

NOTICE  
Decision filed 10/23/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 110463-U  
NO. 5-11-0463  
IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

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).

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VAN ALEN, INC.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Madison County.
	)	
v.	)	No. 10-L-851
	)	
THE CITY OF ALTON,	)	Honorable
	)	Ann Callis,
Defendant-Appellee.	)	Judge, presiding.

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JUSTICE GOLDENHERSH delivered the judgment of the court.  
Justices Welch and Wexstten concurred in the judgment.

**ORDER**

- ¶ 1 *Held*: Demolition statute does not require specific notice to owner of personal property in premises to be demolished.
- ¶ 2 Plaintiff, Van Alen, Inc., appeals the circuit court of Madison County's dismissal with prejudice of its third amended complaint. Said complaint alleged that plaintiff had purchased the property in question but that complications concerning the deed were in the process of being resolved when defendant, the City of Alton, demolished the structure on said property, despite having actual knowledge by and through one of its employees that plaintiff had personal property stored in the structure. Defendant filed a motion to dismiss plaintiff's third amended complaint, which was granted by the circuit court. For the reasons stated below, we affirm.

¶ 3 **FACTS**

- ¶ 4 Plaintiff purchased property known as 913-915 Humboldt Court, City of Alton, State

of Illinois, from its owner, Bank of America. The bank had taken ownership as the result of a foreclosure action. There was some confusion at the closing of this transaction in that plaintiff was presented with the deed to the south half of the property on Lot 4 but should have received the deed to the north half, the premises which plaintiff had intended to purchase. Plaintiff was attempting to correct this title problem when defendant secured an order to demolish the premises at 913-915 Humboldt Court and did so.

¶ 5 Concurrent with attempts to resolve the title situation, plaintiff had stored personal property on the premises at 913-915 Humboldt Court and alleges in its complaint that the head of the building and zoning department of defendant had direct knowledge that personal property of plaintiff was stored there. The personal property consisted of building supplies and home repair items. As alleged by plaintiff, this personalty was destroyed and disposed of by defendant. Plaintiff further alleges that it was never directly contacted about defendant's plan for demolition.

¶ 6 Ultimately, plaintiff's third amended complaint alleging negligence on behalf of defendant was dismissed with prejudice. Plaintiff timely appealed.

#### ¶ 7 ANALYSIS

¶ 8 Plaintiff's third amended complaint dismissed by the circuit court alleged ownership of personal property and the error as to a proper deed to the premises at 913-915 Humboldt Court. It also alleged that defendant had actual knowledge that plaintiff was storing personal property in the premises by means of one James Hernandez, the head of defendant's building and zoning department, that it was foreseeable that demolition of the premises would cause damage to the said personal property, and that defendant, in fact, demolished the premises. The complaint further alleged negligent acts or omissions in that defendant failed to remove the personal property, failed to inspect the premises, and failed to identify plaintiff as the owner of the personal property and give appropriate notice of the demolition. Plaintiff

alleged damages in excess of \$50,000. Defendant's motion to dismiss argued that plaintiff claimed to be storing personal property in a building which it did not own, that under the demolition statute (65 ILCS 5/11-31-1 (West 2010)) all appropriate notices had been given, and that it was not obligated to notify plaintiff despite its interest in personalty in the structure. Plaintiff failed to indicate what duty defendant owed to plaintiff. The record indicates that the first amended complaint alleged a theory of bailment which was dismissed on motion of defendant. The second amended complaint did not allege a duty, and on motion of plaintiff, this third amended complaint sounding in negligence was filed.

¶ 9 As noted by defendant, the notice obligations and general duties under the demolition statute do not include specific notice to owners of personal property located in the premises to be demolished. Defendant alleges, and plaintiff does not contest, that appropriate notice was given pursuant to the demolition statute. While alleging that defendant had actual knowledge of the existence of personal property in the premises and since pleaded must be taken by the circuit court and our court as an accurate statement of fact, plaintiff's third amended complaint fails to indicate a duty which defendant is alleged to have breached. Plaintiff admits that at the time of demolition, it was not yet the owner of record of the premises. Our standard of review of the circuit court's order is *de novo* (*Kean v. Wal-Mart Stores Inc.*, 235 Ill. 2d 351, 361, 919 N.E.2d 926, 932 (2009)). As the motion was filed under either section 2-619 or section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-619, 2-615 (West 2010)), upon our examination of the record, as well as consideration of the parties' arguments before the court, we find no error committed by the circuit court in dismissing plaintiff's third amended complaint.

¶ 10 Accordingly, the order of the circuit court of Madison County dismissing plaintiff's third amended complaint is affirmed.

¶ 11 Affirmed.