2013 IL App (1st) 122695-U

SIXTH DIVISION
December 20, 2013

No. 1-12-2695

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

CERMAK & WABASH CURRENCY EXCHANGE, INC, Plaintiff-Appellee, v. NATIONWIDE ADJUSTING COMPANY, Defendant-Appellant.	)	Appeal from the Circuit Court of Cook County
----------	)	Nos. 10 CH 11556, 10 L 13871 (Cons.)
NATIONWIDE ADJUSTING COMPANY, Plaintiff-Appellant, v. JPMORGAN CHASE BANK, N.A. and REPUBLIC BANK, Defendant-Appellee.	)	Honorable Kathleen M. Pantle, Judge Presiding.

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

ORDER

¶ 1 *Held*: In an appeal from orders in two consolidated cases arising out of the cashing of a check with multiple payees and an allegedly fictitious endorsement, the appellate court lacked jurisdiction over an appeal from an order granting judgment on the pleadings in one of the cases where a counterclaim remained pending. The appellate court, however, had jurisdiction to review the second order because the two cases were consolidated for reasons of judicial economy and convenience. In the second case, the circuit court did not err in dismissing the copayee's complaint against two defendant banks on the ground the banks were holders in due course.

¶ 2 Nationwide Adjusting Company (Nationwide) appeals orders entered by the circuit court of Cook County in two consolidated cases. The first order, in case number 10 CH 11556 (chancery division case), entered judgment on the pleadings in an action filed by plaintiff Cermak & Wabash Currency Exchange, Inc. (Cermak), which sought a declaration it owes Nationwide only 10% of a check it cashed even if Nationwide's endorsement was fraudulent. The second order, entered in case number 10 L 13871 (law division case), granted defendant Republic Bank's motion for the involuntary dismissal of Nationwide's separate action, which alleged Republic Bank and defendant JPMorgan Chase Bank, N.A. (Chase) wrongfully converted the check at issue in the first action. On appeal, Nationwide argues the circuit court erred in entering both orders, contending Cermak, Republic Bank and Chase are not holders in due course. For the following reasons, we dismiss the appeal in part, affirm the circuit court in part, and remand the cause for further proceedings.

¶ 3 BACKGROUND

¶ 4 As this appeal concerns two cases ultimately consolidated in the chancery division of the circuit court, we set forth the allegations presented in the pleadings and the procedural history of both cases.

¶ 5 Common Allegations

¶ 6 Cermak is in the business of cashing checks. Nationwide is a private adjusting company that assists in negotiating settlements and recoveries on behalf of its clients. On November 18, 2009, Cermak was presented with a check in the amount of $59,295.22 (the check) for cashing at its facility located at 2109 S. Wabash, Chicago. The check, payable from State Farm Insurance (State Farm) to Wesley McQuay (McQuay) and Nationwide, bore a signature endorsement as to McQuay and was stamped with an endorsement from Nationwide on the back. The check was issued as insurance proceeds for fire damage to a property owned by McQuay.[1] Nationwide had been retained by McQuay to negotiate a more favorable settlement than his insurance carrier, State Farm, previously offered to remunerate. McQuay agreed to pay Nationwide 10% of the recovery for its services.

[1] The record on appeal contains allegations the property was subsequently foreclosed by McQuay's lender.

¶ 7 Upon being presented with the check by someone identified as McQuay[2], Cermak's employee attempted to verify the parties to the draft. Cermak requested and received photo identification from McQuay. Cermak further requested contact information for Nationwide, which was also provided. Cermak telephoned State Farm to verify the check, the identifications, and the endorsements. After receiving confirmation from State Farm of this information, Cermak cashed the draft.

¶ 8 Nationwide subsequently claimed that its endorsement had been forged and it never provided any confirmation of its endorsement to Cermak's employee. Cermak, without admitting any liability, attempted to resolve the dispute, but Nationwide refused to cooperate and asserted it was entitled to $39,337.62 out of the $59,295.22 paid on the check. Nationwide contended that in addition to the 10% fee it was due under its agreement with McQuay, Nationwide was also entitled to sums due under an assignment. Regarding the assignment, Nationwide claimed it had referred McQuay to Windsor Building Company (Windsor) to renovate his damaged property. McQuay and Windsor entered into an agreement to perform renovations on McQuay's property. Windsor partially completed the renovation in the amount of $32,458.10. Nationwide paid Windsor for the work performed on the property. In return, Windsor assigned its rights under the agreement with McQuay to Nationwide. Windsor was not a payee on the check.

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[2] The pleadings of both parties allege the check was presented by McQuay. The record contains an unsworn letter from McQuay to the trial judge denying he endorsed or cashed the check.

¶ 9 The Chancery Division Case

¶ 10 On March 19, 2010, Cermak filed a declaratory judgment action against Nationwide in the chancery division of the circuit court. Cermak claimed there exists an actual dispute between it and Nationwide and requested the court enter "a judgment declaring Nationwide endorsed the check ***, or that if such endorsement is not authentic, that Nationwide is only entitled to 10% ($5,929.52) of the proceeds[.]" A photocopy of the check was attached as an exhibit to the complaint.

¶ 11 On April 27, 2012, Nationwide filed an answer, affirmative defense, and a two-count counterclaim against Cermak for negligence and conversion. Nationwide's affirmative defense, based on the assignment of rights under Windsor's contract with McQuay to Nationwide, asserted Nationwide was due $39,937.62 from the check.

¶ 12 Nationwide additionally on April 27, 2010, filed a third-party complaint against McQuay, alleging McQuay presented the check with a fictitious endorsement and seeking repayment of funds allegedly due Nationwide, under the alternative theories of breach of contract, conversion and constructive trust. The record on appeal indicates Nationwide's attempt to serve the third-party complaint on McQuay was unsuccessful. The record, however, contains a letter from McQuay to the circuit court filed on May 24, 2010, stating in part that the check was provided to someone else and both endorsements were not authentic.

¶ 13 On August 30, 2010, Cermak filed a motion for judgment on the pleadings pursuant to section 2-615(e) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615(e) (West 2010)) and a separate motion to dismiss Nationwide's counterclaims pursuant to section 2-619 of

the Code (735 ILCS 5/2-619 (West 2010)). On September 16, 2010, Nationwide filed a motion for leave to file an amended answer, affirmative defenses, counterclaim and third-party complaint. On October 5, 2010, the circuit court granted Nationwide's request for leave to amend. Nationwide filed the amended pleading, with a substantially similar affirmative defense and an amended counterclaim for conversion.

¶ 14 On October 27, 2010, Cermak filed an amended motion for judgment on the pleadings. Cermak did not file an amended motion to dismiss Nationwide's counterclaims.

¶ 15 Cermak's amended motion for judgment on the pleadings does not specify whether it sought judgment on its complaint, Nationwide's counterclaim, or both. Cermak asserted there was no dispute the subject check was payable to McQuay and Nationwide, not Windsor. There was no dispute that any agreement between McQuay and Windsor was separate and apart from the agreement between McQuay and Nationwide. Cermak argued that, pursuant to section 3-420(b) of the Uniform Commercial Code (UCC) (810 ILCS 5/3-420(b) (West 2008)), Nationwide's recovery cannot exceed its interest in the check, which was the 10% recovery fee to which Nationwide was entitled under its contract with McQuay. Cermak requested the circuit court enter an order declaring its obligation to Nationwide was limited to the 10% fee Nationwide was due under its contract with McQuay.

¶ 16 On November 23, 2010, Nationwide filed its response to the amended motion for judgment on the pleadings. Nationwide argued its interest in the check was larger than the 10% recovery fee, based on Windsor's assignment of claims against McQuay to Nationwide. Nationwide also argued Cermak improperly cashed the check based on a forged endorsement.

¶ 17 On December 8, 2010, Cermak filed its reply in support of the motion for judgment on the pleadings. Cermak argued any assignment by Windsor to Nationwide was irrelevant because Nationwide was confusing an interest in the funds with an interest in the check under the UCC. Cermak maintained that absent an agreement by McQuay to include third-party claims in Nationwide's share of the check, Nationwide's recovery as to the check must be limited to amounts due under the contract between McQuay and Nationwide.

¶ 18 On January 10, 2011, the circuit court entered an order granting judgment on the pleadings in favor of Cermak. The circuit court ruled McQuay's contracts with third-parties such as Windsor do not affect Nationwide's interest in the check, regardless of whether Nationwide's endorsement on the check was forged. The circuit court also ruled "banks and other check-cashing entities cannot be required to investigate every contract, possible contract and relationship between named payees and unknown persons before cashing a check to avoid liability on those contracts." In addition, the circuit court stated Nationwide's counterclaim for "conversion in the amount of $39,337.62 also fails" under section 3-420(b) of the UCC, as Nationwide's recovery could not exceed its interest in the check. Lastly, the circuit court set the matter for a status call on Nationwide's third-party complaint against McQuay.

¶ 19 The Law Division Case

¶ 20 On December 7, 2010, Nationwide filed a separate action against Republic Bank and Chase in the law division of the circuit court. Nationwide's complaint alleged Cermak cashed the check with a fictitious endorsement. Cermak then endorsed the draft and deposited it into an account at Republic Bank. In turn, Republic Bank endorsed the draft and transferred it to Chase,

who debited State Farm's account and transferred the proceeds to Cermak's account at Republic Bank. Nationwide alleged Republic Bank and Chase were jointly and severally liable for conversion of the check pursuant to section 3-420(a) of the UCC (810 ILCS 5/3-420(a) (West 2008)) because the draft was not properly endorsed.

¶ 21 On January 11, 2011, Republic Bank filed a motion to consolidate this case with the chancery division matter, pursuant to section 2-1006 of the Code (735 ILCS 5/2-1006 (West 2010)), arguing the cases were of the same nature, and involved the same issues and evidence. On January 20, 2011, the circuit court entered an order transferring the law division action to the chancery division of the circuit court and consolidating the two actions.

¶ 22 On March 9, 2011, Republic Bank filed a motion to dismiss Nationwide's complaint pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2010)). In the motion, Republic Bank asserted neither it nor Chase were liable for conversion of the check, arguing they were holders in due course of the check under section 3-302 of the UCC (810 ILCS 5/3-302 (West 2008)).[3] On March 18, 2011, the circuit court entered an order setting a briefing schedule and indicating Cermak offered to tender $5,920.22 to Nationwide, which refused to accept the tender. On April 15, 2011, Nationwide filed a response to the motion to dismiss, arguing: (1) the motion was not supported by affidavit; (2) the circuit court already found the

[3] Although Republic Bank specifically argued it and Chase were both holders in due course, Chase was not a party to the motion to dismiss.

endorsement was not authentic; (3) Republic Bank was not a holder in due course; (4) Republic Bank was not a holder of the check under the UCC.

¶ 23 On June 21, 2011, the circuit court entered an order granting the motion to dismiss. The circuit court ruled the motion need not be supported by affidavit because it was based on the allegations of the complaint, including the copy of the check incorporated as an exhibit to the pleading. The circuit court noted its prior order in the chancery case included no findings or rulings regarding whether the endorsement on the check was forged, inauthentic, suspicious or questionable.[4] The circuit court reviewed the copy of the check attached as an exhibit to the complaint and determined it bore no apparent evidence of forgery or alteration, and did not appear to be so irregular or incomplete as to call its authenticity into question. The circuit court ruled Nationwide failed to provide any evidence (other than an erroneous interpretation of the court's prior order) demonstrating Republic Bank was on notice that the check did not satisfy the criteria of section 3-302 of the UCC, or that Republic Bank did not act in good faith when processing the check.

¶ 24 On July 15, 2011, Nationwide filed a notice of appeal to this court from the orders granting judgment on the pleadings in the chancery division case and granting the motion to

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[4] We note the order in the law division case characterizes the chancery division order as "direct[ing] Cermak to pay Nationwide an amount equal to 10% of the check." This characterization is erroneous, as the chancery division order granted judgment on the pleadings for declaratory relief and did not direct payment.

dismiss in the law division case, but subsequently realized it lacked a final and appealable order, due to the pendency of the third-party complaint against McQuay in the chancery division case. On February 8, 2012, this court granted Nationwide's motion to dismiss the appeal without prejudice. On March 9, 2012, Nationwide filed a motion in the circuit court for a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) in the chancery division case. On July 12, 2012, the circuit court entered an order denying the motion. On August 9, 2012, Nationwide filed a motion to voluntarily dismiss its third-party complaint against McQuay.

¶ 25 On August 23, 2012, the circuit court entered an amended order denying the entry of a Rule 304(a) finding, and a separate order granting Nationwide's motion to voluntarily dismiss the third-party complaint against McQuay in the chancery division case. On September 11, 2012, Nationwide filed a notice of appeal to this court.

¶ 26 DISCUSSION

¶ 27 Initially, we address the issue of jurisdiction. Although the parties do not dispute this court's 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 (2011); *In re Marriage of Mardjetko*, 369 Ill. App. 3d 934, 935 (2007).

¶ 28 Nationwide asserts this court has jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994), which provides every final judgment in a civil case is appealable as of right. " 'A judgment or order is "final" if it disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy.' " *In re Marriage of Gaudio*, 368 Ill. App. 3d 153, 156 (2006) (quoting *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 502

(1997)). Illinois Supreme Court Rule 304(a), however, provides a party may appeal from a final judgment not disposing of the entire proceeding "only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). Absent a finding pursuant to Supreme Court Rule 304(a), a final order disposing of fewer than all of the parties' claims is not an appealable order. *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (2008). "Such an order does not become appealable until all of the claims in the multiclaim litigation have been resolved. Once the entire action is terminated, all final orders become appealable under Rule 301." *Dubina*, 178 Ill. 2d at 502-03.

¶ 29 In this case, Nationwide seeks to appeal from two circuit court orders: (1) the judgment on the pleadings entered in favor of Cermak in the chancery division case; and (2) the order granting the motion to dismiss Nationwide's complaint against Republic Bank and Chase in the law division case. We address these orders in turn.

¶ 30 The circuit court, in entering judgment on the pleadings, concluded Nationwide would not be entitled to more than 10% of the proceeds of the check, regardless of whether the endorsement on the check was authentic. The circuit court reasoned McQuay's contracts with other entities do not affect Nationwide's interest in the check, even after the interest in those contracts was assigned to Nationwide. See 810 ILCS Ann. 5/3-420 Uniform Commercial Code Comments 1, 2 (Smith-Hurd 1993); *American National Insurance Co. v. Citibank, N.A.*, 543 F.3d 907, 910 (2008) (and cases cited therein).

¶ 31 The circuit court's order also stated Nationwide's counterclaim for conversion "in the amount of $39,337.62 also fails" because Nationwide's recovery could not exceed its interest in

the check under section 3-420(b) of the UCC. The circuit court's order in the chancery division case, however, did not dismiss Nationwide's counterclaim, as Cermak never sought a ruling on its motion to dismiss. The order also did not enter judgment for either party on Nationwide's counterclaim. Rather, the order entered judgment on the pleadings to declare that *if* the signature on the check was not authentic, Nationwide would not be entitled to more than 10% of the proceeds of the check, which was the alternative relief sought in Cermak's complaint. The order thus resolved Cermak's complaint, but failed to resolve Nationwide's counterclaim.

¶ 32 "A counterclaim is an independent cause of action, separate from a complaint, and it must stand or fall on its own merits, regardless of the disposition of the complaint." *Health Cost Controls v. Sevilla*, 307 Ill. App. 3d 582, 589 (1999). The order granting judgment on the pleadings in the chancery division case determined the maximum amount of damages to which Nationwide might be entitled, but left the issue of liability on the counterclaim unresolved. Accordingly, the order in the chancery division case is not final and appealable absent a Rule 304(a) finding. See, *e.g.*, *New Alpha Progressive Baptist Church v. Elks 1596 Building Corp.*, 59 Ill. App. 3d 426, 428 (1978). Thus, we conclude we lack jurisdiction over the appeal of the order in the chancery division case.

¶ 33 We next turn to consider whether our lack of jurisdiction extends to the law division case, insofar as it was consolidated with the chancery division case. Section 2-1006 of the Code provides that "[a]n action may be severed, and actions pending in the same court may be consolidated, as an aid to convenience, whenever it can be done without prejudice to a substantial right." 735 ILCS 5/2-1006 (West 2010). Illinois courts have recognized three forms

of consolidation where several actions are pending: (1) the court may stay proceedings in all but one case and determine whether the disposition of one case may settle the others; (2) the cases may be tied together but with separate docket entries and judgments in matters involving an inquiry into the same event; or (3) the cases may be consolidated into one action, to be disposed of as one suit, in cases that could have been brought as a single action. *Busch v. Mison*, 385 Ill. App. 3d 620, 624 (2008). Where two cases are consolidated only for convenience and economy, the cases do not merge into a single suit but retain their distinct identities. *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 657 (2009); *Nationwide Mutual Insurance Co. v. Filos*, 285 Ill. App. 3d 528, 532 (1996).

¶ 34 In this case, the cases were consolidated on the ground they were the same nature, and involved the same issues and evidence. Republic Bank's motion to consolidate was not filed until judgment on the pleadings was entered in the chancery division case. Based on this record, we conclude the two cases were consolidated only for convenience and economy, did not merge, and retained their distinct identities. Accordingly, the order granting the involuntary dismissal of Nationwide's complaint in the law division case was appealable without Rule 304(a) language and this court has jurisdiction to consider the appeal of the law division case. *Filos*, 285 Ill. App. 3d at 532. Thus, we now turn to review the involuntary dismissal of Nationwide's complaint in the law division case.

¶ 35 "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). Republic Bank's 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 2010). 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)).[5]

¶ 36 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 the 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 circuit 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). Under

[5] Nationwide devotes a section of its brief to arguing Cermak, Republic Bank and Chase converted Nationwide's property. Given the procedural posture of the case, we need not address this ultimate question.

section 2-619 of the Code, our standard of review is also *de novo*. *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 361 (2009).

¶ 37 On appeal, as in the motion to dismiss, Republic Bank argues it and Chase cannot be held liable for conversion because they were holders in due course of the check. The UCC provides that a person who takes an instrument as a holder in due course – *i.e.*, took the instrument for value in good faith with no notice of any unauthorized signature or alteration – takes the instrument free of any possessory claim to that instrument. 810 ILCS § 5/3-302 (West 2008). Therefore, holder in due course status is a defense to a conversion claim under the UCC. See *National Accident Insurance Underwriters, Inc. v. Citibank FSB*, 333 F. Supp. 2d 720, 724 (N.D. Ill. 2004) (interpreting section 3-106 of the UCC under Illinois law). Accordingly, we conclude the issue may be raised as "affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2010).

¶ 38 A holder in due course must take the instrument in good faith. 810 ILCS 5/3-302(a)(2)(ii) (West 2008). " 'Good faith' means honesty in fact and the observance of reasonable commercial standards of fair dealing." 810 ILCS 5/3-103(a)(4) (West 2008). The question of whether a party is a holder in due course is an issue of fact. *New Randolph Halsted Currency Exchange, Inc. v. Regent Title Insurance Agency, LLC*, 405 Ill. App. 3d 923, 928 (2010). The issue, however, is subject to a summary determination if the evidence presented does not reveal a genuine issue of material fact. See *Krilich v. Millikin Mortgage Co.*, 196 Ill. App. 3d 554, 561 (1990) (summary judgment).

¶ 39 The primary question in the law division case is whether the circuit court erred in determining Republic Bank and Chase were holders in due course on the ground the check bore no evidence of apparent forgery or alteration. See 810 ILCS § 5/3-302 (West 2008). Although Nationwide in its complaint alleged its purported endorsement on the check was not authentic, a court is not required to accept allegations touching on the asserted affirmative matter as true. *Barber-Colman Co.*, 236 Ill. App. 3d at 1073. Moreover, the circuit court and this court would be entitled to examine the check or a copy thereof attached to the pleadings in order to determine whether a material issue of fact existed regarding the affirmative matter. See *Raintree Homes, Inc.*, 209 Ill. 2d at 262. The circuit concluded no genuine issue of material fact existed regarding whether Republic Bank or Chase had notice the endorsement was forged or not authentic. Moreover, the circuit court observed that Nationwide submitted no supporting materials demonstrating such notice.

¶ 40 On appeal, Nationwide does not argue the circuit court erred in these determinations. If an appellant does not present an argument in its opening brief, the appellant forfeits that issue. *Yancura v. Katris*, 238 Ill. 2d 352, 369 (2010); Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 41 Nationwide argues a genuine issue of material fact exists regarding whether Cermak acted in a commercially reasonable manner. Nationwide, however, did not raise the issue of whether Cermak acted in a commercially reasonable manner in its opposition to the motion to dismiss in the law division case. Indeed, Cermak was not a party in the law division case. In the chancery division case, Cermak alleged it: (1) requested and received photo identification from McQuay; (2) further requested contact information for Nationwide; (3) telephoned State Farm to verify the

check, the identifications, and the endorsements; and (4) received confirmation from State Farm of this information. Yet the questions of whether Cermak acted in a commercially reasonable manner and was a holder in due course were neither raised nor litigated in motions filed in the chancery division case. Nationwide asserts Cermak admits it did not act in a commercially reasonable manner, without citation to the record.[6]

¶ 42 It is axiomatic that " 'an issue not presented to or considered by the circuit court cannot be raised for the first time on review.' " *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996) (quoting *Daniels v. Anderson*, 162 Ill. 2d 47, 58 (1994)). "Generally, arguments not raised before the circuit court are forfeited and cannot be raised for the first time on appeal." *Mabry v. Boler*, 2012 IL App (1st) 111464, ¶ 15. Allowing a party to change its theory of the case on appeal would weaken the adversarial process and likely prejudice the opposing party. *Haudrich*, 169 Ill. 2d at 536.

¶ 43 Similarly, in the circuit court, Nationwide did not raise the issue of whether Republic Bank and Chase acted in a commercially reasonable manner. The circuit court's order in the law division case relied in part on Nationwide's failure to produce evidence in opposition to Republic Bank's claim of good faith, an element of the holder in due course defense. Had Nationwide raised and presented evidence on the sub-issue of commercial reasonableness, Republic Bank and Chase would have had the opportunity to present argument and evidence which could

[6] Similarly, in its brief, Cermak asserts it acted in a commercially reasonable manner and is a holder in due course, although neither point was litigated in the chancery division case.

discredit Nationwide's argument. Accordingly, we decline to relax the general rule of forfeiture in this appeal. Therefore, we conclude the circuit court did not err in granting the motion to dismiss Nationwide's complaint for conversion against Republic Bank and Chase in the law division case.[7]

¶ 44 CONCLUSION

¶ 45 In sum, in these two consolidated cases, this court lacks jurisdiction over the appeal from the order granting judgment on the pleadings on Cermak's complaint in the chancery division case, as Nationwide's counterclaim for conversion was not fully resolved. The circuit court did not err in dismissing Nationwide's complaint against Republic Bank and Chase in the law division case. For all of the aforementioned reasons, the appeal is dismissed in part, the judgment of the circuit court of Cook County is affirmed in part, and the cause is remanded for further proceedings consistent with this order.

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[7] Given our disposition of this appeal, we need not address Nationwide's assertions that Cermak, Republic Bank and Chase acted at their peril or that Republic Bank and Chases's remedies are against Cermak. We observe, however, that Nationwide argues Republic Bank and Chase cannot be holders in due course because Cermak was not a holder in due course. This assertion, based on section 3-203 of the UCC (810 ILCS 5/3-203 (West 2008)), without any citation to case law, was not raised in Nationwide's opposition to the motion to dismiss. Issues not raised before the trial court may not be raised for the first time on appeal, and are deemed forfeited by a reviewing court. *Haudrich*, 169 Ill. 2d at 536.

¶ 46 Affirmed in part, reversed and remanded in part.