

FOURTH DIVISION
Opinion filed September 27, 2012
Modified on denial of rehearing December 13, 2012

No. 1-11-1747

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

WEIYAN YAN,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	09 CH 15816
BURNET TITLE, <i>et al.</i> ,)	
)	The Honorable
Defendant-Appellant.)	Lee Preston,
)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Epstein concurred in the judgment.

ORDER

¶1 HELD: The circuit court did not err in imposing attorney fees and costs as sanctions against the plaintiff pursuant to Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. Feb. 1, 1994)) where the plaintiff alleged that the defendant title company forged the plaintiff's signature on a deed and other real estate settlement documents but the plaintiff's allegations in her amended complaint were admitted to be false. The circuit court also did not err in dismissing plaintiff's complaint with prejudice, regardless of whether the

dismissal was a sanction under Rule 137, where dismissal was appropriate in any event for failure to state a claim because the deed was not forged and the remaining allegations of forgery of other settlement documents do not support a cause of action for conversion.

¶2

I. BACKGROUND

¶3

On April 13, 2009, the plaintiff, Weiyan Yan, through her attorney, The Law Offices of Pengtian Ma, filed a verified one-count complaint for declaratory judgment against defendant, Burnet Title, as well as Deutsche Bank and the city of Chicago. Plaintiff's complaint alleged that Burnet Title had committed various acts of forgery in a real estate transaction on October 25, 2007 where plaintiff purchased an investment property from Deutsche Bank at an auction. The Housing and Urban Development settlement statement (HUD-1) reflected that the purchase price for the property was \$26,250.00, and after deducting plaintiff's buyer's credits, the money due from plaintiff under the purchase contract was \$20,656.43. Plaintiff alleged in her initial complaint that the contract for the purchase of the property had been cancelled and that she left the closing after refusing to sign any closing documents and that the closing did not occur. Plaintiff alleged specifically that Burnet Title recorded a deed in plaintiff's name and recorded it, and "forged" plaintiff's signature on the HUD-1 and signed other closing documents for plaintiff as plaintiff's agent without plaintiff's consent or knowledge. On June 25, 2009, Burnet Title filed a motion to dismiss which was granted on October 15, 2009, based on plaintiff's failure to adequately plead any set of facts which would entitle her to relief.

¶4

On November 12, 2009, plaintiff filed an amended complaint alleging conversion and seeking a declaratory judgment and the imposition of a constructive trust. Plaintiff again alleged that she left the closing and did not sign any documents. The amended complaint again alleged

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that Burnet Title "recorded a deed in Plaintiff's name" and forged plaintiff's signature on the HUD-1 and other closing documents as plaintiff's agent without her consent or knowledge.

Specifically, paragraph 9 of the amended complaint alleged the following: "In recording the deed, Defendant, Burnet Title, forged Plaintiff's signature on the HUD-1, and signed other closing documents for Plaintiff as Plaintiff's 'Agent' without Plaintiff's consent or knowledge."

However, the amended complaint acknowledged that Burnet Title had functioned as the escrow agent in relation to plaintiff's transaction.

¶5 On December 24, 2009, Burnet Title filed its answer to the amended complaint, specifically denying that plaintiff refused to sign the HUD-1 settlement statement and that Burnet Title had unlawfully recorded the deed without plaintiff's authorization. Burnet Title also pled the affirmative defenses of laches and that it was authorized to perform all actions concerning the transaction as plaintiff's escrow agent pursuant to the terms of the Illinois Title Insurance Act (215 ILCS 155/1 *et seq.* (West 2008)). Burnet Title also served plaintiff with a request to admit facts.

¶6 On March 3, 2010, plaintiff filed her answers to Burnet Title's request to admit facts, admitting that she had signed a purchase agreement with joint escrow instructions which were attached as an exhibit. The escrow instructions direct the escrow holder, Burnet Title, to "irrevocably" complete a number of actions on behalf of plaintiff, including recording the deed conveying the property to her, paying all fees, costs and transfer taxes, and paying all broker fees as well as the balance of the purchase price to the seller. Plaintiff also admitted that subsequent to the October 25, 2007 closing she mailed a check to Burnet Title in the amount of \$20,050.42,

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but claimed that she did so "because the Burnet closer had threatened her with a penalty of 10% daily interest if she did not tender the money." Plaintiff also admitted she signed the purchase contract with joint escrow instructions. Plaintiff denied signing an escrow disbursement agreement, an escrow holdback for taxes, an ALTA loan and extended coverage policy statement, and the HUD-1 settlement statement.

¶7 On March 24, 2010, plaintiff tendered answers to interrogatories wherein plaintiff stated she never "signed" the documents. Plaintiff stated that she signed some documents initially, but all of those were "thrown away" or "tossed into the garbage" in front of her and told by the Burnet Title representative that those documents would not be used. Plaintiff also stated that the Burnet Title closer told her that the seller did not have the deed yet; therefore, the closing would not occur. The closing documents plaintiff claimed were fraudulently signed without her consent or knowledge were the HUD-1 settlement statement, the ALTA loan document, and "in fact all the closing documents *** because the Plaintiff had one signed set of documents thrown away in to [sic] a waste basket by the defendant's closer at Burnet Title on October 25, 2007."

¶8 In response to Burnet Title's requests to produce, plaintiff refused to answer eleven of the sixteen requests by either objecting or stating that she would "seasonably supplement the answer" or that she was "in the midst of gathering" the documents. On April 10, 2010, attorney Dennis Fang, faxed a six-page supplement to its answer to Burnet Title's interrogatories, objecting on various grounds as to why information in the interrogatories could not be produced, including that "matters involving the current lawsuit including this case, have been going on for nearly 3 years – this information is located in various files with multiple copies printed on fronts and

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backs of sheets of paper." However, the information for all the responses in the April 10 supplemental answers to interrogatories was provided by plaintiff with the assistance of Dennis Fang and Pengtian Ma.

¶9 On April 16, 2010, Fang faxed plaintiff's supplemental answer to Burnet Title's requests to produce, which included copies of the HUD-1 forms, a special warranty deed with a fax signature, a real estate transfer declaration, an escrow holdback for taxes, and a special warranty deed. Burnet Title then filed a motion to compel the remainder of answers to its discovery requests. Also, Burnet Title filed a motion for sanctions against attorney Pengtian Ma.

¶10 On April 28, 2010, plaintiff filed a newly amended interrogatory answer claiming that "Attorney Pengtian Ma was NOT the plaintiff's attorney at or during the time of the alleged closing which occurred on or around Oct. 25, 1007 at Burnet Title."

¶11 On June 7, 2010, a hearing was held on the motion to compel and the court found that plaintiff had failed to answer part or all of fifteen out of twenty-two interrogatories and eleven out of sixteen requests to produce. The court ordered attorney Pengtian Ma to provide certified answers to the outstanding discovery. However, the court at that time reserved ruling on sanctions pending plaintiff's compliance with the discovery order. On June 21, 2010, plaintiff filed a second set of answers to the requests to produce and a second supplemental set of answers to interrogatories. In response to the question what other closing documents referenced in her complaint were forgeries, plaintiff stated that the HUD-1 did not have her "original signature." The court granted Burnet Title leave to file an addendum to its motion to compel and for sanctions to cite the amended discovery responses it still deemed insufficient.

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¶12 Burnet Title filed notices of deposition for plaintiff, attorney Dennis Fang, and attorney Pengtian Ma. Plaintiff filed a motion to quash the subpoenas for the depositions, but on an emergency motion filed by Burnet Title the court denied plaintiff's motion to quash the subpoenas and ordered that the depositions take place.

¶13 On July 29, 2010 plaintiff and attorney Dennis Fang were deposed. At her deposition, plaintiff was asked whether she signed certain closing documents including the escrow holdback for taxes, escrow disbursement agreement and ALTA loan statement. Plaintiff admitted she signed all of these documents, in direct contradiction to her denials in her answers to Burnet Title's request to admit and the allegations in her initial complaint and amended complaint.

¶14 Dennis Fang testified at his deposition that he specifically asked plaintiff the questions in the request to admit at the law office of Pengtian Ma. Plaintiff admitted to signing the escrow disbursement agreement, escrow holdback for taxes and the ALTA loan statement. According to Fang, plaintiff stated that she signed the documents but they had been thrown away "so therefore it was a not valid signing." At Fang's deposition, attorney Pengtian Ma interjected: "My client, the plaintiff, explained to you that she signed those documents; because those documents were thrown into the trash can, she deemed those documents not signed. That she explained to you." The Law Office of Pengtian Ma filed an emergency motion to withdraw as plaintiff's counsel the next day, as well as a motion to dismiss without prejudice, seeking leave to re-file within one year.

¶15 On August 19, 2010, Burnet Title filed a second motion for sanctions, pursuant to Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. Feb. 1, 1994)), alleging that "[p]laintiff, with the

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full knowledge and cooperation of her attorneys, has put before the Court a patently false series of allegations in two separate complaints and has knowingly submitted false and misleading statements in their Answers to Burnet's Requests to Admit, as well as other discovery." The court granted this motion for sanctions. In its written order, the court stated the following:

"It is apparent through review of the First Amended Complaint, Plaintiff's Answers to Burnet's Request to Admit, the depositions of [plaintiff] and Dennis Fang and the statements made by Pengtian Ma at Fang's deposition that false allegations were made in the First Amended Complaint concerning the forgery of plaintiff's signature. The falsity of these allegations were certainly known to Plaintiff and her counsel prior to the filing of Burnet's Second Motion for Sanctions. The false allegations were not well grounded in fact and were made without reasonable cause."

¶16 The court ordered that plaintiff's first amended complaint was dismissed with prejudice, and also ordered plaintiff and The Law Office of Pengtian Ma to pay Burnet Title its reasonable attorney fees and costs in defense of the suit. Plaintiff appealed.

¶17 II. ANALYSIS

¶18 Plaintiff argues the circuit court erred in imposing sanctions pursuant to Illinois Supreme Court Rule 137 (Ill. S. Ct. R. 137 (eff. Feb. 1, 1994)) for her false statements in her amended complaint, and also argues the sanctions imposed were excessive. Rule 137 provides, in pertinent part:

"Every pleading, motion and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address

shall be stated. *** The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. *** If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney fee." Ill. S. Ct. R. 137 (eff. Feb. 1, 1994).

¶19 "[U]nder Rule 137, both client and counsel must make a reasonable inquiry into the facts to support a legal claim or defense before filing motions and other legal papers with the court." *Schinkel v. Board of Fire and Police Commission of Village of Algonquin*, 262 Ill. App. 3d 310, 323 (1994) (citing *Regan v. Ivanelli*, 246 Ill. App. 3d 798, 809 (1993)). Courts must use an objective standard in evaluating what was reasonable under the circumstances as they existed at the time of filing, and "[i]t is not sufficient that the signing party ' " 'honestly believed' " his or her case was well grounded in fact or law.' " *Whitmer v. Munson*, 335 Ill. App. 3d 501, 514 (2002) (quoting *Fremarek v. John Hancock Mutual Life Insurance Co.*, 272 Ill. App. 3d 1067, 1074-75 (1995)). The decision whether to impose sanctions under Rule 137 is committed to the

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sound discretion of the circuit court, and that decision will not be reversed on appeal absent an abuse of discretion. *Morris B. Chapman & Assocs. v. Kitzman*, 193 Ill. 2d 560, 579 (2000), citing *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998).

¶20

A. Attorney Fees and Costs

¶21 Plaintiff first argues the trial court abused its discretion in granting the sanction of fees and costs because she did not engage in sanctionable conduct. However, we strongly disagree. As the court found, both plaintiff and her counsel knew the allegations of forgery were false but proceeded with the suit regardless, thus squarely within sanctionable conduct under Rule 137.

¶22 Plaintiff also argues that her allegation regarding the signing of the closing documents, if inaccurate, was not completely false and was not the "cornerstone" of her entire cause of action, and that her remaining allegation of not signing the HUD-1 settlement statement or the real estate transfer declaration demonstrate that she still has a viable cause of action. Plaintiff maintains that the court failed to make the proper "cornerstone" analysis. In support, plaintiff cites one of the seminal cases on sanctions, *Dayan v. McDonald's*, 126 Ill. App. 3d 11 (1984). Plaintiff posits that *Dayan* held that conduct is sanctionable only where "false allegations made without reasonable cause are the cornerstone of [an] entire baseless lawsuit." *Dayan*, 126 Ill. App. 3d at 23-24 (citing *McCormick, v. Louis Joliet Bank & Trust Co.*, 114 Ill. App. 3d 205 (1983)). However, this statement in *Dayan* was made in the context of determining *how much* of the defendant's fees and expenses would be reimbursed. The entirety of the statement reads as follows: "The isolated focus on each reimbursable component urged by plaintiff is not necessary where the false allegations made without reasonable cause are the cornerstone of the entire

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baseless lawsuit." *Dayan*, 126 Ill. App. 3d at 23-24. The court concluded that "all of [the defendant's] expenses and fees in defending this unfounded suit may properly said to have been 'actually incurred *** by reason of the untrue pleadings.'" *Dayan*, 126 Ill. App. 3d at 24 (quoting Ill. Rev. Stat. 1981, ch. 110, par. 2-611). Thus, an analysis of whether the false allegations are the "cornerstone" of an entire suit is appropriate in determining whether to award *all* the fees and costs for defending the entire case against false allegations in a complaint, and is not a required analysis in determining whether sanctionable conduct occurred in the first place.

¶23 Plaintiff also relies on *Mari v. Westinghouse Broadcasting Company, Inc.*, 179 Ill. App. 3d 321 (1989), in arguing that sanctions are inappropriate if the false allegations are not the cornerstone of the lawsuit. Here again, however, the issue was the amount of fees incurred by reason of the false allegations. The plaintiff had made statements in paragraphs 29 and 41 of her complaint for breach of contract, invasion of privacy, and misrepresentation, that the court found to be untrue, namely, that she "devoted all her time and efforts to the development and preparation as a guest on defendant's talk show" and that she was "prevented from participating on other radio stations as a result of defendant's appropriation." *Mari*, 179 Ill. App. 3d at 322. The defendants successfully brought a motion in the circuit court to recover all their attorney fees and expenses for defending the entire case. However, this court found that the defendant did not incur the entirety of its fees as a result of the false allegations for the following reasons:

"We do not believe that the false allegations at issue in the present case can be considered the cornerstone of the entire action nor do we believe that there would have been no dispute absent the allegations. The issues raised by the complaint were whether a

contract existed and whether defendants were in breach of it, whether defendants appropriated Mari's name for commercial advantage, and whether defendants were guilty of misrepresentation. The false allegations contained in paragraphs 29 and 41 were not central to the complaint and it does not appear that they played a material part in either defendants' motion for summary judgment or the court's decision to grant the motion."

Mari, 179 Ill. App. 3d at 323-24.

¶24 *Berkin v. Orland Park Plaza Bank*, 191 Ill. App. 3d 1056 (1989) illustrates that only fees associated with the false allegations are awarded. In *Berkin*, two deceased people were named as plaintiffs and were alleged to be located in Cook County. A defendant who was later dismissed from the suit sought fees under former section 2-611, based in part on the untrue allegations about the location of the deceased plaintiffs. This court denied recovery of sanctions for the entire cost of the litigation, finding that the naming of the deceased plaintiffs was not the cornerstone of an entire baseless suit for which the defendant would not have spent the same amount of time and effort in litigation. *Berkin*, 191 Ill. App. 3d at 1063. However, the court allowed recovery of fees that were associated with the false allegations in investigating the deceased plaintiffs. *Berkin*, 191 Ill. App. 3d at 1064.

¶25 Plaintiff argues that Burnet Title failed to prove that she filed a frivolous lawsuit because the "cornerstone" allegations of forgery on the HUD-1 and the unauthorized signing of the transfer declaration were never contradicted. However, we disagree and find that the entire amended complaint centered on allegations of the unlawfully recorded deed in her name and forged closing documents that formed the basis of her alleged conversion and constructive trust

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claims. In awarding fees and costs associated with defending the entire suit, the circuit court below found that the allegations of forgery throughout the amended complaint were false, and these were the entire basis of her lawsuit.

¶26 Plaintiff also argues the circuit court erred because it did not cite any case law in its order. However, there is no technical requirement in Rule 137 that the circuit court must cite case law. Rather, Illinois law requires that a sanction order, at the minimum, should specifically identify the rule under which the order was entered as well as the specific reasons for entry of the sanction order. *Cirrincione v. Westminster Gardens Limited Partnership*, 352 Ill. App. 3d 755, 761 (2004) (citing *In re Estate of Smith*, 201 Ill. App. 3d 1005, 1008 (1990)). The court specified it was awarding sanctions under Rule 137, and it also stated the reasons for the sanction in a written order.

¶27 Here, in sharp contrast to *Mari*, the allegations of forgery were central to plaintiff's entire amended complaint. Though plaintiff attempts to minimize the false allegations regarding the forgery of closing documents and the unlawfully recorded deed, it is apparent that her entire cause of action rested on the allegations of forgery which she later admitted were not true. It is undisputed that the vast majority of documents that plaintiff asserted were forged were in fact not forged but signed by plaintiff. These documents which were alleged to have been forged include: the escrow agreement for taxes; the escrow disbursement agreement; and the ALTA loan statement. Based on these forgeries, plaintiff alleged the deed was unlawfully recorded in plaintiff's name. Plaintiff, however, admitted that there was no forgery and that she in fact signed most of the settlement documents. Plaintiff also admitted she signed the real estate purchase

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contract, which irrevocably gave Burnet Title authority to record the deed.

¶28 In her petition for rehearing, plaintiff argues we misapprehended that her claims for conversion and constructive trust were based on the allegedly unlawful conversion of the money she paid pursuant to the purchase contract, claiming that we analyzed conversion and constructive trust of the real estate property rather than the money. However, the entirety of her claims for conversion and constructive trust for the money rest on her false allegations of forgery of the closing documents. The cornerstone of plaintiff's complaint and amended complaint thus centered on her allegations of the unlawfully recorded deed and the forged HUD-1 and transfer declaration in an attempt to negate her obligation under the purchase contract, which is why we analyze whether these allegations could potentially form the basis for a claim for conversion or constructive trust.

¶29 "A proper complaint for conversion must allege: (1) an unauthorized and wrongful assumption for control, dominion, or ownership by a defendant over a plaintiff's personalty; (2) plaintiff's right in the property; (3) plaintiff's right to the immediate possession of the property, absolutely and unconditionally; and (4) a demand for possession of the property." *Fonda v. General Casualty Company of Illinois*, 279 Ill. App. 3d 894, 899 (1996) (citing *General Motors Corp. v. Douglass*, 206 Ill. App. 3d 881, 886 (1990)).

¶30 Plaintiff argues that we misapprehended the facts and the law because her claim for conversion and request for a constructive trust had nothing "directly" to do with her allegations of forgery of the HUD-1 and an unauthorized execution of the transfer declaration by an agent allegations of forgery of the HUD-1 and an unauthorized execution of the transfer declaration by

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an agent. However, it is elementary that no action for conversion lies for the money paid by plaintiff if there was a valid purchase contract. "Money may be the subject of conversion, but only if it is shown that the money 'at all times belonged to the plaintiff and that the defendant converted it to his own use.' " *Karimi v. 401 North Wabash Venture, LLC*, 2011 IL App (1st) 102670 at ¶ 15 (quoting *In re Thebus*, 108 Ill. 2d 255, 261 (1985)). "One claiming conversion must show a tortious conversion of the chattel, a right to property in it, and a right to immediate possession which is absolute and unconditional and not dependent upon the performance of some act." *Jensen v. Chicago and Western Indiana R. Co.*, 94 Ill. App. 3d 915, 932 (1981). "The general rule, however, is that an action for conversion may not be maintained for money representing a general debt or obligation." *Karimi*, 2011 IL App (1st) 102670 at ¶ 15 (citing *In re Thebus*, 108 Ill.2d 255, 261 (1985)). See *Karimi*, 2011 IL App (1st) 102670 at ¶ 15 (holding that earnest money paid under a real estate sales contract was not the proper subject of a conversion claim and dismissal of that claim was proper where the money did not belong to plaintiffs at all times and it represented plaintiffs' obligation to fulfill the contract).

¶31 Under the doctrine of "equitable conversion," if a vendor and a vendee enter into a binding contract for the sale of land but the vendee has not yet paid the purchase price to the vendor and the vendor has not yet delivered a deed to the vendee, "[b]y the terms of the contract the land ought to be conveyed to the vendee and the purchase price ought to be transferred to the vendor; equity therefore regards these as done: the vendee as having acquired the property in the land, and the vendor as having acquired the property in the price." *United Community Bank v. Prairie State Bank & Trust*, 2012 IL App (4th) 110,973 at ¶ 35 (quoting 1 John Norton Pomeroy,

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A Treatise on Equity Jurisprudence § 368, at 686 (4th ed. 1918)). "When the seller enters into a valid and enforceable contract for the sale of realty, the seller continues to hold legal title in trust for the buyer; the buyer becomes equitable owner and holds purchase money in trust for seller."

Carollo v. Irwin, 2011 IL App (1st) 102765 at ¶ 22. Under the doctrine of equitable conversion, the buyer is considered to be holding the purchase money for the land in trust for the seller.

Stafford-Smith, Inc. v. Intercontinental River East, LLC, 378 Ill. App. 3d 236, 241 (2007) (citing *Shay v. Penrose*, 25 Ill. 2d 447, 449 (1962)).

¶32 This is a basic principle but worth stating here since plaintiff argues in her petition for rehearing that she somehow has a claim for conversion without the allegations of forgery which she claims rendered the recording of the deed unauthorized. There can only be a conversion of the money if there was an "unauthorized and wrongful assumption for control, dominion, or ownership" of that money. See *Fonda*, 279 Ill. App. 3d at 899. As is undisputed, plaintiff executed the purchase contract and agreed to pay the purchase price. Plaintiff also sent the purchase money to defendant Burnet Title. Once plaintiff signed the binding real estate contract, which she does not dispute, she held the purchase money only in trust for the seller. It is undisputed that plaintiff admitted in her responses to defendant Burnet Title's requests to admit *sub judice* that she both signed the purchase agreement with joint escrow instructions *and* that she sent the purchase money to defendant Burnet Title. Thus, without any other allegations negating the contract, there simply is no claim for conversion of the purchase money under the valid contract. We clarify that we analyzed whether the forgery of the HUD-1 and the unauthorized execution of the transfer declaration could form the basis for a conversion of the

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money under the real estate purchase contract because without allegations negating the agreement for the purchase of the real estate, plaintiff *ipso facto* has no claim for conversion of the money. Plaintiff has no basis to allege that there was conversion of the funds without any further allegations negating the transaction. There is no misapprehension of the facts or the law.

¶33 Though plaintiff claims in her petition for rehearing that her "claim of conversion and her request for the imposition of a constructive trust had nothing *directly* to do with the alleged forgery of the HUD-1 and the unauthorized signing of the Illinois transfer declaration" (emphasis added), the only remaining basis in her lawsuit for the claims for conversion and constructive trust are plaintiff's allegations of the forged HUD-1 and unauthorized execution of the transfer declaration by an agent. The cornerstone of plaintiff's complaint and amended complaint thus centered on her allegations of the unlawfully recorded deed and the forged HUD-1 and transfer declaration in an attempt to negate her obligation under the purchase contract, which is why we analyze whether these allegations could potentially form the basis for a claim for conversion or constructive trust. In order to negate the purchase of the property, plaintiff alleged that the closing documents were forged. However, as we explain, the forging of the documents alleged does not alter the property rights. This, in turn, means that plaintiff was obligated to pay the purchase price and therefore there was no conversion of the money.

¶34 No cause of action for conversion or constructive trust lies for the money paid for the purchase of real estate based on a forged HUD-1 settlement statement because a HUD-1 settlement statement does not transfer ownership of real property. A HUD-1 settlement statement under the Real Estate Settlement Procedures Act does not transfer rights in real

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property but, rather, provides mandatory disclosures for federally-related mortgage loans. The use of a HUD-1 settlement statement is required in every settlement involving a federally related mortgage loan in which there is a borrower and a seller. See 24 C.F.R. § 3500.8(a) (2008). The Real Estate Settlement Procedures Act provides that the purpose of the settlement statement is to provide disclosures: "The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this title and the Truth in Lending Act [15 USCS §§ 1601 et seq.], and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures." 12 USCS § 2603(a) (1996). Since the HUD-1 settlement statement does not transfer property rights, there can be no resulting conversion of real property.

¶35 Similarly, the Illinois real estate transfer declaration is not an instrument of conveyance. Section 31-25 of the Real Estate Transfer Tax Law provides, in pertinent part:

"Sec. 31-25. Transfer declaration. At the time a deed, a document transferring a controlling interest in real property, or trust document is presented for recordation, or within 3 business days after the transfer is effected, whichever is earlier, there shall also be presented to the recorder or registrar of titles a declaration, signed by at least one of the sellers and also signed by at least one of the buyers in the transaction or by the attorneys or agents for the sellers or buyers. The declaration shall state information including, but not limited to: (a) the value of the real property or beneficial interest in real property located in Illinois so transferred; (b) the parcel identifying number of the property; (c) the legal description of the property; (d) the date of the deed, the date the transfer was

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effected, or the date of the trust document; (e) the type of deed, transfer, or trust document; (f) the address of the property; (g) the type of improvement, if any, on the property; (h) information as to whether the transfer is between related individuals or corporate affiliates or is a compulsory transaction; (i) the lot size or acreage; (j) the value of personal property sold with the real estate; (k) the year the contract was initiated if an installment sale; (l) any homestead exemptions, as provided in Sections 15-170, 15-172, 15-175, and 15-176 [35 ILCS 200/15-170, 35 ILCS 200/15-172, 35 ILCS 200/15-175, and 35 ILCS 200/15-176] as reflected on the most recent annual tax bill; (m) the name, address, and telephone number of the person preparing the declaration; and (n) whether the transfer is pursuant to compulsory sale." 35 ILCS 200/31-25 (West 2008).

Thus, the Illinois real estate transfer declaration is merely a declaration of information regarding the sale of real property and does not transfer title. Therefore, this document cannot form the basis for a cause of action for conversion and constructive trust for the purchase money either.

¶36 Plaintiff argues in her petition for rehearing:

"The cornerstone allegation of the plaintiff was that Burnet Title forged her signature on the HUD-1 and signed the Illinois Transfer Declaration as her 'Agent' without her authorization in order to 'transfer' the real property to the plaintiff. Without a signed HUD-1 and signed transfer declaration(s), Burnet Title would not have been able to record the deed in the Plaintiff's name, and it would not have been able to 'transfer' the real property to the plaintiff without unlawfully recording the deed in the Plaintiff's name."

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¶37 However, plaintiff conveniently neglects the fact that she signed the purchase contract. Plaintiff also neglects the fact her allegation of an unlawfully recorded deed was proven false where plaintiff admitted in her deposition that she signed the purchase contract which specifically stated that defendant Burnet Title as the escrow holder was irrevocably instructed to record the deed. A deed is the instrument which gives one a right in real property. See *In re Skidmore*, 2011 IL App (2d) 100730 at ¶ 30 ("[A] 'deed' is, generally, a writing that conveys an interest in land and whose primary purpose is to pass title" (citing *Neppl v. Murphy*, 316 Ill. App. 3d 581, 590 n. 1 (2000))). Plaintiffs's admission that she gave authority to record the deed means that no conversion of the money occurred on this basis, and her remaining allegations regarding the forgery of the HUD-1 settlement statement and the Illinois real estate transfer declaration do not support her cause of action.

¶38 It is elementary that there is no claim for conversion or constructive trust for money paid for the purchase of real estate under a duly executed purchase contract. However, we have modified our order to reiterate this basic principle and explain that our analysis of the property rights under the documents alleged by plaintiff is necessary to determine whether there was any proper claim for conversion of the money under a real estate purchase contract. Nothing in our order can or should be taken to read as though we were analyzing a conversion of the real estate property itself as plaintiff argued in her petition for rehearing. As we previously explained, plaintiff's allegations of forgery of the HUD-1 and the transfer declaration do nothing to affect property rights or the seller's legal right to plaintiff's purchase money. Thus, plaintiff's remaining claims of forgery of the HUD-1 and unlawful execution of the transfer declaration by an agent

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without her authority do not state any claim for conversion or constructive trust of her purchase money.

¶39 The only remaining allegation is simply that of forgery. However, forgery is not a civil cause of action but, rather, a crime under the Illinois Criminal Code. See 720 ILCS 5/17-3 (West 2008). The alleged forgery of both the HUD-1 settlement statement and the Illinois real estate transfer declaration is thus not a basis for a state civil cause of action.

¶40 We conclude that the false allegations were made without reasonable cause and that the entire lawsuit was baseless, thus justifying the imposition of the sanction of awarding attorney fees and costs to Burnet Title. See *Dayan*, 126 Ill. App. 3d at 23-24. We hold the circuit court did not abuse its discretion in imposing an award of attorney fees and costs as sanctions pursuant to Illinois Supreme Court Rule 137.

¶41 B. Dismissal With Prejudice

¶42 As her last argument, plaintiff maintains that the circuit court erred in dismissing the lawsuit with prejudice because the plaintiff still has a viable cause of action against the defendant and that the circuit court erred in dismissed her lawsuit with prejudice as well as awarding attorney fees and costs.

¶43 Rule 137 provides, in pertinent part:

"If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an *appropriate sanction*, which *may include* an order to pay to the other party or parties *the amount of reasonable expenses incurred because of the*

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filing of the pleading, motion or other paper, including a reasonable attorney fee."

(Emphasis added.) Ill. S. Ct. R. 137 (eff. Feb. 1, 1994).

Because Rule 137 is penal in nature it must be strictly construed. *Kensington's Wine Auctioneers & Brokers, Inc. v. Hart*, 392 Ill. App. 3d 1 (2009).

¶44 We note that the plain language of Rule 137 does not limit appropriate sanctions to awards of fees and expenses, though this is the sanction most commonly imposed. See *Kennedy v. Miller*, 221 Ill. App. 3d 513, 525 (1991) (stating that appropriate sanctions under Rule 137 “are not limited to[] reasonable expenses generated as a result of the improper pleading”). However, neither party cites, nor are we able to find, any precedent allowing both the imposition of attorney fees and costs and the dismissal of a complaint with prejudice as an appropriate sanction under the rule. The Committee Comments to Rule 137 do not shed any further light on this issue either. See Ill. S. Ct. Rule 137 (eff. Feb. 1, 1994), Committee Comments.

¶45 The only reported case we are able to find regarding this issue was decided under the predecessor to Supreme Court Rule 137, section 2-611 of the Illinois Code of Civil Procedure, *Dolido v. Zenith Radio Corp.*, 194 Ill. App. 3d 268 (1990). In *Dolido*, this court reversed the trial court's dismissal of the plaintiff's action as a penalty for the plaintiff's violation of section 2-611. We found that the only sanction permitted by section 2-611 was an order to pay reasonable expenses including a reasonable attorney fee. The court found that the order of dismissal with prejudice was impermissible because “nowhere in section 2-611 is dismissal of the pleading a permissible penalty.” *Dolido*, 194 Ill. App. 3d at 271-72.

¶46 However, dismissal of causes of action premised upon falsified allegations *can* be

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imposed as a sanction under Rule 137. We believe *Dolido* misinterpreted the language of former section 2-611 which is the same language now found in Rule 137. The language in former section 2-611 was permissive but not exclusive. Both former section 2-611 and current Rule 137 allow for the imposition of an appropriate sanction that may "include" an award of expenses and attorney fees, but neither limits the sanction to only attorney fees and costs.

¶47 We apply this reasoning to the instant case to find that the sanction of dismissal of the lawsuit was appropriate in this case. The circuit court specifically made the following finding supporting its dismissal of the suit with prejudice in addition to the award of fees and costs:

"Defendant Burnet Title defended itself against the false allegations for more than eighteen (18) months. Under these circumstances, dismissal of plaintiff's First Amended Complaint and an award of attorneys' fees [are] appropriate."

¶48 We find the circuit court did not abuse its discretion under the facts of this case. Given the fact that plaintiff persisted in pursuing litigation in a patently false pleading despite admitting that the allegations in her amended complaint were false, we find that the court did not abuse its discretion in dismissal plaintiff's suit with prejudice, in addition to fees and costs, as an appropriate sanction in this case pursuant to Illinois Supreme Court Rule 137.

¶49 III. CONCLUSION

¶50 We hold that the circuit court did not err in finding plaintiff's false allegations throughout her amended complaint sanctionable under Rule 137 and in awarding Burnet Title its fees and costs in defense of the suit. We further hold that the circuit court did not abuse its discretion in dismissing plaintiff's amended complaint with prejudice, as this was also an appropriate sanction

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under the egregious facts of this case.

¶51 Affirmed.