2017 IL App (1st) 161367-U

SIXTH DIVISION
AUGUST 11, 2017

No. 1-16-1367

IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

PASCHEN GILLEN SKIPPER MARINE JOINT VENTURE, an Illinois Joint Venture, Plaintiff-Appellee, v. BMO HARRIS BANK N.A., a National Banking Association; EDWARD E. GILLEN COMPANY, a Wisconsin Corporation; EDWARD E. GILLEN MARINE, LLC, a Wisconsin Limited Liability Company; DLH CONSTRUCTION AND TRUCKING, INC., a Wisconsin Corporation; FIDELITY & DEPOSIT COMPANY OF MARYLAND, a Maryland Corporation; HALLOIN & MURDOCK, S.C., a Wisconsin Service Corporation; ISP MINERALS, INC. n/k/a SPECIALTY GRANULES, INC., a Delaware Corporation; JULLANE J. JACKSON; LAW OFFICE OF JULLANE J. JACKSON; GARY A. JACKSON; and UNKNOWN PERSONS OR ENTITIES, Defendants, (ISP MINERALS, INC. n/k/a SPECIALTY GRANULES, INC., a Delaware Corporation, Defendant-Appellant.)	)	Appeal from the Circuit Court of Cook County No. 15 CH 04330 Honorable Neil H. Cohen, Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Justice Rochford concurred in the judgment.
Justice Delort dissented.

ORDER

¶ 1 *Held*: The trial court's denial of the defendant's motion for sanctions is affirmed, where the defendant failed to show that the trial court's ruling was an abuse of discretion.

¶ 2 The defendant, ISP Minerals, Inc. n/k/a Specialty Granules, Inc. (SGI), appeals from the trial court's order denying its motion for sanctions brought pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013). On appeal, SGI argues that the trial court abused its discretion by denying SGI's motion for sanctions without holding an evidentiary hearing or otherwise considering the merits of its motion. For the reasons that follow, we affirm.

¶ 3 The procedural history of this protracted litigation is convoluted, and we set forth only as much information as is relevant for purposes of this appeal. On September 15, 2009, a joint venture was formed between F.H. Paschen, S.N. Nielsen & Associates, LLC (Paschen); Edward E. Gillen Company (Gillen); and Skipper Marine Development Company (Skipper) (collectively referred to as the Joint Venture). The Joint Venture was formed for the purpose of bidding on three projects undertaken by the Public Building Commission of Chicago (PBC), including the 31st Street Harbor Project (Harbor Project).

¶ 4 The PBC accepted the Joint Venture's bid and awarded it a contract in April 2010 as the general contractor for the Harbor Project to construct the coastal portion of the 31st Street Harbor. On August 27, 2010, the Joint Venture executed a subcontract agreement with Gillen (Gillen Subcontract) for the construction of the harbor's breakwater wall. On April 23, 2010, prior to the execution of the Gillen Subcontract, Gillen entered into an agreement with SGI, a stone quarrier located in Wisconsin, whereby SGI agreed to provide stone to Gillen.

¶ 5 During the construction of the Harbor Project, Gillen became unable to meet its contractual obligations and fell behind in its payments to its subcontractors and material

suppliers. In January 2012, Gillen notified the Joint Venture that it was ceasing work on the Harbor Project. On January 6, 2012, the Joint Venture and Paschen filed suit in the circuit court of Cook County, case No. 12 CH 00417, against Gillen alleging breach of the Gillen Subcontract and the Joint Venture Agreement.

¶ 6 On January 9, 2012, Gillen filed an arbitration claim against SGI, alleging that SGI materially breached their agreement to supply stone (Arbitration Claim).

¶ 7 In September 2012, SGI filed suit in the circuit court of Cook County, case No. 12 CH 03946, against the Joint Venture, Paschen, Gillen, Skipper and DLH Construction and Trucking, Inc. (DLH), seeking foreclosure of a mechanics lien and interest on untimely payments. Cook County case Nos. 12 CH 00417 and 12 CH 03946 were consolidated in the circuit court.

¶ 8 In April 2014, an award was entered in the Arbitration Claim in favor of Gillen. The arbitrator awarded Gillen damages in the amount of $14,005,860 (Arbitration Award) and determined that SGI was entitled to $1,182,263 for the unpaid balance owed by Gillen for stone deliveries.

¶ 9 On June 9, 2014, in case No. 12 CH 03946, the Joint Venture filed a counterclaim against SGI asserting a claim for breach of contract by reason of SGI's failure to supply stone for the Harbor Project in a timely manner. In its amended complaint, the Joint Venture alleged an entitlement to the monies recovered by Gillen from the Arbitration Award.

¶ 10 On October 31, 2014, BMO Harris Bank, N.A. (BMO) filed suit in Ozaukee County, Wisconsin, case No. 14 CV 437, against the Joint Venture, Paschen, Gillen and DLH, seeking a declaration that the defendants' interests in Gillen's assets are subordinate to its security interest.

¶ 11 Having been notified that Gillen and SGI had reached an agreement as to the Arbitration Award, the Joint venture filed the instant action on March 13, 2015, against defendants BMO, Gillen, Edward E. Gillen Marine LLC, DLH, Fidelity & Deposit Company of Maryland, Halloin

& Murdock, S.C., SGI, Jullane J. Jackson, Law Office of Jullane J. Jackson and Gary A. Jackson, seeking a declaration that it is solely entitled to receive all funds paid by SGI to Gillen pursuant to the Arbitration Award. Subsequently, BMO, Gillen, Edward E. Gillen Marine, DLH, Halloin & Murdock, Jullane J. Jackson, Law Office of Jullane J. Jackson and Gary A. Jackson moved to dismiss the instant action pursuant to section 2-619(a)(3) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(3) (West 2014)), alleging that there were other pending cases involving the same claims and parties. On July 7, 2015, SGI filed a motion for sanctions, alleging that the Joint Venture's claims were frivolous.

¶ 12 On September 30, 2015, the trial court entered its order granting the defendants' section 2-619(a)(3) motions to dismiss, finding that Cook County case Nos. 12 CH 00417, 12 CH 03946, and Wisconsin case No. 14 CV 437, involved the same cause and same parties. The trial court further found that the discretionary factors for consideration in ruling on a section 2-619(a)(3) motion strongly favored dismissal of this action because: (1) allowing this case to continue would greatly increase the already significant danger of conflicting and irreconcilable decisions; (2) the Joint Venture could obtain complete relief in Cook County case Nos. 12 CH 00417, case 12 CH 03946 and Wisconsin case No. 14 CV 437; and (3) dismissal would serve to prevent duplicative litigation.

¶ 13 On November 6, 2015, SGI filed an amended motion for sanctions. Without holding a hearing, the trial court denied the motion, reasoning that resolution of SGI's motion for sanctions would require it to assess the truth of the allegations in the Joint Venture's complaint, defeating the purpose of its dismissal pursuant to section 2-619(a)(3). This appeal followed.

¶ 14 The decision to grant or deny a defendant's section 2-619(a)(3) motion is within the trial court's discretion. *Id.* "Section 2-619(a)(3) is designed to avoid duplicative litigation and is to be applied to carry out that purpose." *Kellerman v. MCI Telecommunications Corp.*, 112 Ill. 2d 428,

447 (1986). "A court should consider the following factors when deciding whether to dismiss an action pursuant to section 2-619(a)(3): (1) comity; (2) the prevention of multiplicity, vexation, and harassment; (3) the likelihood of obtaining complete relief in the foreign jurisdiction; and (4) the *res judicata* effect of a foreign judgment in the local forum." *Kapoor v. Fujisawa Pharmaceutical Co., Ltd.*, 298 Ill. App. 3d 780, 785 (1998). SGI has not appealed the trial court's section 2-619(a)(3) dismissal and, therefore, any error in the entry of that dismissal has been forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016).

¶ 15 On appeal, SGI contends that the trial court erred by denying its motion for sanctions without considering the merits of the motion and without an evidentiary hearing. Initially, SGI asserts that the standard of review on appeal should be *de novo*. We disagree. Our supreme court has held that the issue of whether to grant a motion seeking Rule 137 sanctions is committed to the sound discretion of the trial court whose determination of the matter will not be reversed on appeal absent an abuse of discretion. *Lake Environmental, Inc. v. Arnold*, 2015 IL 118110, ¶ 16; *Morris B. Chapman & Associates, Ltd. v. Kitzman*, 193 Ill. 2d 560, 579 (2000); *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998); *Yassin v. Certified Grocers of Illinois Inc.*, 133 Ill. 2d 458, 467 (1990). We, therefore, decline to apply a *de novo* standard and review the trial court's decision for an abuse of discretion.

¶ 16 An abuse of discretion occurs only when the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *Seymour v. Collins*, 2015 IL 118432 ¶ 41. We find no such abuse here.

¶ 17 In this case, the trial court dismissed the action pursuant to section 2-619(a)(3) because there were three other pending cases involving the same claims and parties. The resolution of SGI's motion for sanctions would have necessarily required the trial court to address the factual allegations in the Joint Venture's complaint, thereby defeating the purpose of its dismissal

pursuant to section 2-619(a)(3). Moreover, any factual findings made by the trial court in the context of the motion for sanctions could have an estoppel effect on the issues raised in the other pending actions. As a matter of judicial economy, we, therefore, find that the trial court did not abuse its discretion by denying SGI's motion for Rule 137 sanctions.

¶ 18 Finally, SGI contends that the trial court erroneously denied its motion for sanctions without conducting an evidentiary hearing. We disagree. An evidentiary hearing is not always required under Rule 137. *Shea, Rogal & Associates Ltd. v. Leslie Volkswagen Inc.*, 250 Ill. App. 3d 149, 154-55 (1993). When, as in this case, a hearing on a Rule 137 sanction motion would defeat the purpose of a previously entered dismissal pursuant to section 2-619(a)(3) of the Code, we believe that the sanction motion may be denied without a hearing on the merits.

¶ 19 For these reasons, we affirm the trial court's denial of SGI's motion for sanctions under Rule 137.

¶ 20 Affirmed.

¶ 21 JUSTICE DELORT, dissenting.

¶ 22 The majority correctly notes that key purposes of section 2-619(a)(3) of the Code include avoiding duplicative litigation and promoting judicial economy. 735 ILCS 5/2-619(a)(3) (West 2014). My colleagues conclude that the circuit court did not abuse its discretion in summarily denying the motion for sanctions, because resolving that motion on the merits would require extended additional proceedings and thus defeat the purposes of section 2-619(a)(3).

¶ 23 Illinois Supreme Court Rule 137 establishes an exception to the "American Rule" under which each side to a lawsuit normally is responsible for its own attorney fees. Sanctions under the rule are available when a party files pleadings that are, among other things: (1) not "well grounded in fact"; or (2) "interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Ill. S. Ct. R. 137(a) (eff. July 1,

2013). The sanctions motion at issue here does not focus on the duplicative nature of the underlying complaint, which was the basis upon which the court dismissed it. Instead, the sanctions motion focuses on allegedly false statements made throughout the complaint.

¶ 24 Unlike the majority, I would find that the circuit court abused its discretion in summarily denying the sanctions motion. Rule 137 contains no exception for cases dismissed pursuant to section 2-619(a)(3). Cases dismissed under that section might well have been filed to "needless[ly] increase [the] cost of litigation." *Id*. They also might not be "well grounded in fact." *Id*. Rule 137 sanctions provide remedies for defendants in both situations. The rationale expressed by both the circuit court and the majority—that resolving a "well grounded in fact" sanctions motion after dismissing a case under section 2-619(a)(3) is inefficient—creates an exception found neither in the plain language of Rule 137 nor in any case law interpreting it. Rule 137 clearly provides that sanctions for an improper filing must be brought within "the civil action in which the pleading, motion or other document referred to has been filed." Ill. S. Ct. R. 137(b) (eff. July 1, 2013). Therefore, denying SGI a plenary hearing on its sanctions motion essentially leaves it without a remedy. To be sure, under facts like those presented here, the Code and the supreme court rules promote conflicting interests. The Code seeks to encourage judicial economy. The supreme court rules provide remedies for parties subjected to misuse of the judicial process, but those remedies cannot be meaningfully exercised without prolonging the underlying litigation. Faced with this conflict, the circuit court should have deferred to the supreme court rules and resolved the sanctions motion on its own merits. See *Catlett v. Novak*, 116 Ill. 2d 63, 69 (1987) ("both the judiciary and the legislature may promulgate procedural rules, but if this court's rule is in conflict with a legislative enactment, the rule will prevail"); *Morrison v. Wagner*, 191 Ill. 2d 162, 165 (2000).

¶ 25 I must therefore respectfully dissent from the majority's disposition of this appeal. I would vacate the denial of sanctions motion and remand for reconsideration of the motion on the merits.