

2025 IL App (1st) 232423-U
No. 1-23-2423
Order filed March 21, 2025

FIFTH DIVISION

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 DISTRICT

BLUE OCEAN 21-1, L.L.C.,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellant,)	
)	
v.)	22 CH 08313
)	
GREENWAY COURT CONDOMINIUM)	The Honorable
ASSOCIATION, EZEKIEL MORRIS, EXIT)	Anna M. Loftus,
STRATEGY REALTY/EMA MANAGEMENT))	Judge, presiding.
GREENWAY COURT CONDOMINIUM)	
ASSOCIATION BOARD, ADRIANA STEELE,)	
and BRIDGETTE WASHINGTON,)	
)	
Defendants.)	

JUSTICE ODEN JOHNSON delivered the judgment of the court.
Presiding Justice Mikva and Justice Mitchell concurred in the judgment.

ORDER

¶ 1 *Held:* Affirmed trial court’s finding that condo association did not breach its statutory requirement to provide records to members, where the member’s request was a blunderbuss request rather than one made with “particularity” as the statute requires; and where we cannot find that the trial court’s no-breach conclusion, made after a hearing, was against the manifest weight of the evidence when no transcript or bystander’s report was provided and the record contains some evidence of compliance.

¶ 2 Plaintiff, a former condo owner, appeals the trial court’s denial of count I of its complaint, which alleged a breach by the condo association of the association’s statutory duty to provide association members, such as plaintiff, with association records. Plaintiff also appeals the trial court’s denial of its count II, which alleged a breach of fiduciary duty based on the alleged statutory violation.

¶ 3 The denials were in a written order entered October 18, 2023, after a default by defendants and a prove-up hearing by plaintiff. In the same order, the trial court also granted plaintiff judgment, in part, on count III for unjust enrichment. The court also entered judgement for plaintiff on count IV for defamation but found no damages proven. Neither counts III or IV are contested in plaintiff’s appellate brief.

¶ 4 This appeal was taken on appellant’s brief only. In addition, there are no transcripts or bystanders’ reports. The appellate record consists solely of the common law record, which we summarize in the background section below.

¶ 5 BACKGROUND

¶ 6 I. The Complaints

¶ 7 On August 23, 2022, plaintiff Blue Ocean 21-1, L.L.C. initiated this lawsuit by filing a “Verified Complaint for Declaratory Order” in the trial court. On April 4, 2023, plaintiff filed an amended complaint, which was the last complaint filed and so is the operative complaint before us.

¶ 8 The amended complaint alleged that plaintiff, a Delaware limited liability company, owned title to a unit located in a building in Chicago (the unit); that defendant Greenway Court Condominium Association (the association) is the homeowners association for the unit; that

defendant Ema Investments, L.L.C., doing business as Exit Strategy Realty/EMA Management (Exit Realty), provides management services for the association; that Ezekiel Morris is the registered agent for the association and the manager of Exit Realty; that Andriana Steele is the president of the association and is named in that capacity; and that Bridgette Washington is the treasurer and secretary of the association and is named in that capacity.

¶ 9 The amended complaint alleged that on May 3, 2022, plaintiff notified the association of plaintiff's ownership of the unit and requested information including assessment information. On May 5, 2022, Morris allegedly promised to forward the requested material at no cost. However, the complaint alleged: "To date neither Ezekiel Morris nor the [a]ssociation has provided the requested documents from the request in early May [2022]"

¶ 10 The complaint alleged that, from May through August 2022, Exit Realty collected rents and other fees with respect to the unit, but failed to deliver the collected funds to plaintiff. Plaintiff filed a motion on May 9, 2022, for possession of the unit, which was granted on May 23, 2022. However, Exit Realty allegedly collected rent from occupant Arieon Fox on May 24, 2022, and again on June 30, 2022. On July 19, 2022, the Cook County Sheriff's Office allegedly delivered possession of the unit to plaintiff. Although plaintiff acknowledged that Exit Realty had provided "some assistance," plaintiff alleged that, to date, it had not received the records it requested, or the funds collected on its behalf.

¶ 11 Count 1 alleged a breach of section 19 of the Condominium Property Act (765 ILCS 605/19 (West 2020) (section 19)) by Exit Realty's manager (Morris) and the association, based on their failure to comply with plaintiff's record requests. Count II alleged a breach of fiduciary duty, based on the alleged breach of section 19 by the association, the association's board and

its president (Steele) and treasurer/secretary (Washington). Only counts I and II are at issue on this appeal.

¶ 12 Count III alleged unjust enrichment against all defendants due to the unauthorized collection of rent. Count IV alleged defamation against Exit Realty and its manager (Morris) for allegedly accusing plaintiff of making a wrongful eviction.

¶ 13 The original complaint had eight exhibits attached to it; the amended complaint had five. The exhibits to the original complaint were: (1) an affidavit from a director of plaintiff; (2) plaintiff's deed to the unit; (3) a statement of assessments, fees and rent for the unit for May through August 2022; (4) an order of possession, dated May 23, 2022; (5) an email from Exit Realty to plaintiff, dated July 27, 2022, stating that plaintiff had "completed a wrongful eviction"; (6) an email sent the next day by plaintiff's counsel asking to see numerous categories of documents within 10 days; (7) an email, dated July 29, 2022, by plaintiff's counsel contesting the statement that the eviction was wrongful; (8) an email, dated July 28, 2022, from Exit Realty, confirming receipt of plaintiff's document request and indicating that a response would be forthcoming in the next couple of weeks; and (9) an email, dated August 1, 2022, from Exit Realty, stating that the eviction issue would be "addressed" in the next few days. The amended complaint attached only: the deed; a November 28, 2022, letter from Exit Realty, which appears to provide some of the information requested by plaintiff; and a statement of assessments, fees and rent for the unit from May 1, 2022, through December 1, 2022.

¶ 14 In its brief to this court, plaintiff acknowledged that it sold the unit on December 6, 2022.

¶ 15 Since plaintiff's July 28, 2022, email requesting documents is at the heart of this appeal, we provide below its entire list of requested documents:

- “(1) the association’s declaration, bylaws, plats of survey, and all amendments of these;
- (2) the rules and regulations of the association, if any;
- (3) if the association is incorporated as a corporation, the articles of incorporation of the association and all amendments to the articles of incorporation;
- (4) minutes of all meetings of the association and its board of managers from present back to the beginning of 2019;
- (5) all current policies of insurance of the association (including but not limited to Master Insurance Policy, Liability Policy, Error and Omissions Policy, Officer and Director Policy, Fire and Casualty Policy, and Common Element Protection Policy)[;]
- (6) all contracts, leases, and other agreements then in effect to which the association is a party or under which the association or the unit owners have obligations or liabilities;
- (7) the books and records for the association’s current and preceding fiscal years back to the beginning of 2019, including but not limited to, itemized and detailed records of all receipts, expenditures, and accounts[;]
- (8) copies of any and all legal proceedings which the [a]ssociation is now or has been a party to from 2019 to present. This list includes but is not limited to, municipal code violations, eviction proceedings and condemnation proceedings[; and]
- [9] copies of all filings, pleadings, and orders entered in any court proceedings associated with [the address of the unit].”

¶ 16 The November 28, 2022, letter provided the unit’s account statement, apparently in response to the request for accounts. In response to the request for contracts and liabilities, the

letter provided the association's water-bill account information. In response to the request for bylaw information, the letter noted that the association's bylaws do not have a right of first refusal clause. In response to the request for insurance information, the letter provided policy information and the contact information for the insurance representative. In response to the request for lease information, the letter noted the number of units, the number of rentals and the percentage that are owner-occupied.

¶ 17 II. Order of Default

¶ 18 On September 9, 2022, the trial court granted plaintiff's request for appointment of a special process server. On October 26, 2022, plaintiff moved for an order of default against all defendants. On November 17, 2022, the trial court entered an order of default against all defendants, except Washington who the court found was not served. The default was ordered based on a failure to appear or otherwise plead to plaintiff's original complaint. The matter was set for prove-up on December 21, 2022.

¶ 19 III. Ensuing Litigation and Prove-Up

¶ 20 An order, dated December 29, 2022, continued the matter and set the "hearing on prove-up" for January 18, 2023. On January 17, 2023, plaintiff filed a motion for "judgment and declaratory order" with an affidavit and exhibits attached, which was then withdrawn two weeks later. On January 30, 2023, the court entered an order indicating "counsels for Plaintiff and Defendants present as well as Ezekiel Morris." The order stated that:

- "1. Plaintiff withdraws its' [*sic*] motion for prove-up.
2. Plaintiff is granted 14 days to file an amended complaint.
3. Counsel for Defendants is granted leave to file her appearance within 14 days.
4. This matter is set for [zoom] status on February 16, 2023 ***."

In a subsequent order, dated February 10, 2023, the status set for February 16, which was mentioned in the above order, was stricken and rescheduled for February 28, 2023. On February 28, it was rescheduled to April 4, 2023, when plaintiff filed its amended complaint (which we already described above) and the matter was continued to May 9, 2023.

¶ 21 The May 9, 2023, order noted that plaintiff was present and that “no one appear[ed] on behalf of Defendants, and it set the prove-up for June 1, 2023. The June 1, 2023, order again noted that plaintiff was present and that no one had appeared for defendants, and it again rescheduled the prove-up, this time to June 22, 2023. On June 21, 2023, plaintiff filed its “Amended Motion for Judgment and Declaratory Order.” This motion is the operative motion for this appeal, since the prior motion was withdrawn.

¶ 22 The exhibits attached to the amended motion were: (1) an affidavit from a director of plaintiff; (2) the deed; (3) the order of possession, dated May 23, 2022; (4) a statement of attorney fees by plaintiff’s attorney; (5) the November 28, 2022, letter from Exit Realty, described above (*supra* ¶ 16); and (6) a statement of assessments, fees and rent for the unit from May 1, 2022, through December 1, 2022.

¶ 23 The case was rescheduled on numerous occasions, with no indication of defendants appearing at any of them: namely, June 22, 2023; June 30, 2023; July 18, 2023; August 4, 2023; August, 30, 2023; September 6, 2023; September 7, 2023; September 12, 2023; September 26, 2023; and October 2, 2023 for prove up.

¶ 24 IV. Final Order

¶ 25 Finally, after over a year of rescheduling orders, and withdrawn and refiled pleadings and motions, the trial court issued a substantive order ending the case at the trial level. In its

appellate brief, plaintiff contests only the trial court's denial of counts I and II. With respect to counts I and II, the trial court's written order on October 18, 2023, provided:

"1. Plaintiff's Motion for Judgment on Count I of its Amended Complaint pursuant to 765 ILCS 605/19 is denied as Plaintiff has not established a proper purpose to obtain access to the Condominium Association records following the sale of the unit. Plaintiff's request for attorneys fees is denied.

2. Plaintiff's Motion for Judgment on Count II of Plaintiff's Amended Complaint for breach of fiduciary duty based on 765 ILCS 605/19 against Defendant Association Board Steele and Washington is denied as Plaintiff has not established a proper purpose to obtain access to the Condominium Association records following the sale of the unit. Plaintiff's request for attorneys fees is denied."

¶ 26

With respect to counts III and IV, the trial court's written order stated as follows:

"3. Judgment is granted in part in favor of Plaintiff on Count III on Plaintiff's Amended Complaint relating to unjust enrichment against Greenway Court Condominium Association with respect to monthly assessments. Plaintiff is responsible for assessments in the amount of \$2,102.28 as follows:

August – November 2022 (including late fees) - \$2225.40

July 2022 (prorated from July 19-31, 202[2]) - \$218.66

Credit for payment made by Blue Ocean – (\$442.70)

4. Plaintiff contends the Association improperly rented the Unit during May and June 2022 and improperly collected rent in the amount of \$1,270 from the tenant Arlean Fox. Plaintiff requests that the amount of rent paid by the tenant to the Association be turned over to it. However, since Plaintiff paid no assessments on the unit during this

rental period (and chooses not to pay them after the fact) it would not be entitled to the rent collected on the Unit.

5. Judgment is entered in favor of Plaintiff on Count IV of its Complaint titled *Per Se* Defamation on the part of Ezekiel Morris and Exit Strategy Realty. No damages were proven.

6. Currently, \$5600.92 currently is being held in escrow with respect to this dispute. The total amount of assessments owed by Plaintiff is \$2,102.28. Therefore, the remaining amount of \$3,498.64 is ordered to be disbursed from the escrow to Plaintiff within 30 days.

This is a final order and disposes of the case in its entirety.”

No transcript or bystanders’ report appears in the record regarding the hearing held on October 18, 2023.

¶ 27 On December 18, 2023, plaintiff moved for leave to file a late notice of appeal which was granted on December 21, 2023. The motion for leave to file a late notice of appeal confirmed that a hearing had been held on October 18, 2023. Plaintiff filed the sole appellate brief on May 22, 2024, and on November 8, 2024, this court entered an order taking the case on appellant’s brief only.

¶ 28 ANALYSIS

¶ 29 As noted, we accepted this appeal on the appellant’s brief only. In its brief, plaintiff contests the trial court’s denial of plaintiff’s counts I and II, which were for, respectively, a breach of the duty in section 19 (765 ILCS 605/19(b) (West 2022)) to provide requested records by the association to a member, and a breach of fiduciary duty based on the alleged breach of section 19.

¶ 30 In its brief, plaintiff admits that that the trial court’s written order was “unclear”, but plaintiff does not provide either a transcript or bystander’s report for the proceeding which led to the order. Plaintiff argues that the trial court’s denial was based on findings by the trial court that plaintiff lacked standing and that the issue was moot, although the words “standing” and “moot” do not appear in the trial court’s written order.

¶ 31 However, as an appellate court, we may affirm the lower court’s judgment on any basis supported by the record, regardless of the particular ground stated by the trial court. *Mufaddal Real Estate Fund, L.L.C. v. Vara School Professionals, Inc.*, 2024 IL App (3d) 220499, ¶ 23. It is a fundamental principle of appellate law that, on appeal from a lower court, the question before the court of review is the correctness of the result, not the correctness of the reasoning on which the result was reached. *In re Kendale H.*, 2013 IL App (1st) 130421, ¶ 31. As we explain below, we affirm due to plaintiff’s failure to request records “with particularity,” as section 19(b) requires (765 ILCS 605/19(b) (West 2022)) and because, without a transcript or bystander’s report, we cannot find that the trial court’s decision that there was no breach was against the manifest weight of the evidence presented at the hearing.

¶ 32 This is an appeal from a prove-up hearing. “After a trial court enters an order of default, the trial court has the discretion to hold a ‘prove-up’ hearing, at which the plaintiff must present proof of the factual allegations in its complaint.” *Direct Auto Insurance Co. v. Beltran*, 2013 IL App (1st) 121128, ¶ 66; *Illinois Neurospine Institute, P.C. v. Carson*, 2017 IL App (1st) 163386, ¶ 33 (even after entry of a default order, a plaintiff is still required to prove up the basis for its damages). “If the plaintiff fails to meet its burden of proof at the prove-up hearing, the trial court may refuse to enter a default judgment.” *Direct Auto Insurance Co. v. Beltran*, 2013 IL App (1st) 121128, ¶ 66. Where the record establishes that a hearing was held, but no

report of proceedings or bystander’s report or other record of the prove-up hearing is provided, “we have no way of knowing” what evidence the trial court accepted or rejected. *Illinois Neurospine Institute*, 2017 IL App (1st) 163386, ¶ 33. Without an adequate record preserving the claimed error, a court of review must presume that the trial court’s order conforms with the law. *Illinois Neurospine Institute*, 2017 IL App (1st) 163386, ¶ 33.

¶ 33 To the extent that the issues before us require us to interpret a statute, our review is *de novo*. *Channon v. Westward Management, Inc.*, 2022 IL 128040, ¶ 17. When we construe a statute, our goal is “to ascertain and effectuate the underlying legislative intent,” as expressed in the plain language of the statute. *Channon v. Westward Management, Inc.*, 2022 IL 128040, ¶ 17. To the extent that we must review a trial court’s post-hearing finding, our review is limited to whether the trial court’s finding was against the manifest weight of the evidence. *Nutraceuticals v. ZAC Packaging, L.L.C.*, 2021 IL App (1st) 1200326, ¶¶ 24-26 (following a prove-up hearing, the issue for a reviewing court is whether the trial court’s damages decision was against the manifest weight of the evidence), citing, among other cases, *Med+Plus Neck and Back Pain Center, S.C. v. Noffsinger*, 311 Ill. App. 3d 853, 856 (2000) (“a reviewing court will not disturb the damages assessed by a trial court sitting without a jury unless its judgment was against the manifest weight of the evidence.”).

¶ 34 Since the issue here concerns just one statutory section, we describe its relevant and interlocking subsections. First, subsection (a) of section 19 lists ten broad categories of records that every condo association must “keep and maintain *** at the association’s principal office.” 765 ILCS 605/19(a)(1)-(10) (West 2022) (categories). In order to examine or make copies of these records, a member of the association “must submit a written request to the association’s board of managers or its authorized agent, stating with particularity the records sought to be

examined.” 765 ILCS 605/19(b) (West 2022). Subsection (b) enables only a “member” to make this request. 765 ILCS 605/19(b) (West 2022).

¶ 35 Subsection (g) lists several categories of records that an association does *not* have to provide, unless otherwise directed by a court order. 765 ILCS 605/19(g) (West 2022). These include any documents relating to legal actions pending, or likely, or threatened against the association or its board of managers in a court or administrative tribunal. 765 ILCS 605/19(g) (1), (2) (West 2022).

¶ 36 Subsection (b) permits a “member who prevails in an enforcement action to compel examination,” of certain records described in subsection (a), “to recover reasonable attorney’s fees and costs from the association.” 765 ILCS 605/19(b) (West 2022). The recovery of fees does not apply to the documents in subsection (g) that an association may refuse to provide. Subsection (b) permits collection of fees and costs “from the association” alone. 765 ILCS 605/19(b) (West 2022).

¶ 37 In the record before us, plaintiff’s written request was attached as an exhibit to plaintiff’s original complaint, filed on August 23, 2022. Instead of “stating with particularity the records sought” (765 ILCS 605/19(b) (West 2022)), plaintiff sought almost the entirety of categories (1) through (6) and (9), as well as records from categories of documents that an association is *not* required to turn over without a court order. Plaintiff sought, for example, “copies of any and all legal proceedings which the [a]ssociation is now or has been a party to from 2019 to present,” although subsection (g) states that an association does not have to turn over, without a court order, any “documents relating to actions pending against or on behalf of the association” (765 ILCS 605/19 (g) (West 2022)).

¶ 38 If the drafters of the section had just meant “retype the statute,” they would not have had to add the requirement that a requestor must state the desired documents “with particularity.” 765 ILCS 605/19(b) (West 2022).

¶ 39 While the statute does not define the term “particularity,” and we cannot find a case that interprets the term for this statutory section, it is a term that lawyers are familiar with from other contexts, where rules require them to plead with particularity. A “requirement that allegations must be made with particularity heightens the pleading requirement beyond that which would normally be required to survive” a challenge. *Wells v. Reed*, 2024 IL App (1st) 230502, ¶ 27. A “particularity” is often defined as “a minute detail” (<https://www.merriam-webster.com/dictionary/particularity>) or “the quality of being individual or unique.” (<https://www.oxfordlearnersdictionaries.com/us/definition/english/particularity>). There was nothing unique or minute about plaintiff’s request, which sought “all” records in each category, going back several years.

¶ 40 In addition to lacking in particularity, plaintiff does concede in its complaint that Exit Realty did provide “some assistance,” and the record before us discloses that a letter, prior to plaintiff’s sale of the unit, provided some of the desired information, such as insurance information. *Supra* ¶ 16. Also, as we noted above, some of the requested information needed a court order to be compelled. *Supra* ¶ 38. Thus, without a transcript or bystander’s report, we cannot find that the trial court’s decision to find no breach was against the manifest weight of the evidence.

¶ 41 Further, we observe that it is possible that, at the hearing, it could have become apparent that the real party in interest was the attorney who sent the extensive list in the first place, and pursued it for years after the unit was disposed of by the member, possibly in a quest for

statutory attorney fees; thereby, making the request not truly a member request or, as the trial court phrased it, not a “proper” request for documents. Without a transcript or bystander’s report, we have no idea. *Illinois Neurospine Institute*, 2017 IL App (1st) 163386, ¶ 33 (“we have no way of knowing”).

¶ 42

CONCLUSION

¶ 43

In conclusion, we affirm the trial court’s finding that the condo association did not breach its statutory requirement to provide records to members, where the member’s request was the proverbial ‘laundry list’ rather than one made with “particularity” as the statute requires. and where we cannot find that the trial court’s no-breach conclusion, made after a hearing, was against the manifest weight of the evidence when no transcript or bystander’s report was provided, and the record contains some evidence of compliance.

¶ 44

Affirmed.