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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

BAAT CONSTRUCTION SERVICES,)	Appeal from the Circuit Court
INC., d/b/a BG Plumbing and Heating, Inc.,)	of McHenry County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 09—CH—1255
)	
MAPLES AT THE SONATAS, LLC;)	
WILCOX DEVELOPMENT GROUP, LLC;)	
ELGIN STATE BANK; UNKNOWN)	
OWNERS; and UNKNOWN NECESSARY)	
PARTIES,)	Honorable
)	Michael T. Caldwell,
Defendants-Appellees.)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion in denying plaintiff's motion to amend its complaint to name as plaintiff a party who, unlike plaintiff itself, had standing to sue; as plaintiff admitted that it was a legal nullity, it could not seek to amend its complaint any more than it could file its complaint in the first place.

Plaintiff, Baat Construction Services, Inc. (Baat), doing business as BG Plumbing and Heating, Inc. (BG Plumbing), appeals the dismissal under section 2—619 of the Code of Civil Procedure (735 ILCS 5/2—619 (West 2008)) of its complaint to foreclose a mechanic's lien and for

other relief. On appeal, Baat argues that (1) the trial court erred in refusing to allow an amendment to the complaint that would have substituted Brian Gibson, Baat's president and owner, as plaintiff; and (2) the court erred in holding that judicial estoppel barred the suit. We affirm.

On July 17, 2009, plaintiff filed a three-count complaint for foreclosure of a mechanic's lien, damages for breach of contract, and recovery in *quantum meruit*. The complaint alleged the following core facts. Baat, doing business as BG Plumbing, provided construction trade services. Maples owned The Sonatas Planned Development (The Sonatas). Wilcox managed The Sonatas. Elgin State Bank had a mortgage and security interest in the property. On January 22, 2007, Baat and Maples contracted for Baat to provide services for improvements to The Sonatas. On February 20, 2008, Baat completed all the work for a total price of \$123,587.18. On March 28, 2008, Baat recorded a claim for a mechanic's lien against Maples' interest in the property.

Count I of the complaint prayed for an accounting to determine what each defendant owed Baat; a declaration that Baat had a statutory first lien on the property (see 770 ILCS 60/1 *et seq.* (West 2008)); a sale of the property (if necessary) and a judgment for any deficiency; and attorney fees. Count II alleged that defendants breached their contract with Baat. It requested damages of \$123,587.18 plus interest and costs. Count III requested the same sum based on *quantum meruit*.

Maples moved under section 2—619 to dismiss the complaint. The motion had two counts. The first alleged as follows. In September 2008, Baat, along with Kelly's Plumbing & Mechanical, Inc. (Kelly's Plumbing), and Gibson, had filed a complaint (prior complaint) against Maples, Wilcox, and two employees of Wilcox. The prior complaint's first count contained the same claim as the breach-of-contract claim that Baat now raised, and it was dismissed, for want of prosecution, in May 2009. In 2008, Baat filed for bankruptcy, and, shortly afterward, Gibson and his wife Tracy also filed

for bankruptcy. Thus, Baat no longer existed and, even if it did survive, any cause of action that it may have had was now owned by the bankruptcy trustee for either Baat or Gibson. BG Plumbing was incorporated on February 17, 2009, well after the events that gave rise to litigation and only shortly before the prior complaint was dismissed. BG Plumbing filed for bankruptcy in 2009. In their bankruptcy schedules, Baat and Gibson failed to list the present claim as an asset. Once each petition was filed, the debtor's property rights became assets of the bankruptcy estate. Count I asked the court to dismiss BG Plumbing as a plaintiff. (We note that the complaint itself listed only Baat, doing business as BG Plumbing, as a plaintiff.)

Count II realleged the pertinent facts in count I and added the following facts. Baat was dissolved on August 14, 2009. As a legal nonentity, it could not maintain the present action. Also, the filing of Baat's bankruptcy petition meant that any claims that Baat had for accounts receivable, breach of contract, or money due belonged to its trustee. Baat's complaint did not show that the trustee had authorized the filing of a suit by Baat, BG Plumbing, or Gibson as Baat's owner. Count II asked that the complaint be dismissed because (as pertinent here) (1) Baat no longer existed and thus could not sue; and (2) Baat and Gibson had filed for bankruptcy, divesting themselves of the present claims and thus losing standing.

On April 5, 2010, Baat moved to amend the complaint, stating, "BG Plumbing voluntarily withdraws itself," and asking leave to add Gibson as a plaintiff. Also on April 5, 2010, Baat responded to the section 2—619 motion. Baat argued that, although it and Gibson had filed for bankruptcy, the bankruptcy trustees had abandoned the present claims, so that they "passe[d] back to the debtor[s]." Baat alleged that, on December 15, 2008, when it filed for bankruptcy, it listed the present claim on its schedules; later, Baat's trustee abandoned Baat's assets and the case was closed.

Also, Baat alleged, the Gibsons' bankruptcy petition listed Baat as Gibson's corporation and disclosed Baat's bankruptcy, and the trustee there abandoned the present claims (see 11 U.S.C. §554 (2006)). Further, Baat argued, when a corporation is dissolved, its assets pass to the stockholders, so that the present claims passed to Baat and then to Gibson.

Baat's response to the section 2—619 motion attached Baat's bankruptcy petition and schedules; schedules filed in the Gibsons' bankruptcy case; and bankruptcy court records showing that Baat filed its petition on December 15, 2008, that its case was terminated on May 18, 2009, and that the Gibsons filed their petition on February 6, 2009, and were discharged from bankruptcy on May 12, 2009.

In its reply, Maples contended that the record in the bankruptcy proceedings showed that neither Baat nor Gibson had disclosed the existence of the present claims, so that (1) there had been no abandonment and (2) judicial estoppel barred plaintiff from asserting the claims. In response, Baat contended that allowing an amendment to the complaint would not unduly prejudice defendants, as they had always known that Gibson owned Baat. On the issue of judicial estoppel, plaintiff argued that, in the bankruptcy cases, neither Baat nor Gibson had taken positions inconsistent with what Baat now alleged. (Because we do not reach the judicial estoppel issue, we do not summarize the evidence that Maples and Baat presented on it.)

On June 24, 2010, the trial court dismissed the complaint as to all defendants and denied plaintiff's motion to voluntarily dismiss BG Plumbing and add Gibson. The court's order stated that the complaint was dismissed because (1) Baat, as a legal nonentity, could not sue; and (2) judicial estoppel barred the complaint. On June 25, 2010, plaintiff filed a notice of appeal.¹

¹On June 28, 2010, Maples filed a "motion" to void Baat's mechanic's lien and to recover

The trial court dismissed the complaint on two independent bases: (1) Baat lacked standing, as it had been dissolved; and (2) judicial estoppel. Because we affirm on the first ground, lack of standing, we do not decide whether the second ground, judicial estoppel, also supports the judgment.

Under section 2—619(a)(2) of the Code of Civil Procedure, a trial court may dismiss a complaint if the plaintiff lacks the legal capacity to sue. 735 ILCS 5/2—619(a)(2) (West 2008). The trial court did so here, holding that Baat could not maintain this suit, as it had been dissolved in August 2009. On appeal, Baat does not challenge the trial court’s holding; it does not maintain that, after August 2009, it could still pursue the present claims. Thus, Baat has forfeited any contention that it had (or now has) the legal capacity to maintain this suit. See Ill. S. Ct. R. 341(h)(7) (points not argued on appeal are forfeited); *Skolnick v. Alzheimer & Gray*, 191 Ill. 2d 214, 237 (2000) (same).

Instead of challenging the trial court’s holding that it lacked standing to bring this action, Baat contends that the trial court abused its discretion in denying Baat’s motion to substitute Gibson as a plaintiff. Baat cites the general rule that amendments to pleadings should be liberally allowed (*Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 467 (1992)), and it argues that allowing the substitution would not have caused defendants undue surprise or prejudice, given that they had known all along that Gibson was Baat’s president and sole shareholder.

statutory attorney fees. Because the “motion” was actually a separate action that did not seek relief requested in this case, it does not affect our jurisdiction even though it was filed within 30 days after the judgment and requested attorney fees based on the judgment. See *Hartford Fire Insurance Co. v. Whitehall Convalescent & Nursing Home, Inc.*, 321 Ill. App. 3d 879, 886-87 (2001).

We shall not disturb the trial court’s ruling absent an abuse of discretion. *I.C.S. Illinois, Inc. v. Waste Management of Illinois, Inc.*, 403 Ill. App. 3d 211, 219 (2010).² We conclude that the trial court did not abuse its discretion in denying Baat’s motion—and, indeed, would have abused its discretion, if not exceeded its authority, had it granted the motion. Baat admits that, when it moved to amend the complaint, it was a legal nullity—and thus lacked standing to sue. “Where a plaintiff has no standing, the proceedings must be dismissed.” See *Wexler v. Wirtz Corp.*, 211 Ill. 2d 18, 22 (2004). By conceding that it lacked standing, Baat conceded that its action had to be dismissed. Moreover, it follows that a party that may not file a complaint may not *amend* the complaint. The court did not abuse its discretion in refusing relief to a party that admitted its own legal nonexistence.

We note that Baat’s concession that it lacked standing to bring this action in the first instance suggests the interesting question of whether Baat has standing to bring this appeal. However, defendants do not raise this issue, and we need not do so on our own.

The judgment of the circuit court of McHenry County is affirmed.

Affirmed.

²Generally, review of a dismissal under section 2—619 is *de novo*. *John Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393, 396 (2009). Here, though, Baat does not challenge the trial court’s ruling that Baat lacked standing to sue. Instead, it argues only that the trial court abused its discretion in refusing to allow an amendment to the complaint that, Baat contends, would have cured this admitted deficiency. Thus, we review the trial court’s ruling for an abuse of discretion.