SECOND DIVISION
May 23, 2017

No. 1-16-2131

ATLAS SN LEASING, INC., ATLAS SN, INC., TAK TRUCKING, INC., PATRON TRANSPORT COMPANY, WILLIAMS NATIONAL LEASE, LTD, WILLIAMS SYSTEMS, LLC, WNL TRANSPORTATION, LLC, and WILLIAMS LOGISTICS, LLC, Plaintiffs-Appellants, v. NAVISTAR, INC., SELKING INTERNATIONAL, INC., RUSH TRUCK CENTERS, INC. f/k/a/ CHICAGO INTERNATIONAL TRUCKS, and CIT, INC., Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County No. 15 L 11903 The Honorable James E. Snyder, Judge Presiding.

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

ORDER

¶ 1 *Held:* Plaintiffs' appeal is dismissed for lack of jurisdiction where the trial court's order dismissing plaintiffs' complaint without prejudice was not a final and appealable order.

¶ 2 Eight separate plaintiffs filed a single complaint against the defendants in connection with separate sales of trucks and the servicing of those trucks. Defendants moved to sever the plaintiffs' claims. The trial court *sua sponte* dismissed the plaintiffs' complaint without

prejudice, with leave to file the cases as separate actions. The plaintiffs appeal. For the following reasons, we dismiss the plaintiffs' appeal for lack of jurisdiction.

¶ 3 BACKGROUND

¶ 4 Defendant Navistar, Inc. manufactures and sells trucks as well as truck engines, including an engine known as a "MaxxForce" engine. Defendants Rush Truck Centers, Inc., CIT, Inc., and Selking International, Inc. sell Navistar trucks. Between December 2011 and January 2012, Atlas SN Leasing, Inc. purchased trucks from Navistar, Rush, and CIT. Atlas SN Leasing then leased those trucks to Atlas SN, Inc. and Tak Trucking, Inc. Also between December 2011 and January 2012, Patron Transport Company purchased trucks from Navistar and CIT. Between February 2012 and June 2012, Williams National Lease Ltd. purchased Navistar trucks from Navistar and Selking. Williams National Lease then leased those trucks to Williams Systems, LLC, WNL Transportation, LLC, and Williams Logistics, LLC. All of the trucks purchased by Atlas SN Leasing, Patron, and Williams National contained MaxxForce engines.

¶ 5 In November 2015, Atlas SN Leasing, Atlas SN, Inc, Tak, Patron, Williams National Lease, Williams Systems, WNL Transportation, and Williams Logistics (collectively, plaintiffs), filed a single complaint against Navistar, Rush, CIT, and Selking (collectively, defendants). The complaint asserted that when plaintiffs purchased the Navistar trucks, defendants made several oral and written warranties regarding the trucks and the MaxxForce engines. Plaintiffs alleged that the emissions systems used in the engines resulted in numerous breakdowns, requiring repeated attempts to repair the engines, and that real-world use of the engines resulted in emissions greater than those advertised. Plaintiffs alleged that defendants made various representations about the quality and dependability of the engines with the intention of inducing plaintiffs to purchase the trucks, that plaintiffs relied on those representations, and that those

representations proved to be untrue. Plaintiffs claimed that defendants failed to promptly provide Navistar-certified technicians to handle necessary repairs as promised, resulting in delays in getting plaintiffs' trucks back on the road. Plaintiffs additionally claimed that Navistar knew that its MaxxForce engines had significant and documented problems, including knowledge that the engines would not meet or exceed Navistar's emissions claims, and that Navistar concealed these facts from plaintiffs. The complaint asserted claims of breach of express warranty, breach of implied warranty, breach of contract, fraud, constructive fraud, and also asserted that all of defendants' warranty disclaimers and limitations of remedies or damages were unconscionable.

¶ 6 On January 20, 2016, Navistar filed a motion to sever. It argued that there were three groups of plaintiffs: (1) the "Atlas Plaintiffs" (Atlas SN Leasing, Atlas SN, Inc, and Tak), (2) Patron, and (3) the "Williams Plaintiffs" (Williams National Lease, Williams Systems, WNL Transportation, and Williams Logistics). Navistar contended that there were three separate and distinct transactions that gave rise to each group of plaintiffs' claims, and therefore plaintiffs failed to satisfy the first requirement for joinder under section 2-404 of the Code of Civil Procedure (Code) (735 ILCS 5/2-404 (West 2014)). The motion to sever was briefed, and on March 4, 2016, the trial court denied Navistar's motion to sever without prejudice.

¶ 7 On March 14, 2016, CIT moved for a substitution of judge as a matter of right, which the trial court granted. Navistar then filed a second motion to sever, which was in all respects identical to its first motion. CIT subsequently filed its own motion to sever. CIT argued that plaintiffs' claims failed to satisfy either requirement for joinder under section 2-404 of the Code, since the claims were based on separate transactions, and did not involve common significant questions of law or fact because (1) the breach of express warranty claims involved different warranties issued by each defendant to each separate group of plaintiffs, (2) the breach of

contract claims were based on separate purchase contracts involving each group of plaintiffs, and (3) the fraud claims alleged misrepresentations by all four defendants without specifying "the time or place, and without identifying the declarant or the listener as required." The motions were briefed, and on July 8, 2016, the trial court entered a written order stating that "the complaint filed by Atlas SN Leasing Inc, et al[.,] is dismissed without prejudice, with leave to file the cases as separate actions." On August 5, 2016, plaintiffs filed their notice of appeal from the July 8, 2016, order. Defendants moved to dismiss plaintiffs' appeal, which was denied by a separate panel of the court on October 27, 2016.

¶ 8 ANALYSIS

¶ 9 We have an independent duty to consider our jurisdiction, which "includes the obligation to reconsider the basis of our jurisdiction if our earlier ruling finding jurisdiction appears to be erroneous." *Won v. Grant Park 2, LLC*, 2013 IL App (1st) 122523, ¶ 5. Pursuant to the Illinois constitution, our jurisdiction is limited to appeals from final judgments. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). Absent a supreme court rule, we lack jurisdiction to review judgments, orders, or decrees that are not final. *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 22 (citing *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419, ¶ 9).

¶ 10 A "final judgment" for the purposes of appeal is one that fixes absolutely and finally the rights of the parties in a lawsuit, and determines the litigation on the merits so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment. *Indiana Insurance Co. v. Powerscreen of Chicago, Ltd.*, 2012 IL App (1st) 103667, ¶ 22; see also *In re Detention of Hardin*, 238 Ill. 2d 33, 42-43 (2010). Generally, an order that strikes a complaint but grants leave to amend is not an appealable final order. *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 25. The inclusion of the language "without prejudice" means that the trial court "had not made

a final determination of rights or liabilities or an adjudication on the merits and the order was not final or appealable." *Renzullo v. Zoning Board of Appeals of City of Wood Dale,* 176 Ill. App. 3d 661, 663-64 (1988) (citing *O'Hara v. State Farm Mutual Automobile Insurance Co.*, 137 Ill. App. 3d 131, 134-35 (1985)).

¶ 11 Here, in ruling on Navistar and CIT's motions to sever, the trial court's written order states: "the complaint filed by Atlas SN Leasing Inc., et al[.,] is dismissed without prejudice, with leave to file the cases as separate actions." Plaintiffs acknowledge that the circuit court's order is not "in any way an adjudication of their claims on the merits." Instead, plaintiffs argue that the trial court's dismissal of the complaint "brought a final end to case number 15 L 11403." Plaintiffs identify no authority to support their contention that a trial court's dismissal without prejudice, which grants leave to file claims in separate actions, constitutes a final order for the purposes of Supreme Court Rule 301. The trial court's order does not preclude the filing of an amended complaint in case number 15 L 11403, and does not meet any of the criteria for a final judgment, since it does not "fix absolutely and finally" the rights of the parties nor does it resolve the litigation on the merits. Furthermore, if the dismissal order were affirmed, the separate plaintiffs could pursue claims in separate complaints. We find that the trial court's order dismissing plaintiffs' complaint without prejudice to refiling separate actions was not a final and appealable order, and we therefore lack jurisdiction to consider the merits of plaintiffs' appeal.

¶ 12 CONCLUSION

¶ 13 The trial court's order dismissing plaintiffs' complaint without prejudice was not a final and appealable order, and we therefore lack jurisdiction over plaintiffs' appeal.

¶ 14 Appeal dismissed.