2013 IL App (1st) 112942-U

SECOND DIVISION
March 19, 2013

No. 1-11-2942

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DIVISION COURT CONDOMINIUM ASSOCIATION,	)	Appeal from the Circuit Court of Cook County
Plaintiff-Counterdefendant,	)	
v.	)	No. 05 CH 12351; consolidated with No. 05 CH 16128
K3H CORPORATION,	)	The Honorable Michael R. Panter and Mary L. Mikva, Judges Presiding.
Defendant-Counterplaintiff.	)	

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Quinn and Simon concurred in the judgment.

ORDER

¶ 1 ***Held***: We dismiss the appeal for lack of standing where Jerome Cedicci was not a party to the proceedings before the trial court, and he does not show how he was prejudiced by the trial court's judgment below.

¶ 2 Jerome Cedicci, owner and sole shareholder of defendant K3H Corporation (K3H),

appeals the order of the circuit court granting summary judgment in favor of plaintiff Division Court Condominium Association (DCCA) on DCCA's first-amended complaint and on K3H's third-amended counter-complaint, which was consolidated with DCCA's complaint. On appeal, Cedicci alleges (1) the trial court erred in granting summary judgment on DCCA's first amended complaint; (2) the trial court erred in granting summary judgment in favor of DCCA on K3H's third amended complaint; (3) the attorney fees awarded DCCA were unreasonable.[1] For the following reasons, we dismiss this appeal for lack of standing.

¶ 3 JURISDICTION

¶ 4 The trial court entered its judgment in favor of DCCA on September 1, 2011. Cedicci filed a notice of appeal on October 3, 2011. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 governing appeals from final judgments entered below. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

¶ 5 BACKGROUND

¶ 6 Plaintiff DCCA is the incorporated association of unit owners for real estate located at the southwest corner of Division and Wells streets. The real estate includes a three-story brick building containing 28 residential units, five storefront units and a parking garage. Defendant K3H owned two adjacent storefront units in the building (units 1151 and 1155). The front yardage of these units is a common element of the condominium legally owned by all unit

[1]Although the notice of appeal references the September 1, 2011, judgment of foreclosure and sale, K3H does not address this order in its appellate brief. Points not argued on appeal are deemed waived. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008).

owners as tenants in common. The governing declaration of condominium prohibits "alteration of any Common Elements or any additions or improvements thereto *** without the prior written approval of the Board." In addition, the Chicago Municipal Code §§ 13-32-10, 13-32-120 (Sept. 12, 2012), requires city approval of construction plans and the issuance of building permits prior to "the erection, enlargement, alteration, repair, removal, or demolition of any building, structure, or structural part thereof within, or subject to the jurisdiction of, the city."

¶ 7 In 2004, K3H decided to remove part of the common element brick exterior facade of its units, and install a new facade made of wood with glass windows and a door (buildout). The buildout incorporated approximately 400 square feet of the common element front yardage. On March 17, 2004, K3H applied for and obtained a 6-month permit from the city of Chicago to "repair existing wood on facade." In September, 2004, the president of DCCA, Conor Casey, noticed work being performed on the exterior of the condominium building. Casey was not aware of any planned construction on the building so he contacted K3H's owner and sole shareholder, Jerome Cedicci.

¶ 8 On October 6, 2004, counsel for DCCA sent Cedicci a letter reminding him that construction on any of the common elements "would be illegal and is unauthorized." On November 11, 2004, DCCA's counsel sent another letter to Cedicci, reiterating its concern with his construction project and its belief that he was also violating the Code. The letter informed Cedicci that his violations subject him to "monetary fines assessable by the condominium association, as well liability [*sic*] for all attorneys fees incurred by the Association in enforcing the Declaration, and further the Association has a lien upon and right to possession of the unit if

such charges are unpaid." According to Casey's affidavit, K3H continued construction despite the warnings. The parties agree that the buildout of the common area was completed prior to January 31, 2005.

¶ 9 Counsel for DCCA and K3H met to negotiate the issue from January to March of 2005. On March 24, 2005, the DCCA board held a meeting which Cedicci attended. At the meeting, the parties planned to discuss the buildout issue, as well as the potential lease of the units by 7-Eleven, Inc. No transcript of the meeting is contained in the record. However, both Cedicci and Casey gave depositions. In his deposition, Cedicci stated that at the meeting, the board and Cedicci agreed that K3H would pay rent for the common area taken by the buildout of units 1151 and 1155. He also stated that the board consented to the installation of the facade. Cedicci testified that he was approached by a broker about the lease, and in 2003 he decided to lease his properties to 7-Eleven. K3H and 7-Eleven signed a building lease on March 25, 2005.

¶ 10 Casey stated in his deposition that although the meeting was "constructive," it failed to resolve many remaining complex issues. He also stated that "[a]t no time have I ever orally agreed to or promised Jerome Cedicci or any other representative of plaintiff/defendant K3H Corp. a lease of common area of the Division Court condominium." Furthermore, "[a]t no time has K3H tendered any rent to the Association for the lease agreement it claims."

¶ 11 On June 24, 2005, counsel for DCCA sent a letter to Cedicci with a "proposed very complex lease and license agreement necessary to resolve this situation." The letter stated that "[s]ettlement is of course still subject to formal board vote and reaching mutual agreement on the many terms involved." DCCA did not sign the agreement. The next day, Casey read a story in

the Chicago Sun-Times about allegations that Cedicci had improperly obtained another city building permit, resulting in the resignation or termination of three city officials as well as the removal of two members of the mayor's cabinet. DCCA subsequently obtained documents from the city showing that K3H had only applied for a permit to "repair existing wood on facade" and that the erection of an exterior wood facade on a fire resistant masonry building was an incurable code violation.

¶ 12 On July 25, 2005, DCCA filed its complaint seeking restoration of the units at K3H's expense. Count I requested a finding that the buildout was a violation of the declaration of condominium, count II sought a private cause of action to enforce the Code, and count III sought foreclosure to enforce DCCA's statutory lien for the resulting expenses, fines and attorney fees. On September 21, 2005, K3H filed its action seeking equitable relief and damages for tortious interference with its contractual and business relationships. K3H's claim was subsequently consolidated with DCCA's claim.

¶ 13 In May, 2006, the city inspected the buildout and formally revoked K3H's permit for erecting "combustible wood facade on masonry building, contrary to repair permit." On October 11, 2006, the city filed its complaint seeking removal of the facade and restoration of the premises. The municipal court ordered K3H to restore the premises. The court made a finding of compliance on September 4, 2008, with the premises restored, and imposed a punitive $10,000 fine on K3H for violating the Code.

¶ 14 DCCA filed a motion for summary judgment on October 8, 2008, on the consolidated claims. The trial court granted summary judgment in favor of DCCA on all counts of K3H's

claims, and on counts I and II of its complaint. The court denied summary judgment on count III. Pursuant to DCCA's motion to reconsider, the trial court subsequently found that DCCA's lien had priority and on October 19, 2010, the court entered judgments in favor of DCCA on its lien claims (count III). DCCA then filed an itemized verified petition for attorneys fees and on July 6, 2011, the trial court conducted an evidentiary hearing and awarded DCCA a net amount of $246,019.30. On September 1, 2011, judgment of foreclosure of sale was entered on count III of DCCA's complaint. Cedicci filed this timely notice of appeal.

¶ 15 ANALYSIS

¶ 16 As an initial matter, we address DCCA's argument that Cedicci lacks standing to appeal the trial court's orders below. DCCA argues that Cedicci was not a party to the trial court proceedings, and therefore has no standing to bring this appeal. The doctrine of standing "assures that issues are raised only by those parties with a real interest in the outcome of the controversy." *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999). However, nonparties have standing to file an appeal if they can demonstrate "a direct, immediate and substantial interest in the subject matter of the litigation which would be prejudiced by the judgment or benefit by its reversal." *St. Mary of Nazareth Hospital v. Kuczaj*, 174 Ill. App. 3d 268, 271 (1988). The nonparty must show how they were prejudiced by the trial court's ruling. *Powell v. Dean Foods Company*, 2012 IL 111714, ¶ 39. The fact that a judgment has been entered against the nonparty is not sufficient to establish prejudice. *Id.*

¶ 17 The recently decided *Powell* case is instructive in our determining whether prejudice has been established. There Jamie Reeves, Alco of Wisconsin, Inc. (Alco of Wisconsin), Dean

Illinois Dairies, LLC (Dean Illinois), Alco, Inc. (Alco), Dean Foods Company (Dean), and Alder Group, Inc. (Alder) were named as defendants in a negligence action. Subsequently, Alco of Wisconsin, Dean Illinois, Alco, and Dean moved *ex parte* for a change of judge as of right pursuant to section 2-1001(a)(2)(I) of the Code of Civil Procedure (735 ILCS 5/2-1001(a)(2) (West 2006)). Defendant Alco took a change as of right from Judge Patricia Banks. *Id*. at ¶¶ 5, 10. Plaintiffs filed a motion to reconsider the order granting Alco's substitution of judge, alleging that Alco and Alco of Wisconsin were alternative names for the same entity and therefore, the same party used two names to get two substitutions as of right when it was entitled to only one such substitution. *Id*. at ¶ 11. Defendants agreed, stating that the motion on behalf of Alco was filed inadvertently and Judge Banks granted the motion to reconsider. *Id*. at ¶ 12. Defendant Alder then presented its motion for substitution of judge as of right from Judge Banks. The judge denied the motion, finding that the trial court had made a substantial ruling on a substantive issue when it vacated the order of substitution as to Alco. *Id*. at ¶ 13.

¶ 18 After a trial was held, the jury found in favor of plaintiffs and against all defendants. Defendants filed a posttrial motion alleging that the trial court erred in denying Alder's motion for substitution of judge, and the court denied the motion. *Id*. at ¶ 15. Defendants appealed, arguing that the trial court erred in denying Alder's motion for substitution of judge as a matter of right, and that all orders entered in the case after the error were void. *Id*. at ¶ 16. The appellate court agreed with defendants, and also held that all defendants had standing to challenge the denial of Alder's motion for substitution " 'and all subsequent orders following the improper denial of Alder Group's motion for substitution of judge are void as to all parties.' [Internal

citations omitted.]"

¶ 19 The supreme court disagreed, holding that all defendants did not have standing to challenge the denial of Alder's motion for substitution from Judge Banks. It found that defendants Dean, Alco and Reeves were asserting a claim on appeal based on the rights of Alder rather than asserting their own claims. Alco and Dean had no right to appeal the denial from Judge Banks because they had already sought and obtained a substitution of judge from Judge Susan Zwick and Judge James M. Varga, respectively. Reeves never sought a substitution of judge as of right. "[I]n order to show prejudice, defendants would have to show that they had a right to substitution from Judge Banks." *Id*. at ¶ 42. Since Alco, Dean and Reeves cannot show they had a right to substitution from Judge Banks, they have no standing "to challenge the trial court's order denying Alder Group's motion for substitution of judge as of right." *Id.*

¶ 20 Likewise Cedicci is asserting a claim on appeal based on the rights of K3H and fails to show or even argue prejudice. He is not listed as a party in DCCA's first amended complaint, K3H's third amended complaint, or DCCA's renewed motion for summary judgment.[2] As a nonparty, Cedicci must show how he was prejudiced by the trial court's ruling in order to have standing to appeal. *Id*. Cedicci makes no such argument on appeal. Instead, he argues that relevant pleadings and objections were jointly filed by K3H and Cedicci. However, the only

[2]In fact, DCCA argues in its brief that although Cedicci was listed as a party on DCCA's initial complaint, he was never served and DCCA subsequently dropped him from the amended complaint. See *Redelmann v. Claire Sprayway, Inc.*, 375 Ill. App. 3d 912, 926 (2007) ("an amendment that is complete in itself, which does not refer to or adopt a prior pleading, supercedes it, and the original pleading ceases to be a part of the record, being in effect abandoned or withdrawn. [Internal citations omitted.]").

document on which Cedicci's name appears is a March 12, 2009 response to DCCA's motion for summary judgment. As discussed above, none of the amended complaints show Cedicci as a party. Furthermore, the trial court's opinion on the motion does not list Cedicci as a party. Having failed to show or argue that he had the rights of K3H and thereby suffered prejudice, we find that Cedicci has waived consideration of whether he has standing to appeal as a nonparty. (See Ill. S. Ct. R. 341(h)(7), which provides that "[p]oints not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing.")

¶ 21 Cedicci also states without further argument that "[t]his Court can take judicial notice of the Secretary of State's public record stating that K3H Corporation was dissolved by the Secretary of State on May 13, 2011. Pursuant to Supreme Court Rule 366(a)(2), appellant intends to file a motion for substitution and/or addition of parties." The cases Cedicci cites do not support his argument. (See *Vincent v. Department of Human Services*, 392 Ill. App. 3d 88 (2009) (does not involve a corporate dissolution); *U.S. Air, Inc. v. Prestige Tours, Inc.*, 159 Ill. App. 3d 150 (1987) (record showed that there was an assignment of the dissolved corporation's cause of action to another party); and *Air Line Stewards & Stewardesses Assn. v. Quinn*, 35 Ill. 2d 106 (1966) (involved an action against the officers of an unincorporated labor union)).

¶ 22 Cedicci's bare argument without support violates Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008), which provides that arguments "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Furthermore, the record does not contain a copy of the Secretary of State's record dissolving K3H (although a copy is found in appellee DCCA's appendix to its brief), nor is there any indication

that Cedicci has filed a motion for substitution and/or addition of parties.[3] We therefore dismiss this appeal for lack of standing.

¶ 23 For the foregoing reasons, this appeal is dismissed for lack of standing.

¶ 24 Appeal dismissed.

[3]Cedicci, however, had filed a motion to amend the notice of appeal on November 2, 2011, after the 30-day period allowed to file such notice, and this court in its discretion denied the motion.