

SIXTH DIVISION
July 19, 2013

No. 1-12-1383

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).

BOARD OF DIRECTORS OF GREENBRIER	)	Appeal from the
CONDOMINIUM ASSOCIATION,	)	Circuit Court
	)	of Cook County
Plaintiff-Appellee/Cross-Appellant,	)	
	)	
v.	)	
	)	
GREENBRIER DEVELOPMENT ASSOCIATES, LLC,	)	No. 08 L 7300
	)	
Defendant-Appellant	)	
	)	
(James Walsh, Anthony Pagone, and Howard Goode,	)	Honorable
	)	Thomas Lipscomb,
Defendants/Cross-Appellees).	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Lampkin and Justice Hall concurred in the judgment.

ORDER

¶ 1 Held: Defendant developer failed to demonstrate sanctions were warranted against plaintiff condominium board for filing a frivolous complaint and voluntarily dismissing claims against the defendant. The circuit court did not err in dismissing plaintiff's claim against individual defendants under the business judgment rule. Plaintiff failed to establish sanctions were warranted against defendant developer for filing this appeal.

¶ 2 Defendant Greenbrier Development Associates, LLC (Greenbrier) appeals an order of the circuit court of Cook County denying an award of sanctions against plaintiff Board of Directors of Greenbrier Condominium Association (Board). The Board cross-appeals, arguing the circuit court erred in dismissing their complaint against defendants James Walsh, Anthony Pagone, and Howard Goode (individual defendants).¹ For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 The record on appeal discloses the following facts. On July 3, 2008, the Board filed a complaint against Greenbrier and the individual defendants. The Board alleged Greenbrier owned and developed the Greenbrier condominiums in Arlington Heights, Illinois, and the Board was an Illinois not-for-profit corporation organized by Greenbrier, bringing suit on behalf of its homeowners. Greenbrier entered into purchase agreements with homeowners for the sale of properties which are the subject of a condominium declaration. The Board attached an unsigned form copy of the purported agreements to the complaint.² Paragraph 6 of the purported agreements contained the following warranty:

"Seller hereby warrants the Unit and Common Elements are in good condition, free from any latent or patent defects and that the Seller shall repair or replace any defect in said Unit or Common Elements at its cost upon being notified of such defect in writing

¹ The individual defendants have not filed an appellate brief.

² Greenbrier notes the Board did not attach a signed agreement from any of the unit owners the Board represents.

by the Purchaser within one (1) year from the date of Closing. Further the Seller hereby warrants the structural components of the Building in which the Unit is located including, but not limited to the roof, foundation, external and supporting walls, mechanical, electrical and plumbing are in good condition free from any latent or patent defects. The Seller shall repair or replace any defect in the major structural components at its cost promptly upon being notified of such defect in writing by the Purchaser within one (1) year from the Closing."

Paragraph 7(b) of the purported agreements, addressing building improvements, further states the seller makes no warranty as to the condition of the building structural components, mechanical systems or Common Elements except to complete the work in the development budget in a good, workmanlike manner as set forth in paragraph 6.

¶ 5 The Board alleged Greenbrier failed to properly convert the common areas of the building, which suffers from serious structural defects. The Board attached a list of repairs not undertaken by Greenbrier to the complaint as an exhibit. The Board also alleged Greenbrier, prior to turning the property over to the current Board, failed to establish an adequate reserve fund, despite knowing the common elements were defective or reaching the end of their effective life.

¶ 6 The Board's complaint contained six counts. The first five counts, directed at Greenbrier, alleged: (1) breach of fiduciary duty; (2) breach of contract; (3) breach of express warranty; (4) breach of the implied warranty of habitability; and (5) fraud. The sixth count alleged breach of fiduciary duty by the individual defendants, who were members of Greenbrier's board of

directors, and members of the condominium board prior to Greenbrier transferring control over the property to the unit owners.

¶ 7 On February 24, 2009, Goode filed a motion dismiss count VI of the complaint pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2008)). Goode argued the Board's claims against him were negated because: (1) the condominium declaration contained an exculpatory clause limiting the personal liability of directors and officers of the condominium association to acts or omissions found by a court to constitute criminal conduct, gross negligence or fraud; (2) Goode exercised good faith business judgment in reliance on the report of a professional engineer; and (3) the Village of Arlington Heights issued a certificate of compliance and occupancy for the common areas of the buildings at issue.

¶ 8 On August 10, 2009, following briefing of the motion, the trial court entered an order denying the motion to dismiss as to the argument regarding the exculpatory clause in the condominium declaration. The trial court, however, granted the motion to dismiss without prejudice regarding the business judgment rule. The trial court granted the Board until September 8, 2009, to file an amended complaint.

¶ 9 On September 17, 2009, the Board filed a first amended complaint, which contained substantially identical claims to those in the initial complaint. In count VI, however, the Board specified the individual defendants should have known about the property defects at issue from defendants' own engineering report.

¶ 10 Goode apparently filed a motion to dismiss the first amended complaint pursuant to section 2-619 of the Code. This motion does not appear to be located in the record on appeal,³ but the record contains plaintiff's response thereto, filed on January 21, 2010. The trial court granted the motion without prejudice on March 23, 2010. The trial court also granted the Board leave to file another amended complaint on or before April 13, 2010, and granted Walsh and Pagone leave to file an appearance within 21 days.

¶ 11 On May 18, 2010, the Board filed a second amended complaint, which contained substantially identical claims to those in the first amended complaint. In count VI, however, the Board added specific allegations related to the individual defendants' engineering report and attached a copy of the report as an exhibit to the pleading. On June 11, 2010, all defendants submitted a bill of particulars regarding the second amended complaint. On January 11, 2011, Greenbrier filed an answer to the second amended complaint, along with affirmative defenses.

¶ 12 On January 13, 2011, the individual defendants filed a motion to dismiss the amended complaint pursuant to section 2-619 of the Code. The individual defendants argued they exercised good faith business judgment in relying on the report of their professional engineer, not only as to the necessary repairs, but also as to the necessary reserve funds. The individual

³ Greenbrier's index to the record contains no entry for the motion. Insofar as Greenbrier raises no issue directly related to the motion, we note the apparent existence of the motion only to present a more complete description of the litigation for the purpose of addressing the issue of whether sanctions were warranted in this case.

defendants asserted their budget provided for annual reserve funds of \$60,000, though their engineer recommended \$20,000 annually. They also argued the Board relied on a report prepared by Greenbrier's engineer in 2004, but ignored a 2006 report from the engineer stating the necessary repairs had been performed. The motion was supported by an affidavit by Goode stating the individual defendants reviewed their engineer's 2004 report and acted upon the report's recommendations. The Goode affidavit also attached Greenbrier's repair budget and a copy of the accounting for Greenbrier's spending on various repairs.

¶ 13 On May 17, 2011, following briefing and a hearing, the trial court granted the motion to dismiss count VI with prejudice.

¶ 14 On August 1, 2011, Greenbrier moved for summary judgment on counts I, IV and V of the second amended complaint (alleging breach of fiduciary duty, breach of implied warranty of habitability, and fraud) pursuant to section 2-1005 of the Code (735 ILCS 5/2-1005 (West 2010)). Regarding count I, Greenbrier relied on the business judgment rule and the exculpatory clause in the condominium declaration. Regarding count IV, Greenbrier argued the implied warranty of habitability did not apply to sales of condominiums in an existing building where there was no new construction, even if repairs were made. Lastly, Greenbrier argued the allegations of fraud in count V failed because there was no evidence Greenbrier knew the reserve funds were insufficient and Greenbrier's statements were opinions of future events.

¶ 15 On October 6, 2011, the Board filed its response to the motion for summary judgment. The Board argued Greenbrier failed to submit affidavits supporting the application of the business judgment rule. The Board also argued the exculpatory clause in the condominium

declaration was inapplicable because a breach of fiduciary duty is a form of fraud (and the claim of fraud should survive summary judgment for the same reason). The Board further argued the implied warranty of habitability applied to condominium conversions involving rehabilitation of the common elements. The Board also submitted an affidavit and accompanying report from their engineer regarding latent defects in the walls, heating and ventilation system, roofs, gutters, balconies, floors and swimming pool of the property at issue.

¶ 16 On October 11, 2011, Greenbrier filed a reply in support of summary judgment.

¶ 17 On October 24, 2011, the date set for hearing Greenbrier's motion for summary judgment, the Board voluntarily dismissed counts I, IV and V of the second amended complaint. On November 9, 2011, the date set for trial of the remainder of the case, the Board voluntarily dismissed counts II and III (breach of contract and breach of express warranty, respectively) of the second amended complaint.

¶ 18 On November 22, 2011, all defendants moved for sanctions against the Board pursuant to Illinois Supreme Court Rule 137 (eff. Feb.1, 1994), generally alleging the Board's claims were not well grounded in fact and not warranted by existing law. Defendants asserted the dismissal of the claim against the individual defendants, along with Greenbrier's motion for summary judgment, demonstrated the Board's claims were without merit. Defendants also asserted the Board's conduct during the litigation demonstrated bad faith, specifying the Board's failures to: (1) attach exhibits to the pleadings; (2) issue any written discovery; (3) respond to the bill of particulars; (4) respond to defendants' answer; (5) respond to the affirmative defenses the defendants filed; (6) serve Walsh or Pagone; (7) conduct or order transcripts of depositions; and

(8) produce certain individuals for deposition. Defendants further asserted the Board's voluntary dismissal of the remaining counts without prior notice to defendants entitled defendants to reimbursement under Illinois Supreme Court Rule 219(e) (eff. July 1, 2002). Defendants requested sanctions equal to their defense costs.

¶ 19 On January 4, 2012, defendants filed an attorney fee petition asserting \$106,487.47 in defense costs. On February 9, 2012, the Board filed their response to defendants' motion for sanctions, as well as a cross-motion for sanctions. On March 9, 2012, Greenbrier filed a reply in support of the motion for sanctions.

¶ 20 On April 12, 2012, the trial court denied the motion and cross-motion for sanctions. The trial court also ordered the Board to pay Greenbrier \$594.00 in court costs. On May 9, 2012, Greenbrier filed a timely notice of appeal to this court. On May 21, 2012, the Board filed a notice of cross-appeal.

¶ 21 DISCUSSION

¶ 22 On appeal, Greenbrier contends the trial court erred in denying the motion for sanctions against the Board. On cross-appeal, the Board argues the trial court erred in dismissing count VI of the second amended complaint and seeks sanctions against Greenbrier for bringing the appeal. We address these claims in turn.

¶ 23 I. Rule 137 Sanctions

¶ 24 Illinois Supreme Court Rule 137 provides, in relevant part, every pleading and motion shall be signed by the attorney of record, which constitutes a certificate by the attorney that he or she has read the pleading or motion, and, to the best of his or her knowledge, the pleading or

motion was grounded in fact and warranted by existing law or a good-faith argument for the extension of existing law. Ill. S. Ct. R. 137 (eff. Feb.1, 1994). Rule 137 also provides if a pleading, motion, or other court paper is signed in violation of the rule, a court may impose sanctions on the person who signed it, including an order to pay the other party's attorney fees.

Id. Rule 137 is aimed at preventing parties from abusing the judicial process by imposing sanctions on attorneys who file vexatious and harassing actions based on unsupported allegations in fact or law. *Burrows v. Pick*, 306 Ill. App. 3d 1048, 1050 (1999).

¶ 25 "The party requesting the imposition of Rule 137 sanctions bears the burden of proof and must show that the opposing party made untrue and false allegations without reasonable cause for the mere purpose of invoking harassment or undue delay of the proceedings." *Mina v. The Board of Education for Homewood-Flossmoor*, 348 Ill. App. 3d 264, 279 (2004). Rule 137 should be strictly construed because it is punitive in nature. *Sadler v. Ceekmur*, 354 Ill. App. 3d 1029, 1045 (2004). The rule is not intended to penalize litigants and their attorneys merely because they were zealous, yet unsuccessful. *Toland v. Davis*, 295 Ill. App. 3d 652, 658 (1998). "In deciding whether the imposition of sanctions is appropriate, the court must determine what was reasonable for the attorney or the signing party to believe at the time of filing, rather than engaging in hindsight." *Peterson v. Randhava*, 313 Ill. App. 3d 1, 7 (2000). "A court should not impose sanctions on a party for failing to conduct an investigation of facts and law before filing if he presents objectively reasonable arguments for his position, regardless of whether those arguments are unpersuasive or incorrect." *Id.* "It is not *per se* unreasonable to pursue a possible

claim where the defendant has a strong defense." *In re Marriage of Sykes*, 231 Ill. App. 3d 940, 949 (1992).

¶ 26 " 'When reviewing a decision on a motion for sanctions, the primary consideration is whether the trial court's decision was informed, based on valid reasoning, and follows logically from the facts.' " *Whitmer v. Munson*, 335 Ill. App. 3d 501, 514 (2002) (quoting *Technology Innovation Center, Inc. v. Advanced Multiuser Technologies Corp.*, 315 Ill. App. 3d 238, 244 (2000)). "The decision whether to impose sanctions under Rule 137 is committed to the sound discretion of the circuit judge, and that decision will not be overturned unless it represents an abuse of discretion." *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998). An abuse of discretion occurs where no reasonable person would adopt the same view as the trial court. *Gonzalez v. Nissan North America, Inc.*, 369 Ill. App. 460, 464 (2006). Of course, this general rule does not preclude this court from independently reviewing the record and finding an abuse of discretion where the facts so warrant. *Pritzker v. Drake Tower Apartments, Inc.*, 283 Ill. App. 3d 587, 590 (1996).

¶ 27 Greenbrier, relying on *Givens v. Renteria*, 347 Ill. App. 3d 934 (2003), argues where the determination to impose sanctions is made without an evidentiary hearing and is based upon papers in the record, the trial court's decision is not entitled to deference on review. *Id.* at 940 (citing *Toland*, 295 Ill. App. 3d at 654). In *Toland*, the judge who imposed sanctions neither presided over any aspect of the case while the party seeking sanctions was a defendant, nor conducted an evidentiary hearing on the motion for sanctions. *Toland*, 295 Ill. App. 3d at 654. In this case, the motion for sanctions was denied by a judge who did not preside over the earlier

stages of the litigation and did not conduct an evidentiary hearing on the motion. Accordingly, this court will conduct an independent, non-deferential review of the trial judge's decision. *Id.*

¶ 28 Nevertheless, "[i]t is well settled that issues not raised in the trial court are deemed waived and may not be raised for the first time on appeal." *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996). The theory on which a claim is tried in the circuit court cannot be changed on review. *Id.* Allowing a new theory on appeal would not only weaken the adversarial system and our system of appellate jurisdiction, but also prejudice the opponent, who may have been able to discredit the theory by presenting evidence in the circuit court. *Id.*

¶ 29 In this case, Greenbrier's appellate brief contains a detailed, count-by-count analysis of the Board's complaint which was not presented in defendants' motion for sanctions. Our review of defendants' motion (and the trial judge's denial thereof) necessarily addresses the assertions defendants made in the motion, not arguments Greenbrier presents for the first time on appeal.

¶ 30 Regarding counts I, IV and V of the second amended complaint, defendants' motion for sanctions merely asserts "The Defendants' Motion for Summary Judgment describes facts an [sic] law which confirms those claims are without merit." Even assuming *arguendo* summary judgment would have been granted on these counts, defendants' bare assertion the claims were without merit does not establish Greenbrier is entitled to sanctions. The Board's counsel may have been zealous, yet unsuccessful. See *Toland*, 295 Ill. App. 3d at 658. Similarly, regarding count VI of the second amended complaint, defendants' motion for sanctions asserts "The Defendants' Motion for Summary Judgment of Count VI describes facts and law which confirms those claims are without merit." The trial court dismissed count VI pursuant to section 2-619 of

the Code, but the dismissal based on affirmative matter, by itself, does not prove the claim was meritless, let alone sanctionable. See *Marriage of Sykes*, 231 Ill. App. 3d at 949.

¶ 31 Regarding counts II and III of the second amended complaint, defendants' motion specifically alleged the Board knew none of the unit owners notified defendants of any defect within one year, as purportedly required by the warranty provision of the contracts at issue. Defendants, however, produced no evidence of the lack of complaints or evidence which established the Board's knowledge thereof.

¶ 32 Defendants' motion for sanctions lists a number of the Board's purported failures to issue or respond to discovery as evidence the Board acted in bad faith, without the intent to prove any claim. Defendants carried the burden of proving the Board made untrue and false allegations without reasonable cause for the mere purpose of invoking harassment or undue delay of the proceedings. *Mina*, 348 Ill. App. 3d at 279. In a proper case, a plaintiff's conduct in the course of litigation might be evidence of an improper purpose under Rule 137. Defendants, however, were not relieved of their burden to establish the Board made untrue and false allegations without reasonable cause in the first instance. See *id.*; see also *Cummings v. Beaton & Associates, Inc.*, 249 Ill. App. 3d 287, 320 (1992) (rejecting "bad faith" exception to the American Rule outside claims under Rules 137 and 219). Defendants' motion cites *Singer v. Brookman*, 217 Ill. App. 3d 870, 880 (1991), in support of the assertion defendants' detailed fee petition should be accepted, but this presupposes it is apparent the assertions in the pleadings were made without reasonable cause and found to be untrue. *Id.* Otherwise, it follows the fee petition need not be accepted.

¶ 33 In short, Greenbrier failed to carry its burden of establishing Rule 137 sanctions were warranted in this case.

¶ 34 II. Rule 219(e) Sanctions

¶ 35 Defendants' motion for sanctions asserted in the alternative they were entitled to costs for the two days prior to each of the Board's voluntary dismissals, due to the lack of prior notice. Greenbrier's appellate brief specifically argues the Board should be required to reimburse Greenbrier for attorney fees incurred in the two days prior to the voluntary dismissals of counts I, IV, and V, as well as the two days prior to the voluntary dismissal of counts II and III. Greenbrier primarily relies on Illinois Supreme Court Rule 219(e) (eff. July 1, 2002), which provides:

"A party shall not be permitted to avoid compliance with discovery deadlines, orders or applicable rules by voluntarily dismissing a lawsuit. In establishing discovery deadlines and ruling on permissible discovery and testimony, the court shall consider discovery undertaken (or the absence of same), any misconduct, and orders entered in prior litigation involving a party. The court may, in addition to the assessment of costs, require the party voluntarily dismissing a claim to pay an opposing party or parties reasonable expenses incurred in defending the action including but not limited to discovery expenses, expert witness fees, reproduction costs, travel expenses, postage, and phone charges."

Paragraph (e), however, "does not provide for the payment of attorney fees when an action is voluntarily dismissed." *Id.*, Committee Comments (Revised June 1, 1995). Greenbrier also cites

section 2-1009 of the Code (735 ILCS 5/2-1009 (West 2008)) and Cook County Circuit Court Rule 2.1 (Cook Co. Cir. Ct. R. 2.1 (eff. Aug. 1, 2000)), neither of which authorize an award of attorney fees for a party's failure to comply with them. Accordingly, we conclude Greenbrier has failed to demonstrate it was entitled to attorney fees.

¶ 36

III. The Cross-Appeal

¶ 37 The Board argues the trial court erred in dismissing count VI of the second amended complaint, which alleged breach of fiduciary duty against the individual defendants, pursuant to section 2-619 of the Code. "The purpose of a section 2-619 motion to dismiss is to dispose of issues of law and easily proved issues of fact at the outset of litigation." *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). Defendants' motion was based on subsection (a)(9), which permits dismissal where "the claim asserted *** is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2008).

¶ 38 A section 2-619(a)(9) motion to dismiss admits the legal sufficiency of the plaintiff's cause of action. *Kedzie and 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 115 (1993) (citing *Barber-Colman Co. v. A & K Midwest Insulation Co.*, 236 Ill. App. 3d 1065, 1071 (1992)). A section 2-619 motion also "admits as true all well-pleaded facts, along with all reasonable inferences that can be gleaned from those facts." *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352 (2008). A defendant, however, does not admit the truth of any allegations in plaintiff's complaint which may touch on the affirmative matters raised in the 2-619 motion. *Barber-Colman Co.*, 236 Ill. App. 3d at 1073. "The defendant bears the initial burden of proof of the affirmative matter and, if satisfied, the burden shifts to the plaintiff to

show that 'the defense is unfounded or requires the resolution of an essential element of material fact before it is proven.' " *Mondschein v. Power Construction Co.*, 404 Ill. App. 3d 601, 606 (2010) (quoting *Hodge*, 156 Ill. 2d at 116). The trial court may consider pleadings, depositions, and affidavits when faced with a motion to dismiss filed pursuant to section 2-619 of the Code. *Raintree Homes, Inc. v. Village of Long Grove*, 209 Ill. 2d 248, 262 (2004).

¶ 39 Under section 2-619 of the Code, our standard of review is *de novo*. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009). Accordingly, this court conducts an independent review of the propriety of dismissing the complaint and is not required to defer to the trial court's reasoning. *E.g., In re Marriage of Sullivan*, 342 Ill. App. 3d 560, 563 (2003).

¶ 40 In this case, the trial judge dismissed the claim against the individual defendants due to the business judgment rule, which is an affirmative matter falling within the scope of section 2-619(a)(9) of the Code. *E.g., Miller v. Thomas*, 275 Ill. App. 3d 779, 789-90 (1995). Pursuant to the business judgment rule, " '[a]bsent evidence of bad faith, fraud, illegality, or gross overreaching, courts are not at liberty to interfere with the exercise of business judgment of corporate directors,' " including condominium board members. *Goldberg v. Astor Plaza Condominium Association*, 2012 IL App (1st) 110620, ¶ 63 (quoting *Fields v. Sax*, 123 Ill. App. 3d 460, 467 (1984)). The purpose of this rule is to protect directors who have been diligent and careful in performing their duties from being subjected to liability for honest errors of judgment. *Stamp v. Touche Ross & Co.*, 263 Ill. App. 3d 1010, 1015 (1993). Thus, the directors exercise of due care in carrying out their corporate duties is a prerequisite to the application of the business judgment rule. *Id.* at 1016.

¶ 41 The Board maintains Pagone and Walsh failed to meet their burden by failing to submit affidavits stating they reviewed their engineer's 2004 report and acted upon the report's recommendations, as reflected by the 2006 report. The Board also maintains the affidavit from the Board's expert created a genuine issue of material fact precluding dismissal pursuant to section 2-619 of the Code. We address these arguments in turn.

¶ 42 First, the Board correctly notes the individual defendants' section 2-619 motion was supported by an affidavit from Goode, without affidavits from Walsh and Pagone. Goode's affidavit, however, states all of the directors reviewed the 2004 report, the accounting for the expenditures made upon the report's recommendations, and the operating budget. Absent a motion to strike the Goode affidavit, the trial judge could properly rely on the affidavit to establish the exercise of the directors' business judgment. See, *e.g.*, *Axelrod v. Giambalvo*, 129 Ill. App. 3d 512, 520 n.1 (1984).

¶ 43 Second, the counter-affidavit from the Board's expert states the repairs noted in the 2004 and 2006 reports from Greenbrier's engineer were not adequately addressed. The 2006 report from Greenbrier's engineer itemizes the completed work. These two affidavits may raise an issue of fact regarding whether the repairs to the property were adequate. The counter-affidavit, however, does not assert the individual defendants knew or should have known the 2006 report was in error (assuming *arguendo* it was in error). Thus, the counter-affidavit fails to raise a genuine issue of material fact regarding whether the individual defendants exercised due care and proper business judgment in relying on the 2006 report of their engineer or in funding the reserve at a level three times higher than their engineer recommended.

¶ 44 In short, the trial court did not err in dismissing count VI of the second amended complaint under the business judgment rule. Accordingly, we need not address whether the claim could have been dismissed based on the exculpatory clause in the condominium declaration.

¶ 45 IV. Rule 375(b) Sanctions

¶ 46 Lastly, the Board requests this court impose sanctions on Greenbrier for filing a frivolous appeal pursuant to Illinois Supreme Court Rule 375(b) (eff. Feb.1, 1994). The reviewing court applies an objective standard to determine whether an appeal is frivolous; "the appeal is considered frivolous if it would not have been brought in good faith by a 'reasonable, prudent attorney.' " *Thompson v. Buncik*, 2011 IL App (2d) 100589 ¶ 21 (quoting *Dreisilker Electric Motors, Inc. v. Rainbow Electric Co.*, 203 Ill. App. 3d 304, 312 (1990)). "Sanctions for taking a frivolous appeal are penal in nature and should only be imposed in the most egregious of circumstances." *Amadeo v. Gaynor*, 299 Ill. App. 3d 696, 705 (1998). The imposition of Rule 375(b) sanctions is left entirely to the discretion of the reviewing court. *Kheirkhahvash v. Baniassadi*, 407 Ill. App. 3d 171, 182 (2011).

¶ 47 The Board argues sanctions are warranted because defendants filed at least three prior motions for sanctions, each of which was denied by the circuit court. The Board also alleges defendants' counsel attempted to mislead the trial court regarding whether the dismissal of the amended complaint was without prejudice. As with defendants' motion for sanctions, neither of the Board's assertions regarding the proceedings in the trial court demonstrates the appeal was

frivolous, other than to assert such in a conclusory manner. Accordingly, we conclude the Board has failed to demonstrate sanctions should be imposed on Greenbrier for filing the appeal.

¶ 48

CONCLUSION

¶ 49 In sum, we conclude Greenbrier failed to establish the trial court should have imposed sanctions on the Board under Rules 137 and 219(e). We also conclude the circuit court did not err in dismissing count VI of the Board's second amended complaint. Lastly, the Board failed to establish Rule 375(b) sanctions should be imposed on Greenbrier for filing an appeal. For all of the aforementioned reasons, we affirm the judgment of the circuit court of Cook County.

¶ 50 Affirmed.