

# **GROUP**

# **EXHIBIT 1**



# SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING  
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SPRINGFIELD, ILLINOIS 62701-1721  
(217) 782-2035

Christopher Stoller  
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Apt. 1  
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November 28, 2018

In re: Wesley Terrace Condominium Association, respondent, v.  
Christopher Stoller, petitioner. Leave to appeal, Appellate Court,  
First District.  
123750

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 01/02/2019.

Neville, J., took no part.

Very truly yours,

*Carolyn Taff Gosboll*

Clerk of the Supreme Court

IN THE  
**ILLINOIS APPELLATE COURT**  
**FIRST DISTRICT**

<b>WESLEY TERRACE CONDOMINIUM ASS'N.,</b>	)	No. 2016 M4 000881 Hon. Kevin Lee Judge Presiding
<b>Plaintiff-Appellee,</b>	)	
<b>vs.</b>	)	
<b>CHRISTOPHER STOLLER,</b>	)	
<b>Defendant-Appellant.</b>	)	

**ORDER**

This matter comes before the court on the motion of defendant-appellant, Christopher Stoller<sup>1</sup> for leave to file his brief instanter. After three extensions of time, the final due date for Stoller's brief was set for October 30, 2017. Stoller did not file his brief on that date, but on November 21, 2017, sought leave to file the brief late, attaching a copy of his proposed filing. Due to an oversight in clerk's office, the motion was not promptly brought to the court's attention and has never been ruled upon.

Stoller is the tenant in a unit of a condominium building at 415 W. Wesley in Oak Park, Illinois. Stoller signed a condominium lease agreement on October 30, 2015. The lease Stoller signed erroneously listed the "Wesley Court Condominium Association" as landlord when it should have been the Wesley Terrace Condominium Association as the unit rented by Stoller is located in that building. Stoller paid the first month's rent upon execution of the lease and, according to the association's complaint, paid partial rent for the month of December and no rent

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<sup>1</sup> The caption on the motion lists "Christopher Stoller, et al." as the appellants. Christopher Stoller is proceeding *pro se*. The "et al." apparently refers to another party, Michael Stoller, who is a defendant in the trial court proceedings. As a *pro se* litigant, Christopher Stoller can represent only himself; he cannot represent Michael Stoller, as to do so would constitute the unauthorized practice of law.

thereafter. On February 3, 2016, the Wesley Terrace Condominium Association served Stoller with a landlord's five-day notice for non-payment of rent for the months of December 2015 and January and February 2016. When payment was not forthcoming, the association filed this lawsuit.

When Stoller contested the identity of the landlord (not denying that he rented the unit, only claiming he rented from Wesley *Court* Condominium Association), the association re-filed its complaint seeking reformation of the lease to list the correct landlord. The trial court ultimately granted the association's motion for use and occupancy payments during the pendency of the litigation, and directed that payments to be placed in escrow pending the outcome of the case.

It is this order that is the subject of Stoller's appeal. In his brief, which he has never been granted leave to file, Stoller claims that jurisdiction is proper under Illinois Supreme Court Rule 304(a). But the trial court's order does not contain Rule 304(a)'s mandatory language: appeal may be taken from final order "as to one or more but fewer than all of the parties or claims *only* if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both." As a threshold matter, absent such language, a final judgment as to fewer than all claims or parties may not be appealed. This alone is reason to dismiss the appeal.

But, more importantly, an order granting a motion for use and occupancy payments is not a "final judgment as to one or more but fewer than all of the parties or claims." There is no "claim" for use and occupancy. Use and occupancy payments are a form of interim relief in cases where a party is disputing the plaintiff's right to possession of premises, desires to litigate the right to possession, but is nonetheless obligated to pay the fair rental value of the premises in

the meantime. In other words, because the party disputing the plaintiff's claim to possession is not entitled to live in the premises for free while that issue is litigated, use and occupancy payments maintain the *status quo* while the court decides the issue.

But the purpose of use and occupancy payments has been frustrated here. Stoller has lived in the premises without paying rent since December 2015. The term on his original lease has expired. And to make matters worse, following Stoller's appeal, the trial court granted Stoller's motion to stay the association's eviction proceedings based on the erroneous belief that Stoller's appeal deprived it of jurisdiction. It did not.

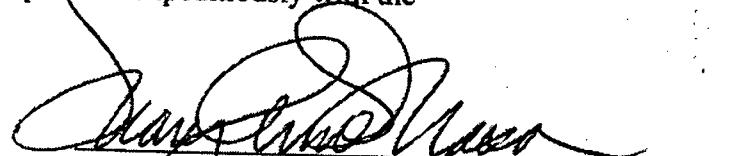
We have an obligation to address our appellate jurisdiction and should do so *sua sponte* when lack of jurisdiction is apparent on the record. This is such a case. The order granting use and occupancy payments is not a final judgment and it does not fall into the categories of interlocutory orders that are appealable under any other rule.

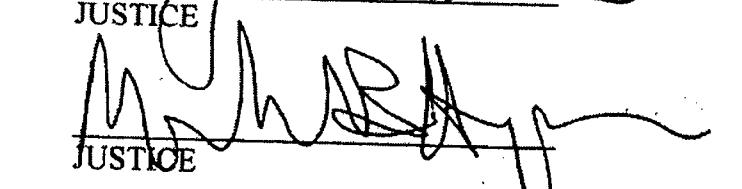
A previous order entered in this case took the association's motion to dismiss Stoller's appeal with the case. A later order denied a second motion to dismiss filed by the association and directed the association to file a brief by June 12, 2018. We vacate these orders and grant the association's motion to dismiss. We further direct the trial court to lift the stay and proceed expeditiously with the association's eviction action.

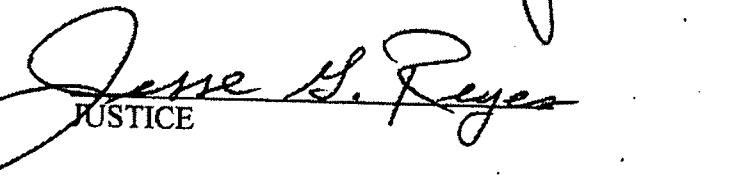
WHEREFORE, for the foregoing reasons, IT IS HEREBY ORDERED that

- 1) The orders entered in this appeal on October 13, 2017, and May 22, 2018 are VACATED;
- 2) This appeal is DISMISSED; and

3) The trial court is directed to lift the stay and proceed expeditiously with the association's eviction action.

  
Daniel P. Nuss  
JUSTICE

  
Michael B. Higginson  
JUSTICE

  
Jesse S. Reyes  
JUSTICE

**ORDER ENTERED**

JUN 01 2018

APPELLATE COURT FIRST DISTRICT

1-17-0274

IN THE  
ILLINOIS APPELLATE COURT  
FIRST DISTRICT

WESLEY TERRACE CONDOMINIUM ASS'N., )

Plaintiff-Appellee, )

vs. )

CHRISTOPHER STOLLER, )

Defendant-Appellant. )

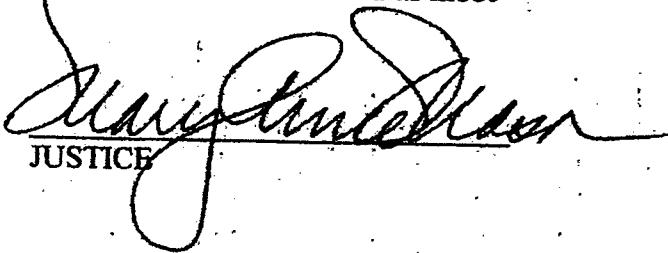
No. 2016 M4 000881

Hon. Kevin Lee  
Judge Presiding

ORDER

This matter coming to be heard on the Appellant's request to file its attached brief  
instanter, the court being fully advised in the premises;

IT IS HEREBY ORDERED that the motion for leave to file instanter is denied as moot  
given the dismissal of this appeal by separate order.

  
JUSTICE

  
JUSTICE

  
JUSTICE

ORDER ENTERED

JUN 01 2018

APPELLATE COURT FIRST DISTRICT

IN THE CIRCUIT COURT OF COOK COUNTY,  
MUNICIPAL DEPARTMENT FOURTH DISTRICT

WESTLEY TERRACE CONDO ASSN.

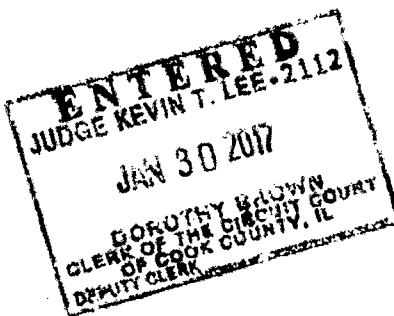
Plaintiff, )  
v. )  
CHRISTOPHER STOLLER and ) 2016- M4-000881  
MICHAEL STOLLER, )  
Defendant )

**ORDER**

This cause coming to be heard on Plaintiff's Motion for Use and Occupancy pursuant to 735 ILCS 5/9-201,

**IT IS HEREBY ORDERED THAT:**

1. Plaintiff's motion for use and occupancy is granted.
2. Defendant shall immediately pay use and occupancy into an escrow account to be held for distribution until the resolution of this action.



ENTERED:

Dated:

Judge

IN THE CIRCUIT COURT OF COOK COUNTY,  
MUNICIPAL DEPARTMENT FOURTH DISTRICT

WESTLEY TERRACE CONDO ASSN.

Plaintiff, )  
v. )  
CHRISTOPHER STOLLER and ) 2016- M4-000881  
MICHAEL STOLLER, )  
Defendant )

ORDER

This cause coming to be heard for ruling on Defendant's 2-619(a) (4) Motion to Dismiss Plaintiff's Amended Complaint for Reformation of Contract and for Possession and Judgment based upon Breach of a Written Lease or in the Alternative Amended Complaint for Possession and Judgment based upon Breach of an Oral Lease;

IT IS HEREBY ORDERED THAT:

1. Defendant's 2-619(a) (4) motion to dismiss Plaintiff's Amended Complaint is based on res judicata and the law of the case. Res judicata applies only to final orders. If the dismissal was not a final adjudication on the merits, res judicata does not apply.
2. The court's prior order dated October 13, 2016, dismissing plaintiff's complaint for possession and judgment granted plaintiff leave to amend. Therefore, it was not a final order which disposed of all claims between the parties.
3. Defendants also argue the court's dismissal order of October 13, 2016 determined the law of the case. Per defendant the amended complaint is predicated on the same defective lease therefore the court is required to dismiss it. To the extent that the court's prior ruling formed the law of the case, there is good reason to depart from the court's prior ruling. Plaintiff's amended complaint is broader both factually and legally than the original complaint. It addresses the reference in the lease to "Westley Court" instead of "Westley Terrace" as a mutual mistake that warrants reformation. Plaintiff provides additional factual allegations to support this theory. Plaintiff in Count III also alleges breach of an oral lease. The Court's October 13<sup>th</sup> ruling did not address either of these theories nor did it consider the new factual allegations put forth in support of these theories. Therefore, dismissal of the amended complaint based upon the law of the case is not warranted.
4. Thus, Defendant's Motion to Dismiss Plaintiff's Amended Complaint for Reformation of Contract and for Possession and Judgment based upon Breach of a Written Lease or in the

Alternative Amended Complaint for Possession and Judgment based upon Breach of an Oral Lease is denied.

ENTERED:

Dated: Jan 30, 2017

Judge

