

No. 1-18-0254

**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).

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TRANSFORMING HOUSING, LLC,	)	Appeal from the
	)	Circuit Court of
Plaintiff and Cross-Defendant-Appellee,	)	Cook County
	)	
v.	)	Nos. 17 M1 715557
	)	17 M1 715558
	)	17 M1 715559
	)	17 M1 715560
NATALIE WILLIAMS, EVELYN BLUFORD,	)	17 M1 715562
TAMASHA WRIGHT, MICHELLE BLUFORD,	)	17 M1 715563
JEREMIAH FERGUSON, and CATHY LIPSCOMB,	)	(consolidated)
	)	
	)	Honorable
	)	James Ryan,
Defendants and Cross-Plaintiffs-Appellants.	)	Judge, presiding.

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PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.  
Justices Hall and Lampkin concurred in the judgment.

### ORDER

¶ 1 *Held:* In this consolidated forcible entry and detainer action, the trial court conducted a bench trial and then entered eviction orders against the six tenants. The tenants subsequently attempted to appeal a pre-trial order denying their motions to dismiss, as well as the judgment entered after trial in favor of the landlord on their counterclaim, which had sought the payment of relocation fees and other damages for failure to comply with the Keep Chicago Renting Ordinance. We found that the order denying the dismissal motions merged into the final judgment and was not properly before us on appeal. We affirmed the trial court's judgment for the landlord on the tenants' counterclaim.

¶ 2 This matter concerns six consolidated eviction actions under the Forcible Entry and Detainer Act ("Act") (735 ICLS 5/9-101 *et seq.* (West 2016))<sup>1</sup> filed by plaintiff Transformation Housing, LLC<sup>2</sup> (hereinafter referred to as "Transformation I") against defendants Natalie Williams, Evelyn Bluford, Tamasha Wright, Michelle Bluford, Jeremiah Ferguson, and Cathy Lipscomb (referred to together as "Tenants"), tenants of a building located at 503-509 W. 64<sup>th</sup> Street (the "Property"). The Tenants moved to dismiss the eviction actions on the grounds that Transformation I lacked standing to bring them, and that Transformation I failed to comply with the Keep Chicago Renting Ordinance ("KCRO") (Chicago Municipal Code §5-14-010 *et seq.* (2004)) by not notifying the Tenants of their right to relocation assistance. The trial court denied the dismissal motions. The Tenants also filed a counterclaim against Transformation I seeking a relocation assistance fee and damages under the KCRO, and sought leave to file a third-party complaint against the new owner of the Property, Transforming Housing V, LLC (hereinafter referred to as "Transformation II"). The trial court denied the motion for leave to file a third-party complaint. After a bench trial, the trial court entered orders of possession and money judgments against each tenant and found in favor of Transformation I on Tenants' counterclaim. The Tenants now appeal, contending that the trial court erred by: (1) denying their dismissal motions; (2) entering judgment for Transformation I on their counterclaim; and (3) denying their motion for leave to file a third-party complaint against Transformation II. We affirm<sup>3</sup>.

### ¶ 3 BACKGROUND

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<sup>1</sup> As of January 1, 2018, the Act is now known as "The Eviction Act" (735 ILCS 5/9-101 *et seq.*).

<sup>2</sup> Plaintiff filed these six lawsuits as "Transforming Housing, LLC," however, the trial judge, on December 20 2017, on plaintiff's written motion entered an order correcting the spelling of plaintiff's name from Transforming Housing, LLC to Transformation Housing, LLC. The latter will be used to refer to the plaintiff.

<sup>3</sup> In adherence with the requirements of Illinois Supreme Court Rule 352(a)(eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

¶ 4 Foreclosure Proceedings

¶ 5 On February 9, 2015, Community Initiatives, Inc. ("Community"), the former mortgagee of the Property, filed a complaint for foreclosure under the Illinois Mortgage Foreclosure Law ("Foreclosure Law") (735 ILCS 5/15-1101 *et seq.* (West 2014)) against the former owner of the Property, Englewood Housing Group, L.P.

¶ 6 On September 28, 2015, the foreclosure court entered an order appointing Van Vincent as receiver for the Property and authorized one of Mr. Vincent's entities, Transformation I, to assist in the property management. The order authorized Mr. Vincent, as receiver, "to collect all rents relating to the property" and directed the occupants and tenants "to pay rent to the receiver from the effective date of this order, until further notice." Transformation I was authorized to manage the billing and collection of rents.

¶ 7 On May 18, 2017, the foreclosure court entered an order approving the sale of the Property to Community and on May 19, 2017, the Judicial Sales Corporation issued a judicial sale deed to Community, which was later recorded by the Cook County Recorder of Deeds.

¶ 8 On August 31, 2017, Community conveyed the Property via special warranty deed to Transformation II.

¶ 9 As part of the conveyance, Community entered into a written agreement assigning Transformation II all of its right, title and interest in and to the leases and tenancies for the Property, including any and all rentals due from the Tenants after August 31, 2017. Under the agreement, any and all rentals due from the Tenants prior to August 31, 2017, remained the sole and exclusive property of Community.

¶ 10 On September 1, 2017, the Tenants were notified of the change in ownership of the Property and that Mr. Vincent and Transformation I would remain on the Property as the

property management company for Transformation II. The notice provided that Transformation I was responsible for collecting rents.

¶ 11 Eviction Proceedings

¶ 12 Prior to Community conveying the Property, on August 29, 2017, Transformation I prepared a "Landlord's Five Day Notice" addressed to each Tenant notifying them that an eviction proceeding would commence if they failed to pay rent within five days. Mr. Vincent signed each of the notices in which he affirmed that he hand-delivered copies to each of the named parties on that same day.

¶ 13 On September 19, 2017, Transformation I filed six eviction actions against the Tenants seeking possession and an award of back rent. In each complaint, Transformation I alleged that it was entitled to possession of each unit and alleged the amount of rent due from each Tenant.

¶ 14 Pursuant to the Tenants' motion, the trial court granted a consolidation of the cases on November 8, 2017. On December 5, 2017, the Tenants filed their answer, affirmative defenses and a two-count counterclaim against Transformation I seeking: relocation assistance (count I) and damages for a violation of section 5-12-080 of the Chicago Residential Landlord and Tenant Ordinance ("RLTO") (Chicago Municipal Code §5-12-080 (2004)) (count II).

¶ 15 The Tenants filed four separate motions to dismiss Transformation I's complaints under sections 2-615 (735 ILCS 5/2-615 (West 2016)) and 2-619 (735 ILCS 5/2-619 (West 2016)) of the Code of Civil Procedure, alleging:

- (i) Transformation I was prohibited from collecting rent on the behalf of Transformation II for failure to give the Tenants the notices required by the Keep Chicago Renting Ordinance ("KCRO") (Chicago Municipal Code § 5-14-010 *et seq.*(2004)). The KCRO notices would have informed the Tenants of their rights to relocation assistance, their

rights to bring a private cause of action against Transformation II, and would have informed them of a website and phone number where they could receive more information about their rights.

(ii) Transformation I's complaints failed to state a cause of action because they did not properly plead entitlement to possession, as Transformation I was neither the owner nor the owner's agent of the Property.

(iii) Transformation I lacked standing to collect rents for the period of time prior to its principal (Transformation II) gaining ownership of the Property because rent arrearages do not run with the land.

(iv) Transformation I failed to deliver the required five day notices as required by section 209 of the Act (735 ICLS 5/9-209 (West 2016)). The five day notices would have informed the Tenants that unless they made their rent payments within five days after service thereof, their leases would be terminated. *Id.*

¶ 16 Subsequently, on January 19, 2018, the trial court denied all of the Tenants' motions to dismiss.

¶ 17 On January 16, 2018, the Tenants sought leave to add Transformation II as a counter-defendant based on the disclosure during discovery that it was the new owner of the Property. In response, Transformation II contended the motion should have been filed as a motion to file a third-party complaint. On January 19, the trial court denied the motion to add Transformation II as a counter-defendant. The Tenants subsequently made oral and written motions for leave to file a third-party complaint against Transformation II, which the court denied.

¶ 18 Evidence Presented at Bench Trial

¶ 19 At trial, Mr. Vincent testified that on September 28, 2015, as part of a foreclosure lawsuit, the foreclosure court issued an order appointing him as receiver of the Property. The court additionally authorized Transformation I, owned by Mr. Vincent, to manage the day-to-day operations of the Property and to collect the rents on behalf of Community.

¶ 20 Mr. Vincent testified that at the time he was appointed as receiver, each Tenant, as part of a subsidized housing program, had individual yearly leases with the former landlord of the Property, Antioch Homes II, for the use and occupancy of specific units. During his testimony, Mr. Vincent was shown a rent roll, detailing each of the Tenant's rental units and the "rent amount" as agreed to with Antioch Homes II. The rent roll was admitted into evidence. By the time of trial, however, each lease of the Tenants had expired and had not been renewed.

¶ 21 Once he was appointed as receiver, Mr. Vincent immediately provided notice to each of these Tenants of a change in management and accountability for security deposits and rent from the prior property manager Antioch Homes II. This notice informed the Tenants that Mr. Vincent through Transformation I would now be in charge of the management of the Property.

¶ 22 On August 29, 2017, Mr. Vincent served, by hand delivery, a five day notice to each Tenant. According to the five day notices, the Tenants owed rent in the following amounts:

Natalie Williams: \$8,582.00

Michelle Bluford: \$10,516.00

Jeremiah Ferguson: \$16,918.00

Evelyn Bluford: \$11,490.00

Cathy Lipscomb: \$8,404.00

Tamasha Wright: \$7,436.00

¶ 23 The Property was subsequently sold and transferred to another entity owned by Mr. Vincent, Transformation II, at a closing on August 31, 2017. At the closing, Community, pursuant to an assignment agreement, assigned all of its “right, title and interest in the leases and tenancies” existing on the Property to Transformation II. The agreement provided that Community specifically retained its rights in past due rent, stating that: "any and all rentals due from the tenants and occupants to the date hereof shall remain the sole and exclusive property of Assignor."

¶ 24 According to Mr. Vincent, he provided each of the Tenants with a KCRO notice on September 1, 2017.

¶ 25 All of the Tenants testified that they had never seen Mr. Vincent prior to trial, were not served with a five day notice on August 29, 2017, and were not served with a KCRO notice on September 1, 2017.

¶ 26 After hearing all of the evidence, the trial court found in favor of Transformation I on its complaint against the Tenants, awarding it possession and damages. The trial court awarded the following monetary judgments against each of the Tenants: (1) Ms. Williams in the amount of \$12,413.00; (2) Ms. Wright in the amount of \$9,642.00; (3) Michelle Bluford in the amount of \$13,422.00; (4) Evelyn Bluford in the amount of \$14,886.00; (5) Mr. Ferguson in the amount of \$21,279.00; and (6) Ms. Lipscomb in the amount of \$18,417.00. The court also found in favor of Transformation I on the Tenants’ counterclaim.

¶ 27 The Tenants filed this appeal on January 29, 2018. Transformation I failed to file an appellee’s brief. This court ordered that the matter be taken on the appellant’s brief and the record only. We will not, however, reverse an order of the circuit court *pro forma* in the absence of an appellee’s brief. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d

128, 131 (1976). When the matter is easily decided in the absence of an appellee's brief, as here, we will decide the merits of an appeal. *Id.*

¶ 28 On appeal, the Tenants ask this Court to reverse the trial court's denial of their motions to dismiss Transformation I's complaints with prejudice based on Transformation I's lack of standing and its failure to comply with the KCRO's notice requirements. The Tenants also ask us to reverse the judgment in favor of Transformation I on their counterclaim seeking a relocation assistance fee and damages under the KCRO.

#### ¶ 29 ANALYSIS

¶ 30 First, we address the Tenants' argument that the trial court erred by denying the pretrial dismissal motions.

¶ 31 A litigant generally may not appeal the denial of a motion to dismiss where the matter subsequently proceeded to trial. See *Ovnik v. Podolskey*, 2017 IL App (1st) 162987 ¶¶19-21; *In re Marriage of Sorkin*, 2017 IL App (2d) 160885, ¶22 (“On an appeal, it is not proper to raise the denial of a section 2-619 motion to dismiss, as the result of the denial merged with the final judgment from which the appeal was taken.”). The rationale for this rule is that it would be unjust to the prevailing party, who won a judgment after the evidence was more completely presented. *Battles v. LaSalle National Bank*, 240 Ill. App. 3d 550, 558 (1992). An exception exists when “the issues presented in the prior motion are questions of law, rather than fact, *and those questions of law were not presented to the court again at trial.*” (Emphasis added.) *In re Parentage of G.E.M.*, 382 Ill. App. 3d 1102, 1114 (2008). The Tenants argue that the issues presented in their motions to dismiss were questions of law that are properly before us, as they concerned Transformation I's lack of standing and its failure to substantially comply with the notice requirements of the KCRO. See *State ex rel. Liebowitz v. Family Vision Care, LLC*, 2019

IL App (1st) 180697, ¶21 (a court’s disposition of a section 2-619 motion on lack of standing presents a question of law); *Figueroa v. Deacon*, 404 Ill. App. 3d 48, 52 (2010) (whether there was substantial compliance with a statutory provision is a question of law). However, we find that the trial court’s denial of the Tenants’ motions to dismiss is not properly before us, because after the denial of their dismissal motions, the Tenants subsequently renewed the standing argument and the KCRO argument at trial, and these arguments were once again rejected by the court. As the standing argument and the KCRO argument were raised both in the motions to dismiss and again at trial after the evidence was more completely presented, the denial of the section 2-619 motions to dismiss is considered to have merged with the final judgment, meaning that the Tenants may only appeal from that final judgment and not from the earlier denial of the dismissal motions. See *In re Parentage of G.E.M.*, 382 Ill. App. 3d at 1114. The Tenants make no argument that the final judgment denying their standing argument and KCRO argument was in error, and therefore the issue is forfeited. Illinois Supreme Court Rule 341(h)(7)(eff. May 25, 2018).

¶ 32 The Tenants’ only assignment of error that is properly before this court is their argument that the trial court erred when, after trial, it entered judgment in favor of Transformation I on their counterclaim for a relocation assistance fee and damages under the KCRO<sup>4</sup>. To properly address the Tenants’ argument, we briefly set forth the relevant provisions of the KCRO.

¶ 33 The KCRO provides:

“[T]he owner of a foreclosed rental property shall pay a one-time relocation assistance fee of \$10,600 to a qualified tenant unless the owner offers such tenant the option to

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<sup>4</sup> The Tenants make no argument that the trial court erred by entering judgment for Transformation I on their counterclaim for damages under the RLTO, and therefore the issue is forfeited. Illinois Supreme Court Rule 341(h)(7)(eff. May 25, 2018).

renew or extend the tenant's current rental agreement with an annual rental rate that: (1) for the first 12 months of the renewed or extended rental agreement, does not exceed 102 percent of the qualified tenant's current annual rental rate; and (2) for any 12-month period thereafter, does not exceed 102 percent of the immediate prior year's annual rental rate." Chicago Municipal Code, §5-14-050(a) (2004).

¶ 34 The KCRO defines "owner" as including the purchaser of the foreclosed rental property (e.g., Transformation II here), as well as the owner's agent for the purpose of collecting rents (e.g., Transformation I). *Id.* §5-14-020.

¶ 35 The KCRO further states:

"[I]f an owner fails to comply with this section [regarding tenant relocation assistance], the qualified tenant shall be awarded damages in an amount equal to two times the relocation assistance fee." *Id.* §5-14-050(f).

¶ 36 The Tenants contend that Transformation I terminated their tenancies without paying them the requisite relocation assistance fee under section 5-14-050(a). The Tenants argue that the trial court erred by entering judgment for Transformation I on their counterclaim which sought payment of the relocation assistance fee owed to them under section 5-14-050(a) as well as damages in the amount equal to two times the relocation assistance fee under section 5-14-050(f).

¶ 37 The Tenants' contention is without merit, as the KCRO provides that "[t]he owner shall not be liable to pay the relocation fee to any qualified tenant \*\*\* against whom the owner has obtained a judgment for possession of the rental unit." *Id.* §5-14-050(e)(2). The trial court here entered orders of possession against each of the Tenants, and therefore they were not entitled to the relocation assistance fee (or to damages in the amount equal to two times the relocation

assistance fee). We affirm the judgment in favor of Transformation I on the Tenants' counterclaim.

¶ 38 Finally, the Tenants argue that the trial court erred by denying their motion to amend their pleading to add Transformation II as a third-party defendant. The Tenants contend that Transformation II was a “necessary party” to their claims under the KCRO that they were entitled to the relocation assistance fee as well as to damages in the amount equal to two times the relocation assistance fee. Any error was not prejudicial, where the Tenants were not entitled to the relocation assistance fee, or to damages equaling twice that fee, because the trial court had entered orders of possession against each of the Tenants. *Id.*

¶ 39 For the foregoing reasons, we affirm the circuit court.

¶ 40 Affirmed.