

2017 IL App (1st) 170356-U
No. 1-17-0356
Order filed June 23, 2017

FIFTH DIVISION

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 DISTRICT

TIMBER COURT, L.L.C.)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff,)	
)	
v.)	
)	
RAYMOND CAHNMAN, SUSAN)	Nos. 13 CH 26214, cons. with
BERMAN and SAFE HARBOR)	2014 L 9779, 13 L 11973.
REALTY, L.L.C.,)	
)	
Defendants-Appellees)	The Honorable
)	Sanjay Tailor,
(Rebecca Anderson, Anthony Argentino,)	Judge, presiding.
Yvonne Baginsky, Anthony Broymant)	
Clifford Cadle, Sam Gesualdo, Lee)	
Gordon, Regina Grach, Evelina)	
Grebenarova, Rebecca Hoban, Soon Lee,)	
Brad Lipsky, Margery Liebke, Natalie)	
Miniuk, Elizabeth Sigalos, Joe Trsar,)	
Rebecca Trsar and Elizabeth Vance,)	
)	
Intervenors-Appellants).)	

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

Timber Court owns and leases 48 of the 72 units that it was unable to sell. The underlying lawsuit is principally a dispute between Raymond Cahnman and David Zazove over who owns and controls Timber Court. Thus, until that litigation is resolved, there is a question concerning who is entitled to vote on behalf of Timber Court's 48 units.

¶ 6 As a result, the trial court entered orders on April 15, 2014, and May 12, 2014, which provided that the parties then in the case, which were Raymond Cahnman, David Zazove and Timber Court, could not take any action to change the composition of the board of directors of the association, until there was a ruling on the merits determining who controlled Timber Court and thus Timber Court's right to vote for the election of directors. At that time, the intervenors were not yet parties to the case and thus were not subject to these orders.

¶ 7 The April 15, 2014, order stated in relevant part:

"No party will take any action to change the (a) membership of the Association Board (b) the officers of the Association Board or (c) current manager of the Association."

¶ 8 The May 12, 2014, order reaffirmed the April 14, 2014, order:

"The Court's April 15, 2014 order remains in effect until further order of [the] Court and no action shall be taken to change the management

company of the Condo Association nor the Board of Directors of the Condo Association."

¶ 9 On July 31, 2015, the trial court granted the intervenors' petition to intervene. The intervenors consist of 18 individuals who currently own 16 of the 72 units in the complex. As noted, Timber Court owns 48 units. In addition, Cahnman owns four units and his wife, Susan Berman, owns an additional two units.

¶ 10 The intervenors filed a "Motion to Lift Stay of Association Elections" on August 10, 2016. On January 3, 2017, after hearing the attorneys' arguments, the trial court denied the intervenors' motion to dissolve the stay orders, observing: "Nothing in my view has changed." The trial court explained that it would "make sense to address in the first instance who has control of Timber Court." The trial court ruled:

"Here is what I am going to do. I am going to deny the motion to lift the stay. To the extent that the earlier orders were injunctions, the time to appeal those are long since past. Nothing in my view has changed.

I think that in terms of going forward, it might make sense to address in the first instance who has control of [Timber Court]. At least address your [(Cahnman's)] claims that you are the rightful party to control [Timber Court], and your [(Zazove's)] claim that they are not."

¶ 11 The written order entered by the trial court on January 3, 2017, observed that "all parties" were "present through counsel" and then stated simply: "For the reasons set forth in the record, the motion is denied."

¶ 12 The current board, which is the same board that was in place when litigation began in 2013, consists of Cahnman; his wife, Susan Berman; and defendant Richard Wojcik, who owns one unit. The intervenors did not serve Wojcik and he has not appeared in this case.

¶ 13 A timely notice of appeal was filed on February 2, 2017, and this appeal followed.

¶ 14 ANALYSIS

¶ 15 In this interlocutory appeal, the intervenors claim that the trial court abused its discretion by denying their motion to dissolve a stay. The trial court denied their motion to dissolve a stay on condominium board elections until it could determine who owned the majority of the units. For the following reasons, we cannot find that the trial court abused its discretion.

¶ 16 I. Jurisdiction

¶ 17 In this appeal, we are asked to consider whether the trial court properly denied a motion to dissolve a stay. While our appellate jurisdiction is normally limited to review of final judgments (see *State Farm Mutual Automobile Insurance Co. v. Illinois Farmers Insurance Co.*, 226 Ill. 2d 395, 415 (2007)),

we have jurisdiction in the instant interlocutory appeal pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2016), which allows for appeals from interlocutory orders "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction."

¶ 18 "This court has consistently held that a stay is injunctive in nature," and thus an order granting, dissolving or refusing to dissolve a stay is immediately appealable under Rule 307(a)(1). *Marzouki v. Najjar-Marzouki*, 2014 IL App (1st) 132841, ¶ 8. See also *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 39 ("Under established Illinois law, the denial of a stay of trial court proceedings is treated as a denial of a request for a preliminary injunction and is appealable as a matter of right under Illinois Supreme Court Rule 307(a)(1)."); *Cholipski v. Bovis Lend Lease, Inc.*, 2014 IL App (1st) 132842, ¶ 33 (noting that "the appellate court has repeatedly held that Rule 307 permits the interlocutory appeal of a stay"). Thus, we have jurisdiction to hear this appeal.

¶ 19 **II. Standard of Review**

¶ 20 The parties agree that we should review the trial court's order only for an abuse of discretion, and we agree. Our courts have consistently found that "[t]he decision to grant or deny a motion to stay will not be overturned unless the court abused its discretion." *Guarantee Trust Life Insurance Co. v. Platinum Supplemental Insurance, Inc.*, 2016 IL App (1st) 161612, ¶ 35.

¶ 21 The standard of review for " 'abuse of discretion' is the most deferential standard of review recognized by law; a decision will be deemed an abuse of discretion only if the decision is 'unreasonable and arbitrary or where no reasonable person would take the view adopted by the circuit court.' " *Pekin Insurance Co. v. St. Paul Lutheran Church*, 2016 IL App (4th) 150966, ¶ 69 (quoting *Gulino v. Zurawski*, 2015 IL App (1st) 131587, ¶ 64).

¶ 22 III. No Abuse of Discretion

¶ 23 The intervenors argue that the trial court abused its discretion: (1) because the trial court had already entered an order on May 18, 2016, in the underlying litigation which declared that Zazove was the controlling shareholder of Timber Court and not Cahnman, thereby eliminating the need to delay the election; (2) because the trial court should have held an evidentiary hearing to determine whether the current composition of the board was beneficial for the complex; (3) because the trial court was under the mistaken impression that the time for objecting to the stay had passed; and (4) because intervenors were denied due process at the time that the original 2014 stay orders were entered.

¶ 24 First, while the trial court issued an order dismissing certain of Cahnman's claims, the litigation is still ongoing and no ultimate resolution has been reached. That is why the trial court observed on January 3, 2017, when

denying the intervenors' motion, that it would "make sense to address in the first instance who has control of [Timber Court]." Second, any claim that the intervenors had concerning an evidentiary hearing is forfeited by their failure to request such a hearing in the court below. They did not request it in their briefs to the trial court or during their oral arguments immediately before the trial court's ruling. "Because plaintiff did not request the opportunity to submit evidence and did not object to the trial court's failure to hold an evidentiary hearing, review of this issue has been waived on appeal, and we need not address it here." *Village of South Holland v. Calumet Auto Truck Plaza*, 197 Ill. App. 3d 49, 51-52 (1990). See also *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 213 (2008) (the rule of procedural default requires first raising an issue before the tribunal rendering a decision from which an appeal is taken).

¶ 25 Third, while the trial court did state that "the time to appeal" the 2014 stay orders was "long since past," that statement was literally correct. No party could file an interlocutory notice of appeal pursuant to Supreme Court Rule 307 concerning those orders. The trial court was correct that the 30-day period to appeal those orders had long since passed. Ill. S. Ct. R. 307(a) (eff. Nov. 1, 2016) ("the appeal must be perfected within 30 days from the entry of the interlocutory order by filing a notice of appeal"). However, that statement did

not detract from the fact that the intervenors could, and did, appeal the trial court's denial of their motion to dissolve the stay. Thus, the trial court's observation did not affect the intervenors' rights.

¶ 26 Lastly, the intervenors claim that they were denied due process when the original stay orders were entered in 2014. However, when they petitioned the trial court to intervene, the trial court granted their petition and heard their motion to dissolve the stay, thereby granting them due process of law and an opportunity to be heard.

¶ 27 In sum, the trial court ruled that, "going forward," ie., from that moment on, it made sense to first determine who has control of Timber Court. We cannot find that the trial court abused its discretion by ruling that the parties should first determine who is voting before holding an election. Since who owns the units is the primary dispute in the underlying litigation, the issue of who owns the units and therefore who can vote on their behalf will be decided by the trial court in a subsequent trial or by summary judgment when discovery is complete. As of March 15, 2017, discovery was scheduled to close on April

30, 2017. The trial court should decide as soon as practicable.

¶ 28

CONCLUSION

¶ 29

For the foregoing reasons, we affirm the trial court's order denying the intervenors' motion to dissolve the stay.

¶ 30

Affirmed.