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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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JOHN DOE CORPORATION 1 and	)	Appeal from the Circuit Court
JOHN DOE CORPORATION 2,	)	of Du Page County.
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 18-CH-0236
	)	
HUIZENGA MANAGERS FUND, LLC, and	)	
HUIZENGA CAPITAL MANAGEMENT,	)	
LLC,	)	Honorable
	)	Bonnie M. Wheaton,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE SPENCE delivered the judgment of the court.  
Justices McLaren and Hutchinson concurred in the judgment.

**ORDER**

¶ 1 *Held:* Appeal dismissed for lack of jurisdiction.

¶ 2 Plaintiffs, John Doe Corporation 1 and John Doe Corporation 2,<sup>1</sup> appeal the circuit court's interlocutory order purporting to dissolve a temporary restraining order that had already expired by its own terms. For the reasons that follow, we dismiss the appeal for lack of jurisdiction.

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<sup>1</sup> The Circuit Court of Madison County allowed petitioners to proceed anonymously.

¶ 3

### BACKGROUND

¶ 4 We recite only those facts that are necessary to this disposition. Plaintiffs are two corporations that, according to their appellate brief, “are alleged to be members and/or managers of an investment fund for insurance-related investments.” They do not identify the investment fund. Defendant entities are hedge funds. Huizenga Capital Management, LLC, provides investment management services to certain pooled investment funds, including Huizenga Managers Fund, LLC (collectively defendants).

¶ 5 On January 31, 2018, plaintiffs filed a complaint in Madison County seeking injunctive relief, including an *ex parte* temporary restraining order (TRO) against defendants. The complaint alleged that defendants entered into two subscription agreements in 2005 to purchase an equity interest in the investment fund, but that they violated certain non-disparagement and confidentiality provisions contained therein.

¶ 6 The Madison County circuit court conducted a hearing that same day and issued an *ex parte* TRO enjoining defendants from, among other things, disparaging plaintiffs and from filing confidential documents unless under seal. The TRO provided that it would expire on February 8, 2018, and the court scheduled a hearing on plaintiffs’ request for a preliminary injunction for February 9, 2018.

¶ 7 On February 2, 2018, defendants filed an emergency motion to transfer venue to Cook County, where they asserted “related actions [had] been pending for more than a decade.” The court granted the motion to transfer on February 6, 2018, but ordered that the case be transferred to Du Page County—the location of defendants’ principal place of business. The court struck the February 9, 2018, hearing on the preliminary injunction and directed the circuit court clerk to immediately transfer the case to Du Page County. During the hearing on the motion to transfer,

plaintiffs requested that the court extend the TRO until it could be heard in Du Page County, but the court declined, reasoning that that it would be “incongruent” to extend the TRO in an improper venue.

¶ 8 On February 7, 2018, the day before the TRO would expire by its own terms, defendants filed in Madison County a “motion to dissolve temporary restraining order and for damages” pursuant to sections 11-108 and 11-110 of the Code of Civil Procedure (Code) (735 ILCS 5/11-108, 11-110 (West 2016)). Therein, they acknowledged that the Madison County circuit court entered an order transferring the case to Du Page County the day prior, but stated that, to their knowledge, the case had not yet been transferred. Defendants indicated that they filed the motion in Madison County while the TRO remained in effect “in order to preserve [their] right” to seek damages under section 11-110 of the Code, and that they would notice up the motion to dissolve in Du Page County upon transfer. The TRO expired by its own terms the following day, on February 8, 2018.

¶ 9 The case was finally transferred to Du Page County on February 21, 2018. From March to June 2018, the parties engaged in substantial motion practice—none of which is relevant to this disposition.

¶ 10 After a hearing on September 26, 2018, the Du Page County circuit court entered an order that “vacated and dissolved” the TRO, and it continued the damages portion of the motion for status, pending discovery and an evidentiary hearing. The court acknowledged that the TRO had expired by its own terms more than seven months prior, but stated that defendants’ timely-filed motion to dissolve served as a “placeholder” that preserved their damages claim.

¶ 11 Two days later, plaintiffs filed a notice of interlocutory appeal pursuant to Illinois Supreme Court Rule 307(d) (eff. July 1, 2017).

¶ 12

ANALYSIS

¶ 13 On appeal, plaintiffs argue that the circuit court of Du Page County erred in dissolving the TRO because (1) the motion to dissolve became moot once the TRO expired according to its own terms and, as a result, damages are unavailable under section 11-110 of the Code (735 ILCS 5/11-110 (West 2016)); (2) the hearing on defendants' motion to dissolve should have been heard by the judge in Madison County who entered the *ex parte* TRO "as a matter of proper venue and comity"; and (3) plaintiffs made a *prima facie* showing that they raised a fair question as to the right claimed such that the TRO was properly granted. We do not reach the merits of these arguments, however, because we lack jurisdiction over this interlocutory appeal.

¶ 14 Although no party has raised the issue, we have an independent duty to verify our jurisdiction and dismiss the appeal if jurisdiction is lacking. See *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1043 (2007). Our jurisdiction is confined to appeals from final judgments and certain interlocutory orders that fit one of the exceptions specified by the supreme court rules. *Johnson v. Northwestern Memorial Hospital*, 74 Ill. App. 3d 695, 697 (1979).

¶ 15 Here, plaintiffs filed their notice of appeal pursuant to Rule 307(d), which permits an interlocutory appeal as of right of any order "modifying, dissolving, or refusing to dissolve or modify a temporary restraining order." Ill. S. Ct. R. 307(d) (eff. July 1, 2017). Because they seek an order from this court reversing the circuit court's "dissolution" of the TRO, plaintiffs' right to an interlocutory appeal necessarily depends on a "dissolution" having actually occurred. As the First District appellate court has observed, however, "expiration of an injunction by its own terms is not equivalent to the dissolution of the injunction for purposes of section 11-110 [of the Code][,] and *an injunction that has expired can no longer be dissolved because a court cannot dissolve that which no longer exists.*" (Emphasis added.) *Emerson Electric Co. v.*

*Sherman*, 150 Ill. App. 3d 832, 836 (1986); See also *Panduit Corp. v. All States Plastic Manufacturing Co.*, 84 Ill App. 3d 1144, 1149 (1980). Whether an action by a trial court fits the criteria for an interlocutory appeal under Rule 307 is determined by looking at the substance of the order rather than its form. *Lake Shore Racquet Club v. Fireman's Fund Insurance Cos.*, 91 Ill. App. 3d 1118, 1121 (1980).

¶ 16 Notwithstanding the verbiage included in the Du Page circuit court's September 26, 2018, order, it plainly did not "dissolve" the TRO because the TRO had already expired by its own terms, and the court could not dissolve that which no longer exists. See *Emerson*, 150 Ill. App. 3d at 836. Based on the court's oral statements in ruling on defendants' motion, including the court's acknowledgment that the TRO had expired more than seven months earlier, it is clear that the substance of the September 26, 2018, order merely reflects the court's determination that the TRO was wrongfully issued. This determination alone is insufficient to confer on us jurisdiction under Rule 307(d). We also observe that, based on the record before us, the damages portion of defendants' motion remains pending in the circuit court. We therefore also lack a jurisdictional basis to review the order under Illinois Supreme Court Rule 303 (eff. July 1, 2017), which governs appeals from final judgments in civil cases.

¶ 17 Because we are without jurisdiction to consider the merits of this appeal, we express no opinion regarding the propriety of the TRO or whether the defendants' "motion to dissolve temporary restraining order and for damages" preserved the question of damages under section 11-110 of the Code (735 ILCS 5/11-110 (West 2016)).

¶ 18 CONCLUSION

¶ 19 For the reasons stated, we dismiss plaintiffs' appeal for lack of jurisdiction.

¶ 20 Appeal dismissed.