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No. 3--10--0166

Order filed March 30, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

WELLS FARGO BANK, N.A.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Plaintiff-Appellee,)	Peoria County, Illinois
)	
v.)	No. 09--LM--1685
)	
JAMES A. COX,)	Honorable Michael E. Brandt,
)	Honorable Stephen Kouri,
Defendant-Appellant.)	Judges, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and Wright concurred in the judgment.

ORDER

Held: The appellate court is without jurisdiction to hear this appeal where the order appealed from did not dispose of all claims and, therefore, was not final and appealable.

Plaintiff, Wells Fargo Bank, N.A. (Wells Fargo), filed suit in the circuit court of Peoria County against defendant, James A.

Cox, alleging breach of contract. The circuit court granted plaintiff's motion for summary judgment and entered a money judgment against defendant. Defendant *pro se* appeals, claiming he did not receive a fair and impartial trial, issues of material fact existed sufficient to preclude summary judgment, and that the trial court was without jurisdiction to hear this matter as plaintiff had no standing to sue defendant.

FACTS

On or about August 2, 2002, defendant executed a consolidation loan application and promissory note with Wells Fargo. Wells Fargo brought this action alleging that defendant breached the terms of the contract by failing to make monthly payments as provided under the contract. Wells Fargo alleged that the last payment defendant made associated with his contractual obligations was on April 20, 2006. On or about October 14, 2009, Wells Fargo filed the underlying lawsuit seeking damages for breach of contract in the amount of \$38,811.88 for outstanding principal and accrued interest, court costs, late fees and attorney fees. While defendant did not file a formal answer to Wells Fargo's complaint, the record on appeal contains a letter from him to "the Honorable Judge reviewing case #09LM1685" as well as copies of numerous other letters from defendant to Wells

Fargo. These letters accuse Wells Fargo of everything from errors in bookkeeping to fraud.

On December 18, 2009, Wells Fargo filed a motion for summary judgment along with a statement of uncontested facts. Within the statement of facts was an affidavit signed by Tim Dejong, a Wells Fargo employee, indicating that he has access to all the books and records of Wells Fargo concerning the account of defendant. The affidavit indicated that defendant signed a consolidation loan application and promissory note including a guarantee for the contract.

The affidavit continued by noting that the contract called for defendant to make monthly payments of principal and interest on any amounts advanced and that he failed to do so as his last payment was made on April 20, 2006. As of November 17, 2009, the date of the affidavit, the sum of \$32,662.79 in principal with interest of \$6,149.10 was due and owing under the contract. A hearing on the motion for summary judgment was set for January 5, 2010.

At the hearing, defendant announced that he was "contesting" the matter. He stated the basis for his contest was that he had done "some research on banking and finance believing there may have been some possible fraud involved." Defendant noted that

after sending Wells Fargo various letters, some of which are included in the record on appeal, he had not "heard from them in three years until now."

Plaintiff's counsel explained that Wells Fargo considered the loan to defendant to be bad debt and, pursuant to FDIC regulations, it was therefore "charged off." Wells Fargo never released defendant from his obligation nor did it release him from his obligations pursuant to the contract. During the hearing, defendant admitted that he borrowed money from Wells Fargo and that he made payments in return "until the point where I discovered I may have been frauded." The trial court then determined that defendant had not consulted a lawyer regarding this matter. The trial judge advised defendant that he could not act as defendant's lawyer and further that when a motion for summary judgment is filed with supporting affidavits, it is incumbent on the opposing party to file responsive documents if the opposing party wishes to contest the allegations and evidence in support of those allegations.

The trial court noted that defendant had "not filed a counter affidavit swearing under oath that this is - - no, none of that is true. Or some of it's true, and some of it's not true. Then I have to grant the motion, and I am going to grant

the motion." Defendant then stated that the reason he appeared at the hearing on the motion for summary judgment was to "give my testimony" in opposition of plaintiff's motion for summary judgment. The court then responded, "Well, you know what? He drove from Rock Island so I'm going to grant the motion. You haven't filed a response. I can't tell you - - I can't be your attorney. I can't tell you what you can do and not do."

The trial court granted Wells Fargo's motion and entered a money judgment in favor of it for \$32,662.78 in principal and \$6,149.10 in accrued interest plus court costs. The matter of attorney fees was reserved. After the entry of the order granting Wells Fargo's motion, defendant filed a number of pleadings. The first of these pleadings was a motion to vacate. Defendant's motion stated his account balance with Wells Fargo was zero and that the granting of summary judgment deprived him of his "right to due process" by foreclosing the possibility of a trial. Defendant also filed an affidavit that stated, while he acknowledged receiving the notice of the motion for summary judgment and was "told to appear in court," he "had no idea I needed to file a response to this motion."

Ultimately, the trial court denied defendant's motion to vacate the entry of the summary judgment order. This appeal

followed.

ANALYSIS

Defendant fails to comply with Supreme Court Rule 341(h)(4)(ii) which mandates an appellant's brief contain a brief and concise statement of jurisdiction. Ill. S. Ct. R. 341(h)(4)(ii) (eff. July 1, 2008). Plaintiff suggests this court has jurisdiction to hear this matter under Supreme Court Rule 301. However, Rule 301 only confers jurisdiction on this court to review a "final judgment." Ill. S. Ct. R. 301 (eff. Feb. 1, 1994).

"A final judgment is one that disposes of the rights of the parties with regard to the entire controversy or a definite and separate part thereof." *Djikas v. Grafft*, 344 Ill. App. 3d 1, 8 (2003) (citing *Gibson v. Belvidere National Bank & Trust Co.*, 326 Ill. App. 3d 45, 48 (2001)). A "[j]udgment is not final, nor immediately appealable, where the court reserves an issue for further consideration or otherwise manifests an intention to retain jurisdiction for the entry of a further order." *Djikas*, 344 Ill. App. 3d at 8. When a judgment or order does not dispose of all matters presented to the court, Supreme Court Rule 304(a) governs. Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). Rule 304(a) allows an appeal from an order that fails to dispose of

all claims "if the trial court has made an express written finding that there is no just reason for delaying the enforcement or appeal" of the order. Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010).

Our review of the record on appeal indicates that plaintiff specifically prayed for, and sought to collect attorney fees pursuant to the contract in question for defendant's breach of that contract. The order from which defendant appeals clearly reserves judgment on the issue of attorney fees and, as such, does not fully dispose of all claims made by the plaintiff. Moreover, the order from which defendant appeals contains no Rule 304(a) language. The order awards to the plaintiff a definite amount of principal, a definite amount of interest and court costs, but reserves ruling on the issue of attorney fees.

"[I]f a trial court has jurisdiction to hear a claim for fees, any other judgment entered in the case before the claim for fees is ruled upon is or becomes nonfinal and nonappealable when the claim for fees is made, unless the prior judgment contains the language set forth in Supreme Court Rule 304(a), that there is no just reason to delay enforcement or appeal." (Emphasis in original.) *F.H. Prince & Co., Inc. v. Towers Financial Corp.*, 266 Ill. App. 3d 977, 983-84 (1994). The *F.H. Prince & Co.* court

explained that while a trial court's decision to reserve judgment on a motion for attorney fees awarded as a sanction pursuant to Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. Feb. 1, 1994)) will not render an order nonfinal and nonappealable, the same action when considering "a petition for fees pursuant to a breach of contract action wherein the contract entitles a party to all fees and costs when enforcement of the contract is pursued" will render an order nonfinal and nonappealable. *F. H. Prince & Co.*, 266 Ill. App. 3d at 987. This is so as "the former claim is a separate and distinct substantive theory for recovery in the underlying action whereas the latter is a claim recoverable under the substantive theory presented in the underlying action." *F. H. Prince & Co.*, 266 Ill. App. 3d at 988.

Undoubtedly, plaintiff's claimed attorney fees were recoverable by virtue of contract. The trial court has never disposed of plaintiff's claim for attorney fees. As such, we hold there is no final judgment from which defendant may appeal. As the order which defendant asks us to review is not final and does not contain language pursuant to Rule 304(a), we find this court is without jurisdiction to hear defendant's appeal.

Even where no party has raised the issue, a "reviewing court has a duty to consider *sua sponte* its jurisdiction." *Revolution*

Portfolio, LLC v. Beale, 341 Ill. App. 3d 1021, 1025 (2003).

CONCLUSION

For the foregoing reasons, the defendant's appeal is dismissed.

Dismissed.