

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

WILMINGTON SAVINGS FUND SOCIETY, FSB, not in	)	
its individual capacity but solely as owner trustee of	)	Appeal from the
The Aspen Holdings Trust, a Delaware statutory trust,	)	Circuit Court of
	)	Cook County
Plaintiff-Appellee/Cross-Appellant,	)	
	)	
v.	)	Nos. 21 CH 01379 &
	)	22 CH 10458 (cons.)
MELISSA CHOJNACKI a/k/a MELISSA POPE,	)	
MATTHEW POPE, RICHARD POPE, and ROSEMARY	)	
C. POPE,	)	Honorable
	)	James T. Derico, Jr.,
Defendants-Appellants/Cross-Appellees.	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices McBride and Van Tine concurred in the judgment.

ORDER

- ¶ 1 *Held:* Vacating circuit court orders where the plaintiff filed motions in consolidated cases which were previously dismissed.
- ¶ 2 Plaintiff Wilmington Savings Fund Society, FSB (Wilmington), not in its individual capacity but solely as owner trustee of The Aspen Holdings Trust, a Delaware statutory trust, filed a foreclosure action in the circuit court of Cook County against defendants Melissa Chojnacki a/k/a Melissa Pope (Melissa), Matthew Pope (Matthew), Richard Pope (Richard), and

Rosemary Pope (Rosemary). Wilmington, as the second lienholder, subsequently filed a motion to consolidate its action with a foreclosure action filed by PNC Bank, National Association (PNC), which was the first lienholder on the same property. Approximately six months after the cases were consolidated, PNC filed a voluntary dismissal motion, and the “cause” was dismissed without prejudice.

¶ 3 After more than a year of inactivity, Wilmington filed multiple motions in the consolidated cases, which the defendants moved to strike. The defendants maintained Wilmington failed to timely commence a new action, as required under section 13-217 of the Code of Civil Procedure (Code) (735 ILCS 5/13-217 (West 1994)),¹ and was thus precluded from proceeding in the dismissed matter. The circuit court ultimately dismissed Wilmington’s complaint with prejudice, finding its claims were barred by the applicable statute of limitations.

¶ 4 The defendants and Wilmington filed cross-appeals, which have been consolidated. The defendants primarily contend that the circuit court should have stricken all filings made by Wilmington after the voluntary dismissal. Wilmington asserts, in part, that the circuit court erred in its findings regarding the statute of limitations. For the reasons discussed below, we conclude that the circuit court lacked jurisdiction to rule on the post-dismissal motions and thus vacate the applicable orders.

¶ 5 BACKGROUND

¶ 6 *The Defendants and the Property*

¶ 7 Melissa purchased a single-family residence in the 100 block of 16th Street in Wilmette,

¹ Public Act 89-7, which amended section 13-217 effective March 1995 (Pub. Act 89-7 (eff. Mar. 9, 1995)), was held unconstitutional by the Illinois Supreme Court in *Best v. Taylor Machine Works*, 179 Ill. 2d 367 (1997). The effective version of section 13-217 is thus the version which preceded the amendments to Public Act 89-7. *Eighner v. Tiernan*, 2021 IL 126101, ¶ 1 n.1.

Illinois (the property) for \$350,000 in October 2005. To finance the purchase, Melissa borrowed \$280,000 from a predecessor to PNC (discussed further below) and \$70,000 from a predecessor to Wilmington. Melissa executed a 20-year home equity line of credit (HELOC) agreement and promissory note with Wilmington's predecessor on October 7, 2005; the credit limit of Melissa's HELOC account was \$70,000. The debt was secured by an equity cash line mortgage on the property, recorded on October 11, 2005.

¶ 8 Melissa and Matthew, who married in November 2005 and resided at the property, were eventually unable to make the payments due on the HELOC. According to the defendants, Matthew's parents—Richard and Rosemary—used a home equity loan on their own (separate) residence to pay off the HELOC on the property in full in October 2006. Melissa and Matthew subsequently executed a promissory note and affidavit, agreeing to repay the \$70,000 to Richard and Rosemary and granting them a security interest in the property. Although not entirely clear, the record also suggests that Richard and Rosemary may have recorded a mortgage against the property in 2019 to secure a \$600,000 note.

¶ 9 *Wilmington Lawsuit*

¶ 10 In March 2021, Wilmington filed a complaint in the circuit court of Cook County to foreclose the mortgage against the defendants (case number 21 CH 01379). The complaint named Melissa and Matthew as the property owners; Richard and Rosemary were included as defendants based on their security interest in the property.

¶ 11 The defendants filed an answer and affirmative defenses, wherein they alleged, in part, that the debt to Wilmington was paid in full by Richard and Rosemary in October 2006. In its reply to the affirmative defenses, Wilmington denied that the indebtedness had been fully satisfied.

¶ 12

Consolidation with PNC Lawsuit

¶ 13 On October 21, 2022, PNC filed a foreclosure complaint in the circuit court of Cook County (case number 22 CH 10458), alleging outstanding indebtedness in the amount of \$186,181.68. Melissa and Matthew were named as the property owners, and Richard, Rosemary, and Wilmington were included as defendants based on their security interests in the property.

¶ 14 In November 2022, Wilmington filed a motion to consolidate, requesting consolidation of the action filed by PNC, as the holder of the first mortgage (22 CH 10458), with the action filed by Wilmington, as the holder of the second mortgage (21 CH 01379). Wilmington asserted, in part, that the two cases “are premised on similar factual premises—foreclosure of the mortgages on the Property; involve the same parties; and involve the same subject Property and borrowers.” According to Wilmington, the consolidation of the two cases promoted judicial economy and would “result in a consistent outcome for the parties and the Property.”

¶ 15 Wilmington’s motion was granted in an order entered on December 28, 2022, and the cases were consolidated.

¶ 16

Dismissal and Subsequent Filings

¶ 17 On May 12, 2023, PNC filed a motion to dismiss the “above-entitled cause” without prejudice, as its loan was reinstated and it did not wish to proceed with the foreclosure. The caption of the motion referred to the consolidated case numbers. The motion was sent to Wilmington and the other parties, and no responses were filed. In an order entered on July 3, 2023—with the consolidated case numbers in the caption—the circuit court dismissed “this cause” without prejudice and struck the judgment hearing.

¶ 18 The record shows that there was no activity in the consolidated cases for approximately 14 months after the entry of the dismissal order. On August 30, 2024, Wilmington filed multiple

motions in the consolidated cases, including a motion for judgment for foreclosure and sale, a motion to appoint a selling officer, and a motion for summary judgment.

¶ 19 The defendants filed a motion to strike and dismiss the motions filed by Wilmington. The defendants argued, in part, that the consolidated cases were dismissed without prejudice on July 3, 2023, and Wilmington failed to commence a new action, as required under section 13-217 of the Code (735 ILCS 5/13-217 (West 1994)). The defendants thus maintained that proceeding in the dismissed matter was improper. They alternatively argued that Wilmington never answered or moved to strike an amended answer and affirmative defenses filed by the defendants in April 2023. The defendants also maintained that, even if the affirmative defenses were not deemed admitted, the defendants' uncontradicted affidavits demonstrated that Wilmington had been fully repaid in October 2006. Finally, the defendants asserted that Wilmington's claims were barred by the 10-year statute of limitations for mortgage foreclosures, as provided in section 13-115 of the Code (735 ILCS 5/13-115 (West 2024)).

¶ 20 In its response to the motion to strike and dismiss, Wilmington contended, in part, that the consolidation was effectuated for the purpose of judicial economy and therefore the dismissal was solely as to the PNC case (22 CH 10458). Wilmington also argued that there was no evidence of loan repayment and that its complaint was timely filed, as the last date of default occurred in October 2013. In their reply, the defendants reiterated that "Wilmington cannot prosecute its Motions, or anything else under this caption."

¶ 21 In an order entered on February 28, 2025, the circuit court found that Wilmington's complaint was time-barred, as a five-year limitations period applied to the note under section 13-205 of the Code (735 ILCS 5/13-205 (West 2024)). The circuit court thus dismissed the action with prejudice. Wilmington filed a motion to reconsider, arguing that the circuit court

erroneously applied a 5-year limitations period instead of a 10-year period.

¶ 22 The circuit court entered an order denying the motion to reconsider on April 22, 2025.

The order also provided that the defendants' motion to dismiss was "denied as moot, without ruling on the merits[,] and the arguments therein are hereby preserved if [Wilmington] appeals."

The defendants and Wilmington each filed a notice of appeal; their appeals have been consolidated before this court.

¶ 23 ANALYSIS

¶ 24 The defendants contend on appeal that the circuit court should have stricken all of Wilmington's filings in the consolidated cases commencing in August 2024, as the cases had been voluntarily dismissed in July 2023. The defendants alternatively maintain that dismissal was proper on the additional grounds raised in their motion to strike and dismiss, including the full payment of the debt to Wilmington in 2006. In its cross-appeal, Wilmington asserts that its claims were timely under the 10-year limitations period applicable to mortgage foreclosures.

¶ 25 As a threshold matter, we must consider our own jurisdiction. *Johansson v. Glink*, 2021 IL App (1st) 210297, ¶ 35 (observing that an appellate court panel "always has an independent duty to consider its own jurisdiction"). Although an appellate court has no authority to address the substantive merits of a judgment entered by the circuit court without jurisdiction, that "does not mean that the appellate court has no jurisdiction at all." *People v. Bailey*, 2014 IL 115459,

¶ 29. "If that were the case, the appellate court would have no means of exercising the authority conferred on it by law to review, recognize, and correct any action that exceeded the trial court's jurisdiction." *Id.* Where the circuit court lacked jurisdiction to enter a judgment, our jurisdiction is "limited to considering the issue of jurisdiction below." *Id.* See also *Colony Country on Wimbolton Condominium Ass'n v. Porter*, 2024 IL App (1st) 230124-U, ¶ 17.

¶ 26 To determine whether the circuit court exceeded its jurisdiction, we begin with the consolidation of PNC’s action with Wilmington’s action in 2022. Section 2-1006 of the Code provides that “actions pending in the same court may be consolidated, as an aid to convenience, whenever it can be done without prejudice to a substantial right.” 735 ILCS 5/2-1006 (West 2022). Illinois courts have recognized that consolidation has three different applications:

“(1) where several actions are pending involving substantially the same subject matter, the court may stay proceedings in all but one and see whether the disposition of one action may settle the others thereby avoiding multiple trials on the same issue; (2) where several actions involve an inquiry into the same event in its general aspects, the actions may be tried together, but with separate docket entries, verdicts, and judgments, the consolidation being limited to a joint trial; and (3) where several actions are pending which might have been brought as a single action, the cases may be merged into one action, thereby losing their individual identity, to be disposed of in one suit.” *Ad-Ex, Inc. v. City of Chicago*, 247 Ill. App. 3d 97, 102-03 (1993).

In the instant case, Wilmington did not request—and the circuit court did not impose—any limitations on the scope of the consolidation. *Cf. In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 656-67 (2009) (finding that consolidated foreclosure and marital dissolution cases “retain[ed] their distinct identities” where the consolidation was “for purposes of convenience and economy only”); *Shannon v. Stookey*, 59 Ill. App. 3d 573, 577 (1978) (observing that the consolidation was “solely limited to an integration of evidence at a joint trial”).

¶ 27 PNC subsequently filed a voluntary dismissal motion, which the circuit court granted. The caption of the dismissal order listed “CASE NO. 22-CH-10458 CONSOLIDATED WITH 21-CH-01379.” The dismissal order provided that the “cause” was dismissed without prejudice;

no distinction was made between PNC and Wilmington. As recognized by our supreme court, an order allowing a voluntary dismissal is a final judgment for purposes of section 2-1203(a) of the Code. 735 ILCS 5/2-1203(a) (West 2022). See *Eighner v. Tiernan*, 2021 IL 126101, ¶ 24; *Hawes v. Luhr Brothers, Inc.*, 212 Ill. 2d 93, 105-06 (2004). Section 2-1203(a) “grants a plaintiff the right to file a motion to vacate a voluntary dismissal order and reinstate the case up to 30 days after the date of the dismissal order, which the circuit court has the discretion to grant or deny.” *Eighner*, 2021 IL 126101, ¶ 24. As Wilmington did not file such a motion, the circuit court lost jurisdiction 30 days after the entry of the voluntary dismissal order. *Id.* ¶ 35. See also *Galaviz v. Mietus Restoration, Inc.*, 2023 IL App (1st) 220514, ¶ 30 n. 6 (noting that “a voluntary dismissal may only be vacated—and the case reinstated—within 30 days of the dismissal order, after which the circuit court loses jurisdiction”). Although not dispositive, we observe that Wilmington’s inaction in the 14 months following the entry of the order appears consistent with an understanding that its lawsuit against the defendants was, in fact, dismissed.

¶ 28 We further note that Wilmington did not avail itself of the “savings statute” under section 13-217 of the Code. *Eighner*, 2021 IL 126101, ¶ 20; 735 ILCS 5/13-217 (West 1994). Section 13-217 “allows a plaintiff to refile a cause of action within one year following the entry of certain dismissal orders or within the remaining period of limitations, whichever is greater.” *Eighner*, 2021 IL 126101, ¶ 20. If Wilmington wished to take advantage of section 13-217 more than 30 days after the entry of the dismissal order when no postjudgment motion was filed, it would have been required to file a new complaint, as the circuit court no longer has jurisdiction over the original case. See *id.* ¶ 25. See also *People v. Hunt*, 2022 IL App (4th) 210001, ¶ 25. Wilmington did not file such a new complaint, instead filing its August 2024 motions in the dismissed consolidated cases.

¶ 29 We thus conclude that the circuit court lacked jurisdiction to address the merits of Wilmington’s claims, and its rulings after the dismissal were void. *Bailey*, 2014 IL 115459, ¶ 28. See also *Colony Country*, 2024 IL App (1st) 230124-U, ¶ 19; *Whitmore v. Joy Auto Tire Repair*, 2022 IL App (1st) 210348-U, ¶ 17. We vacate the circuit court orders entered after August 30, 2024, *i.e.*, when Wilmington improperly attempted to resuscitate its action. *Bailey*, 2014 IL 115459, ¶ 29 (rather than dismiss an appeal where the circuit court lacked jurisdiction to address the merits of a motion, the appellate court should vacate the circuit court’s judgment and order that the motion be dismissed in order to correct any action that exceeded the circuit court’s jurisdiction); Ill. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994) (providing that the reviewing court may “enter any judgment and make any order that ought to have been given or made”).

¶ 30 CONCLUSION

¶ 31 For the reasons discussed above, we vacate the orders entered by the circuit court after August 30, 2024.

¶ 32 Circuit court orders vacated.