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2014 IL App (3d) 130870-U

Order filed August 13, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

CREST BROOKE TOWNHOME ASSOCIATION,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
)	Will County, Illinois,
Plaintiff-Appellee,)	
)	Appeal No. 3-13-0870
v.)	Circuit No. 11-LM-2653
)	
ANDREW M. PACYGA,)	Honorable
)	Michael J. Powers
Defendant-Appellant.)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court had subject matter and personal jurisdiction; (2) the proceedings to recover the unpaid assessments were properly authorized; (3) the attorney-client privilege issue was not properly before the trial court; (4) the trial court did not abuse its discretion in ordering an appeal bond; and (5) the trial court did not err in awarding summary judgment for the Association.

¶ 2 Defendant, Andrew M. Pacyga, appeals from the trial court's award of summary judgment for the plaintiff, Crest Brooke Townhome Association (Association). Pacyga argues that: (1) the trial court abused its discretion in: (a) granting summary judgment for the

Association, and (b) issuing an appeal bond; (2) the court did not have subject matter jurisdiction because Pacyga was not served with a demand notice or summons; (3) a letter from the Association to Pacyga prevented the court from exercising subject matter jurisdiction; (4) the Association did not have the authority to file a complaint because it was operating without a board of directors; and (5) the Association could not raise an attorney-client privilege to prevent Pacyga from reviewing legal invoices. We affirm.

¶ 3

FACTS

¶ 4

On September 2, 2011, the Association filed a complaint, *in rem*, for possession, assessments, and common expenses. The complaint named the property located at 2110 Poppy Lane, Crest Hill, and Pacyga, as a party of interest, as defendants. The complaint alleged Pacyga was the legal owner of 2110 Poppy Lane, which was subject to the terms and conditions of the Association's governing documents. Pacyga was alleged to have defaulted on \$3,407.36 in common expenses. A demand notice, dated July 15, 2011, and summons were filed with the complaint. Two affidavits of nonservice were filed on September 23, 2011.

¶ 5

At the October 13, 2011, hearing, Pacyga appeared before the court. The court asked Pacyga if he admitted or denied the allegations in the complaint. Pacyga responded "I do owe them[,] but disputed the amount of the debt. Pacyga requested a jury trial and filed a motion to dismiss. The court granted Pacyga leave to enter his appearance and continued the matter.

¶ 6

On January 6, 2012, the Association filed a motion for summary judgment. Two account statements, each naming Pacyga and 2110 Poppy Lane, were attached as Exhibit A of the motion. The statements reported the monthly assessment balance, late fees, and legal fees. The complaint alleged that in total, Pacyga owed \$3,407.36 in common expenses, excluding costs and attorney fees. Exhibit B, an affidavit from Michaelene Conrad, managing agent for the

Association, stated that the Association had authorized a demand notice to be sent to Pacyga around July 10, 2011. Exhibit C included the demand notice and a U.S. Postal Service certified mail receipt, dated July 15, 2011.

¶ 7 The "Declaration of Easements, Covenants, Conditions and Restrictions" (Declaration) of the Association was included in Exhibit G. Article VI of the Declaration creates a covenant for maintenance assessments. This article provided that:

"each Owner of any Lot thereof by acceptance of a deed therefore, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charges payable monthly, and
- (b) Special assessments."

Article VI classified the assessments as a charge on the property that creates a continuing lien on the unit and "[e]ach such assessment together with such interest, costs and reasonable attorney's fees shall be the personal obligation of the person who was the Owner of such Unit at the time the Assessment fell due." In the event of a default of the obligation to pay, after 30 days, "the Association may bring suit to enforce collection thereof or to foreclose the lien" and "there shall be added to the amount due the costs of said suit, together with interest and reasonable attorney's fees to be fixed by the court."

¶ 8 The "Bylaws of Crest Brooke Townhome Association" (Bylaws) were also included in Exhibit G. Article V of the Bylaws provided for the creation of a board of directors. Article VI vested the board with the power to direct and administer the property in accordance with the provisions of the Declaration. The Bylaws also vested the board with the power to hire a manager or managing agent to manage and operate the property. Article VII empowered the

board to file a forcible entry and detainer action in the event of an owner's default.

¶ 9 On October 20, 2011, the parties appeared for a hearing on Pacyga's motion to dismiss. Pacyga argued that he was not afforded an opportunity to dispute the validity of the debt because he had not received the demand notice. The Association responded that it had sent the demand notice by certified mail and standard mail. The certified letter was returned as undeliverable, but the letter sent via regular mail had not been returned. In spite of the returned certified letter, the Association argued the notice requirement was satisfied by its act of placing the letter in the mail. The trial court denied Pacyga's motion to dismiss. Pacyga requested a continuance, stating that he was trying to get billing invoices from the Association's counsel. Pacyga acknowledged that the invoices were likely privileged, and opposing counsel agreed that the documents were subject to the attorney-client privilege. However, opposing counsel had sent a request to the Association to release the documents. The court ordered the Association to respond to Pacyga's request for the invoices by November 21, 2011, and set the case for a hearing on January 13, 2012.

¶ 10 On January 6, 2012, the Association filed a motion for summary judgment. On January 10, 2012, Pacyga filed a motion to dismiss. In the motion, Pacyga argued that the court erred when it did not order the Association to produce the billing invoices for Pacyga's review at the October 20, 2011, hearing. On the same date, Pacyga filed a second motion to dismiss that stated he had "communication with the [Association] within the first 30 days of receiving the *in rem* notice and demand for possession dated July 15th, 2011." Pacyga asked the court to dismiss the case to allow him to dispute the validity of the debt. Pacyga's motion included a letter from the Association, dated July 27, 2011, and a copy of the demand notice, dated July 15, 2011. The letter stated that the Association had forwarded Pacyga's account balance request to counsel.

¶ 11 On January 13, 2012, the trial court denied both parties' motions as untimely. Pacyga filed a notice of appeal in case No. 3-12-0057.

¶ 12 On March 14, 2012, the Association filed a motion to reconsider or, in the alternative, for an appeal bond. On April 23, 2012, Pacyga filed a motion to dismiss. At the hearing on the parties' motions, the Association argued that an appeal bond was needed to protect its interest in the property, which could be subject to mortgage foreclosure proceedings. If the property went into foreclosure, the Association would lose the income it could earn renting the property after an award of possession. The trial court struck Pacyga's motion to dismiss, denied the Association's motion to reconsider, and granted the Association's motion for an appeal bond. Pacyga filed a motion to vacate the appeal bond, which the trial court denied. Pacyga appealed the denial of the motion to vacate the appeal bond in case No. 3-12-0388.

¶ 13 On June 18, 2012, we dismissed case No. 3-12-0057 for lack of jurisdiction. *Crest Brooke Townhome Ass'n v. Pacyga*, No. 3-12-0057 (June 18, 2012) (dispositional order). On October 26, 2012, we also dismissed case No. 3-12-0388 for lack of jurisdiction. *Crest Brooke Townhome Ass'n v. Pacyga*, No. 3-12-0388 (October 26, 2012) (dispositional order). Thereafter, Pacyga filed a petition for leave to appeal to the Illinois Supreme Court. On March 27, 2013, the supreme court denied Pacyga's petition. *Crest Brooke Townhome Ass'n v. Pacyga*, No. 115540 (Ill. March 27, 2013).

¶ 14 On January 18, 2013, the Association filed a second motion for summary judgment. The motion included an account statement with a balance due of \$26,575.47.

¶ 15 On August 13, 2013, Pacyga filed a motion for summary judgment, arguing that the trial court did not have subject matter jurisdiction. After a hearing on the parties' cross-motions for summary judgment, the trial court granted the Association's motion and struck Pacyga's motion.

Pacyga filed a motion to reconsider. On October 17, 2013, the trial court denied Pacyga's motion to reconsider and entered a judgment in favor of the Association and against Pacyga in the amount of \$42,730.85. The court also entered an order of judgment and possession. Pacyga appeals.

¶ 16 ANALYSIS

¶ 17 I. Jurisdiction

¶ 18 Pacyga argues that the trial court abused its discretion in granting summary judgment for the Association. Pacyga contends that there were only two possible outcomes to the case: (1) the court did not have subject matter jurisdiction; or (2) the record did not establish that Pacyga received a timely demand notice and account statement, requiring dismissal of the case. Pacyga also argued that a July 27, 2011, letter from the Association impeded the trial court's exercise of subject matter jurisdiction.

¶ 19 A. Subject Matter Jurisdiction

¶ 20 In his first subargument, Pacyga contends that the trial court did not have subject matter jurisdiction over the forcible entry and detainer proceedings because he was not properly served with a demand notice. We review the trial court's decision that it had subject matter jurisdiction *de novo*. *Court of Northbrook Condominium Ass'n v. Bhutani*, 2014 IL App (1st) 130417.

¶ 21 "[S]ubject matter jurisdiction' refers to the power of a court to hear and determine cases of the general class to which the proceeding in question belongs.'" *Id.* ¶ 25 (quoting *Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 324, 335 (2002)). "A forcible detainer action is a special statutory proceeding that is in derogation of the common law; therefore, the party requesting this relief must comply with the requirements of the statute, especially those requirements that relate to jurisdiction." *Nance v. Bell*, 210 Ill. App. 3d 97, 99

(1991).

¶ 22

In the instant case, subject matter jurisdiction was statutorily conferred by the Forcible Entry and Detainer Act (Act). Section 9-102(a)(8) of the Act states:

"[t]he person entitled to the possession of lands or tenements may be restored thereto under any of the following circumstances:

* * *

[w]hen any property is subject to the provisions of a declaration establishing a common interest community and requiring the unit owner to pay regular or special assessments for the maintenance or repair of common areas owned in common by all of the owners of the common interest community or by the community association and maintained for the use of the unit owners or of any other expenses of the association lawfully agreed upon, and the unit owner fails or refuses to pay when due his or her proportionate share of such assessments or expenses and the board or its agents have served the demand set forth in Section 9-104.1 of this Article in the manner provided for in that Section and the unit owner has failed to pay the amount claimed within the time prescribed in the demand." 735 ILCS 5/9-102(a)(8) (West 2010).

To confer subject matter jurisdiction to the trial court, a plaintiff must serve a demand on the owners of the property. 735 ILCS 5/9-104.1(a) (West 2010); *Bhutani*, 2014 IL App (1st) 130417. The demand shall set forth the amount owed, which must be paid within the time prescribed in the demand, and the time periods when the amounts were originally due. 735 ILCS 5/9-104.1(a) (West 2010). The amount claimed shall include regular or special assessments, late charges, interest for delinquent assessments, and attorney fees for services incurred prior to the

demand. *Id.* The demand shall give the property owner at least 30 days to satisfy the terms of the demand before an action is filed. *Id.*

¶ 23 In the instant case, the Declaration established that 2110 Poppy Lane was part of a common interest community, and Pacyga, as unit owner, was required to pay regular assessments. The demand letter was attached as an exhibit to the Association's complaint. The letter stated Pacyga had not paid \$2,650.31 in assessments, owed \$234.28 in legal fees and costs, and demanded payment within 34 days of the date of mailing. A receipt in the record indicated that the demand notice was placed in the mail on July 15, 2011. Service was thus effectuated on that date. 735 ILCS 5/9-104.1(c) (West 2010). Section 9-104.1 of the Act does not require that Pacyga receive the demand notice for subject matter jurisdiction. Therefore, the trial court had subject matter jurisdiction over the proceeding.

¶ 24 B. Personal Jurisdiction

¶ 25 Pacyga also argues that the court did not have subject matter jurisdiction because he was not served with a summons. The Association correctly points out, however, that Pacyga is contesting the trial court's personal jurisdiction. The issue of the trial court's personal jurisdiction over defendant is a matter of law to be reviewed *de novo*. *Bhutani*, 2014 IL App (1st) 130417.

¶ 26 Without personal jurisdiction over a party, a court has no power to adjudicate a personal claim or obligation, and any order entered against a party is void *ab initio* and subject to direct or collateral attack. *Id.* "Absent a general appearance, personal jurisdiction can be acquired only by service of process in the manner directed by statute." *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308 (1986). The Code of Civil Procedure (Code) authorizes service of process by summons or publication and mailing. 735 ILCS 5/2-203, 2-206 (West 2010). Section 2-203(a)

of the Code requires that service of summons upon an individual defendant be made:

"(1) by leaving a copy of the summons with the defendant personally, [or] (2) by leaving a copy at the defendant's usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards, and informing that person of the contents of the summons, provided the officer or other person making service shall also send a copy of the summons in a sealed envelope with postage fully prepaid, addressed to the defendant at his or her usual place of abode[.]" 735 ILCS 5/2-203(a) (West 2010).

¶ 27 To contest personal jurisdiction on the ground of insufficient service, a defendant must file a motion to dismiss the proceeding or a motion to quash service before filing any other pleading other than a motion for an extension of time. 735 ILCS 5/2-301(a) (West 2010). Filing a responsive pleading or motion, other than a motion for an extension of time, prior to filing a motion objecting to the court's jurisdiction "waives all objections to the court's jurisdiction over the party's person." 735 ILCS 5/2-301(a-5) (West 2010).

¶ 28 In the instant case, the record contained an affidavit of nonservice. However, Pacyga waived this issue when he appeared before the trial court and filed a motion to dismiss that did not contest personal jurisdiction. Consequently, Pacyga voluntarily submitted to the trial court's jurisdiction and waived any issues regarding the service of the summons.

¶ 29 C. July 27, 2011, Letter

¶ 30 Pacyga also argues that the trial court lacked jurisdiction because of a letter sent from the Association to Pacyga on July 27, 2011. Pacyga contends that the July 27, 2011, letter establishes that Pacyga never received the demand notice.

¶ 31 The record rebuts Pacyga's claim and, as discussed above, receipt of the demand notice

unpaid fees, runs with the land). According to article VI, section 1, the assessments are a charge on the property and a continuing lien upon the unit. The unit and owner are responsible to the Association for the assessment together with interest, costs, and attorney fees incurred in any action taken by the Association. Article VI, section 8, empowers the Association to bring suit to collect an unpaid assessment or to foreclose the lien when an owner is in default for 30 days.

¶ 36 These portions of the Declaration empower the Association to initiate proceedings to recover from an owner's failure to pay an assessment. The Declaration does not require a resolution of the board to begin recovery proceedings, but more broadly states that the power belongs to the Association. Article XII, section 1, affirms these broad powers, stating that "[t]he Association or any Owner, shall have the right to enforce, by any proceeding at law *** all restrictions, conditions, covenants, reservations, liens and charges ***." Therefore, authorization of the board of directors was not required to initiate proceedings to collect Pacyga's unpaid assessments.

¶ 37 III. Billing Invoices

¶ 38 Pacyga argues that counsel for the Association cannot raise a legal privilege to prevent Pacyga from reviewing legal invoices that were directly related to the forcible entry and detainer action.

¶ 39 We find (1) little indication that Pacyga's argument was properly before the trial court and (2) no evidence of error. On October 20, 2011, the trial court ordered the Association to respond to Pacyga's request for billing invoices by November 21, 2011. In a January 10, 2012, motion to dismiss, Pacyga argued that the trial court erred when it did not order the Association to produce the billing invoices. The record does not contain a specific ruling on this argument, and Pacyga did not otherwise move to compel production of the invoices. As the moving party,

Pacyga had the burden of ensuring that his January 10, 2012, motion was ruled on by the trial court. *Mortgage Electronic Systems v. Gipson*, 379 Ill. App. 3d 622 (2008). Without a ruling on this issue, we presume that Pacyga's argument was abandoned. *Id.* Therefore, we do not find that this issue was properly before the trial court or that the trial court's October 20, 2011, order was erroneous.

¶ 40 IV. Appeal Bond

¶ 41 Pacyga argues that the trial court improperly ordered an appeal bond.

¶ 42 A court may stay enforcement of any judgment upon just terms. Ill. S. Ct. R. 305(b) (eff. July 1, 2004). A court may require a bond or other form of security to protect an appellee's interest in property during the stay. *Id.* "[A]n appeal operates as a supersedeas, interrupting execution of a judgment, only if the appeal is filed within 30 days after the judgment becomes final and only if a bond is presented, filed and approved." *Williamsburg Village Owners' Ass'n, Inc. v. Lauder Associates*, 200 Ill. App. 3d 474, 481 (1990); see also Ill. S. Ct. R. 305(a) (eff. July 1, 2004). We review the trial court's grant of a stay and imposition of an appeal bond for an abuse of discretion. *Stacke v. Bates*, 138 Ill. 2d 295 (1990).

¶ 43 On April 27, 2012, the trial court ordered Pacyga to post an appeal bond. The court's order was based, in part, on the Association's argument that it might lose rental income if 2110 Poppy Lane fell into foreclosure while the parties awaited resolution of Pacyga's appeal. In light of this record, we conclude that Pacyga's appeal placed the Association's interest at risk. Therefore, the trial court did not abuse its discretion in ordering Pacyga to post an appeal bond.

¶ 44 V. Summary Judgment

¶ 45 Pacyga argues that the trial court erred when it awarded summary judgment for the Association.

¶ 46 An award of summary judgment is proper when the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2010); *Kotarba v. Jamrozik*, 283 Ill. App. 3d 595 (1996). A court of review will reverse an order of summary judgment if it determines that a genuine issue of material fact exists. *Kotarba*, 283 Ill. App. 3d 595. We review the trial court's grant of summary judgment *de novo*. *Id.*

¶ 47 In the instant case, the pleadings established that Pacyga had not paid a monthly assessment since December 2009. On October 13, 2011, Pacyga appeared before the court and admitted that he owed the Association "some money." The amount owed continued to accrue during the pendency of the case and was documented in an account statement that was attached as an exhibit to the Association's motion for summary judgment. At the time, the statement indicated that Pacyga owed a total of \$26,575.47. This sum included unpaid assessments plus late fees, attorney fees, and costs. As discussed above, the Association sent Pacyga a demand letter in July 2011 and provided Pacyga with 34 days to make payment. The demand letter was attached to the complaint. There was no evidence that Pacyga made a payment thereafter. Consequently, we conclude that there was no genuine issue of material fact and the trial court did not err in awarding summary judgment for the Association.

¶ 48 CONCLUSION

¶ 49 The judgment of the circuit court of Will County is affirmed.

¶ 50 Affirmed.