

**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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THE NEWPORT CONDOMINIUM ASSOCIATION,	)	Appeal from the Circuit Court of Cook County.
	)	
Plaintiff-Appellee,	)	
	)	No. 15 M1 707433
v.	)	
	)	
BLACKHALL CORPORATION 401(k) PSP, and ANY/ALL UNKNOWN TENANTS AND/OR OCCUPANTS	)	The Honorable Diana Rosario, Judge Presiding.
	)	
Defendant-Appellant.	)	

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JUSTICE PUCINSKI delivered the judgment of the court.  
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court properly denied the parties' cross motions for summary judgment because a genuine issue of material fact concerning defendant's purported efforts to pay assessments arose from their conflicting summary judgment affidavits. The circuit court also properly entered judgment in favor of plaintiff for possession of the subject property and a money judgment.

¶ 2 Defendant, Blackhall Corporation 401(k) PSP (Blackhall), appeals from an order of the circuit court of Cook County denying its motion to dismiss and plaintiff Newport Condominium

(Newport Condo) Association's motion for summary judgment, and from an order entering judgment in favor of Newport Condo on its forcible entry and detainer complaint for possession of the subject property and the amount of \$23,469.98 for unpaid assessments, \$14,801.80 for attorney fees, and \$1,940.72 for costs.

¶ 3

### BACKGROUND

¶ 4

The property at 4800 South Chicago Beach Drive, Unit 1303N, in Chicago, Illinois, was previously owned by Shana Pearson. On August 19, 2014, after much litigation, Newport Condo was awarded possession of the property and \$11,544.20 in unpaid assessments, \$950 in attorney fees, and \$510.99 in costs against Pearson.

¶ 5

On December 23, 2014, Blackhall was allowed to intervene "as mortgagee" in the Pearson matter. The court also vacated the order of possession in favor of Newport Condo but entered judgment in favor of Newport Condo and against Pearson in the amounts above.

¶ 6

Neither the record, nor the briefs are entirely clear, but the quitclaim deed in lieu of foreclosure was delivered to Blackhall on October 14, 2014.

¶ 7

On April 20, 2015, Newport Condo filed a joint forcible entry and detainer action (joint action) against Blackhall for possession of the subject property and a money judgment. In the complaint, Newport Condo claimed that it was entitled to possession of the described premises, which Blackhall unlawfully withheld thereof "from December 31, 2009, to April 13, 2015" and owed \$24,442.11 in unpaid assessments, late charges, and other lawfully assessed charges, plus subsequently accruing amounts of the same.

¶ 8

On June 9, 2015, Blackhall filed a motion to dismiss "pursuant to § 735 ILCS 5/2-1005" and for sanctions pursuant to Illinois Supreme Court Rule 137 (eff. July 1, 2013). Blackhall stated therein that on September 13, 2013, Newport Condo had filed a joint action complaint

against the previous owner, Shana Pearson, and that a *nunc pro tunc* order<sup>1</sup> was entered on August 19, 2014, awarding Newport Condo possession of the subject property, \$11,544.20 in assessments, \$950 in attorney fees, and \$510.99 in costs. Blackhall stated that on December 23, 2014, the court granted its motion to intervene as mortgagee in the Pearson matter, vacated the possession portion of the *nunc pro tunc* order of August 19, 2014, and entered judgment in favor of Newport Condo and against Pearson in the amounts previously ordered. According to Blackhall, pursuant to section 9(g)(3) of the Condominium Property Act (765 ILCS 605/9 (West 2014)), a mortgagee has no duty to pay for any proportionate share of the condominium unit's common expenses prior to taking possession pursuant to court order. Blackhall stated that the instant joint action complaint by Newport Condo sought Blackhall to pay for the proportionate share of the unit's common expenses from December 31, 2009, to April 13, 2015, and that Newport Condo had already been seeking the same amounts awarded in the Pearson matter.

¶ 9 On July 14, 2015, Newport Condo filed a response to Blackhall's motion to dismiss,<sup>2</sup> treating it "in essence" as a motion for summary judgment. According to Newport Condo's response, the parties agreed that Blackhall was the record owner of the subject property, that Blackhall had yet to pay any assessments owed to Newport Condo since it was delivered the deed on October 14, 2014, and that before Blackhall was delivered the quitclaim deed in lieu of foreclosure, there was a lien on the subject property arising from unpaid assessments by the previous owner. Newport Condo asserted that Blackhall's motion should be denied because it

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<sup>1</sup> The August 19, 2014 *nunc pro tunc* order appears in the common law record and shows that judgment for possession of the subject property was entered in favor of plaintiff (Newport Condo) and against Shana Pearson, and a money judgment was entered in favor of plaintiff and against Shana Pearson "in the amount of \$11,544.20 for unpaid assessments plus \$950.00 for attorney's [sic] fees and \$510.99 for costs."

<sup>2</sup> "The court will look to the substance of the motion to determine which section of the Code of Civil Procedure governs." *Scott Wetzel Services v. Regard*, 271 Ill. App. 3d 478, 481 (1995).

relied on inadmissible evidence and failed to comply with Illinois Supreme Court Rule 191 (eff. Jan. 4, 2013), which governs affidavits in support of or opposition to a motion for summary judgment. Moreover, citing the appellate opinion in *1010 Lake Shore Ass'n v. Deutsche Bank National Trust Co.*, 2014 IL App (1st) 130962, and section 9(g)(3) of the Condominium Property Act (765 ILCS 605/9(g)(3) (West 2014)), Newport Condo claimed that Blackhall was responsible for all amounts due and owing on the subject property.

¶ 10 On August 5, 2015, Blackhall filed a reply brief in support of its motion to dismiss and for sanctions. In its brief, Blackhall stated that it had submitted a \$500 check to Newport Condo as payment of the November 2014 condominium assessment, and that the check was attached to its pleadings to intervene and as an exhibit to its motion to dismiss and for sanctions. Blackhall stated that while it was trying to deliver the rest of the money owed by Pearson, Newport Condo initiated supplementary proceedings against Pearson by issuing citations to discover assets and, at the same time, filed suit against Blackhall for the same damages previously awarded in the Pearson matter. Blackhall attached the affidavits of its trustees, Mark Reynolds and Maggie Wu, averring that payments were attempted and the checks were not cashed or outright refused. In particular, Reynolds averred that on December 23, 2014, after Blackhall was awarded possession of the subject premises, he went to Newport Condo's onsite management office to get keys and pay the first month's association fees and was told by Beverly not to worry about the first month's fees until he received a statement in January. Reynolds further averred that he called the management office in February and March, inquiring about the January statement that he did not receive.

¶ 11 On August 11, 2015, Newport Condo filed a motion for summary judgment pursuant to section 2-1005(c) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1005(c) (West 2014)),

claiming that it was entitled to judgment as a matter of law because there was no question of material fact that Blackhall had failed to pay any assessments since delivery of the deed, and “under 1010 Lake Shore and Section 9(g)(3) of the Condominium Property Act, Defendant is responsible for *all* amounts due and owing on the property from the prior Owner through today’s date.” Newport Condo attached, among other things, the affidavit of its managing agent, Rose Rogic, who averred that Newport Condo’s books and records showed that Blackhall had failed to make any payments for assessments, common expenses, late fees, or other lawfully assessed charges, that when the complaint was filed, Blackhall owed \$24,442.11, and that since the complaint was filed, Blackhall owed \$30,140.53.

¶ 12 On September 10, 2015, Blackhall filed a response brief in opposition to Newport Condo’s motion for summary judgment, arguing that there were genuine issues of material fact as to Newport Condo’s assertion that Blackhall failed to pay the common expenses or any fine, and as to whether a lien existed pursuant to section 9(g) of the Condominium Property Act. In support of the first argument, Blackhall attached the same affidavits from its trustees, Mark Reynolds and Maggie Wu, averring that payments were attempted and the checks were not cashed or outright refused. Blackhall added that it had an absolute right to depose Newport Condo’s managing agent about “any material facts” in her affidavit attached to Newport Condo’s motion for summary judgment, but Newport Condo “refused” to present her for deposition in a timely manner. In support of the second argument, namely that no lien on the subject property existed pursuant to section 9(g), Blackhall reasoned “that a lien reduced to Judgment, does not become a lien again merely on the desire of the plaintiff; it stays a Judgment.”

¶ 13 On September 23, 2015, Newport Condo replied to Blackhall’s response brief, arguing there were no material questions of fact related to the existence of the lien, that Blackhall’s

motion to dismiss did not argue that it tried to make payments that were refused by Newport Condo, and that the affidavits of Mark Reynolds and Maggie Wu contained “merely self-serving statements,” including hearsay and did not comply with the rule governing summary judgment affidavits. Newport Condo attached another affidavit from Rose Rogic, who averred that Newport Condo’s books and records showed that Wu “returned to the on-site management office on or about April 25, 2015, and she tendered payment for the amount due and owing for the [health club] membership fee,” that Rogic and another person explained to Wu that there was an amount due and owing for assessments, “but [Wu] stated she does not pay these amounts as her husband does,” and that at no time did Rogic and the other person “refuse to accept any payment from Ms. Wu or refuse to provide her with an accounting of the amounts due and owing.”

¶ 14 On October 6, 2015, when the matter came before the court for hearing on Blackhall’s motion to dismiss “pursuant to § 735 ILCS 5/2-1005” and Newport Condo’s motion for summary judgment pursuant to section 2-1005(c) of the Code, the court entered and continued the hearing pending a ruling by the Illinois Supreme Court in *1010 Lake Shore Ass’n v. Deutsche Bank National Trust Co.*, 2014 IL App (1st) 130962, *appeal allowed*, No. 118372 (Ill. January 28, 2015).

¶ 15 On January 8, 2016, the court entered a denial order on the parties’ “cross motions” for summary judgment. In doing so, the court found the holding<sup>3</sup> in *1010 Lake Shore Ass’n v.*

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<sup>3</sup> In *1010 Lake Shore Ass’n*, 2015 IL 118372, ¶¶ 23-27, the supreme court held that the plain language of sections 9(g)(1) and 9(g)(3) of the Condominium Property Act (765 ILCS 605/9(g)(1), (3) (West 2010)) sets forth the procedure to extinguish a lien on any unpaid assessments incurred by the previous property owner. Pursuant to section 9(g)(1), the condominium association must be included as a party to the mortgage foreclosure action in order for any lien to be extinguished upon the foreclosure sale. *Id.* “The statute does not provide that a foreclosure sale purchaser may extinguish the lien by simply making postforeclosure sale assessment payments.” *Id.* Pursuant to section 9(g)(3), an additional step is required “to confirm or formally approve the extinguishment by paying the postforeclosure sale assessments.” *Id.*

*Deutsche Bank National Trust Co.*, 2015 IL 118372, applicable to the instant case and continued the matter for prove-up of damages.

¶ 16 On March 10, 2016, the court entered a judgment in favor of Newport Condo, on its forcible entry and detainer complaint, and against Blackhall for possession of the subject property and the amount of \$23,469.98 for unpaid assessments, \$14,801.80 for attorney fees, and \$1,940.72 for costs. Additionally, enforcement of the order for possession was stayed until May 10, 2016. According to the bystander's report of the hearing, neither party objected to the court's conclusion that it could decide the amounts to be awarded Newport Condo where Blackhall stipulated to the documents relied on by Newport Condo, "which included the [plaintiff's] statutory demand, prove-up affidavit and attorney's [*sic*] fees affidavit," and because it previously ruled on the applicability of the supreme court's holding in *1010 Lake Shore Ass'n v. Deutsche Bank National Trust Co.*, 2015 IL 118372.

¶ 17 On April 7, 2016, Blackhall filed a motion to reconsider the March 10, 2016 order pursuant to section 2-1203 of the Code (735 ILCS 5/2-1203 (West 2014)). The court entered an order striking the motion to reconsider on May 17, 2016, and Blackhall filed its notice of appeal and a motion to stay enforcement of the judgment and order for possession on June 1, 2016.

¶ 18 ANALYSIS

¶ 19 We note at the outset that because Blackhall stipulated to the documents relied on by Newport Condo, which included the amount ultimately awarded to Newport Condo, the only issue being appealed is the court's denial of the parties' cross motions for summary judgment.

¶ 20 Blackhall contends that this court must vacate the January 8 and March 10, 2016 orders<sup>4</sup> of the circuit court based on its “multiple good faith attempts to pay Plaintiff the assessments owed, all of which Plaintiff refused to accept.”

¶ 21 Although the denial of a motion for summary judgment is generally not appealable, a reviewing court may consider the propriety of the denial if the appeal is from a final judgment and no trial or hearing was conducted. *Clark v. Children’s Memorial Hospital*, 2011 IL 108656, ¶ 119. In this case, the circuit court’s March 10, 2016 order was final and appealable because it disposed of the entire controversy between the parties (*Indiana Insurance Co. v. Powerscreen of Chicago, Ltd.*, 2012 IL App (1st) 103667, ¶ 22), and the January 8, 2016 order denying Blackhall’s motion to dismiss and for sanctions and Newport Condo’s motion for summary judgment became reviewable when Blackhall chose to appeal the final order of March 10, 2016 (*Alpine Bank of Illinois v. Yancy*, 274 Ill. App. 3d 766, 769 (1995)).

¶ 22 “Pursuant to section 2-1005 of the Code, summary judgment should be granted only where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and that the moving party is clearly entitled to judgment as a matter of law.” *PNC Bank, National Ass’n v. Wilson*, 2017 IL App (2d) 151189, ¶ 16. A summary judgment motion must be denied if there is a dispute as to a material fact, if reasonable persons could draw divergent inferences from undisputed facts, or if reasonable persons could differ on the weight to be accorded the relevant factors of a legal standard. *Seymour v. Collins*, 2015 IL 118432, ¶ 42. We

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<sup>4</sup> Despite Blackhall’s contrary assertion, the circuit court *denied* the parties’ “cross motions” on January 8, 2016. Blackhall incorrectly states in its brief, “On January 8, 2016, the Court denied Defendant Blackhall’s Motion to Dismiss and *granted* Plaintiff The Newport Condominium Association (‘Newport’)’s motion for summary judgment on all claims in the above-entitled cause.” (Emphasis added.)



review the circuit court's summary judgment rulings *de novo*. *1010 Lake Shore Ass'n*, 2015 IL 118372, ¶ 20.

¶ 23 Construing the pleadings, depositions, admissions, and affidavits on file, strictly against Blackhall and liberally in favor of Newport Condo, we find that the circuit court properly denied Blackhall's section 2-1005 motion, which was substantively a motion for summary judgment. *La Salle National Bank v. Malik*, 302 Ill. App. 3d 236, 247 (1999); see *In re Estate of Kirk*, 2017 IL App (4th) 160416, ¶¶ 53-54 (a summary judgment motion is the appropriate vehicle for attacking a complaint's factual allegations). A party opposing summary judgment cannot rely solely on its pleadings to raise issues of material facts; rather, "where the party moving for summary judgment supplies well-alleged facts in an affidavit that are not contradicted by counteraffidavit, such allegations must be taken as true, notwithstanding the existence of contrary averments in the nonmovant's pleadings which merely *purport* to establish *bona fide* issues of fact." *Steiner Electric Co. v. NuLine Technologies, Inc.*, 364 Ill. App. 3d 876, 882 (2006). Despite Blackhall's claim that its trustees made multiple good faith attempts, albeit unsuccessfully, to pay the assessments owed, we find that there is a material issue of fact regarding whether Blackhall properly extinguished the lien occasioned by the previous owner's failure to pay assessments. In support of its section 2-1005 motion, Blackhall submitted affidavits from its trustees regarding their unsuccessful attempts to pay assessments, and Newport Condo submitted two different affidavits from its managing agent, Rose Rogic, one in support of its motion for summary judgment and another in support of its reply to Blackhall's response brief in opposition to Newport Condo's motion for summary judgment. These conflicting affidavits created a genuine issue of material fact and thus neither party was entitled to summary judgment. *La Salle National Bank*, 302 Ill. App. 3d at 248. Accordingly, we

conclude that the circuit court properly denied Blackhall's section 2-1005 motion and Newport Condo's motion for summary judgment. *Id.*

¶ 24 Moreover, when the parties appeared before the court for the damages prove-up hearing on March 10, 2016, Blackhall presented no argument or evidence that it paid or attempted to pay any assessments and stipulated to the documents relied on by Newport Condo, "which included the [plaintiff's] statutory demand, prove-up affidavit and attorney's [*sic*] fees affidavit." Under these circumstances, we conclude that the circuit court properly entered judgment in favor of Newport Condo for possession of the subject property and the amount of \$23,469.98 for unpaid assessments, \$14,801.80 for attorney fees, and \$1,940.72 for costs.

¶ 25 As a final matter, we note Blackhall's reliance upon an unpublished decision and caution Blackhall to refrain from citing unpublished decisions except under circumstances permitted by Rule 23(e)(1) (eff. July 1, 2011), which are not present here. *St. Paul Mercury Insurance v. Aargus Security Systems, Inc.*, 2013 IL App (1st) 120784, ¶ 52; *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 17. Accordingly, we have not considered the unpublished decision cited by Blackhall in reaching our conclusion. *Id.*

¶ 26 CONCLUSION

¶ 27 For the reasons stated, we affirm the orders of the circuit court of Cook County denying the parties' cross motions for summary judgment and entering judgment in favor of Newport Condo and against Blackhall for possession of the subject property and the amount of \$23,469.98 for unpaid assessments, \$14,801.80 for attorney fees, and \$1,940.72 for costs.

¶ 28 Affirmed.