2017 IL App (1st) 161031-U
No. 1-16-1031

THIRD DIVISION
September 27, 2017

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHICAGO AUTO LOANS LLC, Plaintiff-Appellee, v. SYNERGY FUNDING CORP., an Illinois Corporation, and YALE SCHIFF, individually, Defendants-Appellants.	))))))))))	Appeal from the Circuit Court of Cook County. No. 2012 L 013652 The Honorable Brigid Mary McGrath, Judge, presiding.

PRESIDING JUSTICE COBBS delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* The order granting summary judgment was not a final order that was appealable in the absence of a finding by the court that there was no just reason for delaying the appeal; defendants' failure to obtain a ruling on their motion to compel arbitration prior to filing their notice of appeal created a procedural default of any issue related to that motion for purpose of appeal; the court did not err in granting summary judgment in favor of plaintiff where defendants failed to present a sufficiently complete record on appeal; and the court acted properly in conducting a bench trial, following a jury demand by defendant, where defendant did not adhere to the court's orders.

¶ 2 Plaintiff, Chicago Auto Loans LLC, (CAL) filed a claim for fraud and breach of contract against defendants, Synergy Funding Corp., (SFC) and Yale Schiff, individually, in the circuit

court of Cook County. Defendants responded with a motion to compel arbitration. Plaintiff was given leave to file a motion for summary judgment. The circuit court granted plaintiff's motion for summary judgment and entered an order for damages against defendants. On appeal, defendants contend that (1) they had a statutory right to a stay of proceedings pending a ruling on their motion to compel arbitration and that the court erred in entering summary judgment in favor of CAL, (2) there were genuine issues of material fact regarding plaintiff's allegations of fraud that precluded summary judgment, and (3) the court erred in denying defendant his right to a jury trial. We affirm the judgment and orders of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 On December 5, 2012, CAL filed a three-count verified complaint for fraud and breach of contract against defendants with regard to a Business Loan Agreement (agreement) and a promissory note entered into between the parties. CAL averred two counts, civil fraud and fraudulent inducement, against Schiff and one count for breach of contract against SFC. CAL alleged that Schiff and SFC represented that they had obtained security interests in valid and authentic automobile titles as collateral from the respective borrowers, which constituted materially false statements of fact, and that at all relevant times CAL relied on Schiff's misrepresentations in entering the agreements and providing principal payments to SFC. CAL also alleged that as a direct and proximate result of Schiff's fraud, CAL had been damaged in an amount not less than $177,500, plus lost interest. CAL additionally alleged that Schiff's conduct was willful, wanton and entitled CAL to recover punitive damages. Subsequently, CAL filed an amended verified complaint. Defendants responded with an appearance and a jury demand.

¶ 5 On July 11, 2013, defendants filed a motion to compel arbitration, pursuant to the Illinois Uniform Arbitration Act (Act) (710 ILCS 5/2 (West 2014)), claiming a right to proceed in

arbitration based upon a term in the agreement. CAL filed a memorandum in opposition to the motion. On September 26, 2013, the motion to compel was fully briefed and the court held a hearing, entered an order stating that the motion was entered and continued, and directed defendants to answer the complaint.

¶ 6 Thereafter, CAL filed a second amended complaint[1], which was followed by its motion for summary judgment on March 4, 2014. CAL sought summary judgment against Schiff for fraud (Count I) and against SFC for breach of contract (Count VI). In support of its motion, CAL attached two affidavits, one from Joel Stone, a managing member of CAL, and the other from Derek Sutphin, assistant administrator of the title division of the Illinois Secretary of State.

¶ 7 Also attached was a memorandum dated October 8, 2013, from investigator Paxton Spresser, with the Secretary of State Police, finding that "[a]fter careful review of the copies of titles that have been submitted to this office by the Department of Police involving the Synergy Funding case, it is our determination that: * * * 36 of the 37 copies of titles reviewed contained bad vehicle identification numbers with the one good number never having been issued an Illinois Certificate of Title. All 37 copies contained a title number not assigned by this office."

¶ 8 The affidavit of Sutphin averred that the memorandum of October 8, 2013, was true and correct. He stated that Illinois motor vehicle titles have 17 digits that comprise the vehicle identification number (VIN). He further stated that 36 of the 37 subject titles contained bad or phony VIN's that consisted of 16 characters along with one valid number (a 17-digit VIN) that had never been issued an Illinois Certificate of Title. He also averred that "in his experience he has seen other examples of phony motor vehicle titles being created by unauthorized person for improper purposes."

[1] The complaint included claims against an additional defendant, Marc Winner. Winner secured a dismissal on January 21, 2015, and is not a party to this appeal.

¶ 9 Stone averred that in reliance on Schiff's express representations that he and SFC had lawfully obtained as loan collateral, numerous valid and authentic Illinois automobile titles, CAL made principal payments totaling $177,500 to SFC. Additionally, Stone averred that he reasonably relied on the false and fictitious automobile titles that Schiff had provided him in his decision to enter into the subject agreements between CAL and SFC, * * * and that but for these false representations, he would not have made those payments to Schiff and SFC.

¶ 10 Defendants filed a reply in opposition including an affidavit from Schiff denying all of CAL's allegations. Schiff averred that during the relevant period, SFC was in the business of making personal loans secured by automobile titles and that each auto title loan SFC made was secured by the borrower's auto title. He stated that no payments were due under the agreement or note and that SFC was not in default at the time the original complaint was filed.

¶ 11 CAL's response included copies of 36 certificates of title with 16 digit VIN's indicating SFC as the first lien holder. Also attached was the affidavit of CAL's attorney Gregg Rzepcznski, averring to emails received from Schiff containing the attached certificates of title.

¶ 12 On January 21, 2015, the court granted CAL's motion for summary judgment. The court set a prove-up date on CAL's claim of damages against Schiff and SFC for February 11, 2015, and on that date entered an order awarding compensatory damages to CAL and against Schiff in the amount of $480,020.65. The court continued the case for briefing as to CAL's claim for punitive damages. Thereafter, the court set dates for status and assignment for jury trial on the issue of punitive damages, and eventually ordered that the trial take place on November 17 and 19, 2015.

¶ 13 On November 12, 2015, defendants filed an emergency motion seeking a 45-day continuance of the scheduled trial. Schiff was to have necessary oral surgery that day and would

be unavailable for six weeks. On November, 13, 2015, after a hearing, the court granted the motion over CAL's objection, and reset the trial to January 19 and 20, 2016, "with the proviso, over defendant Schiff's objection, that the jury demand is waived" as a precondition to the granting of the motion.

¶ 14 On the morning of trial, Schiff advised CAL's attorney that he had filed a Chapter 13 petition for bankruptcy relief, which would require cancellation of the trial. The court stayed the trial due to the bankruptcy, which was subsequently dismissed. Thereafter, defendants' attorney filed a motion to withdraw, which was granted. The court entered an order setting the bench trial for February 23, 2016, for punitive damages against Schiff. The order required Schiff to appear personally. Schiff did not appear for trial. Subsequently, the court set a final date of March 22, 2016, for the bench trial and ordered that Schiff "appear in person for trial." Again Schiff did not appear for trial.

¶ 15 The trial was conducted in Schiff's absence, resulting in entry of judgment against Schiff in the sum of $480,020.65 compensatory damages (tracking the February 11, 2015 order on the summary judgment prove-up), and $960,041.30 in punitive damages. An amended judgment order was entered on April 5, 2016, *nunc pro tunc* March 22, 2016 in order to correct a typographical error. Defendants filed a timely notice of appeal.

¶ 16 II. ANALYSIS

¶ 17 We review the circuit court's grant of summary judgment *de novo*. *Adams v. Northern Illinois Gas Company,* 211 Ill. 2d 32, 43 (2004). “Summary judgment is appropriate where the pleadings, affidavits, depositions, and admissions on file demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” *West Bend Mutual Insurance v. Norton,* 406 Ill. App. 3d 741, 744 (2010); 735 ILCS 5/2–1005 (West

2014). “In determining whether a genuine issue as to any material fact exists, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the [moving party] and liberally in favor of the opponent.” *Adams*, 211 Ill. 2d at 43; see 735 ILCS 5/2–1005 (West 2014). “To prevent the entry of summary judgment, the nonmoving party must present a *bona fide* factual issue and not merely general conclusions of law.” *Bank Financial, FSB v. Brandwein*, 2015 IL App (1st) 143956, ¶ 40. Additionally, the nonmoving party “must produce some competent, admissible evidence which, if proved, would warrant entry of judgment in their favor.” *Id*.

¶ 18 A. Jurisdiction

¶ 19 Initially, CAL contends that this court lacks jurisdiction over defendants' challenge to the January 21, 2015, non-final order entering summary judgment because defendants did not appeal the order of February 11, 2015, entering judgment on the subsequent prove-up hearing. Defendants' notice of appeal indicates they are appealing the orders of January 21, 2015, and March 22, 2016.

¶ 20 The court order of January 21, 2015, states that "[t]his matter being heard on Plaintiff's motion for summary judgment against defendants Yale Schiff and Synergy Funding Corp on Counts I and VI of the second amended complaint, * * * due notice having been given and the court having heard arguments by all counsels, It is hereby ordered that * * * Summary judgment is granted for plaintiff per its motion for summary judgment as follows: (a) [f]or fraud against Yale Schiff, individually (Count I); (b) [f]or breach of contract against Synergy Funding Corp (Count VI). Further, the order specifically states that "prove-up on plaintiff's damage claims against Schiff and Synergy Funding Corp is set for February 11, 2015."

¶ 21 We observe that the order is lacking Illinois Supreme Court Rule 304(a) language. Ill. S. Ct. R. 304(a) (eff. March 8, 2016). Whether an order is final and appealable absent a Rule 304(a) finding, is one of law, which we review *de novo*. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 332 (2002). Rule 304(a) provides, in pertinent part: "If 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. * * * In the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties." Ill. S. Ct. R. 304 (eff. March 8, 2016).

¶ 22 "An order is final and appealable if it terminates the litigation between the parties on the merits or disposes of the rights of the parties, either on the entire controversy or a separate part thereof." *R.W. Dunteman Co. v. C/G Enterprises, Inc*., 181 Ill. 2d 153, 159 (1998). Absent a Rule 304(a) finding, a final order disposing of fewer than all of the claims is not an appealable order and does not become appealable until all of the claims have been resolved. *Marsh v. Evangelical Covenant Church of Hinsdale,* 138 Ill. 2d 458, 464 (1990).

¶ 23 This court has defined a "claim" as "any right, liability or matter raised in an action." *Marsh*, 138 Ill. 2d at 465. The rule was meant "to discourage piecemeal appeals in the absence of a just reason and to remove the uncertainty which existed when a final judgment was entered on fewer than all of the matters in controversy." *In re Marriage of Gutman*, 232 Ill. 2d 145, 150–51 (2008) (quoting *Marsh*, 138 Ill. 2d at 465).

¶ 24 As earlier observed, the court order of January 21, 2015, has no 304(a) language. Further, it did not terminate all of the claims raised in the action, as noted in the order setting the subsequent prove-up date of February 11, 2015, for CAL's damages claims. Thus, we find that we do not have jurisdiction over defendants' challenge to the January 21, 2015, non-final order.

¶ 25 Defendants are also appealing the court order of March 22, 2016. The record reflects that on March 22, 2016, the court entered an order which stated that "on January 21, 2015, the court previously entered summary judgment against Schiff for fraud * * * and in entering summary judgment * * * Plaintiff had met its burden of proving that no genuine issue of material existed * * *." The court further noted that the matter of CAL's damages claim was being heard for trial. The court granted compensatory and punitive damages against Schiff and in favor of CAL. However, the record on appeal does not include any transcript or report of the March 22, 2016, trial. Thus, we do not know the basis of the court's granting of CAL's claim. “From the very nature of an appeal it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant.” *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). An issue relating to the basis for the circuit court's conclusions obviously cannot be reviewed absent a report or record of the proceedings. To support a claim of error, the appellant has the burden to present a sufficiently complete record. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005); *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001). In the absence of the same, as is the case here, we must presume that the circuit court's findings in favor of CAL conformed to the law. See *Corral*, 217 Ill. 2d at 157; *Webster*, 195 Ill. 2d at 433–34; *Foutch*, 99 Ill. 2d at 393–94.

¶ 26 B. Motion to Compel Arbitration

¶ 27 Defendants admit that their motion to compel arbitration was not ruled upon by the circuit court prior to the date that they filed this notice of appeal. On July 11, 2013, defendants filed a motion to compel arbitration, pursuant to the Illinois Uniform Arbitration Act (Act), (710 ILCS 5/2 (West 2012)) claiming a right to proceed in arbitration based upon a term of the agreement. CAL filed a memorandum in opposition to the motion. On September 26, 2013, the motion to compel was fully briefed and the court held a hearing, entered an order stating that the motion was entered and continued, and directed defendants to answer the complaint.

¶ 28 A litigant's failure to obtain a ruling on a motion does not translate into a denial of the motion by the court. *Hadley v. Ryan*, 345 Ill. App. 3d 297, 303 (2003). Moreover, it is the responsibility of the party filing a motion to request the trial judge to rule on it, and when no ruling has been made on a motion, the motion is presumed to have been abandoned absent circumstances indicating otherwise. *Commerce Trust Co. v. Air 1st Aviation Cos.*, 366 Ill. App. 3d 135, 142 (2006); *Herricane Graphics, Inc. v. Blinderman Construction Co.*, 354 Ill. App. 3d 151, 158–59 (2004).

¶ 29 However, defendants argue that they had a statutory right to a stay of proceedings pending a ruling on their motion to compel and that the court erred in entering summary judgment in favor of CAL. They maintain that under the Act a court must render a substantive disposition of a motion to compel arbitration. 710 ILCS 5/2(a) (West 2012). They further maintain that section 2(d) provides that "any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefore has been made * * * ." 710 ILCS 5/2(d) (West 2012). Defendants argue that these are legislatively imposed nonwaivable conditions precedent to the court's exercise of jurisdiction. Defendants contend that

the court exceeded its authority and violated the statutory stay of proceedings pending resolution of their motion. They maintain that any and all orders and/or judgments against defendants that followed the September 26, 2013, hearing on their motion to compel are void. We disagree.

¶ 30 Defendants litigated their case for over 29 months without ever attempting to secure a ruling on their motion. Defendants demonstrably abandoned their motion by litigating this case from September, 2013 through March, 2016. Further, they never requested a ruling or indicated to the court that they were entitled to a stay, pending a ruling on their motion. Under the circumstances here, we find that defendants abandoned their motion to compel arbitration.

¶ 31 Further, a subsequently filed notice of appeal following the failure by a litigant to obtain a ruling on a motion serves as an abandonment of the previously filed motion. See *Jackson v. Alverez*, 358 Ill. App. 3d 555, 563–64 (2005) (the party was deemed to have abandoned a motion for leave to amend her complaint by filing a notice of appeal without first ensuring that the trial court had ruled on the motion for leave to amend). Here, defendants have raised an issue on appeal based on the substance of their motion to compel that was never ruled on by the circuit court. Defendants' failure to obtain a ruling from the court on their motion, prior to filing this notice of appeal resulted in their abandonment of the motion and created a procedural default of any issue related to that motion for the purpose of appeal. We thus need not address this issue on appeal. *Rodriguez v. Illinois Prisoner Review Bd.*, 376 Ill. App. 3d 429, 432–33 (2007).

¶ 32 C. Fraud

¶ 33 Defendants next argue that the circuit court erred in granting summary judgment in favor of CAL and against Schiff on the issue of fraud. However, as earlier noted the court entered summary judgment in its order of January 21, 2015, and entered judgment at law in CAL's favor on March 22, 2016. As previously discussed, we have no jurisdiction over the non-final order of

January 21, 2015. See IL. S. Ct. R. 304(a) (eff. March 8, 2016). Further, defendants did not attend the trial on March 22, 2016, nor did they include a transcript of the trial, thus we have no record or report from the trial. To support a claim of error appellants have the burden to present a sufficiently complete record. *Foutch*, 99 Ill. 2d at 393-94. Given the incomplete record, we must presume that the court's findings had sufficient evidentiary support and that the court acted in full accordance with the law in granting summary judgment in favor of CAL and against Schiff on the issue of fraud. Accordingly, the court did not err in granting summary judgment in favor of CAL.

¶ 34 D. Trial

¶ 35 Finally, Schiff argues that subsequent to his demand for a jury trial, the court erred in entering an order waiving his right to a jury trial and conducting a bench trial on the issue of punitive damages. The parties disagree on the standard of review. Schiff maintains that whether he was denied his right to a jury trial is a matter of law and should be reviewed *de novo*. CAL contends that Schiff's actions should be reviewed under an abuse of discretion standard. Review of decisions related to the circuit court's docket are reviewed for an abuse of discretion. See, e.g., *Insulated Panel Co. v. Industrial Comm'n*, 318 Ill. App. 3d 100, 102 (2001). Whether we review *de novo* or for an abuse of discretion, we find that the court acted properly.

¶ 36 To begin, CAL contends that Schiff waived this issue by failing to file or prosecute a motion to reconsider (735 ILCS 5/2-1203 (West 2014)), and that Schiff's actions precluded his right to a jury trial. This contention lacks merit. Schiff objected to the complained of error when the court entered the order granting his motion for a continuation of the trial. Section 2-1203 governs the filing of posttrial motions in nonjury civil cases, and it states that a party *may* file a posttrial motion within 30 days after the entry of judgment. 735 ILCS 5/2-1203. The failure to

file a posttrial motion in a civil nonjury case has no effect on the scope of appellate court review. *Arient v. Shaik,* 2015 IL App (1st) 133969, ¶ 94. Although there was no posttrial motion filed by Schiff, we conclude that Schiff has not forfeited this issue on appeal. Therefore, we will address the issue on the merits.

¶ 37 Section 13 of article I of the 1970 Illinois Constitution provides: "The right of trial by jury as heretofore enjoyed shall remain inviolate." Ill. Const. 1970, art. I, § 13; *Martin v. Heinold Commodities, Inc*., 163 Ill. 2d 33, 72 (1994) "The constitutional provision that 'the right of trial by jury has heretofore enjoyed shall remain inviolate,' means that the right to a jury trial shall continue in all cases where such right existed at common law at the time the constitution was adopted, but that constitutional provision has never been held to prohibit the legislature from creating new rights unknown to the common law and provide for their determination without a jury." *Martin v. Heinold Commodities, Inc*., 163 Ill. 2d 33, 72–73 (1994) (quoting *Standidge v. Chicago Rys. Co*. (1912), 254 Ill. 524, 532)

¶ 38 In support of his argument that the court erred in waiving his demand for a jury trial, Schiff contends that once he filed a timely demand for a jury trial the right was perfected. He maintains that it was error for the court to hear a civil suit without a jury and assess damages after he had appeared, answered the complaint, made a jury demand and had not been defaulted.

¶ 39 As previously noted, the court had initially set a date of assignment for a jury trial on CAL's claim for punitive damages against Schiff. On August 18, 2015, the court set the matter for November 17, 2015. On November 12, 2015, Schiff filed an emergency motion to continue trial, as he was to undergo oral surgery and then would not be available for six weeks. The court granted the motion with the proviso, over Schiff's objections, that the jury demand was waived. The matter was set for a bench trial to take place on January 19, 2016. The court stayed the trial

due to Schiff's filing of a Chapter 13 bankruptcy, which was subsequently dismissed. On February 1, 2016, the court reset the bench trial for February 23, 2016, requiring that Schiff appear personally. He failed to appear. Thereafter, the court set a final date of March 22, 2016, for the bench trial and again requiring that Schiff appear personally. On March 22, 2016, Schiff did not appear for trial and the trial was conducted in his absence.

¶ 40 We find *Washington v. Clayter*, 91 Ill. App. 3d 489, 494 (1980), to be instructive. In *Clayter*, the circuit court refused to vacate the judgment entered against the defendant at trial, and the appellate court affirmed finding that the defendant had abandoned his defense by refusing to comply with the court's directives. The court stated that "[i]f the orders of a court are to have any binding force, disregard of court-ordered time limits cannot be condoned, particularly where employed to defeat a subsequent judgment. Under defendant's theory of the case, he would have the right to repeatedly raise a collateral defense without fulfilling his obligation to present evidence thereon. Quite the contrary, once a collateral defense is raised, it surely must be pursued, or else be held abandoned. Accordingly, defendant's noncompliance with the court order of May 17 and attendant failure to follow through with his claim of improper service manifested an abandonment of his contentions. As a consequence, the continuation of the cause to default was proper under the circumstances presented by the instant case."

¶ 41 Similarly, here, Schiff's conduct in disobeying and ignoring the court's orders justified the court's treatment of Schiff as having abandoned his jury demand, and acquiesced in the court conducting a bench trial in his absence. We find that the court acted properly in conducting the punitive damages claim as a bench trial. We must stress that court orders are not simply suggestions. Circuit courts have the inherent right to control their docket and require parties to

adhere to their orders. *Insulated Panel Co.,* 318 Ill. App. 3d at 102 (holding trial court had inherent power to control docket).

¶ 42 III. CONCLUSION

¶ 43 For the foregoing reasons we find that the order granting summary judgment was not a final order that was appealable in the absence of a finding by the court that there was no just reason for delaying the appeal; defendants' failure to obtain a ruling on their motion to compel arbitration prior to filing their notice of appeal, created a procedural default of any issue related to that motion for purpose of appeal; the court did not err in granting summary judgment in favor of CAL where defendants failed to present a sufficiently complete record on appeal; and the court acted properly in conducting a bench trial, following a jury demand by Schiff, where he did not adhere to the court's orders. Accordingly, the judgment and orders of the circuit court of Cook County are affirmed.

¶ 44 Affirmed.