

2020 IL App (1st) 191486-U
No. 1-19-1486
Order filed December 4, 2020

Fourth Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

BETH E. ZADIK, AS TRUSTEE OF THE BETH E. ZADIK REVOCABLE TRUST DATED MARCH 1, 2002,)	Appeal from the
)	Circuit Court of
)	Cook County.
)	
Plaintiff-Appellee,)	No. 18 CH 10561
)	
v.)	Honorable
)	Eve M. Riley,
INLAND BANK AND TRUST, an Illinois Banking Corporation,)	Judge, Presiding.
)	
)	
Defendant-Appellant.)	

JUSTICE HALL delivered the judgment of the court.
Justices Lampkin and Justice Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* We affirmed the circuit court's determination that the memorandum of judgment was a properly recorded lien where the trial court examined the original recorded document and found it to strictly comply with the statute and the record does not dispute that finding; and the circuit court properly granted defendant's section 2-619 (735 ILCS 5/2-619 (West 2018)) motion to dismiss where defendant presented an affirmative matter that defeated plaintiff's claim.

¶ 2 Plaintiff Beth E. Zadik as Trustee of the Beth E. Zadik Revocable Trust Dated March 1, 2002 (Zadik Trust) appeals from the circuit court’s grant of defendant Inland Bank and Trust’s (Inland) section 2-619 (735 ILCS 5/2-619 (West 2018)) motion to dismiss its declaratory judgment complaint with prejudice. On appeal, Zadik Trust contends that: (1) Inland’s claim for lien was not perfected when the case number and date of judgment was not properly stated in the memorandum of judgment recorded with the Cook County Recorder of Deeds (Recorder’s Office) and fails to strictly comply with 735 ILCS 5/12-101(West 2018); and (2) the circuit court improperly granted defendant’s section 2-619 motion to dismiss as a matter of law and fact based on the affidavit of Edward P. Boland that the original memorandum of judgment in his file contained the stamp of the clerk of the circuit court setting forth the case number and date of the matter in which the judgment was entered. For the reasons that follow, we affirm.

¶ 3 **BACKGROUND**

¶ 4 The record reveals that Zadik Trust filed a declaratory judgment action against Inland in the circuit court of Cook County, seeking a declaration that the property owned by the trust was free and clear of any unenforceable liens by Inland and other relief.

¶ 5 According to the record, on April 21, 2008, Inland obtained a confession judgment against Natan M. Zadik (Natan) in case number 08 L 050327 for \$4,226,780.62. Inland recorded a memorandum of judgment with the Recorder’s Office on April 29, 2008, under document number 0812031076 to perfect a lien against Natan’s real property located at 4947 North Albany Avenue in Chicago (the property). However, a photocopy of the recorded document had no visible case number, and while the year “2008” was visible, there was a blank space where the month and day that the judgment was entered should have been. The document also contained a file stamp which indicated that the judgment was entered on April 21, 2008.

¶ 6 On December 12, 2008, Natan filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court, for the Northern District of Illinois, Eastern division, (Bankruptcy Court), case number 08-34024, which was discharged on June 3, 2009.

¶ 7 On February 10, 2010, a quit claim deed was recorded, transferring the property from Natan M. Zadik and Beth E. Zadik to the Zadik Trust.

¶ 8 On November 6, 2014, Natan filed a motion in the Bankruptcy Court, to reopen the proceedings, which was granted on November 13, 2014. Subsequently, Natan filed a motion for leave to file an amended motion and an amended motion to avoid judicial lien.¹ Natan sought a finding that the memorandum of judgment was invalid and did not create a lien because it failed to state the court case number of the proceeding in which the judgment was entered and the date on which the judgment was entered.

¶ 9 On December 23, 2014, Inland filed a response admitting that the recorded certified copy of the memorandum of judgment did not have a visible case number. However, Inland stated that was because the clerk of the circuit court's purple ink stamp was not visible on the certified copy but was visible on the original memorandum of judgment in light purple ink that showed the case number.

¶ 10 On January 6, 2015, Natan filed a reply, again stating that Inland's memorandum of judgment was a void lien because it was not in strict compliance with 735 ILCS 5/12-101 (West 2014). However, the bankruptcy court denied Natan's motion to avoid Inland's lien without prejudice on January 22, 2015, finding that this matter should be determined by the state court.

¶ 11 On March 6, 2015, Inland filed a petition to revive the lien against Natan in the circuit court under the prior case number of 08 L 050327. The petition stated that as of the date of filing, the

¹ These documents are provided in the record, but are not file stamped.

unpaid judgment was \$846,780.62, plus interest. The court revived the April 21, 2008, judgment on March 30, 2015.

¶ 12 On September 8, 2015, the court amended the order entered on March 30, 2015, deleting paragraph five from the petition, which incorrectly stated that Inland did not receive notice of the discharge.

¶ 13 On August 21, 2018, Zadik Trust filed a four-count complaint under case number 18 CH 10561, in which it sought a declaratory judgment (count I) and to quiet title (count II); additionally the complaint alleged slander of title (count III) and abuse of process (count IV).

¶ 14 Count I sought a declaratory judgment confirming title to the property to the trust free and clear of any interests of Inland (and any unknown owners). In support of its request for declaratory judgment, Zadik Trust alleged that Natan had no obligation under the revival order and that Zadik Trust had demanded the release of the revival order but Inland refused. Zadik Trust further alleged that Natan attempted to get the bankruptcy court to discharge the lien, but the bankruptcy court deferred the matter to the trial court. Additionally, the complaint alleged that because the initial recording failed to contain the date and case number of the judgment as required by section 12-101 of the Code, both the initial recording and the revival order were void and the lien was unenforceable.

¶ 15 Count II sought to quiet title to Zadik Trust, realleging Zadik Trust's assertion that the initial recording of the memorandum of judgment did not create a proper lien pursuant to section 12-101 of the Code making the subsequent revival order void.

¶ 16 In count III, slander of title, Zadik Trust alleged that Inland knowingly and maliciously filed the revival order for the purposes of intimidation and harassment to induce it to pay money for a discharged debt. Zadik Trust further claimed that Inland made a false statement in paragraph

five of the revival petition that it had no notice of the bankruptcy. Zadik Trust asserted that Inland had knowingly and maliciously committed acts of petitioning, seeking, and recording void and unenforceable lien claims against the property and caused Zadik Trust to incur pecuniary fees in excess of \$50,000.

¶ 17 Count IV, abuse of process, realleged that Inland's actions amounted to harassment and intimidation to induce Zadik Trust to pay a discharged debt. Zadik Trust additionally alleged that the revival petition was a deliberate misuse and perversion of the judicial court process that was not justified by the underlying memorandum of judgment when Inland sought to enforce a void and unenforceable lien.

¶ 18 On September 24, 2018, Inland filed a motion to dismiss the complaint pursuant to section 2-619 (735 ILCS 5/2-619 (West 2018)) of the Code. In its motion, Inland conceded that Zadik Trust was correct that the case number was not visible on the recorded document. However, Inland argued that the memorandum of judgment was in compliance with section 12-101 of the Code because the memorandum of judgment: (1) was signed by the judge that entered the judgment; (2) was entered in the circuit court of Cook County, Illinois; (3) was entered on April 21, 2008; (4) was for the amount of \$4,226,780.62; (5) was entered in case number 2008 L 050327, and; (6) was entered against Natan M. Zadik, who resided at 5505 N. Francisco Avenue, Chicago, Illinois 60625.

¶ 19 Inland also admitted that the statement in paragraph five of the revival order, which indicated that it did not know of Natan's bankruptcy was false but not intentional because the form was preprinted. Inland maintained that the revival had been amended to reflect that. Inland further contended that the bankruptcy court did not discharge Natan's debt and further that his motion to reopen the bankruptcy case to avoid the lien was denied.

¶ 20 Attached to Inland's motion was the affidavit of Edward P. Boland, the attorney who had previously represented Inland in April 2008 when the judgment was originally obtained, dated December 23, 2014. Boland averred that the memorandum of judgment was signed by Judge White on April 21, 2008, stamped as "ENTERED" on that date, and was subsequently recorded with the Recorder's Office. Boland also averred that the memorandum of judgment and the copies were stamped by the clerk of the circuit court in purple ink with the designated case number of 2008 L 050327. Boland further averred that when he found out that the certified copy did not legibly show the case number, he decided to copy the original memorandum judgment himself, but the case number still did not appear. Instead, Boland averred that it wasn't until he increased the toner to a darker level that he was able to "pick up" the case number.

¶ 21 On November 13, 2018, Zadik Trust filed a response to Inland's motion to dismiss, contending that strict compliance should be applied to the requirements of section 12-101, and that the failure to strictly comply with the date and case number requirements rendered the memorandum of judgment recorded on April 29, 2008, invalid. Additionally, Zadik Trust alleged that Inland cannot allege that it provided "inquiry notice" because it was not applicable in this case; if anything, notice was not possible because of the lack of a case number or stated date of judgment.

¶ 22 On December 4, 2018, Inland filed a reply in support of its motion to dismiss, again asserting that the facts in the complaint were true, but the memorandum of judgment did comply with Illinois law. Inland reasserted its arguments that the memorandum of judgment created a lien in accordance with the requirements of section 12-101.

¶ 23 On June 25, 2019, the court entered an order granting Inland's motion to dismiss. The written order indicated that the decision was based on the briefs, arguments, and the examination of the original memorandum of judgment.

¶ 24 On July 19, 2019, Zadik Trust filed a notice of appeal.

¶ 25 On October 31, 2019, the parties filed an agreed motion to amend the record on appeal with an agreed statement of facts from the June 25, 2019, hearing in the circuit court. This court granted the motion on November 6, 2019. The agreed statement indicated the following: On June 25, 2019, William J. McKenna, counsel for Inland, personally brought the original recorded memorandum of judgment to the hearing for the motion to dismiss; counsel for Zadik Trust was present and made no objection to the tendering of the original memorandum of judgment; there was no witness testimony presented at the hearing; the court reviewed the original memorandum of judgment and found that it contained the case number; and the court granted the motion to dismiss with prejudice finding the memorandum of judgment contained all the required statutory features to perfect the lien.

¶ 26 ANALYSIS

¶ 27 On appeal, Zadik Trust contends that Inland's lien was not perfected because the recorded memorandum of judgment does not comply with section 12-101 of the Code (735 ILCS 5/12-101 (West 2018)). Zadik Trust further asserts that the case number and judgment are not explicitly stated in the memorandum of judgment that was recorded in the Recorder's Office, rendering the lien invalid.

¶ 28 Additionally, Zadik Trust contends that the trial court made an improper determination in granting the section 2-619 motion to dismiss based on Boland's affidavit because the motion and accompanying affidavit did not set forth an affirmative defense but rather it argued that the

memorandum of judgment did have those elements, which was an attempt to negate the ultimate facts of the case.

¶ 29 Compliance with Section 12-101

¶ 30 Zadik Trust first contends that the memorandum filed by Inland is not in compliance with section 12-101 of the Code. In support of its contention, Zadik Trust maintains that strict compliance with the requirements of section 12-101 should be applied to the recorded version of the memorandum of judgment contained in the public record and not the original document or copies alone. As it argued in the circuit court, Zadik Trust asserts that the memorandum of judgment failed to strictly comply with section 12-101 because the document is blank where the month and day that the judgment entered should have been, although the year 2008 is visible. While Zadik Trust acknowledges that the memorandum of judgment was dated, as noted in the stamp at the bottom of the document, it nevertheless insists that the date should be on the line expressly provided for the date in order to strictly comply with the statute because the stamp only reflected the clerk's docket entry date and not the date of judgment. Additionally, Zadik Trust maintains that because the date is missing from the designated spot on the recorded memorandum of judgment, sufficient notice is not provided to the public of the lien. Further, Zadik Trust asserts that it was solely Inland's responsibility to comply with section 12-101 and the lack of case number or date in the designated place on the memorandum of judgment as recorded is an error that Inland cannot escape, and Inland's attempts to blame the clerk's ink color and issues with scanning equipment are of no consequence.

¶ 31 Review of Zadik Trust's contention requires us to interpret the requirements of section 12-101 of the Code. In construing a statute, its plain language should be given effect. *Advincula v.*

United Blood Services, 176 Ill. 2d 1, 18 (1996). The standard of review for statutory interpretation is *de novo*. *Burman v. Snyder*, 2014 IL App (1st) 130772, ¶ 10.

¶ 32 Section 12-101 of the Code of Civil Procedure sets forth the requirements for perfecting a lien from a memorandum of judgment:

“The term “memorandum” as used in this Section means a memorandum or copy of the judgment signed by a judge or a copy attested by the clerk of the court entering it and showing the court in which entered, date, amount, number of the case in which it was entered, name of the party in whose favor and name and last known address of the party against whom entered. If the address of the party against whom the judgment was entered is not known, the memorandum or copy of judgment shall so state.” 735 ILCS 5/12-101 (West 2018).

¶ 33 “At common law, a court-entered judgment did not create a lien upon the real estate of a debtor.” *Dunn v. Thompson*, 174 Ill. App. 3d 944, 947 (1988). A lien derived from a judgment is purely a statutory creation. *Id.* “Section 12-101 of the [Code] provides specific guidelines for the creation of a judgment lien against the real estate of the debtor.” *Id.* Section 12-101 must be followed with strict compliance. *Northwest Diversified, Inc.*, 353 Ill. App. 3d 378, 387. In order to create a lien, there must be a recording of a memorandum of judgment. *Northwest Diversified, Inc.*, 353 Ill. App. 3d at 387-88.

¶ 34 The date listed on the memorandum of judgment is the correct date that the judgment was entered on. We have held that only the correct date will suffice to create a valid lien. *Maniez v. Citibank, F.S.B.*, 383 Ill. App. 3d 38, 44 (2008) (an incorrect date listed on a memorandum of judgment is not in strict compliance of section 12-101). The correct date of judgment was entered on the memorandum of judgment provided by the stamp. The memorandum of judgment contained

the date of judgment as April 21, 2008; this was the correct date of judgment. Zadik Trust argues, without pointing to any authorities, that the date should also be placed in the designated space in order to satisfy strict compliance, we disagree. Inland has not failed to comply with section 12-101 of the Code when the date of judgment was listed on the memorandum of judgment. *Advincula v.*, 176 Ill. 2d at 18.

¶ 35 The case number that the judgment was entered in was provided on the memorandum of judgment. We have held that the document filed will constitute a memorandum of judgment when it shows the court entering judgment, the date and amount of judgment, the case number and the names of the parties for and against whom the judgment was entered. *Maniez*, 383 Ill. App. 3d at 42 (citing *First National Bank of Zion v. Fryman*, 236 Ill. App. 3d 754 (1992)). Inland filed a memorandum of judgment that had the case number 08 L 050327 stamped on it. In contending that Inland be responsible for the recorded memorandum of judgment, Zadik Trust attempts to assign an obligation outside of what is strictly required by statute. Our review is strictly limited to the question of compliance with section 12-101 of the Code. Inland has not failed to comply with section 12-101 when the memorandum of judgment filed contained the case number the judgment was entered in. *Advincula v.*, 176 Ill. 2d at 18. Inland provided the date the judgment was entered and the case number the judgment belonged to when it filed the memorandum of judgment and thus, complied with the plain language of section 12-101 of the Code of Civil Procedure.

¶ 36 Section 2-619 Motion to Dismiss

¶ 37 Next, Zadik Trust contends the trial court improperly granted Inland's section 2-619 motion to dismiss based on the affidavit of Edward P. Boland, which stated that the original memorandum of judgment in his file contained the stamp of the clerk of the circuit court setting forth the case number and date of the matter in which the judgment was entered. Zadik Trust

contends the affidavit seeks to challenge the fact that the recorded memorandum of judgment is not in compliance with section 12-101 of the Code, by stating that the original memorandum of judgment is in compliance, through the aide of his own copier by adjusting the tone. Additionally, Zadik Trust contends the “extrapolation” of the meaning of the stamp on the bottom of the document has occurred. Zadik Trust contends Inland’s argument is not an affirmative defense. Rather, its argument is that the memorandum of judgment does have those elements under section 12-101 of the Code and attempts to negate the ultimate facts of the case. Zadik Trust further contends that Boland was not available for cross-examination, the original memorandum of judgment was not entered into evidence, no foundation was laid, and no other evidence was heard.

¶ 38 Inland contends that the motion to dismiss provided an affirmative defense. Inland admits to the representations of Zadik Trust’s complaint; that the recorded memorandum of judgment shows no date in the designated section and the case number was not visible. However, Inland contends that the affidavit of Boland and the presentation of the original memorandum of judgment showed that Inland was in compliance with section 12-101 of the Code. A date was stamped on the document that reflected the date the judgment was entered, and a case number was stamped on its memorandum of judgment reflecting the judgment at issue. Additionally, the affidavit of attorney Boland attested to the original memorandum of judgment and copies each being stamped with the case number.

¶ 39 “A motion to dismiss, pursuant to section 2-619 of the Code, admits the legal sufficiency of the plaintiffs’ complaint, but asserts an affirmative defense or other matter that avoids or defeats the plaintiffs’ claim.” *Mareskas-Palcek v. Schwartz, Wolf & Bernstein LLP*, 2017 IL App (1st) 162746, ¶ 23. A court must construe all well-pleaded facts as true and all inferences that can be drawn in plaintiff’s favor. *Id.* An affirmative defense is “something in the nature of a defense that

negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint.” *Cwikla v. Sheir*, 345 Ill. App. 3d 23, 30 (2003). An affirmative matter must be clear either, “on the face of the plaintiff’s complaint or be supported by affidavit or other evidentiary material.” *Nichol v. Stass*, 192 Ill. 2d 233, 247 (2000). A reviewing court conducts a *de novo* standard of review on a motion to dismiss pursuant to section 2-619. *Marekas-Palcek*, 2017 IL App (1st) 162746, ¶ 23.

¶ 40 Zadik Trust cannot contend the court was improper in granting the section 2-619 motion. “A party’s failure to challenge affidavits in support of or in opposition to a motion to dismiss constitutes an admission of those facts.” *Hall v. Defalco*, 178 Ill. App. 3d 408, 412-13 (1988). Zadik Trust did not file a counter-affidavit to dispute the affidavit of attorney Boland, and therefore, the affidavit of attorney Boland are found to be admitted facts. *Id.* The affidavit of attorney Boland attested that the original memorandum of judgment and copies were each stamped with the case number at the time of filing. Additionally, Zadik Trust’s contention that the granting of the motion to dismiss was improper is disputed by the agreed statement of facts that both of the parties agreed to. In the agreed statement of facts, counsel for Zadik Trust made no objection to the tendering of the original memorandum of judgment. Zadik Trust’s allegation that the trial court should not have granted the motion to dismiss in reliance of the affidavit of attorney Boland cannot prevail over Inland’s uncontradicted facts set forth in the affidavit. *Id.* at 413. The trial court properly granted Inland’s section 2-619 motion to dismiss.

¶ 41 CONCLUSION

¶ 42 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 43 Affirmed.