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2014 IL App (3d) 140110-U

Order filed November 21, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

WELLS FARGO BANK, N.A.,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois.
)	
v.)	Appeal No. 3-14-0110
)	Circuit No. 11-CH-2419
GRZEGORZ CHMIELNIAK and RENATA)	
CHMIELNIAK,)	Honorable
)	Barbara Petrunaro
Defendants-Appellants.)	Judge, Presiding.

PRESIDING JUSTICE LYTTON delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court properly struck defendants' affirmative defenses of equitable estoppel and unclean hands where plaintiff failed to allege sufficient facts to support them.
- ¶ 2 Plaintiff, Wells Fargo Bank, N.A., filed a complaint to foreclose mortgage against defendants Grzegorz Chmielniak and Renata Chmielniak. Defendants filed an answer and affirmative defenses. Plaintiff filed a motion to strike defendants' affirmative defenses. The trial court granted the motion. Thereafter, the trial court entered judgment for foreclosure and sale in

favor of plaintiff, and then an order confirming the sale of the property. Defendants appeal, arguing that the trial court erred in striking two of its affirmative defenses. We affirm.

¶ 3

FACTS

¶ 4

In June 2008, defendants Grzegorz Chmielniak and Renata Chmielniak refinanced a home in Homer Glen and obtained a mortgage from National City Mortgage in the amount of \$405,000. In May 2011, plaintiff Wells Fargo Bank, N.A., the holder of defendants' mortgage, filed a mortgage foreclosure complaint against defendants, alleging that defendants failed to make payments on their mortgage after July 2009.

¶ 5

In January 2012, plaintiff filed a motion for default against defendants for failing to appear and/or answer the foreclosure complaint. A hearing on the motion was set for February 1, 2012. On that date, defendants appeared, and the court granted them 28 days to answer the complaint. Defendants also filed a motion to substitute judge. That motion was granted, and the case was assigned to a new judge.

¶ 6

On March 21, 2012, defendants filed a demand for a bill of particulars. Plaintiff filed a motion to strike or deny defendants' demand for a bill of particulars. On May 11, 2012, the trial court entered an order striking defendants' demand for a bill of particulars and granting defendants "7 days to answer," requiring defendants to answer "on or before May 18, 2012."

¶ 7

On July 18, 2012, defendants filed their answer and affirmative defenses, alleging three affirmative defenses: failure of condition precedent, equitable estoppel, and unclean hands. For their failure of condition precedent defense, defendants alleged that plaintiff never sent them an acceleration letter prior to filing its complaint, as required by the mortgage. With respect to their equitable estoppel and unclean hands defenses, defendants alleged as follows:

- “1. This was a refinance and the Lender’s agent wrote on the loan application that the property was worth \$510,000.
2. The property was not worth that much.
3. Further the loan application states that the co-borrower made \$1462 per month but states no income for borrower and the mortgage payment was just over \$2,500 excluding any escrow payment.
4. In addition, the Defendants don’t speak English with any fluency.
5. Furthermore, Defendants were never given a copy of the appraisal and were charged title insurance on a refinance.”

Defendants did not attach the loan application or any other supporting documents to their answer and affirmative defenses.

¶ 8 Plaintiff filed a motion to strike and dismiss defendants’ answer and affirmative defenses, pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)), arguing that (1) it was filed late and without leave of court, and (2) defendants failed to plead sufficient facts to support their affirmative defenses. The trial court granted plaintiff’s motion and struck defendants’ affirmative defenses.

¶ 9 Thereafter, plaintiff filed a motion for summary judgment on its foreclosure complaint, which the trial court granted. The court entered a judgment of foreclosure and sale in favor of plaintiff. Five months later, the property was sold at a judicial sale. Plaintiff filed a motion to approve the judicial sale, which the trial court granted. The court then entered an order confirming the judicial sale.

¶ 10 ANALYSIS

¶ 11 Defendants argue that the court erred in striking their affirmative defenses of equitable estoppel and unclean hands because they pled sufficient facts to support them.

¶ 12 When defendants raise an affirmative defense, they give color to the plaintiff's claim but assert new matter that defeats the plaintiff's apparent right to relief. *Hartmann Realtors v. Biffar*, 2014 IL App (5th) 130543, ¶ 20. A motion to strike an affirmative defense pursuant to section 2-615 of the Code (735 ILCS 5/2-615 (West 2012)) challenges the legal sufficiency of the affirmative defense. *Biffar*, 2014 IL App (5th) 130543, ¶ 20.

¶ 13 In order to set forth an affirmative defense, sufficient facts must be alleged to satisfy each element of the affirmative defense. *Id.* When determining the sufficiency of any claim or defense, the court will disregard any conclusions of fact or law that are not supported by allegations of specific fact. *Id.* A court's order striking an affirmative defense is subject to *de novo* review. *Id.*

¶ 14 I. Equitable Estoppel

¶ 15 In order to invoke equitable estoppel as an affirmative defense, the defendant must plead and prove the following: (1) a misrepresentation or concealment of material facts by the plaintiff; (2) knowledge by the plaintiff that the representation was untrue; (3) lack of knowledge by the defendant that the representation was untrue; (4) that the plaintiff intended or reasonably expected that the defendant would act on the representation; (5) that the defendant reasonably relied on the misrepresentation in good faith and to its detriment; and (6) that the defendant would be prejudiced by its reliance on the representation if the plaintiff is permitted to deny the truth thereof. See *Falcon Funding, LLC v. City of Elgin*, 399 Ill. App. 3d 142, 157-58 (2010).

¶ 16 Here, defendants alleged in their equitable estoppel affirmative defense that the following bad acts were committed when they refinanced their property: (1) "the Lender's agent wrote on

the loan application that the property was worth \$510,000” when it “was not worth that much”; (2) “the loan application states that the co-borrower made \$1462 per month but states no income for borrower and the mortgage payment was just over \$2,500”; (3) “[d]efendants were never given a copy of the appraisal”; and (4) defendants “were charged title insurance on a refinance.”

¶ 17 Of these alleged bad acts, only the first constitutes a misrepresentation or concealment of material facts that can support an equitable estoppel defense. However, defendants failed to allege any of the remaining elements of equitable estoppel, including knowledge by plaintiff that the representation was untrue, lack of knowledge by defendants that the representation was untrue, an intention or expectation by plaintiff that defendants would act on the representation, detrimental reliance on the misrepresentation by defendants, and prejudice to defendants by their reliance. See *Falcon Funding*, 399 Ill. App. 3d at 157-58. Absent such allegations, defendants have not asserted sufficient facts to support their equitable estoppel affirmative defense. See *id.* Because defendants did not allege the elements necessary for equitable estoppel, the trial court did not err in striking that affirmative defense.

¶ 18 II. Unclean Hands

¶ 19 The doctrine of unclean hands bars equitable relief when the party seeking that relief is guilty of misconduct in connection with the subject matter of the litigation. *Thomson Learning, Inc. v. Olympia Properties, LLC*, 365 Ill. App. 3d 621, 634 (2006). The doctrine is intended to prevent a party from taking advantage of its wrong. *Id.* To allege the defense of unclean hands, the defendant must plead: (1) misconduct by the plaintiff that amounts to fraud or bad faith, (2) made toward the defendant, and (3) related to the subject matter of the litigation. See *id.*; *State Bank of Geneva v. Sorenson*, 167 Ill. App. 3d 674, 680 (1988); *Illinois Power Co. v. Latham*, 15 Ill. App. 3d 156, 167-68 (1973).

¶ 20 Defendants made the same allegations for their unclean hands affirmative defense as they did for equitable estoppel. The misconduct alleged by defendants included the lender's agent misrepresenting the value of the property, the lender allowing defendants to borrow too much based on their stated income, the lender not providing them with a copy of their appraisal, and the lender charging them for title insurance.

¶ 21 Although defendants alleged misconduct, they failed to allege that the misconduct amounted to fraud or bad faith, as required for an unclean hands defense. See *Thomson Learning*, 365 Ill. App. 3d at 634; *Sorenson*, 167 Ill. App. 3d at 689; *Latham*, 15 Ill. App. 3d at 167-68. Because defendants did not allege all of the elements necessary for unclean hands, the trial court properly struck that affirmative defense.

¶ 22 CONCLUSION

¶ 23 The judgment of the circuit court of Will County is affirmed.

¶ 24 Affirmed.