

No. 1-12-3805

**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

SHORELINE PARK CONDOMINIUM ASSOCIATION, an Illinois not-for-profit corporation,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
v.	)	
SONIA ALFISCAR and UNKNOWN OCCUPANTS,	)	
Defendants-Appellants.	)	
<hr/>		No. 11 M1 726141
SONIA ALFISCAR and LEONARD WISE,	)	
Counterplaintiffs-Appellants,	)	
v.	)	
SHORELINE PARK CONDOMINIUM ASSOCIATION, an Illinois not-for-profit corporation,	)	Honorable Leonard Murray, Judge Presiding.
Counterdefendant-Appellee.	)	

JUSTICE CUNNINGHAM delivered the judgment of the court.  
Presiding Justice Connors and Justice Hoffman concurred in the judgment.

**ORDER**

¶ 1 *Held:* Summary judgment for condominium association in forcible entry action for unpaid assessments and parking and utility charges of unit owner was proper, as unit owner admitted in discovery that such charges were proper. Striking of unit owner's counterclaim for damages and accounting was correct, as such a counterclaim is not proper in a forcible entry action.

¶ 2 Defendant and counterplaintiff Sonia Alfiscar (Sonia) appeals *pro se* from an order of the

circuit court of Cook County, granting summary judgment for plaintiff Shoreline Park Condominium Association (Shoreline) in its forcible entry and detainer action for possession of Sonia's residential condominium unit located at 4970 North Marine Drive in Chicago, Illinois, for \$7,675.87 in unpaid assessment, utilities and valet parking fees, and for \$9,035.54 in attorney fees and costs. Sonia contends that summary judgment in favor of Shoreline was erroneous. Both Sonia and counterplaintiff Leonard Wise (Leonard)<sup>1</sup> argue that the circuit court's earlier order striking their counterclaim was erroneous.

¶ 3 In November 2011, Shoreline filed a complaint alleging that it and the premises in question were subject to the Condominium Property Act (Act) (765 ILCS 605/1 *et seq.* (West 2010)), that Sonia was a unit owner who owed Shoreline \$4,843.64 for unpaid assessment fees, plus attorney fees and costs, "and additional assessments accruing each month," and that a notice regarding the amount in arrear was sent to Sonia on September 13, 2011. Shoreline thus sought recovery of that sum as well as possession of Sonia's condominium unit. The notice, which was dated September 13, 2011 and attached to the complaint, indicated that Sonia owed as of that date "\$3,729.26 for [her] proportionate share of the expenses of administration, maintenance, and repair on the common elements and/or any outstanding fines and the costs, expenses, and attorneys' fees." Also attached to the complaint was a portion of the condominium association declaration, which set forth Shoreline's right to collect assessment fees from the condominium tenants and the tenants' obligations to pay such assessment fees.

¶ 4 In February 2012, Sonia appeared on her own behalf, as well as for Leonard as occupant or tenant of her unit. In her verified answer, Sonia alleged that Shoreline "was formed as a criminal

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<sup>1</sup>Leonard and Sonia filed a joint *pro se* brief before us on appeal. Although several of Sonia's pleadings in the circuit court characterized Leonard as a "defendant" in the instant forcible entry detainer action, Leonard had not been named as a defendant in Shoreline's action. However, it appears from the record that Leonard and Sonia did file a joint counterclaim against Shoreline, seeking "accounting" and "dissolution of Shoreline as a not-for-profit corporation."

organization which pretends to be legal and non-profit" and "conspired to falsify documentation" so as "to extort property and money from unsuspecting honest real estate purchasers," but that "no legal condominium exists, so there is no way [Shoreline] can exist without the criminal organizations and people they hire." After alleging various improprieties in the sale and conveyance of the premises, the election of the board, and the management of the premises, she alleged in relevant part that the sums allegedly owed by her (and other unit owners) "have never been documented except by fraudulent accounting spreadsheets which clearly showed monies were received and 'laundered' through my account." The answer alleged that Shoreline has no standing to bring the instant action.

¶ 5 Subsequently, Sonia and Leonard filed a counter-complaint against Shoreline, seeking "accounting" and "dissolution of Shoreline as a not-for-profit corporation."<sup>2</sup> In May 2012, Shoreline filed a motion to strike Sonia and Leonard's counterclaim (motion to strike). The record is devoid of a copy of the counter-complaint, but Shoreline's motion to strike alleged that Sonia and Leonard "seek[] monetary damages in the amount of \$40,235.65, an account and dissolution of Shoreline as a not-for-profit corporation." Shoreline argued that, while the counterclaim alleged fraud and other wrongdoing by the developer that established the condominium, this was not germane to whether Sonia had unpaid assessments and fees entitling Shoreline to possession of her condominium unit, which is the issue presented by Shoreline's forcible entry action.

¶ 6 In response to the motion to strike, Sonia and Leonard argued that Shoreline had, contrary to Sonia's discovery request, provided only one unsigned copy of the condominium association declaration, and that Shoreline had failed to provide copies of any existing amendments to the condominium association declaration. They argued that the developer of the property in question committed fraud and other wrongdoing in board elections and in the management of the premises.

¶ 7 On June 11, 2012, the circuit court granted Shoreline's motion to strike the counterclaim,

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<sup>2</sup>It is unclear when Sonia and Leonard filed a counterclaim against Shoreline.

while noting that "[Sonia] may raise question of payment as an affirmative defense."

¶ 8 In October 2012, Shoreline filed a motion for summary judgment, arguing that it was a properly-constituted condominium association under the Act and the condominium association declaration, that its account showed that Sonia owed \$2,503.19 as of July 26, 2011, that it sent notice to Sonia as required in a forcible entry action, and thus, it was entitled to possession of Sonia's condominium unit. Shoreline stated that, in another action between Shoreline and Sonia (Case No. 10 M1 702465), the circuit court had found that Sonia's "occupant ledger" pertaining to her condominium unit had a balance of \$0 as of January 31, 2011, and that Sonia's answers to interrogatories in the instant case failed to identify any payments for assessment fees, valet parking fees, or utilities charges that she made subsequent to January 31, 2011, even though Sonia admitted that such charges were properly assessed. Shoreline stated that Sonia now owed \$17,824.31, consisting of \$6,624.01 for unpaid assessment fees, \$955.33 for valet parking fees, \$96.43 for utilities, \$450 for failure to install a municipally-required "door-closure apparatus," \$950 in late fees at a monthly rate of \$50, and \$8,784.54 in legal fees.

¶ 9 Attached to the motion for summary judgment was a copy of the forcible-entry notice and an unsigned copy of Shoreline's condominium association declaration and bylaws. Also attached to the motion was a circuit court order in Case No. 10 M1 702465, stating that the case was dismissed with prejudice, and "[Sonia's] occupant ledger as of January 31, 2011 is at a zero balance." Also attached to the motion were Sonia's answers to interrogatories in the instant action. In Sonia's answers to interrogatories, in response to questions asking her to identify any payments she made to Shoreline on assessment fees, valet parking fees, or electricity expenses since January 1, 2011, she answered that "it is unknown how payments and credits have been posted to [her unit's account] regarding any credits or offsets or benefits due to total control of the records maintained by [Shoreline]" so that "we have no idea how any accounting and/or offsets have been provided since 1 January 2011." When asked to identify charges she believed to be improperly imposed by

Shoreline since January 1, 2011, she replied: "All except unit assessment, valet parking, and electricity."

¶ 10 Also in October 2012, Sonia moved to reinstate her counterclaim (motion to reinstate counterclaim), arguing that for various reasons stated therein her condominium account or ledger with Shoreline was fraudulent or otherwise unreliable. On October 17, 2012, the circuit court denied the motion to reinstate counterclaim, and directed Shoreline to "provide copies of the notice of board meeting and minutes of meetings showing approval of 2011-12 assessments and related fees."

¶ 11 In response to the motion for summary judgment, Sonia argued that Shoreline "[did not] maintain ledger with proper accountability," withheld "key documents" until October 17, 2012, and "[was] being run in criminal fashion." The latter allegation was supported by a copy of selected portions of the Act, including section 19 of the Act (765 ILCS 605/19 (West 2010)), which required a condominium board to maintain and make available certain records.

¶ 12 On November 28, 2012, the circuit court granted summary judgment in favor of Shoreline. It issued, but then stayed, an order of possession of Sonia's condominium unit. Shoreline was awarded \$6,624.01 in unpaid assessment fees, \$955.43 in unpaid valet parking fees, and \$96.43 for unpaid utilities fees, all of which were unpaid up to October 12, 2012. The circuit court then set a briefing schedule on Shoreline's fee petition which was tendered in open court.

¶ 13 Sonia filed a response to the fee petition, arguing that the court should deny the petition and reinstate her counterclaim because the case was based on the "fraud" of an "unsigned declaration," the court was aware of Shoreline's property manager's "inability to keep proper records and documents," and the court abused its discretion by accepting "false documents and tainted testimony from [Shoreline]." On December 19, 2012, the circuit court granted the fee petition, awarding Shoreline \$7,300 in attorney fees and \$1,735.54 in costs. This appeal timely followed.

¶ 14 As a preliminary matter, we note that Shoreline asks us to dismiss this appeal as Sonia and Leonard have failed to comply with various Supreme Court Rules governing civil appeals. We agree

that Sonia and Leonard have violated Supreme Court Rule 312 (eff. Jan. 17, 2013), by not filing a docketing statement, and that their brief fails to comply with Rule 341(c) and (h) (eff. Feb. 6, 2013) governing the organization of appellate briefs and requiring a signed appellant certification of compliance with Rule 341. However, failure to comply with Rules 312 or 341 does not affect our jurisdiction to consider the case. *In re Marriage of Debra N. and Michael S.*, 2013 IL App (1st) 122145, ¶ 44. Because the issues in this appeal can be ascertained from the record and briefs, we shall consider this appeal on the merits.

¶ 15 We also agree that Sonia and Leonard have failed to provide a transcript or appropriate substitute (Ill. S. Ct R. 323 (eff. Dec. 13, 2005)) for any of the hearings or proceedings in the instant case, including the hearing on the motion for summary judgment. The record also contains no copy of Sonia and Leonard's counter-complaint. Sonia and Leonard are obligated to provide a sufficiently complete record of the trial court proceedings to support their claims of error, so that we must presume in the absence of such a record that the court's orders conformed to the law and had a sufficient factual basis. *In re Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 422 (2009). Conversely, our review is not precluded by the absence of transcripts where the record contains that which is necessary to dispose of the issues raised under the applicable standard of review. *Midwest Builder Distributing, Inc. v. Lord & Essex, Inc.*, 383 Ill. App. 3d 645, 655 (2007).

¶ 16 On appeal, Sonia and Leonard contend that summary judgment in favor of Shoreline and the court's striking of their counterclaim were erroneous.

¶ 17 Under Article IX of the Code of Civil Procedure (Code)(735 ILCS 5/9-101 *et seq.* (West 2010)), governing actions for forcible entry and detainer, such an action may be brought against a unit owner of any property subject to the Act who fails or refuses to pay her proportionate share of the common expenses, any unpaid fine, or any other lawfully-agreed-upon expenses, so long as the condominium board or its agents first serve a demand and the unit owner fails to pay the amount in the demand within the time prescribed in the demand. 735 ILCS 5/9-102(a)(7) (West 2010). In a

forcible entry case where a condominium unit owner is found to owe unpaid expenses to the association, the court shall award attorney fees, interest, and late charges in addition to the unpaid expenses and possession of the unit. 735 ILCS 5/9-111(a) (West 2010). Similarly, section 9.2 of the Act provides that a condominium association "shall have such rights and remedies as provided in the Act or condominium instruments, including the right to maintain an action for possession against such defaulting unit owner \*\*\* for the benefit of all the other unit owners in the manner prescribed by Article IX of the Code of Civil Procedure," and that attorney fees incurred by an association due to a unit owner's default "shall be added to, and deemed a part of, his respective share of the common expense." 765 ILCS 605/9.2(a), (b) (West 2010).

¶ 18 In a forcible entry action, a "defendant may under a general denial of the allegations of the complaint offer in evidence any matter in defense of the action," but "no matters not germane to the distinctive purpose of the proceeding shall be introduced by joinder, counterclaim or otherwise." 735 ILCS 5/9-106 (West 2010). The purpose of a forcible entry action is to allow a person entitled to the possession of real property to be restored to possession, and the only questions to be answered in such a proceeding concern which party is entitled to immediate possession and whether a defense germane to the aforementioned purpose defeats the plaintiff's asserted right to possession. *Campana Redevelopment, LLC v. Ashland Group, LLC*, 2013 IL App (2d) 120988, ¶ 13. When possession is at issue, the germane issues are claims: (1) asserting a paramount right of possession; (2) denying a breach of the agreement vesting possession in the plaintiff; (3) challenging the validity or enforceability of the agreement on which the plaintiff bases the right to possession; or (4) questioning the plaintiff's motivation for bringing the action. *Id.* ¶ 16. However, serious title disputes may not be determined in a forcible entry action. *Wells Fargo Bank, N.A. v. Watson*, 2012 IL App (3d) 110930, ¶ 15.

¶ 19 A plaintiff may move for a summary judgment, which "shall be rendered without delay if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there

is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(a), (c) (West 2010). A genuine issue of material fact precluding summary judgment exists where the material facts are disputed or reasonable persons might draw different inferences from the undisputed facts. *Mashal v. City of Chicago*, 2012 IL 112341, ¶ 49. Because summary judgment is a drastic means of disposing of litigation, the movant has the burden of production and proof, and the pleadings and supporting documentation are construed strictly against the movant and liberally in favor of the opponent. *Id.* Summary judgment should be granted only when the movant's right is clear and free from doubt. *Id.* Our review of a grant of summary judgment is *de novo*. *Shelton v. OSF Saint Francis Medical Center*, 2013 IL App (3d) 120628, ¶ 22. ¶ 20 Here, it is apparent from the documents attached to Shoreline's motion for summary judgment that Shoreline has made a *prima facie* case showing that it was a properly constituted condominium association, that Sonia admitted in her answers to Shoreline's interrogatories that her condominium unit assessments, valet parking fees, and utility bills were properly assessed, and that she did not state that she had paid any of those expenses. Under the Act and Article IX of the Code, Shoreline was entitled to possession of Sonia's condominium unit and a judgment for the unpaid expenses, plus attorney fees and costs. Notably, the circuit court did not award Shoreline all the unpaid expenses it sought, but only those that Sonia admitted in discovery were properly assessed and thus, were clear and free from doubt. We conclude that the circuit court properly granted summary judgment in favor of Shoreline.

¶ 21 As to Sonia and Leonard's counterclaim against Shoreline, which was not included in the record before us, the scope and nature of the counterclaim's challenges of the very existence of Shoreline as a corporation and condominium association, amounted to a serious title dispute not cognizable in a forcible entry action. Thus, it was properly stricken by the circuit court. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984) ("[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant").

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¶ 22 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 23 Affirmed.