2014 IL App (2d) 0130584-U
No. 2-13-0584
Order filed April 22, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CAVALRY SPV I, LLC,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 10-AR-2497
	)	
MARK FUNK,	)	Honorable
	)	Michael B. Betar,
Defendant-Appellant.	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: (1) We had jurisdiction of defendant's appeal, as the trial court's order was a final grant of plaintiff's motion under section 2-1008(a) of the Code of Civil Procedure; (2) as a motion rather than a pleading, plaintiff's motion was not subject to the requirements of section 2-606; (3) without an official account of the hearing, we could not say that the trial court erred in granting plaintiff's motion.

¶ 2 Defendant, Mark Funk, appeals from a postjudgment order granting the motion of plaintiff, Cavalry SPV I, LLC (Cavalry), to spread of record the assignment from Beneficial Financial I, Inc. (Beneficial), to Cavalry of the indebtedness giving rise to the underlying lawsuit (Motion to Spread of Record). Funk argues on appeal that Cavalry did not submit valid proof of the assignment. We affirm.

¶ 3 This litigation originated as a lawsuit brought against Funk by Household Financial Corporation III (Household) to recover amounts extended to Funk under a Personal Credit Line Account Agreement (Account Agreement), along with interest and attorney fees. Household filed its complaint on October 15, 2010. While the case was pending, Household was given leave to amend its name to Beneficial Illinois Inc. Beneficial Illinois Inc. subsequently merged with Beneficial. As a result, Beneficial succeeded Beneficial Illinois Inc. as plaintiff in this action. On September 7, 2011, following a bench trial, the court entered judgment for Beneficial in the amount of $36,703, plus attorney fees in the amount of $350 and costs.

¶ 4 On January 11, 2013, Cavalry filed the Motion to Spread of Record. Cavalry contended that, on or about November 6, 2012, it "purchased the account which is subject of the suit filed herein" from Beneficial. As an exhibit to the motion, Cavalry attached an Assignment and Bill of Sale (Bill of Sale) providing, in pertinent part, as follows:

> "Each Seller on Schedule I attached hereto (collectively the 'Sellers') have entered into an Account Sale and Interim Servicing Agreement dated November 6, 2012 ('Agreement') for the sale of Accounts (as defined in Section I of the Agreement to [Cavalry] ('Purchaser'), upon the terms and conditions set forth in that Agreement.
>
> NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, each Seller hereby sells, assigns, and transfers to Purchaser, its successors and permitted assigns, all of its right, title, interest and obligations in and to (i) the Accounts owned by such Seller immediately prior thereto and identified on the Sale File delivered by the Sellers to Purchaser *** on November 2, 2012 in conjunction herewith ***."

Beneficial is among the sellers listed on Schedule I. Although no document entitled "Sale File" was submitted, an untitled (and apparently computer-generated) document attached to the Bill of Sale refers to an account in Funk's name opened on November 16, 2007, with "HSBC Consumer Lending USA Inc/Beneficial." The Account Sale and Interim Servicing Agreement (Sale Agreement) was not attached to the Motion to Spread of Record.

¶ 5 The trial court entered an order granting the Motion to Spread of Record. However, on March 28, 2013, the court vacated the order because Funk had not received proper notice of the motion. Cavalry served the motion by mail on April 23, 2013, but apparently did not attach the exhibits. On May 6, 2013, Funk filed a written objection to the motion, arguing, *inter alia*, that Cavalry violated the Collection Agency Act (225 ILCS 425/1 *et seq.* (West 2012)) by failing to (1) provide a written contract of assignment and (2) show a complete chain of title to the underlying indebtedness. On that same date, the trial court entered an order providing, in pertinent part, "[A]ll issues and oppositions raised by [Funk in his objection to the Motion to Spread of Record] are denied with the exception that [Funk] did not see [the] Bill of Sale until court hearing." The trial court granted Funk leave to "raise new objections to documents received in court." Funk later filed a "motion to deny" Cavalry's Motion to Spread of Record. Funk argued that the Bill of Sale and its attachments did not comply with the requirements of the Collection Agency Act. On May 13, 2013, the trial court entered the following order:

> "THIS MATTER coming to be heard pursuant to the motion of the Plaintiff to spread the record of an assignment by plaintiff of the captioned matter, due notice being given the parties, the court being fully advised in the premises; Defendant Mark Funk appearing *pro se*.
>
> IT IS HEREBY ORDERED as follows:

1. That the Clerk of the Circuit Court make the assignment of record and a computer entry be made under the original case number, correcting the name in the plaintiff and defendant index so as to indicate that [Cavalry] is now owner of the above captioned matter.

2. That all future forms bear the name of the assignee."

This appeal followed.

¶ 6 Initially, we note that Cavalry filed a motion to dismiss this appeal for lack of jurisdiction. We denied the motion, but Cavalry argues in its brief that jurisdiction is lacking. Although our denial of Cavalry's motion does not preclude us from revisiting the issue (see *Hwang v. Tyler*, 253 Ill. App. 3d 43, 45 (1993)), for the reasons that follow we conclude that jurisdiction is proper and we adhere to our ruling denying the motion to dismiss.

¶ 7 Our jurisdiction is limited to appeals from final judgments unless an appeal is within the scope of one of the exceptions established by our supreme court permitting appeals from interlocutory orders in certain circumstances. *Puleo v. McGladrey & Pullen*, 315 Ill. App. 3d 1041, 1043 (2000). A judgment is final if it terminates the litigation between the parties on the merits or disposes of the parties' rights with regard to either the entire controversy or a separate part of it (*R.W. Dunteman Co. v. C/G Enterprises, Inc.*, 181 Ill. 2d 153, 159 (1998)) so that " 'if affirmed, the only thing remaining is to proceed with the execution of the judgment' " (*Dolan v. O'Callaghan*, 2012 IL App (1st) 111505, ¶ 34 (quoting *People ex rel. Scott v. Silverstein*, 87 Ill. 2d 169, 171 (1981)).

¶ 8 It is Cavalry's position, and we agree, that the Motion to Spread of Record essentially sought relief under section 2-1008(a) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1008(a) (West 2012)). Section 2-1008(a) provides:

> "If by reason of marriage, bankruptcy, assignment, or any other event occurring after the commencement of a cause or proceeding, either before or after judgment, causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after commencement of the action, it becomes necessary or desirable that any person not already a party be before the court, or that any person already a party be made party in another capacity, the action does not abate, but on motion an order may be entered that the proper parties be substituted or added, and that the cause or proceeding be carried on with the remaining parties and new parties, with or without a change in the title of the cause." *Id.*

The trial court's order granting the motion substituted Cavalry for Beneficial as plaintiff and thereby disposed of Cavalry and Beneficial's respective rights under the judgment previously entered on September 7, 2011. Cavalry argues that the order granting the Motion to Spread of Record "allow[ed] for [the] continuation of the case." It does not appear, however, that the trial court's order contemplated any further proceedings other than proceedings to execute the judgment. Accordingly, the May 13, 2013, order was final for purposes of appeal. See *Dolan*, 2012 IL App (1st) 111505, ¶ 34.

¶ 9 With respect to the merits of this appeal, Funk argues that Cavalry failed to provide sufficient evidence of a valid assignment of the underlying debt under the Account Agreement. Funk contends that Cavalry did not provide a copy of the Sale Agreement referenced in the Bill of Sale. Funk maintains that, by themselves, the Bill of Sale and its attachments are insufficient proof of the purported assignment. In this respect, Funk adds that, inasmuch as Cavalry's claimed interest in the debt is based on the Sale Agreement, Cavalry's failure to attach the Sale Agreement to its motion violated section 2-606 of the Code (735 ILCS 5/2-606 (West 2012)).

Moreover, although the Bill of Sale indicates that Beneficial assigned "Accounts" (as defined in the Sale Agreement), Funk argues that Cavalry failed to establish whether the particular account giving rise to the lawsuit was among those assigned to Cavalry.

¶ 10 We first consider Funk's argument that Cavalry failed to comply with section 2-606 of the Code. Section 2-606 provides as follows:

> "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, unless the pleader attaches to his or her *pleading* an affidavit stating facts showing that the instrument is not accessible to him or her. In *pleading* any written instrument a copy thereof may be attached to the *pleading* as an exhibit. In either case the exhibit constitutes a part of the *pleading* for all purposes. (Emphases added.) 735 ILCS 5/2-606 (West 2012).

By its terms, this provision applies only to pleadings. Although, in common parlance, the term "pleadings" is often used broadly to refer to various types of papers filed in a lawsuit, the more precise definition of the term is considerably narrower. In *In re Marriage of Wolff*, 355 Ill. App. 3d 403, 407 (2005), this court explained that a pleading consists of a party's formal allegations of his claims or defenses. In contrast, a motion is an application to the court for a ruling or an order in a pending case. *Id.*

¶ 11 As noted, in this case, the relief Cavalry sought was essentially that governed by section 2-1008 of the Code (735 ILCS 5/2-1008 (West 2012)), which prevents an action from abating when a new party succeeds to, or otherwise acquires, an interest in the subject matter. Section 2-1008(a) expressly provides that "on *motion* an order may be entered that the proper parties be substituted or added ***." (Emphasis added.) 735 ILCS 5/2-1008(a) (West 2012). A new

party's request to be substituted for a current party does not plead a cause of action or defense; rather the request is essentially to adopt the current party's *existing* pleadings—either those upon which a judgment is sought or those upon which a judgment has already been entered. Accordingly the request is properly made by motion (as section 2-1008(a), expressly provides) and is not subject to the requirements of section 2-606.

¶ 12 Turning to the sufficiency of the evidence to establish a valid assignment, Funk's challenge fails because the record on appeal is not sufficiently complete to facilitate meaningful review. The record on appeal does not contain either a verbatim transcript of the hearing on the Motion to Spread of Record or an acceptable substitute (see Ill. S. Ct. R. 323(c), (d) (eff. Dec. 13, 2005)). It is axiomatic that "[r]eviewing courts must determine the issues before them on appeal solely on the basis of the record made in the trial court." *Lake v. State*, 401 Ill. App. 3d 350, 352 (2010). As a result, arguments based on facts that are not substantiated by the record on appeal are not subject to appellate review. Disposition of this appeal is therefore governed by *Foutch v. O'Bryant*, 99 Ill. 2d 389 (1984), in which our supreme court held that "an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Id.* at 391-92. Under *Foutch*, "[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.* at 392. In accordance with those principles, we must presume that Cavalry presented sufficient evidence to establish a valid assignment.

¶ 13 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 14 Affirmed.