2018 IL App (2d) 170895-U
No. 2-17-0895
Order filed November 19, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CROSSTOWN PROPERTY MANAGEMENT CORP.,	)	Appeal from the Circuit Court of McHenry County.
Plaintiff-Appellee,	)	
v.	)	No. 15-CH-643
CARMEN PINNAVARIA, a/k/a Carmelo Pinnavaria, Individually and as Trustee under a Declaration of Trust Dated December, 21, 1994, HARRIS TRUST AND SAVINGS BANK, n/k/a BMO Harris Bank, MOTOROLA EMPLOYEES CREDIT UNION, n/k/a Andigo Credit Union, and UNKNOWN OWNERS AND CLAIMANTS,	)	
Defendants	)	
(Carmen Pinnavaria, a/k/a Carmelo Pinnavaria, Individually and as Trustee under a Declaration of Trust Dated December, 21, 1994, Defendant-Appellant; Motorola Employees Credit Union, n/k/a Andigo Credit Union, Defendant-Appellee).	)	Honorable Michael J. Chmiel, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Hudson and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: Although the trial court properly struck defendant's *pro se* pleadings as incoherent, it abused its discretion in refusing to give defendant's counsel, whom the court had encouraged defendant to retain, an opportunity to amend them; thus, we vacated the court's judgment and remanded the cause.

¶ 2 Carmen Pinnavaria, a/k/a Carmelo Pinnavaria, the property owner in this mechanic's-lien foreclosure case, appeals from the voluntary dismissal of the suit by the plaintiff, Crosstown Property Management Corp. (Crosstown), after it reached a settlement with Motorola Employees Credit Union, n/k/a Andigo Credit Union (Andigo), a defendant-mortgagee. In this appeal, Pinnavaria argues, among other things, that the court did not give him a fair opportunity to file counterclaims, which would have prevented the voluntary dismissal. We agree, and we therefore vacate the court's denial of leave to amend and the ensuing dismissal, and we remand the cause.

¶ 3 I. BACKGROUND

¶ 4 On June 25, 2015, Crosstown filed a two-count complaint against Pinnavaria (in his individual capacity and in his capacity as trustee of a land trust), Harris Trust & Savings Bank, n/k/a BMO Harris Bank (which had no relevant part in these proceedings), and Andigo. The first count sought to foreclose a mechanic's lien Crosstown claimed on a property at 142 Big Oaks Road in Cary (or Trout Valley). The second count was for breach of contract. Crosstown alleged that Pinnavaria had contracted with it for improvements to the property, that the original cost for the improvements was $38,528.93, and that there had been change orders that added $23,156.51 to the contract price. According to the complaint, Pinnavaria still owed $15,129.28 for the work, and Crosstown recorded a claim for a lien in that amount on November 26, 2014.

¶ 5 Pinnavaria appeared *pro se* and filed a "Counterclaim for Declaratory Judgment and Other Relief."

¶ 6 Andigo appeared and answered, claiming a mortgage lien of $173,405.09. It attached a copy of the mortgage, which contained a clause requiring the mortgagor to either pay or defend

against claims (such as mechanic's liens) that might result in liens with priority over Andigo's mortgage lien.

¶ 7 Crosstown moved to strike Pinnavaria's "Counterclaim," arguing that it did not follow any recognizable legal format and was, in effect, too confusing to require a response. The court granted the motion. Defendant's later attempts to file pleadings had similar results.

¶ 8 On October 7, 2016, the court entered an order that recited the full procedural history of the case. It described the issues in the complaint as "simple and straightforward" and Pinnavaria's filings as "incoherent." Further, it noted that the law accords no special privileges to *pro se* litigants. It concluded that Pinnavaria's most recent "Response" "state[d] a murky, awkward, but barely sufficient response to the Complaint," but that the "remainder of that document, however, has been found to otherwise state incoherent hyperbole which fails to adequately, sufficiently, or otherwise state any cause of action or other actionable item." It therefore struck everything except the part of the response that it deemed to be "barely sufficient." It gave Pinnavaria until October 19, 2016, to file an amended counterclaim. Several times over the course of these proceedings, the court suggested to Pinnavaria that he would be well advised to retain a lawyer to make his case coherently.

¶ 9 Pinnavaria retained counsel; counsel served notice of his appearance on Crosstown and Andigo on October 13, 2016. In motions filed on October 17, 2016, counsel sought leave to file an amended counterclaim and an amended answer. On October 19, 2016, the court initially denied both motions as soon as counsel brought those motions before the court:

"MR. JOHNSON [Counsel for Pinnavaria]: ***

> Your Honor, I've just recently entered my appearance in this case. I have filed two motions, a motion to amend the answer. *** So I filed a motion to actually file an amended answer or otherwise plead and—
>
> THE COURT: Denied."

However, when the court learned that an agreement existed to put the matter over until November 7, 2016, the court chastised counsel for not immediately mentioning the agreement, but delayed its ruling until that day. The court took up the motions again on November 7, 2016; counsel then argued that having "an actual appropriate answer and appropriate affirmative defenses" could only make the case proceed more smoothly. He conceded the failings of Pinnavaria's prior filings, but said that there had been no bad intent:

> "Now, I understand Your Honor was very patient with my client. There is no question. I'm not going to argue that. He filed some inappropriate pleadings, and I don't think that was done, you know, maliciously, or to aggravate the Court, or to delay the Plaintiff's case.
>
> I think it was simply just done. He was over zealous and basically didn't know what he was doing.
>
> So, I would simply ask to correct the answer, get an actual decent answer on file, bring the issues that are before the Court into sharper focus so the case can move on a normal track."

Counsel explained that he had "[g]one back and forth on the counter-claim or some affirmative defenses" and suggested the compromise of allowing Pinnavaria to file an answer with defenses. Crosstown argued in response that the court had a rule that a party would have "three attempts to

get things done" and claimed that this was "attempt five." The court denied Pinnavaria leave to file further pleadings.

¶ 10 The court assigned the case to mediation, but on July 11, 2017, the mediator concluded that a settlement was not possible despite the parties' good-faith negotiation.

¶ 11 On October 10, 2017, the court entered an order stating that the cause was dismissed with prejudice. Counsel for Pinnavaria objected to the dismissal, suggesting that, with slightly more time, Pinnavaria could have filed an acceptable counterclaim. After some colloquy, the court concluded that, although the parties' statements had made clear that the dismissal was occurring because Andigo had paid Crosstown's claim and that Andigo intended to recover its payment from Pinnavaria under the lien clause of the mortgage, it had no power to prevent a voluntary dismissal.

¶ 12 Counsel for Pinnavaria then withdrew with leave of court. Pinnavaria, in further filings, attempted to challenge the settlement. On October 24, 2017, the court denied Pinnavaria's motions and barred him from further filings without leave of court; it reminded him of the 30-day deadline for filing a notice of appeal. Pinnavaria filed a notice of appeal on November 3, 2017.

¶ 13 II. ANALYSIS

¶ 14 On appeal, Pinnavaria asks that we reverse the dismissal and order that the case be assigned to a different judge. The headings in his brief suggest that he intends to make four claims of error; we do not find the expected arguments in his brief. However, Pinnavaria's central argument is that the court treated his attempt to file counterclaims unfairly. Only Andigo has filed a response. The core of its argument is that the court gave Pinnavaria the fair treatment due any party.

¶ 15 We hold that, although the court did not err in striking Pinnavaria's filings, it did err when, as soon as Pinnavaria retained counsel, it denied counsel the opportunity to file amended counterclaims. We further hold, however, that the court displayed no bias against Pinnavaria, so we deny his request to order the case assigned to a different judge on remand.

¶ 16 We start by considering the scope of this appeal—that is, what questions and issues are properly before this court. An appeal from a specified judgment gives the appellate court jurisdiction of both the specified judgment and any nonspecified judgments that are a step in the procedural progression leading to the specified judgment. *E.g.*, *Jill Knowles Enterprises, Inc. v. Dunkin*, 2017 IL App (2d) 160811, ¶ 28. Because Crosstown voluntarily dismissed the case, our review is limited. For instance, we have no reason to address the merits of Crosstown's claim. However, as noted at the dismissal hearing, the dismissal would not have been possible if Pinnavaria had succeeded in filing a counterclaim, so the orders striking the "counterclaims" were a step in the procedural progression leading to the dismissal, as was the order, entered after Pinnavaria retained counsel, that denied him leave to file new counterclaims. Thus, we have jurisdiction to address the issue. Further, because a decision on a motion to strike calls upon the court to apply its discretion (*Knox College v. Celotex Corp.*, 88 Ill. 2d 407, 422 (1981)), the court's impartiality is at issue in this appeal, and we can address Pinnavaria's claim that the court was biased against him.

¶ 17 Initially, Pinnavaria asserts that the court unfairly struck his filings. We do not agree. The filings violated the requirement of section 2-603(a) of the Code of Civil Procedure (Code) (735 ILCS 5/2-603(a) (West 2016)), which provides that "[a]ll pleadings shall contain a plain and concise statement of the pleader's cause of action, counterclaim, defense, or reply." Here, the trial court was not wrong to describe Pinnavaria's pleadings as "incoherent." None of

Pinnavaria's filings was concise—indeed, they were uniformly long and repetitious. Moreover, the filings failed to make a plain statement of his claims. None followed any of the readily available models for pleadings. The filings intermixed factual claims and legal argument. Further, even when the filings made allegations of fact, they did so in a way that precluded a normal response. To pick a random example, in Pinnavaria's "Counterclaim for Declaratory Judgment and Other Relief" of February 22, 2016, item 20.2 in the breach-of-contract count reads as follows:

> "The Counter defendants [the contractors] has [*sic*] failed to complete as agreed on the contract item 1.8. Due to the volume of the work that had to be done and agreed modification it's impossible to agree that everything was done to our satisfaction. Our weekly meetings at times were less that [*sic*] desirable having Mr. Gilman expressing this opinion as to what 'he' thought we should do rather than what we requested."

(According to the counterclaim's "Outline of the Contract," "contract item 1.8" is "…as work required by said schedule is satisfactorily completed, the owner shall make draw payment to the contractor within three days after request by contractor.") Crosstown could not be expected to answer this. As this was typical of Pinnavaria's filings, the court did not err in striking them.

¶ 18 Pinnavaria suggests that the trial court should have overlooked the defects in his pleadings because he was *pro se*. That too is incorrect. "[*P*]*ro se* litigants are presumed to have full knowledge of applicable court rules and procedures and must comply with the same rules and procedures as would be required of litigants represented by attorneys." *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009). However, even under the most relaxed possible standards, the court would still have had the discretion to strike Pinnavaria's filings. Whatever

the standards, the counterparties were entitled to pleadings that they could reasonably answer. As we stated, Pinnavaria's pleadings made that extremely difficult.

¶ 19 However, we conclude that the court erred when, after repeatedly advising Pinnavaria that he should get a lawyer to help him produce intelligible filings, it gave counsel for Pinnavaria no opportunity to produce such filings. Counsel appeared and moved for leave to file amended pleadings, but was denied any time to do so, resulting in an injustice to Pinnavaria.

¶ 20 Initially, we address why we consider this claim. First, we recognize that, at the hearing on his motions, counsel suggested that he was primarily concerned that he get leave to file an amended answer, whereas, as we noted, this appeal is limited to the court's treatment of Pinnavaria's attempts to file counterclaims. However, counsel's choice to limit his argument to the amended answer was necessitated by the court's initial response to the motions, which was to deny them essentially summarily; the best choice counsel had at the rescheduled hearing was to offer a strategic compromise. Second, we also recognize that Pinnavaria frames his argument in terms of bias against *pro se* parties, not in terms of the court's lack of patience when he did get counsel. However, we deem that Pinnavaria's argument is sufficient to frame the issue, especially given the overtness of the error. In any event, even though Pinnavaria fails to make this argument with fullest clarity, and thus has arguably forfeited it, forfeiture is a limitation on the parties, not on the courts, and we may overlook a forfeiture when necessary to produce a just result. *E.g.*, *Jill Knowles Enterprises, Inc.*, 2017 IL App (2d) 160811, ¶ 22.

¶ 21 The court here abused its discretion when it denied Pinnavaria leave to file amended counterclaims. We reverse a denial of leave to file amended pleadings only when the denial was an abuse of discretion. *E.g.*, *CitiMortgage, Inc. v. Parille*, 2016 IL App (2d) 150286, ¶ 44. However, a "trial court should exercise its discretion liberally in favor of allowing amendments

to pleadings if doing so will further the ends of justice." *Parille*, 2016 IL App (2d) 150286, ¶ 44. Here, the ends of justice required that counsel for Pinnavaria have an opportunity to make his client's case for him. Pinnavaria was sued and, as many defendants do, attempted his own defense; for many parties, that is the only way they can have access to the courts. The court advised Pinnavaria that he should retain a lawyer; that was appropriate given his struggles to shape proper pleadings. Pinnavaria took that advice for bias, which it clearly was not. Certainly, the court's characterizations of Pinnavaria's filings as "incoherent" and "murky" were not kind; but those characterizations also were not wrong.

¶ 22 However, Pinnavaria did eventually respond to the advice, only to have the court abruptly deny him a primary benefit of having counsel: a professional presentation of his claims and defenses. Moreover, as counsel suggested, a clear presentation of Pinnavaria's case could only have served the ends of justice. To be sure, the court's impatience with Pinnavaria was not without cause. Pinnavaria's multiple filings were over-long, repetitive, and confusing. Further, the later attempts were no better than the first. However, just as Pinnavaria brought in counsel was the wrong time for the court's patience to reach its end. Counsel should have had one chance to make his amendments. Had the court allowed those amendments, the case could not have been dismissed without Pinnavaria's consent.

¶ 23 We also note that, had he been allowed to file an amended answer, Andigo would not have faced such a risk of its lien losing priority when it settled with Crosstown. See *LaSalle Bank National Ass'n v. Cypress Creek 1, LP*, 242 Ill. 2d 231, 237 (2011) (citing 770 ILCS 60/16 (West 2006)) ("The Act modifies the common law first-in-time, first-in-right rule [citation] by affording lienholders partial priority over pre-existing mortgages when the proceeds of a

foreclosure sale are insufficient to satisfy all claims[.]"). Thus, had counsel been allowed to amend Pinnavaria's answer, Andigo might well not have agreed to the settlement then—or at all.

¶ 24 III. CONCLUSION

¶ 25 For these reasons, we conclude that the court's decision to deny counsel for Pinnavaria a chance to amend Pinnavaria's pleadings was an abuse of discretion and a step in the procedural progression that led to the voluntary dismissal. We thus vacate the dismissal and the denial of the motions for leave to amend, and we remand the cause for further proceedings.[1] As the court displayed no bias toward Pinnavaria, we deny his request that we order that the case be assigned to a different judge.

¶ 26 Vacated and remanded.

[1] We note, however, that Pinnavaria's counsel has withdrawn. If Pinnavaria appears *pro se* on remand, and if his amended pleadings are no better than his original pleadings, the trial court may strike them and re-enter the voluntary dismissal.