2014 IL App (1st) 13-2234

FOURTH DIVISION
May 22, 2014

No. 1-13-2234

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CASABLANCA LOFTS LLC, Plaintiff, v. MOSHE BLAUVISE; DWG, INC.; RICHARD ABRHAM; CLAY P; ANE CORP.; DESIGN 21 CO. INC.; JOSEPH MATIELLO; NISSIM NESHER; VAN TOMARAS; ATLAS 21 CONSTRUCTION CO., INC.; S & S GENERAL CONTRACTORS, INC. and STANLEY FERON, Defendants,	)	Appeal from the Circuit Court of Cook County.
DESIGN 21 CO. INC., Petitioner-Appellant, v. CASABLANCA LOFTS LLC, MIKE WIER, and DOUGLAS LOHMAR,	)	No. 05 CH 2701 Honorable Jeffrey Lawrence,

) Judge Presiding.

Respondents-Appellees.)

PRESIDING JUSTICE HOWSE delivered the judgment of the court.
Justices Fitzgerald Smith and Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: Where the trial court denied petitioner's motion for Illinois Supreme Court Rule 137 sanctions after a four-day evidentiary hearing and made a finding that petitioner failed to show the pleading at issue was filed for any improper purpose that would warrant Rule 137 sanctions, we presume the trial court's ruling was correct where petitioner failed to include a complete transcript of the hearing as part of the record on appeal. The trial court's decision to assess a monetary sanction for an untrue allegation made in an affidavit filed in opposition to a motion to dismiss that was not calculated based on attorney fees and costs is affirmed because the untrue statement did not significantly affect the outcome of the case.

¶ 2 Design 21 Company, Inc. (Design 21) appeals the trial court's decision not to impose sanctions based on paragraphs 57, 59 and 60(a) in Casablanca Lofts, LLC (Casablanca) verified fourth amended complaint as well as the trial court's imposition of a $10,000 sanction that did not include attorney fees and costs for filing an affidavit containing false information. Casablanca originally filed a lawsuit against Design 21 and others, which was dismissed after the trial court entered a directed finding in favor of all the defendants, including Design 21, on the grounds that the lawsuit was filed in the name of the wrong party. The named plaintiff was a limited liability company (Casablanca LLC), but the trial court found that the plaintiff should have been the individual who originally contracted for services with Design 21 (Michael Wier). Therefore, the trial court found there was no contract between Casablanca and Design 21 and, accordingly, no breach of contract claim. After the directed finding was entered, Design 21 filed a motion seeking Illinois Supreme Court Rule 137 sanctions against Casablanca, Michael Wier (the managing member of Casablanca) and Douglas Lohmar (the attorney for Casablanca and

Wier) (hereinafter collectively referred to as respondents). The trial court denied Rule 137 sanctions with respect to the allegations in the motion that the case was in filed in the name of the wrong plaintiff, but granted sanctions after finding that an affidavit containing false information was filed in opposition to a motion to dismiss. Specifically, the court ordered Wier and Lohmar to each pay Design 21 a $5,000 sanction based on the misleading statement contained in the affidavit of Wier. For the reasons that follow, we affirm the trial court's denial of sanctions for the allegations made in paragraphs 57, 59 and 60(a) of the verified fourth amended complaint, and affirm the trial court's imposition of a $10,000 sanction for the statements made in Wier's affidavit.

¶ 3 BACKGROUND

¶ 4 On March 17, 2008, Casablanca filed an amended complaint, which joined Design 21 as well as other parties as defendants in an ongoing lawsuit that claimed damages as a result of design and construction defects. Casablanca's verified fourth amended complaint contains the provisions that are at issue on appeal. Count V of the verified fourth amended complaint, which is the only count against Design 21, alleged that Casablanca retained Design 21 to create blueprints and obtain city permits for the purpose of renovating an abandoned warehouse into a condominium complex. The complaint further alleged that Design 21 breached the contract when Design 21's blueprints were found to be deficient where the blueprints specified stud walls, instead of the masonry walls, as required by the city of Chicago. The complaint ultimately alleged that Design 21 never adjusted the blueprints to accommodate the different thickness in the walls after the city of Chicago modified the plans to require the masonry walls, thereby causing numerous delays and additional costs in the project.

¶ 5 Of relevance to this appeal, paragraphs 57, 59 and 60(a) of Count V in the verified fourth

amended complaint contain the following allegations:

> "57. Design 21 was the original architect on the project and prepared the original blueprints pursuant to an oral contract.
>
> * * *
>
> 59. Design 21 was paid approximately $130,000 to design these blueprints.
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> * * *
>
> [60] a) The distances between the walls were not accurate because Design 21 never adjusted its blueprints to accommodate the different thickness in the walls when the City of Chicago modified the plans to require masonry walls as devising [sic] walls instead of stud walls that Design 21 had originally designed, which Casablanca Lofts learned for the first time in June, 2004[.]"

The verified fourth amended complaint is signed by an attorney at the Lohmar Law Offices and Michael Wier, the managing member of Casablanca.

¶ 6 On August 9, 2011, Design 21 filed a motion to dismiss Casablanca's verified fourth amended complaint pursuant to section 2-619 of the Code of Civil Procedure (the Code). 735 ILCS 5/2-619 (West 2010). The motion to dismiss argued that the breach of contract claim against Design 21 must be dismissed because Casablanca did not exist on the date of the alleged oral contract, which Design 21 claims was November of 2002, since Casablanca was formed on May 29, 2003. The motion also argued that Casablanca's claims against Design 21 were barred by the four-year statute of limitations applicable to construction-related matters (735 ILCS 5/13-214(a) (West 2000)) because Wier was at a meeting on February 25, 2004 where design defects

were discussed, but the amended complaint adding Design 21 as a defendant was not filed until March 17, 2008, more than four years later. In its response to the motion to dismiss, Casablanca attached an affidavit from Wier, which is the affidavit at issue in this appeal, which states: "I have never attended a meeting at Design 21's office with Van Tomaras, Moshe Blauvise and Richard Abrham." The trial court denied Design 21's motion to dismiss because it found that there were issues of fact making trial proper. Specifically, the trial court found that there was an issue of fact as to: (1) whether Design 21 intended to enter a contract with Casablanca since Wier claimed that he made it clear to Design 21 that he would be creating Casablanca for the purpose of carrying out the blueprint plans that Design 21 was creating, and (2) when the defects were discovered because there was conflicting testimony relating to Wier's presence at the February 25, 2004 meeting. The case then proceeded to trial.

¶ 7 At the conclusion of Casablanca's case in chief, all the defendants, including Design 21, filed motions for a directed verdict pursuant to section 2-1110 of the Code. 735 ILCS 5/2-1110 (West 2010). The trial court granted all the motions. With respect to Design 21, the trial court judge found that Design 21 intended to contract with Wier, and not with Casablanca, for the design of blueprints because: (1) Casablanca did not exist at the time the contract was entered into, and (2) because she did not find Wier to be credible and, therefore, did not believe that he told Design 21 about Casablanca at the time the contract was orally created. Specifically, the trial court judge stated:

> "So the question would become: Did the parties intend the contract to be between plaintiff, being Casablanca Loft, LLC and Design 21 or between Mike Wier and Design 21? And I'm finding that they intended the contract with respect to the design of the

> building at issue to be between Design 21 and Mike Wier. The LLC was not formed when Mr. Wier and Mr. Tomaras reached their agreement and design plans. I'm finding it's more likely than not there was no discussion between Mr. Wier and Mr. Tomaras at that time when they entered in their agreement about Mr. Wier's plans to form an LLC to buy the building. I know Mr. Wier testified that he talked about this all the time with Mr. Tomaras, but I just didn't find that testimony to be credible. It just didn't seem like something that people would be talking about all the time. It seemed like plaintiff was stretching there. So I just—At some point he may very well and probably did tell him at some point, but I don't believe he told them before they entered into their agreement. I think that was later. So since Mike Wier is not a plaintiff here, and it's only Casablanca Lofts, LLC, the plaintiff cannot recover on its breach of contract claim against Design 21."

¶ 8 On July 23, 2012, Design 21 filed a motion for sanctions pursuant to Illinois Supreme Court Rule 137 (Ill. Sup. Ct. R. 137 (eff. 1989)) against Casablanca, Wier (the managing member of Casablanca) and Lohmar (the attorney for Casablanca and Wier). The judge who heard the trial retired after the trial, and a new judge was assigned to hear the motion for Rule 137 sanctions. The motion (and amended motions) argued generally that Casablanca did not exist at the time it was alleged to have entered into a contract with Design 21, thus making it impossible for Casablanca to ever have a claim for breach of contract against Design 21. Specifically, the motion argued that paragraphs 57, 59 and 60(a) of the verified fourth amended

complaint were false, and that the statement in Wier's affidavit, wherein Wier claimed he was never at a meeting in Design 21's offices, was also false thus warranting Rule 137 sanctions.

¶ 9 The trial court held an evidentiary hearing on the motion for sanctions. According to Design 21, the purpose of the evidentiary hearing was to determine: "(1) whether Respondents conducted an investigation of the facts and law prior to filing each of Casablanca's five amended complaints, and (2) whether the complaints were filed in bad faith and or for improper purposes." (Appellant's Br., at 6). Following a four-day evidentiary hearing, the trial court judge issued a written order granting the motion for sanctions in part based upon the statements in Wier's affidavit and denying the remainder of the motion. In the trial court's 15-page written order, it noted that "Casablanca's error in pleading that it, rather than Wier, entered into an oral contract with Design 21, worked a positive benefit for Design 21, because it was the basis of Judge McDonald's holding that no such contract existed between the parties. [] This relieved Design 21 of the need to mount a defense to Count V…" The trial court then made specific rulings as to each statement made by Casablanca/Wier/Lohmar that Design 21 argued warranted sanctions. With respect to paragraph 57, the trial court found that Design 21 was not prejudiced by that statement and declined to award sanctions. As to paragraph 59, the trial court refused to issue sanctions because it found that paragraph to be true. As to paragraph 60(a), the trial court found that although the allegation that Casablanca did not discover the defects until June, 2004 was not well grounded in fact, that was of little or no consequence in relation to the balance of the contract claims raised in the rest of Count V, whose discovery after March 17, 2004 was not challenged, and declined to award sanctions. Finally, with respect to the statement made in Wier's affidavit—that he never attended a meeting at Design 21's office, which would include the February 25, 2004 meeting—the trial court found that at best that statement was misleading and

at worst was an outright lie. Accordingly, the order states: "The court finds that Wier's affidavit was an attempt to confuse the court about the trigger date for the statute of limitations" and "was not well grounded in fact." As such, the court held that "Wier and Lohmar should each pay Design 21 $5,000 as a sanction for violating Rule 137. It is the court's intention that these amounts be their personal responsibility…" Design 21 now appeals the trial court's ruling denying sanctions in part and granting sanctions in part.

¶ 10 ANALYSIS

¶ 11 Illinois Supreme Court Rule 341 Violations

¶ 12 Respondents initially request that Design 21's appeal be dismissed due to violations of Illinois Supreme Court Rule 341. See Ill. Sup. Ct. R. 341 (eff. 1969). Specifically, respondents argue that Design 21 failed to cite to the record on a number of occasions and improperly cited to the record on other occasions. See *id*. Our supreme court's rules are mandatory rules of procedure, not mere suggestions. *Menard v. Illinois Workers' Compensation Commission*, 405 Ill. App. 3d 235, 238 (2010). A party's failure to abide by Rule 341 makes appellate review of his or her claim more onerous and may result in waiver. *Id*. This court has the discretion to strike an appellant's brief and dismiss an appeal for failure to comply with Rule 341. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 77 (2013). While we recognize that there are deficiencies in Design 21's appellate brief which required additional work for this court, we choose not to take such a harsh measure in striking the brief as we are able to address the merits of the claims presented on appeal. However, in doing so, we caution that our decision not to strike Design 21's brief "should not be interpreted as a signal that we are willing, as a matter of course, to overlook violations of the Supreme Court Rules in briefs filed with this court. We are not." *Buckner v. Causey*, 311 Ill. App. 3d 139, 142 (1999). Simply put, we find no useful

purpose would be served by striking Design 21's appellate brief for purposes of this appeal.

¶ 13 Standard of Review

¶ 14 Prior to addressing the merits of this appeal, we must first determine what standard of review to apply. Design 21 argues that we should apply the *de novo* standard of review to several of the arguments it raised on appeal, while respondents argue that all the issues on appeal must be reviewed under an abuse of discretion standard. We find that the abuse of discretion standard applies to all issues raised in this appeal for several reasons. First, while Design 21 argues that the trial court judge misinterpreted the language of Rule 137 by finding that proof of prejudice or damage was a requirement under the rule and that the evidence of attorney fees and costs were to be presented in plaintiff's case in chief, we find that the trial court never interpreted the language of Rule 137 and never made any findings "as a matter of law" in its order on sanctions. Accordingly, despite Design 21's attempt to frame the issues as issues involving statutory interpretation, Design 21's arguments involve allegations that the trial court misapplied the facts of this case under Rule 137. Second, the case relied on by Design 21 for its argument that the *de novo* standard applies can be distinguished because in that case the court dismissed a motion for sanctions without conducting an evidentiary hearing. *Heckinger v. Welsh*, 339 Ill. App. 3d 189, 191 (2003) (applying a *de novo* review where the court summarily dismissed a motion for sanctions without an evidentiary hearing.). Here, the trial court held a four-day evidentiary hearing prior to ruling on the motion for sanctions, thus requiring the application of an abuse of discretion standard. *Id*. ("Generally, the decision to grant or deny sanctions under Rule 137 is left to the trial court's discretion."). And third, Illinois courts have routinely applied the abuse of discretion standard to appeals regarding rulings on Rule 137 sanctions, especially where an evidentiary hearing was conducted. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460,

487 (1998) ("The decision whether to impose sanctions under Rule 137 is committed to the sound discretion of the circuit judge, and that decision will not be overturned unless it represents an abuse of discretion."); *Spiegel v. Hollywood Towers Condominium Ass'n*, 283 Ill. App. 3d 992, 1001 (1996); *Bennett & Kahnweiler, Inc. v. American National Bank & Trust Co.*, 256 Ill. App. 3d 1002, 1007 (1993). As such, we review the issues raised in this appeal under an abuse of discretion standard.

¶ 15 The Record on Appeal

¶ 16 As an initial matter, we must note the trial court conducted a four-day hearing on the motion for Rule 137 sanctions and heard from four witnesses at that hearing. The record on appeal only contains one witness's testimony from this evidentiary hearing, the testimony of Mr. Koliarakas. It does not contain the testimony of Wier, Abrhams or Tomaras and, therefore, the record on appeal is incomplete. Given that the trial court relied on the evidence produced at the four-day evidentiary hearing when it ruled on the Rule 137 motion for sanctions and we do not have that complete record before us, to the extent the deficiencies in the record prevent us from fully reviewing the judgment of the trial court, we will assume that the trial court's findings were proper and supported by the evidence. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984) ("in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis.").

¶ 17 Trial Court's Denial of Rule 137 Sanctions
For Allegations Made in Paragraphs 57, 59 and 60(a)

¶ 18 Design 21 argues that the trial court erred when it denied sanctions based on the allegations made in paragraphs 57, 59, and 60(a) of the verified fourth amended complaint. We disagree. Illinois Supreme Court Rule 137 states:

> The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. * * * If a pleading, motion, or other document is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other document, including a reasonable attorney fee. Ill. Sup. Ct. R. 137 (eff. 1989).

¶ 19 The decision whether to grant Rule 137 sanctions lies within the sound discretion of the trial court, and we may not disturb its decision unless there is an abuse of that discretion. See *Dowd & Dowd, Ltd.*, 181 Ill. 2d at 487; *Webber v. Wight & Co.*, 368 Ill. App. 3d 1007, 1032 (2006); see also *Barrett v. Fonorow*, 343 Ill. App. 3d 1184, 1197 (2003) (abuse occurs "only if no reasonable person would take [the trial court's] view" regarding sanctions). Thus, while we are not precluded from finding an abuse where warranted, we must afford the trial court

considerable deference in its decision to deny sanctions. See *Technology Innovation Center, Inc. v. Advanced Multiuser Technologies Corp.,* 315 Ill. App. 3d 238, 244 (2000).

¶ 20 "The party requesting the imposition of Rule 137 sanctions bears the burden of proof and must show that the opposing party made untrue and false allegations without reasonable cause for the mere purpose of invoking harassment or undue delay of the proceedings." *Webber*, 368 Ill. App. 3d at 1032. The standard for evaluating a party's conduct under Rule 137 is one of reasonableness under the circumstances as they existed at the time of the filing. *Bennett & Kahnweiler, Inc.,* 256 Ill. App. 3d at 1007. The purpose of Rule 137 is not to punish litigants or their attorneys for being unsuccessful in the litigation; it is to punish a party who files a pleading for an improper purpose such as harassment, delay, or needless expense to the other party. *Burrows v. Pick,* 306 Ill. App. 3d 1048, 1055 (1999). Because of Rule 137's penal nature, courts must construe it strictly, must make sure the proposing party has proven each element of the alleged violation with specificity, and should reserve sanctions for the most egregious cases. See *Dowd & Dowd, Ltd.,* 181 Ill. 2d at 487; *Technology Innovation,* 315 Ill. App. 3d at 244; *Barrett,* 343 Ill. App. 3d at 1197. Ultimately, the primary consideration on review is whether the trial court's decision was "informed, based on valid reasoning, and follows logically from the facts." *Technology Innovation*, 315 Ill. App. 3d at 244.

¶ 21 Here, Design 21 appeals the trial court's decision to deny sanctions based on three paragraphs alleged in Casablanca's verified fourth amended complaint. Those three paragraphs state:

> "57. Design 21 was the original architect on the project and prepared the original blueprints pursuant to an oral contract.
>
> * * *

> 59. Design 21 was paid approximately $130,000 to design these blueprints.
>
> * * *
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> [60] a) The distances between the walls were not accurate because Design 21 never adjusted its blueprints to accommodate the different thickness in the walls when the City of Chicago modified the plans to require masonry walls as devising [sic] walls instead of stud walls that Design 21 had originally designed, which Casablanca Lofts learned for the first time in June, 2004[.]"

¶ 22 Design 21 argues that the trial court's order denying sanctions was incorrect because: (1) Casablanca LLC was not established until after Design 21 entered the oral contract, making it impossible for Casablanca to have any type of cause of action against Design 21 and the lawsuit to be frivolous from the outset; (2) the trial court found that several allegations were not well grounded in fact yet did not impose sanctions; (3) neither prejudice nor damages are required to impose Rule 137 sanctions, making the trial court's reliance on those factors in not awarding sanctions improper; and (4) the trial court made findings of fact at the hearing on sanctions that contradicted those findings made by the trial court judge in her ruling on the directed verdict.

¶ 23 Initially, it should be noted that Illinois Supreme Court Rule 137 became effective August 1, 1989, and it preempted all matters sought to be covered by section 2-611 of the Code. See *e.g.*, *In re Marriage of Sykes*, 231 Ill. App. 3d 940, 946 (1992). Rule 137 and section 2-611 are the same except that Rule 137 provides that a circuit court "**may**" impose sanctions for violations of the rule while section 2-611 provided that sanctions "**shall**" be imposed. (Emphasis

added.) *Olsen v. Staniak*, 260 Ill. App. 3d 856, 860-61 (1994).[1] As such, the change in the rule is significant because it does not mandate sanctions in the event of a violation of the rule, but rather keeps the grant or denial of sanctions within the sound discretion of the trial court. Ill. Sup. Ct. R. 137 (eff. 1989). Keeping in mind the discretion that is afforded to trial courts when determining whether to allow or deny sanctions, we address Design 21's arguments that the trial court erred in denying sanctions based on the allegations in paragraphs 57, 59, and 60(a).

¶ 24 An appellate court should base its review of the trial court's decision to grant or deny sanctions on three factors: "(1) whether the court's ruling was an informed one; (2) whether the ruling was based on valid reasons which fit the case; and (3) whether the ruling followed logically from the stated reasons to the particular circumstances of the case." *Sanchez v. City of Chicago*, 352 Ill. App. 3d 1015, 1020-21 (2004). Here, we find the first factor, that the court's ruling was an informed one, was clearly met given that the trial court conducted a four-day evidentiary hearing on the issue and issued a multiple-page written order regarding his findings on the issue. As such, we find that the trial court's decision not to impose sanctions based on the allegations made in paragraphs 57, 59 and 60(a) was an informed decision.

¶ 25 We further find that the second factor—that the trial court's ruling be based on valid reasons that fit the case—was also met. While Design 21 argues that it was improper for the trial court to consider damage or prejudice when denying sanctions, we find no case law that states it is an abuse of discretion for the trial court to consider those factors when reviewing a motion for Rule 137 sanctions. While there is case law that states damage or prejudice are not *necessary* to

[1] This distinction is important because Design 21 relies on several cases in its brief that interpret section 2-611 instead of Rule 137, see Appellant's brief, at 17 (citing to *Dayan v. McDonald's Corp*., 126 Ill. App. 3d 11 (1984)), Appellant's brief, at 32-33 (citing to *Dayan* and other cases decided before Rule 137 existed). Given the issues presented in this appeal, cases interpreting Rule 137 are controlling.

impose Rule 137 sanctions, *Heckinger*, 339 Ill. App. 3d at 192 ("the plain language of Rule 137 does not require that the moving party incur damages related to the offensive pleading to maintain a cause for sanctions"), there is nothing that states it is an abuse of discretion for the trial court to consider those factors among others when ruling on a Rule 137 motion for sanctions.

¶ 26 Further, Design 21's arguments that: (1) the trial court erred in not awarding sanctions even where it found pleadings in the complaint not to be well grounded in fact, and (2) that the trial court made findings of fact that differed from those of the trial court's findings of fact following the directed verdict, also do not sway us from finding that the trial court's ruling to deny sanctions was based on valid reasons. As stated earlier, it is entirely within the trial court's sound discretion to grant or deny Rule 137 sanctions, and a court has several options when imposing sanctions, which include "a warm friendly discussion on the record, a hard-nosed reprimand in open court, compulsory legal education, monetary sanctions, or other measures appropriate to the circumstances." *Heckinger*, 339 Ill. App. 3d at 192. As such, Rule 137 does not mandate that a trial court impose monetary sanctions when it finds that the rule has been violated and, consequently, there is no case law stating that it is an abuse of discretion for the court to deny imposing monetary Rule 137 sanctions where a violation of the rule has been found.

¶ 27 With respect to Design 21's argument that the trial court made findings of fact in its ruling on sanctions that conflicted with the findings of fact made by the trial court in its order on directed verdict, we find this argument to be a misunderstanding or misreading of both the trial court's orders. Design 21 argues that when ruling on the directed verdict motion the trial court found that there was no contract between Casablanca and Design 21, but when ruling on the

motion for sanctions the trial court found that there was a contract. This is incorrect. The trial court ruling on sanctions never made a finding that there was a contract between Casablanca and Design 21. To the contrary, the trial court made it clear that if any contract existed, it was one between Design 21 and Wier. (See Trial Court's April 1, 2013 Order, at 11 ("In fact, Casablanca's error in pleading was that it, rather than Wier, entered into an oral contract with Design 21…")). Accordingly, we do not find that the orders issued by the trial court conflict in the manner in which Design 21 argues or in any way that has significance to the issue of sanctions, which is the only issue before us.

¶ 28 With respect to the third factor we must consider when reviewing a ruling on sanctions—that the ruling followed logically from the stated reasons to the particular circumstances of the case—we find that this factor has also been met given the trial court' finding that the filing in Casablanca's name was a mistake that actually ran an advantage to Design 21. Although Design 21 adamantly argues that sanctions are warranted because Casablanca did not exist at the time it allegedly entered into a contract with Design 21, we find that this argument carries little weight absent any evidence of an improper purpose for filing the lawsuit in Casablanca's name. Under Rule 137, the party seeking sanctions must prove that the pleading at issue was filed for an improper purpose. Ill. Sup. Ct. R. 137 (eff. 1989) ("The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, *and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.*") (Emphasis added.). It is the moving party's burden to prove that improper purpose. *Webber*,

368 Ill. App. 3d at 1032 ("The party requesting the imposition of Rule 137 sanctions bears the burden of proof and must show that the opposing party made untrue and false allegations without reasonable cause for the mere purpose of invoking harassment or undue delay of the proceedings."). Here, we find no evidence that the filing of this lawsuit in the name of Casablanca was done for any improper purpose. To the contrary, in the trial court's order on sanctions, the trial court finds that the filing in Casablanca's name was more akin to a mistake in pleading that actually ended up benefitting Design 21, rather than a pleading filed for an improper purpose, such as to harass, cause unnecessary delay or needless increase in the cost of the litigation. [2] In addition, the filing of Casablanca as an LLC was public information that was available to all parties involved in the matter, which further demonstrates a lack of any improper purpose for filing in Casablanca's name.

¶ 29 At this point we again note that Wier testified at the hearing on the sanctions, but Design 21 failed to include the transcript of Wier's testimony in the record before us. Wier testified concerning the allegations in the motion for Rule 137 sanctions and, based on that testimony, the trial court concluded that the filing was not done for an improper purpose but rather was a mistake in pleading. Because the record from the evidentiary hearing is incomplete on appeal, we must presume that the trial court judge listened to all the evidence, including Wier's testimony, and made a proper finding based on that evidence. *Foutch*, 99 Ill. 2d at 392 ("in the absence of such a record on appeal, it will be presumed that the order entered by the trial court

[2] Conversely, we note that where the trial court did impose a sanction, he made a clear finding of fact that the allegations in the affidavit were filed for an improper purpose: "Wier's affidavit that he never attended a meeting at Design 21's offices with Tomaras Blauvise and Abrhams, was at best, misleading and, at worst, an outright lie. *** The court finds that Wier's affidavit was an attempt to confuse the court about the trigger date for the statute of limitations." There is no such mention or hint of such an improper purpose for filing paragraphs 57, 59 and 60(a) anywhere within the trial court's order.

was in conformity with law and had a sufficient factual basis."). As such, we affirm the trial court's denial of sanctions with respect to paragraphs 57, 59 and 60(a) in the verified fourth amended complaint finding that decision was "informed, based on valid reasoning, and follows logically from the facts" (*Technology Innovation*, 315 Ill. App. 3d at 244), because there was no evidence in the record to demonstrate any improper purpose for filing the lawsuit in Casablanca's name and the testimony from the hearing on the Rule 137 motion was not included in the record on appeal.

¶ 30 Trial Court's Imposition of a $10,000 Rule 137 Sanction Based on the Allegations Made in Wier's Affidavit

¶ 31 Next, Design 21 argues that the trial court erred when it imposed a $10,000 sanction on Wier and his attorney ($5,000 each) rather than a sanction based on attorney's fees and costs because: (1) the trial court did not allow Design 21 to submit evidence of its attorney fees and costs in a separate hearing after the close of evidence in the evidentiary hearing, and (2) the trial court's imposition of a $10,000 sanction was arbitrary and there was no logic provided as to how the trial court came to that number. However, we find that the fact that the trial court did not consider attorney fees and costs and imposed a monetary sanction of $10,000 was not an abuse of discretion.

¶ 32 When arguing that the court-ordered sanction was made in error, Design 21 presumes that the statute of limitations on any of Casablanca's claims against Design 21 began to run on February 25, 2004. On February 25, 2004, a meeting was held at Design 21's office where Wier learned that Design 21 prepared blueprints using stud walls instead of masonry walls as required by the city. Under the applicable statute of limitations, Design 21 argues that Wier had four years from February 25, 2004 to file a claim against Design 21, making the filing on March 17, 2008 untimely. See 735 ILCS 5/13-214(a) (West 2000) (The statute of limitations for

construction related activity, which all parties agreed applied to the claims made in this action, states: "(a) Actions based upon tort, contract or otherwise against any person for an act or omission of such person in the design, planning, supervision, observation or management of construction, or construction of an improvement to real property shall be commenced within 4 years from the time the person bringing an action, or his or her privity, knew or should reasonably have known of such act or omission. Given the trial court's finding that the statement in Wier's affidavit that he was not present at the meeting was false, Design 21 argues that if the affidavit had been truthful and acknowledged Wier's presence at the February 25 meeting, the trial court would have dismissed the case against it on statute of limitations grounds after it filed its motion to dismiss and before the matter proceeded to trial.

¶ 33 We may affirm the judgment of the trial court based on any reason as long as a factual basis was before the court. *Dunlap v. Alcuin Montessori School*, 298 Ill. App. 3d 329, 338 (1998) ("a reviewing court may affirm a correct decision for any reason in the record regardless of the trial court's basis for the decision."). The record shows that neither the trial court judge that granted the directed verdict nor the trial court judge that issued the ruling on sanctions made a specific finding of when the statute of limitations began to run on the claims against Design 21. The statute of limitations period applicable to contracts for the design or construction of buildings provides that it begins to run when the defendant learns of a breach. See 735 ILCS 5/13-214(a) (West 2000). First, we note that the trial court found that there was no evidence that Wier knew there was material breach as of February 25, 2004. Further, Design 21's reply brief concedes that one of the witnesses testified at the hearing on sanctions and stated that following the February 25, 2004 meeting, Wier and Tomaras (of Design 21) discussed how much it would cost to correct the defects that had been disclosed at the meeting, and Tomaras gave the estimate

of $7,000 to $9,000. Consequently, the allegations in the verified fourth amended complaint relate to a breach of contract arising out of Design 21's failure to modify and correct the blueprints following the City's review of them. Specifically, paragraph 60(a) in the verified fourth amended complaint states: "The distances between walls were not accurate *because Design 21 never adjusted its blueprints to accommodate the different thickness in the walls when the City of Chicago modified the plans* to require masonry walls as devising [sic] walls instead of stud walls that Design 21 had originally designed, which Casablanca learned for the first time in approximately June, 2004." (Emphasis added.). As such, assuming Wier was present at the February 25, 2004 meeting, his presence did not trigger the running of the statute of limitations with respect to the claims made in paragraph 60(a)—that Design 21 failed to *correct* issues in the blueprints. Because there was evidence that there were discussions to correct the deficiencies that occurred after the February 25, 2004 meeting, Wier could not have known he had a cause of action against Design 21 until after Design 21 reneged on the agreement to correct the deficiencies as alleged in paragraph 60(a) of the verified fourth amended complaint. Accordingly, no matter how much money Design 21 spent on attorney fees to establish that Wier was actually present at the February 25, 2004 meeting, Wier's presence had no bearing on the outcome of the case. Thus, despite the fact that the affidavit stating Wier was not present at the February 25 meeting was false, it had no bearing on the eventual outcome of the case because Design 21 had to continue to defend the case regardless. Therefore, the trial court's decision to award a monetary sanction for the false statement in Wier's affidavit rather than a sanction based on attorney fees and costs was reasonable. *Dowd & Dowd, Ltd.*, 181 Ill. 2d at 487 ("The decision whether to impose sanctions under Rule 137 is committed to the sound discretion of the circuit judge, and that decision will not be overturned unless it represents an abuse of

discretion.").

¶ 34 Although respondents argue the $10,000 sanction was excessive and not *de minimis*, there was no cross-appeal filed on that issue. *Cleys v. Village of Palatine*, 89 Ill. App. 3d 630, 635 (1980); *Ruff v. Industrial Commission of Illinois*, 149 Ill. App. 3d 73, 79 (1986) ("If the appellee fails to file the cross-appeal, the reviewing court is confined to only those issues raised by the appellant."). The only issue before this court regarding the amount of the sanction was raised by Design 21, and that argument was that the sanction was too low given that it did not take into consideration or include attorney fees and costs. However, as we have just found that attorney fees and costs were not warranted in this case, we allow the $10,000 sanction to stand. Nevertheless, in light of the damages sought in the case, which was in excess of $1.5 million, a $10,000 sanction would appear to be *de minimis*.

¶ 35 Moreover, under Rule 137, "[i]f a pleading, motion, or other document is signed in violation of this rule, the court, upon motion or upon its own initiative, *may* impose upon the person who signed it, a represented party, or both, an appropriate sanction, which *may include* an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other document, including a reasonable attorney fee." Ill. Sup. Ct. R. 137 (eff. 1989) (Emphasis added.). Rule 137 does not require the trial court award attorney fees and costs in the event of a violation of the rule. Accordingly, the trial court is free to impose whatever sanction it deems appropriate, which can include, but is not limited to "a warm friendly discussion on the record, a hard-nosed reprimand in open court, compulsory legal education, monetary sanctions, or other measures appropriate to the circumstances." *Heckinger*, 339 Ill. App. 3d at 192.

¶ 36 Additionally, and as stated earlier, because the record is void of a majority of the

evidentiary hearing on sanctions, which is the evidence that the trial court judge relied upon in determining the appropriate sanction, we must find that the $10,000 sanction was proper and, accordingly, affirm the trial court's ruling. *Foutch v. O'Bryant*, 99 Ill. 2d at 392 ("in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis."). Therefore, because the trial court is not mandated to award or consider attorney fees and costs in the event it finds a Rule 137 violation, because this case did not warrant an award of attorney fees and costs, and because the record on appeal is deficient, we affirm the trial court's imposition of a $10,000 sanction.

¶ 37 Because of our disposition of this case, there is no need to address the additional arguments of the parties.

¶ 38 CONCLUSION

¶ 39 For the above reasons, we affirm the trial court's ruling denying sanctions for the allegations made in paragraphs 57, 59 and 60(a), and affirm the trial court's imposition of a $10,000 sanction for the allegations made in Wier's affidavit.

¶ 40 Affirmed.