

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).

2012 IL App (4th) 110938-U

Filed 7/3/12

NO. 4-11-0938

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

CASTLEBUILT HOMES, INC.,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
CANAMBO, LLC, an Illinois Limited Liability Company,	)	No. 10AR378
Defendant-Appellant.	)	
	)	Honorable
	)	Lee Ann S. Hill,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.  
Justices McCullough and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding that the trial court did not err by denying the appellant postarbitration motion for leave to file a counterclaim, noting that the record was simple and the issue could be easily decided without the aid of an appellee brief.

¶ 2 In June 2010, plaintiff, Castlebuilt Homes, Inc. (Castlebuilt), filed a complaint—which proceeded to mandatory arbitration—alleging breach of contract against defendant, Canambo, LLC (Canambo), an Illinois limited liability company, seeking to recover fees in contract and *quantum meruit* for construction it had completed for Canambo. In March 2011, arbitrators ruled in Castlebuilt's favor. Canambo rejected that ruling, which it was entitled to do under the local rules governing mandatory arbitration. 11th Judicial Cir. Ct. R. 106(L) (eff. Feb. 27, 2007) (citing Ill. S. Ct. R. 93 (eff. Jan. 1, 1997)). In May 2011, Canambo filed a motion for leave to file a postarbitration counterclaim.

¶ 3 In July 2011, the trial court denied Canambo's motion for leave to file a counterclaim, finding that Canambo was merely using the postarbitration counterclaim as a mechanism to continue discovery.

¶ 4 Canambo appeals, arguing that the trial court erred by rejecting its motion to file a postarbitration counterclaim.

¶ 5 Castlebuilt has not filed an appellee brief.

¶ 6 Because the record is simple and the issue can be easily decided without the aid of an appellee brief, we affirm the trial court's judgment.

¶ 7 I. BACKGROUND

¶ 8 In November 2009, Castlebuilt, a subcontractor, entered into a construction contract with Canambo to complete certain renovation work at a nightclub. When Castlebuilt completed the construction work, a dispute arose between the parties as to the cost of certain "extras."

¶ 9 In June 2010, Castlebuilt filed a complaint, asserting breach of contract and seeking to recover fees for the "extras" in contract and *quantum meruit*. Pursuant to local court rules, which were established under Illinois Supreme Court Rule 86 (eff. Jan. 1, 1994) ("Mandatory arbitration proceedings shall be undertaken and conducted in those judicial circuits which \*\*\* elect to utilize this procedure"), Castlebuilt's suit proceeded to mandatory arbitration. See 11th Judicial Cir. R. 106 (adopted eff. Aug. 1, 2006; amended eff. Feb. 27, 2007). In March 2011, arbitrators ruled in Castlebuilt's favor. Canambo rejected that ruling, which it was entitled to do under the rules established by the circuit court to govern mandatory arbitration. In May 2011, Canambo filed a motion for leave to file a counterclaim. Canambo's motion for leave to

file a postarbitration counterclaim stated, as its rationale for filing a counterclaim, that it was seeking "to conform the [p]leadings to the evidence and ask[ing] the [c]ourt for damages based on th[ose] facts." Castlebuilt responded by explaining, as follows:

"On May 26, 2011, Defendant filed its Motion for Leave to File Counterclaim alleging that a counterclaim is now necessary in order to conform the pleadings to the evidence[.] [H]owever, Defendant has not stated what new evidence is now available making a counterclaim necessary. Furthermore, the Motion for Leave does not have a potential counterclaim attached to it as is customary in this motion process and, therefore, Defendant has failed to identify what cause of action it now has against the Plaintiff that it did not have a year ago."

¶ 10 Following a June 2011 hearing on Canambo's motion, the trial court entered a written order, denying Canambo's motion to file a counterclaim. As part of its written order, the court found as follows:

"In this cause[,] the response by the Defendant was a very basic answer denying liability for the claim. Never was the issue of an affirmative defense or counter[ ]claim mentioned at any time prior to the motion hearing on June 17, 2011, almost 1 year from the time this cause was filed. The court believes that allowing a counter[ ]claim at this time with no prior indication by the defendant of a possible claim serves only to encourage the use of

Arbitration as a deposition and[/]or discovery device.

If the defendant believed at [any time] throughout this process that there existed an affirmative defense or counter[]claim there was ample time to file either. This Court understands that there are times when not asserting the counter[]claim is a matter of strategy, especially when the extent of damages is unknown, but it should not come as a total surprise to the parties when there exists no evidence that the defendant was even aware [of] any type of claim prior to the Arbitration. That is not strategy[,] it is discovery."

¶ 11 This appeal followed.

## ¶ 12 II. CANAMBO'S APPEAL

¶ 13 Canambo argues that the trial court erred by rejecting its motion to file a post-arbitration counterclaim. Castlebuilt, however, has not filed an appellee brief. Because the record is simple and the issue can be easily decided without the aid of a brief from Castlebuilt, we affirm the trial court's judgment.

### ¶ 14 A. The Impact of Castlebuilt's Failure To File an Appellee Brief

¶ 15 In *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976), the supreme court explained the options a reviewing court may exercise when an appellee fails to file a brief, as follows:

"We do not feel that a court of review should be compelled to serve as an advocate for the appellee or that it should be required

to search the record for the purpose of sustaining the judgment of the trial court. It may, however, if justice requires, do so. Also, it seems that if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal. In other cases[,] if the appellant's brief demonstrates *prima facie* reversible error and the contentions of the brief find support in the record[,] the judgment of the trial court may be reversed."

¶ 16 Put another way, the supreme court has set forth three distinct, discretionary options a reviewing court may exercise in the absence of an appellee's brief: (1) it may serve as an advocate for the appellee and decide the case when the court determines justice so requires, (2) it may decide the merits of the case if the record is simple and the issues can be easily decided without the aid of the appellee's brief, or (3) it may reverse the trial court when the appellant's brief demonstrates *prima facie* reversible error that is supported by the record. *Thomas v. Koe*, 395 Ill. App. 3d 570, 577, 924 N.E.2d 1093, 1098-99 (2009).

¶ 17 B. Canambo's Claim That the Trial Court Erred

¶ 18 As previously stated, a reviewing court may decide the merits of the case if the record is simple and the issues can be easily decided without the aid of an appellee brief. *Talandis Construction Corp.*, 63 Ill. 2d at 133, 345 N.E.2d at 495. Here, Canambo's claim is that the trial court erred by rejecting its motion to file a postarbitration counterclaim. 735 ILCS 5/2-616 (West 2010). Although counterclaims are generally liberally allowed, a trial court has discretion to deny a party's motion to allow a counterclaim when the defendant would be

prejudiced or surprised. See *National Educational Music Co., Ltd. v. Rieckhoff*, 292 Ill. App. 3d 260, 263-64, 684 N.E.2d 1084, 1087 (1997) (finding no abuse of discretion where the theory of the counterclaim was different from the party's previous theory of the case). Moreover, a party may not file a counterclaim for the sole purpose of utilizing the arbitration process for discovery. *Marsh v. Nellessen*, 235 Ill. App. 3d 998, 1002-03, 602 N.E.2d 90, 93 (1992). When, as here, a trial court denies a motion to file a counterclaim, our review is for an abuse of discretion. See *National Educational Music Co., Ltd.*, 292 Ill. App. 3d at 263-64, 684 N.E.2d at 1087.

¶ 19 In this case, Canambo asserted that the trial court erred by rejecting its motion to file a postarbitration counterclaim. Canambo posits in his brief to this court that the court erred because its counterclaim was "based on facts that had been asserted *prior* to arbitration." (Emphasis in original.) But that is not an accurate depiction of Canambo's motion to file a counterclaim. Canambo merely alleged in its motion that it was seeking "to conform the [p]leadings to the evidence and ask[ing] the [c]ourt for damages based on th[ose] facts." Canambo, however, never explained to the trial court what those facts were. Indeed, the plain language of Canambo's motion appeared to indicate that it was actually seeking additional discovery. Under these circumstances, we reject Canambo's invitation to conclude that the trial court erred by denying its motion to file a counterclaim.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we affirm the trial court's judgment.

¶ 22 Affirmed.