

No. 1-11-0616

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
FIRST JUDICIAL DISTRICT

AROY CHEARS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	No. 10 M1 104140
CITY OF CHICAGO COLLECTION AGENCY and)	
FIRSTGROUP AMERICA, INC. a/k/a FIRST)	
STUDENT AMERICA,)	Honorable
)	Laurence J. Dunford,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE QUINN delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where *pro se* complaint asserting erroneous wage garnishment named a non-entity as defendant, that claim was void *ab initio*; the circuit court's dismissal of the complaint was affirmed.
- ¶ 2 Aroy Chears appeals *pro se* the circuit court's dismissal of all claims against the parties named in his complaint, including the "City of Chicago collection agency" and the law firm of Markoff and Krasny. Chears asks that those parties be ordered to return funds that he contends were erroneously obtained by wage garnishment. We affirm.

1-11-0616

¶ 3 In January 2001, the City of Chicago obtained a monetary judgment against Cheers for housing code violations. In October 2006, the City of Chicago filed a wage deduction summons against Cheers' then-employer, Laidlaw Transit Inc., to garnish his pay to satisfy the judgment. The following month, the circuit court stayed the City's action for wage deduction, and in 2007, those proceedings were dismissed pursuant to a settlement.

¶ 4 In April 2008, the city filed another wage deduction summons against Laidlaw Transit Inc., to satisfy the 2001 judgment, and citations to discover Cheers' assets were issued. Cheers filed a motion in which he denied owning the property that was the subject of the 2001 judgment and filed a motion to stay the garnishment proceedings. Cheers appealed an order continuing those proceedings, and this court dismissed that appeal as not being brought from a final judgment or order. *Chears v. City of Chicago, Robert Markoff and James Krasny*, No. 1-09-2217 (2010) (unpublished order under Supreme Court Rule 23). In 2009, the wage deduction from Laidlaw was dismissed and the City of Chicago was granted leave to file wage deduction proceedings with a different employer, FirstGroup America, also known as First Student America.

¶ 5 On January 20, 2010, Cheers filed the *pro se* complaint that has led to this appeal, listing FirstGroup America and the "City of Chicago collection agency" as defendants, and alleging that he was defrauded and seeking \$15,000 in damages. Cheers asserted no deductions should be taken from his wages because he owed no money to the City. FirstGroup America moved to dismiss the complaint, stating that it was complying with a wage deduction order entered by the circuit court in March 2009 and could not be held liable to Cheers for following a valid garnishment order. The claims against FirstGroup America were dismissed with prejudice.

¶ 6 On May 14, 2010, the circuit court heard Cheers' motion for a default judgment against the "City of Chicago collection agency" and ordered that the "defendant, City of Chicago, is held in default with prove-up at arbitration."

1-11-0616

¶ 7 The law firm of Markoff and Krasny was granted leave to file an appearance for the "City of Chicago collection agency." In September 2010, the court assigned the case to mandatory arbitration. At a point that is unclear from the record, an arbitration date of February 8, 2011, was set.

¶ 8 On February 4, 2011, Markoff and Krasny filed an emergency motion to quash service and strike Cheers' complaint pursuant to section 2-401 of the Code of Civil Procedure (735 ILCS 5/2-401 (West 2010)) and to strike the scheduled February 8 arbitration date. An attorney for Markoff and Krasny asserted in the motion that although that law firm represented the City of Chicago, the "City of Chicago collection agency" was a non-existent entity and any proceedings against "the City of Chicago collection agency" were thereby void.

¶ 9 On February 7, 2011, the circuit court dismissed Cheers' claims against all parties, including the "City of Chicago collection agency," which the court held was "a non-entity." The court also struck the scheduled February 8, 2011, arbitration. The court's order stated that "due notice" was given. On February 17, 2011, Cheers filed a *pro se* notice of appeal.

¶ 10 We have ordered that this appeal be taken for consideration on the record and Cheers' brief only. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 62 Ill. 2d 128, 133 (1976) (such review is allowable if record is simple and errors can be considered without additional briefing). Cheers' *pro se* brief is his second attempt to present his claims to this court in written form. His initial brief, filed with this court on July 8, 2011, was stricken for its failure to conform to Supreme Court Rule 341 (eff. July 1, 2008) in numerous respects, including the absence of a jurisdictional statement or a statement of the issue presented. That brief also lacked references to the record on appeal and citations to case law.

¶ 11 Cheers' second appellate brief, which we now consider, consists of an extended recitation of facts devoid of any citation to legal authority in support of his position. Cheers has failed to correct most of the shortcomings asserted by the court in striking his initial filing. A *pro se*

1-11-0616

litigant is held to the same standards as a litigant represented by an attorney (*In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009)), and an appellant is not permitted to "foist the burden of argument and research" onto this court. *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993). Nevertheless, this court may consider the facts and allegations where they can be reasonably discerned and where the record is straightforward. See *In re Marriage of Betts*, 159 Ill. App. 3d 327, 330-31 (1987).

¶ 12 By filing this appeal, Cheers apparently seeks to continue his fraud action against the "City of Chicago collection agency." We observe that Cheers stated in his notice of appeal to this court that he appeals the circuit court's order of February 15, 2011. The record does not contain any order entered on that date. On February 7, 2011, in response to the emergency motion filed by Markoff and Krasny, the circuit court dismissed all claims against all of the parties named in Cheers' complaint, including the "City of Chicago collection agency."

¶ 13 Cheers contends he did not receive notice that the February 8, 2011, arbitration had been cancelled and his complaint dismissed. Parties who have properly appeared in an action are entitled to notice of any impending motions or hearings. *Suriano v. Lafeber*, 386 Ill. App. 3d 490, 494 (2008). Included in the record is a notice of the emergency motion stating that on February 4, 2001, Markoff and Krasny mailed notice of the emergency motion to Cheers at one of two Bolingbrook addresses that Cheers had listed on previous court filings.

¶ 14 That timeline does not appear to have complied with the requirements for service by mail. Pursuant to Supreme Court Rule 12(c), service by mail is completed four days after mailing. Ill. S. Ct. R. 12(c) (eff. Dec. 29, 2009). That four-day period is calculated by excluding the day on which the notice is mailed and including the following four days after the notice is mailed. *Royal Insurance Co. of America v. Insignia Financial Group, Inc.*, 323 Ill. App. 3d 58, 63 (2001). Therefore, under the requirements of service by mail, service of the notice of motion to Cheers was not complete until February 8, the day after the emergency motion was heard.

1-11-0616

¶ 15 However, to sue or be sued, a party to litigation must have a legal existence, either natural or artificial. *Jackson v. Village of Rosemont*, 180 Ill. App. 3d 932, 937-38 (1988) (holding that the Rosemont Horizon was a building operated by the Village of Rosemont and not a legal entity subject to being sued). Because the "City of Chicago collection agency" does not exist, Cheers' legal proceedings against that fictional entity are void *ab initio*. See *Barbour v. Fred Berglund & Sons, Inc.*, 208 Ill. App. 3d 644, 650 (1990).

¶ 16 Accordingly, the judgment of the circuit court is affirmed.

¶ 17 Affirmed.