

No. 1-18-2067

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

RONG CITY RESTAURANT EQUIPMENT,) Appeal from the
) Circuit Court of
Plaintiff and Counterdefendant-Appellant,) Cook County
)
v.) No. 17 M1 102616
)
)
THUNDERBIRD FOOD MACHINERY, INC.,) Honorable
) Patrick Sherlock,
Defendant and Counterplaintiff-Appellee.) Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* This appeal was dismissed for want of jurisdiction.

¶ 2 The plaintiff and counterdefendant, Rong City Restaurant Equipment (Rong), appeals from the following orders of the circuit court of Cook County: granting a directed finding in favor of the defendant and counterplaintiff, Thunderbird Food Machinery, Inc. (Thunderbird), on Rong’s claim for breach of contract; entering a \$4,500 judgment against Rong on Thunderbird’s

counterclaim for unjust enrichment; and awarding Thunderbird \$17,394.42 for attorney fees and costs. For the reasons which follow, we dismiss this appeal for want of jurisdiction.

¶ 3 Rong filed a single-count complaint against Thunderbird, seeking recovery for breach of contract. Thunderbird answered the complaint and filed a counterclaim against Rong for unjust enrichment and for an award of attorney fees and costs incurred in the defense of Rong's claim against it. On May 14, 2018, a bench trial commenced on the parties' claims; and, at the conclusion of Rong's case-in-chief, the circuit court granted Thunderbird's motion for a directed finding on Rong's complaint for breach of contract. The matter proceeded on Thunderbird's counterclaim; following which, the circuit court entered a \$4,500 judgment in favor of Thunderbird. In its written order of that date, the circuit court also "permitted" Thunderbird to "file for fees and costs," thus retaining jurisdiction to entertain a petition for an award of attorney fees and costs. On June 15, 2018, Thunderbird filed its petition for attorney fees and costs. On August 15, 2018, the circuit court granted the petition and awarded Thunderbird \$17,394.42 for attorney fees and costs.

¶ 4 On September 11, 2018, Rong filed a motion titled "1203 Motion for Clarification of Judgment." That motion states that it was "submitted to seek clarification from the Court on the following issue: Whether or not the Court's May 14, 2018 Order should be considered a final order of the Court?" Rong requested that "the Court's order of August 15, 2018 be directed and considered the final order/judgment in this case."

¶ 5 On September 24, 2018, Rong filed a notice of appeal from the circuit court's orders of May 14, 2018 and August 15, 2018. Thereafter, on October 4, 2018, the circuit court entered an order, denying Rong's motion for clarification.

¶ 6 In its brief on appeal, Rong argues the the circuit court erred both in granting Thunderbird’s motion for a direct finding and in granting Thunderbird’s petition for an award of attorney fees and costs. In its brief, Thunderbird argues, *inter alia*, that Rong’s appeal was untimely and should be dismissed for want of jurisdiction. We agree.

¶ 7 “The timely filing of a notice of appeal is both jurisdictional and mandatory.” *Secura Insurance Company v. Illinois Farmers Insurance Company*, 232 Ill. 2d 2019, 213 (2009). Illinois Supreme Court Rule 303 (eff. July 1, 2017) provides for the timing of appeals from final judgments of the circuit court. Section (a)(1) of that rule provides, in relevant part, that

“[t]he notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, whether in a jury or a nonjury case, within 30 days after the entry of the order disposing of the last pending postjudgment motion direct against the judgment or order.” Ill. S.Ct R. 303(a)(1) (eff. July 1, 2017).

¶ 8 Section 2-1203 of the Civil Practice Law authorizes the filing of posttrial motions in nonjury cases. 735 ILCS 5/2-1203 (West 2016). That statute states the following:

“In all cases tried without a jury, any party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief.” 735 ILCS 5/2-1203(a) (West 2016).

“For a motion to qualify as a ‘post-trial motion’ one or more of the types of relief specified in section 2-1203 must be specifically requested.” *Marsh v. Evangelical Covenant Church of*

Hinsdale, 138 Ill. 2d 458, 461 (1990). The “other relief” referred to in section 2-1203(a) must be similar in nature to the other forms of relief specified in that section. *Marsh*, 138 Ill. 2d at 461.

¶ 9 When the circuit court entered its order of August 15, 2018, granting Thunderbird’s petition for an award of attorney fees and costs, the litigation between the parties was terminated fully and finally; and, as a consequence, the 30-day period for the filing of a notice of appeal as provided in Illinois Supreme Court Rule 303(a)(1) commenced running.

¶ 10 As noted earlier, Rong filed a motion for clarification on September 11, 2018. However, that motion did not seek a retrial, a modification of the orders of May 14, 2018 or August 15, 2018, or an order vacating either order. Nor did the motion request “other relief” similar in nature to those forms of relief. We conclude, therefore, that Rong’s September 11, 2018, motion for clarification was not a postjudgment motion within the meaning of section 2-1203 of the Civil Practice Law or a posttrial motion within the meaning of Illinois Supreme Court Rule 303(a)(1). See *R & G, Inc. v. Midwest Region Foundation For Fair Contracting, Inc.*, 351 Ill. App. 318, 323-24 (2004).

¶ 11 Simply stated, Rong’s September 11, 2018 motion for clarification did not toll the running of the 30-day period for the filing of a notice of appeal as mandated by Illinois Supreme Court Rule 303(a)(1). The notice of appeal filed by Rong on September 24, 2018, having been filed more than 30 days after the circuit court’s final judgment order of August 15, 2018, was untimely and did not invoke the jurisdiction of this court. It is for this reason that we dismiss the instant appeal.

¶ 12 Appeal dismissed.