

No. 1-15-1112

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

WALTER DANIELS CONSTRUCTION CO. INC.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 08 CH 43511
)	
DUNDEE REGER LLC,)	Honorable
)	Lisa R. Curcio,
Defendant-Appellant.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Hyman and Justice Neville concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's decision to award attorney's fees to plaintiff affirmed where record insufficient to determine whether court abused its discretion.

¶ 2 Defendant Dundee Reger LLC appeals an order granting attorney's fees to plaintiff

Walter Daniels Construction Company, the prevailing party in the underlying litigation to foreclose a mechanics lien. Because the record is inadequate to address the merits of Dundee Reger's claims, we affirm.

¶ 3 In October 2007, Reger Development, LLC entered into a written contract with Walter Daniels to construct an Autozone store in Wheeling, Illinois. Walter Daniels substantially completed construction of the store in July 2008, but when it did not receive full payment from Dundee Reger,¹ it recorded a mechanics lien against the property in the amount of \$577,043.44 on October 8, 2008. Walter Daniels filed a complaint to foreclose the lien two weeks later, on October 27.

¶ 4 Walter Daniels amended its complaint several times over the next five years, and Dundee Reger asserted affirmative defenses and counterclaims with each amendment. The trial court struck all but one affirmative defense (setoff for damages due to a delay in construction) and one counterclaim (fraudulent misrepresentation of the time it would take to complete the construction). Following the denial of Walter Daniels' motion for partial summary judgment on Dundee Reger's affirmative defense, a bench trial proceeded on Walter Daniels' third amended complaint in May 2013.² The court issued its ruling one year later in July 2014, entering judgment in favor of Walter Daniels in the amount of \$486,183.87 plus \$277,990.70 in interest. The court denied relief on Dundee Reger's counterclaim and also denied Dundee Reger's motion for reconsideration in October 2014.

¶ 5 In August 2014, Walter Daniels moved for attorney's fees pursuant to section 17(b) of the Illinois Mechanics Lien Act (770 ILCS 60/17(b) (West 2012)), arguing that Dundee Reger's refusal of payment was "without just cause or right." After briefing and argument, the trial court granted the motion in a written order in which it further ordered Walter Daniels to file a petition setting forth the amount of its fees. Following the filing of this petition, in March 2015, the court

¹ Reger Development's rights under the contract were assigned to Dundee Reger on July 14, 2008, with Walter Daniels' consent.

² The transcript of the hearing on Walter Daniels' motion for partial summary judgment, as well as the trial transcript, was not made part of the record.

awarded Walter Daniels \$310,035.12 in attorney's fees, the total amount it requested. This appeal follows.

¶ 6 The sole issue on appeal is whether the trial court erred in granting attorneys fees to Walter Daniels pursuant to section 17(b) of the Act, which provides that the court may award a prevailing party its attorneys fees if it "specifically finds that the owner who contracted to have the improvements made failed to pay any lien claimant the full contract price, including extras, without just cause or right." 770 ILCS 60/17(b) (West 2012). "Without just cause or right" is defined, in relevant part, as a defense asserted by the owner of the property "which is not well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." 770 ILCS 60/17(d) (West 2012).

¶ 7 Ordinarily, we review the trial court's decision to award attorney's fees under the Act for an abuse of discretion (*Father & Sons Home Improvement II, Inc. v. Stuart*, 2016 IL App (1st) 143666, ¶ 47), but here, the record is insufficient to conduct such a review. Significantly, it is appellant's burden to provide a sufficiently complete record to support a claim of error, and in the absence of that record we must presume that the trial court's order conformed to the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Dundee Reger has not provided a report of proceedings of the hearing on the motion for attorney's fees, nor has it provided a sufficient substitute, such as a bystander's report or an agreed statement of facts. See Ill. S. Ct. R. 323 (eff. Dec. 13, 2005). As such, it is impossible for us to determine the basis for the court's decision, and without this information, we must presume that the trial court did not act arbitrarily but within the bounds of reason, keeping in mind relevant legal principles. See *Foutch*, 99 Ill.2d at 392 (absent transcript of hearing on motion to vacate, no basis for holding trial court abused discretion); see also *Illinois Founders Insurance Co. v. Williams*, 2015 IL App

(1st) 122481, ¶ 56 (appellate court unable to "divine the trial court's reasoning" behind its decision in absence of report of proceedings and thus could not determine whether decision constituted an abuse of discretion).

¶ 8 Dundee Reger nevertheless contends that the court necessarily abused its discretion because the court's written order omitted a specific finding that Dundee Reger's failure to pay was "without just cause or right." But nothing in the Act requires this finding to be written rather than oral, and we will not assume the court failed to make this finding orally in the absence of a transcript of the hearing. *See In re Marriage of Adler*, 271 Ill. App. 3d 469, 477 (1995) (reviewing transcript to conclude that trial court failed to make necessary findings prior to imposing sanctions pursuant to Rule 137).

¶ 9 Dundee Reger analogizes the attorney's fee provision in the Act to Rule 137, permitting sanctions for signed pleadings and motions that are not well grounded in fact or warranted by existing law or a good-faith argument for the extension of existing law. Ill. S. Ct. R 137(a) (eff. July 1, 2013). Rule 137 further requires the court imposing sanctions to "set forth with specificity the reasons and basis of any sanction *** either in the judgment order itself or in a separate written order." Ill. S. Ct. R. 137(d) (eff. July 1, 2013). Dundee Reger urges us to read a similar requirement into the Act, but we decline to do so. Because the Act does not require a court's findings to be in writing, it is of no moment that the court failed to include a specific finding that Dundee Reger's failure to make payment was "without just cause or right" in its written order.

¶ 10 Finally, the trial court's decision to reduce Walter Daniels' lien claim by \$89,864.13 (the amount Dundee Reger had already paid to subcontractors), does not support Dundee Reger's contention that its defenses to Walter Daniels' claim were "well grounded in fact," so as to

preclude a grant of attorney's fees. Dundee Reger has not explained how its objection to a portion of Walter Daniels' lien claim entitled it to withhold payment of the entire amount due, and in the absence of an explanation, the trial court did not err in awarding attorney's fees to Walter Daniels. See *O'Connor Construction Co., Inc. v. Belmont Harbor Home Development, LLC*, 391 Ill App. 3d 533, 541 (2009) (subcontractor entitled to attorney's fees where defendant challenged portion of subcontractor's claim, but offered no explanation for its refusal to pay on amount which was undisputed).

¶ 11 Affirmed.