 Without a trial transcript or other record of trial, we have no way to assess the specific finding of the trial court. We gather that both Taucher and Gagliano testified at trial, but we know nothing about their testimony on this issue or any other. We do not know how Taucher recounted what he saw of Gagliano handling IPS documents, how Gagliano described his handling of IPS documents, or what was asked of either witness on cross-examination.

¶ 27 As another example, the trial court questioned the credibility of the testimony of Amata witness Kardovich and stated that Kardovich had told IPS representatives that IPS could bill Amata for the job requests at issue:

> "Mr. Kardovich denies saying that plaintiffs could bill Amata. Well, I think Mr. Kardovich said something. He might have—I believe he probably said something, I'll take care of it, don't worry about it, we'll get you taken care of; and, I believe that that was construed as meaning that the only surviving company would be responsible for it, but that's a misconstruction."

On appeal, however, in support of its contention that "IPS's allegations in its *Amended* Complaint were also singularly *false*,"Amata claims that Kardovich did not "promise to pay for the 'unpaid' [print jobs]." (Emphasis in original.) Without addressing the trial court's finding to the contrary, Amata cites only to selected pages from Kardovich's deposition testimony, and claims that Kardovich "confirmed that he would never say 'invoice Amata' for an[y] ABA or MDM print jobs." Initially we note that this court shows great deference to a trial court's findings as to the credibility of a witness. Apart from the trial court's judgment as to Kardovich's credibility, we have no way to evaluate the trial court's factual finding, for we have no record of what the trial court heard from Kardovich on direct or cross-examination. Nor can we reconcile Kardovich's testimony with that of Taucher and Gagliano (who presumably testified that Kardovich did represent that IPS could bill Amata), as the trial court would have done in making its findings. What is clear is that an excerpt from Kardovich's deposition testimony cannot serve as a basis to conclude that the trial court's assessment of Kardovich's testimony *at trial* is arbitrary or unreasonable.

¶ 28 We have only offered a few examples of the inability to evaluate the trial court's specific rulings based on the pretrial record. We are similarly unable to evaluate the trial court's broader

findings that IPS had reason to file suit and that Rule 219(c) sanctions were unwarranted. In making these rulings, the trial court had the benefit of hearing conflicting testimony from witnesses for IPS and Amata, assessing their credibility, and evaluating the parties competing arguments in view of a complete record developed at trial. We do not have the benefit of this record, and as our review of the arguments above show, we cannot conduct a meaningful review of the trial court's sanctions ruling based on selected filings in the pretrial record.

¶ 29 Amata's response is no response at all. Although the appellees argued that this court could not properly assess the trial court's sanctions ruling on this record, Amata filed no reply brief explaining how this court could make a proper assessment of the trial court's findings on this record. Because it is Amata, the appellant, that has not provided a record of the trial, we must presume that the trial court's findings of fact and law are correct. *Foutch*, 99 Ill. 2d at 391-92. Accordingly, we can find no abuse of discretion in the trial court's order denying sanctions under Rule 137 or Rule 219(c), and we affirm the court's order denying sanctions.

¶ 30 Affirmed.