

No. 1-12-2672

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).

DAVID ABRAMS, not individually, but solely as,	)	Appeal from the
Assignee for the Benefit of Creditors of EDWARDS	)	Circuit Court of
STEEL CONSTRUCTION COMPANY, INC.,	)	Cook County
an Illinois corporation,)	
)	
Plaintiff-Appellant,)	
)	
v.)	
)	
INDUSTRIAL STEEL FABRICATORS, INC.	)	Nos. 06 CH 26182,
a Minnesota corporation,	)	07 CH 1193,
	)	07 CH 1194,
Defendant-Appellee.	)	07 CH 2317,
	)	07 CH 22289, and
(Bovis Lend Lease, Inc., a Florida corporation,	)	07 CH 30257
Shubert Hotel Associates LLC, an Illinois)	
Limited liability company, MP Hotel L.L.C., an)	
Illinois limited liability company, LR Hotel L.L.C.,)	
An Illinois limited liability company, City Of)	
Chicago, an Illinois municipal corporation,)	
LaSalle Bank NA, Great American)	
Insurance Company, Unknown Owners and)	
Nonrecord Claimants,	)	Honorable
	)	Lisa R. Curcio,
Defendants.)	)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Simon and Justice Liu concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal from trial court's order confirming the parties' settlement agreement and releasing a judgment as satisfied, is affirmed where the plaintiff-appellant failed to present a sufficient record from which to review the claimed error.

¶ 2 This appeal involves the question of whether a judgment of \$226,156.00 has been discharged under a settlement agreement executed before the judgment was entered. Because the briefs on appeal lack clarity and the record on appeal does include a report of proceedings permitted by Illinois Supreme Court Rule 323 (166 Ill. 2d R. 323), as later explained, we summarize the events that took place in the trial court and before the trial judge in post judgment proceedings. We further note that the parties are generally not in agreement on the import of the events below, however, we will not recount the contention of each party on each circumstance so that this decision can be as clear as possible.

¶ 3 Edwards Steel Construction Company, Inc., was an unpaid subcontractor of Industrial Steel Fabricators, Inc. Edwards filed a mechanics lien claim and breach of contract claims against Industrial related to two construction projects in Chicago. Edwards also filed a claim against the surety bond issued by Great American Insurance Company in favor of Industrial for one of the two projects. In the same litigation, Edwards filed a mechanics lien claim against Bovis Lend Lease, Inc. related to one of the projects. Sometime after the lawsuit was filed, Edwards assigned these claims to Abrams, not individually, but as Assignee for the benefit of Edwards.

¶ 4 On May 9, 2011, Abrams, Industrial and Great American entered into a written settlement agreement that called for Great American to pay \$438,202 to Abrams and, in return, Abrams would release "all claims *** and/or causes of action asserted in the Litigation" against Industrial and Great American. The settlement also provided that, in exchange for Abrams

assigning the Bovis mechanics lien claim to Great American, Abrams would receive 70% of any award over \$438,202 against Bovis on the Edwards mechanics lien claims. Before trial, Great American paid the \$438,202 to Abrams pursuant to the settlement.

¶ 5 What happened on the day of trial, May 19, 2011, is largely disputed. We are certain of the following: summary judgment was entered against Industrial in favor of Abrams on a breach of contract claim in the amount of \$226,156, unrelated to any claims against Bovis or Great American, the entity that paid the settlement. The parties generally agree that the court was informed of the settlement and that the mechanics lien claim against Bovis would proceed with Abrams' counsel presenting the evidence to establish a *prima facie* case. For reasons not clearly apparent, Bovis objected to these attorneys presenting Edwards' claim, the court agreed and then took a brief recess. After the recess, the settling parties advised the court (depending on which version to accept) either: a) that the settlement and the lien assignment had been withdrawn so that Abrams' attorney could present a *prima facie* case of Bovis' liability (plaintiff's version), or b) that the settlement was not withdrawn but the assignment of the lien had been rescinded so that a *prima facie* case of Bovis' liability could be established during the trial (Industrial's version). Whatever representations, if any, were made to the court, the trial began. After evidence relating to the lien claim against Bovis was presented, Industrial, Great American and Bovis settled and all claims between those parties were resolved, including the claims that Abrams assigned to Great American against Bovis.

¶ 6 Importantly, we cannot determine from the record when or in what context the summary judgment order was entered because of the state of the record and the absence of any transcript, abstract or bystander's report: either the settlement was withdrawn and the judgment against

Industrial was entered thereafter or the judgment was entered before the trial and before Bovis' objection. According to the parties to this appeal, this question looms large in the resolution of this appeal.

¶ 7 The record next indicates that when Industrial, Great American and Bovis returned to court on June 7, 2011, to formally dismiss the claims, Abrams orally objected apparently contending that Great American had no authority to dismiss the lien claims against Bovis because the May 9 assignment was no longer effective. Abrams was given time to file a motion "contesting its assignment of claims and settlement with Great American Insurance." Abrams never did this and later withdrew the objection. Not surprisingly, the parties dispute the reason for Abrams's objection to the Bovis settlement. Abrams argues on appeal, without citation to the record, that he intended to contest the validity of the original settlement agreement with Industrial. Whereas, Industrial argues, also without citation to the record, that Abrams objected to the Bovis settlement because, with the dismissal of the claims against Bovis, Abrams would not have any chance of recovering 70% of any excess recovery by Great American from Bovis on the assigned mechanics lien.

¶ 8 Nothing relevant to this appeal happened until December 13, 2011, when Abrams obtained a memorandum of judgment related to the May 19, 2011, summary judgment entered against Industrial. Abrams thereafter initiated collection proceedings in Minnesota, Industrial's home state.

¶ 9 Industrial then filed a motion to confirm the settlement agreement in the circuit court of Cook County and sought a finding that Abrams had released all claims against Industrial, including the underlying claim related to the summary judgment, and that the judgment entered

on May 19, 2011, cannot be enforced because it was within the terms of the settlement agreement. Abrams' response included an affidavit from Abrams' attorney recounting his version of conversations between the attorneys on May 19, 2011. Industrial's reply included an affidavit from its attorney who averred that the trial court had not been told the settlement was withdrawn but only that the assignment to Great American by Abrams had been rescinded and there was no longer a valid assignment of the lien between Abrams and the surety as of May 19, 2011.

¶ 10 After hearing, on August 7, 2012, the trial court confirmed the May 19, 2011 settlement agreement and ruled that Abrams's judgment against Industrial was released and satisfied by the settlement agreement and payment by Great American. Once again, there is no transcript, abstract or bystander's report of this hearing.

¶ 11 On appeal, plaintiff argues that the circuit court erred in confirming the May 9, 2011 settlement agreement and finding the judgment against Industrial was released and satisfied. Plaintiff contends that its settlement agreement with Industrial was withdrawn in open court and the judgment against Industrial is enforceable. In response, Industrial contends that the parties did not withdraw the settlement, but rather informed the trial judge that the assignment of plaintiff's claims against Bovis was temporarily rescinded or "delayed" for the purpose of the May 19, 2011 trial. Industrial argues that plaintiff was paid \$438,202 under the settlement agreement to release Industrial from "all claims asserted in the [l]itigation," including the judgment against Industrial, and it has been satisfied. The parties rely on the opposing affidavits of their trial counsel to support their version of events and offer their opinions on what they "believed" the trial court intended by entering the May 19, 2011 order at issue. The parties presented these same arguments before the trial judge who presided over the May 19, 2011

proceedings and all hearings thereafter, including the August 7, 2012 hearing. The ultimate fact in dispute on appeal between plaintiff and Industrial is whether the parties agreed, in open court, to withdraw the settlement agreement or to "delay" the assignment of plaintiff's claims against Bovis.

¶ 12 There is no document appearing in the record that establishes whether the settlement agreement and assignment were withdrawn or whether the assignment was temporarily delayed or rescinded. For some inexplicable reason, ten days after the settlement was executed by plaintiff, Industrial and Great American, in which plaintiff agreed to "release all claims asserted in the [l]itigation" against Industrial, the trial court entered a judgment against Industrial on one count. One month later, Great American (as assignee of Edwards/Abrams), Industrial and Bovis entered into a settlement agreement on all remaining claims. Initially, Abrams objected to this settlement with Bovis but later withdrew the objection. All claims were then dismissed. Six months later, Abrams obtained a memorandum of judgment from the trial court on the judgment entered against Industrial on the day of trial. At that point, Abrams effectively had recovered \$438,202 from the May 9, 2011 settlement in return for "releasing all claims" against Industrial and also possessed a memorandum of judgment for \$226,156 against one of the settling parties. Later, the trial court found this \$226,156 judgment was released by virtue of the settlement agreement and the payment thereunder. This appeal followed.

¶ 13 In this case, the common law record is void of information regarding the May 19, 2011 proceedings and the August 7, 2012 hearing. Our review of the record indicates that the trial court ruled on Industrial's motion to confirm the settlement agreement and found the judgment against Industrial had been satisfied based on the written submissions of the parties and the

opposing affidavits of their attorneys. There is no writing which evidences an agreement to rescind, revoke, suspend or temporarily delay, the settlement or the mechanics lien assignment. We do not have the benefit of a transcript of the hearing on Industrial's motion, a report of proceedings, a bystander's report, or agreed statements of facts regarding the May 19, 2011 hearing and the hearings thereafter. 166 Ill. 2d Rs. 323(c), (d). There is also nothing in the record which informs us of the reasoning of the trial court when it entered the ruling on appeal.

¶ 14 The nature of Industrial's motion to confirm the settlement agreement was to determine the validity and scope of the May 19, 2011 written settlement agreement. A trial court's determination of whether a settlement agreement is valid will not be reversed unless it is contrary to the manifest weight of the evidence. *Kim v. Alvey*, 322 Ill. App. 3d 567, 670 (2001). As a reviewing court, we will not disturb a trial court's decision to enforce a settlement agreement absent an abuse of discretion. *Lampe v. Toole*, 292 Ill. App. 3d, 144, 146 (1997); *Steiner v. Eckert*, 2013 IL App (2d) 121290, ¶ 17.

¶ 15 Here, the trial court was in the best position to interpret the settlement agreement because the trial court was intimately involved in the proceedings and was not a stranger to the parties, the proceedings or the events surrounding the ultimate disposition of the lawsuit. As appellant, plaintiff has the responsibility to present us with a sufficiently complete record of the proceedings to support the claim of error. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In the absence of such a record, we presume that the trial court acted in conformity with the law and ruled appropriately. *Id.* Any doubts arising from the completeness of the record will be resolved against the appellant. *Id.* "Where the issue on appeal relates to the conduct of a hearing or proceeding, this issue is not subject to review absent a report or record of the proceeding."

Webster v. Hartman, 195 Ill. 2d 426, 432 (2001). From our review of the appellate submissions and the record, it is clear that any issue relating to the trial court's factual findings and the basis for its legal conclusions cannot be reviewed for error, without a sufficient record of those proceedings. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005).

¶ 16 We cannot make assumptions regarding the circumstances of the trial court's rulings and the intent of the trial court in entering its orders on the basis of the parties' speculation and opposing versions of the events. *Webster*, 195 Ill. 2d at 435. Accordingly, without a sufficient record from which to review the claimed error, we have no basis to determine that the trial court erred in its findings. Given the substantial monetary claims involved in this lawsuit, the presumed ability of at least one of the parties to furnish a court reporter at trial or for the post trial proceedings and the sophistication and experience of the attorneys prosecuting and defending the underlying claims, this court cannot be reasonably expected to divine either the intentions of the settling parties or the correctness of the trial court in rendering its ruling. Under these circumstances, we presume that the trial court had a sufficient factual basis to support its rulings and that those rulings were legally sound. *Webster*, 195 Ill. 2d at 433-34.

¶ 17 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 18 Affirmed.