2023 IL App (1st) 221023-U

THIRD DIVISION
June 28, 2023
As Modified Upon Denial of Rehearing

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

No. 1-22-1023

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HICKORY HEIGHTS CONDOMINIUM UNIT NO. 1, INC., AN ILLINOIS NOT FOR PROFIT CORPORATION, Plaintiff-Appellee, v. CAROLINE AKUNNAYA OKOYE, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County 2020-M5-003597 Honorable Matthew J. Carmody, Judge Presiding

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Reyes and Burke concurred in the judgment.

O R D E R

¶ 1 *Held*: In condominium association's action to evict unit owner based on alleged nonpayment of common expenses, unit owner's "affirmative defense" that association's board of managers had not been properly elected was not germane.

¶ 2 Caroline Akunnaya Okoye, who was evicted from her condominium unit in Hickory Hills, Illinois and ordered to pay $47,123 in common expenses and fees to the condominium association, Hickory Heights Condominium Unit No. 1, Inc., appeals from the circuit court's judgment, contending that because the association's board of managers was not properly elected, it did not have authority to adopt an annual budget of common expenses and lacked standing to sue her for

failing to pay her portion. The association responds that Okoye's challenge to standing is a new argument on appeal and that she failed to present any evidence or argument in the circuit court that her liability for common expenses as a unit owner was not invalidated or extinguished by the board of managers' failure to strictly adhere to the association's bylaws or provisions in the Condominium Property Act regarding elections. See 765 ILCS 605/1 *et seq*. (West 2018).

¶ 3 Okoye purchased the condominium at issue, 8620 West 95th Street, Unit 1A1, in September 2018. It was one of eight units in the condominium community. Monthly homeowners' association fees per unit were $220 in 2018, and increased each year until they were $270 in 2021.

¶ 4 The condominium association filed a verified complaint against Okoye in August 2020, seeking eviction and possession of her unit, unpaid and accrued common expenses, as well as late fees, interest, and attorney fees, all totaling $4959.

¶ 5 Okoye countered with a motion to dismiss, on grounds that the association lacked "capacity" to sue her, because its board of managers was not elected as specified in the association's bylaws and Illinois law. She tendered her affidavit to that effect. The association responded with an affidavit from Mary Fontana, indicating that Fontana was elected to the association's presidency during a monthly meeting in December 2019 and that Okoye had even attended the meeting. Okoye replied with an affidavit from Ahmed El Houmaidi, stating that there had been no election since he purchased Unit 1A3 in 2017 and that Fontana was unilaterally holding herself out as president. After oral arguments, the circuit court denied Okoye's motion to dismiss because there was a fact dispute about the association governance issues that Okoye relied upon.

¶ 6 Okoye then filed an answer in which she asserted association governance issues as

affirmative defenses.

¶ 7 The parties next exchanged discovery, then cross-motions for summary judgment as to whether the board was "authorized" to administer the condominium property. Okoye relied entirely on two statutes and two opinions. The first law she cited was "765 ILCS 605/1," which states, "Short title. This Act shall be known and may be cited as the "Condominium Property Act." Her second citation was to "765 ILCS 605/18(b)(9)(b)," which was an imperfect citation to 765 ILCS 605/18(b)(9)(B) (West 2018), which provides "that if a rule adopted at least 120 days before a board election or the declaration or bylaws provide for balloting as set forth in this subsection, unit owners may not vote by proxy in board elections." Okoye argued that discovery showed the condominium community was given the option to vote by email in the December 2020 election (during the pandemic declared in early 2020) even though the board could not produce a rule or resolution allowing for email balloting. She cited *Palm v. 2800 Lake Shore Drive Condominium*, 2014 IL App (1st) 111290 (2014), as an instance in which a board of managers was not authorized to make decisions by email, and *Alliance Property Management, Ltd. v. Forest Villa of Countryside Condominium Ass'n*, 2015 IL App (1st) 150169, for the proposition that unless a board adheres to the community's bylaws, its actions are unauthorized. She proposed creating her own "faux board of directors" without an election and then letting the court determine which board had "condo association administration powers." The circuit court denied the cross-motions because there was a material fact dispute.

¶ 8 The association's claim proceeded to a one-day bench trial in January 2022, which the circuit court described as follows in its written judgment order. The association's only witness was Fontana, who testified that for 29 years, she had been a unit owner and the association's president.

Fontana testified about Okoye's financial obligations to the association and her failure to meet them. On cross-examination, Fontana was asked about her governance of the association's meetings between 2018 and 2021, and in particular, the election of the board of managers. This cross-examination established that Fontana, in her capacity as president, "failed to strictly adhere to the governance requirements set forth in the Declaration and the Condominium Property Act for the annual meetings and elections held in 2018, 2019, and 2020." The circuit court did not describe what those "governance requirements" were and the record on appeal lacks a verbatim transcript or bystander's report of the proceedings from which we might glean those details. Okoye's cross-examination of Fontana did not address Okoye's alleged nonpayment of assessments or the arrearages at issue by the association's complaint. Okoye's five witnesses included the two other members of the association's three-person board of managers, two other unit owners, and Okoye herself. Melissa Huber testified that she had been on the board since 2017 and that written ballots were first used in December 2020. (The record shows that Huber was the board's secretary.) Alexander Stoilkov testified that he is the association's treasurer. Amed Elhamaidi[1] testified that has been a unit owner "for four years," but that he had never attended a board meeting or "been tendered a ballot." Also, "he asked to be on the Board but was not accepted in 2019." Vanessa Villareal testified to being an "association member for three years" and said that the 2020 election was "the only election she was tendered a ballot." Okoye testified that she became a unit owner in 2018 and that "there is no Board of Managers and "Mary Fontana is the only person running everything." She also testified that she made an assessment payment in January 2020, "but [her testimony] was unclear on the manner of payment."

[1] Presumably affiant "Ahmed El Houmaidi" and trial witness "Amed Elhamaidi" are the same person.

¶ 9 The circuit court gave the parties time to tender legal memos. Okoye's memo is largely incomprehensible, but it concerned election procedures. She relied on only one case, "*Palm v. 2800 Lake Shore Drive Condo. Ass'n*, 10 N.E.3d 307, 335," pinpointing a portion of the opinion which indicates that board members are protected by the business judgment rule. It is unclear how this principle might have related to the trial evidence. She contended that the evidence showed "the statutory requirements were not upheld and this association does not have a valid Board of Directors," there was "a divide with the owners" and if the association were to prevail, she would call her own board election so that a future court could decide which of two boards was the valid one. We cannot summarize the association's trial memo because we could not locate it in the record compiled for our review.

¶ 10 The court rejected Okoye's contention that "a condominium association, as part of its *prima facie* case in [an eviction and possession] action, must prove that it properly adhered to or complied with the statutory requirements and by-laws governing not-for-profit condominium associations." The court found that neither the Eviction Act (735 ILCS 5/15-1101 *et seq.* (West 2020) (formerly known as the Forcible Entry and Detainer Act)) nor the Condominium Property Act (765 ILS 605/1 *et seq.* (West 2020)) required the condominium association to prove, as part of its eviction action, that it strictly adhered to or even complied with the Hickory Heights bylaws or the condominium association governance statutes. The court found that the association provided Okoye with the statutorily-required demand and notice of the arrearage of her common expenses, late charges, interest, and attorney fees, and that the association's unrebutted evidence showed that she remained liable. It entered judgment in favor of Hickory Heights for $27,660, as well as $18,740 in attorney fees, and $722.45 in costs, and granted Hickory Heights possession of Okoye's

unit, subject to a stay which has lapsed.

¶ 11 In a motion for reconsideration, Okoye reargued the merits of her motion to dismiss and motion for summary judgment, and the significance of the election testimony, and contended that the circuit court "erred in not connecting the adoption of the budget by a duly elected Board with lawful assessments where a judgment could be entered." She contended, "you simply can't get to point B (collecting assessments), without properly completing point A (legally electing a board who *(sic)* then can legally adopt a budget to determine assessments)." The circuit court found that Okoye's motion relied on a mischaracterization of the court's findings. Contrary to Okoye's argument for reconsideration, the court had not found "that there was no validly elected Board" and the court did not rule that adherence with the statutory election and budget provisions were optional instead of mandatory. Rather, the court had ruled that the issues Okoye raised were "not germane" and that her "nonpayment of condominium assessments as recourse for challenging actions of the Board of Managers [was] improper." The court denied Okoye's motion. This appeal followed.

¶ 12 Okoye's appellate arguments are twofold. She first contends that when the circuit court found that arguments about the board's governance were not germane to the eviction action, it erroneously and "completely dismissed the [requirements of the] Condo Act" as "optional." She contends that the court should have held the board to its burden of showing that election procedures were followed such that the board had the right to manage the business of the condominium association. She contends that the court, however, "ignored the [board's] burden" of showing that it was validly constituted and "answered in the negative with no case law or statutory support."

¶ 13 Okoye's second contention is that the circuit court erred in concluding there was a valid

board, despite trial evidence showing that (1) there were two instead of three board members; (2) non-English speaking unit owners were not "allow[ed] *** to partake in the association or Board;" and (3) Fontana was personally unfamiliar with "budget statutory requirements."

¶ 14 Okoye is not disputing her obligation to share in the condominium community's common expenses, the evidence of her financial liability, the amount calculated and entered as a money judgment, or the validity of the order for possession.

¶ 15 Because our review as to whether Hickory Heights was entitled to judgment implicates the Eviction Act (735 ILCS 5/15-1101 *et seq*. (West 2020)) and the Condominium Property Act (765 ILCS 605/1 *et seq*. (West 2020), the *de novo* standard of review is controlling. *Spanish Court Two Condominium Ass'n v. Carlson*, 2014 IL 115342, ¶ 13.

¶ 16 Although Okoye has previously disputed the board's "capacity to sue" and authority to administer the association's affairs, for the first time on appeal, she uses the word "standing" and cites two cases regarding that principle. She does not, however, develop any argument regarding the concept of standing.

¶ 17 We note that the doctrine of standing requires "a plaintiff to have some real interest in [the] cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy. *In re Estate of Zivin*, 2015 IL App (1st) 150606, ¶ 14 (citing 59 Am. Jur. 2d Parties, §§ 26-29 (Database updated November 2015)).

> " 'To have standing, a [claimant] must present an actual controversy between adverse parties and, as to the controversy, the [claimant] must not be merely curious or concerned but must possess some personal claim, status, or right, a distinct and palpable injury which is fairly traceable to the [respondent's] conduct and substantially likely to be redressed by

the grant of such relief.' " *Estate of Zivin*, 2015 IL App (1st) 150606, ¶ 14 (quoting *Potter v. Ables*, 242 Ill. App. 3d 157, 158 (1993)).

¶ 18 Section 9.1(b) of the Condominium Property Act states: "The board of managers shall have standing and capacity to act in a representative capacity in relation to matters involving the common elements or more than one unit, on behalf of the unit owners, as their interests may appear." 765 ILCS 605/9.1(b) (West 2020).

¶ 19 Having reviewed Okoye's motion to dismiss, affirmative defenses, motion for summary judgment, trial memorandum, and motion for reconsideration the judgment order, we find that Okoye waived the issue of standing.

¶ 20 For instance, Okoye's motion to dismiss was based on nonexistent statutes, no authority regarding the principle of standing, and no mention of "standing." She stated that the action should be dismissed because "the Plaintiff does not have the legal capacity to sue pursuant to 735 ILCS 5/2-619(2)." Presumably Okoye intended to cite section 5/2-619*(a)*(2) of the Code of Civil Procedure (emphasis added). 735 ILCS 5/2-619(a)(2) (West 2020). That statute enumerates nine defects or defenses that justify the involuntary dismissal of an action, and the second of those nine is when "the plaintiff does not have legal capacity to sue or *** the defendant does not have legal capacity to be sued." 735 ILCS 5/2-619(a)(2) (West 2020). The "legal capacity to sue or be sued" generally refers to the status of the party as an incompetent, infant (*Patterson Heating & Air Conditioning Corp. v. Durable Construction Co.*, 3 Ill. App. 3d 444, 446 (1972)), or voluntary unincorporated association of individuals (*American Federation of Technical Engineers, Local 144 v. La Jeunesse*, 63 Ill. 2d 263, 266 (1976); see *Perkins, Fellows & Hamilton v. State*, 4 Ill. Ct. Cl. 197, 197 (1921) (every municipal corporation has the power to sue and be sued and the power

need not be expressly granted)).

¶ 21 In contrast, a standing argument is properly asserted pursuant to section 2-619(a)(9) of the Code—that is, pursuant to the ninth subsection of the statute. *Trzop v. Hudson*, 2015 IL App (1st) 150419 ¶ 65 ("Illinois courts have repeatedly held that a lack of standing qualifies under the ninth listed ground: an 'affirmative matter avoiding the legal effect of or defeating the claim.' ") (citing *Glisson v. City of Marion*, 188 Ill. 2d 211, 220 (1999) ("Lack of standing is an 'affirmative matter' that is properly raised under section 2-619(a)(9)"). Having failed to cite the proper procedural statute for challenging standing, any authority whatsoever regarding standing, or even using the term "standing," Okoye then cited two nonexistent sections of the Condominium Property Act, "765 ILCS 605/17(E)(11)" and "765 ILCS 605/17(E)(10)." Presumably she meant 765 ILCS 605/18(a)(11) (West 2020), which concerns the contents of condominium bylaws and provides "that no member of a board or officer shall be elected for a term of more than 2 years, but that officers and board members may succeed themselves;" and 765 ILCS 18(a)(10) (West 2020), which is another paragraph of the statute concerning the contents of condominium bylaws and provides "that the board shall meet at least 4 times annually." She gave an accurate citation for a third section, 765 ILCS 605/18(a)(1) (West 2020), which also concerns the contents of condominium bylaws and provides in relevant part, "The election from among the unit owners of a board of managers, the number of persons constituting such board, and that the terms of at least one-third of the members of the board shall expire annually[.]"

¶ 22 Okoye argued for dismissal because, although the suit concerned the payment of assessments, she contended there was no board of managers, no budget, and no assessments. Okoye, who purchased her condominium unit in 2018, provided a conclusory affidavit stating that

the association had not held an annual meeting or election since at least 2017 and that there were no valid meeting minutes since at least 2017.

¶ 23 Understandably, the plaintiff association did not construe Okoye's motion to dismiss as one regarding standing. It responded in part, "Perhaps the most glaring problem with Defendant's affidavit is that she purchased her Unit in September of 2018, yet she ostensibly knows there were no meetings, budgets or elections in 2018 prior to her purchase. She provides no explanation for these questionable statements." Furthermore, "She does not state that she requested records that were not produced. She does not identify how she has personal knowledge of the omission of certain acts or non-existence of certain records to which she attests." As we summarized above, the association's response included an affidavit from Mary Fontana, indicating that Fontana was elected to the association's presidency during a monthly meeting in December 2019 and that Okoye had even attended the meeting, and that the association does maintain an annual budget.

¶ 24 The circuit court also did not construe Oyoke's argument for dismissal to be one of standing. After oral argument, the court determined there was a material fact dispute and that the "issue of association governance and matters related thereto does not serve to defeat the legal capacity of the association to sue or be sued, to complain and defend, in its corporate name."

¶ 25 Okoye then answered the complaint, including two affirmative defenses, neither of which was "standing."

¶ 26 Okoye's motion for summary judgment did not mention standing. She discussed the 2020 election. She made vague references to the Condominium Property Act (*i.e.*, Okoye cited section one of the statute, which only states the short title of act, for the proposition that "Illinois law is clear that condominium associations must hold annual elections for the Board of Directors").

Okoye relied on two cases in which valid boards had taken unauthorized actions. In *Palm*, 2014 IL App (1st) 111290, the condominium board, among other things, had meetings that were not open to the general association and voted by email without having prior approval from the association to vote electronically, so the circuit court entered a declaratory judgment that the board erred and enjoined the board from continuing those practices. The issue in the subsequent case of *Alliance Property Management*, 2015 IL App (1st) 150169, was the board's authority to enter into a three-year contract with a real estate management company, despite a bylaw that limited the maximum duration of contracts to two years. The court discussed *Palm* and similar cases regarding boards that exceeded their authority and affirmed the circuit court's determination that the contract was void and unenforceable in a breach of contract action by the property manager. Okoye came to the conclusion that there was a "faux board of directors *** administer[ing] the property" and that she was entitled to summary judgment on the suit.

¶ 27 In its cross-motion, the association argued that Okoye's nonverified answer was an insufficient response to the association's verified complaint; Okoye was relying largely on conclusory statements that the suit was "illegal" because there was no board; and that the board's affidavit and meeting minutes clearly established that the board had been elected.

¶ 28 The circuit court denied the parties' cross-motions for summary judgment because both sides made allegations and argument about the veracity of their opponent's affidavits.

¶ 29 As we summarized above, the matter proceeded to trial. There is no indication in Okoye's legal memorandum or the trial judge's ruling that Okoye made an issue of the board's standing.[2]

[2] We acknowledge that the circuit court's judgment order includes one iteration of the word "standing." But given that Okoye had never argued or cited precedent regarding standing,

¶ 30 Okoye's motion for reconsideration failed to include a recognizable argument about standing.

¶ 31 In her appellate reply brief, Okoye expresses incredulity at the association's response that standing is a newly raised argument on appeal. She contends that there is a "thorough record showing standing as the primary basis of all of the Defendant's arguments ever since the Motion to Dismiss." We emphatically disagree. Okoye's argument regarding the board's authority to collect assessments has consistently been read by all involved in the case as an attempt to nullify the suit regarding her unmet obligation to the association by arguing that the board had not performed its obligations.

¶ 32 Standing to sue is an issue which can be waived when it is not timely raised in the circuit court. *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 508 (1988) ("lack of standing in a civil case is an affirmative defense, which will be waived if not raised in a timely fashion in the trial court"); *Countrywide Home Loans Servicing, LP v. Clark*, 2015 IL App (1st) 133149, ¶ 38 ("Because Clark raises the affirmative defense of Bank of America's lack of standing for the first time on appeal, she has forfeited review of that claim by this court."); *Rothner v. City of Chicago*, 66 Ill. App. 3d 428, 433 (1978). "The rule is well established that matters not raised or presented in the trial court cannot be urged for the first time in a reviewing court." *Rothner*, 66 Ill. App. 3d at 433 (1978) (quoting *Ray v. City of Chicago*, 19 Ill. 2d 593, 602 (1960)). We find

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particularly in her trial memo, we read that word in the context of the record on appeal as shorthand for Okoye's nullification defense:

> "Defendant did not submit evidence or argument that Defendant's liability for unpaid assessments as introduced in Plaintiffs case-in- chief is either invalid or extinguished by the Board's failure to strictly adhere to the statutory governance or by-laws. The Defendant argues that the failure of the Board to strictly adhere to the statutory governance or by-laws defeats the Board's standing to bring this Forcible Entry and Detainer action."

that the record indicates that Okoye waived the issue of standing by failing to raise it prior to this appeal.

¶ 33 Furthermore, although Okoye peppers pages 8 and 9 of her brief with the word "standing" and cites two cases that discuss the concept, she fails to develop any reasoned argument of her own. Her argument is not a true standing argument and she does not advocate for this court to conclude that the board lacked standing to sue.

> "A reviewing court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented [citation], and it is not a repository into which an appellant may foist the burden of argument and research [citation]; it is neither the function nor the obligation of this court to act as an advocate or search the record for error [citation]." *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993); *Daniel v. Aon Corp.*, 2011 IL App (1st) 101508, ¶ 29 (finding waiver under Supreme Court Rule 341(h)(7) (eff. July 1, 2008) where appellant set out "general contentions" but not "support in fact, law or the pages of the record relied upon").

¶ 34 This is a second and independent reason, that we find that Okoye has waived appellate review of the concept of the plaintiff association's standing.

¶ 35 This brings us to Okoye's argument that the circuit court erred in rejecting her defense as not germane to an eviction action. We were not provided with a transcript of the bench trial. However, the circuit court's judgment order shows that the "only issue [that Okoye] presented *** in defense of [Hickory Height's] action [was]: whether a condominium association, as part of its *prima facie* case in [an eviction] action, must prove that it properly adhered to or complied with the statutory requirements and by-laws governing not-for-profit condominium associations." The

only precedent Okoye cited in her trial memo was *Palm*, 2014 IL App (1st) 111290.

¶ 36 A similar argument was rejected in *North Spaulding Condominium Ass'n v. Cavanaugh*, 2017 IL App (1st) 160870. The defendant unit owners, the Cavanaughs, argued that the plaintiff, North Spaulding Condominium Association, as part of its *prima facie* case for recovery of unpaid assessments and possession, was required "to prove that it had properly noticed and conducted an association board meeting where a vote was taken to authorize the [eviction] action." *North Spaulding Condominium Ass'n*, 2017 IL App (1st) 160870, ¶ 23. Like Okoye, the Cavanaughs relied primarily on *Palm*, 2014 IL App (1st) 111290. More specifically, the Cavanaughs argued that North Spaulding needed to prove:

> " '(a) first, that a meeting was held to consider whether or not to institute collection proceedings against [the Cavanaughs]; (b) that a vote was taken during an open portion of that meeting by [North Spaulding] to institute litigation; and (c) that North Spaulding gave proper notice of such meeting where collection proceedings were discussed and/or voted on to [the Cavanaughs] within forty-eight hours before the meeting convened.' The Cavanaughs [argued] that under section 18(a)(9) of the Condominium Property Act, all meetings of the board of managers for a condominium association must be open to any unit owner with proper notice, and that all votes must be made at an open meeting." *North Spaulding Condominium Ass'n*, 2017 IL App (1st) 160870, ¶ 19.

¶ 37 Like Okoye, the Cavanaughs did not dispute evidence on their nonpayment, but instead argued that the claim failed as a matter of law because the association had not proven it took preliminary steps to bringing suit. *North Spaulding Condominium Ass'n*, 2017 IL App (1st) 160870, ¶ 19.

¶ 38 The Eviction Act outlines the necessary steps and proceedings to determine the right and restoration of possession to land and property. In order to prevail in an eviction action regarding condominium property, the association must establish that "assessments are unpaid, how much is due, and whether reasonable attorney fees should be awarded to the association if successful." *North Spaulding Condominium Ass'n,* 2017 IL App (1st) 160870, ¶ 25. The plaintiff association must prove its allegations by a preponderance of the evidence. 735 ILCS 5/9-109.5 (West 2018).

¶ 39 Both the Eviction Act and the Condominium Act focus on the unit owner's obligation to shoulder his or her fair of common expenses and the association's inability to forgo their collection for the good of the condominium community. Courts applying those statutes in this context have determined that any issues outside the scope of these limited financial issues are irrelevant to the proceedings. For instance, section 9-111 of the Eviction Act specifies:

> "(a) As to property subject to the provisions of the 'Condominium Property Act,' approved June 20, 1963, as amended, when the action is based upon the failure of an owner of a unit therein to pay when due his or her proportionate share of the common expenses of the property, or of any other expenses lawfully agreed upon or the amount of any unpaid fine, and if the court finds that the expenses or fines are due to the plaintiff, the plaintiff shall be entitled to the possession of the whole of the premises claimed, and the court shall enter an eviction order in favor of the plaintiff and judgment for the amount found due by the court including interest and late charges, if any, together with reasonable attorney's fees, if any, and for the plaintiff's costs." 735 ILCS 5/9-111 (West 2020).

¶ 40 Section 9-106 of the Eviction Act *expressly* limits the matters that may be raised in an eviction action. That section states: "no matters not germane to the distinctive purpose of the

proceeding shall be introduced by joinder, counterclaim or otherwise." 735 ILCS 5/9-106 (West 2020). The statute does not define "germane," however, a long body of caselaw that developed regarding leased property indicated that the "distinctive purpose" of an eviction action was to gain possession of property unlawfully withheld. *Spanish Court*, 2014 IL 115342, ¶ 15 (citing *Jack Spring, Inc. v. Little*, 50 Ill. 2d 351, 357-58 (1972)). When the legislature brought condominium property within the scope of the eviction statute, it provided that an association may (1) obtain a money judgment for a unit owner's unpaid common expenses or any other expenses lawfully agreed upon and (2) obtain possession of the property. *Spanish Court*, 2014 IL 115342, ¶ 15. The only matters that are "germane" are matters that are "closely tied to the plaintiff's claim for possession." *Spanish Court*, 2014 IL 115342, ¶ 16.

¶ 41 The Eviction Act anticipates that after taking possession, the association will recoup the overdue assessments by renting out the noncompliant owner's unit. Section 9-111.1 of the Eviction Act provides that if the condominium association opts to lease out the unit, it "shall first apply all rental income to assessments and other charges sued upon in the eviction action plus statutory interest on a monetary judgment, if any, attorneys' fees, and court costs incurred." 735 ILCS 5/9-111.1 (West 2020). Additional rental income shall then be applied "to other expenses lawfully agreed upon (including late charges), any fines and reasonable expenses necessary to make the unit rentable, and lastly to assessments accrued thereafter until assessments are current." 735 ILCS 5/9-111.1 (West 2020).

¶ 42 "A unit owner does not cease to be a unit owner even if dispossessed of his or her unit" and "an order of possession in favor of an association is intended to be temporary, not permanent, 'with possession eventually returning to the unit owner.' " *Spanish Court*, 2014 IL 115342, ¶ 23

(citing sections of the Eviction Act and *Knolls Condominium Ass'n v. Harms*, 202 Ill. 2d 450, 457 (2002)). "Any surplus [rental income] shall be remitted to the unit owner." 735 ILCS 5/9-111.1 (West 2020

¶ 43 Moreover, the duties of an association under the condominium declaration and bylaws and the Condominium Act are set out as independent of the duty of a condominium unit owner to pay assessments. *Spanish Court*, 2014 IL 115342, ¶¶ 25-26. The Condominium Act specifies that the "association shall have no authority to forbear the payment of assessments by any unit owner." 765 ILCS 605/18(o) (West 2018). As for the unit owner, that person "may not assign, delegate, transfer, surrender, or *avoid* the duties, responsibilities, and liabilities of a unit owner under this Act" and that an attempt to do so "shall be deemed void." (Emphasis added.) 765 ILCS 605/18(q) (West 2018). Together, these statutory provisions "demonstrate that a unit owner's liability is not contingent on the association's performance" of its own obligations. *Spanish Court*, 2014 IL 115342, ¶ 26. "The unit owner cannot 'avoid' the duty to pay assessments, *i.e.*, the duty cannot be annulled, vacated, defeated, or invalidated *** and the association cannot refrain from enforcing that obligation." *Spanish Court*, 2014 IL 115342, ¶ 26.

> "The association, which is comprised of all the unit owners (765 ILCS 605/2(o) (West 2008)), 'is responsible for the overall administration of the property through its duly elected board of managers.' 765 ILCS 605/18.3(o) (West 2008). The officers and members of the board must 'exercise the care required of a fiduciary of the unit owners.' 765 ILCS 605/18.4 (West 2008). The business of the board, which includes, *inter alia*, the care and upkeep of the common elements, the employment of necessary personnel, the acquisition of appropriate insurance, and the payment of real property taxes (765 ILCS 605/18.4(a),

(e), (f), (k) (West 2008)), is funded through the unit owners' assessments. The assessments are derived from the annual budget prepared by the board. See 765 ILCS 605/18(a)(6) to (8) (West 2008) (discussing procedure for adoption of the 'proposed annual budget and regular assessments pursuant thereto'). The association's ability to administer the property is dependent upon the timely payment of assessments, and 'any delinquency in unit owners' payments of their proportionate share of common expenses may result in the default of the association on its obligations or the curtailment of association directed services,' impacting not only the delinquent unit owner, but all association members. 1 Gary A. Poliakoff, The Law of Condominium Operations § 5:03 (1988 and Supp. 2012-13). Because of the interdependence that exists among unit owners, the condominium form of property ownership only works if each unit owner faithfully pays his or her share of the common expenses. When a unit owner defaults in the payment of his or her assessments, the resulting forcible entry and detainer action is thus brought 'for the benefit of all the other unit owners.' 765 ILCS 605/9.2(a) (West 2008). See also 765 ILCS 605/9(h) (West 2008) (statutory lien for common expenses 'shall be for the benefit of all other unit owners'). *Spanish Court*, 2014 IL 115342, ¶ 30.

¶ 44 In an eviction action, permitting a unit owner's duty to pay assessments to be nullified by a defense regarding the association's purported failure to properly perform its duties would "threaten the financial stability of condominium associations throughout this state." *Spanish Court*, 2014 IL 115342, ¶ 31.

" 'Whatever grievance a unit owner may have against the condominium trustees must not be permitted to affect the collection of lawfully assessed common area expense charges.

> A system that would tolerate a unit owner's refusal to pay an assessment because the unit owner asserts a grievance, even a seemingly meritorious one, would threaten the financial integrity of the entire condominium operation. For the same reason that taxpayers may not lawfully decline to pay lawfully assessed taxes because of some grievance or claim against the taxing governmental unit, a condominium unit owner may not decline to pay lawful assessments." *Spanish Court*, 2014 IL 115342, ¶ 31 (quoting *Trustees of the Prince Condominium Trust v. Prosser*, 412 Mass. 723, 592 N.E.2d 1301, 1302 (1992)).

¶ 45 Okoye's argument regarding the sufficiency of Hickory Heights's *prima facie* case is essentially no different from the argument that was rejected in *North Spaulding Condominium Association*. We find that contrary to Okoye's argument at trial, Hickory Heights was under no burden to prove as part of its *prima facie* case "that it properly adhered to or complied with the statutory requirements and by-laws governing not-for-profit condominium associations," and that the circuit court was correct in finding that the steps the association took prior to filing suit were not germane to its eviction action. Furthermore, Okoye's reliance on *Palm*–much like the Cavanaughs' reliance on *Palm* in *North Spaulding Condominium Association*–was misplaced, as *Palm* was not an eviction action and did not address whether an essential element of a condominium association's eviction action includes proving anything other than whether assessments are unpaid, how much is due, and whether reasonable attorney fees should be awarded to the association if successful.

¶ 46 Okoye's second main contention is that the circuit court erred in concluding there was a valid board, even though the trial evidence showed there were not enough board members, non-English speakers were not welcome, and Fontana could not recall certain statutory requirements

about the association's budget. To the extent this argument is different from Okoye's "standing" argument, it is unpersuasive because the circuit court never found that the board was valid or invalid. Okoye did not submit a transcript of the proceedings, bystander's report, or agreed statement of facts. The only record of the trial testimony is the judgment order in which the trial judge summarized what was stated during the direct and cross examinations. There is no indication in the judgment order that Okoye elicited any testimony about the number of board members or a language(s) they spoke, or whether Fontana recollected any particular statutes while she was testifying. More importantly, in rejecting Okoye's motion to reconsider the judgment order, the trial judge specified that he "did not find or order 'that there was not a validly elected Board.' " It seems, therefore, that Okoye is challenging a ruling that does not exist.

¶ 47 Okoye is not disputing the association's evidence regarding the common expenses that were assessed, her failure to pay them, or the amount that she owed, including attorney fees.

¶ 48 We conclude the circuit court did not err in its judgment.

¶ 49 However, in a petition for rehearing, Okoye argues that two unpublished orders, *4043 S. Drexel Condominium Ass'n v. Burke*, 2022 IL App (1st) 210666-U and *Morgan's Orchard Lake Homeowners' Ass'n v. Morgan*, 2022 IL App (3d) 220006-U support her standing argument. We have found, however, that Okoye waived the issue of the association's standing by failing to assert it prior to this appeal. Accordingly, we reject her argument for rehearing.

¶ 50 The circuit court's judgment is affirmed.

¶ 51 Affirmed.