

2011 IL App (1st) 100283
No. 1-10-0283

FIRST MARBLEHEAD,)	Appeal from the Circuit
)	Court of Cook County
Plaintiff-Appellee,)	
)	No. 06 L 802
v.)	
)	
MONICA E. RIBBECK,)	Honorable
)	Brigid Mary McGrath,
Defendant-Appellant.)	Judge Presiding.
)	

JUSTICE MURPHY delivered the judgment of the court, with opinion.
Presiding Justice Quinn and Justice Steele concurred in the judgment and opinion.

OPINION

¶ 1 Defendant Monica Ribbeck appeals from an order of the circuit court of Cook County granting the motion to enforce settlement filed by plaintiff, First Marblehead Corp. On appeal, defendant contends that the court erred by granting plaintiff's motion because the settlement agreement at issue is not an enforceable contract, and plaintiff contends that defendant and her counsel should be sanctioned pursuant to Illinois Supreme Court Rule 375(b) (Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994)). For the reasons that follow, we affirm the order of the circuit court and impose sanctions against defendant and her appellate counsel.

¶ 2 **BACKGROUND**

¶ 3 On January 24, 2006, plaintiff filed a complaint in which it asserted that defendant had failed to make required payments to it under the terms of a number of promissory notes, and it requested a judgment in the amount of \$95,699.77, plus accruing interest, attorney fees, and court

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costs. On February 18, 2009, defendant's counsel sent a letter to plaintiff's counsel relating that defendant would agree to "make a lump sum payment of \$45,000.00 as a final, full settlement of all claims made against her in this case" and that the offer would remain open for acceptance until March 6, 2009. On February 24, 2009, plaintiff's counsel sent a letter to defendant's counsel relating that plaintiff "has agreed to accept [defendant]'s offer of \$45,000.00 as a final and full settlement of this account." On March 5, 2009, defendant's counsel sent a letter to plaintiff's counsel relating that plaintiff had a substantial change in her financial condition over the previous two weeks and now only had \$35,000 with which to settle the case.

¶ 4 On March 12, 2009, plaintiff filed a motion to enforce settlement, in which it asserted that it had accepted defendant's offer of a lump-sum payment of \$45,000 to fully settle its claims against her and requested the court enforce the settlement agreement, dismiss the matter with leave to reinstate subject to defendant's immediate lump-sum payment of \$45,000, sanction defendant for frivolous delay, and enter any other order which the court deemed fair and just. On April 10, 2009, defendant filed a response to plaintiff's motion, in which she asserted that the parties had not reached an agreement because plaintiff's letter from February 24, 2009, amounted to a counteroffer to the settlement offer she had made in the letter from February 18, 2009, and plaintiff subsequently filed a reply. On June 8, 2009, the circuit court entered an order granting plaintiff's motion to enforce settlement.

¶ 5

ANALYSIS

¶ 6

I. Settlement Agreement

¶ 7 On appeal, defendant contends that the settlement agreement is unenforceable because its

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terms are too indefinite and uncertain. Plaintiff first responds that this court must presume the circuit court's ruling had a sufficient legal and factual basis because defendant has failed to present a sufficiently complete record.

¶ 8 In its order granting plaintiff's motion to enforce settlement, the circuit court stated that it had conducted a hearing on plaintiff's motion prior to granting it. The record, however, does not include a report of proceedings, a bystander's report, or an agreed statement of facts of that hearing. Thus, the record only discloses that the circuit court granted plaintiff's motion, and does not include the evidence or arguments presented to the court at the hearing or the court's findings of fact or reasons for granting the motion. As such, any doubts that arise from the incompleteness of the record will be resolved against defendant, the appellant, who had the burden to present a sufficiently complete record. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156-57 (2005).

¶ 9 In any event, defendant has waived her claim that the settlement agreement is unenforceable because its terms are too indefinite and uncertain by failing to raise this argument before the circuit court. Arguments not raised before the circuit court cannot be raised for the first time on appeal and are deemed waived. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 344 (2002). The record shows that defendant did not assert that the alleged agreement was unenforceable due to the indefiniteness of its terms in her response to plaintiff's motion to enforce the settlement agreement, but instead asserted that the parties had not reached an agreement because plaintiff's alleged acceptance was actually a counteroffer. In addition, defendant asserted in her motion to reconsider that the court should reconsider its order because it did not consider her change in

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financial conditions when it granted plaintiff's motion, and did not assert the claim she now raises on appeal. As such, defendant has waived this claim on appeal.

¶ 10 Moreover, the terms set forth in the alleged settlement agreement are sufficiently clear and definite to constitute an enforceable contract. In order for a contract to be enforceable, its essential terms must be definite and certain, and such terms are sufficiently definite and certain if a court is able to ascertain what the parties have agreed to under proper rules of construction and applicable principles of equity. *Midland Hotel Corp. v. Reuben H. Donnelley Corp.*, 118 Ill. 2d 306, 314 (1987).

¶ 11 Defendant first asserts that the settlement agreement's terms are too indefinite and uncertain because a court could not ascertain whether she was to make the \$45,000 payment to plaintiff in installments, and if so, in what amounts. The record shows, however, that defendant offered to "make a lump sum payment of \$45,000.00 as a final, full settlement," and plaintiff accepted that offer. Thus, there is no uncertainty as to whether the \$45,000 was to be paid in installments or a lump sum where the agreement explicitly provided that defendant was to make a lump-sum payment.

¶ 12 Although defendant also asserts that there is uncertainty as to the time at which she is supposed to make the payment, a contract will not be rendered unenforceable solely by the absence of a term specifying the time at which an obligation is to be performed, as a court will imply a reasonable time for performance. *Rose v. Mavrakis*, 343 Ill. App. 3d 1086, 1092 (2003). In addition, while defendant asserts that there is uncertainty as to whether a clause to indemnify and hold harmless the parties and their attorneys from claims for attorney fees is included in the

agreement, the record clearly shows that no such clause was included in her offer, which set forth the terms of the agreement.

¶ 13

II. Sanctions

¶ 14 Plaintiff contends that defendant and her appellate counsel should be sanctioned pursuant to Illinois Supreme Court Rule 375(b) because this appeal was taken by defendant to delay enforcement of the circuit court's order granting its motion to enforce the settlement agreement at issue and was not brought in good faith. Pursuant to that rule, an appropriate sanction may be imposed upon any party or the attorney of any party if, after consideration of the appeal by the reviewing court, it is determined that the appeal is frivolous, was not taken in good faith, or was brought for an improper purpose, such as to cause unnecessary delay. Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994). "An appeal or other action will be deemed frivolous where it is not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law," and will be deemed to have been taken for an improper purpose where its primary purpose is "to delay, harass, or cause needless expense." *Id.*

¶ 15 Plaintiff asserts that defendant had a motive to delay enforcement of the settlement agreement where she was allegedly unable to pay the entire \$45,000. Plaintiff also asserts that defendant's claim that the agreement was unenforceable because its terms were too indefinite and uncertain was waived, without foundation in fact or law, and unsupported by an adequate record. Plaintiff further asserts that defendant may have had some personal relationship with a firm principal and was therefore not expected to pay for all the attorney fees incurred in prosecuting

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the appeal where her last name is Ribbeck and she was represented by an attorney from Ribbeck Law Chartered.

¶ 16 We initially note that defendant's appeal is patently frivolous where the only issue raised in this appeal is whether the alleged settlement agreement is unenforceable because its terms are too indefinite and uncertain, and defendant has waived that issue by failing to raise it before the circuit court. *Robidoux*, 201 Ill. 2d at 344; *Gilkey v. Scholl*, 229 Ill. App. 3d 989, 994 (1992). In addition, defendant has failed to include a report of proceedings, a bystander's report, or an agreed statement of facts of the hearing on plaintiff's motion to enforce settlement in the record and, as such, any doubts arising from the incompleteness of the record are to be resolved against her and in plaintiff's favor. *Corral*, 217 Ill. 2d at 156-57.

¶ 17 The appropriateness of sanctions is further bolstered by defendant's failure to seriously or meaningfully address the issues of waiver or plaintiff's request for sanctions in the appellant's brief or reply. As to waiver, defendant entirely failed to address the issue in the appellant's brief, and dedicated 3 sentences, comprising 38 words, to the issue in the reply, in which she simply stated that plaintiff's waiver argument "has no basis" and did not cite to any supporting authority. Regarding sanctions, defendant declined to explain why her appeal was not frivolous or brought in bad faith, and instead provided a one-paragraph response in which she accused plaintiff of raising sanctions "to avoid arguing against the fact that there was no enforceable contract here" and asserted that "[t]his appeal is not frivolous. It was made in good faith and not as a delaying tactic. No reduced attorney fee payments are or were expected from Defendant. No sanctions are warranted."

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¶ 18 We thus determine that defendant's appeal could not have been brought in good faith where the only issue raised on appeal has been waived, she failed to provide this court with a sufficiently complete record, and she did not seriously address the relevant issues in this appeal in the appellant's brief or reply. See *Gilkey*, 229 Ill. App. 3d at 994 (Rule 375(b) sanctions are imposed where the plaintiff's appeal was patently frivolous due to waiver and the plaintiff failed to present a sufficiently complete record, failed to include a jurisdictional statement, and attempted to appeal from a nonfinal order more than 30 days after the order was entered). We therefore conclude that Rule 375(b) sanctions are appropriate in this case.

¶ 19 Although plaintiff asks this court to require defendant and her appellate counsel to show cause as to why they should not be sanctioned, we note that such a proceeding is only required where the sanction is initiated by the reviewing court (Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994)). In this case, sanctions were requested by plaintiff in its appellee's brief, and defendant was given the opportunity to respond to that request in her reply. As such, we see no reason to delay the imposition of sanctions upon defendant and her appellate counsel by requiring them to show cause as to why they should not be sanctioned.

¶ 20 Appropriate sanctions for a violation of Rule 375(b) include "the reasonable costs of the appeal *** and any other expenses necessarily incurred by the filing of the appeal or other action, including reasonable attorney fees." *Id.* We therefore direct plaintiff to file a statement of reasonable expenses and attorney fees incurred as a result of this appeal within 14 days. *Gilkey*, 229 Ill. App. 3d at 994. Defendant and her attorney shall then have seven days to file a response, and this court will thereafter file an order determining the amount of the sanctions which will be

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imposed on defendant and her appellate counsel. *Id.*

¶ 21

CONCLUSION

¶ 22 Accordingly, we affirm the judgment of the circuit court of Cook County and impose sanctions on defendant and her appellate counsel pursuant to Rule 375(b).

¶ 23 Affirmed; sanctions imposed.

