

No. 1-15-3011

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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JOE McCARTHY d/b/a JOE'S BLACKTOP, INC.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 M4 00009
	)	
RELIABLE MANAGEMENT CO., INC.,	)	Honorable
	)	Kevin T. Lee,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE CUNNINGHAM delivered the judgment of the court.  
Justices Connors and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* When the appellant challenges the trial court's determination that its agent did not qualify as an expert and the court's entry of judgment following a bench trial yet does not include a transcript or report of proceedings in the record on appeal, this court must presume that the trial court's orders had a sufficient factual basis and were in conformity with the law.

¶ 2 Defendant Reliable Management Company, Inc. (Reliable Management), appeals from the trial court's entry of judgment in favor of plaintiff Joe McCarthy d/b/a Joe's Blacktop, Inc. (McCarthy) following a bench trial. On appeal, Reliable Management contends that the trial court erred when it did not permit its agent Ronald Kafka to testify as an expert with respect to

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"blacktop resurfacing," and that the trial court's entry of judgment in favor of McCarthy was against the manifest weight of the evidence. We affirm the trial court's ruling.

¶ 3 The record reveals that in August 2011, Reliable Management hired McCarthy, by way of written contracts, to resurface the pavement at 1241 and 1261 Balmoral Avenue in Westchester, Illinois. Reliable Management agreed to pay \$4,100 for the project at 1241 Balmoral, and \$2,500 for the project at 1261 Balmoral. The parties do not dispute the financial terms of the contract.

¶ 4 In January 2014, McCarthy filed a breach of contract lawsuit alleging that the work was performed, and inspected and approved by the Village of Westchester. McCarthy's complaint alleged that Reliable Management had an outstanding balance of \$4,100 for the 1241 Balmoral project and an outstanding balance of \$2,500 for the 1261 Balmoral project. The complaint sought \$6,600 plus interest, court costs and reasonable attorney fees from Reliable Management.

¶ 5 In May 2014, Reliable Management filed an answer and affirmative defenses alleging that the work was not completed as alleged in that the "blacktopping" provided was not the "thickness required, requested or ordered." The answer further alleged that as a result of this inadequate work by McCarthy, Reliable Management "was compelled to have additional work done by a third party in order to attain the results required in its original understanding with Plaintiff" McCarthy.

¶ 6 In February 2015, Reliable Management filed a motion and an amended motion for leave to file a counterclaim. The counterclaim alleged breach of contract in that McCarthy failed to provide the requested "thickness and/or depth" of blacktop. On February 23, 2015, the trial court

granted Reliable Management's motion to file a counterclaim and "leave granted to file *instanter*."

¶ 7 The matter proceeded to a bench trial. The trial court's April 29, 2015 order states:

"After trial and the submission of all proof the court finds in favor of the plaintiff on the plaintiff's complaint and for counter defendant and against the counter plaintiff on the counter complaint. [A]nd [the court] assesses damages in favor of the plaintiff in the amount of \$6,600 plus 2% interest per month on the amount to date of judgment, and attorney fees and costs to be determined for the reasons stated in open court."

¶ 8 The trial court later granted McCarthy's petition for attorney fees and costs in the amount of \$6,026.61. The court ultimately denied Reliable Management's motion for a new trial.

¶ 9 On appeal, Reliable Management contends that the trial court abused its discretion when it refused to qualify Kafka as an expert with respect to "blacktop resurfacing." Reliable Management further contends that the trial court's entry of judgment in favor of McCarthy after a bench trial was against the manifest weight of the evidence.

¶ 10 Our review of Reliable Management's appeal, however, is hindered by the failure to comply with our supreme court's rules. The argument section of Reliable Management's brief is devoid of any citations to the record. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). It is well established that a court of review is entitled to briefs that conform to supreme court rules. *Schwartz v. Great Central Insurance Co.*, 188 Ill. App.

3d 264, 268 (1989) (appellants' briefs are to provide cohesive legal arguments in conformity with supreme court rules). This court may, in its discretion, strike a brief and dismiss an appeal based on the failure to comply with the applicable rules of appellate procedure. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 77. However, we choose, in our discretion and in the interests of judicial economy, not to dismiss this case because we are able, despite the shortcomings of Reliable Management's brief, to discern its claims on appeal. See *In re Estate of Jackson*, 354 Ill. App. 3d 616, 620 (2004) (a reviewing court has the choice to review the merits of an appeal, even in light of multiple Rule 341 mistakes).

¶ 11 Reliable Management first contends that the trial court abused its discretion when it refused to qualify Kafka as an expert with respect to "blacktop resurfacing." Although we generally review a trial court's determination as to whether a witness qualifies as an expert for an abuse of discretion (see *People v. Jordan*, 103 Ill. 2d 192, 208 (1984)), our review is hindered by the fact that the record on appeal contains no information regarding Kafka or any proceedings related to his potential qualification as an expert.

¶ 12 Reliable Management, as the appellant, has the burden to present a sufficiently complete record of the proceedings in the trial court to support its claims of error. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Any doubts arising from the incompleteness of the record will be resolved against Reliable Management. *Id.* at 392. Reliable Management's brief does not state the trial court's basis for determining that Kafka did not qualify as an expert and its argument regarding Kafka contains no citations to the record. We therefore presume that the trial court's determination that Kafka did not

qualify as an expert had a sufficient factual basis and conformed with the law. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156-57 (2005).

¶ 13 Reliable Management also challenges the trial court's entry of judgment in favor of McCarthy following a bench trial. However, the record does not contain a transcript, report of proceedings, bystander's report or an agreed statement of facts regarding the April 29, 2015 trial. See Ill. S. Ct. R. 323 (eff. Dec. 13, 2005). In light of the fact that the record on appeal does not contain a report of proceedings or other record of the trial, we have no basis for disturbing the trial court's judgment because we do not know what evidence or arguments were presented to the trial court or the court's reasoning in ruling as it did. See *Corral*, 217 Ill. 2d at 156-57. Because we have no meaningful record from which to review the claimed error, we presume that the challenged ruling was entered in conformity with the law and was properly supported by the evidence (*Foutch*, 99 Ill. 2d at 392-93).

¶ 14 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 15 Affirmed.