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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RICHARD PARILLO,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 14 CH 08351
)	
METROPOLITAN PROPERTIES & ,)	
DEVELOPMENT, INC.)	Honorable
)	Thomas R. Allen,
Defendant-Appellee.)	Judge Presiding.

PRESIDING JUSTICE MASON delivered the judgment of the court.
Justice Fitzgerald Smith and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* Plaintiff's appeal from an order dismissing his complaint for specific performance was moot where plaintiff did not obtain a stay of the order and the real property, which was the subject of the complaint, was sold to a third-party.

¶ 2 Plaintiff-appellant, Richard Parillo, appeals the dismissal of his complaint for specific performance against defendant-appellee Metropolitan Properties & Development, Inc. Parillo sought to compel Metropolitan to convey certain commercial

property pursuant to a real estate contract entered into between Metropolitan and Parillo's assignor, Robert Skahill. Because Skahill failed to make a required deposit of earnest money on the due date, the trial court found that he could not establish his own performance under the contract, an essential element of any claim for specific performance. Parillo failed to obtain a stay of the order dismissing his claim for specific performance and the property was sold to a third party. We dismiss his appeal as moot.

¶ 3 On October 18, 2013, Skahill entered into a contract with Metropolitan to purchase for \$3.1 million property located at 1810 W. Jackson Boulevard in Chicago. The contract called for a total of \$50,000 in earnest money: \$5,000 due on execution of the contract and the remainder due on November 18, 2013, at the expiration of the inspection period provided for under the contract. The contract contained an attorney approval clause that permitted either party to terminate the contract for any reason within six days after its execution. Neither party exercised that right. Skahill made the initial deposit of \$5,000, but never tendered the remaining \$45,000 at any time prior to the filing the suit for specific performance.

¶ 4 On November 25, 2013, Gary Saipe, one of Metropolitan's lawyers wrote to Skahill's counsel, Arnold Landis, declaring a default and terminating the contract based on Skahill's failure to make the second earnest money deposit. The letter further requested Skahill to authorize release to Metropolitan of the \$5,000 initial earnest money deposit. There was no response to the letter. Saipe again wrote to Landis on December 13, 2013, referring to the lack of a response to his previous letter and demanding release of the earnest money. The letter further stated that, failing Skahill's authorization for release of the earnest money, Metropolitan intended to pursue legal action against Skahill

for the initial deposit as well as the second deposit. Again there was no response to the letter.

¶ 5 Skahill never informed Metropolitan that on November 18, 2013, he had assigned the contract to Parillo or that he or Parillo stood ready, willing and able to make the required earnest money deposit. Also on November 18, 2013, Skahill recorded in the Cook County Recorder of Deeds Office a memorandum of agreement referencing the contract between himself and Metropolitan. No notice of this recording was sent to Metropolitan.

¶ 6 On February 19, 2014, following termination of its contract with Skahill, Metropolitan entered into a contract to sell the property to a third party, ReVive Center for Housing & Healing. A closing was scheduled for May 29, 2014.

¶ 7 As promised, on February 11, 2014, Metropolitan commenced suit against Skahill. In its complaint for declaratory judgment,¹ Metropolitan sought a determination that the earnest money provisions of the contract were valid and enforceable and sought recovery of the entire \$50,000 earnest money deposit. Upon learning of Skahill's conduct in recording the memorandum of agreement, Metropolitan amended its complaint to add counts for slander of title and to quiet title. On April 9, 2014, Metropolitan sought injunctive relief to compel Skahill to release the recorded memorandum of agreement.

¹ A declaratory judgment was not the proper vehicle to determine Skahill's obligation to pay earnest money as Metropolitan had declared a default and terminated the contract. Declaratory relief is not available to declare the consequences of past conduct. See *Adkins Energy, LLC v. Delta-T Corp.*, 347 Ill. App. 3d 373, 378 (2004) ("The doctrine of nonliability for past conduct bars an action for declaratory judgment when the conduct that makes the party liable, that is, amenable to suit, has already occurred.").

¶ 8 Metropolitan's motion for a preliminary injunction was originally set for hearing on May 2, 2014. On that day, Landis filed a motion for substitution of judge as of right pursuant to 735 ILCS 5/2-1001 (West 2012) and the matter was transferred to another judge who set the motion for hearing on May 8, 2014. On that day, Landis agreed to release the recording against the property, thus mooting Metropolitan's request for injunctive relief.

¶ 9 A week later, Parillo filed a separate action for specific performance in which he sought to enforce the agreement between Skahill and Metropolitan. The sole relief sought in the complaint was an order directing Metropolitan to specifically perform under the October 18, 2013 contract. On the same day, Landis, who also represented Parillo, filed a *lis pendens* against the property. Parillo's newly filed action was transferred to the chancery division where Metropolitan's action was pending.

¶ 10 Because the *lis pendens* threatened to interfere with the scheduled closing on the sale to ReVive, Metropolitan then filed what it denominated an emergency motion to dismiss the complaint for specific performance. Parillo responded to the motion, which the trial court granted with prejudice on June 26, 2014. We need not summarize the parties' arguments as they are not relevant to the disposition of this appeal, although we note our agreement with the trial court's reasons for dismissing the complaint.

¶ 11 Following the dismissal of his complaint, Parillo neither sought a stay nor posted a bond necessary to stay the judgment and the sale to ReVive closed. Metropolitan argues that, as a result, Parillo's appeal is moot.

¶ 12 Parillo has failed to file a reply brief and, therefore, has not contested the fact that Metropolitan no longer owns the property and has not responded to Metropolitan's

mootness argument.

¶ 13 We agree that Parillo's appeal is moot. Under Illinois Supreme Court Rule 305(b) (eff. July 1, 2004), a nonmoney judgment order may be stayed, generally on application in the first instance to the trial court. A bond or other form of security "shall be required to protect an appellee's interest in property." *Id.* Under subsection (k) of the rule, in the absence of a stay, reversal of the judgment on appeal cannot affect "the right, title, or interest of any person who [was] not a party to the action in or to any real or personal property that [was] acquired after the judgment [became] final." Ill. Sup. Ct. R. 305(k) (eff. July 1, 2004).

¶ 14 The sale of the property to ReVive, a non-party, closed after the judgment dismissing Parillo's complaint became final. In the absence of a stay, " 'an appeal is moot if a specific property, possession or ownership of which is the relief being sought on appeal, has been conveyed to third parties.' " *In re Estate of Pendleton*, 250 Ill. App. 3d 296, 298 (1993) quoting *Town of Libertyville v. Moran*, 179 Ill. app. 3d 880, 886 (1989). Because, as we have noted, the sole relief sought in Parillo's complaint was Metropolitan's performance under the real estate sale contract with Skahill, and because, having conveyed the property to the third party, Metropolitan is incapable of performing and we are unable to afford Parillo any relief, there is no longer any case or controversy and we dismiss Parillo's appeal as moot.

¶ 15 Appeal dismissed.