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MEMBER REQUEST FOR DOCUMENTS

WHAT CAN A MEMBER REQUEST/INSPECT?

A. Condominium's CPA Section 19(b)

B. Non Condominium's CPA Section 18.5 (d) and SB 3180 Section 1-30 (I)

WHO SHOULD RESPOND TO THE REQUEST?

A. Board of Managers, President, Manager, Attorney

WHAT IS A PROPER PURPOSE

A. Almost anything. See Wesley case.

B. Per case law: "A proper purpose is shown when a member has an honest motive, is acting in good faith, and is not proceeding for vexatious or speculative reasons." Proper purpose is one that seeks to protect the interest of the corporation and the shareholder seeking the information A good faith fear of mismanagement of the finances is a proper purpose.

WHAT CAN AN OWNER DO WITH THE INFORMATION?

A. Use it for election/removal of directors.

B. Use it in litigation against Board, Board Members, President, Manager.

C. Publish it to other owners.

WHAT AN OWNER CANNOT DO WITH THE INFORMATION.

A. Interfere with contract or contractors or vendors.

B. Misquote, falsify, modify, defame, publish generally, interfere with business and functions of association.

WHAT ABOUT REDACTING (BLOCKING OUT) INFORMATION GIVEN?

A. May be able to do so if information is in a protected class but should be able to withhold all protected information.

B. May be able to block out names and/or units in certain matters. Phone numbers, account numbers, banking information, or other information of particular unit owners should be redacted if necessary.

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MEMBER REQUEST FOR DOCUMENTS (Continued)

WHAT HAPPENS IF A REQUEST ISN'T ADDRESSED IN A TIMELY MANNER?

A. It is "deemed" a denial. Condos - 19(b) and Non Condos - 18.5(d)(4).

B. Member can seek enforcement of compliance by suit and if successful can recover their attorney fees and costs from association to bring suit.

WHAT IF LITIGATION IS PENDING?

A. Certain documents cannot be obtained (see Section 19(g), all others are available.

CAN A GROUP OF OWNERS SUBMIT A REQUEST TOGETHER?

A. Any member has the right.

B. A group of members have the right.

SHOULD AN ASSOCIATION HAVE A POLICY REGARDING SUCH REQUESTS?

A. Association does not need a policy or a rule as it is relatively clear in Sections 18.5(d) and 19. However,

B. A policy would give the board some guidance and a rule might also give the owners guidance in procedures to follow to submit, obtain records and to fix costs for same.

C. Each request is to be reviewed on a case by case basis.

IS THERE A TIME PERIOD TO RESPOND TO A REQUEST?

A. Illinois Condominium Property Act 18.5(d) and 19 requires response in thirty (30) days of receipt of the request.

B. City of Chicago requires three (3) days to make available, so check your municipality, most have ordinances.

WHAT IS NOT MADE AVAILABLE?

A. Section 19(g) for Condos.

HOW IS A REQUEST MADE TO THE BOARD? (Officer or Manager)

A. Requests should be made in writing, state what specifically is wanted and a proper purpose.

B. Should be dated by Association or Manager with date of receipt.

C. Must identify party(ies) requesting documents.

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CAN AN ASSOCIATION CHARGE FOR OBTAINING RECORDS AND WHAT AMOUNT?

A. Section 19(f) - Condo - The "actual cost" to the Association of retrieving and making requested records available for inspection and examination under this Section "shall" be charged by the Association to the requesting Member(s).

B. If a member requests copies of records requested, the actual costs to the Association of reproducing the records "shall" also be charged by the Association to requesting member(s).

C. Section 18.5(d)(3) - Non Condo - A "reasonable fee" for "cost of copying."

HOW ARE THESE SECTIONS INTERPRETED BY THE COURTS?

A. Broadly so far except earliest case, making records available.

B. Broadly in favor of disclosure, even if statute is limiting.

C. Evolving as statute is modified.

WHO HAS BURDEN OF PROOF; ON WHAT; WHAT DOES IT MEAN?

A. Regarding records; 19(a) 6, 7, 8 and 9 only, burden of proof is on member to establish the member's request is based on a proper purpose (burden of proof to whom). All others no proper purpose.

B. Under Not-for-profit Act. Burden of proof fro financial records on member. Burden of proof for minutes is on the Board.

C. Burden of proof means the person must show that it is more probable than not that the purpose is proper.

WHAT ARE DEFINITIONS FOR (A)"BOOKS & RECORDS", (B)"FINANCIAL BOOKS & RECORDS", (C)"BOOKS & RECORD OF ACCOUNTS", (D)"ITEMIZED AND DETAILED RECORDS OF ALL RECEIPTS AND EXPENDITURES?

A. Should be only formal adopted materials but may be more and may be all records.

B. Should be only financials, i.e., accounts payable, accounts receivable, general ledger, balance sheet, P&L statement. Should not include work papers or drafts but may. Should not include budget work papers, but did in Taghert-Wesley case.

C. Same as /B/

D. Same as /B/ but may be all invoices, bills, etc., even though it does not technically meet wording.

MUNICIPAL CODE OF CHICAGO

Chapter 13-72 - Condominiums

13-72-080 Examination of Records By Unit Owners.

No person shall fail to allow unit owners to inspect the financial books and records of the condominium association within ten three* business days of the time written request for examination of the records is received.

(Prior code § 100.2-8; Amend Coun. J. 5-4-11, p. 118299, § 3)

221 Ill.App.3d 742
Appellate Court of Illinois,
First District, Fifth Division.

Eugene MEYER, Plaintiff-Appellant,
v.
The BOARD OF MANAGERS OF HARBOR HOUSE CONDOMINIUM ASSOCIATION, Defendant-Appellee.

No. 1-89-3456. | Oct. 18, 1991.
| Rehearing Denied Dec. 9, 1991.

Condominium unit owner filed suit against condominium association. The Circuit Court, Cook County, Kenneth L. Gillis, J., entered summary judgment for association on count alleging that owner was denied the statutory right to examine association's records. Unit owner appealed. The Appellate Court, Lorenz, P.J., held that: (1) delinquency reports and itemized bills for legal services did not relate to common elements for purposes of one subsection of Condominium Property Act, but those documents pertained to financial matters of association and could be described as "books and records of account" subject to examination on showing of proper purpose; (2) association did not contradict by affidavit unit owner's proper purpose to examine delinquency reports; but (3) genuine issue of material fact, as to whether unit owner had proper purpose to examine itemized bills for legal services, precluded summary judgment.

Reversed and remanded.

West Headnotes (9)

[1] Common Interest Communities
Association records

Delinquency reports and itemized bills for legal services were not subject to examination by condominium unit owner under Condominium Property Act subsection for records relating to common elements. S.H.A. ch. 30, ¶ 319(a)(2).

[2] Corporations and Business Organizations
Inspection of corporate books and records

Under Not For Profit Corporation Act, shareholder has burden to establish he has "proper purpose" to inspect corporation's records; "proper purpose" is shown when shareholder has honest motive, is acting in good faith, and is not proceeding for vexatious or speculative reasons, although purpose must be lawful in character and not contrary to interests of corporation. S.H.A. ch. 32, ¶ 107.75.

1 Cases that cite this headnote

[3] Corporations and Business Organizations
Proper purposes

Proper purpose for shareholder inspection of corporate records is one that seeks to protect interests of corporation and shareholder seeking information.

1 Cases that cite this headnote

[4] Corporations and Business Organizations
Right to Inspection

Shareholder's right to inspect corporation's books and records must be balanced against needs of corporation depending on facts of case.

[5] Corporations and Business Organizations
Proper purposes

Proof of actual mismanagement is not required and good-faith fear of mismanagement is sufficient to show proper purpose to inspect corporation's records.

[6] Corporations and Business Organizations
Proper purposes

Shareholder is not required to establish proper purpose for each record he requests.

[7] Common Interest Communities
Association records

Delinquency reports and itemized bills for legal services pertained to financial matters of condominium association and could be described

as "books and records of account" subject to unit owner's examination on showing of proper purpose. S.H.A. ch. 30, ¶ 319(a)(5); ch. 32, ¶ 107.75.

1 Cases that cite this headnote

[8] Common Interest Communities

Relationship with unit owners in general

Condominium association's statement in its affidavits that disclosure of delinquency reports listing unit owners who had not paid their assessments would violate unit owners' privacy rights did not contradict unit owner's good-faith fear that association was mismanaging its financial matters, a proper purpose for examining the delinquency reports. S.H.A. ch. 30, ¶ 319(a)(5).

1 Cases that cite this headnote

[9] Judgment

Particular Cases

Genuine issue of material fact, as to whether condominium unit owner had proper purpose to examine itemized bills for legal services, precluded summary judgment on count of complaint against condominium association alleging denial of right under Condominium Property Act to examine association records. S.H.A. ch. 30, ¶ 319.

Attorneys and Law Firms

****15 *744 ***461** Steven Messner, Wilmette, Ellis Levin, Lamet, Kanwit & Assoc., Chicago, for plaintiff-appellant.

Barry B. Nekritz, Phillip J. Zisook, Altheimer & Gray, Chicago, for defendant-appellee.

Opinion

Presiding Justice LORENZ delivered the opinion of the court:

Plaintiff, Eugene Meyer, appeals from summary judgment entered in favor of defendant, the Board of Managers of Harbor House Condominium Association (Association), on count V of his amended complaint which alleged he was denied the statutory right to examine the Association's records. We consider: (1) whether plaintiff, as a unit owner, had a right to examine the Association's delinquency reports, which listed unit owners who did not pay their assessments, and itemized bills for legal services under section 19 of the Condominium Property Act (Ill.Rev.Stat.1989, ch. 30, par. 319); and (2) whether the Association complied with section 19 when it required plaintiff to obtain its records from the doorman of the building rather than in its office. For the following reasons, we reverse and remand.

In count V of his amended complaint, plaintiff alleged that, as the owner of a condominium unit governed by the Association, he made numerous requests to inspect a variety of the Association's records, including some he identified as "delinquency reports" and "legal detailed breakdowns." Plaintiff alleged that the Association denied the requests violating section 19 (Ill.Rev.Stat.1989, ch. 30, par. 319) which allows a unit owner to examine a condominium association's records. He sought a preliminary injunction to order the Association to supply him with the requested records and reimburse him for costs of the suit.

After the Association answered the complaint and some discovery was completed, both plaintiff and the Association moved for summary judgment on count V.

In an affidavit supporting his motion for summary judgment, plaintiff stated that the Association did not allow him to examine the delinquency reports and legal invoices.

***745** In support of its motion for summary judgment, the Association relied on the affidavit of Joey Buchanan, the building manager who maintained the Association's records. Buchanan stated that plaintiff was not allowed to examine the delinquency reports, which included the names of unit owners who did not pay their assessments, because it would have violated their right to privacy. Further, plaintiff was not allowed to examine legal invoices because ****16 ***462** they did not pertain to the common elements, they related to plaintiff's litigation against the Association, and they were subject to the attorney-client privilege. Instead of allowing plaintiff to obtain the remaining records he requested in the Association's office, it required him to receive the records from the doorman of the building because plaintiff had previously been abusive to the office personnel.

After a hearing, the trial judge stated that plaintiff was not entitled to the delinquency reports or the itemized bills for legal services, however, he did not rule on the motions for summary judgment and, instead, continued the hearing to another date.

Plaintiff filed a petition to reconsider, although an order was not yet entered on the summary judgment motions, relying on his two supplemental affidavits. He stated that before he filed the present lawsuit, the Association allowed him to examine delinquency reports and "detailed breakdown [s] of legal invoices." He further stated that he was informed that the Association allowed several unit owners to accumulate a substantial amount of unpaid assessments, it was paying an excessive hourly rate for attorney fees, and it incurred attorney fees to pursue a claim which were higher than the claim itself. Plaintiff also denied he was abusive to the personnel in the Association's office.

In response to the petition to reconsider, the Association relied on Buchanan's supplemental affidavit in which he stated that, although plaintiff was not allowed to examine certain records, he was allowed to examine general records stating the total amount of delinquent assessments and legal bills. He also asserted that only 4 unit owners, out of 278, were delinquent in their payment of assessments and that if an owner did not pay his assessments for two months, it was the Association's practice to refer the matter to its attorneys. Further, the Association discontinued legal action against a former commercial tenant when the attorney fees it incurred approached the amount of the claim.

In a reply brief, plaintiff filed a fourth affidavit and stated that, based on a document obtained from the Association, it failed to collect unpaid assessments from three unit owners who owed a total of approximately ***746** $40,000. Also, the Association sent a memo to unit owners stating that, as a result of plaintiff's lawsuits, it incurred approximately $35,000 in attorney fees which plaintiff believed was incorrect.

Another hearing was held on the motions for summary judgment. The trial judge based his ruling on the finding that, as a matter of law, plaintiff was not entitled to examine the records he requested from the Association. The unit owners' privacy rights precluded plaintiff from examining the delinquency reports, which listed the names and unit numbers of owners who did not pay their assessments, the amount due, and any collection efforts. Also, the itemized bills for legal services, listing the attorney's name, the amount of time spent, and a description of the legal services provided, were subject to the attorney-client privilege and would not be disclosed to plaintiff. As a result, plaintiff's motion for summary judgment and his petition to reconsider were denied and the Association's motion for summary judgment was granted. The judge also found that the Association did not violate section 19 and it was not unreasonable to require plaintiff to obtain the remaining records he requested from the doorman.

Plaintiff now appeals.

OPINION

Summary judgment should be granted if the pleadings, depositions, admissions, and affidavits show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Ill.Rev.Stat.1989, ch. 110, par. 2-1005(c).

As a preliminary matter, the Association contends that plaintiff's affidavits filed in support of his petition to reconsider should not be considered on appeal because they contained information which should have been included in his first affidavit. However, plaintiff's petition to reconsider was filed when the motions for summary judgment were still pending. Because a party ****17** *****463** opposing summary judgment may file affidavits prior to or at the time of the hearing on the motion (Ill.Rev.Stat.1989, ch. 110, par. 2-1005(c)), plaintiff's affidavits, as well as the Association's affidavit, filed prior to the last hearing on the motions will be considered.

On appeal, plaintiff argues that summary judgment was improperly entered in the Association's favor because he had a right to examine the delinquency reports and the itemized bills for legal services under section 19(a) of the Condominium Property Act (Ill.Rev.Stat.1989, ch. 30, par. 319(a)). The Association responds that the records plaintiff requested are not subject to his right to inspect because they are not specifically enumerated in the section.

***747** Section 19(a) requires a condominium association to maintain certain records available for the unit owners' examination listing several categories of records, such as the declaration, by-laws, and minutes of meetings.

[1] Plaintiff first contends that delinquency reports and itemized bills for legal services are included in subsection (2) of section 19(a), which states:

> "(2) Detailed accurate records in chronological order of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred, and copies of all contracts, leases, or other agreements entered into by the association shall be maintained." Ill.Rev.Stat.1989, ch. 30, par. 319(a)(2).

The language used in subsection (2) only refers to the common elements which are defined as "all portions of the property except the units." (Ill.Rev.Stat.1989, ch. 30, par. 302(e).) Although there is a reference to "any other expenses incurred," it appears that phrase is limited by the language that preceded it which refers to maintenance and repair of the common elements. Therefore, neither the delinquency reports nor the itemized bills for legal services that plaintiff requested are subject to examination under subsection (2) because they do not relate to the common elements.

[2] [3] [4] [5] Plaintiff also argues that the delinquency reports and the itemized bills for legal services fall under subsection (5) of section 19(a), which states:

> "(5) Such other records of the association as are available for inspection by members of a not-for-profit corporation pursuant to Section 107.75 of the General Not For Profit Corporation Act of 1986 ["Not For Profit Corporation Act"] * * * shall be maintained." (Ill.Rev.Stat.1989, ch. 30, par. 319(a)(5).)

Section 107.75 of the Not For Profit Corporation Act provides:

> "Each corporation shall keep correct and complete books and records of account * * *; and shall keep at its registered office or principal office a record giving the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member entitled to vote, or that member's agent or attorney, for any proper purpose at any reasonable time." (Ill.Rev.Stat.1989, ch. 32, par. 107.75.)

The shareholder has the burden to establish he has a proper purpose to inspect the corporation's records. (*Weigel v. O'Connor* (1978), 57 Ill.App.3d 1017, 15 Ill.Dec. 75, 373 N.E.2d 421.) A proper purpose is shown when a ***748** shareholder has an honest motive, is acting in good faith, and is not proceeding for vexatious or speculative reasons (*Weigel,* 57 Ill.App.3d 1017, 15 Ill.Dec. 75, 373 N.E.2d 421), however, the purpose must be lawful in character and not contrary to the interests of the corporation (*Sawers v. American Phenolic Corp.* (1949), 404 Ill. 440, 89 N.E.2d 374). A proper purpose is one that seeks to protect the interests of the corporation and the shareholder seeking the information. (*Weigel,* 57 Ill.App.3d 1017, 15 Ill.Dec. 75, 373 N.E.2d 421.) This court has previously recognized that a shareholder's right to inspect a corporation's books and records must be balanced against the needs of the corporation depending on the facts of the case. (****18 ***464** *National Consumers Union v. National Tea Co.* (1973), 14 Ill.App.3d 186, 302 N.E.2d 118.) Proof of actual mismanagement is not required; a good faith fear of mismanagement is sufficient to show proper purpose. *Weigel,* 57 Ill.App.3d 1017, 15 Ill.Dec. 75, 373 N.E.2d 421.

[6] The shareholder is not required to establish a proper purpose for each record he requests. (*Weigel,* 57 Ill.App.3d 1017, 15 Ill.Dec. 75, 373 N.E.2d 421.) "Once that purpose has been established, the shareholder's right [to inspect] extends to all books and records necessary to make an intelligent and searching investigation * * * [and] 'from which he can derive any information that will enable him to better protect his interests.' " *Weigel,* 57 Ill.App.3d 1017, 1027, 15 Ill.Dec. 75, 82, 373 N.E.2d 421, 428 (quoting 5 W. Fletcher, Private Corporations § 2239 at 779 (rev. vol. 1976)).

[7] The references in section 107.75, incorporated in subsection (5) of section 19(a), to "complete books and records of account" and "all books and records" grant a unit owner access to a broad range of an association's records, however, the access is limited to a showing of proper purpose. (Ill.Rev.Stat.1989, ch. 32, par. 107.75) Once the purpose is established, the unit owner may examine necessary books and records. In this case, both the delinquency reports and the itemized bills for legal services, which pertain to the financial matters of the Association, can be described as books and records of account and may be subject to plaintiff's examination on a showing of proper purpose.

[8] In his affidavits, plaintiff stated that the Association was not collecting assessments from delinquent unit owners and that the Association was incurring excessive attorney fees. These statements established a good faith fear that the Association was mismanaging its financial matters which was a proper purpose to inspect the Association's records.

In response to plaintiff's asserted purpose, the Association stated in its affidavits that disclosure of the delinquency reports would violate ***749** the privacy rights of the unit

owners. However, this claim was insufficient because the Association does not contend that it can assert a claim for invasion of privacy on behalf of the owners and it does not show that plaintiff's purpose was improper. The Association also stated that it properly managed the collection of delinquent assessments but this claim did not address plaintiff's right to examine the records to make that determination for himself as allowed under section 19. As a result, the Association did not contradict, by affidavit, plaintiff's proper purpose to examine the delinquency reports.

[9] However, as to the itemized bills for legal services, the Association responded that, despite plaintiff's asserted purpose, the bills related to plaintiff's lawsuits pending against the Association and would disclose attorney-client privilege. The fact that a shareholder has a lawsuit pending against the corporation does not alone affect the right to an inspection or show improper purpose. (5A W. Fletcher, Private Corporations § 2225 at 379 (perm. ed. 1987).) Similarly, the Association's claim of privilege did not automatically defeat plaintiff's assertion of proper purpose, especially on a motion for summary judgment. Although plaintiff's litigation against the Association may establish his purpose to examine the itemized bills was contrary to its interests, a hearing is required where the parties' competing interests may be balanced. As a result, the affidavits established a genuine issue of material fact as to whether plaintiff had a proper purpose to examine the itemized bills for legal services.

Therefore, the entry of summary judgment in the Association's favor on count V of plaintiff's complaint must be reversed and remanded.

Plaintiff also argues that the trial judge erred when he found that the Association did not violate section 19 when it required him to receive the records from the doorman. However, plaintiff did not allege this violation of section 19 in count V of his complaint, which is the only count relevant on appeal. This issue developed in the parties' affidavits in support of and in opposition to their motions for summary judgment, ****19 ***465** however, it was not based on the pleadings. As a result, it will not be addressed on appeal.

Reversed and remanded.

GORDON and McNULTY, JJ., concur.

Parallel Citations

221 Ill.App.3d 742, 583 N.E.2d 14

343 Ill.App.3d 1140
Appellate Court of Illinois,
First District, Fifth Division.

Francis TAGHERT, Plaintiff-Appellee,
v.
Walter WESLEY and Nat Ozmon, President and Director of 1440 Lake Shore Condominium Association, Defendants-Appellants.

Nos. 1-01-3554, 1-02-1087, 1-02-1227. | Sept. 30, 2003.

Owner of condominium unit brought action under Condominium Property Act against president and director of condominium association, for failure to provide a requested inspection of association financial documents. The Circuit Court, Cook County, Amanda S. Toney, J., ordered president and director to produce the documents for inspection, entered sanctions against president and director, and awarded unit owner attorney fees and costs. President and director appealed. The Appellate Court, Campbell, P.J., held that: (1) owner of condominium unit had standing to bring action; (2) owner stated a proper purpose for inspection of financial documents specifically relating to preparation of condominium association's budget; (3) entering contempt sanctions against defendants was not an abuse of trial court's discretion; and (4) awarding owner attorney fees was not an abuse of discretion.

Affirmed.

West Headnotes (9)

[1] Common Interest Communities
Right of Action; Persons or Entities Entitled to Sue; Standing

Owner of condominium unit had standing to bring action under Condominium Property Act against president and director of condominium association, individually and in their capacity as members of association's board of directors, for failure to provide a requested inspection of association financial documents. S.H.A. 735 ILCS 5/2-209.1.

[2] Common Interest Communities
Association records

Owner of condominium unit stated a proper purpose, under Condominium Property Act, for the inspection of financial documents specifically relating to preparation of condominium association's budget for the specified fiscal year. S.H.A. 765 ILCS 605/19.

1 Cases that cite this headnote

[3] Corporations and Business Organizations
Proper purposes

A "proper purpose" is shown when a shareholder who seeks to examine the records, books, and papers of the corporation has an honest motive, is acting in good faith, and is not proceeding for vexatious or speculative reasons; however the purpose must be lawful in character and not contrary to the interests of the corporation.

3 Cases that cite this headnote

[4] Corporations and Business Organizations
Proper purposes

A "proper purpose" is one that seeks to protect the interests of the corporation and as well as the interests of shareholder seeking to examine the records, books, and papers of the corporation.

3 Cases that cite this headnote

[5] Pretrial Procedure
Failure to Comply; Sanctions

Entering sanctions against president and director of condominium association defendants in the amount of $500 per day until such time that they complied with trial court's order, requiring them to produce requested financial documents, was not an abuse of trial court's discretion to fashion appropriate remedies for a party's contempt.

1 Cases that cite this headnote

[6] Contempt

Nature and grounds of power

The trial court is vested with inherent power to enforce its orders and preserve its dignity by the use of contempt proceedings.

[7] Contempt

Discretion of court

Contempt

Review

It is within the discretion of the trial court to fashion appropriate remedies for a party's contumacious behavior and the Appellate Court will not reverse the contempt order of the trial court absent an abuse of such discretion.

[8] Common Interest Communities

Costs and attorney fees

Entering an award of attorney fees in favor of owner of condominium unit in action seeking condominium association documents under Condominium Property Act was not an abuse of discretion. S.H.A. 765 ILCS 605/19(e).

[9] Appeal and Error

Attorney fees

Costs

Discretion of Court

Costs

Discretion of court

An award of attorney fees and costs is within the discretion of the trial court, and, absent an abuse of discretion, the Appellate Court may not reverse such an award.

2 Cases that cite this headnote

Attorneys and Law Firms

****378 *1141 ***660** Kiesler & Kanyock, LLC, Chicago (David J. Kiesler and Joshua J. Whiteside, of counsel), for Appellant.

Francis Taghert, Chicago, for Appellee.

Opinion

***1142** Presiding Justice CAMPBELL delivered the opinion of the court:

This is a consolidated appeal. Plaintiff, Francis Taghert, filed a complaint under the Illinois Condominium Property Act (765 ILCS 605/19 (West 2000)), against defendants, Walter Wesley and Nat Ozmon, the President and Director of 1440 Lake Shore Condominium Association, respectively, for failure to provide a requested inspection of Condominium Association financial documents. The trial court ordered defendants to produce the documents for inspection, entered sanctions against defendants, and awarded plaintiff attorney fees and costs. Defendants appeal from the various orders of the circuit court of Cook County denying motions to dismiss, motions to enter judgment on the pleadings, and from sanctions and awards entered against them. We affirm.

BACKGROUND

The record reveals the following relevant facts. Plaintiff, Francis Taghert, is an owner of a condominium unit in 1440 N. Lake Shore Drive, and operated as the 1440 Lake Shore Condominium Association (LSCA). Walter Wesley was president of the board of directors of the LSCA from June 1997, until June 2000. Nat Ozmon has been a board member and vice-president of the board of directors of the LSCA since June 1997.

On August 12, 1999, plaintiff sent a written petition to the LSCA Directors requesting certain condominium records from the Board, *to wit*, the "budgetary files of the LSCA finance committee." Wesley responded to plaintiff *via* letter dated August 27, 1999, that plaintiff could obtain the information requested by attending a meeting of the finance committee.

Thereafter, on August 27, 1999, plaintiff filed a complaint, *pro se*, naming as defendants, Wesley and Ozmon, alleging misfeasance in the process of determining special assessments and requesting punitive damages and fees.

In his initial complaint, plaintiff alleged that defendants failed to adhere to the provisions of the Declaration of Condominium and its bylaws, and to Section 19 of Illinois Condominium Property Act (Condominium Property Act), in making the records of the Association available for examination and review (765 ILCS 605/19 (West 2000)).

Plaintiff alleged that defendants failed to comply with his requests to ****379 ***661** review the budgetary files of the LSCA Finance Committee for the 1999/2000 budget. Plaintiff sought compensatory damages in the amount of $1, and punitive damages in the amount of $3,000, to be distributed to a Chicago charity at the court's direction, and associated court fees.

***1143** The trial court permitted plaintiff to amend his complaint four times. In his fourth amended complaint, dated March 19, 2001, plaintiff alleged that the insurer of LCSA, St. Paul Fire and Marine Insurance Company (St. Paul), by and through its manager Brad Smith and counsel, Daniel M. Extrom, wrongly failed to pay plaintiff an arbitration award in the amount $400, for attorney fees and $1 for nominal damages, associated with the arbitration of plaintiff's complaint for request for documents. [1] Defendants rejected the arbitration award as their statutory right.

The trial court entered an order on June 1, 2001, denying defendants' April 9, 2001, motion for judgment on the pleadings. The trial court granted in part and denied in part defendants' section 2-615 motion to dismiss plaintiff's fourth amended complaint with prejudice for failing to state a cause of action, striking certain paragraphs of plaintiff's fourth amended complaint.

Plaintiff filed a fifth amended complaint on June 13, 2001, adding counts sounding in conspiracy and misappropriation in connection with defendants' budgetary decisions in 1999-2000. A pre-trial settlement conference commenced on July 13, 2001. At the onset of the conference, plaintiff made a settlement demand of $3001. The trial court restated plaintiff's position as plaintiff having asked the Board for information regarding the preparation of the 1999-2000 budget. Defense counsel maintained that plaintiff had never requested this information in his complaint, and failed to request records with specificity. At the end of the hearing, the trial court denied defendants' motion to dismiss plaintiff's complaint or to grant judgment in favor of defendants on the pleadings.

On September 24, 2001, a hearing commenced in open court. The trial court inquired of the parties why they had failed to supply plaintiff with the documents he requested, then, *sua sponte,* entered an order compelling defendants' production of the "files of the Finance Committee." On October 1, 2001, defendants advised the court that no such files existed, and filed affidavits to that effect. Nevertheless, the trial court entered an order finding defendants in contempt of court and assessed fines in the amount of $500 per day until defendants produced such documents.

On October 9, 2001, plaintiff filed a motion for judgment on the pleadings arguing that by defendants' statements through counsel in ***1144** open court, defendants admitted that the Board possessed documents relating to the 1999-2000 budget. Plaintiff alleged a contradiction between defendants' affidavits and the admission of defendants and of defense counsel. Plaintiff asserted that he had a witness, Don Rosenbaum, Co-Chairman of the Finance Committee during the formation of the 1999-2000 budget, who would testify that condominium budgets were often assembled without working sheets and were based on prior budgets. Plaintiff asserted that Wesley had tampered with the budget and inserted a special assessment without approval of the Board, and that Ozmon assented. Plaintiff also cited the following exchange:

> ****380 ***662** "THE COURT: Do you have papers or receipts or anything that were used by the Board condo, its managers etc. in preparing a budget for 99/00?
>
> MR. OZMON: Well, certainly there are papers.
>
> THE COURT: Certainly there are papers.
>
> MR. OZMON: Certainly there are papers, just as your honor said."

On November 16, 2001, the trial court granted plaintiff's motion for judgment on the pleadings. The trial court noted that "Defendant Wesley refused to provide the documents citing the fact that plaintiff failed to make a proper request for the documents." On December 18, 2001, the trial court entered judgment in favor of plaintiff and against defendants in the amount of $2,274.34. Defendants' motions to reconsider these orders were denied on April 4, 2002, and April 17, 2002, respectively.

Defendants filed their timely notices of appeal of the above described orders of the trial court on October 3, 2001, and April 17, 2002. On October 26, 2001, this court granted defendants' motion to stay the trial court's contempt order, denied waiver of bond, and denied defendants' motion to stay further proceedings in the trial court.

OPINION

[1] Initially, defendants contest their standing to be sued under section 19(e) of the Condominium Property Act.

Section 19(e) provides that the condominium board is the proper party from which to request documents and from whom a complaining party may receive costs and fees. 765 ILCS 605/19(e) (West 2000). Defendants argue that plaintiff incorrectly filed his action against Wesley and Ozmon in their individual capacity and as board members of the LSCA, rather than against the LSCA Defendants' contention is without merit. The record shows that plaintiff properly filed his complaint against defendants individually and in their capacity as members of the LCSA Board of directors. 735 ILCS 5/2-209.1 (West 2002).

[2] ***1145** Next, defendants contend that the trial court erred in entering various orders denying their motions to dismiss plaintiff's case for failure to state a claim, and motions for judgment on the pleadings. Defendants argue that plaintiff failed to comply with the procedures set forth in the Condominium Property Act regarding the inspection of association records. In particular, defendants contend that plaintiff failed to state a "proper purpose" for inspecting condominium documents.

Section 19 of the Condominium Property Act provides in pertinent part as follows:

> "19(a) The board of managers of every association shall keep and maintain the following records, or true and complete copies of these records, at the association's principal office:
>
> * * *
>
> (9) the books and records of account for the association's current and 10 immediately fiscal years, including but not limited to itemized and detailed records of all receipts and expenditures.
>
> * * *
>
> 19(e) Except as otherwise provided in subsection (g) of this Section any member of an association shall have the right to inspect, examine and make copies of the records described in subdivisions (6), (7), (8), and (9) of subsection (a) of this Section in person or by agent, at any reasonable time or times but only for a proper purpose, at the association's principal office. In order to exercise this right, a member must submit a written ****381** *****663** request, to the association's board of managers or its authorized agent, stating with particularity the records sought to be examined and a proper purpose for the request. Subject to the provisions of subsection (g) of this Section, failure of an association's board of managers to make available all records so requested within 30 business days of receipt of the member's written request shall be deemed a denial; * * * "
>
> * * *
>
> In an action to compel examination of records described in subdivisions (6), (7), (8), and (9) of subsection (a) of this Section, the burden of proof is upon the member to establish that the member's request is based on a proper purpose. Any member who prevails in an enforcement action to compel examination of records described in subdivisions (6), (7), (8), and (9) of subsection (a) of this Section shall be entitled to recover reasonable attorney's fees and costs from the association only if the court finds that the board of directors acted in bad faith in denying the member's request." 765 ILCS 605/19 (West 2000).

There is a veritable dearth of case law in the state of Illinois ***1146** interpreting section 19 of the Condominium Property Act and its provision directing the inspection of documents.

The Condominium Property Act itself is only forty-years old, first established by law in 1963. The Condominium Property Act originally derived the rights enunciated in section 19, vesting rights of condominium unit owners to inspect the books and records of the association, from the statutory law of corporations.

[3] **[4]** It has long been established in Illinois that a shareholder in a corporation has the right to examine the records, books and papers of the corporation after stating a "proper purpose." *Stone v. Kellogg,* 165 Ill. 192, 46 N.E. 222 (1896); *Weigel v. O'Connor,* 57 Ill.App.3d 1017, 15 Ill.Dec. 75, 373 N.E.2d 421 (1978); *Hagen v. Distributed Solutions, Inc.,* 328 Ill.App.3d 132, 262 Ill.Dec. 24, 764 N.E.2d 1141 (2002). A proper purpose is shown when a shareholder has an honest motive, is acting in good faith, and is not proceeding for vexatious or speculative reasons. However the purpose must be "lawful in character and not contrary to the interests of the corporation." *Sawers v. American Phenolic Corp.,* 404 Ill. 440, 89 N.E.2d 374 (1949). "A proper purpose is one that seeks to protect the interests of the corporation and as well as the interests of shareholder seeking the information." *Weigel,* 57 Ill.App.3d at 1025, 15 Ill.Dec. 75, 373 N.E.2d 421.

In *Meyer v. The Board of Managers of Harbor House Condominium Association,* 221 Ill.App.3d 742, 164 Ill.Dec. 460, 583 N.E.2d 14 (1991), this court addressed a plaintiff unit owner's request to inspect documents under the above quoted provision of the prior version of the Condominium Property Act. In its prior incarnation, section 19(a) specifically stated that the right of inspection was derived from the Not For Profit Corporation Act, permitting inspection of condominium records by "members of a not-for-profit corporation pursuant to Section 107.75 for the General Not For Profit Corporation Act of 1986." Ill.Rev.Stat.1989, ch. 30, para. 319(a)(5). Section 107.75 of the Not For Profit Corporation Act provided in pertinent part as follows:

> "Each corporation shall keep correct and complete books and records of account * * *; and shall keep at its registered office or principal office a record giving the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected ****382 ***664** by any member entitled to vote, or that member's agent or attorney, for any proper purpose at any reasonable time." (Ill. Rev. Stat 1989, ch. 32, par. 107.75).

The *Meyer* court thus examined the rights and burdens of a unit-owner in requesting an inspection of records as those of a shareholder making such a request of a corporation. This court held that where a unit owner asserted a good-faith fear of mismanagement of financial matters ***1147** by the association, he established a proper purpose to inspect the records of the condominium association's delinquency reports and itemized legal bills. *Meyer,* 221 Ill.App.3d at 748, 164 Ill.Dec. 460, 583 N.E.2d 14.

In the present case, plaintiff requested an inspection of the records of the Finance Committee of the LCSA in order to ascertain the expenditures proposed for the 1999-2000 budget year. The record shows that following lengthy proceedings, the trial court determined that plaintiff submitted a request to inspect documents pursuant to section 19, that plaintiff stated a proper purpose in making such a request, and that defendants acted in bad faith in denying plaintiff's request. Defendants' argument that plaintiff's request was inadequate as non-specific is unfounded. The record shows that both defendants and defense counsel admitted in the trial court that such documents existed and, in fact, were in defendants' possession.

Section 19 is clear as to plaintiff's right to an examination of the books and records of the association. We find that plaintiff has stated a proper purpose for the inspection of the financial documents specifically relating to the preparation of the fiscal year 1999-200 budget. Under these circumstances we cannot find that the trial court erred in entering judgment in favor of plaintiff and against defendants.

[5] Defendants further object to the sanctions rendered against them after the trial court found them in contempt of court. On September 24, 2001, the trial court ordered defendants to produce the requested documents. Defendants refused, and the trial court found defendants in contempt of court and entered sanctions against defendants in the amount of $500 per day until such time that defendants comply with the trial court's order.

[6] **[7]** The trial court is vested with inherent power to enforce its orders and preserve its dignity by the use of contempt proceedings. *In re Marriage of Bonneau,* 294 Ill.App.3d 720, 229 Ill.Dec. 187, 691 N.E.2d 123 (1998). It is within the discretion of the trial court to fashion appropriate remedies for a party's contumacious behavior and this court will not reverse the contempt order of the trial court absent an abuse of such discretion. *Shatkin Inv. Corp. v. Connelly,* 128 Ill.App.3d 518, 83 Ill.Dec. 810, 470 N.E.2d 1230 (1984). We find no abuse of discretion here.

[8] Finally, defendants object to the award of attorney fees and costs to plaintiff.

Although plaintiff appears *pro se* on appeal, and appeared *pro se* for much of his activity at the trial court level, the record shows that plaintiff initially retained an attorney to represent him in his action and incurred attorneys fees. The trial court reviewed plaintiff's petition for fees and costs presented by plaintiff and entered an award totaling $2,274.34. Under section 19(e) of The Act, as quoted above, ***1148** after a member prevails in an action to compel examination of records, the member is entitled to petition the court for attorney fees. This court has held that where a plaintiff succeeds in an action against a condominium association to compel disclosure of books and records, the plaintiff is ****383 ***665** entitled to legal fees and the defendant association is not entitled to attorney fees for the defense of such an action. See *Verni v. Imperial Manor of Oak Park Condominium, Inc.,* 99 Ill.App.3d 1062, 55 Ill.Dec. 171, 425 N.E.2d 1344 (1981).

[9] An award of attorney fees and costs is within the discretion of the trial court and absent an abuse of discretion, this court may not reverse such an award. *Kruse v. Kuntz,* 288

Ill.App.3d 431, 225 Ill.Dec. 522, 683 N.E.2d 1185 (1996). In the present case, we cannot find that the trial court erred in entering an award in favor of plaintiff for $2,274.34.

We therefore affirm the judgment of the trial court.

Affirmed.

REID and HARTIGAN, JJ., concurring.

Parallel Citations

343 Ill.App.3d 1140, 799 N.E.2d 377

Footnotes

1 Plaintiff's collateral complaint against St. Paul was previously dismissed by the trial court pursuant to section 2-615 of the Code of Civil Procedure after a determination that St. Paul is not a proper party to plaintiff's case.

401 Ill.App.3d 868
Appellate Court of Illinois,
First District, Fifth Division.

Gary PALM, Plaintiff–Appellee,
v.
2800 LAKE SHORE DRIVE CONDOMINIUM ASSOCIATION, an Illinois Not–for–Profit Corporation, Board of Directors of the 2800 Lake Shore Condominium Association, and Kay S. Grossman, Individually and as President of the Board, Defendants–Appellants
(The City of Chicago, Intervenor–Appellee.)

No. 1–08–2436. | May 28, 2010.

Synopsis

Background: Condominium unit owner brought suit against condominium association seeking production of financial records pursuant to city ordinance, and city intervened, alleging its ordinance was valid. The Circuit Court, Cook County, No. 00 CH 0679, Sophia Hall, J., granted summary judgment, ordering production of documents, awarding attorney's fees to owner, and finding the ordinance valid. Association appealed.

Holdings: The Appellate Court, First District, Fifth Division, Fitzgerald Smith, J., held that:

[1] ordinance allowing document inspection was valid;

[2] attorney's fees provisions in ordinance were valid;

[3] attorney's fees of $300 per hour were reasonable;

[4] order continuing issue of sanctions was not a final, appealable order; and

[5] condominium declaration was not inconsistent with statute pertaining to declarations.

Affirmed.

West Headnotes (17)

[1] Municipal Corporations
Local legislation

Constitutional provision pertaining to powers of home rule units was intended to give home rule units like Chicago the broadest powers possible to regulate matters of local concern. S.H.A. Const. Art. 7, § 6.

2 Cases that cite this headnote

[2] Municipal Corporations
Local legislation

A statute intended to limit or deny home rule powers must contain an express statement to that effect. S.H.A. Const. Art. 7, § 6.

[3] Municipal Corporations
Local legislation

Unless a state law specifically states that a home rule unit's power is limited, then the authority of the home rule unit to act concurrently with the state cannot be considered restricted; comprehensive legislation is insufficient to declare the state's exercise of power to be exclusive. S.H.A. Const. Art. 7, § 6(h).

1 Cases that cite this headnote

[4] Municipal Corporations
Local legislation

To meet the requirements of constitutional provision pertaining to exclusive exercise by state of a home rule power, legislation must contain express language that the area covered by the legislation is to be exclusively controlled by the state. S.H.A. Const. Art. 7, § 6(h).

[5] Common Interest Communities
Association records

Municipal Corporations
Local legislation

Neither the Condominium Property Act nor the General Not for Profit Corporation Act specifically excludes home rule units from governing the manner by which a unit owner can gain access to a condominium association's financial books and records. S.H.A. 765 ILCS 605/1 et seq.; 805 ILCS 105/101.01 et seq.

[6] Common Interest Communities
Association records

Municipal Corporations
Local legislation

Chicago condominium ordinance provisions entitling unit owners to access to condominium associations' financial books and records constituted a valid exercise of city's home rule authority, and thus the provisions were not preempted by state law. S.H.A. 765 ILCS 605/1 et seq.; 805 ILCS 105/101.01 et seq.

[7] Appeal and Error
Necessity of presentation in general

Issues not raised in the trial court are deemed waived and may not be raised for the first time on appeal.

[8] Common Interest Communities
Costs and attorney fees

Municipal Corporations
Local legislation

Attorney fees provision in city condominium ordinance was not preempted by state law and was a valid exercise of the city's home rule power; state had the power to provide for an award of attorney fees to prevailing plaintiffs, and thus city, as a home rule unit, had the same power, as long as it was not specifically preempted by state legislature.

1 Cases that cite this headnote

[9] Common Interest Communities
Costs and attorney fees

Attorney's fees of $300 per hour were reasonable in unit owner's action seeking disclosure of condominium association's records; owner, as prevailing plaintiff, provided the trial court with detailed records containing facts and computations upon which he predicated his charge for attorney fees, presented the court with information about his attorney's skill and standing, the nature of the case, the usual and customary charges for comparable services, and an affidavit of a retired judge in support of his petition for attorney fees.

[10] Costs
Evidence as to items

The party seeking attorney fees always bears the burden of presenting sufficient evidence from which the trial court can render a decision as to their reasonableness.

[11] Costs
Items and amount; hours; rate

Costs
Evidence as to items

An appropriate attorney fee consists of reasonable charges for reasonable services; however, to justify a fee, more must be presented than a mere compilation of hours multiplied by a fixed hourly rate or bills issued to the client, since this type of data, without more, does not provide the court with sufficient information as to their reasonableness.

[12] Costs
Form and requisites of application in general

A petition for attorney's fees must specify the services performed, by whom they were performed, the time expended thereon, and the hourly rate charged therefor.

[13] Costs
Items and amount; hours; rate

In determining the reasonableness of attorney's fees, trial court should consider a variety of factors such as the skill and standing of the attorney, the nature of the case, the novelty and/or difficulty of the issues and work involved, the importance of the matter, the degree of responsibility required, the usual and customary charges for comparable services, the benefit to the client, and whether there is a reasonable connection between the fees and the amount involved in the litigation.

[14] Appeal and Error

Insufficient discussion of objections

Mere contentions, without argument or citation of authority, do not merit consideration on appeal; contentions supported by some argument but by absolutely no authority do not meet the requirements of Supreme Court rule governing appellate briefs. Sup.Ct.Rules, Rule 341(h)(7).

3 Cases that cite this headnote

[15] Appeal and Error

Relating to witnesses, depositions, evidence, or discovery

Trial court's order continuing a motion for sanctions was not a final and appealable order because the order did not finally determine the respondent's rights and status as to the matter of sanctions, and it was subject to further determination by the court.

[16] Common Interest Communities

Association records

Condominium declaration making condominium board's books and records available to unit owners was not inconsistent with condominium statute's declaration provisions, so as to disallow production of financial records requested pursuant to declaration, although statute required a proper purpose to be stated and declaration did not, before inspecting financial records. S.H.A. 765 ILCS 605/4.1(b).

[17] Common Interest Communities

Association records

Even if condominium unit owner was required to state a proper purpose in writing before inspecting financial records of condominium association, he did so by letter stating that he was seeking documents to establish fraud, mismanagement, or self-dealing. S.H.A. 765 ILCS 605/4.1.

Attorneys and Law Firms

****643** Orum & Roth, LLC, Mark D. Roth, Chicago, IL, for Appellant.

Gary H. Palm, Chicago, IL, for Appellee.

Corporation Counsel of the City of Chicago, Mara S. Georges, Chicago, IL, Benna Ruth Solomon, Deputy Corporation Counsel, and Myriam Zreczny Kasper, Chief Assistant Corporation Counsel, for Appellee.

Opinion

Justice FITZGERALD SMITH delivered the opinion of the court:

*****992** ***870** This cause of action arose when Gary Palm (Palm) sought production of various books and records from 2800 Lake Shore Drive Condominium Association (Association), pursuant to the City of Chicago Condominium Ordinance (Chicago Municipal Code, § 13–72–080 (2009)) (the Ordinance). *****993** ****644** The Association did not comply. Palm subsequently brought suit against the Association, the board of directors of 2800 Lake Shore Condominium Association (Board), and Kay S. Grossman (Grossman), individually and as president of the Board (collectively, defendants). Defendants claimed that the Association did not have to comply with the Ordinance because it conflicted with existing Illinois law and, therefore, was invalid. The City of Chicago (City) intervened, alleging that the Ordinance was validly enacted according to its home rule power. The trial court granted Palm's and the City's (collectively plaintiffs') motion for summary judgment in regards to the production of various records, finding that the Ordinance was valid and did not conflict with Illinois law. The trial court also granted interim attorney fees to Palm's attorney. Defendants now appeal, alleging that (1) the

trial court erred in granting summary judgment to plaintiffs because the Ordinance is invalid, (2) the trial court improperly awarded attorney fees at a rate of $300 per hour, (3) trial court erred in refusing to consider defendants' motion for sanctions, and (4) the trial court erred in granting Palm's request for documents pursuant to the Association's declaration. For the following reasons, we affirm.

I. BACKGROUND

The 2800 Lake Shore Drive building is a condominium building. There are more than 700 units in the association. Grossman had ***871** served as a member of the Board since 1982 and also as president of the Board. Palm is a unit owner and served on the Board from 1992 to 1998.

While serving on the Board, Palm allegedly became aware of various improprieties and departures from association bylaws, including (1) Grossman exceeded her authority by taking action without authorization from the Board, (2) Grossman and the Association's counsel did not allow Board members access to Association documents, (3) Board members discussed condominium business, voted, and took action without giving proper notice to or opportunity for input from unit owners, (4) Grossman and management did not require bids on all contracts, (5) management awarded contracts to relatives or entities owned by relatives without proper notification to the Board, and (6) management did not hold "insider" contractors liable for faulty workmanship. Accordingly, Palm requested access to certain Association records. Grossman and the Association counsel denied him access to such documents, claiming that he did not have the right to inspect association records. Palm subsequently filed suit.

Palm filed his original complaint on January 13, 2000, naming the Association as the sole defendant. Palm's single-count complaint asked the trial court to grant an order requiring the Association to allow him to inspect certain records, declaring members of the Board exempt from having to state a proper purpose in order to obtain records, and declaring that the Board may not take action except at an open meeting. The Association filed a motion to dismiss Palm's complaint, alleging in part that his prayer for relief was inconsistent with Illinois's Condominium Property Act (765 ILCS 605/1 *et seq.* (West 2004)) and the Ordinance. The trial court granted the Association's motion to dismiss the complaint, without prejudice.

Palm then filed a first amended complaint against defendants. Count IV, the only count at issue in this appeal, alleged that the Association failed to produce books and records under the Ordinance, the Condominium Property Act, the General Not For Profit Corporation Act of 1986 (805 ILCS 105/101.01 *et seq.* (West *****994** ****645** 2004)), and the Association's declaration. Defendants filed a motion to dismiss. The trial court entered an order requiring the parties to submit supplemental briefs on whether the City properly enacted the Ordinance under its home rule authority, or whether state law preempts the Ordinance. The parties filed supplemental briefs regarding such issue.

The trial judge, Judge Sidney Jones, entered a memorandum opinion and order on December 11, 2000, finding that Illinois law preempted the City's home rule authority to enact the Ordinance, and thus, the Ordinance was invalid.

***872** Palm then filed a motion to reconsider, and defendants filed a response. Soon thereafter, the City filed a petition to intervene in support of Palm's position. The trial court allowed the City to intervene, but denied Palm's motion to reconsider. Plaintiffs then each filed a second motion to reconsider, and defendants responded.

A new trial judge granted the plaintiffs' second motion to reconsider. The new trial judge vacated the prior dismissal order and found that neither the Condominium Property Act nor the General Not for Profit Corporation Act preempts the Ordinance.

On January 31, 2003, the trial court entered summary judgment in favor of Palm on count IV and ordered the Association to immediately produce the requested documents to Palm.

Palm then petitioned the court for an award of interim attorney fees. Palm submitted that an hourly rate of $300 was reasonable and appropriate. Palm noted that he paid his attorney $200 an hour, which was a reduced hourly rate. Palm alleged that it is typical in litigation where attorney fees are recoverable pursuant to statute for an attorney and client to enter into a fee agreement where the client pays a reduced hourly rate, with the reasonable attorney fees to be determined upon the conclusion of the case. Palm filed an affidavit of retired Judge Kenneth Gillis in support of his contention that $300 was a reasonable hourly rate, based on the market value of the work done. In response to Palm's

petition, defendants argued that the court should not entertain issues regarding attorney fees until the conclusion of the litigation and that Palm was not necessarily the "prevailing plaintiff" under the ordinance. Defendants filed a motion for sanctions against Palm for violation of the trial court's January 20, 2006, order by disclosing in public filings the billing rate for the Association's regular counsel. Defendants requested that, as a sanction, Palm's request for interim attorney fees be denied. The trial court refused to consider defendants' motion for sanctions and continued such motion generally.

On August 26, 2008, the trial court granted Palm's petition for interim attorney fees and found him to be the prevailing party under the Ordinance. The trial court awarded Palm fees at a rate of $300 per hour for the period of time from November 1, 2001 to January 31, 2003. Defendants now appeal the January 31, 2003, order granting Palm summary judgment, and the August 26, 2008, order granting interim attorney fees.

II. ANALYSIS

On appeal, defendants claim that (1) the trial court erred in granting summary judgment to plaintiffs because the Ordinance is invalid, ***873** (2) the trial court improperly awarded attorney fees at a rate of $300 per hour, (3) the trial court erred in refusing to consider defendants' motion for sanctions, and (4) the trial court erred in granting Palm's request for certain documents pursuant to the declaration.

***995 **646 A. Ordinance a Valid Exercise of City's Home Rule Power

Defendants' first argument on appeal is that the trial court erred in granting summary judgment to plaintiffs because the Ordinance upon which plaintiffs relied on is invalid. Specifically, defendants allege that the portion of the Ordinance relating to the production of a condominium association's financial records is in direct conflict with both the Condominium Property Act and the Illinois General Not for Profit Corporation Act. Plaintiffs respond that the Ordinance's provision authorizing inspection of association records by unit owners is a valid exercise of the City's home rule power. We agree with the plaintiffs.

The trial court's ruling that the Ordinance was an appropriate exercise of home rule authority presents a question of law, which this court reviews *de novo*. *People v. Whitney*, 188 Ill.2d 91, 98, 241 Ill.Dec. 770, 720 N.E.2d 225 (1999).

Under the Illinois Constitution, a municipality with a population exceeding 25,000 is deemed a "home rule unit" and is granted authority to enact laws relating to the rights and duties of its citizens:

> "[A] home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt." Ill. Const.1970, art. VII, § 6(a).

[1] There is no debate that the City of Chicago is a home rule unit. The above provision was intended to give home rule units like Chicago the broadest powers possible to regulate matters of local concern. *Scadron v. City of Des Plaines*, 153 Ill.2d 164, 174, 180 Ill.Dec. 77, 606 N.E.2d 1154 (1992). In addition, the Illinois Constitution provides that the "[p]owers and functions of home rule units shall be construed liberally." Ill. Const.1970, art. VII, § 6(m). Here, defendants do not argue that the City did not have home rule power to enact the Ordinance. Rather, they argue that Illinois law conflicts with the Ordinance and thus preempts the Ordinance. We disagree.

The Ordinance states in pertinent part:

> "No person shall fail to allow unit owners to inspect the financial books and records of the condominium association within three business days of the time written request for examination of the records is received." Chicago Municipal Code § 13–72–080 (2009).

The two provisions that defendants claims are in conflict with the Ordinance are found in the Condominium Property Act and the ***874** General Not for Profit Corporation Act. The provision in the Condominium Property Act authorizes any member of a condominium association to inspect, examine, and make copies of certain association records at any reasonable time, at the association's principal office, when the request is made in writing and with particularity, and provides that the association's failure to make the records available within 30 days of receipt of the request constitutes a denial. 765 ILCS 605/19(b), (e) (West 2008). The General Not for Profit Corporation Act allows any member of such a corporation who is entitled to vote to inspect the corporation's books and records "for any proper purpose at any reasonable time." 805 ILCS 105/107.75 (West 2008). Defendants argue

that these two provisions are in direct conflict with the Ordinance and, therefore, the Ordinance is invalid.

[2] [3] [4] However, "[a] statute intended to limit or deny home rule powers must contain an express statement to that effect," *****996 **647** *Scadron,* 153 Ill.2d at 187, 180 Ill.Dec. 77, 606 N.E.2d 1154, quoting *Stryker v. Village of Oak Park,* 62 Ill.2d 523, 529, 343 N.E.2d 919 (1976). Unless a state law "*specifically* states that a home rule unit's power is limited, then the authority of the a home rule unit to act concurrently with the State cannot be considered restricted." (Emphasis in original.) *Scadron,* 153 Ill.2d at 188, 180 Ill.Dec. 77, 606 N.E.2d 1154. " 'Comprehensive' legislation is insufficient to declare the state's exercise of power to be exclusive." *City of Chicago v. Roman,* 184 Ill.2d 504, 517, 235 Ill.Dec. 468, 705 N.E.2d 81 (1998). To meet the requirements of section 6(h) of the Illinois Constitution, legislation must contain "express language that the area covered by the legislation is to be exclusively controlled by the State." *Village of Bolingbrook v. Citizens Utilities Co. of Illinois,* 158 Ill.2d 133, 138, 198 Ill.Dec. 389, 632 N.E.2d 1000 (1994). "It is not enough that the State comprehensively regulates an area which otherwise would fall into home rule power." *Citizens Utilities,* 158 Ill.2d at 138, 198 Ill.Dec. 389, 632 N.E.2d 1000. "The General Assembly cannot express an intent to exercise exclusive control over a subject through coincidental comprehensive regulation." *American Health Care Providers, Inc. v. County of Cook,* 265 Ill.App.3d 919, 928, 202 Ill.Dec. 904, 638 N.E.2d 772 (1994).

Moreover, "[w]hen the General Assembly intends to preempt or exclude home rule units from exercising power over a matter, that body knows how to do so." *Roman,* 184 Ill.2d at 517, 235 Ill.Dec. 468, 705 N.E.2d 81. "In many statutes that touch on countless areas of our lives, the legislature has expressly stated that, pursuant to section 6(h) or 6(i), or both, of article VII of the Illinois Constitution, a statute is declared to be an exclusive exercise of power by the state and that such power shall not be exercised by home rule units." *Roman,* 184 Ill.2d at 517, 235 Ill.Dec. 468, 705 N.E.2d 81.

[5] Applying these principles to the case at bar, neither the Condominium Property Act nor the General Not for Profit Corporation Act specifically excludes home rule units from governing the manner ***875** by which a unit owner can gain access to a condominium association's financial books and records. Although the Ordinance does not contain the exact same language as the Condominium Property Act and the General Not for Profit Corporation Act, that by no means renders it invalid. See, *e.g., Scadron,* 153 Ill.2d at 194, 180 Ill.Dec. 77, 606 N.E.2d 1154 (" '[t]he fact that the state has occupied some field of governmental endeavor, or that home rule ordinances are in some way inconsistent with state statutes, is not in itself sufficient to invalidate the local ordinances' "), quoting D. Baum, *A Tentative Survey of Illinois Home Rule (Part II): Legislative Control, Transition Problems, and Intergovernmental Conflict,* 1972 Ill. L.F. 559, 572; *Roman,* 184 Ill.2d at 519, 235 Ill.Dec. 468, 705 N.E.2d 81 (conflicting provisions of the Illinois Criminal Code and the Unified Code of Corrections did not preempt home rule ordinance prescribing more stringent minimum prison sentence for assault against the elderly where General Assembly did not specifically limit home rule power); *Kalodimos v. Village of Morton Grove,* 103 Ill.2d 483, 505–06, 83 Ill.Dec. 308, 470 N.E.2d 266 (1984) (state statutes regulating firearms did not preempt more restrictive local laws prohibiting possession of handguns where statutes did not specifically state that firearms control was the subject of exclusive state control); *City of Evanston v. Create, Inc.,* 85 Ill.2d 101, 104–09, 51 Ill.Dec. 688, 421 N.E.2d 196 (1981) (state regulation of landlord-tenant relationship did not preempt authority of home rule municipalities to *****997 **648** regulate that relationship differently or more strictly).

[6] Accordingly, because we find that neither the Illinois Condominium Act nor the Illinois General Not for Profit Corporation Act specifically prohibits a home rule unit from governing the process by which a unit owner may gain access to a condominium association's financial records, the Ordinance's provisions regarding this subject are valid. Defendants' reliance on *City of Oakbrook Terrace v. Suburban Bank & Trust Co.,* 364 Ill.App.3d 506, 301 Ill.Dec. 135, 845 N.E.2d 1000 (2006), does not convince us otherwise.

In *Oakbrook Terrace,* the court concluded that the a city ordinance that provided for a two-year amortization period for existing nonconforming advertising signs was an invalid exercise of home rule authority because it precluded the remedy of just compensation under the Illinois Eminent Domain Act (735 ILCS 5/7–101 (West 1998)). *Oakbrook Terrace,* 364 Ill.App.3d at 516–18, 301 Ill.Dec. 135, 845 N.E.2d 1000. The court found this to be the case despite the fact that there was no Illinois law in existence which expressly precluded the exercise of home rule authority in this area. Instead, the court stated that ordinances which contravene state statutes have been deemed invalid exercises of home rule authority. *Oakbrook Terrace,* 364 Ill.App.3d at 518, 301 Ill.Dec. 135, 845 N.E.2d 1000.

We disagree with the majority opinion in *Oakbrook Terrace* and instead choose to follow our supreme court's precedent. As the dissent ***876** in *Oakbrook Terrace* noted, "Our supreme court has instructed that, to limit home rule powers, the legislature must say specifically the 'statute constitutes a limitation on the power of home rule units to enact ordinances that are contrary to or inconsistent with the statute.' " (Emphasis omitted.) *Oakbrook Terrace,* 364 Ill.App.3d at 522, 301 Ill.Dec. 135, 845 N.E.2d 1000 (Callum, J., dissenting), quoting *Roman,* 184 Ill.2d at 520, 235 Ill.Dec. 468, 705 N.E.2d 81. The dissent went on to say:

> "The supreme court has decided that a general reference to municipalities in a state statute is not sufficient to preempt home rule powers. In *Scadron,* the supreme court held that the legislature did not specifically express its intention to limit a home rule unit's concurrent power to regulate advertising signs where the statute in question, which regulated outdoor advertising near federally funded highways, referred simply to municipal zoning authorities. [Citation.]T he statutory provision in that case read, in relevant part: 'In zoned commercial and industrial areas, whenever a State, county or municipal zoning authority has adopted laws or ordinances, which include regulations with respect to the size, lighting and spacing of signs * * * the provisions of Section 6 [containing size, light, and spacing limitations] shall not apply to the erection of signs in such areas.' [Citation.] Given this language, the issue in the case was not whether the legislature had specifically declared that the State had exclusive power to regulate signs—the quoted section gave municipalities the power to regulate signs—but whether it had specifically limited home rule units' power to concurrently regulate outdoor advertising signs along with the state. The court was not persuaded that the statutory language was sufficiently specific to include home rule municipalities. Noting that '[t]he legislature is perfectly capable of being specific when it wants to be' [citation], the court held that the statute did not preempt the authority of home rule municipalities to regulate—including via more restrictive regulations that *****998** ****649** included a total ban on signs under certain circumstances—outdoor advertising signs in areas subject to the statutory provision. [Citation.]" (Emphasis omitted.) *Oakbrook Terrace,* 364 Ill.App.3d at 522, 301 Ill.Dec. 135, 845 N.E.2d 1000.

We agree with the dissent in *Oakbrook Terrace* and note that the majority opinion in that case failed to cite to any of our supreme court cases we discussed above. Accordingly, we are unpersuaded by defendant's reliance on *Oakbrook Terrace* and maintain that the provisions of the Ordinance at issue constituted a valid exercise of the City's home rule authority.

Defendants also allege, however, that the portion of the Ordinance allowing for attorney fees to a unit owner who successfully obtains records from an association is preempted by existing Illinois ***877** law and is therefore invalid. Plaintiffs respond first that this issue is waived, and second, that the City has home rule authority because there is no existing state law that specifically limits the remedies that a home rule unit may enact in particular circumstances. We agree with plaintiffs.

[7] Initially we note that "[i]t is well settled that issues not raised in the trial court are deemed waived and may not be raised for the first time on appeal." *Haudrich v. Howmedica, Inc.,* 169 Ill.2d 525, 536, 215 Ill.Dec. 108, 662 N.E.2d 1248 (1996). Although defendants raised the issue of whether the ordinance provisions regarding records inspection by condominium owners were outside the City's home rule power, they failed to raise the issue of whether the ordinance provisions regarding attorney fees were also outside the City's home rule power. Accordingly, defendants have waived such issue on review.

[8] However, even if we were to nevertheless reach this issue, we would find that the attorney fees provision in the Ordinance would not be preempted by state law and would be a valid exercise of the City's home rule power. As noted above, home rule units have the same power as the sovereign, except where such powers are specifically limited by the General Assembly. *Roman,* 184 Ill.2d at 513, 235 Ill.Dec. 468, 705 N.E.2d 81; *City of Evanston,* 85 Ill.2d at 115, 51 Ill.Dec. 688, 421 N.E.2d 196.

There is no question that Illinois has the power to provide for an award of attorney fees to prevailing plaintiffs. See *Taghert v. Wesley,* 343 Ill.App.3d 1140, 1147–48, 278 Ill.Dec. 659, 799 N.E.2d 377 (2003) (court upheld Illinois Condominium Property Act's provision for attorney fees where a plaintiff succeeds in an action against a condominium association to compel disclosure of books and records); *Becovic v. City of Chicago,* 296 Ill.App.3d 236, 230 Ill.Dec. 766, 694 N.E.2d 1044 (1998) (upholding attorney fees provision under Illinois Human Rights Act). Thus, the City of Chicago, as a home rule unit, has the same power to provide for attorney fees to a prevailing party, as long as it is not specifically preempted by state legislature. See *Atkins v. City of Chicago*

Comm. on Human Relations, 281 Ill.App.3d 1066, 1077, 217 Ill.Dec. 575, 667 N.E.2d 664 (1996) (upholding award of attorney's fees by Chicago Commission on Human Relations where Illinois Human Rights Act's provision for attorney fees in state matter did not limit that remedy by "denying or restricting the same right to local matters"). None of these Illinois statutes contradicts the fee provision in the Ordinance.

Defendants nevertheless rely on *City of Naperville v. Lerch,* 198 Ill.App.3d 578, 144 Ill.Dec. 668, 555 N.E.2d 1187 (1990), and *Village of Glenview v. Zwick,* 356 Ill.App.3d 630, 292 Ill.Dec. 735, 826 N.E.2d 1171 (2005), to support their proposition *****999 **650** that state law preempts the Ordinance's provision on attorney fees. In *Lerch,* the court noted that the general rule is that absent a statute or agreement of the parties, the parties generally pay their own attorney fees. ***878** *Lerch,* 198 Ill.App.3d at 583–84, 144 Ill.Dec. 668, 555 N.E.2d 1187. The court went on to hold that a home rule ordinance is not a statute, so a home rule unit's ordinance that provided for an attorney fee award contrary to the general rule was unauthorized. *Lerch,* 198 Ill.App.3d at 583–84, 144 Ill.Dec. 668, 555 N.E.2d 1187. The court noted, "we have found no case law, nor has plaintiff provided any, that raises an ordinance of a municipality * * * to the level of a statute of the General Assembly." *Lerch,* 198 Ill.App.3d at 584, 144 Ill.Dec. 668, 555 N.E.2d 1187.

We agree with plaintiffs, however, that this holding cannot be reconciled with section 6(i) of the article VII of the Illinois Constitution. As stated by our supreme court in *Roman* eight years after *Lerch,* a home rule unit's ordinance is elevated to the level of a statute so long as (1) the ordinance pertains to the unit's government and affairs, and (2) the subject matter of the ordinance was not excluded or preempted. See *Roman,* 184 Ill.2d at 513, 235 Ill.Dec. 468, 705 N.E.2d 81; *Zwick,* 356 Ill.App.3d at 638, 292 Ill.Dec. 735, 826 N.E.2d 1171. As noted above, defendants do not contend that the Ordinance does not pertain to the City's government and affairs. Additionally, the subject matter of attorney's fees has not been specifically preempted by the State. Accordingly, we are unpersuaded by defendants' reliance on *Lerch.*

In *Zwick,* Glenview (a home rule unit), filed a complaint against the defendant alleging that defendant had violated its refuse ordinance. *Zwick,* 356 Ill.App.3d at 631–32, 292 Ill.Dec. 735, 826 N.E.2d 1171. Glenview sought attorney fees under a village ordinance which provided:

> " 'If the Village proceeds in any court of record to enforce and/or defend any provisions of the Municipal Code of the Village of Glenview, as from time to time amended, and is successful in either the enforcement or defense proceedings as referred to herein, the village shall recover its reasonable attorney[ ] fees and costs incurred in the course of those proceedings from the person and/or entity who has been found to have violated the Municipal Code of the Village of Glenview and/or who has initiated proceedings.' " *Zwick,* 356 Ill.App.3d at 632, 292 Ill.Dec. 735, 826 N.E.2d 1171, quoting Glenview Municipal Code, Ch. 1, § 1.13 (eff. June 21, 1994).

The trial court held that the fee-shifting ordinance was an improper exercise of Glenview's home rule authority and the reviewing court affirmed. *Zwick,* 356 Ill.App.3d at 641, 292 Ill.Dec. 735, 826 N.E.2d 1171. The court found that the ordinance did not pertain to its local government and affairs because it discouraged those who received a citation from Glenview from challenging it in state court for fear that they would have to pay Glenview's attorney fees if they lost. This therefore impacted access to the state court system. See *Zwick,* 356 Ill.App.3d at 641, 292 Ill.Dec. 735, 826 N.E.2d 1171. The court noted, "Glenview's fee-shifting ordinance represents a real and immediate danger to a citizen's right to challenge a Glenview ordinance he or she finds doubtful, as it discourages litigation concerning the validity of any of its ordinances." *Zwick,* 356 Ill.App.3d at 641, 292 Ill.Dec. 735, 826 N.E.2d 1171.

***879** Conversely in the case at bar, the Ordinance provision in question states that "[i]n any action brought to enforce any provision of [the Ordinance] * * * the prevailing *****1000 **651** plaintiff shall be entitled to recover, in addition to any other remedy available, his reasonable attorney fees." Chicago Municipal Code § 13–72–100 (2009). The Ordinance does not state, as it did in *Zwick,* that if the plaintiff who brings the case does not prevail, he must pay the City's attorney fees. Therefore, the Ordinance's attorney fee provision is a consumer protection provision allowing plaintiffs to bring a meritorious action to enforce the Ordinance without fearing a financial loss. This provision in no way discourages litigation concerning the validity of the Ordinance, as it did in *Zwick.* See *Zwick,* 356 Ill.App.3d at 641, 292 Ill.Dec. 735, 826 N.E.2d 1171. Illinois courts have routinely upheld state and local attorney fees provisions that serve this purpose, as noted above. See also *Pitts v. Holt,* 304 Ill.App.3d 871, 873, 237 Ill.Dec. 732, 710 N.E.2d 155 (1999) (upheld attorney fee provision in city's landlord-tenant ordinance because such "attorney fees provisions are meant to give a financial incentive to attorneys to litigate

on behalf of those clients who have meritorious cases but who, due to the limited nature of the controversy, would not normally consider litigation as being in their client's financial best interest"); *Page v. City of Chicago,* 299 Ill.App.3d 450, 467–68, 233 Ill.Dec. 575, 701 N.E.2d 218 (1998) (upheld attorney fee provision in city's human rights ordinance and noted that "an award of attorney fees is required to ensure that individuals filing complaints, who are often economically disadvantaged, receive proper representation and to enforce the public policy goals behind the legislation"). Accordingly, we find defendants' argument that the fee provision in the Ordinance is invalid is without merit.

B. Amount of Attorney Fees

[9] Defendants' next contention on appeal is that the trial court improperly awarded attorney fees at a rate greatly in excess of the amount of attorney fees incurred by Palm. Defendants allege that Palm contracted with his attorney to pay $200 per hour, and that Palm did in fact pay his attorney $200 per hour for his legal services, yet the trial court awarded Palm's attorney fees at a rate of $300 per hour. Palm responds that the $200 hourly rate was a reduced rate his attorney allowed him to pay, but that $300 is the reasonable rate based on the market value of the work.

[10] **[11]** **[12]** It is well settled that the party seeking attorney fees always bears the burden of presenting sufficient evidence from which the trial court can render a decision as to their reasonableness. *LaHood v. Couri,* 236 Ill.App.3d 641, 648, 177 Ill.Dec. 791, 603 N.E.2d 1165 (1992). An appropriate fee consists of reasonable charges for reasonable services; however, to justify a fee, more must be ***880** presented than a mere compilation of hours multiplied by a fixed hourly rate or bills issued to the client, since this type of data, without more, does not provide the court with sufficient information as to their reasonableness. *LaHood,* 236 Ill.App.3d at 648, 177 Ill.Dec. 791, 603 N.E.2d 1165. Rather, the petition for fees must specify the services performed, by whom they were performed, the time expended thereon, and the hourly rate charged therefor. *LaHood,* 236 Ill.App.3d at 648–49, 177 Ill.Dec. 791, 603 N.E.2d 1165. Because of the importance of these factors, it is incumbent upon the petitioner to present detailed records maintained during the course of the litigation containing facts and computations upon which the charges are predicated. *LaHood,* 236 Ill.App.3d at 648–49, 177 Ill.Dec. 791, 603 N.E.2d 1165.

[13] Once presented with these facts, the trial court should consider a variety of additional factors such as the skill and *****1001** ****652** standing of the attorney, the nature of the case, the novelty and/or difficulty of the issues and work involved, the importance of the matter, the degree of responsibility required, the usual and customary charges for comparable services, the benefit to the client, and whether there is a reasonable connection between the fees and the amount involved in the litigation. *LaHood,* 236 Ill.App.3d at 649, 177 Ill.Dec. 791, 603 N.E.2d 1165. The decision of the trial court will not be reversed absent an abuse of discretion. *LaHood,* 236 Ill.App.3d at 649, 177 Ill.Dec. 791, 603 N.E.2d 1165.

In the case at bar, Palm provided the trial court with detailed records containing facts and computations upon which he predicated his charge for attorney fees. He also presented the court with information about his attorney's skill and standing, the nature of the case, the usual and customary charges for comparable services, and an affidavit of a retired judge in support of his petition for attorney fees. The trial court considered all these facts and found that the reasonable fee was $300 an hour for services rendered. We do not find that the trial court abused its discretion in coming to such conclusion.

C. Motion for Sanctions

Defendants' next contention on appeal is that the trial court erred in refusing to consider their motion for sanctions alleging that Palm violated an order of the court. Defendants argue that if the trial court had considered the motion, the trial court would have struck down Palm's request for attorney fees based on his "blatant disregard for the court's January 20, 2006, order establishing the procedure for considering attorney's fees in this case." Palm responds that the motion for sanctions is not a part of this appeal, as it was continued in the trial court.

The trial court's January 20, 2006, order provided in pertinent part that "[t]he scope of discovery related to Plaintiff's pending ***881** interim fee petition, presented to the Court on or about September 19, 2005, will be governed by N.D. Ill. Local Rule 54.3 ('the Rule'), including the confidentiality provisions of that Rule." The confidentiality provisions of Rule 54.3 provide as follows:

> "All information furnished by any party under this section shall be treated as strictly confidential by the party receiving the information. The information shall be used solely for purposes of fee litigation and shall be disclosed to other persons, if at all, only in Court filings or hearings related to the fee litigation. That party receiving such information who proposes to disclose it in a Court filing or hearing shall provide the party furnishing it with prior written notice and a reasonable opportunity to request an appropriate protective order." N.D. Ill. Local R. 54.3(d).

The parties then confidentially exchanged billing records relating to the time spent by each side on the matter, including hourly rates. Thereafter, Palm filed a motion for partial summary judgment, which disclosed the association's general counsel's hourly rate. Defendants then filed a motion for sanctions arguing that because the motion for partial summary judgment was a pleading unrelated to the fee litigation and not filed under seal, it constituted a violation of the trial court's January 20, 2006, order when it included general counsel's hourly rate. Defendants contended that the trial court should sanction Palm for such a violation by vacating his interim attorney fee award and requiring Palm to pay defendants' reasonable attorney fees incurred in preparing and presenting the motion for sanctions.

****653 ***1002** The trial court ordered that any issues related to the motion for sanctions were continued generally, and then it issued its order granting Palm's request for attorney fees. Defendants argue that had the trial court considered their motion for sanctions, it would have struck Palm's request for interim fees based on his disregard for the January 20, 2006, order.

[14] We first note that this section of defendants' brief contains absolutely no citations to legal authority whatsoever. Supreme Court Rule 341(h)(7) provides that an appellant's brief must contain "the contentions of the appellant and the reasons therefor, with citations of the authorities and the pages of the record relied on." 210 Ill.2d R. 341(h)(7). Furthermore, if a point is not argued, it is waived and cannot be raised in a reply brief, oral argument, or petition for rehearing. 210 Ill.2d R. 341(h)(7). "The well-established rule is that mere contentions, without argument or citation of authority, do not merit consideration on appeal." *People v. Hood,* 210 Ill.App.3d 743, 746, 155 Ill.Dec. 228, 569 N.E.2d 228 (1991). "Contentions supported by some argument but by absolutely no authority do not meet the requirements of Supreme Court Rule ***882** 341([h])(7)." *Hood,* 210 Ill.App.3d at 746, 155 Ill.Dec. 228, 569 N.E.2d 228. "A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository into which the appealing party may dump the burden of argument and research." *Hood,* 210 Ill.App.3d at 746, 155 Ill.Dec. 228, 569 N.E.2d 228. Accordingly, we may treat the issue raised as having been waived for failure to cite authority.

[15] Waiver aside, we find that this issue is not a final, appealable order and is therefore not properly before this court at this time. At trial, the court continued the motion for sanctions, choosing not to rule on it before granting plaintiffs partial summary judgment. Accordingly, the trial court's continuance was not a final and appealable order because the order did not finally determine the respondent's rights and status as to the matter of sanctions, and it was subject to further determination by the court. See *In re Guzik,* 249 Ill.App.3d 95, 99, 187 Ill.Dec. 601, 617 N.E.2d 1322 (1993).

D. Declaration Provisions

Defendants' final contention on appeal is that the trial court erred in allowing production of certain documentation pursuant to the association's declaration. Defendants note that the trial court found that Palm was entitled to records based on both the Ordinance and section 6.05 of the declaration. They argue that the trial court should not have allowed document requests based on section 6.05 of the Declaration because that section conflicts with section 19 of the Illinois Condominium Property Act (the Act) (765 ILCS 605/4.1(b) (West 2004)), and therefore Palm's requests for certain documents should have been denied. Specifically, defendants argue that section 6.05 of the declaration does not require a plaintiff to state a proper purpose for requests of financial records, while section 19 of the Act requires a plaintiff to state a proper purpose for requests of financial records.

We must first note that defendants have again failed to cite to a single point of authority in support of their proposition. As noted above, Supreme Court Rule 341(h)(7) provides that an appellant's brief must contain "the contentions of the appellant and the reasons therefore, with citations of the authorities and the pages of the record relied upon." 210 Ill.2d R. 341(h)(7). "Contentions supported by some argument but absolutely no authority do not meet the requirements of Supreme *****1003 **654** Court Rule 341([h])(7)." *Hood,* 210 Ill.App.3d at 746, 155 Ill.Dec. 228, 569 N.E.2d 228.

Accordingly, we may treat this issue as waived for failing to cite to authority.

Waiver aside, we note that section 4.1(b) of the Act, which defendant relies on, provides that except to the extent otherwise provided by the declaration or other condominium instruments ***883** recorded prior to the effective date of this Act, "in the event of a conflict between the provisions of the declaration and the bylaws or other condominium instruments, the declaration prevails except to the extent the declaration is inconsistent with this Act." 765 ILCS 605/4.1(a)(6)(b) (West 2004). Defendants claim section 6.05 of the declaration is inconsistent with section 19 of the Act and, therefore, the trial court erred permitting financial records to be produced to Palm.

Section 6.05 of the declaration states:

> "The Board shall keep full and correct books and records in chronological order of the receipts and expenditures affecting the Common Elements, specifying and itemizing the maintenance and repair expenses of the Common Elements and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for inspection at the office of the Association, if any, by any Unit Owner or any holder of a first mortgage lien on a Unit Ownership, at such reasonable time or times during normal business hours as may be requested by the Unit Owners. Upon ten (10) days notice to the Board and payment of a reasonable fee, any Unit Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due an owing from such Unit Owner."

[16] **[17]** Defendants point to section 19(a)(9) and section 19(e) of the Act as being inconsistent with the above provision. Such sections provide that an association member shall have the right to inspect the books and records of account for the association's current and ten immediately preceding years, only for a proper purpose stated in writing. We do not find that the Act and the declaration are inconsistent just because one requires a proper purpose to be stated and one does not, before inspecting financial records. And even if we were to find that the Act superceded the declaration and Palm was required to state a proper purpose in writing, we would find that he did so. In his original letter to the association, Palm stated that he was seeking documents to establish fraud, mismanagement, or self-dealing. It has been held that a proper purpose for inspecting books and records under the Act is to establish corporate mismanagement, and this court has held that "where a unit owner asserted a good-faith fear of mismanagement of financial matters by the association, he established a proper purpose to inspect the records of the condominium association's delinquency reports and itemized bills." *Taghert v. Wesley*, 343 Ill.App.3d 1140, 1146–47, 278 Ill.Dec. 659, 799 N.E.2d 377 (2003). Accordingly, we find that the trial court did not err in granting Palm's request for financial records.

***884 III. CONCLUSION**

For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

Judgment affirmed.

TOOMIN, P.J., and HOWSE, J., concur.

Parallel Citations

401 Ill.App.3d 868, 929 N.E.2d 641

CONDOMINIUM/ TOWNHOME RESALE DISCLOSURE FORM
(to be completed by Officer or Managing Agent of the Association)

In compliance with Illinois law (Chapter 765, Section 605/ 22.1 of the Illinois Complied statutes) the (strike one) (Board of Managers of the condominium association) (the designated managing agent for the _____ Condominium Association) hereby provides the following statements of condition:

1. (a) That the monthly assessments of $_____ per month are paid in full through _____, 20_____. Past due sums of $_____ are due the Association for the following period:

_____

_____

(b) That there (are) (are not) other monthly, special or other assessments or charges due the association by the unit owner;

_____

_____

2. Capital expenditures (are) (are not) anticipated by the unit owner's association within the current or succeeding two fiscal years;

_____

_____

3. The amount of the reserve or replacement fund for current or future capital expenditures is $_____. This reserve or part of their reserve (is) (is not) earmarked for a specified project by the Board of Managers;

_____

_____

4. A complete copy of the Association's most recent approved budget (statement of financial condition) is attached hereto.

5. There (are) (are not) pending lawsuits of judgments in which the unit owner's association is a party;

_____

_____

6. The insurance carrier for the unit owner's association is:
Name of Company:_____
Address:_____
Telephone:_____

7. The association/ managing agent for the association states that it knows of no improvements or alterations made to the unit or the limited common elements assigned thereto by the current unit owner which violate the condominium declarations, by-laws, rules or regulations.

Dated:_____

Association Name:_____

Managing Agent's Name:_____
(if applicable)

By:_____
(Agent of Association)