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Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 151001-U

NO. 4-15-1001

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

EDGAR COUNTY BANK AND TRUST COMPANY, d/b/a PROSPECT BANK, Plaintiff-Appellant and Cross-Appellee, v. STRIEGEL KNOBLOCH AND COMPANY, LLC; and DENNIS K. KNOBLOCH, Defendants-Appellees and Cross-Appellants.	))))))))	Appeal from Circuit Court of McLean County No. 14L199 Honorable Rebecca Simmons Foley, Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding (1) the trial court's dismissal of plaintiff's complaint under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2014)) was appropriate as the claims contained therein were untimely; (2) plaintiff failed to demonstrate the trial court abused its discretion in dismissing its complaint with prejudice; and (3) defendants failed to demonstrate the trial court abused its discretion in denying their motion for Rule 137 sanctions.

¶ 2 In December 2014, plaintiff, Edgar County Bank and Trust Company, d/b/a Prospect Bank (Prospect), filed a complaint against defendants, Striegel Knobloch and Company, LLC, and its partner Dennis K. Knobloch (collectively Knobloch), alleging claims under the Illinois Public Accounting Act (225 ILCS 450/30.1(1), (2) (West 2012)). In February 2015, Knobloch filed a motion to dismiss under section 2-619 of the Code of Civil Procedure (Civil

Code) (735 ILCS 5/2-619 (West 2014)), alleging Prospect's claims were time-barred. Following a June 2015 hearing, the trial court granted Knobloch's motion to dismiss with prejudice.

¶ 3 In August 2015, Prospect filed a motion to reconsider, and Knobloch filed a motion for sanctions under Illinois Supreme Court Rule 137 (eff. July 1, 2013). Following a November 2015 hearing, the trial court denied both parties motions.

¶ 4 Prospect appeals, arguing the trial court erred in dismissing its complaint on the basis its claims contained therein were untimely. In the alternative, Prospect asserts, even if the court's dismissal was proper, it should have been granted without prejudice to allow it the opportunity to replead its complaint. Knobloch cross-appeals, arguing the trial court abused its discretion in denying its motion for Rule 137 sanctions. We affirm.

¶ 5 I. BACKGROUND

¶ 6 In December 2014, Prospect filed a two-count complaint against Knobloch, alleging claims under the Public Accounting Act (225 ILCS 450/30.1(1), (2) (West 2012)). Prospect alleged, from 2007 to 2011, Knobloch provided Rhodes Town Acquisitions, LLC (Rhodes), with accounting and tax preparation services. In June 2010, Rhodes requested a loan from Prospect to consolidate its debts. In response, Prospect requested supporting financial documentation, including tax returns for previous years. In early September 2010, Knobloch completed Rhodes' 2009 tax return, which reported a business loss of $439,871 for the year. Upon receipt of the 2009 tax return, Rhodes requested Knobloch prepare an amended 2009 tax return. On or about October 8, 2010, Knobloch delivered to Rhodes an amended 2009 tax return, reporting a business income of $162,945 for the year, which Rhodes delivered to Prospect in support of its requested loan. Prospect relied on Rhodes' amended 2009 tax return when it

approved a $704,500 loan to Rhodes. In January 2011, Rhodes defaulted on that loan. Prospect's later investigation into Rhodes' solvency led it to discover Rhodes' amended 2009 tax return was materially false. Prospect sought in excess of $1 million, which included previously incurred expenses and attorney fees associated with its collection efforts against Rhodes, for the damages caused by Knobloch's fraud or professional negligence in the preparation of Rhodes' amended 2009 tax return.

¶ 7 In February 2015, Knobloch filed a motion to dismiss under section 2-619 of the Civil Code (735 ILCS 5/2-619 (West 2014)), alleging Prospect's claims were time-barred. Knobloch alleged, as supported by exhibits attached to its motion, it conducted a review of Rhode's financial records following the unexpected death of a Rhodes' owner. On February 8, 2011, Knobloch informed Prospect its review revealed the existence of "false financials and tax returns," including Rhodes' amended 2009 tax return. Prospect thereafter took legal action against a Rhodes' owner and obtained a default judgment on February 24, 2011. That Rhodes' owner later filed for bankruptcy. In September 2011, Prospect filed an adversarial complaint in bankruptcy, requesting the denial of a discharge of debt relating to monies owed on fraudulently obtained loans. In fall 2011, Prospect also requested an inspection of Knobloch's "accounting and tax preparation files" for Rhodes, which Knobloch allowed. Based on this information, Knobloch argued, Prospect's claims under the Public Accounting Act (225 ILCS 450/30.1(1), (2) (West 2012)) were filed outside the two-year statute of limitations contained in section 13-214.2(a) of the Civil Code (735 ILCS 5/13-214.2(a) (West 2012)) and could not be saved by the discovery rule as any action against it had accrued by 2011.

¶ 8 On May 18, 2015, Prospect filed a memorandum of law in opposition to

Knobloch's motion to dismiss. Prospect requested Knobloch's motion be denied as (1) its claims were timely under section 13-214.2(a) of the Civil Code (735 ILCS 5/13-214.2(a) (West 2012)), and (2) the evidence presented was insufficient to rule as a matter of law the limitations period had passed by December 2014. Prospect alleged, as supported by exhibits attached to its memorandum of law, on November 18, 2011, it (1) served a request to produce Rhodes' tax returns on a Rhodes' owner as part of its adversarial complaint; and (2) issued a subpoena to Knobloch requesting the production of Rhodes' financial reports since 2007. Neither request, however, produced a copy of Rhodes' original 2009 tax return. On November 28, 2012, Prospect issued a second subpoena to Knobloch requesting tax returns, including amended tax returns, for all years since 2007. On January 7, 2013, Knobloch produced Rhodes' original 2009 tax return. Prospect argued, prior to January 7, 2013, it was unable to compare the amended and original 2009 tax returns to discover the returns, produced just weeks apart, were significantly different, thereby suggesting Knobloch's participation in Rhodes' fraud. Prospect further argued, although it was informed Rhodes had misrepresented its tax returns in February 2011, the issue of whether that information was sufficient to put it on notice of Knobloch's complicity in the fraud raised a question for the trier of fact to decide. Alternatively, Prospect requested, "if [the trial court] concludes [its] initial [c]omplaint does not contain sufficient allegations to assert the discovery rule, *** any dismissal be without prejudice so [it] can allege facts sufficient to plead the discovery rule and fraudulent concealment." In support of its request, Prospect cited *Ogle v. Hotto*, 273 Ill. App. 3d 313, 652 N.E.2d 815 (1995), for the proposition a "plaintiff must be given leave to replead after dismissal for failure to plead sufficient facts to invoke the discovery rule."

¶ 9 On May 27, 2015, Knobloch filed a reply in support of its motion to dismiss. Knobloch maintained the undisputed facts indicated, in 2011, Prospect knew or reasonably should have known about of its potential causes of action. Knobloch further asserted, with respect to Prospect's suggestion it could not have discovered the differences in Rhodes' tax returns until January 7, 2013, Prospect (1) had access to its accounting and tax preparation files for Rhodes in the fall of 2011, and it should have discovered the original 2009 return in those files; and (2) should have pursued the original 2009 tax return sooner than it did.

¶ 10 In June 2015, the trial court held a hearing on Knobloch's motion to dismiss. A transcript from the hearing or a bystander's report is not included in the record on appeal.

¶ 11 In a July 2015 written order, the trial court granted Knobloch's motion to dismiss with prejudice. The court found it was undisputed, on February 8, 2011, Prospect was (1) in possession of Rhodes' amended 2009 tax return, which indicated it was prepared by Knobloch; and (2) aware Rhodes' tax returns misrepresented its financial condition. At that time, the court found, Prospect "reasonably should have known" of Knobloch's alleged involvement, placing it "under an obligation to further inquire to determine [whether] an actionable wrong was committed." In addition, the court noted, Prospect "failed to diligently pursue the original 2009 tax return which it claims was key to their determination of [Knobloch's] alleged involvement with their cause of action." The court concluded Prospect "knew or should have known that its alleged injury was wrongfully caused as early as February 8, 2011, and certainly no later than late 2011." The complaint here was untimely filed in December 2014. The court further noted, "[a]lthough [Prospect] cites [*Ogle*] in support of its request to file an Amended Complaint, the [c]ourt finds that the present case is distinguishable, as [Prospect] here has fully briefed and

argued the facts it claims supports its position under the discovery rule."

¶ 12 In August 2015, Prospect filed a motion to reconsider, and Knobloch filed a motion for sanctions under Illinois Supreme Court Rule 137 (eff. July 1, 2013). Prospect later filed a memorandum of law in opposition to Knobloch's motion for Rule 137 sanctions, and Knobloch filed a response to Prospect's motion to reconsider and a reply in support of their motion.

¶ 13 With respect to its motion to reconsider, Prospect asserted the trial court's (1) "ruling constitute[d] a misunderstanding and misapplication of the law by applying the common law 'discovery rule' analysis to a specific and specialized statute of limitations *** that itself fixes a different standard for discovery of the specific cause of action," and (2) dismissal was improper as issues of fact remained. Prospect further requested the court to reconsider its dismissal *with prejudice* and allow it an opportunity to file an amended pleading to include factual allegations demonstrating (1) its claims were "initiated within the time allowed by law," and (2) Knobloch "fraudulently concealed the cause of action." In response, Knobloch asserted the court properly determined Prospect's claims were untimely based on the undisputed facts and any additional amendment to its pleadings would be frivolous. In addition, with respect to its request to plead fraudulent concealment, Knobloch asserted the court should reject that request as Prospect "failed to support it with any relevant legal authority or 'reasoned argument.' "

¶ 14 On November 20, 2015, the trial court held a hearing on Prospect's motion to reconsider and Knobloch's motion for Rule 137 sanctions. A transcript from the hearing or a bystander's report is not included in the record on appeal. A docket entry indicates the court denied both parties' motions.

¶ 15 On December 17, 2015, Prospect filed a notice of appeal from the trial court's November 20, 2015, order denying its motion to reconsider. On December 28, 2015, Knobloch filed a notice of cross-appeal from the court's November 20, 2015, order denying its motion for Rule 137 sanctions, which was later amended.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 A. Prospect's Appeal

¶ 19 1. *Dismissal of Prospect's Complaint*

¶ 20 Prospect argues the trial court erred in dismissing its complaint on the basis it was untimely. Specifically, Prospect asserts the court improperly (1) evaluated the timeliness of its claims under the common-law discovery rule rather than the statutory discovery rule contained in section 13-214.2(a) of the Civil Code (735 ILCS 5/13-214.2(a) (West 2012)), and (2) concluded its claims were untimely as a matter of law. Knobloch disagrees, maintaining (1) section 13-214.2(a) incorporates the common-law discovery rule, and (2) the undisputed facts demonstrated Prospect's claims were untimely.

¶ 21 When deciding whether to grant a motion under section 2-619 of the Civil Code (735 ILCS 5/2-619 (West 2014)), a court accepts all well-pleaded facts as true and should grant the motion only when it appears no set of facts can be proved that would allow the plaintiff to recover. *Federated Industries, Inc. v. Reisin*, 402 Ill. App. 3d 23, 27, 927 N.E.2d 1253, 1257 (2010). Under section 2-619(a)(5) of the Civil Code (735 ILCS 5/2-619(a)(5) (West 2012)), a defendant is entitled to a dismissal if the "action was not commenced within the time limited by law." We review a trial court's order granting a section 2-619 motion *de novo*. *Henderson*

Square Condominium Ass'n v. LAB Townhomes, LLC, 2015 IL 118139, ¶ 34, 46 N.E.3d 706.

¶ 22 The applicable statute of limitations and statute of repose is codified in section 13-214.2(a), (b) of the Civil Code (735 ILCS 5/13-214.2(a), (b) (West 2012)), which provides, in relevant part, as follows:

> "(a) Actions based upon tort, contract or otherwise against any person, partnership or corporation registered pursuant to the Illinois Public Accounting Act, as amended, or any of its employees, partners, members, officers or shareholders, for an act or omission in the performance of professional services shall be commenced within 2 years from the time the person bringing an action knew or should reasonably have known of such act or omission.
>
> (b) In no event shall such action be brought more than 5 years after the date on which occurred the act or omission alleged in such action to have been the cause of the injury to the person bringing such action against a public accountant."

¶ 23 The common-law discovery rule developed where the literal application of a statute of limitations produced harsh results. *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 77, 651 N.E.2d 1132, 1135 (1995). When the discovery rule is applied, it delays the commencement of the limitations period from running until a party "knows or reasonably should know of his injury and also knows or reasonably should know that it was wrongfully caused." *Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 414, 430 N.E.2d 976, 979 (1981). Once

the limitations period begins to run, the party "is under an obligation to inquire further to determine whether an actionable wrong was committed." *Nolan v. Johns-Manville Asbestos*, 85 Ill. 2d 161, 171, 421 N.E.2d 864, 868-69 (1981); see also *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 45, 978 N.E.2d 1020 ("[A] plaintiff may not sit on his rights, but must investigate further once alerted to an injury that may have been caused by wrongful conduct.").

¶ 24 Our supreme court has noted the discovery rule "is generally treated the same whether created by common law or by statute." *Hermitage Corp.*, 166 Ill. 2d at 78, 651 N.E.2d at 1135. However "[t]he common law discovery rule *** will not be applied where there is a contrary indication of legislative intent." *Id.* The court noted such an indication would be where the legislature has created a statute of repose placing an absolute outer time limit on when an action can be brought. *Id.*

¶ 25 Prospect initially asserted, relying on the purported *Hermitage Corp*. exception, the language in section 13-214.2(a) indicated the legislature intended to supplant the common-law discovery rule with a more narrow statutory discovery rule. In support, Prospect relied heavily on the Third District's decision in *Moon v. Rhode*, 2015 IL App (3d) 130613, ¶¶ 16-20, 34 N.E.3d 1052 (declining to apply the common-law discovery rule where it was not found in the plain language of the applicable statute of limitations), as an example of the application of the *Hermitage Corp.* exception. Under Prospect's interpretation, the limitations period starts to run when a claimant knows or reasonably should know of an act or omission of an accounting professional rather than when the claimant simply knows or reasonably should know of its injury, generally, and that it was wrongfully caused. Prospect maintained, prior to January 7, 2013, it was unable to compare the amended and original 2009 tax returns to suggest Knobloch's

participation in Rhodes' fraud.

¶ 26 Knobloch disagreed, maintaining the exception was inapplicable and section 13-214.2(a) incorporated the common-law discovery rule. In support, Knobloch relied on the First District's previous application of the common-law discovery rule in evaluating the timeliness of accounting malpractice actions. See *Federated Industries, Inc.*, 402 Ill. App. 3d at 28, 927 N.E.2d at 1258; *Dancor International, Ltd. v. Friedman, Goldberg & Mintz*, 288 Ill. App. 3d 666, 672-75, 681 N.E.2d 617, 621-23 (1997). Knobloch maintained Prospect had sufficient information in 2011 to put it on notice it was injured and the injury may have been wrongfully caused to start the running of the limitations period.

¶ 27 Following the filing of the briefs in this case, our supreme court reversed the Third District's decision in *Moon*. *Moon v. Rhode*, 2016 IL 119572, 67 N.E3d 220. The court found, although the applicable statute of limitations (735 ILCS 5/13-212(a) (West 2012) (claims against a physician or hospital)) omitted any language necessitating the discovery of wrongful conduct for the limitations period to begin to run, precedent directed it to apply the common-law discovery rule and find the period tolled until the plaintiff knew or should have reasonably discovered the wrongful conduct. *Moon*, 2016 IL 119572, ¶¶ 24-27, 40, 67 N.E.3d 220.

¶ 28 The parties have filed supplemental briefs addressing the supreme court's decision in *Moon*. Prospect modifies its argument, asserting section 13-214.2(a) should be interpreted through, but not replaced by, common-law discovery rule principles. Prospect contends applying such an interpretation produces the construction it has consistently advocated, that is, the limitations period starts to run when a claimant knows or reasonably should know of an act or omission of an accounting professional rather than when the claimant simply knows or

reasonably should know of its injury, generally, and that it was wrongfully caused. Prospect asserts "the ultimate question before this [c]ourt is whether the trial court correctly determined that [it] knew or reasonably should have known that Knobloch prepared irreconcilably different 2009 tax returns prior to January 7, 2013."

¶ 29 Knobloch maintains, regardless of whether the discovery rule is articulated in a statute, our courts have repeatedly and consistently found a statutory limitations period begins to run when a claimant knows or reasonably should know of its injury, not the specific defendant's involvement, and knows or reasonably should know that the injury was wrongfully caused. Knobloch asserts Prospect knew of the alleged fraud related to the preparation of Rhodes' tax returns in 2011 but failed to timely file its complaint until 2014.

¶ 30 Assuming, *arguendo*, we accept Prospect's construction and find the statutory limitation period starts to run when a claimant knows or reasonably should know of the act or omission of an accounting professional that caused its injury, we would still find its claims to be untimely. In 2011, Prospect was aware (1) it granted Rhodes the loan at issue based on Rhodes' *amended* 2009 tax return, which necessarily implicates the existence of an original 2009 tax return; (2) in January 2011, Rhodes defaulted on the loan; (3) Rhodes' amended 2009 tax return contained material misrepresentations; and (4) Knobloch prepared Rhodes' amended 2009 tax return. With this information, Prospect had sufficient knowledge to raise a red flag as to whether Knobloch committed any wrongful acts or omissions. That is, Prospect had sufficient information to put it on notice to inquire further as to whether Knobloch either actively participated in Rhodes' fraud, or failed to adequately investigate and discover the fraud in preparing Rhodes' amended 2009 tax return. Prospect slumbered on its rights by failing to

inquire further to determine whether an actionable wrong against Knobloch may have been pursued. Given the undisputed facts, we find the trial court did not error in concluding Prospect's claims were untimely as a matter of law and dismissing its complaint. See *Witherell v. Weimer*, 85 Ill. 2d 146, 156, 421 N.E.2d 869, 874 (1981) (noting the timeliness of a claim may be determined as a matter of law by the court where the undisputed facts indicate only one conclusion may be drawn).

¶ 31 2. *Dismissal With Prejudice*

¶ 32 Prospect alternatively asserts, even if the trial court's dismissal was proper, that dismissal "should have been granted without prejudice" to allow it "the opportunity to replead its complaint to include allegations to support the statutory discovery rule, as well as facts to support fraudulent concealment." Knobloch disagrees and maintains any additional amendment would be frivolous based on the undisputed facts.

¶ 33 "Whether to dismiss an action with or without prejudice is a matter within the trial court's discretion." *Crull v. Sriratana*, 388 Ill. App. 3d 1036, 1046, 904 N.E.2d 1183, 1191 (2009). Absent an abuse of that discretion, the court's decision will not be disturbed. *Ingold v. Irwin*, 302 Ill. App. 3d 378, 384, 705 N.E.2d 135, 140 (1998). "On review, we consider whether the court took the particular facts and unique circumstances of the case into account before determining that the case should be dismissed with prejudice." *Crull*, 388 Ill. App. 3d at 1046, 904 N.E.2d at 1191.

¶ 34 a. Discovery Rule

¶ 35 Prospect's May 18, 2015, memorandum of law in opposition to Knobloch's motion to dismiss requested, "if [the trial court] concludes [its] initial [c]omplaint does not

contain sufficient allegations to assert the discovery rule, *** any dismissal be without prejudice so [it] can allege facts sufficient to plead the discovery rule." In support of its request, Prospect cited *Ogle* for the proposition a "plaintiff must be given leave to replead after dismissal for failure to plead sufficient facts to invoke the discovery rule." Prospect has denied this court the opportunity to review any argument or discussion on this issue by failing to include in the record on appeal a transcript from the June 2015 hearing on Knobloch's motion to dismiss or a bystander's report. In its July 2015 written order dismissing Prospect's complaint with prejudice, the court noted, "[a]lthough [Prospect] cites [*Ogle*] in support of its request to file an Amended Complaint, the [c]ourt finds that the present case is distinguishable, as [Prospect] here has fully briefed and argued the facts it claims supports its position under the discovery rule."

¶ 36 It is axiomatic the appellant has the burden to present a sufficiently complete record of the proceedings to support a claim of error, and in the absence of such a record, a reviewing court will presume the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392, 459 N.E.2d 958, 959 (1984). Without a transcript or a bystander's report from the hearing below, we presume the trial court's account is correct, indicating it took the particular facts and unique circumstances of the case into account before determining the case should be dismissed with prejudice. Prospect has failed to demonstrate the trial court abused its discretion in dismissing its complaint with prejudice. Moreover, based on our findings above, any additional amendment on this ground would be frivolous.

¶ 37 b. Fraudulent Concealment

¶ 38 Prospect's May 18, 2015, memorandum of law in opposition to Knobloch's

motion to dismiss briefly requested, without presenting any factual support, reasoned argument, or citation to authority, it be given the opportunity to allege facts sufficient to plead fraudulent concealment. Again, we note, Prospect has denied this court of opportunity to review any argument or discussion on this issue by failing to include in the record on appeal a transcript from the June 2015 hearing on Knobloch's motion to dismiss or a bystander's report. The trial court's July 2015 written order does not otherwise address Prospect's request. In its August 2015 motion to reconsider, Prospect again requested, without presenting any factual support, reasoned argument, or citation to authority, it be given the opportunity to allege facts sufficient to plead fraudulent concealment. In its response to Prospect's motion, Knobloch asserted the court should reject Prospect's request as Prospect "failed to support it with any relevant legal authority or 'reasoned argument.' " Prospect has denied this court the opportunity to review any argument or discussion on this issue by failing to include in the record on appeal a transcript from the November 2015 hearing on its motion to reconsider or a bystander's report. In a November 2015 docket entry, the court outright denied Prospect's motion.

¶ 39 Again, we presume the order entered by the trial court was in conformity with the law and had a sufficient factual basis. See *Foutch*, 99 Ill. 2d at 392, 459 N.E.2d at 959. The record on appeal discloses Prospect's repeated request to plead fraudulent concealment was without factual support, reasoned argument, or citation to legal authority. Given this record, Prospect has failed to demonstrate the trial court abused its discretion in dismissing its complaint with prejudice.

¶ 40 B. Knobloch's Cross-Appeal

¶ 41 On cross-appeal, Knobloch asserts the trial court abused its discretion in denying

its motion for sanctions under Illinois Supreme Court Rule 137 (eff. July 1, 2013). Prospect maintains the trial court's judgment was proper.

¶ 42 In its jurisdictional statement of its appellee brief, Knobloch asserts it filed a timely notice of cross-appeal under Illinois Supreme Court Rule 303(a) (eff. Jan. 1, 2015), *generally*. Prospect does not address Knobloch's assertion. This court has a *sua sponte* duty to consider its jurisdiction prior to addressing the merits of an appeal and to dismiss the appeal if it finds jurisdiction is lacking. *Brentine v. DaimlerChrysler Corp.*, 356 Ill. App. 3d 760, 765, 826 N.E.2d 1057, 1062 (2005); *Cangemi v. Advocate South Suburban Hospital*, 364 Ill. App. 3d 446, 453, 845 N.E.2d 792, 800 (2006).

¶ 43 Illinois Supreme Court Rule 303(a)(3) (eff. Jan. 1, 2015) provides:

> "If a timely notice of appeal is filed and served by a party, any other party, [(1)] within 10 days after service upon him or her, or [(2)] within 30 days from the entry of the judgment or order being appealed, or [(3)] within 30 days of the entry of the order disposing of the last pending postjudgment motion, *whichever is later*, may join in the appeal, appeal separately, or cross-appeal by filing a notice of appeal, indicating which type of appeal is being taken." (Emphasis added.)

On November 20, 2015, the trial court denied Prospect's motion to reconsider and Knobloch's motion for Rule 137 sanctions, which were the last pending postjudgment motions. On December 17, 2015, Prospect filed a timely notice of appeal. On December 28, 2015, Knobloch filed a notice of cross-appeal from the trial court's November 20, 2015, denial of its motion for

Rule 137 sanctions, which was later amended. Knobloch's notice of cross-appeal was undoubtedly filed outside the 30-day period from the entry of the order disposing of the last pending postjudgment motion. Under Rule 303(a)(3) however, a notice of cross-appeal may still be timely if it is filed within 10 days after the notice of appeal is served upon the party seeking to file the cross-appeal. Prospect's notice of appeal included a certificate of service indicating it mailed a copy of its notice of appeal to Knobloch on December 16, 2015. Under Illinois Supreme Court Rule 12(c) (eff. Sept. 9, 2014), service by mail is complete four days after mailing. Under Rules 303(a)(3) and 12(c), we conclude Knobloch's December 28, 2015, notice of cross-appeal is timely. In future appeals, it would behoove the cross-appellant's counsel to set forth the provision it seeks to invoke under Rule 303(a) and apply it to the operative facts.

¶ 44 Turning to the merits, Knobloch asserts the trial court should have awarded Rule 137 sanctions because (1) the law in effect was not in dispute, (2) Prospect acted in bad faith in bringing its claims, and (3) an award would deter others from pursuing similar litigation tactics. The decision whether to impose Rule 137 sanctions is left to the sound discretion of the trial court and will not be overturned unless it was an abuse of discretion. *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487, 693 N.E.2d 358, 372 (1998). The party requesting the imposition of Rule 137 sanctions bears the burden of proof. *Dismuke v. Rand Cook Auto Sales, Inc.*, 378 Ill. App. 3d 214, 217, 882 N.E.2d 607, 610 (2007). Knobloch, like Prospect, has denied this court the opportunity to review any argument or discussion on this issue by failing to include in the record on appeal a transcript from the November 2015 hearing or a bystander's report. See *Foutch*, 99 Ill. 2d at 392, 459 N.E.2d at 959. Given the record presented and the arguments made on appeal, we find the trial court did not abuse its discretion by denying Knobloch's motion for

Rule 137 sanctions.

¶ 45 III. CONCLUSION

¶ 46 We affirm the trial court's judgment.

¶ 47 Affirmed.