



## Appellate Practice Corner

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# Litigants Who Fail to Appeal Permanent Injunctions Within 30 Days Lose Their Right to Challenge Them in a Reviewing Court

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The Illinois Appellate Court First District recently reminded litigants of the importance to accurately determine the nature of injunctive orders entered mid-litigation and the applicable Illinois Supreme Court rules governing their appeal. Litigants who fail to appeal a permanent injunction as a “final order”—even if other claims remain pending in the trial court—risk forfeiting their right to challenge the injunction altogether. Such a failure could adversely affect their business.

### *TAG Holdings, LLC v. Rizza*

In *TAG Holdings, LLC v. Rizza*, 2024 IL App (1st) 21078-U, the First District dismissed an appeal for lack of jurisdiction. The challenged order was a permanent injunction, which a litigant mistakenly appealed under Rule 307(a) governing interlocutory appeals. *Id.* ¶ 2. In *Rizza*, the parties entered into a real estate transaction that subsequently fell through. *Id.* ¶ 5. TAG Holdings brought a suit in circuit court seeking specific performance and damages. In ruling on summary judgment, the court ordered the parties to close the real estate sale by a specific date, but denied TAG’s motion with respect to the asset purchase agreement. Rizza filed a motion to reconsider, which the court denied, and then sought appellate review under Rule 307(a), which allows interlocutory appeals of circuit court orders “granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction.” *Id.* ¶¶ 2, 5.

In dismissing Rizza’s appeal, the First District explained that there are three types of injunctive relief: temporary, preliminary, and permanent. *Id.* ¶ 10. The first two constitute interlocutory orders, while the latter is a final order. *Id.* Specifically, the court explained:

Both temporary restraining orders and preliminary injunctions preserve the status quo until further proceedings, are “limited in duration” and do not “extend beyond the conclusion of the action,” and do not conclusively resolve the parties’ rights . . . . By contrast, a permanent injunction is an order “of unlimited duration” that “alters the status quo,” meaning that it adjudicates rights between the interested parties.” *Skolnick v. Alzheimer & Gray*, 191 Ill. 2d 214, 222 (2000). A court may enter a permanent injunction only after . . . ‘a hearing on the merits.’

*Rizza*, 2024 IL App (1st) 21078-U, ¶ 10.

The First District explained that the circuit court order directing the parties to close the real estate transaction by a certain date was a permanent injunction—there was no indication that the court contemplated modifying or vacating this order later. *Id.* ¶ 11. The order also permanently altered the *status quo* between the parties by ordering a transfer of real estate from one party to another. *Id.* The First District explained that permanent injunctions are final orders that do not

fall within the scope of Rule 307(a) governing interlocutory orders. *Id.* Consequently, it did not have jurisdiction to consider the appeal.

### *Same Condition, LLC v. Codal, Inc.*

Earlier this year, the First District applied the same principles to dismiss an appeal of an injunctive order in *Same Condition, LLC v. Codal, Inc.*, 2024 IL App (1st) 230554-U. In that case, the plaintiff company, Same Condition, sued a software developer, Codal, for failing to develop a medical software application. *Same Condition, LLC*, 2024 IL App (1st) 230554-U, ¶ 5. In addition to suing Codal, plaintiff also began posting disparaging comments on Twitter, LinkedIn, Google, and other social media platforms, accusing Codal of “unethical business practices,” being “incompetent,” and having “cheated” Same Condition. *Id.* It also created a blog at the address [codalsucks.blogspot.com](http://codalsucks.blogspot.com). *Id.* Codal filed a counterclaim seeking to enjoin Same Condition from posting disparaging comments online which hurt its business. *Id.* ¶ 7.

Two years into the litigation, Codal moved for summary judgment on all pending claims, including its counterclaim for defamation. *Id.* ¶ 8. Codal asked the court to order Same Condition to “remove all published statements about Codal” and to “refrain from publishing similar statements about Codal in the future.” *Id.*

The circuit court granted summary judgment in Codal’s favor on all claims, except its counterclaims for defamation *per se* and the Deceptive Trade Practices Act, which remained pending. *Same Condition, LLC*, 2024 IL App (1st) 230554-U, ¶ 9. The circuit court also ordered Same Condition to remove all published comments about Codal, to assign the domain name [codalsucks.blogspot.com](http://codalsucks.blogspot.com) to Codal within 30 days, and to refrain from publishing similar statements about Codal in the future. *Id.*

More than two months after the entry of the injunctive order, Same Condition moved to vacate it under 735 ILCS 5/2-1203, arguing that it was an unconstitutional prior restraint on its right to free speech. *Id.* ¶ 12. After the circuit court denied the motion, Same Condition appealed under Rule 307(a)(1), governing appeals from orders “granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction.” *Same Condition, LLC v. Codal, Inc.*, 2022 IL App (1st) 220687-U, ¶ 41.

On review, the First District dismissed the appeal for lack of jurisdiction. 2022 IL App (1st) 220687-U, ¶¶ 51-52. The First District explained that the injunction was permanent, as opposed to interlocutory, because it was “of an unlimited duration” and adjudicated the parties’ rights on the merits. *Id.* ¶ 44. The fact that several claims remained pending in the circuit court did not affect the permanent nature of the injunctive relief. *Id.*

Since a permanent injunction is “a final order,” Same Condition had only 30 days to challenge it, either by a post-judgment motion under 735 ILCS 5/2-1203(a) or by an appeal under Rule 304(a) governing appeals from final judgments that do not dispose of an entire proceeding. *Id.* ¶¶ 45-46, 48. Rule 304(a) requires a circuit court’s written finding that “there is no just reason for delaying either enforcement or appeal or both.” Because Same Condition did not challenge the injunctive order within the required 30 days, the appellate court had no jurisdiction to review it. *Id.* ¶ 52.

Same Condition sought to appeal the injunction once again at the conclusion of the entire case. *Same Condition, LLC*, 2024 IL App (1st) 230554-U. Ordinarily, an appeal from a final judgment at the conclusion of the case draws into issue all previous interlocutory orders that produced the final judgment. *See In re Marriage of Arjmand*, 2024 IL 129155, ¶ 29. This rule, however, does not apply to permanent injunctions—even if entered in the middle of trial litigation—because they constitute final, not interlocutory, orders. *Same Condition, LLC*, 2024 IL App (1st) 230554-U, ¶ 22. Consequently, the First District ruled that it lacked jurisdiction to review the permanent injunction entered against Same Condition even under Rule 301. *Id.* ¶¶ 22-23. The court explained:

Rule 301 simply provides that “every final judgment of a circuit court is appealable as a matter of right.” [T]he permanent injunction . . . was a final judgment . . . appealable as of right under Rule 301, as long as [a litigant] appealed within 30 days. Rule 301 does not act retroactively to cure [a litigant’s] delay in challenging the permanent injunction.

*Id.* ¶ 19. Same Condition petitioned the Illinois Supreme Court for review, which was denied. *Same Condition, LLC v. Codal, Inc.*, No. 130568, 2024 WL 2808292 (Ill. May 29, 2024). As a result, Same Condition lost an opportunity to challenge a broad permanent injunction that ordered it to remove “all published statements” about Codal, even though that injunction was potentially vulnerable on the First Amendment grounds.

### Practice Tip

When a trial court orders injunctive relief mid-litigation, such as when ruling on summary judgment motions, defense counsel should carefully examine the injunctive order to determine if it is interlocutory or permanent. The key considerations are (1) whether the order is entered only for the duration of the litigation or is unlimited in duration, and (2) whether it adjudicates the parties’ rights on the merits. If an injunctive order is interlocutory, it can be appealed either by way of an interlocutory appeal under Rule 307(a), or at the conclusion of the entire litigation as a part of an appeal from final judgment under Rule 301. In contrast, if an order constitutes a permanent injunction, it must be challenged within 30 days by way of a post-judgment motion or a Rule 304(a) appeal, even if other claims remain pending with the trial court. A party’s failure to appeal a permanent injunction within 30 days will result in the loss of the right to appeal it.

One issue that *Same Condition, LLC*, left open is what happens if the circuit court denies a litigant’s request for a Rule 304(a) finding. Will the litigant preserve its right to appeal the injunctive order at the conclusion of all litigation, or will its right to appeal be lost forever? An answer to this question will have to await further clarification from the reviewing courts.

### About the Author

**Irina Dmitrieva** is a partner with *HeplerBroom, LLC*. She focuses her practice on appellate litigation and critical trial motions. Irina has represented both government entities and private clients in federal and state appellate courts, including the Illinois Supreme Court, Illinois Appellate Court, and the U.S. Court of Appeals for the Seventh Circuit. Prior to joining HeplerBroom LLC, she handled all appeals on behalf of the Chicago Transit Authority.

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