

No. 1-13-3613

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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PEBBLE COURT CONDOMINIUM ASSOCIATION,	)	Appeal from the Circuit Court of Cook County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 2012 M3 2020
	)	
SONIA JAIN,	)	Honorable Thomas David Roti,
	)	Judge Presiding
Defendant-Appellant.	)	

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PRESIDING JUSTICE SIMON delivered the judgment of the court.  
Justices Pierce and Liu concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court erred when it awarded attorney fees to the plaintiff because no statute relevant to the case permitted or required attorney fees to be awarded to the losing party.

¶ 2 The trial court awarded plaintiff attorney fees in a dispute over the payment of condominium assessments. On appeal, Defendant Sonia Jain argues that the trial court erred by awarding fees to Plaintiff Pebble Court Condominium Association. We reverse.

¶ 3

### BACKGROUND

¶ 4 The record on appeal does not contain a transcript of the underlying proceedings so the following facts come from the report of proceedings certified by the trial court and from other record evidence. Plaintiff Pebble Court Condominium Association is the entity that administers the property commonly known as 6633 Scott Lane, Hanover Park, Illinois. Defendant Sonia Jain is the owner of a unit at Pebble Court. Jain purchased the condominium at a foreclosure sale in January 2012. In February or March 2012, Jain's representative, her mother, went to Pebble Court's management office multiple times to pay the assessments. However, the parties did not agree on the amount that was owed. Pebble Court sought to collect assessments and other fees that accrued during the period prior Jain's ownership and Jain refused to pay those charges.

¶ 5 Jain's mother testified that she attempted to pay the assessments that the parties agreed were due, but that Pebble Court would not accept anything less than the full amount it claimed was outstanding, including the charges incurred during the tenure of the previous owner. On April 5, 2012, Pebble Court's lawyers began to work on the matter. Days later, Pebble Court purportedly sent Jain a statement itemizing the charges for which it was seeking payment. The statement contains a provision detailing the "account status" which states "Reject Payment." In June 2012, Pebble Court filed a complaint in the Circuit Court of Cook County seeking \$4,558.55 consisting of assessments, utilities, attorney fees, and other charges.

¶ 6 During certain pretrial proceedings, the trial court made a finding that there was a six month "look back" period for which Pebble Court was entitled to seek assessments that accrued during the tenure of the previous owner. However, on July 25 2013, the trial court reversed its own ruling and found that, because Pebble Court did not institute an action against the prior owner,

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it was not entitled to any back assessments from Jain. At the conclusion of the order, there is language that states that the "action is dismissed in its entirety," but the language is stricken out. On August 29, 2013, the trial judge entered an order setting a trial date for October 10, 2013, and also indicating that the trial date would be used for a hearing on fees if there were no outstanding assessments at that point. The August 29th order also indicates that the court will issue another order which will serve to amend its July 25, 2013 order. On September 4, 2013 the trial court issued an amended order. That order states that the "action is dismissed in its entirety," but this time, the language is not stricken out. On October 10, 2013, in a second amended order, the trial court removed the dismissal language and continued the case for further proceedings.

¶ 7 In a second order on October 10, 2013, the trial court continued the case for trial to be held on October 31, 2013. On the date of trial, Pebble Court filed a petition for attorney fees. At trial, the court found that Pebble Court was not entitled to any unpaid assessments or other fees. The trial court, however, entered judgment for Pebble Court for \$2,300.00 in attorney fees and \$370.04 in costs. Jain filed a motion to reconsider the award of attorney fees on the basis that it was unwarranted in light of the fact that Pebble Court was not the prevailing party. Ruling on that motion, the trial court held that the "motion to reconsider by defendant is granted but defendant's requested relief is denied." Jain appeals the award of attorney fees.

¶ 8 ANALYSIS

¶ 9 Although not raised by the parties, because the October 10th order was not issued until more than 30 days after the September 4th order that purported to dismiss the action "in its entirety," we will review the issue of jurisdiction *sua sponte*. A final judgment is one that absolutely and finally fixes the rights of the parties in the lawsuit. *Brown and Kerr, Inc. v.*

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*American Stores Properties, Inc.*, 306 Ill.App.3d 1023, 1027. A judgment is not final unless it resolves every claim in the case and there is nothing left for the trial court to do. *Berry v. American Standard, Inc.*, 382 Ill.App.3d 895, 906 (2008). Although the September 4th order purports to dismiss the action, it is clear that all claims were not resolved on September 4th. Part of the relief sought in Pebble Court's complaint was the amount of the undisputed fees. Jain tendered, and Pebble Court accepted, the undisputed assessment payments on October 10th. Additionally, the issue of attorney fees remained outstanding until the hearing was held on October 31, 2013. The August 29th order indicates that the trial court considered the issue of assessments and attorney fees to be separate issues to be dealt with separately, and the September 4th order only dealt with assessments. Orders must be construed in a reasonable manner so as to give effect to the apparent intention of the trial court. *Kiefer v. Rust-Oleum Corp.*, 394 Ill.App.3d 485, 494 (2009). Despite the language that purported to dismiss the case, it is clear that the trial court did not intend to fully dismiss the case on September 4th. Along with that intention, there were unresolved claims and other issues that still required judicial action. A final judgment was, therefore, not issued until October 31, 2013 when the parties' rights were fully determined and fixed. After certain post-trial proceedings, a notice of appeal was timely filed so we have jurisdiction to hear this appeal.

¶ 10 We review a trial court's decision to award attorney fees *de novo*. *Spencer v. Di Cola*, 2014 IL App (1st) 121585, ¶ 35. Illinois courts follow the American Rule under which attorney fees are not generally awarded to the prevailing party and each party bears its own fees. *Geisler v. Everest Nat. Ins. Co.*, 2012 IL App (1st) 103834, ¶ 86. However, Illinois courts will award attorney fees when the parties contracted for the award of fees or when such an award is authorized

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by statute. *Id.*

¶ 11 In the trial court, Pebble Court based its entitlement to attorney fees on two statutes. In its petition for fees, Pebble Court quoted one section of the Illinois Condominium Property Act and one section of the Illinois Code of Civil Procedure, but did not specifically explain why those sections entitled it to attorney fees. The trial court did not express what statute authorized its award of fees, but stated that "the statute" did not require Pebble Court to be the prevailing party.

Pebble Court's quote from the Code of Civil Procedure is:

"When the action is based upon the failure of an owner of a unit therein to pay when due his or her proportionate share of the common expenses of the property, or of any other expenses lawfully agreed upon or the amount of any unpaid fine, and if the court finds that the expenses or fines are due to the plaintiff, the plaintiff shall be entitled to . . . judgment in favor of the plaintiff . . . together with reasonable attorney's fees, if any, and for the plaintiff's costs."

(citing 735 ILCS 5/9-111(a)). That section does not entitle Pebble Court to attorney fees because the statute requires that the trial court find that "expenses or fines [were] due to the plaintiff."

Here, the trial court found that no expenses or fines were due.

¶ 12 Pebble Court's quote from the Condominium Property Act comes from the section titled "Sharing of Expenses—Lien for Nonpayment" and the subsection titled "Lien" and reads:

"If any unit owner shall fail or refuse to make any payment of the common expenses or the amount of any unpaid fine when due, the amount thereof together with any interest, late charges, reasonable

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attorney fees incurred enforcing the covenants of the condominium instruments, rules and regulations of the board of managers, or any applicable statute or ordinance, and costs of collections shall constitute a lien on the interest of the unit owner in the property . . ."

(citing 765 ILCS 605/9(g)(1)). That section does not entitle Pebble Court to attorney fees because it requires the trial court to find that the unit owner failed or refused to make a payment when it was due. Here, the trial court found that Jain did not fail or refuse to make a payment that was due. Instead, the court found that Pebble Court was seeking money to which it was not entitled. That statutory section also deals with the creation of liens, not the award of litigation costs so it is not applicable to this case.

¶ 13 For the first time on appeal (though the position is alluded to in its pretrial brief), Pebble Court cites section 9.2(b) of the Condominium Property Act as a basis for its entitlement to attorney fees. That section states that:

"Any attorneys' fees incurred by the Association arising out of a default by any unit owner . . . in the performance of any of the provisions of the condominium instruments, rules and regulations or any applicable statute or ordinance shall be added to, and deemed a part of, his respective share of the common expense."

765 ILCS 605/9.2(b). That section does not entitle Pebble Court to attorney fees because it requires the trial court to find that there was a default by the unit owner. The trial court made no such finding in this case. Instead, the trial court found Pebble Court sought payment for assessments and fees to which it was not entitled.

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¶ 14 Pebble Court maintains that the evidence demonstrates that Jain was, in fact, in default until after the proceedings were initiated because it is undisputed that she did not make all of her assessment payments until January 2013—during the litigation. However, the evidence adduced at trial was that Jain was always willing to pay the assessments that began to accrue once she was actually the owner of the property, but was not willing to pay assessments and fees incurred during the previous ownership period. The uncontradicted evidence shows that Jain actually tendered payment for the assessments she owed, but that Pebble Court rejected the tender because it insisted on collecting money to which it was not entitled. According to the trial court's ruling, Jain's position was the correct one all along. She did not default on her obligations. The only reason that Pebble Court was not fully paid the amount that it was owed was because it rejected her tender, based on the mistaken assumption that it was entitled to more.

¶ 15 Even if we accepted Pebble Court's premise that there was a default, it would still be obvious that the attorney fees in this case did not "arise out of" the default. The fees in this case arose out of Pebble Court's mistake of law.

¶ 16 Pebble Court relies upon *Board of Directors of 420 West Grand Condominium Ass'n v. LaSalle Bank Nat. Ass'n*, 2011 IL App (1st) 102306-U, an unpublished decision, to support its position. However, aside from it being an unpublished decision, that case is clearly distinguishable because the plaintiff in that case actually secured a judgment for unpaid assessments. Here, the plaintiff was awarded nothing as far as assessments or fees.

¶ 17 Pebble Court did not receive the relief it sought in its complaint. It was never entitled to the back assessments or the other fees that it sought from Jain. The uncontradicted evidence establishes that Jain was ready and willing to perform her actual obligations before any legal

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maneuverings began. Jain certainly should not be held to pay for the legal proceedings against her when the proceedings vindicated the position she held all along. No statute authorizes such a result. All points of contention were resolved in Jain's favor. The attorney fees were incurred as a result of Pebble Court's own misunderstanding of what it was entitled to under the Condominium Property Act. Had it accepted Jain's tender at the outset, it would have received everything that it was legally entitled to, and it would not have incurred any of the costs set forth in its fee petition. Attorney fees should not have been awarded.

¶ 18

#### CONCLUSION

¶ 19 Accordingly, we reverse the judgment of the Circuit Court of Cook County.

¶ 20 Reversed.