

2020 IL App (1st) 181748-U
No. 1-18-1748
Order filed December 4, 2020

Fourth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PHILIP J. TIMYAN, individually and as managing)	Appeal from the
member of Riggs Partners, LLC, and as managing)	Circuit Court of
member of Riggs Qualified Partners, LLC, a Delaware)	Cook County.
Limited Liability Company; RIGGS PARTNERS, LLC, a)	
Delaware Limited Liability Company; and RIGGS)	No. 12 L 3078
QUALIFIED PARTNERS, a Delaware Limited Liability)	
Company,)	Honorable
)	Margaret Ann Brennan,
Plaintiffs-Appellants-Cross-Appellees,)	Judge, Presiding.
)	
v.)	
)	
NANCY TIMYAN,)	
)	
Defendant-Appellee-Cross-Appellant.)	

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Gordon and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the circuit court’s entry of summary judgment in favor of defendant where plaintiffs’ first amended complaint and depositions fail to establish the elements of tortious interference with prospective business advantage. We affirm

the circuit court's denial of plaintiffs' motion to file second amended complaint where the proposed pleading failed to cure the defects, was untimely and unfair to defendant and further raised new legal theories. We affirm the circuit court's denial of defendant's motion to file a counterclaim where it failed to state a cause of action and defendant's motion for Rule 137 attorney fees where the record does not establish that plaintiffs' pleadings were filed to harass defendant.

¶ 2 Plaintiffs, Philip Timyan (Philip), Riggs Partners, LLC (RP) and Riggs Qualified Partners, LLC (RQP), (collectively, the plaintiffs), appeal an order of the circuit court of Cook County which granted summary judgment in favor of defendant, Nancy Timyan (Nancy). On appeal, plaintiffs contend that: (1) the circuit court erred in ruling that their claims were barred by the general release in the Timyans' marital settlement agreement; (2) plaintiffs RP and RQP were not parties to the Timyans' mutual release and their claims should not have been barred based on it; (3) evidence adduced during discovery supports and raises a material issue of fact regarding plaintiff's claims of tortious interference with prospective business advantage; (4) the circuit court abused its discretion in denying plaintiffs' motion for leave to file a second amended complaint to conform to proofs. In her cross-appeal, Nancy contends that the circuit court erred in denying her motion for leave to file a counterclaim for abuse of process and also in denying her motion for attorney fees. For the reasons that follow, we affirm the circuit court's entry of summary judgment in favor of Nancy on plaintiffs' claims. We also affirm the circuit court's order denying Nancy leave to file a counterclaim and denying attorney fees in the cross-appeal.

¶ 3 **BACKGROUND**

¶ 4 Plaintiffs filed their initial complaint against Nancy for tortious interference with prospective business and expectancies on March 21, 2012. Nancy responded with a section 2-619 (735 ILCS 5/2-619 (West 2012)) motion to dismiss on August 31, 2012, contending that the general release contained in section 13.2 of the Timyans' marital settlement agreement (MSA)

precluded plaintiffs' suit. The parties entered an agreed order on September 11, 2012, that granted plaintiffs leave to file an amended complaint within 21 days. Plaintiffs' first amended complaint, which is the subject of this appeal, was filed on October 21, 2012.

¶ 5 The single-count, first amended complaint alleged that RP was engaged in the business of buying and selling securities, including "short selling" securities on margins, and was in operation between September 1999 and late 2010. RQP was engaged in a similar business, and was in operation between November 2002 and late 2010. Philip was the managing member for both RP and RQP and was responsible for making all investment decisions for both companies, and also for administering all business of the companies. When RQP began operations, RP invested substantially all of its assets into RQP.

¶ 6 In order to raise the capital needed to invest in securities Philip, RP and RQP sold interests in RP and RQP through private placement offerings and subscription agreements. The interests were sold to subscribers who met certain investment qualifications and who invested minimum amounts of \$500,000 for initial investments, \$100,000 for subsequent investments, and who agreed to keep their money invested for certain periods of time called "lock-up periods." Each of the investors agreed to execute subscription documents and subsequently became a member of either RP or RQP.

¶ 7 Additional capital was raised through the creation of business relationships with qualified individual investors and with various securities brokers and dealers who would have their clients invest in RP or RQP.

¶ 8 Plaintiffs alleged that these relationships were necessary to the business operations of PR and RQP. Plaintiffs further alleged that the capital invested by the members who subscribed to

RP and RQP was also necessary to the ongoing business operations of both entities; without the investment capital, the entities could not maintain their investments and could not buy, sell and “short sell” securities.

¶ 9 Plaintiffs further alleged that at all relevant times, Nancy knew the nature of the funds and knew that Philip was the managing member of both RP and RQP; that he was responsible for managing the investment decisions of both entities; and also responsible for developing and maintaining relationships with individual investors, brokers and dealers. They also alleged that Nancy was aware of the written subscription agreements between plaintiffs and the investors, and the terms of those agreements, including minimum investments and the lock-up period.

¶ 10 Plaintiffs alleged that they had valid business relationships and valid expectations of maintaining continued business relationships with each of the investors, brokers, and dealers. Plaintiffs alleged that Nancy intentionally interfered with those valid business relationships and expectancies of continued business relationships by making a series of statements about Philip to investors, brokers, and dealers. They contended that those statements were designed and intended to cause investors to lose confidence in Philip and in their investments in RP and RQP, and to withdraw their investments from those entities, and to cause brokers and dealers to recommend to their clients that they withdraw their investments and memberships in RP and RQP.

¶ 11 Plaintiffs also alleged that Nancy’s interference was intentional and without justification; they claim that Nancy informed Philip during their divorce proceedings and prior to the parties’ July 11, 2008, divorce that she would interfere with, and ruin his business because of the divorce.

¶ 12 Plaintiffs maintained that shortly before 2008 and during 2008, Nancy made a series of false statements about Philip to investors and brokers, including: Charles Winnick, an investor in

RP; Anton Gerdes, an investor in RP; and Marck Reed, a broker whose clients, including David Wood, invested in RP. According to plaintiffs, Nancy told them that Philip had a gambling problem, that he was falsifying the books and records of RP and RQP, and that he was trading on insider information that she said she had reported to the Securities and Exchange Commission (SEC). Nancy warned them, and others who had valid existing investment relationships with plaintiffs, to discontinue those relationships.

¶ 13 Plaintiffs claimed that Nancy had no legitimate purpose for making these statements to people that she knew were business associates of Philip, RP and RQP, and made those statements for the sole purpose of harming Philip professionally and in connection with his relationships with investors, brokers and dealers who did business with Philip, RP and RQP.

¶ 14 Plaintiffs also claimed that Nancy knew that the statements she made would be repeated by them to others who invested with plaintiffs, and that Nancy told Philip this in 2008, prior to their divorce. Statements that Nancy made to Winnick, Gerdes and Reed were subsequently repeated to other investors, brokers, and dealers, including Jim Smith, Brian Smith, David Wood, and others.

¶ 15 Plaintiffs alleged that they did not sustain harm as a result of Nancy's tortious conduct until the end of October 2008, when several investors first began pulling their investments out of the funds. Specifically, plaintiffs alleged that at the end of October 2008, after hearing Nancy's statements about Philip, Jim Smith began pulling out his \$500,000 investment; Brian Smith began pulling out his \$900,000 investment; Charles Winnick began pulling out his \$2,000,000 investment; Anton Gerdes began pulling out his \$900,000 investment; and David Wood began pulling out his \$1,100,000 investment. Additionally, plaintiffs alleged that after Nancy's rumors

spread among the investors in RP and RQP, several other investors began to withdraw their investments at the end of October 2008. Plaintiffs further alleged that as a direct and proximate result of Nancy's statements, several large investors, and members in RP and RQP discontinued their relationships with plaintiffs.

¶ 16 According to the complaint, this left Philip without adequate means of continuing to fairly and properly manage and invest the funds that had been entrusted to him for investment, which in turn left him with no meaningful choice but to discontinue investing the funds entrusted to him and to return the investors' funds and membership interests to them. Additionally, as a direct and proximate result of the withdrawal of the investments, Philip was forced to discontinue the ongoing business operations of RP and RQP, was forced to discontinue the management of the investments for both entities, resulting in substantial damage to plaintiffs- loss of profits, management fees and performance payments- which plaintiffs would have earned in the absence of Nancy's interference with the continuing business and expectancies of plaintiffs. Plaintiffs alleged that their damages and losses totaled several million dollars.

¶ 17 Plaintiffs requested that judgment be entered in their favor and that damages be awarded to them in such amounts as are shown by the evidence to have directly and proximately resulted from Nancy's tortious interference with the business and expectancies of plaintiffs. Plaintiffs also requested punitive damages from Nancy because of the intentional nature of the conduct alleged and because the conduct was intended to cause harm and ruin to plaintiffs, and resulted in such.

¶ 18 The matter was continued for Nancy to file an appearance or otherwise plead. Nancy filed a response to plaintiffs' first amended complaint on January 16, 2013. On the same day, Nancy filed a section 2.619.1 (735 ILCS 5/2-619.1 (West 2012)) motion to dismiss plaintiffs' first

amended complaint. Nancy alleged in her motion to dismiss that plaintiffs' business ventures failed during the "historically turbulent economic collapse which began in October 2008." Nancy also renewed her allegation that plaintiffs' suit was barred by section 13.2 of the parties' MSA executed during their divorce, which was finalized in July 2008. That section provided that Nancy and Philip released each other "to the fullest extent permitted by law" of all claims, intentional or unintentional. Nancy alleged that to the extent that Philip's claims were based on actions prior to the divorce, the case must be dismissed. She further alleged that RP and RQP are the only proper plaintiffs in the case, as the business relationships alleged to be affected were with RP or RQP. Nancy further alleged that Philip should be dismissed as a plaintiff for lack of standing. The circuit court denied Nancy's motion to dismiss without prejudice on April 30, 2013.

¶ 19 Nancy filed an amended answer to plaintiffs' complaint on May 31, 2013, in which she raised affirmative defenses of: 1) statute of limitations based on plaintiffs' allegations of slander, libel or commercial disparagement; alleging that there was a one year statute of limitations that barred the complaint; 2) Philip's claims were barred by the release contained in the parties' MSA; and 3) that Nancy had a lack of capacity based on her disability that arose during the parties' divorce in late 2007.

¶ 20 The record indicates that Nancy's counsel subsequently withdrew from the case, and a default judgment was entered against Nancy in the amount of \$21,790, 100 on April 7, 2014. Nancy, through new counsel, filed a motion to vacate the default judgment on April 16, 2014, which was granted over objection, on April 17, 2014. Nancy was also ordered to pay plaintiffs' reasonable attorney fees incurred in obtaining the default judgment. Nancy contested the requested attorney fee amount, which resulted in the filing of a Motion for Ruling on Fees. The circuit court

entered an order on July 21, 2014, which granted Nancy's motion in part and awarded plaintiffs' \$6368 in fees and \$500 in costs. Nancy's new counsel subsequently withdrew from the case on October 6, 2015.

¶ 21 Nancy's new counsel was given leave to file an appearance and the parties were ordered to set a schedule for witness depositions on October 30, 2015. Her counsel filed an appearance on February 22, 2016. On March 31, 2016, Nancy filed a motion for protective order and case management order to protect and respect the private, non-public nature of the documents that the deponents would produce. Additional counsel entered an appearance for Nancy on April 8, 2016. An agreed protective order was subsequently entered on April 14, 2016. Nancy also filed a motion to extend the May 25, 2016, discovery cut-off for Rule 213(f)(1) witnesses, which was granted until July 25, 2016. The court set additional pre-trial conferences and due dates for pre-trial memorandums on June 28, 2016.

¶ 22 The parties engaged in more contentious litigation during the discovery phase of the case, and both of Nancy's attorneys subsequently withdrew on October 3, 2017, and her new counsel entered an appearance on the same date. On January 10, 2018, Nancy filed a brief in support of a proposed counterclaim for abuse of process against plaintiffs.

¶ 23 On February 9, 2018, Nancy filed a motion for summary judgment, in which she contended that Philip's release in the parties' MSA precluded the current case. Nancy also alleged that the current case was Philip's attempt to recover assets awarded to her during the parties' divorce. She also argued that the evidence did not support Philip's allegations of tortious interference because (a) Philip closed RP and RQP one month before he alleged that he suffered harm as a result of Nancy's alleged interference, (b) Philip closed RP and RQP during the height of the 2007-2008

financial recession, and (c) Philip's investors did not seek to withdraw their interests because of Nancy. Nancy also contended that, Philip's damages were speculative.

¶ 24 Plaintiffs filed their response on March 9, 2018, contending that the evidence adduced in discovery supported and raised a material issue of fact regarding their claims, and further that the release in the parties' MSA does not bar claims based on Nancy's conduct that occurred after the divorce was final. They also contended that the investors invested with Philip and based on the loss of the funds' income, he personally lost his source of income.

¶ 25 On May 21, 2018, plaintiffs filed a motion for leave to file a second amended complaint to conform to proofs. In their motion, plaintiffs essentially argued that the timeline of events set forth in the first amended complaint was erroneous in certain respects and that the testimony of certain witnesses was slightly different than what was asserted in the first amended complaint.

¶ 26 Nancy opposed plaintiffs' motion for leave to file a second amended complaint, asserting the lengthy amount of time since the beginning of the case (10 years after the events at issue and six years after the case was filed) and additionally that contrary to plaintiffs' statements in its motion, the amended complaint was entirely rewritten and completely changed plaintiffs' legal theories for recovery against Nancy.

¶ 27 The circuit court heard both Nancy's motion for summary judgment and plaintiffs' motion for leave to file a second amended complaint on July 24, 2018. At the hearing, Nancy argued that plaintiffs' claims were barred by the general release in the MSA because Philip was aware of the additional claims at the time the release was signed, which was alleged in the first amended complaint. Nancy also argued that plaintiffs' could not prove that Nancy's alleged interference was the reason for his funds' failure; the evidence adduced during discovery established that the

investors who withdrew had not spoken to Nancy and wanted their money back because the funds were performing poorly. With regard to Philip's damages, Nancy argued that they were speculative because the funds' earnings were already down 40 percent when he closed them.

¶ 28 After hearing argument from both parties, the circuit court agreed that plaintiffs, by changing the story in attempting to file an amended complaint, were attempting to create a genuine issue of fact to try and defeat summary judgment by his own self-serving statements. The court found that plaintiffs' were aware and advised throughout the divorce proceedings, which lasted four years, of what was going on and that Nancy had allegedly made the comments to investors in the funds. With respect to causation, the court found that the investors who pulled out testified that their actions were based on the economic downturn of 2008 and had nothing to do with statements made by Nancy. Finally, as to damages, the court found that the damages were created prior to execution of the parties' mutual release in their MSA and additionally that when the complaint was filed, plaintiffs knew that it included statements made prior to the date of the release and the same statements continued after the divorce. The circuit court concluded that the release controlled and granted summary judgment in favor of Nancy. All claims against Nancy were dismissed with prejudice.

¶ 29 The circuit court also denied plaintiffs' motion for leave to file a second amended complaint because it would be futile based on its ruling on the release.

¶ 30 Plaintiffs filed a notice of appeal on August 13, 2018.

¶ 31 On August 15, 2018, Nancy filed a motion for attorney fees pursuant to Rule 137 (eff. Jan. 1, 2018), contending that such sanctions were warranted because the complaint was not well grounded in fact, was not warranted by existing law, and was intended for an improper purpose.

The circuit court denied Nancy's motion on November 9, 2018, finding that the case was filed in 2012 and survived a motion to dismiss before eventually being dismissed on a motion for summary judgment. The court therefore found that plaintiffs' claims were sufficiently well grounded in fact and that the case was not brought for the improper purpose of harassing Nancy.

¶ 32 Additionally, on August 21, 2018, Nancy filed a notice of cross-appeal from the May 1, 2018, order of the circuit court that denied her leave to assert a counterclaim for abuse of process against plaintiffs. She subsequently amended her notice of appeal to include an appeal from the denial of her motion for Rule 137 attorney fees.

¶ 33 ANALYSIS

¶ 34 On appeal, plaintiffs contend that: (1) the circuit court erred in ruling that their claims were barred by the general release in the Timyans' marital settlement agreement; (2) plaintiffs RP and RQP were not parties to the Timyans' mutual release and their claims should not have been barred based on it; (3) evidence adduced during discovery supports and raises a material issue of fact regarding plaintiffs' claims of tortious interference with prospective business advantage; (4) the circuit court abused its discretion in denying plaintiffs' motion for leave to file a second amended complaint to conform to proofs. In her cross-appeal, Nancy contends that the circuit court erred in denying her motion for leave to file a counterclaim for abuse of process and also in denying her motion for attorney fees.

¶ 35 A. Summary Judgment

¶ 36 Plaintiffs' first three arguments amount to a challenge of the circuit court's entry of summary judgment in favor of Nancy. Specifically, plaintiffs contend that the court erred in ruling that their claims were barred by the general release in the Timyans' marital settlement agreement;

the funds (RP and RQP) were not parties to the MSA and their claims should not have been barred based on it; and evidence adduced during discovery raised a material issue of fact regarding plaintiffs' claims.

¶ 37 Summary judgment is appropriate where the pleadings, depositions, admissions, and affidavits on file, when taken together in the light most favorable to the nonmovant, show that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2018); *Fremont Casualty Insurance Co. v. Ace-Chicago Great Dane Corp.*, 317 Ill. App. 3d 67, 73 (2000). Our review of the trial court's ruling on a motion for summary judgment is *de novo*. *Fremont Casualty*, 317 Ill. App. 3d at 73.

¶ 38 The tort of interference with prospective advantage recognizes that a person's business relationships constitute a property interest and as such are entitled to protection from unjustified tampering by another. *Miller v. Lockport Realty Group, Inc.*, 377 Ill. App. 3d 369, 373 (2007). Tortious interference with prospective advantage or business opportunity consists of the following elements: (1) the plaintiff has a reasonable expectancy of entering into a business relationship; (2) the defendant knows of the expectancy; (3) the defendant interferes and prevents the realization of the business relationship; and (4) the defendant's interference actually damages the plaintiff. *Alpha School Bus Co., Inc. v. Wagner*, 391 Ill. App. 3d 722, 747 (2009).

¶ 39 We believe that plaintiffs' claim in this case fails on the third and fourth elements, the requirement that they show an intentional and unjustified interference by Nancy and further that Nancy's interference actually damaged plaintiffs. The interference alleged by plaintiffs involved the negative statements that Nancy allegedly made to investors of RP and RQP that caused them to withdraw their funds, which caused plaintiffs to suffer damages. However, the evidence

adduced during the many depositions, including Philip's deposition, indicated that: (1) the parties divorced in July 2008, at which time they executed a MSA that contained a mutual release from all claims; (2) Philip was aware of Nancy's threat of negative statements and those alleged negative statements in early 2008, prior to the execution of the MSA inclusive of the release; (3) Philip stated that he decided to close the funds as of September 2008, which is at least one month earlier than when the complaint alleged that plaintiffs first suffered damages; (4) the investors who pulled their monies from the funds began to do so in late October 2008; and (4) the investors listed in the complaint either did not rely on Nancy's statements or never spoke with her. In short, the evidence on file indicates that there is no genuine issue of material fact and that Nancy is entitled to judgment as a matter of law.

¶ 40 Moreover, we find that while plaintiffs' argument is correct that the RP and RQP were not parties to the release executed during the Timyans' divorce, their claims still fail based on the other evidence present in the record as noted above. As such, we affirm the entry of summary judgment in favor of Nancy.

¶ 41 B. Denial of Leave to File Second Amended Complaint

¶ 42 We turn our attention to the circuit court's denial of plaintiffs' motion for leave to file a second amended complaint.

¶ 43 The right to amend pleadings is not absolute. *Trans World Airlines, Inc. v. Martin Automatic, Inc.*, 215 Ill. App. 3d 622, 627-28 (1991). The decision to allow an amendment to a pleading rests within the sound discretion of the trial court, and an appellate court will not reverse the trial court's decision absent an abuse of discretion. *Zale v. Moraine Valley Community College*, 2019 IL App (1st) 190197, ¶ 35. An abuse of discretion occurs when no reasonable person would

take the view adopted by the trial court. *Devyn Corp. v. City of Bloomington*, 2015 IL App (4th) 140819, ¶ 88. To determine whether the trial court abused its discretion by denying appellants leave to replead, we consider: (1) whether the proposed amendments would cure the defective pleading, (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendments, (3) whether the proposed amendments were timely, and (4) whether previous opportunities to amend the pleading could be identified. See *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273 (1992).

¶ 44 Here, we find that the circuit court did not abuse its discretion in denying plaintiffs' motion for leave to file a second amended complaint. Our review of the proposed second amended complaint reveals that plaintiffs' motion mischaracterized the nature of the proposed pleading. While plaintiffs' stated in their motion that the purpose of the amended pleading would be to conform to proofs, the proposed amended pleading changed legal theories, which would have caused surprise and been prejudicial to Nancy. Additionally, the proposed amendment was untimely, having come six years after the filing of the case and well after discovery was complete. Moreover, the proposed amended pleading did not cure the defects of the first amended complaint and was futile, given the summary judgment ruling. We find that the circuit court properly denied plaintiffs' motion to file a second amended complaint.

¶ 45 C. Denial of Leave to File Counterclaim

¶ 46 In her counter-appeal, Nancy contends that the circuit court erred in denying her leave to file a counterclaim for abuse of process. She asserts that her counterclaim was timely and that it properly alleged that Philip misused the judicial process, and was supported by the evidence.

¶ 47 Argument on Nancy's motion was heard on May 1, 2018. During argument, Nancy's counsel argued that the reason for plaintiffs' suit was to harass Nancy and further an attempt to recover the sizable divorce settlement. The circuit court disagreed, finding that Philip's testimony during his deposition was that he filed the lawsuit to get Nancy to stop harassing him, not that he filed the lawsuit to get the settlement back.

¶ 48 Section 608 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-608 (West 2018)) gives a defendant discretion whether to file a counterclaim by permitting a party to plead the claim either in a separate action or as a counterclaim. Section 608 does not require a defendant to assert immediately his rights by way of a counterclaim if it would be inconvenient or strategically inadvisable to do so or where the full extent of the damages was not known earlier. *Marsh v. Nellessen*, 235 Ill. App. 3d 998, 1001 (1992). Although counterclaims are generally liberally allowed, a trial court has discretion to deny a party's motion to allow a counterclaim when the other party would be prejudiced or surprised. *National Education Music Co., Ltd. v. Rieckhoff*, 292 Ill. App. 3d 260, 263-54 (1997). The trial court's denial of a motion to file a counterclaim is reviewed for abuse of discretion. *National Education Music Co.*, 292 Ill. App. 3d at 263-64.

¶ 49 Here, Nancy's motion for leave to file a counterclaim was filed two weeks after Philip's discovery deposition was completed, during which Nancy asserts that his testimony was that the underlying lawsuit was filed to reclaim part of Nancy's divorce settlement. Thus, the timeliness of the motion was not at issue. From the record, it is clear that the circuit court denied Nancy's motion on the basis that it failed to state a cause of action.

¶ 50 Abuse of process is defined as the misuse of legal process to accomplish some purpose outside the scope of the process itself. *Kumar v. Bornstein*, 354 Ill. App. 3d 159, 165 (2004). The

only elements necessary to plead a cause of action for abuse of process are: (1) the existence of an ulterior purpose or motive and (2) some act in the use of legal process not proper in the regular prosecution of the proceedings. *Id.* In order to satisfy the first element, a plaintiff must plead facts that show the defendant instituted proceedings against him for an improper purpose, and to satisfy the second element, the plaintiff must show that the process was used to accomplish some result that is beyond the purview of the process. *Id.* at 165-66. The elements are strictly construed, as the tort of abuse of process is not favored under Illinois law. *Id.* at 166.

¶ 51 In this case, the initial and first amended complaint in the underlying suit stated that the suit was filed to recover damages incurred based on negative statements that Nancy made concerning Philip and his handling of the RP and RQP to investors. Philip testified in his deposition that he initially sought a restraining order and wanted Nancy to stop harassing him throughout the divorce and after the divorce. Contrary to Nancy's assertions, this does not establish that the suit was filed for an improper purpose. Nor has Nancy shown that the process was used to accomplish a result "beyond the purview of the process." The case sought damages in relation to damages plaintiffs' asserted were the result of Nancy's behavior. We find that the circuit court did not abuse its discretion in denying Nancy's motion to file a counterclaim based on abuse of process.

¶ 52 E. Denial of Motion for Rule 137 Attorney Fees

¶ 53 Nancy also contends in her cross-appeal that the circuit court erred in denying her motion for Rule 137 attorney fees against plaintiffs because their allegations were not well grounded in fact.

¶ 54 We initially note that Nancy fails to cite any caselaw in support of her argument in violation of Rule 341(h)(7) (eff. May 25, 2018),¹ and thus her argument is forfeited.

¶ 55 Forfeiture aside, we find that Nancy's argument is without merit.

¶ 56 Rule 137 allows a court to impose sanctions against a party or counsel who files a pleading or motion that is not well grounded in fact, is not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, or is interposed for any improper purpose. *Garlick v. Bloomingdale Township*, 2018 IL App (2d) 171013, ¶ 43. The purpose of Rule 137 is to prevent the filing of false and frivolous lawsuits. *Sanchez v. City of Chicago*, 352 Ill. App. 3d 1015, 1020 (2004). Rule 137 mandates, that, by signing a pleading, motion, or other document, the attorney or party certifies that “to the best of his [or her] knowledge, information, and belief formed after reasonable inquiry [the filing] is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purposes, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” Ill. S. Ct. R. 137a (eff. July 1, 2013). Under the rule, appropriate sanctions may include an order to pay the other party's reasonable expenses “incurred because of the filing of the pleading, motion or other document, including a reasonable attorney fee. *Id.* The rule is penal in nature and must be strictly construed. *Garlick*, 2018 IL App (2d) 171013, ¶ 44. Yet, the rule is not intended to penalize litigants and their attorneys merely because they were zealous, yet unsuccessful. *Sanchez*, 352 Ill. App. 3d at 1020.

¹ Rule 341 was recently amended by 2020 Illinois Court Order 0031 (C.O. 0031), effective October 1, 2020; however, this appeal is governed by the version of the rule in existence at the time the appeal was filed.

¶ 57 Courts should use an objective standard in determining what was reasonable under the circumstances as they existed at the time of filing. *Peterson v. Randhava*, 313 Ill. App. 3d 1, 8 (2000). An appellate court should base its review of the trial court's decision on three factors: (1) whether the court's ruling was an informed one; (2) whether the ruling was based on valid reasons which fit the case; and (3) whether the ruling followed logically from the stated reasons to the particular circumstances of the case.

¶ 58 The standard for evaluating a party's conduct under the rule is one of reasonableness under the circumstances existing at the time of the filing. *Garlick*, 2018 IL App (2d) 171013, ¶ 45. The party requesting sanctions bears the burden of proof and must show that the opposing party made untrue and false allegations without reasonable cause for the mere purpose of invoking harassment or undue delay of the proceedings. *Webber v. Wight & Co.*, 368 Ill. App. 3d 1007, 1032 (2006). We review the trial court's ruling on sanctions for an abuse of discretion. *Longo Realty v. Menard, Inc.*, 2016 IL App (1st) 151231, ¶ 44.

¶ 59 Based on our review of the record here, we do not find any abuse in the circuit court's determination that plaintiffs' actions in this case did not merit the imposition of Rule 137 sanctions. While Nancy points to evidence gathered during discovery to support her claim for sanctions, namely depositions taken from the parties and some of the investors, we find that such evidence cannot support a conclusion that plaintiffs knew, at the time the case was filed, that their information and beliefs were incorrect.

¶ 60 CONCLUSION

¶ 61 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 62 Affirmed.