

No. 1-14-1980

**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).

---

JOSEPH LINHOFF,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	
	)	No. 2012 M1 164439
ELI FISHMAN, an individual and as director of	)	
LIGHTNING SMART, a not-for-profit corporation,	)	Honorable
	)	Thomas V. Lyons, II
Defendants-Appellants.	)	Judge Presiding.

---

JUSTICE PIERCE delivered the judgment of the court.  
Justices Neville and Liu concurred in the judgment.

### ORDER

¶ 1 *Held:* Appeal dismissed for failure to comply with Illinois Supreme Court Rules 341 (eff. Feb. 6, 2013) and 342 (eff. Jan. 1, 2005).

¶ 2 Plaintiff, Joseph Linhoff, filed this action for breach of contract, quantum meruit, and fraudulent inducement against defendants Eli Fishman and Lightning Smart. Plaintiff alleged that the parties had a valid and enforceable contractual agreement for plaintiff to develop a videogame prototype for defendants in return for a \$15,000 fee. Plaintiff alleged that defendants

1-14-1980

breached that agreement by failing to pay plaintiff for the work performed and by prematurely terminating the contractual relationship. Defendants, represented by counsel throughout the trial court proceedings, answered the complaint and alleged as affirmative defenses: no meeting of the minds, mutual/common mistake, failure to perform, failure of condition precedent, indefinite contract, and no contract in effect.

¶ 3 After discovery was complete, each party filed a motion for summary judgment. Plaintiff argued that the parties had a valid and enforceable contract. Defendants, in their cross-motion, argued that there was no contractual agreement between the parties because there was no meeting of the minds regarding material terms and, in the alternative, that defendants were justified in terminating the relationship based on plaintiff's failure to perform.

¶ 4 On November 6, 2013, after hearing, the circuit court granted plaintiff's motion for summary judgment and denied defendants' cross-motion for summary judgment finding that an enforceable agreement existed between the parties. The matter proceeded to a two-day jury trial on the issue of whether defendants were in breach of the contract. The jury awarded plaintiff \$4,832.00 on his breach of contract claim. This timely appeal followed.

¶ 5 Defendants, *pro se*, appeal the denial of their cross-motion for summary judgment arguing that there was no enforceable agreement between the parties because of fraud or unconscionability.

¶ 6 Plaintiff responds and argues that defendants' appellate brief does not comply with Illinois Supreme Court Rule 341(h)(6), (7) and should result in the waiver of the issues and arguments on appeal. Specifically, plaintiff argues that the appellate brief does not contain a single citation to the record.

1-14-1980

¶ 7 Illinois Supreme Court Rules 341 (eff. Feb. 6, 2013) and 342 (eff. Jan. 1, 2005) govern the procedure concerning appellate briefs. These rules are not mere suggestions, but are compulsory. *Niewold v. Fry*, 306 Ill. App. 3d 735, 737 (1999). The purpose of appellate rules is to require parties before a reviewing court to present clear and orderly arguments so that the court can properly ascertain and dispose of the issues involved. *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7. The fact that a party appears *pro se* does not relieve that party from complying with these rules. *Voris v. Voris*, 2011 IL App (1st) 103814 ¶ 8; *Lewis v. Heartland Food Corp.*, 2014 IL App (1st) 123303, ¶ 5. An appeal may be dismissed for the failure to comply with these rules. *Epstein v. Galuska*, 362 Ill. App. 3d 36, 42 (2005).

¶ 8 Rule 341 requires citation to the record for all factual assertions made in the appellants' brief. Ill. Sup. Ct. Rule 341(h)(6), (7) (eff. Feb. 6, 2013). The failure to substantiate factual assertions with such citation warrants the dismissal of an appeal because it makes it “next to impossible for this court to assess whether the facts as presented \*\*\* are an accurate and fair portrayal of the events in this case.” *Collier v. Avis Rent A Car System, Inc.*, 248 Ill. App. 3d 1088, 1095 (1993). Upon review of the appellants' brief, we find that defendants failed to support any of the factual assertions in their brief with citations to the record, in violation of Rule 341.

¶ 9 Rule 342 requires an appellant to include in its brief, among other things, a copy of the notice of appeal, the judgment appealed from, any findings of fact or opinions issued by the trial court and any relevant pleadings. Ill. Sup. Ct. Rule 342 (eff. Jan. 1, 2005). Upon review of defendants' appellate brief, we find defendants failed to attach an appendix, relevant pleadings, a copy of the judgment from which they appeal, the notice of appeal or a table of contents to the record, in violation of Rule 342. Plaintiff, for the court's convenience, attached a supplementary

1-14-1980

appendix consisting of a table of contents to the record on appeal, transcripts from the November 6, 2013 hearing, the summary judgment order and the notice of appeal. Notwithstanding, this does not cure defendants' non-compliance and does not remotely enable this court to thoroughly consider defendants' purported grounds for reversal. Because the appellate brief fails to follow the provisions set forth in Rules 341 and 342, we dismiss this appeal. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8; *People v. Kraft*, 277 Ill. App. 3d 221, 224 (1995); See *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 38.

¶ 10 Furthermore, even if we were to reach the merits of this appeal, we would nonetheless affirm because the contentions made on appeal were never raised in the trial court, and have therefore been forfeited. The arguments made in the appellate brief are based on defendants' belief that there was no contractual agreement between the parties because of fraud or unconscionability, and therefore, the trial court erred in finding that a contractual agreement existed.

¶ 11 The record includes a copy of the operative complaint, defendants' answer and affirmative defenses, the motions for summary judgment, the parties' responses to those motions and transcripts from the trial court's hearing on the motions. In reviewing the record, we find defendants made no reference or argument based on fraud or unconscionability before the trial court on their summary judgment motion.

¶ 12 It is well established that issues raised for the first time on appeal and not previously raised in the trial court, are waived or forfeited. *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996); *Mann v. Thomas Place, L.P.*, 2012 IL App (1st) 110625, ¶ 15. "A trial court cannot err in failing to decide an issue not presented to it for decision." *Schili Leasing, Inc. v. Forum*

1-14-1980

*Insurance Co.*, 254 Ill. App. 3d 731, 746 (1993). We cannot review a trial court's decision unless each adversary had the opportunity to respond and present their arguments to the trial court regarding the issues raised on appeal (*Somerset House, Inc. v. Board of Appeals of City of Chicago*, 131 Ill. App. 2d 569, 572 (1970)) and the trial court had the chance to make a decision on those issues (*Rogers v. Gehrke*, 77 Ill. App. 2d 343, 347 (1966)).

¶ 13 In short, given the multitude of rule violations in this case, we are unable to conduct meaningful review of this appeal and are therefore compelled to dismiss the appeal in its entirety. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8; *Zadrozny v. City Colleges of Chicago*, 220 Ill. App. 3d 290, 292-93 (1991).

¶ 14 Appeal Dismissed.