

No. 1-16-1291

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

| | | |
|---|---|---------------------|
| CITIBANK N.A., |) | Appeal from the |
| |) | Circuit Court |
| Plaintiff, |) | Cook County. |
| |) | |
| v. |) | |
| |) | No. 12 CH 12910 |
| UNKNOWN HEIRS AND DEVISEES OF JUNE |) | |
| SPIEZER, Deceased, WILLIAM P. BUTCHER, as the |) | |
| SPECIAL REPRESENTATIVE for JUNE SPIEZER, |) | |
| Deceased, JOSEPH SPIEZER, JOSEPH SPIEZER as |) | |
| TRUSTEE OF THE JUNE SPIEZER REVOCABLE |) | |
| TRUST DATED FEBRUARY 16, 2002, NORTHBROOK |) | |
| COUNTRY CONDOMINIUM ASSOCIATION, |) | |
| UNKNOWN OWNERS, and NONRECORD |) | |
| CLAIMANTS, |) | |
| |) | |
| Defendants. |) | |
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| JOSEPH SPIEZER, |) | |
| |) | |
| Cross-Plaintiff-Appellant, |) | |
| |) | |
| v. |) | |
| |) | |
| NORTHBROOK COUNTRY CONDOMINIUM |) | |
| ASSOCIATION, and BOARD OF MANAGERS OF |) | |
| NORTHBROOK COUNTRY CONDOMINIUM |) | |
| ASSOCIATION, |) | Honorable |
| |) | Allen Price Walker, |
| Cross-Defendants-Appellees. |) | Judge Presiding. |

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Ellis and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly dismissed cross-plaintiff's complaint for lack of jurisdiction where the complaint sought to collaterally attack a final judgment entered in another case.

¶ 2 In April 2012, plaintiff Citibank N.A. filed a mortgage foreclosure action against defendants based on a mortgage entered by June Spiezer. In August 2015, cross-plaintiff Joseph Spiezer filed a *pro se* motion seeking leave to file a third party complaint for accounting and possession against cross-defendant Northbrook Country Condominium Association and Board of Managers of Northbrook Country Condominium Association (collectively, the Association), based on the judgment entered in a separate forcible entry and detainer action filed by the Association against June Spiezer, as trustee of the June Spiezer revocable trust. The Association filed a motion to dismiss Spiezer's third party complaint as improper because it was a collateral attack on the forcible entry and detainer judgment. The trial court granted the Association's motion to dismiss, as well as denied Spiezer's motion to reconsider, noting that it had "no authority to change another court's order."

¶ 3 Spiezer appeals, arguing that the trial court had jurisdiction to consider his third party complaint.

¶ 4 In April 2012, Citibank filed a mortgage foreclosure seeking to foreclose a mortgage entered on June 4, 2003, in the amount of \$223,000, for the property located at 1175 Lake Cook Road, Unit 206W, Northbrook, Illinois. June Spiezer died on November 14, 2011. Citibank subsequently filed an amended complaint in May 2013 to correct the caption in accordance with June's passing.

¶ 5 In August 2012, the Association filed a forcible entry and detainer action in the trial court under case number 12-M1-721683. This action involved the same condominium unit at issue in the foreclosure proceedings. In January 2013, the trial court entered an order of possession. In February 2013, Spiezer filed a notice of appeal in this court, which was dismissed for want of prosecution in August 2013.¹

¶ 6 In August 2015, Spiezer filed a motion for leave to file a third party complaint for accounting and possession against the Association. The complaint alleged that the forcible detainer action “failed to have service of summons issued to the proper trustee or the beneficiaries, but named June Spiezer, a deceased person, as Trustee.” The Association “obtained in said action, as relief, possession of the premises and damages for alleged unpaid fees.” Further, “[t]hat any relief granted to in that cause was a nullity and has no effect on the parties not served.” The complaint stated that following the order of possession, the Association has rented the premises and collected certain sums “which sums are properly the property of the beneficiaries” of the trust. Additionally, “any tenant currently in the premises is a trespasser without any rights to the premises whatsoever.” The complaint asked for an order and accounting of sums in the possession of the Association, an order for a turnover of such sums, and an order granting him immediate possession of the premises.

¶ 7 In November 2015, the Association filed a motion to dismiss Spiezer’s third party complaint because the complaint improperly sought to attack the judgment entered by another court in the forcible entry and detainer action, and Spiezer was prohibited from collaterally attacking a judgment in another case. Spiezer filed a response to the motion, asserting that the judgment in the forcible action was “a nullity,” and his complaint was not barred under the doctrine of *res judicata*. The Association filed a reply, reiterating its argument that Spiezer

¹ Appeal no. 1-13-0573, dismissed August 28, 2013.

cannot collaterally attack the forcible action in the foreclosure action. In January 2016, the trial court granted the Association's motion to dismiss Spiezer's third party complaint for accounting and possession.

¶ 8 In February 2016, Spiezer filed a motion to reconsider the dismissal of his third party complaint. He argued that the judgment in the forcible action was without jurisdiction and a nullity because the action failed to name the trustee and beneficiaries as necessary parties. The Association filed a response, reasserting that Spiezer has failed to respond to the claim that he cannot collaterally attack the forcible action in the foreclosure action. In his reply, Spiezer contended that an exception to the bar on collateral attacks exists when the trial court that entered the order lacked jurisdiction. According to Spiezer, the judgment in the forcible action was void *ab initio*. In May 2016, the trial court denied Spiezer's motion to reconsider "with this court holding that it has no authority to change another court's order and that this is not a decision on the merits of [Spiezer's] action."

¶ 9 This appeal followed.

¶ 10 Initially, the Association argues that this court lacks jurisdiction to hear this appeal because Spiezer improperly asserts that this court has jurisdiction under Supreme Court Rules 303 and 306 (Ill. S. Ct. Rs. 303 (eff. Jan. 1, 2015) and 306 (eff. Mar. 8, 2016)). Rule 303 provides an appeal from a final judgment within 30 days of its entry. Ill. S. Ct. R. 303. However, as the Association points out, this is not a final judgment because the foreclosure action remains pending. Further, Rule 306 provides for interlocutory appeals by petition. Ill. S. Ct. R. 306. Spiezer did not file a petition seeking leave to appeal under any subsection of Rule 306, nor are any of the subsections applicable to the trial court's order dismissing Spiezer's third party complaint. See Ill. S. Ct. R. 306(a).

¶ 11 "An order is 'final if it either terminates the litigation between the parties on the merits or disposes of the rights of the parties either on the entire controversy or on a separate and definite part of it." *Bennett v. Chicago Title & Trust Co.*, 404 Ill. App. 3d 1088, 1094 (2010); *Shermach v. Brunory*, 333 Ill. App. 3d 313, 316 (2002). A judgment is final if it determines the litigation on the merits so that if affirmed on appeal, the only thing remaining is to proceed with execution of the judgment. *Shermach*, 333 Ill. App. 3d at 316. An order is final when any matters left for future determination are merely incidental to the ultimate rights that have been adjudicated by the order. *Id.* at 317. In instances in which an order adjudicates one or more but fewer than all of the parties or claims, the trial court may authorize an interlocutory appeal pursuant to Illinois Supreme Court Rule 304(a) by making an express written finding that there is no just reason for delaying either enforcement or appeal or both. Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016); *Bennett*, 303 Ill. App. 3d at 1094. There was no Rule 304(a) language included in the trial court's orders dismissing the complaint or denying Spiezer's motion to reconsider. Since this was not a final order and no rule allowing for interlocutory appeals or an appeal from final judgment that does not dispose of the entire proceedings was followed, we lack jurisdiction over this appeal.

¶ 12 Moreover, we also lack jurisdiction over Spiezer's appeal because the trial court did not have jurisdiction over his third party complaint since it was a collateral attack on a final judgment entered in another proceeding. " 'If a trial court did not have jurisdiction, the parties cannot confer jurisdiction on a reviewing court merely by taking an appeal.' " *KT Winneburg, LLC v. Calhoun County Board of Review*, 403 Ill. App. 3d 744, 747 (2010) (quoting *Greer v. Illinois Liquor Control Commission*, 185 Ill. App. 3d 219, 221 (1989)).

¶ 13 " ' "A collateral attack on a judgment is an attempt to impeach that judgment in an action other than that in which it was rendered." ' " *City of Chicago v. Midland Smelting Co.*, 385 Ill.

App. 3d 945, 961 (2008) (quoting *Thomas v. Sklodowski*, 303 Ill. App. 3d 1028, 1033 (1999), quoting *Buford v. Chief, Park District Police*, 18 Ill. 2d 265, 271 (1960)). “Under the collateral attack doctrine, a final judgment rendered by a court of competent jurisdiction may only be challenged through direct appeal or procedure allowed by statute and remains binding on the parties until it is reversed through such a proceeding.” *Apollo Real Estate Inv. Fund, IV, L.P. v. Gelber*, 403 Ill. App. 3d 179, 189 (2010) (citing *Board of Trustees of Community College District No. 508 v. Rosewell*, 262 Ill. App. 3d 938, 961 (1992)).

¶ 14 Here, Spiezer’s third party complaint sought to relitigate issues pertaining to the Association’s forcible entry and detainer action, in which a final judgment was entered in February 2013 and that appeal was dismissed for want of prosecution. Spiezer did not address the collateral attack doctrine in his opening brief and failed to file a reply brief on appeal. Spiezer argues in his brief that the trial court had jurisdiction because a void judgment may be attacked at any time, citing *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002). While Spiezer is partially correct, the Illinois Supreme Court has clarified:

“Although a void order may be attacked at any time, the issue of voidness must be raised in the context of a proceeding that is properly pending in the courts. If a court lacks jurisdiction, it cannot confer any relief, even from prior judgments that are void. The reason is obvious. Absent jurisdiction, an order directed at the void judgment would itself be void and of no effect.” *People v. Flowers*, 208 Ill. 2d 291, 308 (2003).

¶ 15 In this case, the trial court in the foreclosure action lacked jurisdiction over a judgment in the forcible action under the collateral attack doctrine. Spiezer’s third party complaint attacking

the forcible action judgment was not properly raised in the foreclosure proceedings. The appropriate forum for the allegations raised in Spiezer's third party complaint was the municipal court in which the forcible entry and detainer action was litigated. Since the trial court lacked jurisdiction over his complaint, it follows that this court likewise lacks jurisdiction on appeal.

¶ 16 Based on the foregoing reasons, we dismiss Spiezer's appeal for lack of jurisdiction.

¶ 17 Appeal dismissed.