

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).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

LEADERS BANK,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellee,)	
)	
v.)	Nos. 11-CH-3999
)	11-L-973
MARC F. IOZZO,)	11-L-974
)	
Defendant-Appellant)	
)	
(ATG Trust Company, as Trustee, Fred Iozzo,)	
as Trustee, 50 W. Ogden, LLC, Ogden)	
Chevrolet, Inc., Nancye Eggert Fiolka, Elaine)	Honorable
Iozzo, Unknown Owners, and Nonrecord)	Bonnie M. Wheaton,
Claimants, Defendants).)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Schostok and Spence concurred in the judgment.

ORDER

- ¶ 1 *Held:* We dismissed defendant’s appeal for lack of jurisdiction, as the order appealed, which noted that previous judgments were final and which denied without prejudice a motion to continue supplementary proceedings, was not itself appealable.
- ¶ 2 Defendant Marc F. Iozzo appeals from an order denying, without prejudice, the motion of plaintiff, Leaders Bank (Bank), to “continue” supplementary proceedings. Iozzo seeks review of

the trial court's finding that the judgments underlying the supplementary proceedings were final and appealable. As explained below, appellate jurisdiction is lacking, so the appeal must be dismissed.

¶ 3 Plaintiff filed four separate lawsuits in the circuit court of Du Page County. In case No. 11-CH-3959, the Bank sought to foreclose a mortgage on property located at 50 West Ogden Avenue in Westmont, and in case No. 11-CH-3999, the Bank sought to foreclose a mortgage on property located at 100 West Ogden Avenue. Iozzo was among the defendants named in both foreclosure actions. The Bank alleged that Iozzo was personally liable for the indebtedness secured by the mortgages on both properties. In case No. 11-L-973, the Bank sued Iozzo on two promissory notes. In case No. 11-L-974, the Bank sued Iozzo and others for repayment of overdrafts on a business checking account. On May 17, 2012, the trial court consolidated the four cases and ordered that the matter proceed under case No. 11-CH-3959.

¶ 4 On August 22, 2012, the trial court entered judgment for the Bank in the amount of \$306,761.48 on the overdraft claim and \$943,647.56 on the promissory notes. At that point, the mortgage foreclosure proceedings remained pending, but the Bank initiated supplementary proceedings by serving citations under section 2-1402 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1402 (West 2012)) on Iozzo and various third-party respondents to discover assets that might be applied in satisfaction of the money judgments entered on August 22, 2012. The Bank's efforts to collect those judgments gave rise to a dispute over the effect of the consolidation of the four underlying lawsuits.

¶ 5 Illinois courts have recognized different types of consolidation. In some instances, cases are consolidated for joint proceedings but essentially retain the character of separate actions. See *Kassnel v. Village of Rosemont*, 135 Ill. App. 3d 361, 364 (1985). However, "where several

actions might have been brought as a single action, the cases may actually be merged into one action, thereby losing their individual identity, and they are disposed of as one suit.” *Id.* In such cases, a judgment that does not dispose of the entire action is not immediately enforceable unless the trial court makes an express written finding that there is no just reason to delay enforcement or appeal of the judgment (Ill. S. Ct. Rule 304(a) (eff. Feb. 26, 2010)). See *Nationwide Mutual Insurance Co. v. Filos*, 285 Ill. App. 3d 528, 532 (1996). Iozzo argued that, because the mortgage foreclosure proceedings remained pending, enforcement of the August 22, 2012, judgments was premature. The Bank countered that the four lawsuits had been consolidated simply as a matter of convenience, so the judgments were enforceable when entered. The trial court agreed with the Bank, and on November 8, 2012, the court ordered certain third-party respondents in the supplemental proceedings to turn assets over to the Bank.

¶ 6 On February 13, 2013, the trial court entered an agreed order providing, in pertinent part:

“1. Cause number 11 CH 3959 is hereby severed from this cause for all purposes.

2. Cause number 11 CH 3999 is dismissed with prejudice.”

On July 29, 2013, the Bank moved for a “continuance” of the proceedings on the citation to discover assets served on Iozzo. The citation’s return date was November 8, 2012, and the Bank acknowledged that, pursuant to Illinois Supreme Court Rule 277(f) (eff. Jan. 4, 2013), the proceeding on the citation terminated automatically six months later. The Bank urged the trial court to exercise its prerogative under Rule 277(f) to “grant extensions beyond the 6 months, as justice may require.” *Id.* In response to the Bank’s motion, Iozzo argued that there was no longer any judgment to collect. According to Iozzo, because the trial court had not entered a written finding of no just reason to delay enforcement or appeal of the August 22, 2012, judgments, those judgments were subject to revision until the entry of final judgment fully

disposing of the cases consolidated under case No. 11-CH-3999. Iozzo's attorney argued in open court that, "when the order that dismissed the entire case as consolidated was entered, I think the entire case went away." The trial court disagreed, but also concluded that Rule 277 did not authorize the court to "breathe life" into an already-terminated proceeding on a citation to discover assets. The trial court denied the Bank's motion "without prejudice, for [*sic*] future supplemental proceedings." However, in its written order, the court found that "the judgments entered on August 22, 2012 in [case No. 11-L-973 and case No. 11-L-974] are final and appealable orders." This appeal followed.

¶ 7 Our jurisdiction is limited to appeals from final judgments unless an appeal is within the scope of one of the exceptions established by our supreme court permitting appeals from interlocutory orders in certain circumstances. *Puleo v. McGladrey & Pullen*, 315 Ill. App. 3d 1041, 1043 (2000). "A final judgment fixes absolutely and finally the rights of the parties in the lawsuit; it determines the litigation on the merits so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment." *In re Parentage of Rogan M.*, 2014 IL App (1st) 132765, ¶ 9. Illinois courts also recognize the finality of judgments that do not resolve an action in its entirety, but that dispose of "some definite part of it." *Id.* The appealability of such judgments depends on Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), which provides, in pertinent part, "[i]f 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." (Emphasis added.)

¶ 8 An appeal from a final judgment is initiated by filing a notice of appeal. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). Iozzo's notice of appeal states that this appeal is taken "from the Court Order

entered by the Circuit Court of Du Page County, Illinois on October 1, 2013, finding the Judgment Orders entered on August 22, 2012 were final and appealable orders which survived the subsequent dismissal with prejudice of the entire consolidated case.” The October 1, 2013, order does not qualify as a final judgment. That order denied the Bank’s motion to extend the supplementary proceedings against Iozzo, but it did not constitute a final determination of either the entire controversy or any separate claim within the action.

¶ 9 Our supreme court “has defined a ‘claim’ as ‘any right, liability or matter raised in an action.’ ” *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (2008) (quoting *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 465, (1990)). Although the parties dispute whether the August 22, 2012, judgments on the promissory-note claim and the overdraft claim “survived” the dismissal—on February 7, 2013—of the 100 West Ogden foreclosure action, it is clear that, upon dismissal of that action, final judgment had been entered as to the claims set forth in the complaints in three of the four consolidated cases. Furthermore, the fourth case—the 50 West Ogden foreclosure action—was severed from the remaining cases; for purposes of the final judgment rule, it was no longer a part of the litigation giving rise to this appeal. Thus, as of February 7, 2013, all that remained to be done was the execution of the judgments on the promissory-note claim and the overdraft claim (assuming that those judgments “survived” the dismissal of the 100 West Ogden foreclosure action). The trial court’s subsequent finding, in its order of October 1, 2013, that the August 22, 2012, judgments “are final and appealable” did not resolve the merits of the promissory-note and overdraft claims; to the contrary, the court’s finding presupposed that those claims had *already been resolved*.¹

¹ We note that Iozzo does not contend that the quoted finding vests this court with jurisdiction pursuant to Rule 304(a) to review the August 22, 2012, judgments. Rather, Iozzo

¶ 10 We note that our jurisdiction extends to appeals from final judgments in supplementary proceedings commenced by service of a citation pursuant to section 2-1402 of the Code (735 ILCS 5/2-1402 (West 2012)). See Ill. S. Ct. R. 304(b)(4) (eff. Feb. 26, 2010). However, the October 1, 2013, order was not such a judgment. That order denied the Bank’s motion to extend a citation to discover assets that had already terminated automatically as a result of the passage of time. Because there was no citation pending, there was nothing upon which to enter a judgment. Moreover, because the trial court denied the motion “without prejudice, for [sic] future supplemental proceedings,” its order did not determine any rights on the merits.

¶ 11 For the foregoing reasons, we dismiss this appeal.

¶ 12 Appeal dismissed.

seeks review of the *finding itself*.