

NO. 5-08-0178

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

FILED
AUG 13 2008
LOUIS E. COSTA
CLERK APPELLATE COURT, 5th DIST.

LOUIS I. MUND,)	Appeal from the Circuit Court of St. Clair County.
Plaintiff-Appellee, Cross-Appellant,)	
v.)	No. 05-L-83
REBECCA BROWN, et al.,)	
Defendants-Appellants, Cross-Appellants.)	

ORDER

This cause has been considered on the court's own motion; and the court, being advised in the premises, finds;

That on February 2, 2006, plaintiff filed a 23-count second amended complaint;

That on February 26, 2007, a written order was entered dismissing Count XVII (although it appears from the pleadings and the notice of cross-appeal that the court intended to dismiss Count XVIII). The order does not contain an express written finding under Supreme Court Rule 304(a) that there is no just reason to delay appeal;

That in a written order entered on February 25, 2008, the trial court took under advisement defendants' motions to dismiss pursuant to the Citizen Participation Act (735 ILCS 110/1 *et seq.* (West 2007 Supp.)). In a written order entered on March 14, 2008, the trial court denied the motions to dismiss;

That on April 8, 2008, defendants Rebecca Brown, Robert W. Furkin, and James R. Furkin, filed a notice of appeal from the March 14, 2008, order denying their motion to

dismiss;

That on April 10, 2008, defendants Paul Brown and Annamalai & Brown filed a notice of appeal from the March 14, 2008, order denying their motion to dismiss;

That on April 17, 2008, plaintiff Louis I. Mund filed a notice of cross-appeal from the February 26, 2007, order dismissing count XVIII of the second amended complaint;

That the appeals are from an interlocutory order denying defendants' motions to dismiss pursuant to the Citizen Participation Act (735 ILCS 110/1 *et seq.* (West 2007 Supp.)), which is a newly enacted statute protecting citizens from money damages resulting from their valid exercise of their constitutional right to petition, participate in, and communicate with government. Section 20(a) of the Act provides in pertinent part:

"An appellate court shall expedite any appeal or other writ, whether interlocutory or not, from a trial court order denying that motion or from a trial court's failure to rule on that motion within 90 days after that trial court order or failure to rule." 735 ILCS 110/20(a) (West 2007 Supp.).

This statute presents a separation of powers issue where its creation of an appeal by right from an interlocutory order is in apparent conflict with article VI, section 6, of the Illinois Constitution of 1970, which prescribes that the Supreme Court may provide for appeals from less than final judgments, and Supreme Court Rule 307, which prescribes the necessary jurisdictional conditions precedent for pursuing interlocutory appeals by right. An order denying a motion to dismiss does not fall within the ambit of Supreme Court Rule 307(a) and is not otherwise subject to an appeal by right (see *State Farm Mutual Automobile Insurance Co. v. Illinois Farmers Insurance Co.*, 226 Ill. 2d 395, 415, 875 N.E.2d 1096, 1108 (2007)). If the statute is in violation of the separation of powers provision in our State constitution (Ill. Const. 1970, art. II, §1), then the appeals must fail for lack of appellate jurisdiction;

That the February 26, 2007, order dismissing Count XVIII is not accompanied by a Supreme Court Rule 304(a) finding that there is no just reason to delay appeal (see *In re Application of Du Page County Collector*, 152 Ill. 2d 545, 549-50, 605 N.E.2d 567, 570 (1992)). Nor does such a finding appear elsewhere in the record on appeal. Absent such a finding, the notice of cross-appeal is premature and fails to vest this court with jurisdiction to review the dismissal of a single count of a multi-count complaint.

IT IS THEREFORE ORDERED that the Attorney General shall be, and the same hereby is, granted the opportunity to intervene pursuant to Supreme Court Rule 19(c) for the purpose of defending the legitimacy of section 20 (a) of the Citizen Participation Act (735 ILCS 110/20(a) (West 2007 Supp.)).

IT IS FURTHER ORDERED that defendants-appellants, cross-appellees, shall be, and the same hereby are, granted 35 days within which to file supplemental briefs addressing the separation of powers issues identified by this court.

IT IS FURTHER ORDERED that the intervenor's brief, should the Attorney General elect to intervene, shall be, and the same hereby is, due within the same 35-day period.

IT IS FURTHER ORDERED that plaintiff-appellee, cross-appellant shall be, and the same hereby is, granted seven days from the date of this order to show cause why his cross-appeal should not be dismissed as premature in the absence of an express written finding pursuant to Supreme Court Rule 304(a) that there is no just reason to delay appeal.

IT IS FURTHER ORDERED that the brief of plaintiff-appellee, cross-appellant shall be, and the same hereby is, due 35 days after the filing of the supplemental and intervenor briefs.