

No. 1-17-1592

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

ROGER IVEY and HELIX STRATEGIES, LLC,) Appeal from the
) Circuit Court of
Plaintiffs-Appellants,) Cook County
)
v.) No. 15 L 7382
)
TRANSUNION RENTAL SCREENING)
SOLUTIONS, INC., and TRANSUNION, LLC,) Honorable
) Brigid Mary McGrath,
Defendants-Appellees.) Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Connors and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* We dismiss this appeal for lack of appellate jurisdiction where there are remaining unresolved claims and the order purporting to dispose of the litigation did not include a finding pursuant to Supreme Court Rule 304(a) (eff. Mar. 8, 2016).

¶ 2 The plaintiffs, Roger Ivey and Helix Strategies, LLC (Helix), appeal from orders of the circuit court of Cook County, which (1) entered summary judgment pursuant to section 2-1005(c) of the Code of Civil Procedure (Code) (735 ILCS 2-1005(c) (West 2016)) in favor of the defendants, TransUnion Rental Screening Solutions, Inc. (TURSS) and TransUnion, LLC

(TransUnion), on the plaintiffs' claims for breach of contract and promissory estoppel; and (2) dismissed the plaintiffs' claim for fraud pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2016)). For the reasons that follow, we dismiss.

¶ 3 The following factual recitation is taken from the pleadings, exhibits, affidavits, and depositions of record. We set forth only those facts that are necessary for understanding our holding in this appeal.

¶ 4 Ivey is the president and chief executive officer of Helix, a Colorado company that compiles residential lease forms from different states. TURSS, a Delaware corporation with offices in Illinois, is a subsidiary of TransUnion and provides consumer credit and background screening services to property management companies and landlords. In March 2009, Helix and TURSS entered into a five-year written marketing agreement (agreement), which provided, in relevant part, that TURSS would provide a software platform (platform) for marketing Helix's forms on a non-exclusive basis. Between July 2009 and January 2012, TURSS represented that the platform was under development but that its release was delayed. When Ivey contacted TURSS in October 2014, the employees he reached were unaware of the agreement and, in an email exchange, determined that "no one is left at TURSS who was involved in the Helix project."

¶ 5 On July 20, 2015, the plaintiffs filed a four-count complaint against TURSS in the circuit court. Count I, brought by Helix, alleged "willful and intentional" breach of contract. Counts II, III, and IV, brought by Ivey and Helix, alleged, respectively, fraud, negligent misrepresentation, and promissory estoppel. On June 17, 2016, TURSS filed a motion seeking summary judgment on each count of the complaint.

¶ 6 On November 14, 2016, the circuit court entered an order that granted summary judgment in favor of TURSS on Counts I, III, and IV of the complaint. In the same order, the circuit court struck Count II *sua sponte* but granted the plaintiffs leave to replead that count in an amended complaint. On December 14, 2016, the plaintiffs filed a motion to reconsider the entry of summary judgment solely on their claims for breach of contract and promissory estoppel.

¶ 7 On December 19, 2016, while the plaintiffs' motion to reconsider was pending, they filed a three-count amended complaint naming both TURSS and TransUnion as defendants. The amended complaint included claims for breach of contract (Count I), fraud (Count II), and promissory estoppel (Count III), but did not state that the claims for breach of contract and promissory estoppel were repleaded for purposes of preserving those issues for review.

¶ 8 On January 17, 2017, TURSS filed a combined motion to dismiss Count II of the amended complaint pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2016)). In its motion, TURSS did not object to the breach of contract and promissory estoppel claims contained in the plaintiffs' amended complaint.

¶ 9 On May 22, 2017, the circuit court entered an order granting the plaintiffs' motion to reconsider in part and denying it in part, with the effect of affirming the summary judgment entered against the plaintiffs on their original claim for breach of contract.¹ In the same order, the court dismissed Count II of the plaintiffs' amended complaint for fraud. The order made no reference to the repleaded claims for breach of contract and promissory estoppel, nor did it state that the dismissal of the amended fraud claim was final and appealable pursuant to Supreme Court Rule 304(a) (eff. Mar. 8, 2016). Notwithstanding, the order stated that the case was "dismissed with prejudice." This appeal followed.

¹ Initially, the circuit court entered an order denying the plaintiffs' motion to reconsider. On May 22, 2017, that order was modified as described here.

¶ 10 Before reaching the substantive issues raised by the plaintiffs on appeal, we must examine our jurisdiction and dismiss this appeal if that jurisdiction is lacking, even when, as in this case, none of the parties have questioned our jurisdiction. See *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994).

¶ 11 “Appellate jurisdiction is limited to review of final judgments unless an order falls within a statutory or supreme court exception.” *Cole v. Hoogendoorn, Talbot, Davids, Godfrey & Milligan*, 325 Ill. App. 3d 1152, 1153 (2001). To be considered final, an order must dispose of the rights of the parties, either upon the entire controversy or some definite and separate part of it. *In re Guardianship of J.D.*, 376 Ill. App. 3d 673, 676 (2007). In general, this court acquires jurisdiction over an appeal from a judgment which does not dispose of all the claims only if the judgment order complies with the mandates of Supreme Court Rule 304(a) (eff. Mar. 8, 2016). In relevant part, Rule 304(a) provides that, when judgment is entered on fewer than all the claims in an action, an appeal may be taken “only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both.” *Id.*

¶ 12 Turning to the present case, we find that the circuit court’s order of May 22, 2017 was not final and appealable. As noted, the court’s November 14, 2016 order entered summary judgment against the plaintiffs on the claims for breach of contract, promissory estoppel, and negligent misrepresentation contained in their original complaint, and struck their claim for fraud but granted them leave to replead that claim. Notwithstanding, the plaintiffs’ amended complaint repleaded claims for breach of contract, promissory estoppel, and fraud. TURSS, however, raised no objection to the plaintiffs’ failure to obtain leave to amend the complaint as to the breach of contract and promissory estoppel claims. See *Ragan v. Columbia Mutual Insurance Co.*, 183 Ill.

2d 342, 354 (1998) (noting that the “failure to obtain leave to amend a complaint is not a jurisdictional defect and *** a party may waive its right to object to the defect”).

¶ 13 Based on the foregoing, all three claims from the plaintiffs’ amended complaint were before the court when it entered its order of May 22, 2017. However, although the court dismissed the plaintiffs’ repleaded claim for fraud, it made no reference to their repleaded claims for breach of contract and promissory estoppel. Indeed, the court’s only reference to the plaintiffs’ breach of contract claim was in relation to their motion to reconsider the entry of summary judgment on the corresponding count from their original complaint. Thus, notwithstanding that the May 22, 2017 order purported to dismiss the case “with prejudice,” we find no basis in the record from which to conclude that the court contemplated or ruled upon the plaintiffs’ claims for breach of contract and promissory estoppel in their amended complaint. See *In re Guardianship of J.D.*, 376 Ill. App. 3d at 675 (recognizing that the finality of an order depends on its substance, not its form).

¶ 14 Because the circuit court’s May 22, 2017 order did not dispose of all the claims in the amended complaint, the plaintiffs could only appeal from that judgment if the circuit court found, pursuant to Supreme Court Rule 304(a) (eff. Mar. 8, 2016), that no just reason existed for delaying enforcement or appeal. No such language is contained in the order. Consequently, this court is without jurisdiction to consider the plaintiffs’ appeal, and it must be dismissed.

¶ 15 Dismissed.