

No. 1-15-1528

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

832 OAKDALE CONDOMINIUM ASSOCIATION,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant and Cross-Appellee,)	Cook County.
)	
v.)	No. 10 M1 709497
)	
BRIDGET MCBRIDE,)	Honorable
)	Martin Paul Moltz,
Defendant-Appellee and Cross-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* We dismissed the appeal of plaintiff-appellant and cross-appellee for lack of jurisdiction. We dismissed the cross-appeal of defendant-appellee and cross-appellant for lack of jurisdiction and for failure to comply with Illinois Supreme Court Rule 341(h)(7).

¶ 2 Plaintiff-appellant and cross-appellee, 832 Oakdale Condominium Association (plaintiff), filed a forcible entry and detainer action against defendant-appellee and cross-appellant, Bridget McBride (defendant), seeking to recover approximately \$5,000 in damages and to obtain possession of defendant's condominium unit. The trial court denied the parties' cross-motions for partial summary judgment, and the cause proceeded to trial. Prior to the conclusion of the trial, the trial court dismissed plaintiff's action, without prejudice, for failing to comply with the holding in *Palm v. 2800 Lake Shore Drive Condominium Association*, 2014 IL App (1st)

No. 1-15-1528

111290, which requires that the board of managers of a condominium association must vote at an open meeting to authorize the filing of a forcible entry and detainer action against the unit holder. Plaintiff appeals the order dismissing its forcible entry and detainer action, without prejudice, against defendant. We dismiss the appeal of plaintiff for lack of jurisdiction.

¶ 3 Defendant cross-appeals, arguing that the trial court erred by denying her motions for relief under the Citizen Participation Act (Act), 735 ILCS 110/1 *et seq.* (West 2014), and for failing to rule on various other motions. We dismiss the cross-appeal of defendant for lack of jurisdiction and for failure to comply with Illinois Supreme Court Rule 341(h)(7) (Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016)).

¶ 4 I. Plaintiff's Appeal

¶ 5 Although neither party raised a challenge to our jurisdiction to hear the appeal and cross-appeal, we have a duty to consider our jurisdiction *sua sponte*, and to dismiss the appeal if jurisdiction is wanting. *Citibank, N.A. v. Illinois Department of Revenue*, 2016 IL App (1st) 133650, ¶ 49.

¶ 6 Ordinarily, jurisdiction is conferred on this court by the filing of a notice of appeal within 30 days of the entry of the final judgment from which the appeal is taken. *D'Agostino v. Lynch*, 382 Ill. App. 3d 639, 642-43 (2008). Illinois Supreme Court Rule 303 states:

"The notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, whether in a jury or a nonjury case, within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order ***." Ill. S. Ct. R. 303 (eff. Jan. 1, 2015).

¶ 7 Our supreme court recently has held:

"To be 'final,' a judgment or order must terminate the litigation and fix absolutely the parties' rights, leaving only enforcement of the judgment. [Citations.] In determining when a judgment or order is final, one should look to its substance rather than its form. [Citation.] Illinois Supreme Court Rule 273 provides: '*Unless the order of dismissal or a statute of this State otherwise specifies, an involuntary dismissal of an action, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join an indispensable party, operates as an adjudication upon the merits.* (Emphasis added.) Ill. S. Ct. R. 273 (eff. Jan. 1, 1967). If a circuit court involuntarily dismisses a plaintiff's action, other than for one of the rule's three exceptions, and if the plaintiff does not procure leave of court to refile the complaint or if a statute does not guarantee that opportunity, then Rule 273 deems the dismissal to be on the merits. [Citation.] *However, a dismissal 'without prejudice' signals that there was no final decision on the merits and that the plaintiff is not barred from refiling the action.*" (Emphasis added.) *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 24. See also *D'Attomo v. Baumbeck*, 2015 IL App (2d) 140865, ¶ 24 (holding that, while the effect of a dismissal order is determined by its substance and not by any particular "magic words," an order clearly indicating it was made "without prejudice" is not a final and appealable order).

¶ 8 In the present case, when dismissing plaintiff's forcible entry and detainer action for failing to comply with *Palm's* requirement that the board of managers of the condominium association vote at an open meeting to authorize the filing of said action against defendant, the trial court stated:

"I think pursuant to *Palm* I have no choice but to dismiss the action. *** The big question is with or without prejudice. I am convinced that if I dismiss it with prejudice

that this case is going to be back in two years. I don't think the [appellate] court is going to go along with it at all. I don't want to do this to the board, and I especially don't want to do this to [defendant], have this case come back in two years. I just know that the appellate court is not going to go for it, simply because I have made no rulings on the merits at all, none. For that reason alone there is no way the appellate court will buy I think a dismissal with prejudice. For that reason alone I think it has to be without prejudice, because I really don't want this case coming back in two years."

¶ 9 On April 7, 2015, the trial court entered the written dismissal order from which plaintiff appeals, stating therein: "For the reasons stated on the record, this cause is dismissed *without prejudice*, pursuant to [*Palm*]." (Emphasis added.)

¶ 10 Since the dismissal order from which plaintiff appeals was expressly entered "without prejudice," it was not final and appealable. Further, as discussed later in this order, there were outstanding anti-SLAPP motions filed by defendant that the trial court never ruled on, which also rendered the dismissal order non-final. Therefore, we dismiss plaintiff's appeal for lack of jurisdiction.

¶ 11 II. Defendant's Cross-Appeal

¶ 12 Defendant cross-appeals from the trial court's denial of her motions for relief under the Act. 735 ILCS 110/1 *et seq.* (West 2014).

¶ 13 "The Act was created as anti-SLAPP [Strategic Lawsuits Against Public Participation] legislation. SLAPPs are lawsuits aimed at preventing citizens from exercising their political rights or punishing those who have done so. Plaintiffs in SLAPP suits do not intend to win but rather to chill a defendant's speech or protest activity and discourage opposition by others through delay, expense, and distraction. SLAPP's use the threat of money damages or the

prospect of the cost of defending against the suits to silence citizen participation. The purpose of the Act is to give relief, including monetary relief, to citizens who have been victimized by meritless, retaliatory SLAPP lawsuits because of their act or acts made in furtherance of the constitutional rights to petition, speech, association, and participation in government." (Internal quotation marks and citations omitted). *Stein v. Krislov*, 2013 IL App (1st) 113806, ¶ 14.

¶ 14 Defendant argues that plaintiff's forcible entry and detainer lawsuit fell within the purview of the Act, as it was brought to harass defendant for exercising her first amendment rights when she complained to the City of Chicago about plaintiff's various plumbing code violations. Defendant contends the trial court erred by denying her relief under the Act.

¶ 15 An order denying a motion to dispose of litigation under the Act is interlocutory, and is appealable under Illinois Supreme Court Rule 306(a)(9), which provides:

"A party may petition for leave to appeal to the Appellate Court from the following orders of the trial court:

(9) from an order of the circuit court denying a motion to dispose under [the Act] (735 ILCS 110/1 *et seq.*)." Ill. S. Ct. R. 306(a)(9) (eff. March 8, 2016).

¶ 16 Defendant failed to petition for leave to appeal the denial of her motions to dispose of plaintiff's forcible entry and detainer action under the Act as required by Rule 306(a)(9) and, therefore, we lack jurisdiction to consider her cross-appeal. Accordingly, we dismiss defendant's cross-appeal of the denial of her motions under the Act for lack of appellate jurisdiction.

¶ 17 Defendant also argues on cross-appeal that the trial court failed to rule on two of her motions under the Act. In the absence of any ruling on the two motions, there is nothing for us

No. 1-15-1528

to review and, therefore, we lack jurisdiction. *In re Appointment of Special State's Attorney*, 305 Ill. App. 3d 749, 762 (1999).

¶ 18 In section IV of her amended appellee and cross-appellant brief, defendant raises four other arguments, specifically, that the trial court erred by not ruling on her motions: (1) to find that certain board members violated the Condominium Property Act, breached their fiduciary duty, and acted in a grossly negligent manner by failing to authorize the filing of the forcible action at an open meeting; (2) to file additional affirmative defenses; and (3) for leave to file a Rule 137 (Ill. S. Ct. R. 137 (eff. July 1, 2013), motion and counterclaim for malicious prosecution against plaintiff. Defendant also argues the trial court erred by not allowing her to "present her motion to admit into evidence defendant's exhibits which had been identified during plaintiff's case."

¶ 19 Defendant forfeited appellate review by making only a half-page argument, covering all four issues, with no citation to authority for three of the issues, and no citation to the record at all. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016); *Taylor v. Board of Education of City of Chicago*, 2014 IL App (1st) 123744, ¶ 53 (matters forfeited under Rule 341(h)(7) are subject to dismissal). Further, as discussed earlier in this order, in the absence of a ruling on any of the motions at issue, there is nothing for us to review and, therefore, we lack jurisdiction. *In re Appointment of Special State's Attorney*, 305 Ill. App. 3d at 762.

¶ 20 For the foregoing reasons, we dismiss plaintiff's appeal and defendant's cross-appeal. As a result of our disposition of this case, we need not address the other arguments on appeal.

¶ 21 Dismissed.