

No. 1-14-2304

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GUARANTEE TRUST LIFE INSURANCE COMPANY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
KEITH LINDVIG and LARRY GRAVES,)	No. 13 L 2143
)	
Defendants-Appellees)	
)	
(Robert Kribbs,)	Honorable
)	John C. Griffin,
Defendant).)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.
Presiding Justice Simon and Justice Neville concurred in the judgment.

ORDER

- ¶ 1 *HELD:* Appeal dismissed for lack of jurisdiction where plaintiff sought to appeal judgment entered against fewer than all parties without special finding under Rule 304(a).
- ¶ 2 Plaintiff, Guarantee Trust Life Insurance Company (Guarantee Trust), appeals an order of the circuit court of Cook County dismissing its claims against defendants, Keith Lindvig and

Larry Graves, pursuant to section 2-619(a)(5) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(5) (West 2012)). On appeal, Guarantee Trust contends that the applicable statute of limitations should be tolled and that Lindvig and Graves should be estopped from asserting the statute of limitations as a defense. For the following reasons, we dismiss this appeal for lack of jurisdiction.

¶ 3

BACKGROUND

¶ 4 This action first arose in 2006 when Guarantee Trust filed its complaint against defendant, Robert Kribbs. Following a voluntary dismissal in 2012 pursuant to section 2-1009(a) of the Code (7335 ILCS 5/2-1009(a)(West 2012)), Guarantee Trust re-filed the suit on February 27, 2013, against Kribbs and an additional defendant, Keith Lindvig, and also named Larry Graves as a respondent in discovery. On July 31, 2013, Guarantee Trust filed a first amended complaint to which Graves was subsequently added as a party defendant. The following is a brief summary of the allegations in that pleading.

¶ 5 Guarantee Trust alleges that two former employees, Lindvig and Graves, caused it to enter into a reinsurance agreement with Somerset Reinsurance, Ltd. (Somerset) as part of a scheme to enrich themselves and Kribbs, the sole shareholder and administrator of Somerset. The purpose of the reinsurance agreement was to reinsure the Guarantee Trust policies sold by Kribbs and others; Guarantee Trust would cede purchased policies to Somerset in exchange for the premiums that Guarantee Trust received on those policies. Guarantee Trust and Somerset also entered into a separate custodial agreement wherein any money received from Guarantee Trust would be deposited in a custodial account to pay reinsurance claims on the policies subject to the reinsurance agreement. Under the custodial agreement, if a surplus resulted, that money could be released to Somerset with the approval of Guarantee Trust.

¶ 6 According to Guarantee Trust, Lindvig and Graves provided false information to Guarantee Trust in order to facilitate the release of money from the custodial account directly to Kribbs, which left the account reserves insufficient to indemnify policyholders for claims. Kribbs allegedly kept some funds for himself and distributed the rest to Lindvig and Graves. As a result of the defendants' actions, Guarantee Trust was required to indemnify policyholders with alternative reserves and premiums. In its first amended complaint, Guarantee Trust alleged five counts against defendants: unjust enrichment (Count I), conversion (Count II), constructive fraud (Count III), civil conspiracy (Count IV), and concert of action (Count V).

¶ 7 On January 6, 2014, Graves moved to dismiss the first amended complaint pursuant to section 2-619(a)(5) of the Code (735 ILCS 5/2-619(a)(5) (West 2012)), asserting that Guarantee Trust's claims against him were barred by the applicable statute of limitations (735 ILCS 5/13-205 (West 2012)). The court later granted Lindvig's request to join in Graves' motion to dismiss.

¶ 8 On March 27, 2014, the circuit court entered an order granting Graves' and Lindvig's motion to dismiss, stating, "This is a final [o]rder that disposes of the case in its entirety without further notice against Defendants Graves and Lindvig." The court indicated in its order that it was continuing the case "against Defendant Kribbs." Guarantee Trust's motion to reconsider this ruling was denied by the court on July 2, 2014, which again indicated in its order that the case would be continued "as to Defendant Kribbs."

¶ 9 On July 28, 2014, Guarantee Trust filed a notice of appeal from the orders of March 27 and July 2. Guarantee Trust stated that it was appealing those orders pursuant to Illinois Supreme Court Rules 303 (eff. May 30, 2008) and 304(a) (eff. Feb. 26, 2010). In its jurisdictional statement in the opening brief, however, Guarantee Trust now asserts that this court has jurisdiction under Illinois Supreme Court Rules 301 (eff. Feb. 1, 1994) and 303.

¶ 10

ANALYSIS

¶ 1 We have an independent duty to address our jurisdiction (*Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009)) and conclude that it is lacking in this case.

¶ 11 The record shows that proceedings in this case continued against defendant, Kribbs, after the claims against Graves and Lindvig were dismissed. Our jurisdiction therefore must lie under Illinois Supreme Court Rule 304, which applies to appeals from final judgments that do not dispose of an entire proceeding. Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010).

¶ 12 Rule 304(a) provides that "[i]f multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims 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). Rule 304(b) then lists a number of judgments and orders that are appealable without the special finding required by Rule 304(a). Ill. S. Ct. R. 304(b). The type of judgment entered here is not among the six enumerated grounds set forth under subsection (b); accordingly, we only have jurisdiction to the extent the court entered the appropriate Rule 304(a) finding in the order.

¶ 13 In reviewing the March 27 and July 2 orders, we have found only one statement by the court that arguably comes close to Rule 304(a) language. The court, in its March 27 dismissal order, stated that it was entering "a final [o]rder that disposes of the case in its entirety without further notice against Defendants Graves and Lindvig." This court noted in *Palmolive Tower Condominiums, LLC v. Simon*, 409 Ill. App. 3d 539, 544 (2011), that "a circuit court order accompanied by language indicating that it is 'final and appealable,' but not referencing immediate appeal, the justness of delay, or Rule 304(a), does not trigger" appellate jurisdiction under Rule 304(a). Here, the court's order did not refer to the order's appealability, let alone

"immediate appeal, the justness of delay, or Rule 304(a)." As such, the court's language was wholly insufficient to invoke this court's jurisdiction under Rule 304(a). *Palmolive Tower Condominiums, LLC*, 409 Ill. App. 3d at 545. Similarly, there is also no language in the July 2 order indicating that the denial of plaintiff's motion to reconsider was final *and* appealable under Rule 304(a).

¶ 14 Because neither the March 27, 2014 or the July 2, 2014 orders contain the requisite language required for a Rule 304(a) finding that permits an immediate appeal, we must dismiss this appeal.

¶ 15 Appeal dismissed.