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2018 IL App (3d) 170456-U

Order filed July 16, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

THE CITY OF KANKAKEE, an Illinois)	Appeal from the Circuit Court
Municipal Corporation,)	of the 21st Judicial Circuit,
)	Kankakee County, Illinois,
Plaintiff-Appellee,)	
)	
v.)	
)	
KKEY PROPERTIES, LLC,)	Appeal No. 3-17-0456
)	Circuit No. 14-MR-767
Defendant-Appellant,)	
)	
and)	
)	
Unknown Tenants,)	Honorable
)	Susan Sumner-Tungate,
Defendants.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Carter and Justice McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's memorandum of decision was not a final judgment and did not give rise to appellate jurisdiction.
- ¶ 2 The City of Kankakee (plaintiff) filed a complaint alleging that KKEY Properties, LLC, along with unknown tenants (defendants), owners and tenants of the certain parcel of real estate

described as 419-423 S. 5th Ave., were in violation of the International Property Maintenance Code (The Kankakee Property Maintenance Code or KPMC) adopted by plaintiff based on plaintiff's authority as a home rule municipality in the State of Illinois. Following a variety of filings, the parties filed cross motions for summary judgment in the matter. The trial court granted summary judgment in favor of plaintiff. Defendants' appeal.

¶ 3

FACTS

¶ 4

On December 18, 2014, plaintiff filed a two-count complaint for compliance against defendants. Count I of the complaint sought injunctive relief and alleged that defendants had violated certain provisions of the KPMC. Count II requested monetary penalties against defendants in an amount not greater than \$500 per day for each violation in accordance with the provisions of the KPMC and also requested that defendants be assessed the costs of the action.

¶ 5

On July 9, 2015, defendants filed a motion to dismiss plaintiff's complaint pursuant to section 2-615 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-615 (West 2014). On September 24, 2015, defendants also filed an answer and counterclaim to plaintiff's complaint. Defendants' answer and counterclaim requested a declaratory judgment finding that certain sections of the KPMC were unconstitutional. Specifically, defendants challenged the constitutionality of sections 112.4, 112.5, 112.6, 112.7, 112.12, 112.13, 112.14, 112.16, 112.24, 112.25, and 112.26 of the KPMC on due process, equal protection, and fourth amendment grounds. On February 18, 2016, and August 25, 2016, respectively, defendants filed an amended counterclaim and a second amended counterclaim raising constitutional challenges that closely mirrored the challenges in defendants' original answer and counterclaim. In response, plaintiff filed motions to dismiss defendants' amended counterclaim and second amended counterclaim.

¶ 6 The parties filed cross motions for summary judgment. On June 1, 2017, the trial court issued a memorandum of decision finding the challenged provisions of the KPMC did not violate the Constitution and granting summary judgment in favor of plaintiff. The trial court's memorandum of decision did not address the monetary issues raised in count II of plaintiff's complaint.

¶ 7 Defendants filed a timely notice of appeal on Jul 3, 2017. On July 6, 2017, plaintiff filed a formal judgment order seeking a final written judgment from the trial court. The proposed judgment order purported that judgment was entered against defendants as to count I and did not address count II. The proposed order did not include Rule 304(a) findings and evidence that the trial court addressed or signed the proposed order does not appear in the record.

¶ 8 ANALYSIS

¶ 9 At the outset of this appeal, plaintiff argues that the trial judge's memorandum of decision did not constitute a final, appealable, order pursuant to Supreme Court Rule 304(a). Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016). Without a final judgment, plaintiff contends this court cannot properly exercise our appellate jurisdiction.

¶ 10 As a preliminary matter, we acknowledge that plaintiff previously challenged this court's jurisdiction by requesting this court to dismiss the instant appeal. On November 16, 2017, this court entered an order denying plaintiff's motion to dismiss.

¶ 11 The jurisdictional issue has now been fully developed by the parties in their respective briefs. It is well established that courts of review are required to determine whether they possess jurisdiction to hear an appeal. *Little Texas, Inc. v. Buchen*, 319 Ill. App. 3d 78, 81 (2001). After conducting a more comprehensive review of the record, together with the aid of the parties'

briefs, we have reconsidered our ruling on plaintiff's motion to dismiss, and conclude that our court lacks jurisdiction to hear the instant appeal.

¶ 12 In this case, plaintiff prayed for fines and costs in count II of their complaint against defendants. The trial court's memorandum of decision granted summary judgment in favor of plaintiff on the constitutional issues raised in defendants' counter suit. However, the trial court has not resolved plaintiff's request for monetary penalties due to defendants' non-compliance with the KPMC. Where some, but not all, claims remain unresolved, Supreme Court Rule 304(a) controls whether an interlocutory appeal is appropriate. Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016). Supreme Court Rule 304(a) provides that:

“If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims 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. Such a finding may be made at the time of the entry of the judgment or thereafter on the court's own motion or on motion of any party. The time for filing a notice of appeal shall be as provided in Rule 303. In computing the time provided in Rule 303 for filing the notice of appeal, the entry of the required finding shall be treated as the date of the entry of final judgment. In the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties.” Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016).

¶ 13 It is well settled that, “Absent a Rule 304(a) finding, a final order disposing of fewer than all of the claims is not an appealable order and does not become appealable until all of the claims

have been resolved.” *In re Marriage of Gutman*, 232 Ill. 2d 145, 151 (2008). The term “claim” may be defined as “any right, liability or matter raised in an action.” *Id.*

¶ 14 The record on appeal does not contain an order from the circuit court that includes any Rule 304(a) findings. Therefore, the trial court’s memorandum of decision, filed on June 1, 2017, did not constitute a final judgment as necessary to gain appellate jurisdiction. Consequently, upon reconsideration, our decision denying plaintiff’s motion to dismiss is vacated and we now dismiss the appeal due to this court’s lack of jurisdiction.

¶ 15 The nature of our ruling does not necessitate a review of the jurisdictional argument raised by defendants with regard to Supreme Court Rule 272 concerning the form of the trial court’s decision on the parties’ cross motions for summary judgment. Ill. S. Ct. R. 272 (eff. Nov. 1, 1990).

¶ 16 **CONCLUSION**

¶ 17 For the foregoing reasons, the appeal is dismissed for lack of jurisdiction.

¶ 18 Dismissed.