

No. 1-18-0351

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 JUDICIAL DISTRICT

TOWN BANK,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	No. 17 M1 708436
PIERCE FOOD SERVICE EQUIPMENT and)	
PIERCE EQUIPMENT, INC.,)	Honorable
)	Jim Ryan,
Defendants-Appellants.)	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Reyes and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* Appeal dismissed as moot because defendants failed to obtain a stay of a judgment pursuant to Supreme Court Rule 305 (Ill. S. Ct. R. 305 (eff. July 1, 2004)), and property was sold to bona fide third-party purchaser after final judgment.

¶ 2 Plaintiff Town Bank filed this eviction action against defendants Pierce Food Service Equipment (Pierce Food) and Pierce Equipment, Inc. (Pierce Equipment), (collectively defendants), for possession of an industrial building located at 9685 West 55th Street in Countryside, Illinois (the Property). Both of the defendants are owned by Danny Pierce.

Defendants appeal the trial court's grant of summary judgment in favor of plaintiff, arguing that the trial court lacked subject matter jurisdiction over the action. While defendants filed motions to stay enforcement of the final judgment in both the lower court and this court on appeal, both motions were denied. During the pendency of the proceedings, the Cook County Sheriff executed the eviction notice and the property was sold to a nonparty purchaser. Therefore, this court lacks the ability to grant the relief requested by defendants and we dismiss this as moot for the reasons that follow.

¶ 3 Since the appeal is moot, we discuss the facts only as necessary for our disposition. Prior to December 29, 2016, the title to the Property was held in a land trust known as State Bank of Countryside as Trustee under Trust Agreement, dated January 18, 1993, known as Trust No. 93-1232. The beneficiary of the trust was Pierce's daughter. In October 2007, Pierce, his mother, and the trustee executed a promissory note in favor of First Suburban National Bank in the principal amount of \$2,100,000. Foundations Bank later purchased participation in the loan agreement from First Suburban. Over several years, the banks on the loan were acquired or merged with other entities, ending with plaintiff in March 2016.

¶ 4 After a default in May 2013, a forbearance agreement was executed in which the banks agreed to forbear exercising their rights and remedies in exchange for Pierce placing a deed in lieu of foreclosure into escrow. Plaintiff was entitled to record the deed upon occurrence of a termination event to the forbearance agreement. The forbearance agreement was extended until July 1, 2015, at which time Pierce was required to pay all sums due and owing on the loan. He failed to pay the outstanding balance and on December 29, 2016, plaintiff recorded the deed to the Property and became the owner.

¶ 5 In 2011, when Pierce was the owner of the Property, he executed a lease to defendant Pierce Food. In November 2015, Pierce Food filed for bankruptcy. Pierce Food has not paid rent since that time. In August 2016, Pierce incorporated Pierce Equipment. Pierce subsequently executed a lease as both lessor and lessee for Pierce Equipment in September 2016. Pierce Equipment never paid rent to plaintiff after it acquired ownership of the Property.

¶ 6 In May 2017, plaintiff filed a complaint for forcible entry and detainer and ejectment against defendants. Plaintiff requested possession as its relief and did not seek a money judgment. In October 2017, plaintiff filed a motion for summary judgment. On January 18, 2018, following briefing, the circuit court granted plaintiff's motion. The court also entered an eviction notice against defendants, which was stayed until January 31, 2018, to allow defendants the opportunity to voluntarily vacate the premises.

¶ 7 On February 8, 2018, defendants filed the instant appeal. Defendants also filed a motion to stay enforcement of the final judgment or in the alternative to set a bond in the circuit court. The circuit court denied defendants' motion on April 25, 2018. Defendants subsequently filed a motion to stay enforcement or set a bond in this court. On May 16, 2018, another division of this court denied defendants' motion.

¶ 8 On June 1, 2018, the Cook County Sheriff executed the eviction order and forcibly evicted defendants from the Property. On September 21, 2018, plaintiff sold the Property to a bona fide nonparty purchaser for value. On September 27, 2018, plaintiff filed a motion to dismiss this appeal as moot based on the sale, and another panel of this court denied the motion "without prejudice to raising issues in appellate brief."

¶ 9 Before we can reach defendants' arguments raised on appeal, we must first consider plaintiff's renewed argument that the instant appeal is moot because the Property was sold to an

unrelated third party. This court has the ability to reconsider plaintiff's argument based on our inherent authority to reconsider our prior rulings as well as our continuing obligation to consider our own jurisdiction. See, e.g., *Loman v. Freeman*, 229 Ill. 2d 104, 128 (2008) (court has continuing duty to consider its jurisdiction, even if not raised by parties); *Horvath v. Loesch*, 87 Ill. App. 3d 615, 621 (1980) (reconsidering previous denial of motion to dismiss on grounds of mootness and granting it) *Stevens v. Village of Oak Brook*, 2013 IL App (2d) 120456, ¶ 37 (“A court has the inherent authority to reconsider and correct its rulings, and this power extends to interlocutory rulings as well as to final judgments.”).

¶ 10 “An appeal is moot when it involves no actual controversy or the reviewing court cannot grant the complaining party effectual relief.” *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 522-23 (2001). “[I]t is well established that without a stay, an appeal seeking possession or ownership of specific property that has already been conveyed to a third party is moot.” *Northbrook Bank & Trust Co. v. 2120 Division, LLC*, 2015 IL App (1st) 133426, ¶ 3; see also *Steinbrecher*, 197 Ill. 2d at 532. The failure to obtain a stay pending appeal, standing alone, does not make an issue moot. *In re Tekela*, 202 Ill. 2d 282, 292 (2002). However, when an intervening event makes it impossible for a reviewing court to grant relief to any party, the case is rendered moot because an appellate ruling on the issue cannot have any practical legal effect on the controversy. *Id.* at 292-93.

¶ 11 Absent a stay of judgment pending appeal, Supreme Court Rule 305(k) protects third-party purchasers of property from appellate reversals or modifications of judgments regarding the property. *Steinbrecher*, 197 Ill. 2d at 523. Supreme Court Rule 305(k) provides, in relevant part:

“If a stay is not perfected within the time for filing the notice of appeal
***, the reversal or modification of the judgment does not affect the right, title, or
interest of any person who is not a party to the action in or to any real or personal
property that is acquired after the judgment becomes final and before the
judgment is stayed; nor shall the reversal or modification affect any right of any
person who is not a party to the action under or by virtue of any certificate of sale
issued pursuant to a sale based on the judgment and before the judgment is
stayed.” Ill. S. Ct. R. 305(k) (eff. July 1, 2017).

¶ 12 Rule 305(k) requires “(1) the property passed pursuant to a final judgment; (2) the right,
title and interest of the property passed to a person or entity who is not part of the proceeding;
and (3) the litigating party failed to perfect stay of judgment within the time allowed for filing a
notice of appeal.” *Steinbrecher*, 197 Ill. 2d at 523-24; see also *Deutsche Bank National Trust Co.
v. Roman*, 2019 IL App (1st) 171296, ¶ 23.

¶ 13 In *Steinbrecher*, the plaintiff filed a partition action seeking to partition property left to
him and two siblings. The trial court concluded that partition was inequitable and ordered the
property sold. *Id.* at 517. The trial court entered a final order confirming the sale to the highest
bidder, a nonparty. One of the siblings moved to vacate the sale confirmation and to stay the
judgment; both motions were denied by the trial court. *Id.* at 519. The sibling refused to vacate
the subject property and the buyer was allowed to intervene to enforce its right to possession.
Eventually, the buyer took possession of the property. *Id.* The sibling filed a notice of appeal, but
never filed a motion to stay the judgment in the appellate court. The appellate court found the

case was not moot because the buyer's intervention barred application of Rule 305(k)¹ and vacated the sale. *Id.*

¶ 14 The supreme court reversed the appellate court and held that the sibling's appeal was moot under Rule 305(k). *Id.* at 521. The *Steinbrecher* court found all three requirements to the rule protecting nonparty purchasers to have been satisfied. The court specifically held that the buyer's intervention to enforce possession did not make it a party, rather the rule designates a nonparty status at the time of the judgment and sale. *Id.* at 525. "Stripping the protection of Rule 305[(k)] because of subsequent efforts by a party to secure exclusive possession of the property would render an absurd result." *Id.* at 526. The court explained as follows.

"Such a holding would deny recourse to parties who in good faith purchase property pursuant to a judicial sale, but are unable to secure right to possession and use of that property. This outcome would force parties to choose court intervention, and lose the protection of Rule 305[(k)], or engage in self-help to secure possession." *Id.*

¶ 15 The supreme court further reasoned that public policy supported its finding.

"Public policy of this state supports our conclusion. Illinois law protects the integrity and finality of property sales, including judicial sales. [Citations.] Indeed, it extends this protection to purchasers who without notice at the time of the purchase buy in good faith. This finality and permanence is relied on by both purchasers and others in connection with the purchase of the property ***. Absent this policy, no person would purchase real property involved in a judicial proceeding, if afterwards he incurred the hazard of losing the property due to facts

¹ At that time, the language of Rule 305(k) was designated as Rule 305(j). We refer to the current subsection for clarity.

unknown to him at the time of the sale. A party may avoid the harshness of this rule by complying with the procedural mechanisms available, such as a motion to stay enforcement of the judgment and sale.” *Id.* at 528-29.

¶ 16 In the present case, plaintiff’s motion to dismiss filed in this appeal discloses that the Property was sold to Luke Castrogiovanni, a bona fide nonparty purchaser for value. In an affidavit attached to the motion to dismiss, Castrogiovanni confirmed his purchase of the Property. He executed a contract to purchase the Property on December 18, 2017. On September 18, 2018, Castrogiovanni and his wife organized MGM Countryside, LLC (MBM), to take title to the Property. Both he and his wife are managers for the company. On September 21, 2018, the closing of the sale occurred. The purchase agreement and closing documents were attached to the affidavit as exhibits. Plaintiff also attached affidavits from Castrogiovanni’s attorney and its own attorney confirming the sale details. The special warranty deed to the Property was recorded on September 25, 2018, as document number 1826844048.

¶ 17 All three requirements for Rule 305(k) have been satisfied. First, the Property passed pursuant to a final judgment. Plaintiff’s motion for summary judgment was granted and an order of possession was entered on January 18, 2018. An eviction order was executed by the Cook County Sheriff on June 1, 2018. The sale of the Property closed on September 21, 2018. Second, the purchaser, Castrogiovanni, has never been a party to the proceedings. Third, defendants failed to perfect a stay of judgment. While defendants filed motions to stay enforcement in both the circuit and appellate court, both motions were denied and no stay is in place. Accordingly, Castrogiovanni is entitled to protection of his purchase of the Property under Rule 305(k). Since the Property is in the possession of a nonparty, this court cannot grant effectual relief to defendants and renders the appeal moot.

No. 1-18-0351

¶ 18 Based on the foregoing reasons, we dismiss this appeal as moot.

¶ 19 Appeal dismissed.