2019 IL App (2d) 180199-U
No. 2-18-0199
Order filed June 27, 2019
Modified upon denial of rehearing December 18, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CARDINAL DESIGN, INC.,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 16-L-671
	)	
DEBORAH AVENUE INVESTORS, LLC, and SIGMA SERVICE CORPORATION,	)	
	)	
Defendants	)	
	)	Honorable
(Deborah Avenue Investors, LLC, Defendant-Appellee).	)	Margaret J. Mullen, Michael J. Fusz
	)	Judges, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Birkett concurred in the judgment.
Justice McLaren dissented upon denial of rehearing.

ORDER

¶ 1 *Held*: The appellate court lacked jurisdiction to review the trial court's order dismissing with prejudice plaintiff's claims for constructive eviction, tortious interference with prospective economic advantage, and scheme to defraud. Plaintiff failed to provide a sufficiently complete record to support its claim that the trial court abused its discretion in determining the amount of the fee award.

¶ 2 Plaintiff, Cardinal Design, Inc., (Cardinal Design), appeals from the trial court's order granting defendant's, Deborah Avenue Investors, LLC's (Deborah Avenue Investors), motion to

dismiss with prejudice claims for constructive eviction, tortious interference with prospective economic advantage, and scheme to defraud in its second amended complaint. Cardinal Design also appeals from the trial court's order granting only a portion of the attorney fees sought in its fee petition. For the following reasons, we dismiss for lack of jurisdiction the appeal from the trial court's order on the motion to dismiss and affirm the trial court's order on the fee petition.

¶ 3 I. BACKGROUND

¶ 4 This case involves a dispute regarding a commercial lease. Cardinal Design was the tenant of a 10,000-square foot space on the second floor of the building located at 2701 Deborah Avenue, Zion. Deborah Avenue Investors is the owner and landlord of the building. Cardinal Design leased the space to operate its sewing manufacturing business. The lease was for a five-year term beginning August 15, 2015, with a monthly rent of $500 for the first year, $1,950 for the second year, $2,300 for the third year, $2,800 for the fourth year, and $3,300 for the fifth year. The monthly rent was prorated with the first year at only $500 in exchange for Cardinal Design's renovation of the leased space.

¶ 5 The record demonstrates that Cardinal Design moved its operations to the building and began renovations. Soon thereafter, however, Cardinal Design lodged multiple complaints that the building had fallen into disrepair, including a leaking roof, non-operational freight elevator, and broken furnace. Cardinal Design requested a nine-month deferral of rent on grounds that its business production was delayed due to the disrepair.

¶ 6 On August 26, 2016, after Deborah Avenue Investors refused the request for rent abatement, Cardinal Design filed this lawsuit. The initial complaint was filed against Deborah Avenue Investors as well as Sigma Service Corporation (Sigma) (a packaging business and tenant in the building), individuals David Knop (Knop) and Paul Lozanski (Lozanski) (principals of

Deborah Avenue Investors and Sigma), RD Strategic (the leasing agent for the building), and individual Rick Delisle (Delisle) (a principal of RD Strategic). Cardinal Design raised claims for breach of contract and fraud based upon the condition of the building. Regarding the breach-of-contract claim, Cardinal Design alleged that it was damaged "in an amount in excess of $200,000, additional expenses, compensatory damages of money lost plus punitive damages for losses sustained as a result of defendants' wrongful actions" including the cost of moving and renovating, property damage, lost sales and income, and the costs of electrical distribution and its business license. It sought judgment on the breach-of-contract claim "in excess of $200,000 plus interest, and for additional relief this Court deems just and appropriate." With respect to the fraud claim, Cardinal Design reiterated the list of damages for losses sustained from defendant's alleged wrongdoing and sought judgment "in excess of $200,000 plus interest and attorney[] fees, punitive damages and for additional relief this Court deems just and appropriate."

¶ 7 Defendants moved to dismiss the complaint with prejudice pursuant to section 619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2016)) and sought sanctions under Supreme Court Rule 137 (eff. July 1, 2013). Defendants argued that the complaint should be dismissed under section 615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)) for failure to contain plain and concise statements and inclusion of multiple allegations in paragraphs. Moreover, defendants maintained, the fraud allegations were conclusory and Cardinal Design failed to allege that Sigma, RD Strategic, or Delisle made any statement upon which Cardinal Design relied.

¶ 8 Defendants argued that the complaint should be dismissed under section 619(a)(9) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(9) (West 2016)) as to the individual defendants and RD Strategic. Defendants pointed out that the Limited Liability Company Act (805 ILCS

180/10-10 (West 2016)) shielded Knop and Lozanski from personal liability for the alleged actions. They further argued that Cardinal Design pled no facts to support the contractual liability of RD Strategic or Delisle as the complaint itself alleged that RD Strategic merely acted as the agent for Deborah Avenue Investors.

¶ 9 The trial court set a briefing schedule on the motion to dismiss, but Cardinal Design never responded to the motion. Rather, Cardinal Design filed a motion for leave to amend its complaint. The trial court granted Cardinal Design's motion and vacated the briefing schedule on the motion to dismiss. Cardinal Design filed an amended complaint on February 6, 2017. The amended complaint named only two defendants—Deborah Avenue Investors and Sigma. In addition to maintaining the breach-of-contract claim, Cardinal Design raised new claims for constructive eviction and scheme to defraud. The *ad damnum* clause from the breach-of-contract claim in the initial complaint remained extant. On the constructive-eviction claim, Cardinal Design sought "compensatory and punitive damages in an amount to be proven and determined at trial, plus costs of suit." On the scheme-to-defraud claim, Cardinal Design sought judgment "in excess of $200,000 plus additional cost of moving and setting up in a new location, interest and attorney[] fees, punitive damages and for additional relief this Court deems just and appropriate."

¶ 10 Deborah Avenue Investors and Sigma moved to dismiss the amended complaint with prejudice pursuant to section 615. Initially, defendants argued that the amended complaint should be dismissed as to Sigma because there were no allegations as to a contractual relationship between Cardinal Design and Sigma. Defendants also argued that the breach-of-contract claim was deficient because Cardinal Design failed to attach a fully executed contract to the amended complaint, as required by section 606 of the Code of Civil Procedure (735 ILCS 5/2-606 (West 2016)) ("If a claim or defense is founded upon a written instrument, a copy thereof, or of so much

of the same as is relevant, must be attached to the pleading as an exhibit or recited therein ***."). Additionally, defendants argued, Cardinal Design alleged that Deborah Avenue Investors breached the lease by "failing or refusing to make necessary repairs to the building, including to the roof and elevator as aforesaid," but failed to cite to a provision of the lease that contained this requirement. Defendants further pointed out that the amended complaint failed to attribute the amount of the damages sought to the alleged failure to repair.

¶ 11 Defendants also argued that Cardinal Design failed to allege that it had vacated the premises as required to support a constructive-eviction claim. In fact, Cardinal Design remained in possession of the premises. Regarding the scheme-to-defraud claim, defendants argued that Cardinal Design failed to allege that it relied upon any statement from Sigma and failed to allege that any of Sigma's actions as a co-tenant in the building, such as locking the door or using the elevator, were deceptive. Moreover, defendants maintained that the conclusory allegations failed to allege that Deborah Avenue Investors made a misrepresentation with the intent to induce Cardinal Design to rely upon it to its detriment. To the contrary, Cardinal Design attached to the amended complaint correspondence between the parties reflecting that Deborah Avenue Investors informed Cardinal Design that it would address the leaking roof when the weather permitted. As a final matter, defendants argued that the allegations failed to support a claim for punitive damages under Illinois law.

¶ 12 In its response in opposition to the motion to dismiss the amended complaint, Cardinal Design sought leave to file a second amended complaint to attach the fully executed lease. Moreover, Cardinal Design argued that it sufficiently pled facts to support its claims. Regarding the constructive-eviction claim, Cardinal Design pointed out that it was not permitted to abandon the premises without first affording Deborah Avenue Investors the opportunity to make the

requisite repairs. Also, the logistics and expense of moving its business did not allow for a simple abandonment of the premises. As for the scheme-to-defraud claim, Cardinal Design contended that it sufficiently pled a scheme to induce Cardinal Design to sign the lease and renovate the space but then force Cardinal Design out. And finally, Cardinal Design argued, its allegations supported the request for punitive damages.

¶ 13 During the pendency of the briefing on the motion to dismiss the amended complaint, RD Strategic, Delisle, Knop, and Lozanski filed a motion for costs pursuant to section 1009 of the Code of Civil Procedure (735 ILCS 5/2-1009 (West 2016)) on grounds that Cardinal Design essentially voluntarily dismissed them from the case. While Cardinal Design had a right to dismiss them, defendants argued, it was nevertheless required to pay their costs. See 735 ILCS 5/2-1009(a) (West 2016) ("The plaintiff may, at any time before trial or hearing begins, upon notice to each party who has appeared or each such party's attorney, and upon payment of costs, dismiss his or her action or any party thereof as to any defendant, without prejudice, by order filed in the cause."). Cardinal Design filed a response in opposition, arguing that dismissal of the defendants was entirely permissible under the liberal standard for amendment of pleadings set forth in section 616 of the Code of Civil Procedure (735 ILCS 5/2-616) (West 2016)).

¶ 14 Following a hearing on the motion to dismiss the amended complaint and the motion for costs, the trial court entered an order granting the motion to dismiss, allowing Cardinal Design leave to file a second amended complaint, and denying the previously dismissed defendants' motion for costs. There is no transcript of the hearing in the record.

¶ 15 On May 4, 2017, Cardinal Design filed a second amended complaint. The second amended complaint maintained the claims for breach of contract, constructive eviction, and scheme to defraud, but added a claim for tortious interference with prospective economic advantage. The

second amended complaint again named Deborah Avenue Investors and Sigma as defendants. However, the claims for breach of contract, constructive eviction, and tortious interference with prospective economic advantage were brought against Deborah Avenue Investors only, and the claim for scheme to defraud was brought against both Deborah Avenue Investors and Sigma.

¶ 16 Regarding the breach-of-contract claim, Cardinal Design alleged that Deborah Avenue Investors breached the lease provision entitled "Landlord's Repairs" by failing or refusing to make necessary repairs to the building, including to the roof, heat, lighting, and elevator despite repeated requests for the repairs. Increasing the damages sought from $200,000 to $400,000, Cardinal Design alleged that it that was damaged "in an amount in excess of $400,000, additional expenses, compensatory damages of money lost plus punitive damages for losses sustained as a result of defendants' wrongful actions." It sought judgment on the breach-of-contract claim "in excess of $400,000 plus interest, and for additional relief this Court deems just and appropriate."

¶ 17 With respect to the constructive-eviction claim, Cardinal Design alleged that Deborah Avenue Investors induced Cardinal Designs to sign the lease, relocate its business, and renovate the leased space with no intention of providing the building in the condition advertised or performing its obligations under the lease. Cardinal Design further alleged that Deborah Avenue Investors conspired with Sigma to interfere with Cardinal Design's business by locking the entrance door, blocking the overhead exit door, failing to provide parking spaces, interfering with the use of the elevator, and failing to provide a non-leaking roof thereby endangering Cardinal Design's equipment, material, and inventory. Cardinal Design also alleged without explanation: "On April 13, 2017[,] the Court in 16 LM 2023 entered an order of possession against Cardinal [Design]. The stay of enforcement date is May 13, 2017." Cardinal Design sought compensatory

and punitive damages and "expenses for constructive eviction" in an amount to be proven and determined at trial, plus costs of suit.

¶ 18 In support of its claim for tortious interference with prospective economic advantage, Cardinal Design alleged that Deborah Avenue Investors intentionally and unjustifiably interfered with Cardinal Design's operations and reasonable expectancy of entering into valid business relationships with its customers for its products by inducing Cardinal Design to sign the lease, relocate its business, and renovate the leased space with no intention of providing the building in the condition advertised or performing its obligations under the lease. Cardinal Design also alleged that Deborah Avenue Investors interfered with Cardinal Design's business by locking the entrance door, blocking the overhead exit door, failing to provide parking spaces, and interfering with the use of the elevator. Further allegations included that Deborah Avenue Investors conspired to interfere with Cardinal Design's business by refusing to provide a non-leaking roof and endangering Cardinal Design's equipment, material, and inventory, and conspired to interfere with Cardinal Design's efforts to safely move out of the leased space by preventing unobstructed passage to the closest loading dock and by harassment from Deborah Avenue Investors's and Sigma's workers. Cardinal Design sought compensatory and punitive damages in an amount to be proven and determined at trial.

¶ 19 Regarding the scheme-to-defraud claim, Cardinal Design alleged that Deborah Avenue Investors employed deceptive acts and practices and made the following fraudulent misrepresentations, misstatements, and omissions of material fact: (1) inducing Cardinal Design to sign the lease, relocate its business, and renovate the leased space with no intention of providing the building in the condition advertised or performing its obligations under the lease; (2) conspiring with Sigma to interfere with Cardinal Design's business and constructively evict Cardinal Designs

by locking the entrance door, blocking the overhead exit door, failing to provide parking spaces, and interfering with the use of the elevator; (3) conspiring to interfere with Cardinal Design's business and constructively evict Cardinal Designs by failing to provide a non-leaking roof thereby endangering Cardinal Design's equipment, material, and inventory; (4) conspiring to evict Cardinal Design through legal proceedings after Cardinal Designs requested a rent abatement; (5) conspiring to interfere with Cardinal Design's efforts to safely move out of the leased space by forcing Cardinal Designs to use hazardous passages, "refusing to comply with OSHA requirements and regulations related to [a] safe working environment," and "attempting to block Cardinal [Design's] bank account"; and (6) conspiring to frustrate Cardinal Design's staff by "launching harassing campaign[s] either through written letters by [Deborah Avenue Investors] or through conduct by [Sigma's] workers."

¶ 20 Cardinal Design alleged that Deborah Avenue Investors "knew their promises of fixing the leaking roof, repairing the elevator and providing adequate lighting, heat, loading access, elevator access, parking spaces[,] and electrical capacity and conduct were false with the intent that [Cardinal Design] rely upon such acts, practices, representations, misstatements, and omissions of material fact." Cardinal Design alleged that the foregoing conduct upon which it relied to its detriment was unfair, deceptive, and contrary to public policy and generally recognized standards of business. Cardinal Designs sought damages on the scheme-to-defraud claim in excess of $400,000, the "additional cost of moving and setting up in a new location," interest, attorney fees, and punitive damages.

¶ 21 Deborah Avenue Investors and Sigma moved to dismiss the second amended complaint with prejudice pursuant to section 619.1 of the Code of Civil Procedure. Defendants argued that the claims for constructive eviction, tortious interference with prospective economic advantage,

and scheme to defraud should be dismissed under section 615 as the allegations failed to state a cause of action. Deborah Avenue Investments argued that the constructive-eviction claim remained deficient for failing to allege that Cardinal Design had vacated the premises. Deborah Avenue Investors also argued that the claim for tortious interference with prospective economic advantage claim was deficient for failure to plead an essential element—that the alleged actions were directed at third parties. Sigma maintained that the scheme-to-defraud claim against it failed to state a cause of action because Cardinal Design failed to allege that it relied upon any statement from Sigma to its detriment. Moreover, the allegations merely referred to alleged actions taken by Sigma at the direction of Deborah Avenue Investors.

¶ 22 Defendants further argued that the claims for breach of contract, constructive eviction, and scheme to defraud should be dismissed pursuant to section 619(a)(9). As for the breach-of-contract claim, Deborah Avenue Investors argued that Cardinal Design failed to comply with the terms of the lease. In support, Deborah Avenue Investors attached the affidavit of Knop, in which Knop attested that Deborah Avenue Investors successfully brought an eviction proceeding against Cardinal Design after its nonpayment of rent. Also attached to the motion to dismiss was the April 13, 2017, judgment order for $18,520.84 entered in favor of Deborah Avenue Investors and against Cardinal Design following a trial in the eviction proceeding.

¶ 23 Deborah Avenue Investments argued that the constructive-eviction claim should be dismissed under section 619(a)(9) because Cardinal Design had not yet relinquished possession of the premises. In his affidavit, Knop attested that Cardinal Design remained in possession of the premises as it had requested an extension of the stay date on grounds that it would take several months to relocate its operations. Thus, Deborah Avenue Investors argued, Cardinal Design was not constructively evicted; it was actually evicted.

¶ 24 As for the scheme-to-defraud claim, defendants attached correspondence between the parties (which Cardinal Design had attached to prior complaints) reflecting that Deborah Avenue Investors informed Cardinal Design that it would address the leaking roof when the weather permitted. As a final matter, defendants argued that the allegations failed to support a claim for punitive damages.

¶ 25 In its response in opposition, Cardinal Design initially argued that defendants failed to properly designate their motion to dismiss as a combined motion under section 619.1 and requested sanctions under Rule 137 for what it characterized as a frivolous motion. It also argued that the allegations in the second amended complaint supported the request for punitive damages.

¶ 26 As for its response to the arguments that dismissal was warranted pursuant to section 615, Cardinal Design argued that its constructive-eviction claim was properly pled. Namely, Cardinal Design was required to provide Deborah Avenue Investors a reasonable opportunity to make the necessary repairs to the building, and the failure to do so forced Cardinal Design to move. Cardinal Design contended that Deborah Avenue Investors essentially took possession on April 13, 2017, by virtue of the order in the eviction proceeding, and Cardinal Design represented that it had actually vacated the premises on June 19, 2017, after a five-day move.

¶ 27 Regarding the claim for tortious interference with prospective economic advantage, Cardinal Designed argued that it was not required to plead that the alleged interference was directed toward a third party. Rather, Cardinal Design argued, the proper legal standard is whether the allegations set forth sufficient facts to show that the defendant's alleged interference was between the plaintiff and a third party. According to Cardinal Design, this is precisely what it pled—that "with a leaking roof, non-functioning elevator and inadequate electrical supply, [Cardinal Design] could not conduct business with its customers."

¶ 28 Cardinal Design argued that it sufficiently pled its scheme-to-defraud claim. According to Cardinal Design, the initial part of the scheme was Deborah Avenue Investment's act of inducing Cardinal Designs to sign the lease and move into the building, "all the while never intending to perform but rather to coax [Cardinal Design] into preparing the space and then, with Sigma's assistance, forcing [Cardinal Design] out." Indeed, Cardinal Design argued, Deborah Avenue Investors conceded that Sigma operated under Deborah Avenue Investors's direction—"the very essence of a concerted action to defraud."

¶ 29 Cardinal Design argued that the 619(a)(9)-portion of the motion to dismiss should be stricken for improper reliance upon Knop's affidavit, which "presents evidentiary material going to the truth of the allegations contained in the complaint—namely whether [Deborah Avenue Investors] repaired the roof." Cardinal Design maintained that dismissal of the breach-of-contract claim was not warranted as it was excused from performance because of Deborah Avenue Investor's anticipatory breach. Cardinal Design also argued that "[n]othing in the case law supports [Deborah Avenue Investor's] assertion that because [Cardinal Design] was actually evicted it cannot claim it was constructively evicted." And as for the scheme-to-defraud claim, Cardinal Design contended that Knop's affidavit denied the allegation that the roof was repaired during Cardinal Design's tenancy. Alternatively, Cardinal Design argued that Knop's affidavit should be stricken for failure to provide supporting documentation for the attestation that Deborah Avenue Investments conducted repairs to the property on multiple occasions.

¶ 30 On August 10, 2017, following a hearing, the trial court entered the following order:

> "(1) Defendants' 2-615 Motion to Dismiss is allowed with respect to counts II [constructive eviction], III [tortious interference with prospective economic advantage], & IV [scheme to defraud] with prejudice, the Court having found there have been

reasonable opportunities to cure the defects, further amendment is not in the interest of justice; (2) [t]he Court noting although Defendants' title of the motion does not lable [*sic*] it a 2-619.1 Combo, the Motion is clearly labeled, so over Plaintiff's objection, the Court will hear the 2-615 portion of the motion & will not reach the 2-619 portion of the Motion; (3) Defendant, Deborah Avenue Investors, LLC shall file an answer to the sole remaining count, Count I [breach of contract], within 14 days or by no later than August 24, 2017; (4) [Plaintiff's] counsel's oral motion to continue trial & [Supreme Court Rule] 218 deadlines is denied."

¶ 31 The record does not contain a transcript of the hearing on the motion to dismiss the second amended complaint. However, following the parties' disputed submissions of a proposed bystander's report for the hearing, the trial court entered the following pursuant to Supreme Court Rule 323(c) (eff. Dec. 13, 2005):

"THEREFORE, THE COURT HEREBY SETTLES, CERTIFIES AND ORDERS FILED the following accurate report of proceedings for the August 10, 2017[,] hearing:

1. The Defendant's Motion to Dismiss the Plaintiff's Second Amended Complaint was heard by Judge Margaret Mullen on August 10, 2017.

2. Judge Mullen noted that while the title of Defendant's Motion did not indicate that it was a 735 ILCS 5/2-619.1 combined motion, the motion was clearly labeled. Over Plaintiff's objection, Judge Mullen agreed to hear the 5/2-615 portion of the motion but said she would not reach the 5/2-619 portion of the motion.

3. After hearing argument from both attorneys, Judge Mullen allowed the Defendant's 735 ILCS 5/2-615 Motion to Dismiss as to Counts II, III, and IV with prejudice, finding

that there had been enough opportunities for Plaintiff to cure the defects and that allowing further amendments was not in the interest of justice.

4. Judge Mullen denied the Plaintiff's attorney's Rule 137 argument and ordered that Defendant, Deborah Avenue Investors, LLC filed its Answer to Count I of the Second Amended Complaint within 14 days or by August 24, 2017;

5. Judge Mullen also denied the Plaintiff's oral motion to continue the trial and the previously-set Illinois Supreme Court Rule 218 deadlines.

6. Judge Mullen's ruling is accurately set forth in the Court Order prepared by Defendant's Attorney, Janelle A. Dixon and filed with the Court on August 10, 2017."

¶ 32 A bench trial on the breach-of-contract claim proceeded. Cardinal Design requested preparation of a limited record on appeal to include only the time periods from August 26, 2016 (the date the initial complaint was filed) through August 10, 2017 (the date of the order on the motion to dismiss the second amended complaint), and from November 21, 2017 (as will be discussed *infra*, the date Cardinal Design's counsel filed a petition for attorney fees), through June 15, 2018 (the date the trial court entered the bystander's report of the ruling on the motion to dismiss the second amended complaint). Thus, the record does not include any transcripts, exhibits, or motions from the trial. However, the trial court's judgment order following the bench trial was in the record because it was attached to Cardinal Design's fee petition. The order, dated November 8, 2017, stated:

"This cause coming to be heard for the Court's ruling after trial conducted October 30, 2017—November 2, 2017[,] due notice having been given and this court being fully advised in the premises[,] IT IS HEREBY ORDERED:

> (1) Pursuant to the Court's prior rulings on Defendants' Motions to Dismiss, the only party Defendant in this matter is Deborah Avenue Investors, Inc.; with Sigma Service Corp, RD Strategic, Rick Delisle, David Knop and Paul Lozanski having been dismissed; (2) Judgment is entered for the Plaintiff due to Defendant's Breaches of the Lease regarding the non-working elevator and roof leaks, as further stated in the record, in the amount of $5,340 plus court costs."

¶ 33 On November 21, 2017, Cardinal Design filed a petition for attorney fees in the amount of $63,618.75 with a supporting affidavit and invoices from counsel. The petition also included a request for court costs in the amount of $402.46 ($290.46 for the filing fee and $112 for the service fee). Cardinal Design cited a provision in the lease providing that the prevailing party in a proceeding to enforce the lease was entitled to reasonable attorney fees and costs.

¶ 34 Deborah Avenue Investors objected to the fee petition on grounds of insufficient detail regarding the skill and standing of the attorney and the reasonableness of the rates charged, inconsistencies between the invoices and fees requested, impermissible block-billed time entries, and failure to support the contention in the fee petition that the breach-of-contract claim involved complex issues. Deborah Avenue Investors also argued that there was no reasonable connection between the attorney fees charged and the outcome of the litigation, as Cardinal Design sought over $400,000 in damages but was awarded only $5,340 —slightly more than 1% of the damages sought. Following a hearing on February 16, 2018, the trial court entered an order granting Cardinal Design's fee petition "with fees reduced to 30 [hours] at $325/hour for a total of $9,750.00 for reasons stated in court, court costs of $402.46 allowed for a total of $10,152.46." There is no transcript of the hearing.

¶ 35 On March 7, 2018, Cardinal Design filed a motion to reconsider the fee order on grounds that the substantial reduction in the fee amount awarded thwarted the parties' intent to provide reasonable attorney fees to the prevailing party and that the trial court erred in considering the judgment amount awarded in reducing the fee request. In addition to arguing that the motion for reconsideration failed to establish a proper basis for reconsideration, Deborah Avenue Investors maintained the objections set forth in its response to the initial fee petition.

¶ 36 Following a hearing on May 10, 2018, the trial court denied the motion to reconsider. The sole transcript in the record on appeal is the transcript of the hearing and ruling on Cardinal Design's motion to reconsider the fee order.[1] The trial court detailed multiples instances of block billing in the invoices and stated that it would have "no way of knowing how much time was actually spent." The trial court questioned whether any client "would pay a bill where the bills are block billed for days at a time as opposed to being broken out separately."

¶ 37 While stating that it "can't say [Cardinal Design's attorney's] hourly rate is unreasonable standing on its own," the trial court concluded that "the other factors I have considered indicate that my awarded fees [were] reasonable in the context of the case." Specifically, the trial court considered the "motion practice, a large volume of unnecessary paper motions that were generated, plus the, frankly, unfocused and somewhat repetitious presentation at trial." The trial court reasoned that the case was "fairly straightforward," and it did not consider the case novel, difficult, or complex, "except for perhaps [Cardinal Design's] unreasonable high demand at the outset, the

[1] The court reporter's certification of the transcript of the hearing on the motion to reconsider, as required by Supreme Court Rule 323(b) (eff. Dec. 13, 2005), is unsigned. Deborah Avenue Investors does not object to its inclusion in the record on appeal, and we consider it.

legal theories there were not supported by the law, including the fraud counts [and] the amount and importance of the subject matter of $400,000 demanded." The trial court pointed out that the request for judgment at the close of trial was "a fraction of that, $83,000 and of that $70,000 was remodeling expenses, which were not substantiated at all by any credible evidence at trial" and "as a result, I awarded $5,340." The trial court concluded that the "degree of responsibility and the management of the case," was "not responsibly prepared or tried considering the nature of the case." Specifically, the "time and labor required—not the time and labor put in—but the time and labor required was much less than is being sought here."

¶ 38 Moreover, the trial court reviewed the time billed for the various pleadings and trial preparation and stated that the case was "over prepared" and "not presented effectively or effectually" and informed counsel that "just because you billed that time or spent that time doesn't mean it's reasonable." In sum, the trial court stated, "I will not say that your [] $63,000 request is reasonable considering the result you achieved and the presentation that was made to the Court." Accordingly, on May 10, 2018, the trial court entered an order denying Cardinal Design's motion to reconsider the fee order.

¶ 39 Meanwhile, after filing its March 7, 2018, motion to reconsider the fee order, on March 15, 2018, Cardinal Design filed a notice of appeal from the trial court's August 10, 2017, order granting the motion to dismiss with prejudice the claims for constructive eviction, scheme to defraud, and tortious interference with prospective economic advantage and from the trial court's February 16, 2018, order on the fee petition.

¶ 40 II. ANALYSIS

¶ 41 Cardinal Design argues on appeal that dismissal of its claims for constructive eviction, scheme to defraud, and tortious interference with prospective economic advantage was not

warranted under section 615 as the claims were sufficiently pled. At a minimum, Cardinal Design contends, the dismissal should not have been with prejudice, and it should have been allowed to further amend the claims. Cardinal Design also argues on appeal that the trial court abused its discretion in reducing the sum requested in the fee petition.

¶ 42 A. Jurisdiction

¶ 43 As an initial matter, although the parties do not raise the issue, we have an obligation to determine whether we have jurisdiction to review the trial court's August 10, 2017, dismissal order. See *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). Supreme Court Rule 303(a)(1) provides:

> "The notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, whether in a jury or a nonjury case, within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order, irrespective of whether the circuit court had entered a series of final orders that were modified pursuant to postjudgment motions. A judgment or order is not final and appealable while a Rule 137 claim remains pending unless the court enters a finding pursuant to Rule 304(a). ***" Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015).

¶ 44 A final order or judgment is a determination by the trial court on the issues presented by the pleadings which ascertains and fixes absolutely and finally the rights of the parties to the litigation. *Phoenix Capital, LLC v. Tabiti*, 2016 IL App (1st) 162686, ¶ 6. On August 10, 2017, the trial court dismissed with prejudice the claims for constructive eviction, scheme to defraud, and tortious interference with prospective economic advantage. Trial proceeded on the surviving

breach-of-contract claim against Deborah Avenue Investors, and on November 8, 2017, the trial court entered judgment for Cardinal Design "in the amount of $5,340 plus court costs."[2] The trial court did not reserve the calculation of court costs and made no reference to any claim for attorney fees.

¶ 45 Indeed, Cardinal Design's breach-of-contract claim against Deborah Avenue Investors did not request attorney fees (or costs) so there was no such pending claim. See *F.H. Prince & Co. v. Towers Financial Corp.*, 266 Ill. App. 3d 977, 988 (1994) ("[T]he filing of a petition for attorney[] fees and costs pursuant to a breach of contract does not create the claim nor does it vest jurisdiction with the trial court to hear that claim. The claim is created when a complaint for breach of contract, seeking fees and costs as an element of damages, is filed."). In the second amended complaint, Cardinal Design alleged it was damaged by Deborah Avenue Investors's breach of the contract "in an amount in excess of $400,000, additional expenses, compensatory damages of money lost plus punitive damages for losses sustained as a result of defendants' wrongful actions." Its *ad damnum* clause in support of the breach-of-contract claim alleged: "WHEREFORE, [Cardinal Design] prays that judgment be entered in its favor in excess of $400,000 plus interest, and for additional relief this Court deems just and appropriate." There was no claim for attorney fees or costs. We note that this is also the precise relief requested in the breach-of-contract claim in the initial complaint and amended complaint (with the exception that in the initial complaint and amended

[2] We note that the November 8, 2017, order reflects that it was prepared by Cardinal Design's attorney and he appears to have scratched out words to the effect that the order was final and appealable. There is no clarification, explanation, or discussion in the record as to the basis for the addition or ultimate deletion of this language.

complaint, the judgment amount sought was only $200,000). Consistently throughout the iterations of the complaint, Cardinal Design only sought attorney fees (without any reference to the fee-shifting provision in the lease) in its *ad damnum* clause for the fraud claim in the initial complaint and the scheme-to-defraud claims in the amended complaints. But those claims were dismissed. There was simply no claim for attorney fees alleged in the sole, surviving breach-of-contract claim.

¶ 46 Thus, the November 8, 2017, judgment order was final and appealable; there were no pending claims left for the trial court to resolve. Consequently, Cardinal Design was required to file its notice of appeal within 30 days after its entry pursuant to Supreme Court Rule 303(a)(1). Cardinal Design did not file a notice of appeal until months later on March 15, 2018. Recognizing this, in its statement of jurisdiction, Cardinal Design represents that, following the November 8, 2017, order, it "timely filed its post-judgment motion, a Fee Petition" on November 21, 2017, and thus its March 15, 2018, notice of appeal (following the trial court's February 16, 2018, order on the fee petition) was timely.

¶ 47 A timely postjudgment motion extends the time for filing a notice of appeal until 30 days after the entry of the order disposing of the postjudgment motion but critically, only if the postjudgment motion is directed against the judgment. Ill. S. Ill. S. Ct. R. 303(a)(1) (eff. Jan. 1, 2015); *Naperville South Commons, LLC v. Nguyen*, 2013 IL App (3d) 120382, ¶ 14. *Naperville South Commons*, which likewise involved a commercial lease dispute, is illustrative. The landlord brought a complaint for forcible entry and detainer against the commercial tenant for nonpayment of rent. Following a bench trial, the trial court entered judgment in favor of the tenant. *Id.* ¶¶ 1-2, 6. The tenant filed a motion for attorney fees, costs, and expenses within 30 days of the judgment. The landlord was later granted leave to file its own petition for attorney fees. Both pleadings were based upon a provision in the lease providing for attorney fees, costs, and expenses to the

prevailing party. *Id.* ¶¶ 7-8. The landlord never filed a notice of appeal until the day after the trial court entered its order granting the tenant's motion for attorney fees, costs, and expenses. In its notice of appeal, the landlord sought review of the fee award as well as the judgment order in the tenant's favor entered months earlier on the forcible-entry-and-detainer claim. *Id.* ¶¶ 7, 9.

¶ 48 The appellate court in *Naperville South Commons* held that the "tenant's motion for attorney fees was not a posttrial motion directed against the judgment, because claims for fees were collateral to the underlying action." *Id.* ¶ 14. The court reasoned that the motion was related to the underlying judgment, as the judgment provided the basis to seek fees, but the motion did not challenge the findings in that judgment. *Id.* Accordingly, the motion for fees did not extend the time period to file the notice of appeal. The landlord failed to file a timely notice of appeal within 30 days of the judgment. *Id.* Thus, the appellate court held that, while it had jurisdiction to review the attorney fee award, it lacked jurisdiction to review the underlying judgment on the forcible-entry-and-detainer claim. *Id.* ¶¶ 14-15.

¶ 49 Likewise, here, Cardinal Design's fee petition was not a posttrial motion directed against the judgment. The fee petition was related to the judgment on the breach-of-contract claim as it provided the basis for Cardinal Design to seek fees as the prevailing party under the fee-shifting provision in the lease. But nothing in the fee petition challenged the underlying judgment. The fee petition was collateral to the underlying judgment on the breach-of-contract claim and was not a posttrial motion directed against the judgment. Accordingly, the fee petition did not extend the time period for filing a notice of appeal. Cardinal Design failed to file a notice of appeal within 30 days of the judgment. We therefore lack jurisdiction to review the trial court's August 10, 2017, order dismissing with prejudice the claims for constructive eviction, tortious interference with prospective economic advantage, and scheme to defraud in the second amended complaint.

¶ 50 The dissent states that "the trial court had jurisdiction to hear Cardinal Design's claim for fees such that the August 10, 2017, order became nonfinal and nonappealable when the claim for fees was made, and this court now has jurisdiction to review that order." We respectfully submit that this statement conflates two concepts: jurisdiction to consider a postjudgment fee petition and a final and appealable order. The trial court had jurisdiction to rule on Cardinal Design's fee petition, as it was filed within 30 days of the order entering judgment for Cardinal Design on the breach-of-contract claim. See *Herlehy v. Marie V. Bistersky Trust, Dated May 5, 1989*, 407 Ill. App. 3d 878, 898 (2010). In fact, the trial court did rule on it, and, as discussed *infra*, we affirm that ruling.

¶ 51 The issue presented at this time, however, is whether the order entering judgment for Cardinal Design on the sole, surviving breach-of-contract claim was a final and appealable order such that Cardinal Design was required to file its notice of appeal from the dismissal of its other claims within 30 days after entry of the order pursuant to Rule 303(a)(1). Under the particularized facts of this case, it was. The dissent cites *F.H. Prince* for the principle that a request for attorney fees is a "claim" within the meaning of Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016), regardless of whether the fees are sought pursuant to statute or pursuant to a contract provision. *F.H. Prince*, 266 Ill. App. 3d at 983. But the point is that the request for attorney fees must in fact be pled for there to be a claim. The record demonstrates that throughout every iteration of its complaint, Cardinal Design simply never pled a request for attorney fees in its breach-of-contract count. Thus, when the trial court entered judgment for Cardinal Design on the breach-of-contract count, there was no pending claim left for the trial court to resolve.

¶ 52 The dissent's position is that Cardinal Design's postjudgment fee petition was the claim that made the judgment order on the breach-of-contract count nonappealable. In support, the

dissent cites language in *Suburban Auto Rebuilders, Inc. v. Associated Tile Dealers Warehouse, Inc.*, 388 Ill. App. 3d 81 (2009). However, the issue in *Suburban Auto Rebuilders* was whether the trial court improperly struck the defendant's postjudgment fee petition for lack of jurisdiction. *Id.* at 96-98. The appellate court reversed the trial court's order on this issue, holding that the trial court had jurisdiction to entertain the fee petition filed within 30 days after entry of final judgment. *Id.* at 96-97. The court also held that the defendant's failure to request attorney fees in its answer did not preclude the trial court from ruling on the petition. *Id.* at 97.

¶ 53 Again, here, there is no dispute that the trial court had jurisdiction to rule on Cardinal Design's fee petition. But the filing of Cardinal Design's fee petition did not transform the trial court's final and appealable order on the breach-of-contract count into a nonappealable order. This was because the fee petition, seeking fees for the first time on the breach-of-contract claim, was collateral to the underlying judgment. Nothing in the fee petition challenged the underlying judgment. The petition merely sought fees as the prevailing party and included an attorney affidavit and invoices in support.

¶ 54 The dissent does not address the distinction between claims that are brought as part of the principal action and collateral claims that are brought after the principal action has been decided for purposes of whether an order is final and appealable. Where a plaintiff's complaint includes a request for attorney fees and the court enters judgment in the plaintiff's favor but does not rule on the amount of fees, the judgment is not appealable while that issue is pending. See *F.H. Prince*, 266 Ill. App. 3d at 984-85. However, where the prevailing party files a fee petition only after the court has entered a final judgment, the petition is collateral and does not affect the appealability of the final judgment on the principal action. See *In re Estate of Kunsch*, 342 Ill. App. 3d 552, 559 (2003) (the judgment in the defendants' favor did not require a Rule 304(a) finding to become a

final and appealable order where the defendants' motion for costs was filed after the final judgment on the principal action); *Hartford Fire Ins. Co. v. Whitehall Convalescent & Nursing Home, Inc.*, 321 Ill. App. 3d 879, 886-87 (2001) (the declaratory judgment in the plaintiff's favor was appealable notwithstanding the plaintiff's motion for reimbursement of defense costs filed after the judgment was entered); *Servio v. Paul Roberts Auto Sales, Inc.*, 211 Ill. App. 3d 751, 761 (1991) (the defendant's motion for attorney fees, filed after judgment and where request for fees was not included in the defendant's responsive pleadings, did not prevent the judgment from being appealable without a Rule 304(a) finding). Cardinal Design's postjudgment fee petition, requesting fees for the first time, was collateral to the underlying judgment and did not affect the appealability of the final judgment here.

¶ 55 We note that when the trial court dismissed the claims for constructive eviction, tortious interference with prospective economic advantage, and scheme to defraud in the second amended complaint and ordered Cardinal Design to answer the sole, surviving breach-of-contract claim, Cardinal Design did not seek a Rule 304(a) finding allowing it to appeal the dismissal of the claims. Trial proceeded on the breach-of-contract claim. When final judgment was entered on the breach-of-contract claim, Cardinal Design's fee petition was the only postjudgment motion it filed. Cardinal Design did not file a motion to reconsider the order dismissing its claims for constructive eviction, tortious interference with prospective economic advantage, and scheme to defraud in the second amended complaint. Such a motion could have qualified as a postjudgment motion directed against the judgment tolling the time for appeal. See 735 ILCS 5/2-1203 (West 2016); *Heiden v. DNA Diagnostics Center, Inc.*, 396 Ill. App. 3d 135, 138-39 (2009).

¶ 56 To be sure, Cardinal Design was not required to seek a Rule 304(a) finding or file a motion to reconsider the dismissal order. But having not done so, and having filed merely a collateral

postjudgment fee petition, Cardinal Design *was* required to file its notice of appeal within 30 days after the November 8, 2017, judgment order in order to challenge the dismissal of its claims for constructive eviction, tortious interference with prospective economic advantage, and scheme to defraud. Cardinal Design, however, did not file a notice of appeal until months later. Accordingly, in the face of this record, we are compelled to hold that we have no jurisdiction to review the trial court's dismissal of these claims.

¶ 57 B. Fee Petition

¶ 58 We nevertheless have jurisdiction to review the trial court's February 16, 2018, order on the fee petition (as well as the trial court's denial of the motion to reconsider the order) as Cardinal Design timely appealed from the order on March 15, 2018. See Ill. S. Ct. R. 303(a)(1), (2) (eff. Jan. 1, 2015). Cardinal Design argues that the trial court abused its discretion in determining the reasonableness of the fees requested in the petition. Cardinal Design sought $63,618.75 in attorney fees for hours billed from August 4, 2016, through November 8, 2017. The trial court granted the petition but reduced the amount of the fees awarded to $9,750.

¶ 59 An unsuccessful party to a lawsuit generally is not responsible for the payment of the other party's attorney fees. *Mirar Development, Inc. v. Kroner*, 308 Ill. App. 3d 483, 488 (1999). However, a contractual provision providing for an award of attorney fees to the prevailing party is an exception to this rule. *Id.* Here, The lease agreement between the parties contained a fee-shifting provision in section 19.D:

> "If either party hereto institute[s] any action or proceeding to enforce any provision hereof by reason of any alleged breach of any provision of this Lease, the prevailing party shall be entitled to receive from the losing party all reasonable attorneys' fees and all court costs in connection with such proceeding."

¶ 60 The party requesting attorney fees bears the burden of presenting sufficient evidence from which the trial court may determine the reasonableness of the fees. *Mirar Development*, 308 Ill. App. 3d at 488. A fee petition must specify the services performed, by whom they were performed, the time expended, and the hourly rate charged. *First Midwest Bank, N.A. v. Sparks*, 289 Ill. App. 3d 252, 263 (1997). The fee petition must be supported by detailed records maintained during the course of litigation. *Id.*

¶ 61 Once presented with this information, the trial court should consider the following factors in determining the reasonable value of an attorney's services: the skill and standing of the attorney, the nature of the case and the novelty and difficulty of the questions at issue, the amount and importance of the subject matter, the degree of responsibility involved in the management of the case, the time and labor required, the usual and customary charge in the community, and the benefits resulting to the client. *Mountbatten Surety Co. v. Szabo Contracting, Inc.*, 349 Ill. App. 3d 857, 873 (2004). The trial court has broad discretionary powers in awarding attorney fees, and its decision will not be disturbed on appeal absent an abuse of that discretion. *In re Estate of Callahan*, 144 Ill. 2d 32, 43-44 (1991); *Mountbatten Surety Co.*, 349 Ill. App. 3d at 873. An abuse of discretion occurs when the trial court's ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view. *In re Marriage of LaRocque*, 2018 IL App (2d) 160973, ¶ 94.

¶ 62 Cardinal Design contends that its fee request of $63,618.75 was reasonable and that the trial court abused its discretion in reducing the award. Cardinal Design, as the appellant, has the burden of providing a sufficiently complete record to support its claim of error. *EDN Real Estate Corp. v. Marquette National Bank*, 263 Ill. App. 3d 161, 167 (1994). Cardinal Design opted to designate a limited record on appeal. The common law record ends with the August 10, 2017,

ruling on the motion to dismiss the second amended complaint and resumes when Cardinal Design filed its fee petition on November 21, 2017. The only transcript in the record is of the May 10, 2018, hearing and ruling on Cardinal Design's motion to reconsider the fee award. And the only bystander's report is of the August 10, 2017, hearing and ruling on the motion to dismiss the second amended complaint.

¶ 63 Nevertheless, a review of the invoices Cardinal Design submitted in support of the fee petition reflects that a substantial portion of the fees requested were incurred during the time period for which there is no record. Cardinal Design seeks fees incurred for trial, trial preparation, and trial motions as well as for an unsuccessful motion for summary judgment. But there is no trial transcript in the record, no transcript of the arguments and ruling on the summary judgment motion, and no filings, motions, briefs, or orders from the trial or summary judgment proceedings. There is also no transcript of the initial hearing and ruling on the fee petition; there is only a transcript of the hearing and ruling on Cardinal Design's motion to reconsider the fee award. In the absence of a sufficiently complete record to support its claim that the trial court abused its discretion in reducing the fee amount awarded, we must presume that the trial court's order on the fee petition was in conformity with the law and had a sufficient factual basis. See *Victor Township Drainage District v. Lundeen Family Farm Partnership*, 2014 IL App (2d) 140009, ¶ 35; *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 64 According to Cardinal Design, review of every pleading and transcript is not necessary to resolve whether the fee award was an abuse of the trial court's discretion. Rather, Cardinal Design contends, the transcript of the ruling on the motion to reconsider the fee award establishes that the trial court abused its discretion by improperly characterizing various time entries as block billing

and improperly considering the unsuccessful claims and final judgment amount in reducing the fee award. We disagree.

¶ 65 Initially, we note that, contrary to its argument here, in its motion to reconsider the fee award, Cardinal Design discussed at length the progression of the case, the pleadings and motion practice, and the trial proceedings in support of its fee request. Yet the limited record omits much of this material. Moreover, Cardinal Design's reliance upon isolated comments in the trial court's ruling fails to recognize that the trial court considered the entirety of the litigation as well as the conduct of Cardinal Design's counsel throughout the proceedings in reducing the amount awarded. As the trial court concluded, "the other factors I have considered indicate that my awarded fees [were] reasonable in the context of the case."

¶ 66 Regarding the trial court's finding with respect to improper block billing, the invoices submitted in support of the fee petition reflect multiple instances where tasks were billed for days at time. An example is an entry for 3 hours on "8/11-12" with the narrative "[o]rganize documents and prepare affidavits to the Statement of Facts." As the trial court pointed out, it would have "no way of knowing how much time was actually spent" and questioned whether any client "would pay a bill where the bills are block billed for days at a time as opposed to being broken out separately." This finding was not arbitrary, fanciful, or unreasonable.

¶ 67 And the trial court's consideration of the ultimate benefit resulting to the client likewise was not an abuse of discretion. The trial court pointed out that Cardinal Design's demand was $400,000, yet the request for judgment at the close of trial was "a fraction of that, $83,000 and of that $70,000 was remodeling expenses, which were not substantiated at all by any credible evidence at trial." The trial court concluded, "I will not say that your [] $63,000 request is reasonable considering the result you achieved and the presentation that was made to the Court."

The existence of a "reasonable connection between the fees and the amount involved in the litigation" is a proper consideration in determining the reasonableness of a fee request. See *First Midwest Bank*, 289 Ill. App. 3d at 263. Cardinal Design presents no basis upon which to hold that the trial court abused its discretion in reducing the amount of fees sought.

¶ 68 III. CONCLUSION

¶ 69 For the reasons stated, we dismiss for lack of jurisdiction the appeal from the trial court's order granting the motion to dismiss with prejudice the claims for constructive eviction, tortious interference with prospective economic advantage, and scheme to defraud in the second amended complaint and affirm the trial court's order on the fee petition.

¶ 70 Dismissed in part; affirmed in part.

¶ 71 JUSTICE McLAREN, dissenting:

¶ 72 I respectfully dissent from the majority's determination that, pursuant to *F.H. Prince & Co. v. Towers Financial Corp.*, 266 Ill. App. 3d 977, 988 (1994), we lack jurisdiction to review the August 10, 2017 order dismissing with prejudice the claims for constructive eviction, tortuous interference with prospective economic advantage, and scheme to defraud. According to the majority, Cardinal Design's petition for attorney fees, filed within 30 days of the trial court's ruling on the breach of contract count, was not a pending claim so as to render the judgment non-final and non-appealable in the absence of Rule 304(a) language. The majority holds that Cardinal Design was required to file a notice of appeal within 30 days of the November 8, 2017 trial court order entered after the trial on the breach of contract claim; thus, the March 15, 2018 notice of appeal, filed after the trial court ruled on Cardinal Design's fee petition, was untimely and did not vest this court with jurisdiction. This line of thinking goes against the trend in the law that that fee

petitions, even those that are collateral to a judgment, must be disposed of before appeal unless 304(a) language is used. Our supreme court has made this trend clear:

> " 'An order is final and appealable if it terminates the litigation between the parties on the merits or disposes of the rights of the parties, either on the entire controversy or a separate part thereof.' *R.W. Dunteman Co. v. C/G Enterprises, Inc.*, 181 Ill. 2d 153, 159, (1998). 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. *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458, 464 (1990). This court has defined a 'claim' as 'any right, liability or matter raised in an action.' *Marsh*, 138 Ill. 2d at 465. The rule was meant 'to discourage piecemeal appeals in the absence of a just reason and to remove the uncertainty which existed when a final judgment was entered on fewer than all of the matters in controversy.' *Marsh*, 138 Ill. 2d at 465.
>
> The appellate court below held that a contempt petition, although a 'part' of the underlying action, does not raise a 'claim for relief' in that action within the meaning of Rule 304(a). 376 Ill. App.3d at 763. Therefore, according to the court, the order terminating maintenance was a final order as to all 'claims' in the dissolution action and required no Rule 304(a) finding to be final and appealable. We disagree.' " *IRMO Gutman*, 232 Ill. 2d 145, 151 (2008).

¶ 73 The majority bases much of its rationale on the fact that the breach-of-contract count did not contain a specific request for attorney's fees in its prayer for relief. See *supra*, ¶ 45. This is irrelevant. The *F. H. Prince* court related that "[a] request for attorneys' fees is a claim within the meaning of Supreme Court Rule 304(a). *This is so whether the fees are sought pursuant to statute, such as the entry of sanctions for false pleadings* [citations] *or pursuant to a contract provision*

[citations]." (Emphasis added). *F.H. Prince*, 266 Ill. App. 3d at 983. The court went further and related that, if the trial court had jurisdiction to hear the fee petition, then the underlying judgment was no longer final and appealable:

> "Consequently, *if a trial court has jurisdiction* (emphasis in original) to hear a claim for fees, any other judgment entered in the case before the claim for fees is ruled upon is or becomes nonfinal and nonappealable *when the claim for fees is made* (emphasis added), unless the prior judgment contains the language set forth in Supreme Court Rule 304(a), that there is no just reason to delay enforcement or appeal." *Id*. at 983-84.

Because the fee petition here was filed within 30 days of the entry of the judgment, the trial court had both subject matter and personal jurisdiction to hear the claim for fees. Thus, the November 8, 2017 order was not final and appealable.

¶ 74 The majority admits that the trial court had jurisdiction to hear the fee petition (see *supra*, ¶ ¶ 50, 53), yet then completely ignores the implication of the finding of jurisdiction over the fee petition: that "any other judgment entered in the case before the claim for fees is ruled upon [*i.e.* the November 8, 2017 order] is or becomes *nonfinal and nonappealable* when the claim for fees is made, unless the prior judgment contains the language set forth in Supreme Court Rule 304(a), that there is no just reason to delay enforcement or appeal." (Emphasis added.) *F.H. Prince*, 266 Ill. App. 3d at 984. The majority blithely asserts that "the filing of Cardinal Design's fee petition did not transform the trial court's final and appealable order on the breach-of-contract count into a nonappealable order" (*supra*, ¶ 53) without even bothering to address, let alone attempting to refute, this clearly contradictory caselaw. Again, the policy behind Rule 304(a) is "to discourage piecemeal appeals in the absence of a just reason and to remove the uncertainty which existed

when a final judgment was entered on fewer than all of the matters in controversy." *Marsh*, 138 Ill. 2d at 465. The majority here subverts that policy.

¶ 75 The majority asserts that I do not address "the distinction between claims that are brought as part of the principal action and collateral claims that are brought after the principal action has been decided for purposes of whether an order is final and appealable." *Supra* ¶ 54. However, it is the majority that fails to address the caselaw that holds that *there is no such distinction*. See, *e.g.*, *Marsh v. Evangelical Covenant Church of Hinsdale*, 138 Ill. 2d 458 (1990) ("no appeal may be taken from an otherwise final judgment entered on a claim when a section 2-611 claim [for attorney fees as sanctions] remains to be resolved, absent a finding pursuant to Rule 304(a) that there is no just reason to delay enforcement or appeal."); *F.H. Prince*, 266 Ill. App. 3d at 984. See also *Longo v. Globe Auto Recycling, Inc.*, 318 Ill. App. 3d 1028, 1033 (2001) ("A request for attorney fees is a claim within the meaning of Supreme Court Rule 304(a) (155 Ill.2d R. 304(a)). [Citation.] 'This is so whether the fees are sought pursuant to statute, such as the entry of sanctions for false pleadings, or pursuant to a contract provision.' [Citations.]"

¶ 76 The irrelevancy of the majority's distinction aside, the majority is also wrong in its classification of Cardinal Design's fee petition. The majority asserts that the order on the breach-of-contract count was not made into a nonappealable order "because the fee petition, seeking fees for the first time on the breach-of-contract claim, was collateral to the underlying judgment." *Supra*, ¶ 53. However, Section 2-606 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-606 (West 2016)), requires that a written instrument upon which a claim or defense is founded must be attached to the pleading as an exhibit or be recited therein. "A written instrument attached to a pleading as an exhibit *constitutes part of the pleading for all purposes*." (Emphasis added.). *Law Offices of Colleen M. McLaughlin v. First Star Financial Corp.*, 2011 IL App (1st) 101849,

¶ 32. Such an attached exhibit is not required to be introduced into evidence to be considered (*id*.), and, when the facts contained in such an attached exhibit conflict with facts alleged in the complaint, the exhibit controls. *Garrison v. Choh*, 308 Ill. App. 3d 48, 53 (1999).

¶ 77 Cardinal Design attached as Exhibit A to its second-amended complaint a copy of the lease. Section 19 D. of the lease provides in part:

> "If either party hereto institutes any action or proceeding to enforce any provision hereof by reason of any alleged breach of any provision of this Lease, the prevailing party shall be entitled to receive from the losing party all reasonable attorneys fees and all court costs in connection with such proceeding."

¶ 78 This clause of the lease, entitling the prevailing party in a breach of contract proceeding to attorney fees, is to be considered *part of the complaint for all purposes*, including the relief to be granted. Cardinal Design's fee petition clearly referenced and quoted from Section 19.D. of the lease, which was attached as an exhibit to the complaint, and argued that it is the basis for its claim for fees. Thus, *contra* the majority, Cardinal Design's fee petition was *not* collateral; it arose *from the complaint*.

¶ 79 The majority claims that this quote is the basis for its holding:

> " '[T]he filing of a petition for attorney[] fees and costs pursuant to a breach of contract does not create the claim nor does it vest jurisdiction with the trial court to hear that claim. The claim is created when a complaint for breach of contract, seeking fees and costs as an element of damages, is filed.' " *Supra*, ¶ 45, quoting *F.H. Prince*, 266 Ill. App. 3d at 988.

¶ 80 I submit that the majority has taken that quote out of context and misapplied it, thus leading to the majority's irrelevant and erroneous distinction addressed *supra* ¶ ¶ 75-76. The *F.H. Prince* court did distinguish between a petition for fees as a sanction and "a petition for fees pursuant to

a breach of contract action wherein the contract entitles a party to all fees and costs when enforcement of the contract is pursued." *Id*. at 987. The court noted that a petition for fees as a sanction "is a separate and distinct substantive theory for recovery in the underlying action" that "does not exist until the petition for fees is filed. The petition must be filed while the court has jurisdiction over the underlying action." *Id*. at 988. "Until the petition for fees is filed, the trial court has no jurisdiction to hear the matter." *Id*. If such a motion is not filed within 30 days of the entry of the final judgment or within 30 days after ruling on the last-pending posttrial motion, "the trial court will have lost jurisdiction forever over the claim for fees." *Id*. However, the court did not distinguish between the effects of petitions for fees if the petitions are timely-filed.

¶ 81 On the other hand, a petition for fees contained as a contractual element "is a claim recoverable under the substantive theory presented in the underlying action" such that:

> "[t]he claim is created when the complaint for breach of contract, seeking fees and costs as an element of damages, is filed. Once the complaint is filed, the trial court has jurisdiction over that claim; and once the court finds a breach and entitlement to attorneys' fees and costs as a result of that breach, the court retains jurisdiction to determine all amounts owed." *Id*.

However, the court noted that both types of claim "are considered to be part of the underlying cause of action and must be brought as part of that action." *Id*. at 987-88. While there may be a distinction between such claims regarding when they came into being, there is no distinction between them as to their effects on finality and appealability if the claims are timely filed. In any event, the claim for fees in this case was based on the attached lease that was made part of the complaint and therefore could not be collateral.

¶ 82 The majority ignores this portion of *F.H. Prince* and then claims that "Cardinal Design's breach-of-contract claim against Deborah Avenue Investors did not *request* attorney fees (or costs) so there was no such pending claim." *Supra*, ¶ 45. (Emphasis added.) This simply is not the case. There *was* an existing pending claim for fees pursuant to Cardinal Design's November 21, 2017 petition; that petition was brought in the underlying action and was "filed while the court ha[d] jurisdiction over the underlying action." See *id*. at 988. Further, the existence of Cardinal Design's claim was based on the lease that was attached to the complaint and not on the prayer for relief. I doubt that there is a case that can be found that holds that, if the prayer does not specifically contain a claim, then the claim does not exist. Rather, the explanation would be that, although the claim exists, such relief was not sought and, thus, was not recoverable. However, if a fee petition requesting such relief is then timely filed, the claim is not resurrected; it is what it always was—a continuing basis for recovery. *F.H. Prince* does ***not*** hold, as the majority claims, that a claim for attorney fees *must* be specifically raised in the prayer for relief in a breach of contract case.

¶ 83 The majority then finds that "the November 8, 2017, judgment order was final and appealable; there were no pending claims left for the trial court to resolve. Consequently, Cardinal Design was required to file its notice of appeal within 30 days after its entry pursuant to Supreme Court Rule 303(a)(1)." *Supra*, ¶ 46. Again, this is factually untrue and clearly erroneous. Under Supreme Court Rule 303(a)(2), a "pending claim" is the same as a "claim" for purposes of Supreme Court Rule 304(a). *In re Marriage of Valkiunas and Olsen*, 389 Ill. App. 3d 965, 968 (2008). For purposes of Rule 304(a), a "claim" is any "right, liability or matter raised" in an action. *Id*., citing *Marsh*, 138 Ill.2d at 465. "If an order does not resolve every right, liability or matter raised, it must contain an express finding that there is no just reason for delaying an appeal [pursuant to Rule 304(a)]." *Marsh*, 138 Ill. 2d at 465. Thus, in *Valkiunas*, a pending motion to disqualify the

petitioner's attorney, which did not qualify as a timely postjudgment motion directed against the judgment, was found to be a pending "matter" raised in the action; as the underlying judgment from which the petitioner did not contain Rule 304(a) language, the notice of appeal filed before the motion was disposed of was premature. *Valkiunas*, 389 Ill. App. 3d at 968. Even a pending contempt petition, clearly a collateral claim, requires 304(a) language to appeal the underlying judgment. See *Gutman*, 232 Ill. 2d 145.

¶ 84 My analysis is supported by this court's decision in *Suburban Auto Rebuilders, Inc. v. Associated Tile Dealers Warehouse, Inc.*, 388 Ill. App. 3d 81 (2009):

> "A circuit court retains jurisdiction for 30 days after its entry of a final order or judgment. [Citations.] A circuit court has jurisdiction to entertain a petition for fees filed within 30 days of the entry of a final judgment without regard to a previously filed notice of appeal. [Citations.] In addition, a circuit court has jurisdiction to address a timely-filed fee petition regardless of whether the fee request is considered to be part of the original action or collateral to the original claim. [Citations.] The filing of a postjudgment petition for fees renders a prior notice of appeal premature. [Citations.]
>
> In this case, Associated's petition for fees was timely filed within 30 days of the entry of summary judgment in its favor. The filing of Associated's fee petition rendered Suburban's December 17, 2007, notice of appeal premature. Therefore, Suburban's first notice of appeal did not deprive the circuit court of jurisdiction to rule on the petition for fees. [Citations.]
>
> In addition, we reject Suburban's argument that Associated's failure to request attorney fees in its answer to the amended complaint precluded the court from ruling on the petition. *A court can consider a postjudgment fee petition even where the request for*

> *fees has not been included in a prior pleading.* [Citations] *but see F.H. Prince & Co.*, 266 Ill. App. 3d at 988 *** (holding that a circuit court is vested with jurisdiction to consider a claim for fees filed pursuant to a breach of contract when the complaint seeking fees as an element of damages is filed). For the reasons set forth above, we conclude that the circuit court incorrectly found that it lacked jurisdiction to consider Associated's postjudgment petition for attorney fees." (Emphasis added.) *Suburban Auto Rebuilders, Inc.*, 388 Ill. App. 3d at 96-97.

The majority attempts to distinguish *Suburban Auto Rebuilders, Inc.* by stating that "the issue in *Suburban Auto Rebuilders* was whether the trial court improperly struck the defendant's postjudgment fee petition for lack of jurisdiction." *Supra*, ¶ 52. The majority claims that the case merely held that "the trial court had jurisdiction to entertain the fee petition filed within 30 days after entry of final judgment." However, the majority completely ignores the clear statements in *Suburban Auto Rebuilders, Inc* that "[t]he filing of a postjudgment petition for fees renders a prior notice of appeal premature" and that, because the petition for fees was timely filed within 30 days of the entry of summary judgment, it "rendered Suburban's December 17, 2007, notice of appeal premature." *Suburban Auto Rebuilders, Inc.*, 388 Ill. App. 3d at 97. Because the trial court had jurisdiction to entertain the collateral fee petition, *the underlying judgment was no longer final and appealable*. The majority's analysis of this case is lacking, at best, and is inconsistent with the clear policy to discourage piecemeal appeals.

¶ 85 *F.H. Prince*, *Valkiunas*, and *Suburban Auto Rebuilders, Inc.* clearly show that the trial court had jurisdiction to hear Cardinal Design's claim for fees such that the August 10, 2017 order became nonfinal and nonappealable when the claim for fees was made, and this court now has jurisdiction to review that order.

¶ 86 The majority incorrectly concludes that failing to ask for attorney fees in the prayer for relief is the same as the failure to allege a claim. The fallacy in that conclusion is that, once this case is over, the "collateral" claim, which is based on the contract that is part of the complaint, will be subject to *res judicata* or collateral estoppel. Curiously, the majority fails to recognize that they have declared that supposedly collateral claims are now subject to collateral estoppel. Such a syllogism is a paradox. The claim obviously could be brought up because it was a claim based on the contract, rather than an absent prayer for relief.

¶ 87 Finally, "[i]t is well established that a prayer for general relief is sufficient to authorize any judgment warranted by the facts alleged in the pleadings." *Heritage Standard Bank and Trust Co. v. Heritage Standard Bank and Trust Co. as Trustee Under Trust Agreement dated April 25, 1960*, 148 Ill. App. 3d 563, 568 (1986). Section 2-604 of the Code provides in part:

> "Except in case of default, the prayer for relief does not limit the relief obtainable, but where other relief is sought the court shall, by proper orders, and upon terms that may be just, protect the adverse party against prejudice by reason of surprise." 735 ILCS 5/2-604 (West 2018).

¶ 88 Here, Cardinal Design sought judgment on the breach-of-contract claim "in excess of $400,000 plus interest, *and for additional relief this Court deems just and appropri*ate." (Emphasis added.) Language similar to this has been deemed a proper basis for money damages in a court of equity where no specific request for such damages was made. See *Westerfield v. Redmer*, 310 Ill. App. 246, 250 (1941) ("The matter of the employment of plaintiff by defendants was set up in the bill, and while the prayer was for equitable relief (namely, specific performance) the bill also prayed 'for such other and further relief in the premises as the court shall deem equitable and just.' ") Additionally, prejudgment interest has been correctly awarded based upon a general

prayer for relief. See *In re Marriage of O'Malley*, 2016 IL App (1st) 151118, ¶ 52 ("The original petition requested Kim's bargained-for interest in the sale of the home and for any additional relief the trial court found to be just and equitable under the circumstances. We find that the award of prejudgment interest to Kim was within the authority of the trial court to award a prejudgment interest, with a proper basis to establish a prejudgment interest award."). Contrary to the majority's determination that the prayer for relief was inadequate for a lack of reference to attorney fees, I submit that the petition for fees was covered by the general request for additional relief as deemed just and appropriate, especially in light of the attached lease that clearly entitled the prevailing party to attorney fees.

¶ 89 For all these reasons, I dissent.