2026 IL App (1st) 251951

FIRST DIVISION
November 9, 2026

No. 1-25-1951

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BASIL M. HANTASH and DEBBIE HANTASH, Plaintiffs-Appellants, v. AFFORDABLE PORTABLES, INC., d/b/a Philips Interiors, an Illinois corporation, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of Cook County 25 L 1456 Honorable Jerry A. Esrig, Judge Presiding

PRESIDING JUSTICE ELLIS delivered the judgment of the court, with opinion.
Justices Fitzgerald Smith and Cobbs concurred in the judgment and opinion.

OPINION

¶ 1 The question here is whether a landlord may assign its right to collect past-due, unpaid rent. We hold that it may. The circuit court ruled otherwise, relying on supreme court precedent from 1872 as well as a more recent appellate decision. Our read of supreme court case law in the modern era, however, convinces us that Illinois law permits the assignment of claims for unpaid rent. We thus reverse the circuit court's judgment and remand for further proceedings.

¶ 2 BACKGROUND

¶ 3 As this case terminated at the pleading stage, we draw our facts from the complaint and take them as true. See *Petta v. Christie Business Holdings Co., P.C.*, 2025 IL 130337, ¶ 3.

¶ 4 In 2002, defendant Affordable Portables, Inc., doing business as Philips Interiors, which we will call "API," leased commercial property on North Clark Street in Chicago (the

"Property"). The original lessor was La Salle Bank, but the Property was sold several times during the initial 20-year lease period. As of 2021, the Property was owned by 2600 N. Clark Street, LLC.

¶ 5 Under the lease, API was required to pay, among other things, 38% of the Property's real estate tax obligation, utilities, and base rent. The complaint alleges that, while 2600 N. Clark Street, LLC was the landlord, API failed to pay many of these rent charges.

¶ 6 In 2024, 2600 N. Clark Street, LLC assigned its right to collect this unpaid rent to plaintiffs here, Debbie and Basil Hantash. (Debbie was the "managing member" of 2600 N. Clark Street, LLC. She and Basil are married.) So in January 2025, Basil and Debbie Hantash filed the lawsuit at issue here, a verified complaint to collect unpaid rent from API.

¶ 7 API moved to dismiss, among other reasons, claiming the Hantashes lacked standing to recover unpaid rent owed to a previous landlord. The circuit court agreed, dismissing the complaint "solely on the ground that the Court finds that the Plaintiffs lack standing."

¶ 8 Basil and Debbie timely filed a joint notice of appeal (both individually named as appellants). But only Basil, *pro se*, filed a brief.

¶ 9 ANALYSIS

¶ 10 I. Dismissal of Appeal

¶ 11 As an initial matter, API says we should dismiss this appeal because only Basil filed an appellate brief. API argues that Debbie, though a "necessary party," did not file a brief and thus "abandoned" her appeal. We need to unpack a few matters to explain why API is incorrect.

¶ 12 First, both Basil and Debbie filed a notice of appeal, the only jurisdictional step necessary to initiate appellate review. See *People v. Smith*, 228 Ill. 2d 95, 104 (2008). So we have jurisdiction over both Basil's and Debbie's appeal as separate appellants.

¶ 13 It is true that only one appellant's brief was filed in this case, and only Basil signed it. It is likewise true that, as a non-attorney, Basil is free to represent himself on appeal, but he may not represent anyone else. See *Ratcliffe v. Apantaku*, 318 Ill. App. 3d 621, 626 (2000).

¶ 14 Basil says this was a mere oversight, that Debbie intended to adopt Basil's brief and would be willing to file a motion to adopt it. But Debbie never told us that herself; as a technical matter, Debbie has not said a word to this court. Just as Basil may not represent Debbie's legal interests before this court, likewise he may not speak for her.

¶ 15 So that leaves us with Basil filing a brief, and Debbie failing to do so. But it remains true, as we said above, that we still have jurisdiction over Debbie's appeal. And while it is true that we may dismiss an appeal for failure to file an appellant's brief (or the failure to file an adequate one), that is a matter of our discretion, not a requirement. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131 (1976); *Kozenczak v. Du Page County Officers Electoral Board*, 299 Ill. App. 3d 205, 208 (1998); Ill. S. Ct. R. 343, Committee Comments (rev. Sept. 1, 1974).

¶ 16 In many cases, the lack of an appellant's brief dooms our ability to consider the case. How, after all, can we determine whether an appellant's arguments carry the day when we don't know what they are? So while it remains in our discretion to dismiss the appeal, it is almost a foregone conclusion that we would do so in that circumstance. Here, however, we have two appellants, and Debbie's interests are clearly aligned with those of her husband and co-assignee, Basil, who has filed a brief providing a coherent argument for reversal. If he prevails on appeal, so does she. We are not required to dismiss Debbie's appeal, and we see no reason why we should.

¶ 17 More importantly, there is absolutely no basis for dismissing the appeal *in its entirety*, even as to Basil, who filed an appellant's brief. The "necessary parties" doctrine API cites for that proposition has no application here.

¶ 18 A necessary party is one whose participation in the litigation is required (1) to protect an interest of the absent party that would be materially affected by the judgment, (2) to reach a decision that protects the interests of those before the court, or (3) to allow for a complete determination of the controversy. *Emalfarb v. Krater*, 266 Ill. App. 3d 243, 247 (1994). An order entered without a necessary party is void. *Id.* This objection is typically raised at the trial court in the prejudgment phase, usually as a basis for dismissal. See 735 ILCS 5/2-615(a) (West 2024). Though disfavored, it may be raised for the first time on appeal, but the point of the argument remains to void the original trial judgment. See *Emalfarb*, 266 Ill. App. 3d at 247.

¶ 19 API is using the doctrine not to challenge the judgment below but to scotch the *appeal* of that judgment. With one exception, the "necessary parties" doctrine does not work that way in the appellate court. A plaintiff at the trial level may sue whomever she must to include a necessary party, but a potential appellant has no control over whether another appellant files an appeal. It would be grossly unfair if an appellant were denied her day in (appellate) court simply because a different appellant chose, for whatever reason—lack of money, settlement, bankruptcy, etc.—not to prosecute an appeal.

¶ 20 To say nothing of the fact that, even if the doctrine applied in this context, API's argument would still fail. The "necessary parties" concept is a jurisdictional one; an order entered without a necessary party is void for want of jurisdiction. *Id.* We have already explained that we have jurisdiction over Debbie's appeal, as she filed a notice of appeal.

¶ 21 The one exception to this discussion comes in the unique context of appeals of

administrative action, where state law often requires that all defendants be joined in the appeal. See *McGaughy v. Illinois Human Rights Comm'n*, 165 Ill. 2d 1, 11 (1995); 735 ILCS 5/3-107(a) (West 2024) (trial level); Ill. S. Ct. R. 335 (eff. July 1, 2017) (in appellate review of administrative actions, "[t]he agency and all other parties of record shall be named respondents."). But administrative-action review is unique in that its authority derives not directly from our constitution but from state law, and thus the requirements of state law dictate the courts' authority. *McGaughy*, 165 Ill. 2d at 6-7; Ill. Const. 1970, art. VI, §§ 6, 9.

¶ 22 That administrative-action exception does not apply here. API's "necessary parties" objection is unfounded. We see no basis to dismiss this appeal in whole or in part.

¶ 23 II. Assignment of Claim for Unpaid Rent

¶ 24 We now turn to the principal issue raised on appeal: may a property owner assign claims for past unpaid rent to another party? In answering that question in the negative, the circuit court relied on our supreme court's 1872 decision in *Kennedy v. Kennedy*, 66 Ill. 190, 196 (1872), which held that such claims are not assignable, as well as our appellate decision in *1002 E. 87th Street, LLC v. Midway Broadcasting Corp.*, 2018 IL App (1st) 171691, ¶ 24, which quoted *Kennedy* for that proposition in *dictum*. We explain below why this case law is inconsistent with our supreme court's modern view on the law of assignability of claims.

¶ 25 We start with a general discussion of the law and a clarification of terms. Unless the parties contract otherwise, when a party is conveyed property that contains a lease, the lease runs with the property, so the new property owner steps into the shoes of the previous one and becomes the new landlord on the lease. *Lipschultz v. Robertson*, 407 Ill. 470, 474 (1950); *Midway Broadcasting*, 2018 IL App (1st) 171691, ¶ 17. The new landlord obviously may now receive any rent associated with the lease in the future and may sue for nonpayment of that rent.

See *People ex rel. Hargrave v. Phillips*, 394 Ill. 119, 123 (1946) (rights to future rent "follow the land" and "pass with a sale or devise of the land." (Internal quotation marks omitted.)); *Kahn v. Deerpark Investment Co.*, 115 Ill. App. 2d 121, 125-26 (1969) (same); *Midway Broadcasting*, 2018 IL App (1st) 171691, ¶ 17 (same); 735 ILCS 5/9-209 (West 2024).

¶ 26 That is not our issue. We are not talking about future rent. We are talking here about rent *already* due and owing that has not been paid. That is what we mean when we refer to "past unpaid rent" or "rent in arrears" or "accrued unpaid rent." Here, the Hantashes are seeking payment of rent that was owed to the previous owner/landlord, 2600 N. Clark Street, LLC. The Hantashes, in other words, are not suing in their capacity as landlord; they are suing as assignees of a claim originally held by 2600 North Clark Street as landlord.

¶ 27 That presents a different question, as claims for rent owed to the previous owner do *not* run with the property, so to speak, when a new owner/landlord steps in. That has been true for over a century. See *Scully v. People*, 104 Ill. 349, 351 (1882); *Kennedy*, 66 Ill. at 196 ("The sale of the [property] carries with it rents to fall due, or that may subsequently accrue, under any lease, unless reserved, *but not rents already accrued*." (Emphasis added.)). It remains true today. See *Midway Broadcasting*, 2018 IL App (1st) 171691, ¶ 17 ("[T]he new landlord does not have a right to recover rent due from before it owned the property."); *A.M. Realty Western L.L.C. v. MSMC Realty, L.L.C.*, 2012 IL App (1st) 121183, ¶ 45 (same).

¶ 28 Rather, a claim for unpaid rent is held by the landlord to whom the rent was owed, as an actionable claim or "chose in action." *Phillips*, 394 Ill. at 122 ("rent in arrears is a chose in action"); *Scully*, 104 Ill. at 352 ("Rent arrear is a chose in action ***." (Emphasis omitted.)); *A.M. Realty*, 2012 IL App (1st) 121183, ¶ 50 ("[R]ent that accrues prior to the termination of the lease is a chose in action and is not assigned to future owners of the property."). As such, the

landlord to whom the rent was owed may sue to collect that unpaid rent, either before or after the property is conveyed to a new owner. *A.M. Realty*, 2012 IL App (1st) 121183, ¶¶ 45, 50; *Dasenbrock v. Interstate Restaurant Corp.*, 7 Ill. App. 3d 295, 302 (1972) (landlords' "cause of action for past due rent was not extinguished by a conveyance of the land.").

¶ 29 But may the owner/landlord to whom the unpaid rent was owed *assign* that claim for unpaid rent to another party? That is our question. In 1872, our supreme court squarely answered that question in the negative: "rents in arrear are not assignable." *Kennedy*, 66 Ill. at 196.

¶ 30 Supreme court decisions of any vintage are binding on us. *People v. Artis*, 232 Ill. 2d 156, 164 (2009). But a review of recent supreme court case law in this area leaves us only to conclude that *Kennedy*, though it has never been expressly overruled on this ground by the supreme court, is flatly inconsistent with the supreme court's recent pronouncements in this area.

¶ 31 The law on assignability of claims has markedly changed since 1872. Twice in the last 28 years, our supreme court has articulated what it deems "the modern view on assignability," namely: " 'Today, assignability is the rule and nonassignability is the exception.' " *Citibank, N.A. v. Illinois Department of Revenue*, 2017 IL 121634, ¶ 43 (quoting *Kleinwort Benson North America, Inc. v. Quantum Financial Services, Inc.*, 181 Ill. 2d 214, 225 (1998)). And courts should be careful to " 'strict[ly]' " view any proposed exceptions to assignability and exempt them only " 'sparingly' " on public-policy grounds. *Id.* ¶ 44 (quoting *Kleinwort*, 181 Ill. 2d at 226).

¶ 32 As our supreme court explained in 1998, the principal reason for the significant shift in attitude is that, historically, assignability of claims was considered hand-in-glove with the doctrine of survival of claims "because, in both instances, a claim was being transferred from one entity to another." *Kleinwort*, 181 Ill. 2d at 219. And "[a]t common law, many actions were

neither assignable nor survived the death of a claimant." *Id.*

¶ 33 But just as the law on survival of claims has been liberalized (and codified), so too has the law on assignability of claims. As our supreme court has twice advised us more recently:

> " 'Today, assignability is the rule and nonassignability is the exception.' [Citation.] *** 'Basically, in Illinois, the only causes of action that are not assignable are torts for personal injuries and actions for other wrongs of a personal nature, such as those that involve the reputation or feelings of the injured party. [Citation.] These limitations are based primarily on public policy concerns.' " *Citibank*, 2017 IL 121634, ¶ 43 (quoting *Kleinwort*, 181 Ill. 2d at 225).

¶ 34 The supreme court has identified " '[s]ome general principles that determine when an agreement between parties violates public policy.' " *Id.* ¶ 44 (quoting *Kleinwort*, 181 Ill. 2d at 226). Initially, courts should consider our constitution, statutes, and court decisions. *Id.*; see *Kleinwort*, 181 Ill. 2d at 226. "Beyond that inquiry," courts should "determine whether the agreement is so capable of producing harm that its enforcement would be contrary to the public interest." *Citibank*, 2017 IL 121634, ¶ 44.

¶ 35 In the end, however, courts "should 'apply a strict test in determining when an agreement violates public policy,' " as " '[t]he power to invalidate part or all of an agreement on the basis of public policy is used sparingly because private parties should not be needlessly hampered in their freedom to contract between themselves.' " *Id.* (quoting *Kleinwort*, 181 Ill. 2d at 226).

¶ 36 The case law bears out that assignability is, indeed, the norm. See, *e.g.*, *Dubina v. Mesirow Realty Development, Inc.*, 197 Ill. 2d 185, 194 (2001) ("[A]n assignment of a cause of action for property damage generally is valid in Illinois."); *North Chicago Street R.R. Co. v. Ackley*, 171 Ill. 100, 108 (1897) ("[A]ction[s] for injuries to property, real or personal, by which

an estate is diminished, are generally assignable."); *Daugherty v. Blaase*, 191 Ill. App. 3d 496, 500 (1989) (broker malpractice claims are assignable, as they implicate business, not personal, relationship); *Puckett v. Empire Stove Co.*, 183 Ill. App. 3d 181, 191-92 (1989) (assignment of contribution action does not violate public policy).

¶ 37 A notable exception: claims for *legal* malpractice are generally deemed non-assignable on public policy grounds, given the intimate nature of the attorney-client relationship and because allowing such assignments would "commercialize legal malpractice suits" and "debase the legal profession." *Gonzalez v. Profile Sanding Equipment, Inc.*, 333 Ill. App. 3d 680, 696 (2002); see *Learning Curve International, Inc. v. Seyfarth Shaw LLP*, 392 Ill. App. 3d 1068, 1075, (2009) (assignment of legal malpractice claims would " 'relegate the legal malpractice action to the market place and convert it to a commodity to be exploited' " and " 'imperil the sanctity of the highly confidential and fiduciary relationship existing between attorney and client' " (quoting *Clement v. Prestwich*, 114 Ill. App. 3d 479, 480-81 (1983))).

¶ 38 We can think of no reason why the assignment of a claim for unpaid rent would violate public policy. It is not an action "for personal injuries" or "for other wrongs of a personal nature" involving "the reputation or feelings of the injured party." *Citibank*, 2017 IL 121634, ¶ 43. It involves no intimate or fiduciary relationship. See *Daugherty*, 191 Ill. App. 3d at 500 (assignment of negligence claim against insurance broker did not violate public policy, as "an insurance broker shares a business relationship with his client, not a 'personal' one").

¶ 39 Nor is such an assignment "so capable of producing harm that its enforcement would be contrary to the public interest." *Citibank*, 2017 IL 121634, ¶ 44. A lease, with its requirement to pay rent, is a garden-variety, arm's-length business transaction between two individuals and/or companies.

¶ 40 We do not fault the circuit court for following *Kennedy* and *Midway Broadcasting*. But in our view, the 1872 decision in *Kennedy* does not reflect the supreme court's current jurisprudence on the assignability of claims. We instead follow the "modern view" articulated by the far more recent supreme court decisions of *Citibank* (*id.* ¶ 43), and *Kleinwort*, 181 Ill. 2d at 225. If assignability is the norm and non-assignability the exception, and if we are to invoke the exception " 'sparingly' " so that private parties are not " 'needlessly hampered in their freedom to contract between themselves' " (*Citibank*, 2017 IL 121634, ¶ 43 (quoting *Kleinwort*, 181 Ill. 2d at 226)), then we have no hesitation in concluding that claims for past-due, unpaid rent are, indeed, assignable.

¶ 41 We recognize that, only eight years ago, this court cited and quoted *Kennedy* for the very proposition we reject today. See *Midway Broadcasting*, 2018 IL App (1st) 171691, ¶ 24 ("Illinois courts routinely hold that rent in arrears is not assignable."). We decline to follow that isolated portion of *Midway Broadcasting* for the reasons we have given above.

¶ 42 We would add that this statement in *Midway Broadcasting* was pure *dictum*. The question there was whether a new landowner could sue for unpaid rent owed to the previous owner. This court correctly held that a claim for past-due unpaid rent did not run with the land (as we have stated above), so the new landowner had no standing to assert that claim. *Id.* ¶ 17. There was no assignment of unpaid rent in that case from the former landlord to the new one. *Id.* ¶ 23. Nothing in that appellate decision changes our conclusion.

¶ 43 III. Alternative Bases for Dismissal

¶ 44 API raised other grounds for dismissal below and correctly notes that we may affirm a dismissal on any basis appearing in the record, even if it was not the basis on which the circuit court ruled, and even if we disagree with the circuit court's reasoning. See *Rodriguez v. Sheriff's*

Merit Comm'n of Kane County, 218 Ill. 2d 342, 357 (2006).

¶ 45 API claims first that the complaint failed to allege that the Hantashes performed conditions precedent to the bringing of this lawsuit. API also claims that the Hantashes pleaded conclusions, not facts, in their descriptions of the parties and the various signatories to the various documents included in the record.

¶ 46 It is not clear to us that any of these additional arguments would warrant a dismissal with prejudice, as opposed to pleading defects for which the court might allow amendment. And given that the circuit court never reached these arguments in the first place, the better course under these circumstances is a remand for the circuit court to first consider them and then the consequences of any such ruling.

¶ 47 CONCLUSION

¶ 48 The judgment of the circuit court is reversed. The cause is remanded for further proceedings.

¶ 49 Reversed and remanded.

***Hantash v. Affordable Portables, Inc.*, 2026 IL App (1st) 251951**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 25-L-1456; the Hon. Jerry A. Esrig, Judge, presiding.
Attorneys for Appellant:	Basil M. Hantash and Debbie Hantash, both of San Juan, Puerto Rico, appellants *pro se*.
Attorneys for Appellee:	Monica A. Forte, of Forte & Associates, LLC, of Chicago, for appellee.